

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 2, 2016

7:00 p.m.

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

Chairman: Alan Silverman

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

Commissioners Absent: Bob Cronin

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 to order the City of Newark Planning Commission meeting for the month of February, 2016. We do have a quorum present.

1. THE MINUTES OF THE JANUARY 5, 2016 PLANNING COMMISSION MEETING.

Mr. Silverman: Commissioners, you have received draft copies of the minutes. Do you have any additions or corrections to the minutes? Okay, if there are no additions or corrections to the minutes, they stand as written.

2. REVIEW AND CONSIDERATION OF A MAJOR SUBDIVISION AND SPECIAL USE PERMIT FOR THE REDEVELOPMENT OF THE 0.88 ACRE PROPERTY LOCATED AT 147-163 EAST MAIN STREET, KNOWN AS TRADER'S ALLEY.

Mr. Silverman: Moving onto agenda item number 1.

Mr. Will Hurd: Two.

Mr. Silverman: Two, I'm sorry. We have the review and consideration of a major subdivision and special use permit for the redevelopment of a 0.88 acre property located at 147-163 East Main Street, known as Trader's Alley.

Now before we begin, I'd like to advise that there is a speaker sign-up slip available by the door for anyone who would like to speak either for or against the project. We do have a commercial transcription service. Our secretary is an adjunct to that. If there are any unusual names and terms that are used, the secretary may interrupt us to make sure that she has the proper spelling for the transcription and we will move on from there. The purpose of the application to speak is not to prohibit anyone from speaking, it's simply to give us an idea of the number of people who want to speak on the topic and to provide for a flow of discussion so everyone has an opportunity.

I'd like to move on to the Director's report.

Ms. Maureen Feeney Roser: Thank you, Chairman Silverman. I will try to be brief as I know we will have a lot of discussion, but I think there are several points in the report that are very important that we get on the record. [Secretary's note: Ms. Feeney Roser summarized the report, which reads as follows:]

On March 31, 2011, the Planning and Development Department received applications and plans from Landmark Science and Engineering (formerly Landmark JCM) on behalf of Trader's Alley, LLC for the redevelopment of the property at 147-163 East Main Street. Subsequently, the Department received revised plans on June 30, 2011, which were reviewed and, following a public hearing, tabled by the Planning Commission at its August 2, 2011 meeting. Numerous sets of Trader's Alley plans have been submitted since the August 2, 2011 Planning Commission, and a Board of Adjustment hearing to challenge Code interpretations of area requirements relating to the plans was held on August 19, 2015, resulting in the revised plans before you for consideration, which are dated September 15, 2011 with revisions through December 31, 2015. The applicant's latest plans request major subdivision approval to construct a four story building with ground and second level parking and eight (8) upper floor, three-bedroom apartments at the location of the Trader's Alley's existing surface parking lot and attached on the second floor to the Trader's Alley building fronting on Main Street (147-163 East Main Street). In addition to major subdivision approval, the applicant continues to request the required special use permit for apartments in the BB zoning district.

Please see the attached Landmark Science and Engineering development plans and building elevation drawings.

Because considerable time has passed (and many plan revisions submitted) since the Commission's initial review of this project, we have repeated below the standard background and technical information that appeared in the July 25, 2011 report to the Commission and updated it as appropriate. Our most recent review of the Trader's Alley project follows:

Property Description and Related Data

1. Location:

The rear of 147-163 E. Main Street.

2. Size:

Total Site (including existing structure): .88 acres.

3. Existing Land Use:

The Trader's Alley site is a developed property containing a two-story building fronting on East Main Street with commercial uses on the first floor and eight two-bedroom second story apartments. A 45-space parking lot is located to the rear of the building.

4. Physical Condition of the Site:

Trader's Alley is a developed site containing one two-story building. The site also contains a fairly large surface parking area and shared access ways to East Main Street and East Delaware Avenue.

In terms of topography, the site is very level with a slight increase in elevation from south to north.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, Trader's Alley contains Matapeake – Sassafras Urban Land Complex soil. The Natural Resources Conservation Service indicates that this is disturbed soil that has been used for development purposes. No development limitations for the proposed use are indicated.

5. Planning and Zoning:

Trader's Alley is zoned BB. BB is our central business district zone that permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery-restaurants and delicatessens.
- D. Finance institutions, banks, loan companies.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site, of any article for sale which is permitted in this district, with special conditions.
- I. Related indoor storage facilities as accessory uses with special requirements.
- 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 special conditions.
- 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 offices, with 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, in conjunction with any nonresidential uses permitted, 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. (Please note, in the case of Trader's Alley, the average setback provision as regulated in Code Section 32-56.2(d)(1) applies).

- 6) *Rear yards.* 15 feet.
- 7) *Side yards.* No side yards are required for buildings up to 35 feet in height. For buildings above 35 feet in height, a minimum side yard of 8 feet is required.
- 8) *Parking.* As required in Code Section 32-45.

Regarding BB zoning area requirements, the Department believes the plan meets all applicable zoning specifications. Please note, as previously mentioned, the parking and setback requirements applicable to this application were addressed in a code interpretation issued by the Department. That interpretation was appealed to the Board of Adjustment by both Trader's Alley and a neighboring property owner, Schlosser & Dennis LLC. The Board of Adjustment's decision did not alter the Department's interpretation regarding the applicable setback, and affirmed that the required parking spaces should be calculated based upon the "shopping center" parking calculation. Trader's Alley and Schlosser & Dennis filed appeals of the Board of Adjustment's decision with the Superior Court. Subsequently, Trader's Alley and the City reached a settlement that stays the Trader's Alley Superior Court appeal while the application before you is being considered. Schlosser & Dennis' Superior Court appeal has not been stayed – but the Board of Adjustment has moved to dismiss the Schlosser & Dennis appeal on jurisdictional grounds. While there are a number of procedural matters under consideration by the Superior Court concerning the pending appeals, at this time, the Department's code interpretation on parking and setbacks (which was left undisturbed in the Board of Adjustment decision) governs the parking and setbacks applicable to the present application. The code interpretation governs this application unless and until it is changed or altered by the Superior Court or the Delaware Supreme Court.

Regarding adjacent and nearby properties, the Schlosser and Dennis properties, including Camera's Etc., The Days of Knights, Moxie and other commercial facilities and a shared surface parking lot are located immediately east of the site on East Main Street occupying lands zoned BB. Commercial businesses also zoned BB are also located west of the site, as well as on the north side of East Main Street, across from the existing Trader's Alley building. An easement providing access to the Trader's Alley parking area from East Delaware Avenue roughly bisects the adjoining property to the south. Also, at this location to the south is the mixed use, commercial and residential Campus Edge project, with 22 upper floor apartments in two three-story buildings. A parking area for the adjoining commercial properties to the west lies immediately adjacent to the proposed new Trader's Alley residential facility.

Regarding comprehensive planning, Comprehensive Development Plan IV calls for "commercial (pedestrian oriented)" uses at this site. The Plan defines these uses as:

"Shopping and commercial uses of all types, including retail facilities for 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, as noted in detail above and in Chapter II, may be permitted under certain circumstances."

In addition, the Plan's Downtown Economic Enhancement Strategy shows the Trader's Alley site within the "District One - Downtown Core District," which is described as:

"This is the center of Newark's Central Business District that is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed

apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. Beyond that and particularly to encourage owner occupancy downtown, the City may consider reducing the permitted downtown density in the projects in this district for residential projects.”

More generally, concerning downtown residential uses, the Plan includes the comment that:

“Regarding the City’s review of downtown mixed use redevelopment projects with housing components, the intent is to make it abundantly clear that the City seeks positive impacts from such residential uses. One key positive impact from an individual project, for example, might include the potential at the site for affordable housing for owner occupants. In particular, and perhaps most importantly, to implement this Action Item, Council may need to actively consider density reductions for projects of this type, on a case-by-case basis, depending upon the location, other site conditions and the nature of the project.”

Concerning gross residential site density, please note that the Trader’s Alley plan calls for 18.18 dwelling units per acre. [This calculation includes the proposed eight apartments, the existing eight apartments in the original Trader’s Alley building as well as the acreage at the site]. In 2012, City Council passed legislation limiting the density for three-bedroom or larger units in the BB zone to a maximum of 20 units per acre; and two-bedroom apartments to 50 per acre. The existing 8 units at Traders Alley are two-bedroom units and the proposed 8 apartments are three-bedroom units. Using the formula for calculating the maximum number of dwelling units permitted for developments with combinations of dwelling unit types, the allowable density for the site with the proposed mix of units $([8 \times 50] + [8 \times 20] / 16 \times .88)$ is 30.80 dwelling units per acre. This allowable density for the site (30.80) is approximately one unit less per acre than the average density of recently approved downtown mixed use buildings (31.88); and therefore, the 18.18 units per acre density proposed by this plan is considerably less dense than Code permitted density.

By way of comparison, other nearby and adjacent multi-unit developments have the densities noted below:

<u>Project</u>	<u>Units Per Acre</u>
Newark Shopping Center	47.79
Campus Edge	25.90
Kate’s Place & Choate Street Townhomes	25.00
Washington House	36.10
102 East Main Street	20.80
108 East Main Street	14.71
129 East Main Street	35.30
132 East Delaware Avenue	34.80
1 South Main Street	37.27
201 Delaware Avenue	28.71
58 East Main Street	44.28

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 40 bedrooms proposed for Trader’s Alley calculate to 45.45 bedrooms per acre. For comparison purposes, other nearby and recently approved multi-unit developments have the following bedroom densities:

<u>Project</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5

Kate’s Place & Choate Street Townhomes	59.3
102 East Main Street	62.5
108 East Main Street	58.8
129 East Main Street	105.9
132 Delaware Avenue	104.3
1 South Main Street	83.6
201 East Delaware Avenue	75.1
58 East Main Street	45.3

Status of the Site Design

Please note that at this stage in the Newark subdivision and review process for projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features must be included in the construction improvements 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 improvements plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvements plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan – within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision plan and agreement for the project

The Trader’s Alley development plan calls for a new four-story building located in the rear of the existing two-story Trader’s Alley commercial and upper floor residential facility that fronts on East Main Street. The applicant has offered to donate the ground level portion of the site (to be reconfigured for 37 parking spaces) to the City for public parking. As understood, the adjoining property owner (Schlosser & Dennis LLC) contends that Trader’s Alley cannot construct the subdivision because, it claims, the construction of the building (and presumably the donation of the ground level parking to the City) violates the easement. The dispute over the scope and requirements of this private easement/access agreement are not issues to be resolved by the City in this case. If, however, the easement allows construction but otherwise precludes donation of the ground level parking to the City, or if the parties to the easement cannot agree to amend the easement to allow the donation of the surface level parking to the City, the ground level parking may remain under the ownership and control of Trader’s Alley.

The proposed 32-space second floor parking deck will provide parking spaces for the existing eight units in the portion of Trader’s Alley fronting on East Main Street (freeing up 8 spaces in the existing parking lot currently reserved for apartment tenants), and the 8 new apartments built above this parking facility. Access to the site is proposed to be through shared easements at the Campus Edge property to the south to East Delaware Avenue and, as noted above, to the north to East Main Street between the Trader’s Alley building and the one-story commercial building to the east owned by Schlosser & Dennis, LLC.

Please consult the applicant’s submitted elevation drawings and supporting letter for additional information concerning the proposed site and building design.

To evaluate the proposed architectural design, the Planning Commission may wish to review the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations Appendix XIII (d).

Please note in this regard, that on a voluntary basis, some time ago the applicants reviewed the proposed building elevation drawings with the Downtown Newark Partnership’s Design Review Committee. As a result, the Committee recommended in favor of the project and

noted that the proposed building is, “very well designed.” The architecture of the development has not changed significantly since the Committee’s review.

Fiscal Impact

The Planning Department has evaluated the Trader’s Alley major subdivision and special use permit plan’s impact on Newark’s municipal finances. The estimates generated for net return are based on the Planning Department’s Fiscal Impact Model. The Model projects the Trader’s Alley fiscal impact – that is, the total annual municipal revenues generated, less total cost of municipal services provided. The Planning and Development Department’s estimate of net annual revenue for Trader’s Alley is \$4,244.

Please note 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 to the City of real estate transfer tax in the first year. In addition, please note that the current fiscal impact of Trader’s Alley is not calculated into this estimate. In other words, the impact is calculated from the proposed project alone, and not the combined Trader’s Alley site.

Traffic

Because the development will have access and egress on State owned and maintained roadways (Main Street and Delaware Avenue), the Planning and Development Department requested DelDOT review and comment on the Trader’s Alley plan. DelDOT indicates that the project does not meet the volume-based warrants for a Traffic Impact Study (TIS), which are 500 trips per day and/or 50 peak hour, but DelDOT did provide a series of administrative instructions on submitting forms and fees for record plan and commercial entrance plan approvals, which have been shared with the applicant.

Subdivision Advisory Committee

The City’s Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed Trader’s Alley development plan and has the comments below as follows:

1. The Planning and Development Department notes that the proposed upper floor residential land use at the Trader’s Alley site conforms to the City’s Comprehensive Development Plan; and corresponds by and large to the residential development pattern of recently approved downtown development projects.
2. The Planning and Development Department recommends, in order to limit the impact of adding eight apartments to the existing mixed use building at the site and to be consistent with Council’s recent approvals, that the applicant deed restrict the new addition to a maximum of total tenants permitted to reside there to the equivalent of one per bedroom or 24 tenants. The Commission may wish to discuss this recommendation with the applicant at the meeting.
3. The Planning and Development Department suggests the following, regarding subdivision site design conditions:
 - The architectural design of the proposed facades of the Trader’s Alley building should be carried out on all building elevations. (Note #6 on plan)
 - 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. (Note #6 on plan)
 - The parking area lighting should be designed to limit impact on adjoining and nearby properties.
 - The building should be designed to be easily converted to condominium units should market conditions change.
 - Compactors should be considered for the trash and recycling needs of the entire site.

4. The Planning and Development Department notes that it had suggested (in the 2011 departmental report) that the Commission recommend that Council approve the Trader's Alley project largely because the earlier plan added directly and immediately to the City's inventory of available public parking, and provided parking for the new and existing apartments on the site. The proposal, therefore, was viewed as of benefit to the community because it would add to the public parking inventory, help meet the downtown demand for parking, alleviate some of the on-going issues with illegal parking at the Trader's Alley lot, and would correspond directly to the Comprehensive Development Plan's proviso that downtown projects be evaluated based on, ". . . the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment. Trader's Alley, in conjunction with its application, has offered to donate the surface parking to the City. However, as noted above, due to issues raised by Schlosser & Dennis regarding the existing easement agreement, allowing the City to eventually accept ownership of the ground floor parking may (or may not) be prohibited by the easement and use of the easement for construction may (or may not) require Schlosser & Dennis's consent. As such, the Department suggests that should the Commission wish to recommend approval of the Trader's Alley Major Subdivision and Special Use Permit plan, that the applicant be required to make a good faith and documentable effort to seek and secure any necessary and legally required agreements with their neighbors to allow the donation of the surface level facility to the City prior to applying for a building permit. Should the applicant be unsuccessful in securing the agreements for amendment of the easements (if necessary) for the donation of the surface level parking to the City, the lot would remain privately held by Trader's Alley who shall allow parking for Main Street patrons and customers of the complex. The Commission may wish to discuss this suggestion with the applicant at the meeting.
5. The Planning and Development Department notes that DelDOT entrance/exit review and approval will be required through the Construction Improvements Plan (CIP) process. In addition, verification of all required cross access, shared parking and construction easement agreements will be required at CIP and before the issuance of a building permit.
6. The Department notes that the plan shows four (4) bicycle racks, which potentially provide eight (8) bike parking spaces. The bike rack detail was not provided and will need to be included on the Construction Improvements Plan (CIP).
7. The Code Enforcement Division of the Planning and Development Department indicates that:
 - The proposed new structure must meet all applicable City Building and Fire Code requirements. In this regard, for building permit review, the applicant will need to show the fire rating and verify that the openings in the masonry fire barrier wall proposed to be constructed along the west side of the property meet Code. In addition, exterior walls of the existing building and the proposed new building shall meet the opening limitations and the fire ratings base on Code provisions regarding the distance to property line.
 - Overhangs and projections, as stipulated in Section 32-56(a)(2), may not protrude more than two (2) feet into any required yard.
 - The support columns may not reduce the size of parking spaces below the Code required minimum. All parking spaces must be an unimpeded 9' x 18' when constructed to meet Code.
 - At CIP, turning templates will be required to ensure safe passage of vehicles on the ramps. In addition, and for the same reason, the division requests that the location of any parking gates to the second floor parking that may be installed to restrict the use to residents only be shown on the CIP.
 - The Division reiterates the Planning comment above that construction easements will be necessary with adjacent properties to build the project as proposed.
8. The Public Works and Water Resources (PWWR) Department indicates that they have concerns with some aspects of the plan, which extend beyond what is required at the

subdivision phase, but which may affect the ability to approve the CIP. Plan Note #23 has been added to address this concern.

