

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

May 3, 2016

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Jeremy Firestone
Willard Hurd
Frank McIntosh
Robert Stozek

Commissioners Absent: Bob Cronin
Edgar Johnson

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

Mr. Silverman called the Planning Commission meeting to order at 7:01 p.m.

Mr. Alan Silverman: I'd like to call to order the City of Newark, Delaware Planning Commission meeting for Tuesday, May 3, 2016. Given the number of residents who are appearing for one of the items on our agenda, with the consensus of the Commission, I would like to re-order our agenda and move Item #3, Review and Consideration of an Annexation etc. for 0 Darien Road to Item #2 on our agenda. Is there a problem with that?

Mr. Will Hurd: No.

Mr. Alan Silverman: The rest of our work tonight is basically administrative. Okay, hearing no objection, the order of business has been changed so that the Darien Road proposal will be the second item on our agenda.

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

Mr. Silverman: The first item on our agenda is the approval of our minutes from the April 5, 2016 Planning Commission meeting. The Commissioners have received printed copies as part of their packets. Are there any additions or corrections?

Mr. Frank McIntosh: Yes. On page 25, line 1352, 'I suffered through the I-95 debacle.' It was the I-93 debacle. The I-95 debacle was another time.

Mr. Silverman: Are there any other additions or corrections? Hearing none, the minutes stand approved as corrected.

2. REVIEW AND CONSIDERATION OF AN ANNEXATION, REZONING AND MINOR SUBDIVISION FOR THE 5.43+/- ACRE PROPERTY AT 0 DARIEN ROAD, LOCATED ON THE NORTH SIDE OF DARIEN ROAD AND THE WEST SIDE OF STAMFORD DRIVE IN THE FAIRFIELD SUBDIVISION.

Mr. Silverman: Madame Director.

Ms. Maureen Feeney Roser: That was my cue. See how quick I am.

Mr. Silverman: Do you have a report for us?

Ms. Feeney Roser: I do. This is the annexation, rezoning and minor subdivision for 0 Darien Road which is Planning and Development Department Case #16-02-02.

[Secretary's note: Ms. Feeney Roser addresses the applicant, who is distributing documents to the Commission and Director and setting up presentation boards.] I am going to make my report and then we're going to give you an opportunity to make yours, okay?

Mr. Silverman: While the applicant is distributing, for those of you who are not regulars at our meetings, our procedure is such that we will hear the City's Planning Department. They do a comprehensive report that involves evaluations and staff comments across the service departments of the City. The Commissioners will have the opportunity to ask questions of the Director with respect to that particular report. We will open the floor up to the applicant to make their presentation. What I'd like to do is have the Commissioners hold their questions until the end of the applicant's presentation. The Commissioners will question the applicant if there are any things that are unclear. And then we will open up the floor to comments from those of you who have taken your time this evening to participate at our Commission hearing. Within reasonable limits, we will permit the applicant to either respond collectively to your comments or individually, depending on how things develop. And I would like you to remember that this is a quasi-judicial public hearing. Rights of members of the community as well as the applicant are represented here and if there are any questions or comments, they should be directed to the Chair. Not to one another and not directly to the applicant. With that being said...

Ms. Feeney Roser: Thank you, Chairman Silverman. I should mention, too, that the Commission has an email that we received about 6:30 tonight from John and Jane Camp, as well. They weren't able to make the meeting so they provided comments in email for us, which should be in your packets.

Mr. Silverman: So every Commissioner has a copy of those comments?

Ms. Feeney Roser: Yes.

Mr. Silverman: Thank you.

[Secretary's note: The Planning and Development Department report on the proposed annexation, rezoning and minor subdivision follows.]

On February 26, 2016, the Planning and Development Department received an application from David and Eileen Hall for the annexation of their 5.43+/- acre property located north of Darien Road and west of Stamford Drive, and adjacent to the Fairfield subdivision. Mr. and Mrs. Hall also submitted accompanying rezoning and minor subdivision applications to create two large single family lots with RH (residential – half acre) zoning out of the vacant property, currently considered part of the County Covered Bridge Farms Subdivision.