9. The PWWR Department also has the following comments:

Public Works

- If the first level of parking is to eventually be dedicated to the City for public parking, the surface of the parking and aisle areas shall be reinforced concrete.
- The applicant should review stormwater management and sediment control details with the Department through the Construction Improvements Plan process.
- During the Construction Improvements Plan process the Department will review the applicant's plan to restrict access to upper floor parking to avoid U-turns on the second floor. In addition, and also as requested by Code Enforcement, auto turn information will be reviewed at the CIP phase to determine if any limitations on truck size will be necessary.

Water

- Off-site improvements may be necessary if fire flows are not available.
- Prior to the issuance of a Certificate of Occupancy for each unit, an STP fee will be required.
- Easements on adjoining properties need to specify that they are applicable for water and sewer service.
- Individual water meters will be required for each apartment; the meters shall be located in a central mechanical room.
- Through the Construction Improvements Plan process, the applicant needs to review the capacity of sewer mains on Main Street with the Department.

10. The Electric Department has the following comments:

- The applicant will be required to pay \$13,500 toward the cost of the pad mount transformer and meters and will be responsible for the transformer pad, primary cable, conduit, and all secondary conduits and cable.
- Any switch gear must be approved by the Department through the building permit process.
- The developer must supply a forklift to allow the transformer to be set on its pad at time of delivery.
- The developer will be responsible for all costs to repair the City's smart meter system if the building, when constructed, interferes with its operation.

11. The Police Department notes concerns with the increased vehicular and pedestrian traffic during construction and when the project is completed. The Department adds that the City would benefit from the additional public parking proposed at the site, should it be provided.

Recommendation

Because, the Trader's Alley major subdivision and special use permit plan, with the Subdivision Advisory Committee conditions, meets all the applicable Code requirements, the proposed use does not conflict with the development pattern in the nearby area, the plan conforms to Comprehensive Development Plan IV's land use recommendations for the site, and because the plan, subject to the Subdivision Advisory Committee conditions, may potentially add to the City's inventory of available public parking while at the same time providing parking for the residential uses on the site, the Planning and Development Department suggests that, **the Planning Commission recommend that City Council approve the Trader's Alley major subdivision and special use permit plan, subject to all Subdivision Advisory Committee conditions, as shown on the Landmark Science and Engineering plan dated September 15, 2011 with revisions through December 31, 2015.**

That concludes documenting our report. I would be happy to answer any questions the Commissioners may have for me.

Mr. Silverman: Do the Commissioners have any questions?

Mr. Hurd: I have sort of a clarification question, I guess, for me, because I'm new to this. I guess I wasn't around for the conversations about the bedrooms per acre calculations. It always seems to come up and it always seems to be tied to tenants and always seems to come up to being deed issues. Was there a concern that brought this on of more tenants, more than one tenant per bedroom, at some point, that they were trying to work against?

Ms. Feeney Roser: I want to start with this is not a Code requirement. The bedrooms are not done by that.

Mr. Hurd: Right, okay.

Ms. Feeney Roser: But over the last couple of years, there have been concerns on this Board, as well as Council, because we were only using units and it's really not the number of units. It's the number of bedrooms in those units that drive how many people are in them.

Mr. Hurd: Okay.

Ms. Feeney Roser: And then, from that, we've talked about trying to work with the applicant to limit the number of individuals that would be able to reside in the unit, so it's pretty standard.

Mr. Hurd: Okay, thank you.

Mr. Jeremy Firestone: I've got one clarification question. This has to do with the estimated net annual revenue. I take it that if the parking, the lower level, is transferred over to the City, the City is going to put up meters?

Ms. Feeney Roser: That would be the most cost-efficient way to do it.

Mr. Firestone: And so does this economic analysis include, account for, additional revenue?

Ms. Feeney Roser: It does not.

Mr. Firestone: So the net could be substantially larger?

Ms. Feeney Roser: It could be.

Mr. Firestone: Thank you.

Mr. Bob Stozek: Regarding parking, Maureen, in your recommendation it says given the various deals that are going on, it may potentially add to the City's inventory of available public parking.

Ms. Feeney Roser: It may.

Mr. Stozek: Since surface parking is eliminated by the foot print of the building and you're adding in, I think actually fewer spaces on the first floor. How is this adding to the inventory?

Ms. Feeney Roser: Well this is private parking now so even though it's only 37 spaces, which is what they have minus the 8 that are reserved there, it's pretty much a wash. But it would be considered public parking, which would mean it would be for people who were going downtown and might also visit another business or two. They wouldn't have to risk being towed, and I think that's one of the benefits to it. It becomes public parking so that you can avail yourself of places other than what's just in Trader's Alley.

Mr. Stozek: Just from a simplistic standpoint, it's not adding new parking?

Ms. Feeney Roser: There is no new parking, no.

Mr. Stozek: It's essentially the same number of parking spaces.

Ms. Feeney Roser: Right, it's customer [inaudible].

Mr. Silverman: Frank?

Mr. Frank McIntosh: Staying with the parking for a minute. How much does this parking, additional spaces, how much did that influence your decision to recommend?

Ms. Feeney Roser: How much did it influence?

Mr. McIntosh: I mean, maybe that's not a good question, but...

Ms. Feeney Roser: I think it's part of it, but there are others, you know, the recommendation goes through the reasons for our recommendation to suggest that you approve it, and that's that it can meet Code, it doesn't conflict with the area, it meets the Comprehensive Development Plan, and then, it may improve the parking.

Mr. McIntosh: But if the parking was never an issue with this, would you still be recommending we approve this?

Ms. Feeney Roser: Yes.

Mr. McIntosh: Okay, because it seems like that's a real giant if.

Ms. Feeney Roser: It's a real giant, you need to know, it's a real if. But if it does work out, it would be a benefit.

Mr. McIntosh: But a minor one at that, with 8 spaces?

Ms. Feeney Roser: Yes.

Mr. McIntosh: Okay, thank you.

Mr. Silverman: Okay, with respect to the reference in your report about if the parking spaces were to become part of the City's public system, you would require concrete decking?

Ms. Feeney Roser: Yes.

Mr. Silverman: And this is at ground level?

Ms. Feeney Roser: Yes.

Mr. Silverman: Wouldn't concrete decking be required at ground level regardless? I've never seen a parking building with asphalt on the first floor and concrete on the second.

Ms. Feeney Roser: It may.

Mr. Silverman: Okay, so the City would permit that? Okay.

Mr. Edgar Johnson: I have a question. On page 4 it says, "Subsequently Trader's Alley and the City reached a settlement that stays the Trader's Alley Superior Court appeal while the application before you is being considered." What are the criteria, or what's in the settlement?

Ms. Feeney Roser: Bruce, do you want to answer that?

Mr. Bruce Herron: Well, what the settlement agreement does is stay the Trader's Alley appeal of the Board of Adjustment decisions on the parking and the setback. In response to those

decisions, Trader's Alley submitted a revised plan which was compliant with what the Board of Adjustment decided. So the agreement was to let the process play out and, while the process is ongoing, to stay the Trader's Alley appeal because it might become moot.

Mr. Firestone: Maureen, I have another question. Is there anything in the application that provides incentive for the applicant to zealously pursue easement issues so that parking could, in fact, be turned over to the City?

Ms. Feeney Roser: There's nothing forcing them to do that. What we're asking for is that they do, in good faith, try to negotiate something and that they document to us that they have given it that effort. We haven't said that you will not be able to get a building permit if it doesn't happen. What we've said is that you will try, because it's out of their hands at this point.

Mr. Firestone: Right, but, to a certain extent, the incentives are the exact opposite for them. Presumably their structure will be more valuable to them if they end up owning that parking then if the parking is ultimately turned over to the City. Not only do they own the private parking but that's a perk, presumably, for tenants that live there. There would be, effectively, a private parking lot underneath that building. So the question is, you mention the issue of good faith, but is there, in fact, any kind of requirement of good faith or anything, even more, that they have to do something to move forward with this? Because, as I said, absent that, the incentives are for them to throw up their hands and this parking won't come to the City.

Ms. Feeney Roser: You may want to hear from the applicant on that. But I can tell you that Ms. Tsionas has been very generous to the City over the years and we have made these arrangements with her previously. So I don't think that she's opposed to doing it. I think that she actually offered to do it and, if you go back through the reports, you will see that in the first one, we didn't realize there was going to be a problem with an easement agreement or anything like it. So, over time, that recommendation has been changed and since we can't require it, we can ask for her to make her best faith effort.

Mr. Firestone: Right and I appreciate that she offered and she may or may not be able to. But now that she's in a situation where she may or may not be able to, her private incentives are not necessarily aligned with the City. Whereas they would be if she was clearly legally able to, and she was wanting to get her development approved and her incentives were aligned with the City. In this case, they're not. So that's the issue that I'm bringing up and, yes, I think we will be hearing from the applicant on that issue.

Mr. Silverman: Anyone else? Okay, before we move on to asking the applicant to speak, I have a statement I'd like to provide for the benefit of the public who are here.

The Trader's Alley application has been the subject of staff review, Board of Adjustment action, as well as civil court proceedings over an extended period of time. These actions have been covered in both the local media and on the internet. A reminder to Commissioners, by Law, the Commissioners, in our deliberations, can only consider information given in presentations, submitted reports or testimony at this hearing. We cannot take into account things that we may remember, heard, talked to other people on the street about, that have previously occurred to this hearing. Tonight's hearing will focus on topics relevant to making an informed decision with respect to moving the applicant's land development application forward in the form of a recommendation to City Council. In making the Commission's recommendation, the Commissioners will consider how the application supports the currently adopted Comprehensive Plan V, is in compliance with the Zoning Ordinance, conforms to site development ordinances and regulations, meets the recommendations of the Planning Department, and takes into account information provided by parties testifying for or against the application. As Maureen has commented, there is still an additional review process beyond tonight's Commission hearing, whereby details are worked out prior to building permit. And if those details are not worked out satisfactorily through the CIP, the plan can be remanded by staff back to City Council who, in turn, can remand it back to the Planning Commission for further review and hearing. Tonight's hearing will not become a forum for revisiting past Board of Adjustment activities, past litigation or pending litigation unless that is desired by a majority of the Commissioners to revisit a

particular item. The speaker will be asked by the Chair to move on to another topic if we start re-plowing those fields. So that kind of sets the parameters as far as the Chair is concerned.

May we hear from the applicant?

Mr. Richard Abbott: Certainly, Mr. Chair. Richard Abbott, on behalf of the applicant, Trader's Alley LLC, and I'm the attorney representing them. Also with us here tonight are Angela Tsionas, Kerry Haber, who is our architect, and Project Engineer Joe Charma. Joe is going to give some comments after I complete my explanations on the legal standards and so forth, as to the engineering details, and then both the owner, Ms. Tsionas, and Mr. Haber, the architect, are here should we get any questions on subjects that they would be better versed with.

The plan has had a long journey, as you've heard here tonight, and the plan is before you in paper form as well as on the screen. And I know this oversimplifies a nearly five year process, but it's a four story building with two stories of parking and two stories of apartments, when you boil it all down. Some of the chronology has already been provided to you by the Director, the Planning Director, and it's been reviewed and reviewed and reviewed. It might have set a new record. I don't know, you'd have to ask Mr. Charma. He's been in this business for a long time. But that's fine because don't let it be said that it hasn't been fully vetted. There has also been, in particular, a number of detailed reviews. Obviously, the Subdivision Advisory Committee as well as the professionals in the Department of Planning and Development.

You've heard about the lawsuits. We're not going to talk about those but we hope to be able to get through this process so that we can moot those, as your solicitor indicated. When you boil it all down, too, in the end, you have the comment, and we've summarized it in our screenshot there, which is the City's ultimate conclusion, which is the recommendation of approval subject to the Subdivision Advisory Committee recommendations.

So let's take a step back on the plan itself. You heard the Chair mention the point, or perhaps it was the Director, it's a 0.88 acre parcel zoned BB, which is central business district, and then there was a comment, I'll address this early on before I forget it, by Commissioner Firestone about the parking. My client is ready, willing and able to donate that parking. There is a cross access easement which includes a cross parking easement agreement that creates some difficulties. And we have had a lot of opposition through the last, nearly, five years from the neighboring owner that that agreement is with, so that's why, I think you've heard the expression that there may be some difficulty there. I'm not trying to cast any aspersions on them, just saying there have been challenges, and so, hopefully, we can avoid challenges with respect to gaining approval to donate that 37-space portion on the first story of the parking garage. My client is ready, willing and able and prepared to do so and, as I understand it, has done so in the past. And just so the Commission is aware, this is not her first journey, as you may know. She has developed 58 East Main Street, which is briefly mentioned in one of the density comparison charts in the Department's recommendation, and owns numerous other properties, has done numerous other development projects and hopes to do more development projects in the future with the City in tandem. She has that commitment and she has stood by her commitment and is good to her word in the past. Should the Commission wish to make a recommendation subject to the types of points that were contained in the Department's recommendation, no problem. We will do everything that we reasonably can, and if we need to give you the emails and letters and so forth to exhibit our reasonable good faith efforts, then we're fine with that. Because that is a joint objective of not only the City, but of my client.

Now in terms of the architectural renderings, you can see here the first row of pictures gives you the north elevation, going from left to right. North elevation, south elevation, view from Main Street and this is the building that Iron Hill Brewery is in and, obviously, the foreground is Main Street. And then this is the parking and apartment building that is proposed. So that gives you a sense for the way that it would look from various directions.

The second row, in the middle of the page, is, this is Iron Hill Brewery. This is the connection to the new parking garage and apartment building. This is the CampusEdge building, and we'll come back to this in a little bit when I comment about the scale, character and so forth,

because the Commission also has the ability to evaluate the architectural components of the plan because it is in the downtown district.

The final row gives you the west elevation and, again, you see the building that the Iron Hill Brewery Restaurant is in, the view of the proposed building in the middle and then the CampusEdge, same height, same essential density and size characteristics.

So the next slide doesn't give you any architectural design but it shows you the cross section of the building with the two stories of parking and the two stories of residential apartments. And then to the right side of this spot you'll see the addition here on the backside of the existing building and the access from Main Street and then the access between the CampusEdge buildings from Delaware Avenue below. So that should well orient you, if you're not already.

The standards for approval, and there are, although the architectural design is really more of a recommendation issue, I included it on my three issue list. And the three issues are, essentially, major subdivision plan #1, #2 the design review and, then, #3 the special use permit. And I'll take those in turn.

For the major subdivision plan, that's governed by Code Section 27-21 and there are, essentially, two elements, two components of it. You've already heard the end result of that through the Director's recitation of the recommendation. But step 1 is SAC review and comments and step 2 is Planning and Development Department report. So the scope of that review is both the Zoning Code and the Subdivision Code compliance. So, ultimately, when you hear reference to the Code compliant plan, that covers the gap. And, of course, you've heard the recommendation. The Department believes the plan meets all applicable zoning specifications. It wouldn't be here before you tonight if it hadn't been vetted and found to meet all of the subdivision requirements.

Now with respect to the design review, that's contained in Chapter 27, Appendix XIII, and that has two elements. The first criteria, review element, is the design elements as opposed to the adjacent buildings. So that is what I alluded to a moment ago when we looked at the way that it fit in with the size and the design elements of the adjacent CampusEdge building and the building that it's being added onto, which I'll refer to as the Iron Hill existing building. The second element is general architectural character. And that's where the Design Review Committee of the Downtown Newark Partnership comes in. Under the Code, there is a referral to that Design Review Committee, and the Planning Commission is asked to consider the comments that they provide. And while there is not an extensive formal report, as was mentioned, the determination was that it was well designed and that's to, we believe, both of the elements. So we believe, first, the picture tells a thousand words and, second, some others that are expert and assigned to do this review have agreed with that.

So the third point, and this one is going to require a little bit more discussion on my part, is the special use permit. Under Code Section 32-78 there are three elements. And let me say, for the most part, the first two elements that the Commission is asked to look at, I would submit to you are more aimed at uses that might be inconsistent with surrounding uses. That doesn't say that in the Code but you'll hear what I mean in a second.

The first criteria is that the application, or the development project, not affect health or safety adversely. So in this instance we're talking about parking and apartments. As long as the lighting and all of the other elements of the design meet the Code, which obviously is the standard established to protect public health, safety and welfare, then you don't have any inconsistency. If you had, for example, a fast food restaurant that operated 24 hours a day, that would obviously, potentially, be inconsistent with neighboring residential uses so you could have a situation where you could have a negative effect on health or safety. Again, I think it stands to reason that if you're having a residential use which, although its multi-family, is on the low end of the density scale, as has been described by the Director, then there's really no chance that you're going to have any adverse effects of those sorts.

The second criteria is that it is not detrimental to the public welfare or injurious to property or improvements. Similar to the first element, I think, in a way, but in effect, the same argument and the same proof applies. That is, you have a relatively low density multi-family residential use as well as parking. Obviously, other than the vehicles, there's very little noise emanating from a parking garage and you have an apartment use that's in character and in keeping, as the Department recommendation has concluded, with the surrounding downtown core area.

The third criteria is that the project not be in conflict with the Comprehensive Plan purposes. You heard a lot and you've read a lot, I'm sure, in the Department's recommendation about the Comprehensive Plan issues. And the downtown development district, downtown core provisions of the Comprehensive Plan suggest that apartments on upper floors are appropriate, and we have that. They suggest that you should have sufficient parking, and we have that. They suggest that you should have an appropriate building design, and I've covered that in the architectural component. And then the contribution to the economic environment. And, in that situation, I think, again, you've got apartment dwellers, you've got a downtown business district, to some degree, you've got a restaurant and another business in town. I want to have more residents, I want to have more foot traffic that would be associated with this type of use and so, under those circumstances, we would submit that element, or that component, of the third part of the special use permit test is also satisfied.

I think of note is the, there's also the bedrooms per acre density and it, again, under all of those categories, it's the lowest density. So I think, given that low density, you have a low impact resulting and that plays in and helps support the satisfaction of the special use permit test. There are a number of other details, as I said, that Mr. Charma will discuss. And, of course, as the Chair noted, and as the Director noted, there will be a Construction Improvements Plan phase that follows hopeful approval, if we're lucky enough to get that from the Mayor and Council. So a lot of that nitty-gritty will be addressed at that stage, not at this stage.

There is neighboring owner opposition that's been alluded to and you'll, no doubt, hear from them tonight. Just so the Commission is aware, we had numerous communications with the neighboring owner through their counsel. In April of 2014 we sat down with them at Mr. Charma's office and they brought a number of engineers in and raised a number of issues and we kicked off what, we believe, resolved those issues. They're not in agreement with that but we met with them and I'd say it was probably an hour-and-a-half, maybe even two, hour meeting, going through, in intimate detail, all of the issues that they had raised up to that point and followed it up with a letter. And, again, we're very confident and Mr. Charma can talk about it, but we don't want to go back into that minutiae unless the Commission really wants us to. But, in any event, he can confirm for you that, as far as we're concerned, between all the experts on Fire Code with the City, all the experts on planning, on design, on zoning and so forth, that this has been an exhaustively vetted plan and that all of the issues are resolved in terms of Code compliance or else, once again, you wouldn't be reading this. So, with that, I am going to hand the floor, or the podium, over to Mr. Charma to go through a few more of the engineering details. Thank you.

Mr. Joe Charma: Thank you, Mr. Abbott. Mr. Chair and Commissioners, my name is Joe Charma and I'm with Landmark Engineering, I'm a professional engineer. As Mr. Abbott has stated, it's been a long road. We've been at this since 2011 and I'd like to just discuss some of the Code issues that have been discussed in great length for many months, many years. The plan has been reviewed, again, by all of the City Operating Departments and found to meet or exceed City Municipal Code requirements. Otherwise, again, we would not be here tonight.

As you can see by the exhibit up on the screen there, the plan has been reviewed many times. As a matter of fact, we ran out of, on the upper right corner, we ran out of room for revisions. It's off the border of the page. That gives you an indication of how many times this plan has been looked at by the Subdivision Advisory Committee and by the Operating Departments. So for a moment I'd like to focus on the issues that followed the August 11 Planning Commission meeting. There were a number of questions that were raised at that meeting and, I might add, by the opposing neighbor at that Commission hearing. If you look

back in the minutes, it was stated that they did not oppose this project. Merely, they were looking for a Code compliant project.

Mr. Silverman: The year on that August 11th hearing?

Mr. Charma: That was August 2, 2011.

Mr. Silverman: Thank you.

Mr. Charma: At that Commission meeting some of the questions that were raised were building setback, vertical clearance at the ground parking level, parking circulation, turning movements, Fire Code compliance, constructability, trash handling, parking space layout and adequacy of parking.

Regarding those questions, the building setbacks applying to this proposed building and the property comply with the BB zoning district. And, if I might add, at the August 19, 2015 hearing by the City Board of Adjustment, they ruled that no additional front yard setback was required for the existing building. That is, no 20 foot setback was required for the front yard for the existing building. You'll also note on the plan that the 8 foot side yard, the minimum side yard, is met on the west side of the property and the 15 foot rear yard is met on the south side of the property.

With respect to vertical clearance within the parking structure, the plan notes that the clearance is 14 foot minimum. That clearance not only meets the City requirements but it meets AASHTO bridge clearance requirements and will allow larger trucks and emergency vehicles to pass under the structure. That was one of the key issues the Fire Marshal had and Code Enforcement had.

With respect to vehicular circulation and turning radii within the parking structure, we performed multiple computer-simulated analyses using auto-turn, standard 30 foot long single unit vehicle trucks, the largest Aetna fire truck as dictated by the Aetna Fire Chief, along with standard parking vehicles. All of those vehicles have adequate vertical and horizontal room to maneuver safely through the structure from Main Street to Delaware Avenue, or vice versa.

There has been great discussion and I know that the opposition to this project has done turning movements to the upper level deck. They're trying to put an SU30, a 30 foot single unit truck, on the parking deck. There's no trucks on the parking deck. It is only for passenger cars and the people that live in the apartments. It's essentially all of the 8 units that are in Iron Hill and the 8 proposed units. If there is any loading that will occur from trucks like that, if it's a moving van or something, they would simply back up, drop off the furniture and use the elevator like they do in other apartment buildings in the City.

With respect to Fire Code compliance, after several meetings, I might add, with the City Code Enforcement Division, the City Fire Marshal and the Aetna Fire Chief, criteria was established to ensure that the building would meet more restrictive requirements of the Delaware State Fire Regulations. Our April 3rd, meaning Landmark Engineering, our April 3rd letter to the Planning Commission, I'm sorry, to the Planning and Development Department, stipulates that specific building provisions discussed and agreed upon at the meeting will make the building meet or exceed all Fire Code requirements.

As far as trash handling, the dumpster enclosures are shown on the plan and they will be, they are set up for commercial and residential trash containment and they're located at a convenient location where a private hauler can pick up the waste and exit the site and not inconvenience or negatively impact the adjacent properties. I've lived in this City for 42 years and I see loading and trash handling every morning when I'm going to the gym. Those vehicles are coming very early in the morning. There's no one, usually, around in any of the parking lots. They get in and out of there without a problem, and I could see this project functioning in a similar fashion. Also, the Trader's Alley will consider using a trash compactor, as recommended by the Planning and Development Department, to maximize trash collection efficiency. That has been done in one of the other parking lots behind, I guess it's parking lot #4 behind Panera Bread

in conjunction with the Kate's Place apartment project. They put in a trash compactor there and it handles trash from multiple businesses and that's something that, kind of, works out very nicely instead of having dumpsters scattered all over the place.

Also, according to the Iron Hill Restaurant manager, and I know that the applicant will show you a large picture tonight of a truck parked in the parking lot, but according to the manager, trucks do enter the property via Delaware Avenue access-way and through the existing lot. I must note here that the existing aisle widths and geometric configuration of the existing parking lot, including all turning radii, are similar, that is, to the conditions that will exist following the completion of this project. Albeit the parking space layout will be reconfigured and the flow direction will be two-way rather than one-way. And that's a good thing because one-way traffic will tend to reduce vehicular conflict points.

Also, the 8 apartment units will not generate any large loading demand at all. It's possibly a UPS truck or a FedEx truck which will probably either park on Main Street or park briefly behind the Iron Hill building, run in the elevator, deliver their package and they're gone. It's typical. This is life in the City.

I'd like to talk about adequate parking by Code. Again, I'm just mentioning this, pursuant to the August 19, 2015 Board of Adjustment ruling defining parking rationale for this project. Fifty-one spaces for existing onsite uses are required in addition to 16 new spaces for the proposed 8 apartments, for a total of 67 spaces. This plan provides a total of 69 spaces. Thirty-seven ground level spaces and 32 deck spaces. Hence, the plan provides a two space surplus.

Again, those were the major points that were brought out in the, major questions that were brought out in the 2011 Planning Commission meeting, the August 2nd meeting. And, again, over the years, those same concerns have been mashed and reiterated and turned inside and out by several consultants that the applicant has hired to refute our design. We still stand by our design and, again, as mentioned multiple times here, this project still has to be approved by City Council, and after Council there is a Construction Improvements Plan process that, being an engineer and having done many projects in the City, it is a rigorous process and no stone will be left unturned. And I have had projects sent back to the Planning Commission or sent back to Council for review or reconsideration. So this project is no different.

I think right now, again, we're here because this project meets the Code. It meets the Fire Code, it meets the Life Safety Code and it meets the City Operating Department Code and Subdivision regulations. So I ask the Planning Commission to consider recommending this project for approval. Thank you.

Mr. Silverman: Does the applicant have any other speakers?

Mr. Abbott: No, Mr. Chair.

Mr. Silverman: We will now move into questions from the Commissioners to the applicant. Bob?

Mr. Stozek: Bob Stozek. There are two areas, I guess, that concern me about this. We'll go back to the parking again. Until its resolved how the lower level parking is going to be dealt with, whether its going to be public or remain private but semi-open to the public, I'm not sure what the parking aspect of this project adds to the City. It could be two less spaces available.

The other thing is, if you go into the Trader's Alley parking area now, and I've been there a couple of times this week, you can drive in off of Main Street, you can make a loop around the parking lot and fairly easily see whether there are spaces available or not. Now you're going to have a parking structure. Now people are going to be driving through this structure to see if spaces are available? To me that's one negative issue. How are you going to control the public, if they don't find a space on the first level, going up to the second level?

Mr. Charma: Thank you, Commissioner Stozek? The second level, well first of all, the circulation, if you look at the site plan that's up on the panel now, you can see that you can still

drive in the parking lot. You will be able to circulate and you can see all of the spaces just as you can right now because the current plan has a double bay in the center of the parking lot. That's the picture all the way to the left. There you go, thank you. Thank you, Mr. Tucker. The existing lot, if you come in off of Delaware Avenue, you can drive around here and you can go out Main Street or vice versa. The same thing will happen. You're coming in from Delaware Avenue except there's a one-way traffic configuration. You go around the lot and come back and then you can go out or you can continue around and go out Main Street. Or, similarly, come in, go around, around and out. So the circulation is essentially the same. And, again, being a one-way pattern, it reduces the potential, that lot right now, I've been in that lot many times, it's pretty chaotic. It's a busy lot and it's chaotic. So I agree with you.

Mr. Stozek: But my point is now you have walls.

Mr. Charma: There are no walls in the middle there.

Mr. Stozek: No. Pardon?

Mr. Charma. There are no walls here. This is open, you can see through this garage.

Mr. Stozek: No, I'm saying the wall of the structure obscures the view of the parking spaces on the rest of the lot. To me, it's just going to create confusion.

Mr. Charma: I don't know, I think that if you look in, this is looking at the north elevation, when you drive in, you can see through the, this is all open, there's no wall there. When you're here, you can look all across here.

Mr. Stozek: No, I'm talking about the spaces that exist to the east of the building that you're putting up. There are spaces to the east.

Mr. Charma: Oh, to the east in the, in Schlosser and Dennis' property? Right.

Mr. Stozek: Right, so now those are all visible when you're in the parking lot and when this structure is there, when you're inside this structure you can't see them.

Mr. Charma: That's true. We do have some openings that are in that side of the building but you know, I guess I can't refute what you're saying. I don't think it's going to be an issue, but it is what it is.

Mr. Stozek: I guess, every time I've been there in the last couple of weeks, that parking lot is always full and there are always people driving around looking for a space or waiting for a space to open up. I don't see, I see where this creates a problem. But to get back to my other question, how are you going to keep people from going up to the second floor?

Mr. Charma: Okay, on the second floor. I'm sorry, bear with me, I'm having a technical issue here.

Mr. Firestone: I mean, is there going to be a pass-gate or something to, where you're going to need a card to get up to the second floor?

Mr. Charma: Yes, so I just wanted to show you on the plan that, okay, on the plan right in this location there will be a control gate similarly here. There is a gate and you'll either have a key access or a card access or some remote access, and only the residents that live at that level can access that. This is very similar to what's done at the Washington House currently.

Mr. Stozek: Okay. The other area, and I understand it's difficult to visualize fire access in these drawings, and I realize you've got the required distances and whatever, but it just seems in looking at this map in an overhead view, I don't understand how, you know, in the case of a large fire either in this building or the CampusEdge building, how the fire equipment is going to have easy access in there. And I'm sure you've probably done a study and I assume the fire department has blessed this. It's just, if you have cars filling up this space, it seems to me there

would be a problem. But my secondary question is, are the garages, are they required to be sprinklered?

Mr. Charma: That's correct. The entire building is required to be sprinklered, and that is noted on the plan.