Please see the attached Merestone Consultants, Inc. annexation, rezoning and minor subdivision plans and associated materials.

The Planning and Development Department's report concerning 0 Darien Road follows:

Property Description and Related Data

1. Location:

The property is located in Covered Bridge Farms, north and west of the Fairfield 4 and 5 residential subdivisions. Specifically, the property is adjacent to the municipal boundary north of the Darien Road stub and west of backyards along Stamford Drive in Fairfield. It is also east of New Castle County properties along Darien Road in Covered Bridge Farms.

2. Size:

5.43+/- acres

3. Existing Land Use:

The property is currently vacant from a land-use point of view, and is heavily wooded.

4. Physical Condition of the Site:

The property is heavily wooded and contains a small shed and a portion of an existing bridge over a small stream which runs along the property line with Covered Bridge Farms properties to the west. The property slopes in general from high points on the east and south to the stream. Two relatively small areas of wetlands have been identified via a March 16, 2016 investigation, along the southwestern portion of the site, in the area proposed for parcel A.

Regarding soils, according to the subdivision plan and the United States Department of Agriculture Natural Resources Conservation Service, the site consists of Gaila Loam (GaC), 8-15% slopes and Glenelg-Wheaton-Urban Land Complex (GhB) soils. According to the Natural Resources Conservation Service, these soils do not pose development limitations for the proposed residential use.

5. Planning and Zoning:

The property is currently zoned "NC21" in New Castle County. "NC21," in the County is a "neighborhood conservation" district intended to preserve the residential character of existing neighborhoods and permitting half-acre residential lots.

The applicants are requesting RH (single family detached) zoning. RH is a one-half acre lot minimum residential district which permits the following:

- A. A one-family dwelling detached.
- B. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, but not including student homes, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling except that an owner occupant family resident shall mean that the individual taking in nontransient boarders or roomers has a minimum of 50% ownership by deed of the property; and further provided that if more than two boarders or roomers are taken in, rental permits are required to be applied for and issued as provided in Chapter 17, Housing and Property Maintenance, of this code. In those instances in which there is more than one individual owner of a property on the deed pertaining to that property, and in which those multiple owners are not spouses owning as tenants by the entireties, said multiple owners, upon proper request, may be required to provide affidavits through the rental permit process, as provided in Chapter 17, that establish to the satisfaction of the city that minority ownership has not been created to circumvent any provision of this code.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a nonowner occupant family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use, provided there is no display or advertising

on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, subject to special requirements.

- D. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that in RS districts, no lot less than 12,500 square feet shall be used for such purposes.
- E. Public and private elementary, junior, and senior high schools.
- F. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- G. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- H. Municipal sewage pumping station and sewers.
- I. Right-of-way, street.
- J. Swimming pool, private; swimming pool, public.
- K. Temporary building, temporary real estate, or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- L. Private garage as an accessory use, subject to the special regulations of Article XV of this chapter.
- M. Accessory buildings or structures, no impact, and accessory uses, no impact, excluding semitrailers and similar vehicles for storage of property.
- N. Cluster or neo-traditional types of developments including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.
- O. Utility transmission and distribution lines.
- P. Public transportation bus or transit stops for the loading and unloading of passengers.
- Q. Student home, subject to special requirements.
- R. No impact home businesses in a residential dwelling shall be permitted, subject to special provisions.

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

- A. Police and fire stations, library, museum, and art gallery.
- B. Country club, regulation golf course, including customary accessory uses, subject to special requirements.
- C. Professional office in a residential dwelling permitted, subject to special provisions.
- D. Customary home occupations, subject to special requirements.
- E. Substation, electric, and gas facilities, subject to special requirements.
- F. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- G. Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
- H. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service, subject to review by the planning department.
- I. Swimming club, private (nonprofit).
- J. Bed and breakfast, defined as an inn, guest house, or similar commercial lodging establishment permitted only in a structure in existence at the time of this ordinance's adoption (6/26/95), subject to special requirements.
- K. Accessory buildings or structures, with impact, and accessory uses, with impact, excluding semitrailers and similar vehicles for storage of property.

Regarding area regulations, a summary of RH requirements are as follows:

- (1) *Minimum lot area.* One-half acre.
- (2) *Lot coverage.* 44%; 20% for building.
- (3) *Minimum lot width.* 100 feet, with exceptions.
- (4) *Height of buildings.* Max three stories or 35 feet, with exceptions.
- (5) *Building setback lines.* 40 feet, with exceptions.

- (6) *Rear yards.* 50 feet, with exceptions.
- (7) *Side yards.* 15 feet minimum/35 feet aggregate.

Regarding zoning area requirements, the to-be-zoned RH parcels meet or can meet all applicable area requirements.

The adjoining properties in the County to the west of the site along Darien Road and Brentwood Lane are also zoned “NC21” and contain Covered Bridge Farms single family homes. One City of Newark RH zoned parcel is also adjacent to the west, which was annexed by the City in May, 1997 for sewer service. Properties to the east and south of the site are zoned RS and contain single family homes in Fairfield 4 and 5 subdivisions. RS zoning permits single family residential uses on lots of a minimum of 9,000 square feet. Also adjacent on the southwest corner is an RT zoned lot in the West Branch subdivision. RT zoning requires a minimum of 15,000 square foot lots.

Regarding comprehensive planning, the Newark Adjacent Areas Land-Use Plan of the Comprehensive Development Plan IV calls for single family residential (low density) uses at the site. Single family residential (low density) is defined in the Plan as areas designated for dwellings occupied by one family, with overall densities of 1-3 dwelling units per acre. The 0 Darien Road annexation, rezoning and minor subdivision plan proposes less than 0.4 units per acre, which clearly meets the Comprehensive Plan. In addition, the requested zoning (RH) yields half-acre lots, which is equivalent to the current New Castle County zoning category, and which requires larger lot sizes than the RS zoning of residential properties adjacent to the south and east in the City of Newark.

Status of Site Design

Please note that in this stage of the Newark subdivision review process, applicants need only show the general site design. For site design, specific details taking into account topographic and other natural features must be included in the Construction Improvements Plan. If the Construction Improvements Plan, which is reviewed and approved by the Operating Departments, does not conform substantially to the approved subdivision site, the Construction Improvements Plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means the general site concept has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan – within Code determined and approved subdivision set parameters – to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

While not required by Code for a minor subdivision outside the boundaries of downtown, the applicant has provided conceptual architectural designs for the two proposed single family homes for Planning Commission consideration. These designs are attached. It is important to note that the actual architecture of the structures proposed for the two lots requested has not been finalized. The applicant, however, commits to the overall quality of materials to be used, the general architectural design, and the structures’ relationship to the surrounding community.

Be that as it may, the 0 Darien Road annexation, rezoning and minor subdivision plan calls for single family dwellings on two lots: A and B. Parcel A is proposed as a 4.25+/- acre property south of Parcel B, which is proposed as a 1.25+/- acre lot. Access is proposed via a private drive along the western portion of the site, extending north from the Darien Road stub in Fairfield. The access is proposed through a 30 foot wide access and utility easement, with 12 feet of paved roadway.

Please note that because the annexation, rezoning and minor subdivision plan calls for two single family homes accessed through City owned and maintained streets, the plan was not sent to DelDOT for review and comment.