Mr. Stozek: If there is a fire on the western side of the upper stories, the apartments, how does the fire company get access for fighting that fire?

Mr. Charma: Well, that's one of the conditions that, let me just briefly go back to my notes here. Recognizing that 8 foot side yard, normally for a building, to get perimeter accessibility, perimeter accessibility is not necessarily by vehicle.

Mr. Stozek: By what?

Mr. Charma: By vehicle. The fire truck doesn't have to pull up to that side of the building. It has to be accessible by two men and a ladder, okay? So in that 8 foot space, they can put a ladder up. But, recognizing that's minimal, that's very tight. Recognizing that minimal space was part of the discussion at our March 14, 2014 meeting with the Fire Marshal and the Fire Chief and the Code Enforcement Division. And what we talked about is the fire rating of the building would be increased either to 2-hour or 3-hour as one of the provisions, and window openings, including protection of window openings and whatnot, where there was limited perimeter accessibility. So they're going to increase the fire rating. So the building, the likelihood of the building burning is going to be diminished even more than the Code requires for a typical building.

We are considering, we will add three standpipes to the building. There will be one in each stairwell and one in the center of the building, so firemen answering a call have adequate connection to fight a fire. You know, those provisions, given those provisions, the Fire Chief and the Fire Marshal and Code Enforcement were comfortable with building a building to higher standards. We're almost building a building to healthcare standards. I hope that answers your question.

Mr. Stozek: It does to a degree. I'm still concerned when you're talking about two men and a ladder going up on that side of the building if they have to get to the upper floors. But what if the fire company wanted to get to there with a truck?

Mr. Charma: Well, like currently, there is an open parking lot to the west, so they could drive right in there with the truck.

Mr. Stozek: Is that parking lot owned by your client?

Mr. Charma: No, it's not, but in an emergency the fire company will go where it will go, and they will.

Mr. Firestone: Assuming no one else builds there.

Mr. Charma: Pardon me?

Mr. Firestone: Assuming that the owner of that lot doesn't build there.

Mr. Charma: That's true.

Mr. Stozek: Yeah, that was my next, really what I'm getting to. Doesn't that put restrictions on what that owner can potentially do with their property?

Mr. Charma: The perimeter accessibility is met on this project, okay? The perimeter accessibility in conjunction with the higher standard of construction is met with a fire lane to the north, there's a small fire lane, let me get my proper, there's a portion...

Mr. Stozek: I see it.

Mr. Charma: We come off of Main Street, we have a fire lane here and there's access here through, this is not designated as a fire lane per se, but through CampusEdge there is access. Coming in here, down this side of the building, this side of the building is set back some 14', which really allows a ladder and that was part of the building accessibility discussion. They said if we want to get to the second floor, can we throw a ladder here and go right up, or can we go up to the fourth floor. We did an exhibit for the, presented to the Fire Marshal, that showed that a ladder set at 73 degrees can reach the fourth story windows.

Mr. Stozek: Right, but that's on the east side of the building, not the west.

Mr. Charma: Right, but they would access the windows, go through the building to that side of the building.

Mr. Silverman: Mr. Charma, in your discussion with the fire officials, did they express a need for 360 degrees access to any building?

Mr. Charma: No, they didn't. There are provisions. Again, we're looking at the provision in the State Fire Code which allows, there's a provision in the State Fire Code that allows urban, when you have buildings that are in, I'm going to quote this here with regard to developing additional fire protection measures for the building, construction plans per the State Fire Marshal's requirements, "considering other design criteria for existing properties in traditional urban settings on an individual basis," that's in accordance with Section 7 General Fire Safety Chapter, Paragraph 4.3. And that was discussed and this plan does meet those provisions. In other words, there's alternatives, they did not require 360 degree coverage. With a fully sprinklered building, perimeter coverage is reduced to 50%.

Mr. Silverman: So they need access to two sides of the building rather than four sides?

Mr. Charma: That is correct. And we meet that requirement.

Mr. Silverman: And you do meet that requirement?

Mr. Charma: We do meet that requirement. There's not a fire lane on two sides of the building but you can, again, on the east side of the building, the building is set back far enough to allow ladders to be placed against the building. There not at an excessive pitch. We did prepare an exhibit for that, and the Fire Marshal was satisfied with that.

Mr. Silverman: Okay. Bob, any other questions?

Mr. Stozek: So they can get up to the second or third and fourth floor by ladders on the east side and then go through the building to get to the west side?

Mr. Charma: That's correct.

Mr. Stozek: How do they go through the building?

Mr. Charma: They're going to go through the building. I'm not being facetious but, in an emergency, firemen carry a big axe and they're going to go wherever they need to go.

Mr. Stozek: I'm just asking the question, you know.

Mr. Charma: Right. They're going to, they'll get there.

Mr. Stozek: But in a safety situation, time is of the essence. I'm just asking the question has this been thought about so they're not going to have to be bringing in special equipment to go through a wall.

Mr. Charma: Right, well it has been...

Mr. Stozek: I don't think they can do it with an axe.

Mr. Charma: It has been thought about. The building is fully sprinklered, and sprinklers have been demonstrated that they do reduce the fire. They give the fire officials more time to respond.

Mr. Stozek: I understand all that in the ideal situation. This building is going to be heated by gas, right, I assume?

Mr. Silverman: Bob, this building meets all applicable Fire Codes.

Mr. Stozek: I know.

Mr. Silverman: We can get into the "what if's" forever.

Mr. Stozek: The building is going to be heated by gas, correct?

Mr. Charma: I'm not sure. It's not determined at this point.

Mr. Stozek: Okay.

Mr. Silverman: Any other questions?

Mr. Hurd: I did have one and unfortunately it's a fire-related one, but it should be short. Can you walk through, sort of, the explanation of this free-standing masonry fire wall for the benefit of those who don't understand the loophole or whatever that is going on?

Mr. Charma: Sure. Thank you, Commissioner Hurd. Yes, on the west side of the building and then up in this area here, there is a section that shows this free-standing fire wall. There is a Code provision in the International Building Code that restricts the amount of opening in a parking garage based on the distance from the building to the property line. This building is set back, it meets the 8 foot side yard setback. With respect to the Code, if the building were 10 feet away, the openings could be unlimited. It could just be totally open, open garage. But because it's 8 feet away, there is a reduction in the amount of opening. I think it's 15% of the wall surface of that level. So this masonry firewall here, or fire barrier, is reducing that opening because cars, when they pull up, cars can just stick out a little bit here past the edge of the building and I think you can see that on the site plan below. But they just stick out. And this fire barrier is reducing that opening. So, in other words, the percentage of the opening will be based on the horizontal distance. You can actually bring this façade of the building down. You could almost bring it, again we don't have final design, but you could almost bring that down to the hood of the car which, again, would even reduce that opening even further. So that's what that fire barrier is about.

Mr. Hurd: Okay.

Mr. Charma: And I might add that CampusEdge, directly to the south of us, has exactly the same situation and I do have photographs here if you'd like to see them, I can pass them to you.

Mr. Hurd: Okay.

Mr. Silverman: Mr. Charma, are you referring to the drawing and the protected wall on Exhibit DD002?

Mr. Charma: Yes, that is...

Mr. Hurd: That's D002, yes.

Mr. Silverman: That is not in the Commissioner's packet.

Mr. Charma: That is in the packet, yes. That is in the packet and also there is...

Mr. Silverman: So what you're explaining is the drawing to the left side of the screen?

Mr. Hurd: Right.

Mr. Charma: That is correct.

Mr. Silverman: Okay.

Mr. Charma: This reduces, this allows us to meet our opening requirement, the IBC wall opening requirement. And, again, we can place, in the final design you could place a sprinkler head right here which would even diminish the likelihood of, you know, an uncontrolled fire even further.

Mr. Hurd: Thank you.

Mr. Firestone: I'd like to go back to the parking issue and I'd just start off by saying I don't think my concern was addressed at all. So I'm going to start by trying to go at it a different way. The question is, I understand there's a potential problem with transferring the parcel to the City under the terms of the easement. Is there any problem with the easement prohibiting the transfer of the parcel to a non-profit?

Mr. Abbott: It would apply regardless of the nature of the recipient of the donation or the dedication or transfer, however it would be formatted, simply because, and I don't know how many years ago, 10 or 15 years ago, this cross access and, essentially, a cross parking agreement was entered into by the neighboring property owners and there are certain rights. Basically the Commissioner talked about going to the property. It's first come, first served today. And that's because there is this cross easement agreement that allows it and so the neighboring property owner would have the right, potentially, arguably, to say, "Well if you donate your parking, then how do we get to use it because we just lost our ability to come over there and park as a matter of right because there will be meters, potentially, for example. And now we have to pay to park, whereas today we don't."

Now the advantage, and as to your point about the value, my client actually thinks that the property is more valuable if it's the City controlled parking lot because the City is then able to control the parkers. And today there are a lot of illegal parkers in the open lot and that would be restricted. Not to say eliminated entirely, but significantly scaled back because people tend to worry about getting parking tickets and getting towed if it's a City lot. So I think there's an advantage to both sides to doing that but, again, the other party to the cross parking easement could say, "Well we don't care if it's an advantage or not. We're not going to do it. We're just not going to do it." Arbitrarily or otherwise. There is nothing in the agreement that I am aware of where they have an obligation to agree. Which, if we ask, sometimes there are provisions put into agreements that say we can modify it based on a request, the approval of which cannot be unreasonably withheld. We don't have that in this situation. And I wasn't involved in negotiating the cross parking easement but it was at a different time and it was based on different long-term objectives of what was going to happen with the properties.

Mr. Charma: I'd just like to add that if the lot were transferred, the use of the lot, the property would not be transferred to the City but the use would be, this has been done in similar other locations in the City, and it would benefit, if the use was transferred, it would benefit both property owners because the City would maintain the lot. If there were any snow, they would take care of the meters, they would take care of cleaning up, lighting and all that, as they do in the other quasi-public, some lots are quasi-public. There are lease agreements and other things. So it is an advantage to both parties. That's why we're kind of baffled why, you know, the neighboring property owner doesn't want to do it. They don't have to worry about doing anything to the lot.

Mr. Firestone: Well to me there's advantages to having the meters. You're going to stop, I mean part of the reason that people drive and circle through there is because the parking is free, and you're going to get much less of that, sort of, constant circling. And I agree that the present, I park there on occasion if I'm going to Iron Hill, and that parking lot is a nightmare. It's very

hard to maneuver, people are going in two directions and the turning radius. I can't believe that the parking garage wouldn't be an improvement over the existing lot. Certainly if there were meters it would control a lot of unnecessary traffic driving into that area. But, to me, it sounds as if the way you've described the easement, that there is a decent likelihood that that property will not, the City will not get use of that parking. Given the terms of the easement, as you have described them. So, that is concerning.

Mr. Abbott: The most likely probability, and we'll certainly commit to try to gain agreement to it, is to extinguish the cross parking component of that agreement. In other words, so Schlosser and Dennis now has full reign over their spaces and we have free reign over ours. We need the access from Main Street, obviously, but if there is an issue about the parking then I think it makes a lot of sense. Then they can control and do whatever they want with the spaces on their parcel. My client is at liberty to do what she wants which will be to make it a City, the first story, a City parking lot.

Mr. Firestone: But you've got no control over whether they have any interest in doing that, so I'm just saying, given the terms of the easement, as you described them, you are not in a position to deliver.

Mr. Abbott: Correct. Absolutely right.

Mr. Firestone: At all. I mean it sounds, I just think people need to be aware that you are not standing on strong ground to be able to deliver this parking. You may be able to negotiate it and, you know, they would probably extract something from you but, ultimately, if they don't want to, then they don't have to.

Mr. McIntosh: Mr. Chairman?

Mr. Silverman: Frank?

Mr. McIntosh: I have to comment on that. I asked very much earlier of the Director, did she make this recommendation to us tonight based heavily on that parking. I'm not sure those are my exact words, but she said no, that the recommendation would have been still to go ahead and approve the project, with or without the parking. So it seems to me that if you get the parking, it's a bonus. If you don't get it, so what, you know.

Mr. Silverman: Exactly, from the project [inaudible].

Mr. McIntosh: It's not really a point, it's a plus if you get it. And if you don't get it, well you don't get it. So, you're no further ahead or behind.

Mr. Firestone: The issue is that residents, if you're entitled to one spot, say, on the second floor, and you've got friends over, I mean it's basically, it's going to put more pressure on those spaces than presently exists. So it's going to have negative implications overall for parking downtown.

Mr. McIntosh: Except those spaces are always used. I mean any time I've been in there I've never been able to get a space.

Mr. Firestone: But now there's going to be even more competition for them.

Mr. Charma: Commissioner Firestone? If I may, our proposal takes, there are 8 existing parking spaces that are now reserved for Iron Hill Apartment tenants. Those people are now going to park up on the deck. So out of the gate, our proposal will free up 8 more spaces on the ground. So if there are people coming to visit or something, they can.

Unidentified Speaker: [inaudible]

Mr. Silverman: Sir.

Mr. Charma: It's 8 spaces that, where there are tenants parking now, will be up on the deck. So those spaces will be available for CampusEdge, not CampusEdge, I'm sorry, for Iron Hill or Trader's Alley, Schlosser and Dennis tenants, or customers to park in.

Mr. Firestone: Or for the residents of the structure that you want built, or their friends or family, etc. Visitors.

Mr. Charma: It, you know, I mean, it's a private parking lot right now. So the people that come and park there that shop downtown are parking illegally. It is a private parking lot. It's no different than the Newark Shopping Center or anything else. A lot of people use that lot but it, I'm not, I'm just saying that, and I'm not going to debate that other people will come to visit, friends will come. But it's life in the City.

Mr. Silverman: With respect to parking places, a group of parking places that I just discovered in looking at an aerial photograph, which I mentally have not taken into account, are the approximate 15 parking spaces that are on the Schlosser et al property that aren't even part of this discussion but are included in the cross access agreements. So those 15 parking spaces that exist are not going to be disturbed by this project, correct?

Mr. Charma: That is correct.

Mr. Silverman: So this will, we're actually overlaying additional parking on the existing parking?

Mr. Charma: That's correct.

Mr. Silverman: And probably cleaning up the traffic flow, diagonal parking versus 90 degree, making it more efficient.

Mr. Charma: That's correct. It's easier to maneuver in there, sure.

Mr. Silverman: Any other questions from the commissioners? Okay, I'd like to open up the floor for anyone who would like to speak in favor or in opposition of the project. Now we received two requests to speak simultaneously here. Mr. Dennis, Mr. Tucker, who would like to go first?

Mr. Shawn Tucker: Thank you, Mr. Chairman, [inaudible].

Mr. Silverman: That will be no problem, all the application does is give you first priority.

Ms. Michelle Vispi: You're going to have to turn that microphone on. There is an on/off button right at the top.

Mr. Tucker: Thank you. I assume you prefer me at the podium, Mr. Silverman, not off to the side this evening?

Mr. Silverman: It makes no difference to me.

Mr. Tucker: Okay, thank you. I'll start here but I'll walk over to get my exhibit in a moment. Thank you, Mr. Chairman and Planning Commission members, for your time and, of course, the City Solicitor, this evening.