Fiscal Impact Analysis

The Planning and Development Department has evaluated the impact of the proposed annexation and minor subdivision on Newark's municipal finances. The estimate is based on the Department's Fiscal Impact Model. The Model projects the development's fiscal impact; that is, the total annual municipal revenues, less the cost of municipal services provided. The Planning and Development Department's estimate of annual net revenue is \$2,362 in the first year with real estate transfer tax, and then \$162 annually thereafter.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the 0 Darien Road annexation, rezoning and minor subdivision plan and has the following comments. Where appropriate, changes to the plan shall be made prior to the plan's review by City Council. In any case, our comments are as follows:

Planning and Development

Land Use

1. The Department notes that the proposal meets the land-use designations for the Comprehensive Plan IV's Adjacent Areas Plan for single family residential (low density) uses at the site. The Department also notes that the requested zoning yields half-acre lots, which is equivalent to the current New Castle County zoning area requirements, and provides for larger lot sizes than the RS and RT zoning of residential properties adjacent to the east and south in the City of Newark. The Department views the larger lot size as a positive result of the proposed annexation and subdivision.
2. The Department notes that the actual architectural design of the buildings to be located on the two lots has not been finalized. The applicant has provided information regarding the proposed building and materials to be used and related site amenities. If following the Commission's recommendation Council grants approvals, the applicants will be required to construct the proposed buildings in a similar architectural design as submitted, not exactly what was submitted.
3. The Department notes that the parcel is currently heavily wooded and believes that the owner and future owners should preserve as much of the tree canopy as possible, particularly along the southern and eastern boundaries of the parcel, adjacent to Fairfield properties. The Commission may wish to discuss methods to ensure tree conservation with the applicants at the meeting.
4. The Department notes that prior to City Council consideration, soils information and a Plan Purpose Statement must be added to the plan.

Code Enforcement

1. The plans have been reviewed using the 2012 ICC Codes. The ICC Codes adopted, and as amended by the City at the time of building permit application will apply.
2. All structures must contain sprinklers
3. Complete architectural, structural, plumbing, HVAC, electrical and fire protection drawings will be required prior to permits.

Electric

1. Electric service is available from the closest transformer in front of 3/5 Darien Road.
2. The developer will be required to pay all costs for onsite and offsite electrical distribution equipment and labor to install, subject to yearly CPI increase from the date of Council approval. Costs to be determined at a later date.
3. No street lights will be provided on private roads.
4. The developer will be required to dig and backfill all trenches for underground high-voltage and low-voltage cables.
5. The force main shown on the print should be moved to one side or the other within the 30 foot easement to allow room for the high voltage underground cable, CATV and telephone cables. Normally a 3 foot trench 40 inches deep is dug.
6. The developer must pay any costs associated with system restoration if the houses interfere with the City's smart metering system.

Police

1. The Newark Police Department indicated that it had no concerns concerning the proposed annexation and minor subdivision.

Parks and Recreation

1. The Department indicates that it has no concerns regarding the plan.

Public Works and Water Resources

1. A Sewage Treatment Plan (STP) fee of \$1,000 per unit is required prior to issuance of a Certificate of Occupancy for a Single Family Unit.
2. A Residential Construction Standard Plan for Sediment and Stormwater Control will be required before construction may begin. The Department will have additional plan comments at that time.

Recommendation

Because the 0 Darien Road annexation, rezoning and minor subdivision plan does not conflict with the purposes or goals of the Newark Comprehensive Development Plan IV, because the overall site density is well within the range typical for single family developments in the area, because the RH zoning is compatible with the zoning of adjacent and nearby City of Newark communities, as well as Covered Bridge Farms in New Castle County, and because the development pattern in the immediate area is single family detached, **the Planning and Development Department suggests that the Planning Commission make the following recommendations to City Council, with the conditions noted in this report:**

- A. **Recommend that the 5.43+/- acre property at 0 Darien Road be annexed with RH (single family detached – half-acre lot) zoning, as shown on the attached Planning and Development Department Exhibit A dated May 3, 2016;**
- B. **Recommend that City Council approve the Merestone Consultants, Inc. minor subdivision plan dated February 24, 2016, with revisions through April 4, 2016, with the Subdivision Advisory Committee conditions.**

Ms. Feeney Roser: That summarizes the Department's report on the annexation, rezoning and minor subdivision. I will be happy to try to answer any questions that the Commission may have for staff.

Mr. Silverman: Commissioners?

Mr. Jeremy Firestone: Thank you. I've got a couple of questions. One, are we able to condition the annexation on the plan to put just the two single family homes on it?