There are obviously a lot of issues here. You have scratched the surface on a lot of those issues and you've done a good job doing it. So I want to thank you for that and I want to thank you for your patience. There, as Mr. Abbott noted, there is a long history, a five year history unfortunately and, in fairness to you, it is not fair for you to be expected, in my opinion, to absorb all of this this evening. It just isn't. It's been alluded or suggested that there are other people that will be checking this later in the process. Sure, but you, as the Planning Commission, are an essential check and balance in this process, to make sure you're individually satisfied and, as a group, that all the boxes have been checked. Whether they be fire safety and

ensure that those who review fire safety have done it and have signed off, or whether it be zoning issues or access issues. So while I heard comments about there are other people that will be checking and looking at this, I don't think it's fair, and I'm not saying this is done, but some could take away that maybe you don't have to worry about this as much because others will look at it. No, I respectfully submit, you do need to worry about this. You do need to make sure the boxes are being checked this evening. And because of the history, it is a lot to do in one evening.

So first I'll start off by saying I'll respectfully ask that we have some things introduced tonight. It's nothing new that the applicant hasn't already seen in terms of substance, that we've provided. We've provided many of these things to the Planning Commission in 2011. Not all of them because other things evolved over the years, but I'd like to hand them out, Chairman. A letter will summarize these things, it will have a history of the submissions over the years and I would just ask, respectfully, for you to consider taking them with you tonight and considering them and looking at them before you make a final recommendation, if possible. So with that, with the Chairman's permission, I'd ask to be able to hand out those letters for your consideration this evening.

Mr. Silverman: We will accept receipt of your letters.

Mr. Tucker. Thank you, sir. Exhibit 1 for the record. While my assistant is doing that, in addition to Exhibit 1, there is an Exhibit 3 which are the cross access easement agreements that, I think, some questions came up about. What they say, what they mean. That is included as an Exhibit 3. And I'll walk over to Exhibit 2, which is a photograph taken by our client's engineer and what I would respectfully submit is relevant to some of the concerns raised by various [inaudible].

Here with me this evening is our client's engineer, Ron Carpenter, who has reviewed the new application before you, as well as my client, Steve Dennis, whose company owns the property immediately next door. I'm going to conveniently thank Mr. Charma for leaving this up. My client owns this property, including the property by which access is taken for both Trader's Alley and my client's property from Main Street. That's very, I think, important in terms of understanding the dynamics of the relationship between these two properties. My client's property line is essentially here, so that my client owns this fire lane. One of the questions that came up, and I'll just jump to it, tonight was, well maybe they could agree to get rid of the cross access. My client, at this point, after five years, would be happy to extinguish this cross access easement. My client is fighting for his right to operate this property with its tenants and have adequate parking, and the parking is disastrous right now. Mr. Commissioner, you were spot on about the conditions out there. This is a tragedy right now. It is not working well. This application will make it worse. I don't think there's any doubt about that. So my client would be more than happy to extinguish this cross access and keep the parking that he has today.

Mr. Silverman, I can tell you the current plan relies on parking from both sides. Those these plans don't stand apart based on that cross access. All this parking is required for both plans to stand. So there is an overlap. But my client would be willing to extinguish that. We actually put that in a letter to the applicant very recently but my client's part of this arrangement was the access off of Main Street. My client wants to keep his access off of Main Street. My client doesn't want the general public coming in off of that access. My client owns this property right now. This is not owned by the applicant. This is owned by my client. So, just to cut to the chase, as troubled as we are by what we believe are clear Code violations that I'm going to touch on in a moment, we would stop and ignore those Code violations and stand down in terms of a settlement if the applicant would simply agree to extinguish the easement voluntarily. We think it's essentially been extinguished because it's being violated by this plan. But if the applicant would agree to extinguish it and give us back exclusive access off of Main Street, then she could take access, the applicant could take access off of Delaware Avenue exclusively. We'd have our parking, the applicant would have her parking, and we would have our access back. So, just a global resolution to this I'd like to throw out early because there's a lot here to think about, but that's a resolution and we would simply ignore what we think are Code violations that I do need to touch on for the record. So, food for thought, probably more for us than you.

Let me jump into what I think are clearly Code issues. And, Mr. Abbott is correct, we have said all along, since 2011, that if the Code issues were addressed and our easement was respected, that we would be fine. And as my client sits here today five years later, that remains 100% true. Unfortunately, in discussing these Code violations, what we believe are Code violations, with the applicant, they have not been resolved. There has not been a give and take here, in terms of what we believe are clear Code violations. And I'm going to tell you, or try to express to you, what they are, and some of the cleaner ones first. Some other ones are a little bit more complicated, but the cleaner ones first. Had there been some give and take and some compromise, had there been some recognition as to the impact this would have on my client, maybe this could have been resolved. The idea, you know, that somehow everybody has worked together in good faith.

Let me walk you through the Code issues that we've raised and what remain unresolved, in our opinion, in all due respect to the folks in this room. First of all, and this is in the submission, and again I don't expect you to read it all this evening, the Code clearly requires two loading bays. Okay, we have cited that for years in our submissions and comments. Literally years. It clearly requires loading bays. There are no loading bays today. We expect that is because this property is grandfathered under an older Code revision. I don't know that for certain, but there are no designated loading bays today. The picture that I am displaying, which is Exhibit 2 and is also included in your packet and one of the letters where we've pointed this out months, if not years, ago, and I think it's been years, this is a picture of the site with a Sysco truck delivering at about 11:30am when our engineer took this picture. So I can put this on the record and he's here to testify, delivering to Iron Hill. This is not just a UPS truck, this is a full size commercial vehicle delivering to Iron Hill at 11:30. Does everybody know what's going to be here if this project is approved, right where this truck is parked today? A parking garage. Does anybody think this commercial vehicle is going to fit in that parking garage? Of course not. The only place it's going to be able to park is going to be on Main Street. Good luck at 11:30, or on my client's property, which it's not allowed to. But those will be the options. I'm just trying to give you a flavor for [inaudible], because this doesn't work. That parking structure will not accommodate this truck and the Code requires, for new applications, a parking berth. We cite the section. It's not addressed, it's not on the plan. I challenge Mr. Abbott to get up here and show you where they're going to park these trucks. They can't. They don't have room. That's one of the issues.

The second issue and, again, these are not new, is the cross access easement, which is Exhibit 3, I've handed out as well. There is an exhibit to Exhibit 3. Okay, there is Exhibit A and B at the very end, the last two pages. And if I could point your attention to Exhibit A first, it's essentially a layout of the parking between these two property owners. My client owns the property, this property, at the time this was entered into, however the current applicant did not own the property, her property. It was owned by, I guess, an H. Gibbons Young and a Richard Handloff. But the reason I'm pointing this out is, if you look at the parking that's agreed to in this recorded document which runs with the landowner's properties, and you try to overlay the parking structure on this, it doesn't work. It doesn't work. The document clearly requires an amendment agreed to in writing by my client. That's never happened. That's not happened. That never happened. So my client is very upset about all of this. Because there is a written legal agreement that is not being honored. The parking structure, if you overlay it on this and you line up the parking, does not line up, and this needs to be amended. In my experience as a land use attorney and litigator, I can't imagine how any judge, and I won't get into the litigation, Mr. Silverman, I appreciate the caution, I just can't imagine how anybody is going to look at this, wherever this goes, and says, okay, even though an amendment requires a written agreement, we're not going to require it here, even though this plan changes this exhibit. I just don't see it happening. I don't see how it happens legally. So that the second thing that we raised, and have raised for years, that has not been addressed.

There are side yard setbacks that are required in the Code. These are not the setbacks that are currently subject to litigation because there's not been a final decision issued yet that we have seen from the Department. But there are side yard setbacks that we think that Code clearly require 8 feet per side yard setback. Eight feet is not provided on both sides of this building consistently over the length. I think there may be one or two points on the plan where 8 feet is

achieved, but not uniformly down the side of the building. That's in the Code for buildings over 35 feet. That has been raised for, I think, years now. It is not addressed in this plan.

There are AASHTO standards that are applicable to the design of parking structures, as we understand things. There are also provisions in Chapter 27, Appendix II of the City Code regarding minimum aisle widths, and angles and widths of parking spots that have not been addressed. Now we just didn't pull this out of our heads. We actually hired Century Engineering. It's an engineering firm well-respected in the State, is often hired by DelDOT. They're a consultant for DelDOT. They've looked at this. They've done the turning radii. There's problems with vehicles, especially of a certain size, turning within this parking structure. Emergency vehicles on the 2nd floor, according to our consultant, and this is in the material, it's all been provided to the applicant in the past, can't make those turns. There is a safety issue with access, in our opinion, respectfully, because those vehicles can't make those safe turns. That is in the material, I won't dive deeper into it unless I have some questions about it, but we would be happy to bring Bill Conaway from Century Engineering, if the Commission wanted, and if the Commission reserves decision tonight, to the next meeting to drill down into the turning radii he did, and why the emergency vehicles cannot access that parking structure fully. And I think the question that was brought up by Commissioner Stozek is a very important one, especially for anybody renting on this top floor. How does a fireman get from one side of the building to the other? Is he just going to throw up a ladder on the neighboring property and trespass? Is that the solution? Do we want to set a precedent where the City is approving plans where emergency vehicles have to trespass?

Mr. Silverman: Don't go there. The Fire Marshal and the Fire Chief have absolute trespass authority.

Mr. Tucker: Mr. Silverman, I'm not suggesting they don't, but is that the precedent we want to set, that we want to approve plans where that becomes how you access.

Mr. Silverman: That's the custom.

Mr. Tucker: Not in my experience.

Mr. Firestone: I'm not sure your client has standing to raise that [inaudible].

Mr. Tucker: Well, I'll move on but I think that's a dangerous precedent, respectfully.

Fire lane. The fire lane on this current plan is on our property. Where is the fire lane that is going to be used in this new configuration? Now there have been a lot of questions about parking. There is a new provision, or a newer provision, in your Zoning Code that was created for shopping centers. If that provision is applied to this situation, which the City recently did, not always, but recently did, the parking spaces, I think, are calculated as expressed in the current application. If the definition of shopping center is not applied to this site, which historically it was not, as the site pre-dates that provision, this location is 100 spaces short of the Code. By calling this a shopping center, and that is subject to the litigation that's pending right now, Mr. Firestone, you brought up that issue, so that has yet to be resolved fully. But by calling this a shopping center, suddenly this site goes from not being Code compliant in terms of parking, it may be legally grandfathered but not in Code compliance based on the current Code, to suddenly being Code compliant to the tune of 100 spaces. That is an incredible swing. And as we mention in our papers, to set the precedent for businesses like this to be considered shopping centers, opens up a whole can of worms for other parcels on Main Street to be considered shopping centers. So it is something that's the subject of litigation, so I'll stop there, but it is not resolved. It's 100, if we are right, it's a 100 parking spot swing.

Now, in fairness to the applicant, she, the applicant bought the property in this condition. It appears, from our research, the parking deficiency has resulted because the original plan did not show restaurants. Restaurants require additional parking. They were never required to provide that additional parking when those restaurants were subsequently approved. I'm not sure how that happened. But that's why we believe, at least based on our research, there is a deficiency and this applicant certainly didn't cause that but it was purchased in that condition.

My point is that the deficiency may be far greater depending on how the Court rules ultimately on that issue than what you're seeing this evening.

So give me just one moment, I want to check my notes to make sure I did not miss any other key points that I wanted to make this evening.

Construction easement. The Department raised the issue of the construction easement. There are no construction easements. Nobody has reached out to us about a construction easement. It is difficult for us to fathom how this building could be built in its present configuration without those construction easements. There is a trespass case right now pending in Chancery Court that I am involved with, involving a developer who, you know, not only trespassed on the neighboring property but took down a tree, a curb, part of a driveway. You know, construction easements are important so that people's property rights aren't violated and that people's properties are not trespassed upon. So that is not addressed here in any meaningful way, nor has it been obtained. And I think the fair question, certainly, for you to all ask is how are you going to build this without trespassing on your neighbor's properties and what are you going to do to avoid that? Maybe there's an explanation. I have not heard.

There is a settlement agreement that has been reached between the City and this applicant. Mr. Walton was kind enough to provide me a copy with it today. I called him up and spoke to him. He's here tonight. I looked at it late this afternoon. You should look at that settlement agreement and what it provides before you vote tonight because I think it's important to read that settlement in the context of the recommendation this receives so you have the full picture of what the City has agreed to in its negotiations with the applicant. We weren't parties to that. As the neighboring property owner, we'd have very much liked to have been a party to that and we were not invited to be a party to that. We are trying, currently, through proceedings, to become a party to that, so that we're involved in that final resolution. But the current settlement agreement did not involve the consent of my client, the involvement of my client or any invitation to my client.

The current application we received tonight. And I want to thank Ms. Roser for forwarding that to us. The applicant didn't provide us with that. We found that out from the City, so I want to thank the City for providing us that copy. So at least we had some opportunity to review this and respond.

So those are my comments in a nutshell. I know it's been a long night. I dig into a little bit greater detail in the submission and I apologize for its length but I need to create a record here tonight in order to protect my client's property rights. And I would ask your indulgence to give Mr. Dennis an opportunity to speak as well because this has been a long five years for him and I think he's acted in good faith. He's raised issues that are legitimate. He's hired Delaware consultants and professionals to review this carefully and, again, at the end of the day, if it's Code compliant and the easement is respected, my client is not going to stand in the way of this project. Not one inch. But he is completely satisfied, and we hope that others will agree ultimately, there are Code issues that have not been properly resolved and, certainly, the easement is not being honored as we read its terms and we read that exhibit which you have in front of you now, as well. Thank you, Mr. Chairman.

Mr. Silverman: Mr. Tucker, can you remain standing?

Mr. Tucker: Sure.

Mr. Silverman: Do the Commissioners have any questions of Mr. Tucker?

Mr. Stozek: Until I have a chance to read these exhibits [inaudible].

Mr. Hurd: Yeah

Mr. Silverman: On his initial presentation.

Mr. McIntosh: Mr. Chairman? I, personally, would like to get the other side of this from the applicant. I don't know where that is procedurally, but, I'm sorry, I forgot your name.

Mr. Tucker: Shawn.

Mr. McIntosh: Shawn?

Mr. Tucker: Yes.

Mr. McIntosh: Shawn has made certain allegations that, you know, they have no chance to respond to. I'd like to hear what they have to say about those. And if this is appropriate, I'd like to hear that now before it gets rusty.

Mr. Silverman: This body is rather fluid on how it handles give and take, as you've witnessed in some of your attendance, so if that is the consensus of the group, do we want to hear how the applicant responds to Mr. Tucker?

Mr. Hurd: Sure.

Mr. Silverman: Okay, let's go in that direction.

Ms. Feeney Roser: Do you want to hear from Mr. Dennis first though? So that we've covered, we've opened up the...

Mr. Silverman: That's what I'm asking.

Mr. Steve Dennis: I can go, sure.

Mr. McIntosh: Sure, I'd be happy to hear that, if that's alright.

Mr. Tucker: Mr. Dennis said he'd be willing to wait [inaudible].

Mr. Abbott: For starters, I guess, to those of us, I've only been involved in this for just over two years, but in the law we have this motion called a Motion for Re-argument. In other words, you present an argument, you lose, and you say, well wait a minute, I think we made a mistake. And the courts have a way of dispensing with those where it's just an attempt to get a second bite at the apple. And the typical statement is that it's obvious that the applicant or the movement is merely attempting to re-hash arguments previously raised and rejected, and that's essentially what you heard Mr. Tucker give to you tonight. He, obviously, is just hoping that you'll delay the decision. We would suggest that all these issues have been previously raised, vetted and, if there has been a legitimate issue in part or whole, they've been taken care of, and if they weren't meritorious, then his client and he were advised of that.

But getting to the specifics, I counted a total of 7 issues. I don't have the benefit of the paperwork that you were provided with but Mr. Charma will address most of them. I have three down that are sort of in my bailiwick and those are the cross access easement agreement, the parking shopping center issue and the settlement agreement.