Ms. Feeney Roser: Not the annexation. It's a minor subdivision but they could certainly come back at another time and ask for a different subdivision. They would have to go through the same process that they're going through now. But you can't make the annexation conditional only for two homes forever. You can annex the land and it's going to get zoned. And it's zoned for half-acre lots. And then somebody could re-subdivide it.

Mr. Firestone: But you don't believe we can place a condition on the annexation?

Ms. Feeney Roser: That it just be for two single family lots?

Mr. Firestone: Yes.

Ms. Feeney Roser: That's what you're being asked to do. But I don't think you can forever hold a property to being subdivided into only two lots. They have to have an opportunity to go through the process to ask for something else.

Mr. Firestone: Okay. My second question is, if we didn't annex it and they wanted to develop it, they could still gain access to the road that runs through that subdivision? The same way that they're going to get access to that road.

Mr. Silverman: For the record, what road are you referring to?

Ms. Feeney Roser: Darien. He's talking about Darien.

Mr. Firestone: I don't know the name of this road. Darien?

Mr. Silverman: Darien? You mean within the City limits?

Mr. Firestone: Within the City limits. Could they build a road in the County that connected to the City road without annexation?

Ms. Feeney Roser: It's a private drive. I don't believe that you have to be in the City to be connected to the City street system. The issue here is sewer.

Mr. Firestone: I understand that.

Ms. Feeney Roser: So they won't be able to develop in the County and get sewer.

Mr. Firestone: Correct. I understand they wouldn't be able to do sewer but they could do a leach field in the County.

Ms. Feeney Roser: I don't know.

Mr. Silverman: That would depend on soil conditions and slopes. They would need, my recollection, at least one acre minimum to meet DNREC standards.

Mr. Firestone: Right. Well they've got one lot at over an acre and one lot over four acres so it's at least possible that even if we didn't grant annexation, the property could be developed. And perhaps developed with additional limits.

Ms. Feeney Roser: You may want to hear from the engineer about that.

Mr. Firestone: Okay. Thank you.

Mr. Silverman: Commissioners, any other questions? Okay, Madame Director, I do have two questions. The report discussed encouraging the maintenance of the tree cover that is on the site. Was that to act as a buffer between the residential subdivision in New Castle County, as well as a buffer between the existing residential units in Fairfield?

Ms. Feeney Roser: I think it's both that and just that it's a beautiful wooded site. I think it would be great to be able to maintain as many trees as possible. And I understand that that is really the desire of the owner as well. But the buffer issue, you know, if you could save as many trees there as you can, it would be less impactful upon the people who have been enjoying that as borrowed open space for many, many years. So I thought if it was possible to maintain as many trees as possible along the border, it would be good for everybody.

Mr. Silverman: Although it does not show up in this plan but further down the road if this plan were to be approved, there would be detailed site engineering plans and DNREC approved sediment and erosion controls would require a limit to the area of disturbance. So there would be a future document which shows how much area would be disturbed. And by disturbed I mean removal of trees so a driveway could be put in and where the house would be located. Would that give us some guide as to what trees would probably remain on the property?

Ms. Feeney Roser: That and the landscape plan.

Mr. Silverman: Thank you. Is there a landscape plan that's been prepared already?

Ms. Feeney Roser: Not at this point.

Mr. Silverman: And my other comment was you stated the access to the proposed house and the proposed future home site is via private driveway.

Ms. Feeney Roser: Yes.

Mr. Silverman: As opposed to a public street. There is a reference to access to a utility easement. I would like to see in the subdivision document that's filed along with this plan a formal cross access agreement. And the cross access agreement says that whoever develops the future home site has a legal right to come up this person's private driveway. The cross access agreement could also contain a maintenance agreement as to the time that this driveway needs to be refinished so the person in the future site, home site #2, doesn't get surprised with a \$50,000 paving bill. And snow removal and right of access. These are kind of standard development but it should be part of this. And I'm saying this because there are other projects I questioned at times that have come back to the City. And the City has to say that's a private driveway, a private road. It's between property owners. So this just gets rid of all problems in the future.