So in terms of the cross access, if you heard Mr. Tucker, he's saying, well if you want to cut off your legs and give up your access from Main Street, then we'd be happy to drop everything. Well, obviously, my client isn't able to do that, even if it was something that was viable from a common sense standpoint, which it's not. You wouldn't do that because the tenants rely on that access from Main Street. What I was suggesting, and I think I made it clear earlier, is if we want to part company in terms of a parking component only of that agreement, then we'd be more than happy to do that so that we have our parking and they have their parking, and all we have to do is share the access. And I think there was a comment about 15 parking spaces on the Schlosser and Dennis property, so I don't understand why they wouldn't want to have access from Main Street, too. So, in any event, I'm just not following that point, but we will try, as I said, to see if maybe they can think it through and maybe they'll come to terms with the wisdom of parting company just on the parking.

Mr. Firestone: Excuse me, if I may?

Mr. Abbott: Sure.

Mr. Firestone: I've got two questions to follow up on what you said.

Mr. Abbott: Sure.

Mr. Firestone: Is there any legal prohibition on you not having access from Main Street, vis-à-vis your developments?

Mr. Abbott: No, except it's called Main Street for a reason.

Mr. Firestone: Yeah, I guess I'm just trying to understand whether, what the concern is. And secondly, you've said these things have already been litigated. Are you making a claim of res judicata or collateral estoppel? Or are you just making that more generally?

Mr. McIntosh: Could you say that in English?

Mr. Firestone: Well the question is whether there's a judgment of some sort in a legal body where the issues have already been adjudicated and the neighbor is trying to re-litigate things that have already been subject to adjudication. Or whether he was talking more informally that these things have been discussed over a number of years.

Mr. Abbott: The answer is informally.

Mr. Firestone: Thank you.

Mr. Abbott: And, also I'm not an expert on transportation and traffic flow, but I would suggest that because Delaware Avenue is one-way in one direction and Main Street is one-way in the opposite direction, that the traffic circulation flow probably works best if the parcels all have access from both streets. But, in any event, I'll leave that to the experts such as Mr. Charma. I just stayed at a Holiday Inn Express last night, I guess.

Also in terms of the parking, Mr. Tucker mentioned, well you can't do that. Now, first of all, it's a private agreement and I think you've already seen in the Department's report they correctly pointed out that has nothing to do with the Code compliance of this project. But since he mentioned it, I'll only just say to you that under Delaware Easement Law, an owner of the underlying fee simple title still owns the fee simple title. You do not give up all of your rights to that land. And as long as you do not unreasonably obstruct the easement, then you can change it as you see fit. So there's nothing in Delaware Easement Law that prohibits modifications as long as you're providing the fundamental purpose – parking spaces. And that's provided for. So, again, I don't want to get into a debate, I think we're going to end up back and forth, and back and forth. I already see Mr. Tucker writing notes and his client is going to comment next, and, in any event, we'll be happy to debate as long as the Commission wants us to debate.

In any event, the next point is in terms of the settlement agreement. We're not here to talk about the settlement agreement tonight, but since Mr. Tucker raised it, I'll give you this one basic point. All the settlement agreement says is if this plan ends up getting approved, then the litigation goes away. I'll hand it over to Mr. Charma.

Mr. Charma: I'd just like to comment on a couple of...

Mr. Stozek: Excuse me. Can you repeat what you just said about the agreement and the litigation goes away?

Mr. Abbott: If the plan ultimately gets approved, then the litigation goes away.

Mr. Charma: Thank you. I'd like to comment on a couple of points Mr. Tucker made. He is correct, the two loading bays for Iron Hill are absent from the plan. Iron Hill has been grandfathered. That plan was approved in the late '90s, I guess, and it is what it is.

With respect to the apartments, I don't see apartments generating any need for loading. There's no real, there aren't going to be Sysco trucks serving the apartments. There's no need for large vehicles to service them, as I said. Emergency vehicles, they can traverse through the parking lot, loading occurs, like I said. Again, if you've been on Main Street, I don't know how long they waited to get a picture of a Sysco truck in the parking lot but I could probably go in any parking lot in the City and find an oversized vehicle in the parking lot at some point in time in a 24-hour day. So, it is what it is. I still say that logic and my experience tells me that the types of vehicles that service the apartments are not large vehicles.

Mr. Silverman: Point of clarification. The commercial that fronts on Main Street, Iron Hill and that group, you're saying appears to be grandfathered from the requirement of having loading docks.

Mr. Charma: There was no loading dock shown anywhere.

Mr. Silverman: Okay, the property we're looking at tonight is primarily residential.

Mr. Charma: It's all residential.

Mr. Silverman: And under Newark Code, residential uses do not have to have loading docks of this size?

Ms. Feeney Roser: Unless they're a high-rise apartment, and this is not.

Mr. Charma: In a high-rise apartment it would be required.

Mr. Silverman: So does that mean, in your opinion, this loading dock truck issue is a moot issue?

Mr. Charma: I'll defer to the Planning Director.

Ms. Feeney Roser: The way we looked at it, there was no commercial component to what you're trying to do and it's not a high-rise apartment, so therefore the loading dock for that is not required.

Mr. Silverman: Okay.

Mr. Charma: Thank you. With respect to the 8 foot side yard, I take that to task because this side of the building, that's clearly 8 feet all the way down here, and that's what we need to meet, 8 feet. And that is 8 feet. There's an exhibit here and it was shown on the architectural section also. This is clearly 8 feet. We know what the setback is and that was an issue before and we actually moved the building.

Ms. Feeney Roser: Right, I think the difference and what's confusing, I think, to the Commission is the wall that is situated in the side yard. But we have determined that to be a fence, and fences are permitted in the side yard.

Mr. Charma: That is absolutely correct. Fences are permitted and it's exactly the same situation, and I mentioned it before but I think it's time for me to bring out that exhibit. I have one copy. I'll pass it to the Commission so they can take a look at it. This is what's exactly behind us at CampusEdge. They have a parking structure. You can start with the photographs, it's the clearest thing and there is a plan in there, highlighted. But there is a parking structure that you can see from Delaware Avenue. There is a wall that you can clearly see and you can look at these photographs and go through and see they have a barrier wall exactly as we propose, and it's classified as a fence. A wall is a fence by definition in the Code.

Mr. Hurd: Excuse me. Is that fence in their side yard setback?

Mr. Charma: Yes, it is. It's even closer to the property line than ours is.

Mr. Firestone: Are you familiar with the parking lot behind Taverna?

Mr. Charma: I am.

Mr. Firestone: And where is access to that lot?

Mr. Charma: It's from Delaware Avenue.

Mr. Firestone: Okay, so they have an access solely from Delaware. They don't have access on Main Street.

Mr. Charma: No. There is an entrance in and an exit out. It's a circular, one-way in and one-way out.

Mr. Firestone: Thank you.

Mr. Charma: With respect to the traffic aisle widths, I also have an issue with that. The City Code allows diagonal parking. There is a range in the Code and I don't have the Code in front of me specifically but I believe it's 70-80 degrees diagonal parking. You're in that range. The aisle width is 18 feet. We provide that on this plan and that was discussed previously. It was raised by this applicant a couple of times before. We changed the plan, and this plan does reflect that. So we had addressed that issue. If you check back in the Planning Commission minutes of the prior meeting, the 2011 meeting, there is probably a discussion in there. Or, if not, I can also provide copies of our discussions with the Planning and Development Department. The Department does have copies of all of that correspondence. We do comply with the parking geometrics and aisle widths. That was reviewed by the Public Works and Water Resources Department. And approved, I might add.

With respect to construction easements, at this level, this plan, this is not a construction drawing. So to definitively define where we do or don't need easements, it's a little bit early for that. And Mr. Tucker alluded to another project where there is a trespass issue currently going on, and it's a tight site, similar to this site. That's true. But what I offer to the Commission, at the Construction Improvements Plan stage, the Public Works and Water Resources Department, along with Planning and Development, had asked for specific easements to be shown, if we need them. If we feel, when our client hires a construction manager and the construction manager defines how this project will be constructed, that will define the need, or not the need, for subsequent construction easements. And I offer that in my 43 years in this business as an engineer, I have never done a record plan to show construction easements on it in the City of Newark. Ever. So this is a first. And I understand the adjoiner's issues with trespassing and disturbing their property but, again, I think what really needs to happen here is a good neighbor policy. Be a good neighbor. We'll be a good neighbor. The applicant will be a good neighbor. The adjoining property owners need to be a good neighbor also. It's give and take. Thank you.

Mr. Abbott: If I could just supplement one point about the parking garage aisle width issue. Just so the Commission understands, we're referring to the Subdivision Code, Chapter 27, Appendix II entitled Design Requirements for Parking Lots. So what Mr. Tucker is arguing is because the parking spaces are at a 75 degree angle, that we have to meet the 80 degree angle standard. So unless he can somehow magically convince us that 75 degrees equals 80 degrees, he's simply misreading the parking chart.

Mr. Silverman: I do have a question for Mr. Charma. Have you worked with designing parking structures in the past?

Mr. Charma: Yes.

Mr. Silverman: Have you ever been asked to accommodate a fire engine above the street level?

Mr. Charma: Never.

Mr. Silverman: Also, in my experience of more than 50 years, I've never been involved in training that involves taking a piece of fire apparatus off of the ground surface. And you also pointed out standpipes were being provided through the structure in the building, correct?

Mr. Charma: That's correct. Three.

Mr. Silverman: Okay. And those standpipes would extend to the 2nd floor of the parking level?

Mr. Charma: They'll go all the way up to the 4th floor.

Mr. Silverman: Okay, thank you.

Mr. Hurd: Mr. Chairman, I just have one question for clarification, or such, about the issue of whether this is a shopping center. Maureen, maybe you can walk us through how that was defined. Because I think I'm in...

Ms. Feeney Roser: It's in the Code, what a shopping center is. And this falls squarely within that definition. This was part of the Board of Adjustment's discussion. Let me see if I can find it for you. But it is a newer part of the Code. It was not in place when the original building was built, but it was adopted, I believe, in 2000.

Mr. Hurd: Okay.

Mr. Herron: And, Maureen, I don't mean to interrupt you but if I could just, for the Commissioner's benefit, there was a question about res judicata and collateral estoppel. Perhaps that's not the precise terms.

Mr. Hurd: You say that so smoothly.

Mr. Herron: Perhaps that's not exact term that applies here but, in a sense, there is something akin to that, in that the Board of Adjustment has made a decision that the shopping center parking calculation applies.

Mr. Hurd: Okay.

Mr. Herron: And that is what must guide you tonight.

Mr. Hurd: Okay.

Mr. Herron: That may be the subject of future litigation but for the purposes of tonight that is the parking calculation that applies to your deliberations.

Mr. Hurd: Okay, yes, I didn't see that. Thank you.

Mr. Silverman: Mr. Dennis?

Mr. Dennis: Thank you. I know it's late. I'd like to thank all of you for being here and taking your time and diligence to review all these issues that are being placed before you. My name is Steve Dennis. I'm the managing partner of Schlosser and Dennis. We own the property to the east of this. We've owned it for some time. Just to clarify, because it's a little confusing, when this original building that the applicant owns was constructed, it was constructed for retail purposes.

Mr. Silverman: I'm getting lost in the pronouns here. You own the property that contains Cameras Etc. The building you're referring to?

Mr. Dennis: I actually own three buildings that are now one parcel. So we own from Cameras Etc. all the way through Ali Baba.

Mr. Silverman: Okay.

Mr. Dennis: And all the parking behind all of them.

Mr. Silverman: And then the other building...

Mr. Dennis: And the 15 spaces that were referenced earlier are not part of this cross parking agreement. They are behind Ali Baba. They're in the 3rd parcel.

Mr. Silverman: Okay, and then the other building that you're referring to that originally was designed for commercial now contains the bar, Iron Hill Brewery.

Mr. Dennis: Yes.

Mr. Silverman: Okay, thank you.

Mr. Dennis: When the tenant was obtained, and the applicant did not own the building at the time, but when the tenant was obtained, there was no further review through the City and they were not put through the parking requirements of a restaurant at the time. Restaurants at the time, parking was always applicable to the number of seats that you have in a restaurant. It's a rather large restaurant. It's a rather good restaurant. I'm glad it's here, really. Also, an addition was made onto the back of this building and more seating was added, and no parking spaces were made available at that time. So this is one of the reasons that we have one of the big problems that we have now. It just wasn't intended for this use when the building was originally approved.

The reason there is an access agreement is because they used every square inch of Main Street on their property for their building and we agreed to give them access if they would sell us the building. That would be the first building that we own, the one with Cameras Etc. in it. So there's a lot of history to this that the applicant really isn't a part of, but I just want you to understand the history of why this parking lot is in such a bad situation. Everybody's busy in there. We're fortunate to have tenants that are busy. And it's a problem, okay?

So you've heard a lot of experts. I'm no expert in these matters and that's why we hired Shawn five years ago and I'm very fortunate to have Shawn. He's very skillful and knowledgeable. But it doesn't take an expert to see that there's a lot of violations that have been going on for years. I bring to your attention the revision panel that Mr. Charma so eloquently spoke about. All these issues have been here for five years, okay? The reason that bar has increased is because they've had to go back and address issues that we have raised. They're still not solved. They've been revised, they've been revised, and we've been back and forth, you know. They're still not resolved. You can look at this building, and if you look at this traffic flow through this building, I would challenge the fact that two Smart cars could pass each other in this thing, and you're talking about a 30 foot fire truck driving through this building. It's insane. It's absolutely insane.

We have been dealing with this for five years. We are very frustrated. This is a process that I don't really want to be a part of. I didn't choose to be a part of. I've been thrust into this. I'm protecting my family and our property rights. And, quite honestly, I'm a little bit disgusted by the process wherein we pay taxes and a municipality has codes developed that are supposed to be followed and then I have to hire attorneys and spend more money to fight the violations that the codes are in place for. Those codes are supposed to protect the property owners. There is supposed to be a uniform Code that everybody follows and this just seems to me that, in many instances, they are loosened for certain projects and for certain individuals. And I just, I don't agree with that.

Mr. Silverman: How about we not go down that road.

Mr. Dennis: Well, I'm sorry, I just did.

Mr. Silverman: I hope you're not making implications as to this Commission.

Mr. Dennis: Your Commission was not part of what was done initially. I have not implicated anybody. I'm just saying codes are meant to provide a uniform means for all the property owners to have projects conducted. And I just don't feel like it's always that way, to be quite honest. I'm sorry. This has been a long process. Five years. Expensive for us, expensive for them, expensive for you. All I'm requesting is that you use your Code. They're not my codes and they're not their codes. They're your codes. You put them in place. You adopted these codes. We're just asking that you use them. That's all I'm asking. And, in fairness, I would like for Mr. Tucker to have an opportunity to speak again since they were able to speak a second time. If you would allow that.

Mr. Silverman: Well they're the applicants and they get to rebut directly. I'd like to open the floor for any other people who have comments and then we'll get back to Mr. Tucker.

Mr. Ron Carpenter: Good evening, my name is Ron Carpenter from Carpenter Engineering. My client hired me to take a look at the parking demand for this site. The day that I arrived at the site, I took the photo that's here before you. I just want to get it on the record that it was 11:30 in the afternoon. I didn't hang out all day. I pulled up, walked into the restaurant so I could do a seat count. My main concern was that the record plan from 1995 calls out retail space and restaurant space for parking. And now most of that building, including Iron Hill, is restaurants. So that's what, I feel, is the reason that this parking lot has such a high demand. I don't think it's because it's a free parking lot. I think that there is a big attraction to that parking lot because of the land use. I think introducing a parking structure with columns and fire walls and screening is going to generate much more confusion in there. It takes time for somebody who is driving through a parking lot to make a decision. Do I want to go left or do I want to go right? And they need to have a clear open view of that. Currently it's improved because there are no other obstructions, just cars. I think it would be detrimental to approve the parking garage. That's my point.

The other thing I'd like to say is Shawn gave you a copy of the easement agreement. The easement agreement clearly calls out for ingress/egress and parking spaces. It does not call out for columns. It does not call out for fire screening walls, all of which are being proposed in the easement that my client would like. Thank you.

Mr. Silverman: Mr. Tucker?

Ms. Feeney Roser: There's another gentleman.

Mr. Silverman: Oh, I'm sorry, go ahead.

Mr. Mark Edelson: Good evening everybody.

Mr. Silverman: Your name for the record?

Mr. Edelson: My name is Mark Edelson. I'm one of the cofounders of Iron Hill Brewery and Restaurant. It is the largest tenant at the Trader's Alley shopping center, if you will. I know a lot of people here. Iron Hill is celebrating its 20th anniversary coming this November and our first location was here in Newark at Trader's Alley. So thanks to Newark. It was the beginning of our company and has been very successful.

A couple of things I just wanted to point out, clarify and talk to you about, being a tenant of Trader's Alley, and talk particularly about parking and our feelings about the project. First I'd like to say we enjoy a great relationship with our landlord and they've always been very supportive of Iron Hill, as well as our previous landlord, Richard Handloff.

Just some clarifications for a couple of things that I heard through this. There was a comment made by Mr. Charma that there would be 8 less students parking there. I just wanted to point out that there would be 8 less spots on the ground level as well, so that math doesn't really help us with that. But that aside, the other thing is that this building was built with Iron Hill in mind. Because the original plan was changed to accommodate the space that Iron Hill needed, so those plans were all approved. Everything that we've done has been approved by this

Commission. Roy was involved with it and we all looked at the parking waivers that were in place at the time and everything worked out. Now look, putting businesses in a downtown requires, there isn't a downtown that meets all the parking counts. That's why you have parking waivers. That's the only way we get businesses in the downtown. But, you know, our feeling, let's talk about parking there. Parking is a disaster and everybody's talking about five years. We've been there for twenty. After year one, we realized parking was a disaster, right. So it's been a parking disaster for twenty years there, for a lot of reasons. It has nothing to do with restaurants being there. When the parking lot is full an hour before we open our doors, it has nothing to do with more restaurants being in there. It has absolutely everything to do with the only free parking in the whole district of that area is there, and it becomes a parking magnet, right? That's the unfortunate thing. When there is paid parking everywhere else and there is, what we call, private parking. But it's not. It's free parking. It's open lot parking and it's unmonitored parking.

Iron Hill's position has always been to turn it over to the City so that somebody can monitor the parking because the tenant monitoring never works. We've towed people. Towing people is just disastrous because they never walk back through the doors of Iron Hill. Even if they were going down the street this time, they're not coming Friday night to Iron Hill. So we never win that battle. We can't keep people out of it. We can't monitor it. We spent a lot of time, people monitoring it, and it just doesn't work. The only way that the parking lot works is if it's monitored and the best way to do it is if it's monitored by the City. We've been trying to do this for years. Not five years. You know, when Richard owned the property, Richard always wanted to turn it over. Our current landlord always wanted to turn it over. The resistance has always come from the other owner, of not to turn it over. Because we validate parking, we would love it. We validate parking. It's great. All I hear is we want free parking for our customers. What everyone doesn't realize is there's no parking back there. It doesn't exist. It's full with everybody else. College students, employees of other businesses, everybody else and it becomes a big magnet. In our mind, we would love to see the parking situation get better. The only way the parking situation gets better is if it's taken over by the City. That's the only way it happens. We're certainly not in favor of dividing it up, okay. Because 37 spots will not accommodate what we need. You know, having the cross easement helps a little bit but, like I said, it doesn't matter. It's still not enough parking for there.

Which brings me to my next point and I wanted to talk about the greater problem that we have. You know, Iron Hill has 12 locations now. Eight of them are in similar downtowns to what Newark is. You know, we're in Media, we're in West Chester, so we know Main Street parking better than anybody because we see it all over the place. And, unfortunately, with the exception of Phoenixville, Newark is the worst that we have to deal with. And Phoenixville is about to get better because they're putting a parking structure up right across the street from Iron Hill. So then Newark becomes our worst city for parking of any of the Iron Hills. And, you know, from our perspective, we've been disappointed because, I mean it's great the amount of business that has come to Main Street over the last 20 years. It's terrific. There is more activity. That's all great. That's great for everything. But our feeling is, at least on our end of Main Street, virtually nothing has been done to enhance parking. You know, Commissioner Stozek asked a great question tonight which was I don't see how this makes parking better. And I don't think that we ask enough questions. We've been talking until we're blue in the face about putting structures up in this town. Everybody is resistant to it. And every town what we're in, West Chester, Media, have all put parking structures up and it has made parking better and has made businesses better. Yet this City has been hesitant to do that to help the business community out. We're talking about whether or not, what other spaces here get better. It's just semantics. The parking sucks here and it's going to suck when we build this building. So it's just whether or not you want to go ahead and put more student housing in. We're fine either way, but we just need the parking situation to get better in this City.

I mean I have to tell you that it's so bad, it's gotten so bad in the last three years, that, you know, as we come down to the last couple years of our lease, we are looking outside the City of Newark for moving this location. It's just untenable for a business like us that relies on non-student customers. You've all been to Iron Hill. You all come here because...

Mr. Silverman: Let me interrupt you. I understand your concern. I respect your passion. But we're not dealing with the universal parking issue of Newark.

Mr. Edelson: Sure, that's the problem.

Mr. Silverman: Can you confine yourself to this particular project?

Mr. Edelson: Well, this parking situation goes into the universal parking situation in Newark. So I'm done.

Mr. Silverman: I do have a question for you.

Mr. Edelson: Sure. Absolutely.

Mr. Silverman: The issue of truck offloading came up tonight.

Mr. Edelson: Absolutely.

Mr. Silverman: Do you get your deliveries at 11:30 in the morning?

Mr. Edelson: Sometimes. That's late for us.

Mr. Silverman: As a convenience for the delivery vehicle? Do other merchants get pre-opening deliveries, 5 o'clock in the morning deliveries, kind of thing?

Mr. Edelson: Not that I'm aware of. We like to have them in the mornings and 11:30 is a little late for us because we are open for business and we'd like to see it a little earlier. You know, we try to do that. But if you're in West Chester, the Sysco truck is on Main Street because there's nowhere to get in. So we probably have a better situation than most deliveries on Main Street in Newark.

Mr. Silverman: Okay. Thank you.

Mr. Firestone: Is the access on Main Street critical to you?

Mr. Edelson: Absolutely. Absolutely.

Mr. Firestone: And why?

Mr. Edelson: Because it's Main Street. Somebody said it before. You know, turning in off of Main Street, forcing somebody to circle around, we would definitely leave if that access got cut off. We'd see our business get cut in half if that was the case. I'm just telling you right now. You know, being on Main Street and not having access and having to drive around to Delaware. I realize there are other restaurants that have that down the street, but we've always enjoyed Main Street access. Take that away, it would be, again, untenable.

Mr. Silverman: Edgar?

Mr. Johnson: I'm troubled by your comment that you need Main Street access. If the parking lot is full before you open, what customers are driving through and going into your restaurant?

Mr. Edelson: Well, everybody said, everybody circles.

Mr. Johnson: I don't circle. I know it's full, I don't go there.

Mr. Edelson: Sure.

Mr. Johnson: So, you know.

Mr. Firestone: And there are a number of very successful restaurants on Main Street that don't have that kind of access and they're quite full. And you can wait, at times, upwards of an hour for a seat. I mean, I don't see how that issue is critical to your business.

Mr. Edelson: That's fine. I'm just going to tell you that Main Street, if you ask any business would they like to have access off of Main Street versus not, they're going to tell you absolutely access off of Main Street. Customers will just drive by and go to the one that has access off of Main Street. That's my opinion. If you want to debate me, that's, you know, you asked my opinion and I told it, and now you're debating me on it.

Mr. Silverman: Do you have any other points to add, sir?

Mr. Edelson: I don't.

Mr. Silverman: Okay. Well thank you very much. Now we are at the 9:30 hour. Would the Commissioners like to take 5 or 10 minutes as a break and then come back?

Mr. Johnson: No, I don't. I don't want to take a break.

Mr. McIntosh: Trudge on.

Mr. Silverman: No calls of nature from this end? Okay, we will continue.

Mr. Johnson: I have a couple of questions. Mr. Abbott stated earlier that they've met with Mr. Schlosser and Mr. Dennis regarding trying to resolve this easement thing and he mentioned that he had an hour-and-a-half meeting. Is that the only meeting that you had?

Mr. Abbott: Yes.

Mr. Johnson: And would you characterize an hour-and-a-half meeting as a good faith effort to resolve the differences?

Mr. Abbott: Yes.

Mr. Johnson: Really?

Mr. Abbott: We went through point by point each and every item that Mr. Tucker had included in his most recent letter. I think he filed it the day of, or the day before, the December 2013 Planning Commission hearing that we were originally scheduled to appear before.

Mr. Johnson: So your commitment to the City regarding the parking spaces being turned over to the City, you would make every good faith effort, but that good faith effort would not exceed an hour-and-a-half because you view that as a good faith effort. An hour-and-a-half meeting.

Mr. Abbott: No, because what preceded the April 2014 meeting were multiple exchanges of written submissions, comments, responses, submissions by Mr. Tucker, responses by Mr. Charma. So that meeting was not the sole basis. What led up to that meeting, because they had said to us at some point, I got involved in this matter in December of 2013, very soon before we were originally scheduled to come before Planning Commission. And it got put off because Mr. Tucker sort of dropped the bomb at the last minute like he did tonight giving you a big thick packet without really any advance notification. And so the decision was to put off that meeting. We could have proceeded with that meeting. We could have come forward and said it's just more of the same objection upon objection, but we decided that it was better to prevent there from being a big circus, for want of another word, in front of the Commission. And so we exchanged these written correspondence and then we had the face-to-face meeting and we utilized Mr. Tucker's list like he submitted tonight in his presentation. I counted seven issues, or something along those lines. And we went through point by point, each and every one. Mr. Tucker had an engineer there from Century Engineering, a fire expert, another engineer. I don't know if it was Mr. Carpenter or another engineer who was there as well. They covered their issues. In fact, I remember the gentleman from Century Engineering raised some issues, Mr.

Charma responded to them and he said, okay, given that, then I don't have any issue. So, we banged through this list. The only thing that was left hanging at the end of this meeting was Mr. Tucker's assertion, his legal opinion, that 75 degrees equals 80 degrees. Which I'm not going to agree with that because it's impossible to be true. So we then followed that up with written correspondence and that's what I was saying earlier about the re-hashing. No matter how many times you resolve the issues and answer all the questions, he keeps coming back and saying you haven't resolved them yet. But we wouldn't be here if they weren't resolved because if they had any validity, then we were asked to address them by the Planning and Development Department. They were fully addressed, resolved and put to bed. So everything that he's raised tonight has been previously discussed, previously reviewed multiple times and either taken care of through the submission and this set of, I believe, what is it, 10 or 12 revisions, Joe, that you can see in the upper right-hand corner, or through rejection, in effect, finding there to be no merit to certain points that were raised. So, again, I don't know how many issues we've gone through over time but maybe a couple dozen, and they're all taken care of.

Mr. Johnson: I have two more issues. One is, it would seem to me if you were to give up Main Street access as far as the easement and just have access off of Delaware Avenue, wouldn't that solve the problem? Iron Hill says they'd like to have Main Street access but they're talking about moving out of Newark because of the problems with parking. Well if you have Main Street access and you have problems with parking, taking the Main Street access away doesn't solve the problems nor does it exacerbate it. So why wouldn't you have just Delaware Avenue access like, say, Taverna.

Mr. Abbott: Well Mr. Charma is whispering in my ear that it's a fire lane, so under the Fire Code, we can't do that. And the other point of it is, the flip side I would say is, why don't we just eliminate the cross parking component. Mr. Dennis has testified he's upset he wants greater control over his parking. Fine. You can have it. We could resolve this whole issue here tonight. Mr. Dennis can come up here and be the hero and say I will extinguish the cross parking component. My client will agree and then we will give that area on the first level to the City. And even their own expert, Mr. Carpenter, said there's going to be more confusion with a parking garage. Well we resolve that problem if the City controls it. Mr. Edelson even testified we'd love the City to control it. August of 2011, Mr. Edelson's partner, Mr. Davies, appeared here and said almost the exact same thing. We're happy that the City is going to take over the parking because then we'll have greater control and we won't have all of these intruders and trespassers who aren't supposed to be in there. But Mr. Dennis doesn't want to do that. We need the access from Main Street. It's a commercial operation, and even if Iron Hill eventually leaves, there will probably be another restaurant or some other commercial retail user that goes in there and they want that access. Whether the lay-people believe that they need it or not doesn't matter. The perception in the commercial/retail community is, the more access, the better. And if you take away the Main Street, you take away property value. That's just not something that would make any economic sense. Particularly because all Mr. Dennis has to do is say yes to the extinguishment of the cross parking component. And then we're ready to go and all this time we've spent here tonight about how we can get this parking on the first level to the City is solved. Mr. Dennis is here. Why doesn't he answer that question?

Mr. Firestone: But then at the end of the day you get an easement for nothing. Cross parking is gone, you get an easement and they get nothing. That doesn't really make sense to me.

Mr. Johnson: Exactly.

Mr. Abbott: Well, as I said, then he may not agree to it and then we'll just have a private parking garage. I mean, again, this is, my client bought the property and this has been discussed when the die was already cast. So this history Mr. Dennis talked about, the background, what happened, why are there only 45 parking spaces in the existing lot, my client wasn't involved in all that. My client, and just so the Planning Commission knows, when my client bought the property, as happens with regular due diligence, they obtained an affidavit, they obtained a zoning verification, and they were told your property is fully compliant based on all current conditions. So, in reliance on that, back in 2006, ten years ago, my client bought the property. So anybody that comes in now and says there's a problem, there's an issue, there's something wrong, I don't know. But the bottom line is my client bought a fully Code compliant parcel.

And the City verified it and provided that affidavit necessary or it would have never gone to closing.

Mr. Firestone: But the bottom line is that if the cross easements are extinguished the way you're suggesting, you're getting something for nothing.

Mr. Abbott: We're not getting anything for anything.

Mr. Johnson: Yes, you are.

Mr. Abbott: My client paid full fair market value for the property.

Mr. Firestone: I don't want to argue with you.

Mr. Abbott: I'm just telling you, economically, that added value to Trader's Alley, my client paid the prior owners for that enhanced value. So my client's already paid full fair market value for that full easement. So she's not getting anything for anything. She's paid in full. So there's no free ride on her part.

Mr. Silverman: With all due respect, that's a private property and private market decision. It has nothing to do with the land use issue at hand here.

Mr. Johnson: Well may I ask one final question? Mr. Abbott made this comment. If the plan is approved, then the litigation goes away. I didn't stay at a Holiday Inn Express last night so I don't understand how we, as a Commission, can deny them their rights to litigate. Can somebody explain that to me? A decision that we make makes the litigation go away.

Mr. Herron: There is, Mr. Walton is here...

Mr. Silverman: I'm going to defer to the attorney for the Commission.

Mr. Herron: I believe what Mr. Abbott meant was if the plan is approved, the Trader's Alley challenges to the Board of Adjustment's actions will go away. He didn't mean to say that if the plan is approved, that Mr. Tucker's client's rights go away.

Ms. Feeney Roser: Right and the...

Mr. Herron: If they have rights. I'm not saying they have rights. But I think that answers your question.

Ms. Feeney Roser: And the applicant did...

Mr. Herron: Mr. Walton is here as well.

Mr. Silverman: The Chair would like to recognize Mr. Walton.

Mr. Max Walton: Thank you, Mr. Chair, sorry about the noise. I just want to explain...

Mr. Hurd: I don't think the mic is on.

Ms. Feeney Roser: Is it off or are we out of battery?

Ms. Vispi: We have a back-up if it's not working. Is the green light on?

Mr. Walton: Can you hear me?

Mr. Hurd: Oh, there it is, okay.

Mr. Walton: I just wasn't close enough to the microphone. I'm neither here to support or be on any side. I just want to explain that I am Litigation Counsel for the City of Newark and the

pending litigations relating to this particular project. There are three total litigations. I don't think anyone is going to dispute these points. There are two litigations filed by Trader's Alley. One which was filed in advance of the Board of Adjustment proceeding, which is in the Court of Chancery of the State of Delaware, which makes a vested rights equitable estoppel. They tried to enjoin the Board of Adjustment hearing and stop it, kind of case. That case has been stayed based upon the settlement agreement.

Trader's Alley has a second appeal of the Board of Adjustment decision which has been appealed to the Superior Court. That action has been stayed because they're bringing the new plan and that's what the settlement agreement says. Just to be clear, if, not the Planning Commission, the City Council ultimately approves the plan, the Trader's Alley litigations will be dismissed. There might be a challenge to them by the other side but that's what the settlement agreement is designed to do. It's designed so they could bring a plan that was compliant with the parking requirements that were established by the Board of Adjustment.

There is a third litigation which was brought by Schlosser and Dennis, LLC which is an appeal of the Board of Adjustment decision to the Superior Court. That action will not go away and is not subject to the settlement agreement.

So there are three, and I agree with Mr. Abbott that if there is an approval, those two will go away. I can't say the same for the Schlosser and Dennis appeal. We could go through all the different iterations and motions and things in that case, but I don't want to bore you. I just wanted to make a clear record on what's out there for the Commission. If there are any questions, I would be happy to answer them. Thank you.

Mr. Charma: Excuse me, I'd just like to add one comment to Commissioner Johnson regarding reaching out to the clients, to the Schlosser and Dennis group. We met, besides the meeting we had with Mr. Abbott and the Schlosser and Dennis engineers and Mr. Tucker, we had two other meetings to try to bring some resolution to this matter. So we have reached out in good faith to try to get to some common ground.

Mr. Abbott: And I apologize because those occurred, apparently, before I got involved in December of 2013.

Mr. Silverman: Okay, Mr. Tucker, do you have additional comments and information?

Mr. Tucker: Yes, and I do promise I'll be brief. Just a couple of final points. I have to respectfully disagree with Mr. Abbott's overall characterization of our meeting. This was not a meeting where our consultants sat there and agreed with counterpoints to the issues listed in the document we provided you. We had to agree to disagree on most, if not all, of these things. Respectfully, but we had to agree to disagree. One of the perfect examples is this loading bay issue. In all due respect to the City, I don't find a provision in their Code that says if you have an existing restaurant and you come back in to add square footage to the site, you're grandfathered in under the fact that under the old Code you weren't required to have a loading bay. And in this case, keep in mind, they are taking advantage of the new Code shopping center definition. So on one hand they're taking advantage of the shopping center definition for parking, which we dispute, but on the other hand, they don't want to comply with the loading bay requirement that's in the Code.

So we didn't reach any resolution on those kind of issues. We think that's a fundamental misinterpretation of the Code. So we have met. We've talked through these issues. I don't feel like we have gotten any of them resolved in terms of how we read the Code, and we think we are reading the Code correctly, in all due respect to other folks who have looked at this. We certainly have not been able to get the easement issue resolved. Mr. Silverman, you pointed out it is a private agreement. It is referenced on one of the older record plans and so Mr. Walton and I need to talk through that a little bit more. But we have met several times. I don't feel there's been any resolution offered by the applicant other than we'll find a way to provide you parking during construction. That's pretty much where we've gotten and that's just not going to cut it for my client for obvious reason. That truck picture alone.

So I'll just close by asking that you simply consider absorbing a little bit more here. You've done, I think, a superb job of touching on the key issues that we are concerned about. There is a lot of material here to consider. The prior Planning Commission did not rule on this. They looked at these issues and they had concerns. They had many pauses and hesitations just like you have tonight and said, wait a minute, we need more time. The easement issue alone is something that will be litigated for many months. Without getting into the details of that, it will be many months. So the idea that if you don't rule tonight this was going to get resolved in the next thirty days, it won't. There is a process that we're going to have to go through because we have agreed to disagree on the easement issue right now unless we come up with something between now and when we end up in front of the judge. So, again, I would respectfully make that request only because it is unfair to absorb all this. These are not new issues for the applicant. Every issue that's raised in here has been raised in here multiple times and it's cross-referenced. So it wasn't just a bomb that I dropped and I just want to clarify that, as well. Thank you very much, Mr. Chairman. Thank you for your patience.

Mr. Silverman: Madam Director you've been sitting here very pensively and very quietly.

Ms. Feeney Roser: That's unusual, isn't it?

Mr. Silverman: You've been involved in the events leading up to and the preparation for this Commission meeting. You've prepared the report that initially opened the discussion and I'd like to offer you the opportunity to comment or add to your report based on what you've heard.

Ms. Feeney Roser: Thank you, Chairman Silverman. I would just focus on two things from the Department's point of view and to let the Commission know, if you look at how many iterations of this plan have been reviewed, the staff has spent a lot of time reviewing it and we believe that it meets Code. So I just want to put that out there. There are ways to address that if someone feels that we were incorrect in our interpretation.

The other thing that I would say is that the easement agreements for cross access and parking are private and they will be litigated long after this Commission does or does not make their final recommendations. The City is not a party to that. The City simply would need to make sure that they were in place, the construction easements and things, before we could issue a building permit.

So they're just really the two themes I wanted to get across is, 1) we believe it to be Code compliant, and 2) that the cross access and parking agreement is a private issue that will need to be settled outside of this body.

Mr. McIntosh: Mr. Chairman, I have question.

Mr. Silverman: Yes.

Mr. McIntosh: Were you, in all of your thinking around the Code and your Code discussions, were you aware of the other side's view of these Code, their positions and as you worked through it all you determined that the Code, as it exists, worked on behalf of the applicant, regardless of what was being said on the side?

Ms. Feeney Roser: Right. I think Mr. Tucker has done a very good job keeping us informed of what his arguments are. We have reviewed them as they've come in and the staff is of the opinion that what is before you tonight, because, as you know, it's been changed along the way, meets Code.

Mr. Silverman: Any other questions for Maureen? Any other questions from the Commissioners? Okay I would like to talk about moving, prepare for moving to the question.

The Chair entertains a motion that the Planning Commission concur with the recommendation that the City Council approve the Trader's Alley major subdivision plan and special use permit subject to all Subdivision Advisory Committee conditions as shown on the

Landmark Science and Engineering plan dated September 15, 2011 with revisions through December 31, 2015. Do I hear a motion to that effect?

Mr. McIntosh: So moved.

Mr. Silverman: Do I hear a second? I suggest that someone second this so we can least vote the motion up or down, or table it.

Mr. Firestone: I would move that we table the motion.

Mr. Silverman: You're out of order. There's a motion being formed on the floor. I'm going to ask our counsel, where do we go from here? If this motion fails for lack of a second and the motion fails, how do we deal with Mr. Tucker's request?

Mr. McIntosh: Excuse me. I'll withdraw that. I have no objections of coming back to this if that's what people want to do.

Mr. Silverman: Okay, so in lieu of a motion up or down, with respect to agreeing or disagreeing with the recommendation of the Planning and Development Department, is there any other motions recommended from the body? Frank?

Mr. McIntosh: Well, there's a lot to think about. I think that point has been well made.

Mr. Silverman: Are you suggesting a move to table this particular item?

Mr. McIntosh: I think I'm leaning that way, yes.

Mr. Silverman: Okay, I need more than leaning.

Mr. McIntosh: Well, geez, I'm only here near the microphone.

Mr. Silverman: And I need a second.

Mr. McIntosh: And it's five minutes to ten, come on.

Mr. Herron: Mr. Chairman, if I could just interject. If there is going to be a motion to table this or postpone it, I think the correct verbiage would be postponement. It would need to be a motion to postpone it to a specific meeting.

Mr. Silverman: We'd have to have a specific time and date?

Mr. Herron: Yes.

Mr. Silverman: Yes, I understand that.

Mr. Herron: So that would need to be part of the motion.

Ms. Feeney Roser: Wouldn't we also need some direction of what it is that you need between now and then? I mean, is it just to be able to review Mr. Tucker's information? I'm not really sure.

Mr. McIntosh: Well, I mean, there's a lot of information that's been put in front of us.

Ms. Feeney Roser: Yes, but he said nothing that was new.

Mr. McIntosh: Yeah, but I was, I'm new to it, as are most of the members here new to it. It just seems to me that, in fairness, that I wouldn't want to come back here and go through all this all over again, personally.

Mr. Silverman: Then what's the purpose of tabling or deferring?

Mr. McIntosh: Well I think if nobody wants to second a motion to vote on something, then the Commissioners are saying they're not ready to vote on it.

Mr. Silverman: I'm going to refer back to counsel for the Commission. Doesn't the City Ordinance require us to vote something up or down? We cannot vote the equivalent of 'present' if we don't want to vote on this.

Mr. Herron: The Code requires that there be something forwarded to Council, yes.

Mr. Silverman: Okay. So another way of saying what I'm saying is that we have to say yes or no on this.

Mr. Herron: I don't believe you're precluded from postponing it or saying yes or no. But you have to do one or the other.

Mr. Silverman: Correct. Yes.

Mr. Firestone: Someone could also make the motion to vote down the proposal.

Mr. Herron: Motions should generally be in the affirmative.

Mr. Hurd: And then you vote against it.

Mr. Firestone: But if we're not able to get a second, the question is whether someone can bring a motion in the negative.

Mr. Herron: And I just want to point out, too, Mr. Chairman, I know the motion has been withdrawn now but, as I understand it, you are not precluded from seconding a motion.

Mr. Silverman: That's correct.

Mr. Herron: I just wanted to point that out.

Mr. Johnson: Why don't we just vote on it?

Mr. Silverman: Now, as we've been reminded many times before, we are advisory and if the Commissioners choose to, I hate to use this term, kick the can to Council, we have done our duty.

Mr. Johnson: What are our other options? If...

Mr. Silverman: We vote it up, we vote it down, we vote to defer.

Mr. Herron: Postpone.

Mr. Silverman: Postpone it.

Mr. Johnson: To what benefit do we vote to defer? What are we waiting for? What do we want to hear? That they've come to some agreement on the easement and that we're not going to consider this until they've reached an agreement? I'll be 80 years old then.

Mr. Firestone: No, but one month might give the parties an opportunity to resolve this amongst themselves. I mean that would be the only benefit that I see.

Mr. Silverman: I see a lot of heads going back and forth.

Mr. Johnson: It's not going to happen, Jeremy. It's not going to happen.

Mr. Silverman: And I've also been involved in some jury trials where the theory is the guy is not going to plead until he looks into the eyes of the jury. I don't think that's going to work here. So, do we want to move this out of our room into somebody else's room?

Mr. Hurd: Sure.

Mr. Silverman: Then the Chair entertains a motion, or I will make the motion if we have a second out there, that we concur for the Planning Commission recommendation that the City Council approve the Trader's Alley major subdivision and special use permit subject to all Subdivision Advisory Committee conditions as shown on the Landmark Science and Engineering plan dated September 15, 2011 with revisions through December 31, 2015. Is there a second?

Mr. Hurd: Second.

Mr. Silverman: Okay. It's been moved and seconded. Is there any comment?

Mr. Hurd: I just have a few things I want to say because I think it's germane to how I'm voting. I think this was presented to us as a residential project, which I kind of tend to agree is in conflict with the BB zoning. A purely residential project with just parking. If we look at it in totality with the retail, then I'm troubled by the issue of the loading areas and the parking attached to that. So I think in both situations, it has problems with the zoning and with the Code in terms of compliance, for me.

Ms. Feeney Roser: The Code does permit residential on upper floors and parking...

Mr. Hurd: Over parking?

Ms. Feeney Roser: Yes.

Mr. Hurd: Well then, to me, it has conflicts with the Comp Plan if I look at it solely as parking with residential over. That, to me, is not in compliance with the intentions of the Comprehensive Plan because it's not providing any benefit at the ground level. Specifically, it's asking for retail/mixed use, all that stuff to activate at the street level, and this isn't doing that. And I think, as many people said, the parking concerns me. I would like to see a project that's improving things and not, this, holding the status quo.

Mr. Silverman: Mr. Stozek?

Mr. Stozek: I'd like to make a similar statement. I feel like we're here being asked to settle the disagreement between the Hatfields and the McCoys. There are court cases going on, there is adjudication going on and we've heard that if this project is approved, some of that goes away. That bothers me. That we're going through the back door rather than resolving issues that require adjudication. I understand the Planning Department believes this project meets all the Code. I have some questions, like Will does, about their interpretation. But I think the other part of this Commission, besides just rubber-stamping Code approval, is, what is this doing to improve the City? What is it doing to improve the situation? I guess I haven't been convinced, because of all of the questions about easements and parking and access and construction easements, that this improves the conditions of the City.

Mr. Silverman: Mr. Johnson, any questions, any comments?

Mr. Johnson: Mr. Stozek's comments are right on. I second them.

Mr. Silverman: Commissioner Firestone?

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

Mr. McIntosh: No. Me either.

Mr. Silverman: Okay. All those in favor of supporting the proposal by the Department of Planning, signify by saying Aye. All those in opposition, signify by saying Nay. The motion is defeated.

Ms. Feeney Roser: Thank you.

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

THAT CITY COUNCIL APPROVE THE TRADER’S ALLEY MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN, SUBJECT TO ALL SUBDIVISION ADVISORY COMMITTEE CONDITIONS, AS SHOWN ON THE LANDMARK SCIENCE AND ENGINEERING PLAN DATED SEPTEMBER 15, 2011 WITH REVISIONS THROUGH DECEMBER 31, 2015.

VOTE: 2-4

AYE: MCINTOSH, SILVERMAN

NAY: FIRESTONE, HURD, JOHNSON, STOZEK

ABSENT: CRONIN

MOTION FAILED

3. DISCUSSION REGARDING PLANNING COMMISSION TRAINING SESSIONS

Mr. Johnson: Mr. Chairman, can we dispense with agenda item 3?

Mr. Hurd: Absolutely.

Mr. Silverman: Okay, it has been suggested with dispense with agenda item 3.

Mr. Firestone: Second.

Mr. McIntosh: Third. Can you have a third?

Unidentified Speaker: Can we have a third?

Unidentified Speaker: No.

Mr. McIntosh: No? I take the third back.

Mr. Silverman: If there is no objection, we will dispense with item 3 on our agenda and carry it forward to the next meeting.

There being no further business, the Planning Commission adjourned at 10:05 p.m.

Respectfully submitted,

Michelle Vispi
Planning Commission Secretary

/mv