So I talked about the limit of disturbance, tree cover maintenance and the maintenance agreement for the cross access across Parcels A and B. Are there any other questions?

Mr. Hurd: Mr. Chairman, I just want to note that there is a limit of disturbance line located on the...

Mr. Silverman: Okay, I must have missed it.

Mr. Hurd: The line marked LOD.

Mr. Silverman: Yes, I see it. Thank you.

Mr. Hurd: That is the proposed limit of disturbance.

Mr. Silverman: My fault for not reading it even more closely. Thank you.

Mr. Hurd: You bet.

Mr. Silverman: So that limit of disturbance line shows that, as we discussed, the remainder of the property remains substantially as it is.

Are we ready to hear from the applicant? Is the applicant ready? Please come to the podium and state your name for the record.

Ms. Feeney Roser: May I ask, is this the same plan that you submitted? Okay.

[Secretary's note: During the course of their presentation, Mr. Early and Mr. Hall referred to photographs being displayed for the benefit of the Commission, Director and public.]

Mr. Michael Early: I'll bring these pictures up a little closer. It will be a little easier to visualize. Where do you want me? Here?

Ms. Feeney Roser: That microphone would be good.

Mr. Early: Good evening, Mr. Chairman. Good to see you again. Members of the Commission. If I may...

Mr. Silverman: If you'd like, you can move the tripod over.

Ms. Feeney Roser: There you go.

Mr. Early: So I'm a little more visual? I'm going to leave it right here. You were talking about septic systems a minute ago and not too awful long ago the County and the State got together and decided that the County is going to get out of the septic system business and basically default to the State regulations, which only require half an acre in terms of the lot size. That's been in place for approximately two years. As an FYI, things continue to change.

My name is Michael Early. I am here tonight with Dave Hall and his wife, and my partner in crime, Ben Kulp, to make a presentation to the Commission for approval of the annexation in light of the positive recommendation from the Planning Department, in line with the Comprehensive Plan, to approve this 5.43, although I struggle with the .43, and I'm just going to call it a 5 acre parcel, for annexation and further subdivision as that process occurs.

The Halls fell in love with this property the moment they saw it and had been looking for some time for a property in Newark to build a home. I have handed out a full size copy of the, let's just call it a multi-purpose plan for lack of a better name at this point, that shows the division of this property into two parcels, basically one consisting of just over 4 acres and the other one about an acre and a quarter. I've also handed out an 8 ½ x 11 copy of a very generic house plan that seems to fit the goal that they are hoping to build. And while the colors and some of the architectural features will probably change along the way, I think it's safe to say in concert with the Halls this evening, that this plan is, by and large, what you're going to see when you go out there after the home is built. They certainly recognize that this treed lot has been enjoyed by the community for a number of years. Actually the previous owner, current owner, has owned this property since early mid-80s when they had an adjoining lot next door in the subdivision of Covered Bridge Farms. They also understand that there is a substantial expense in bringing utilities – electric, sewer and water – to the site. And I think certainly Mr. Silverman's recommendation that an agreement be put together for the future maintenance and maintenance responsibilities is well placed and will be accomplished before the final transaction is made with the current owner.

The Planning Director has kind of spelled out a number of things that are significant about this property, most of which, basically, is the trees. And I'm going to let Mr. Hall speak to the efforts that they have taken to try to protect as many of those trees as they can during the planning process. And unless you have any questions for me, I'll ask Mr. Hall to the podium to kind of explain that process to you.

Mr. David Hall: Thank you for hearing our application here tonight. As Mike was saying, we've been looking for over two years to build. We live in North Wilmington now. I've had significant ties to the Newark community over the years. I was the president out at the Newark Senior Center for a couple of years. I spent probably 20+ years out there on the Board as well, primarily as the treasurer for the function during the days of Margaret Catts and many of the other people, back when we were in the old Waterworks building and then finally getting over to Marrows Road.

Again, it's just a beautiful site. It just, it met our needs in so many different ways as to what we have been looking for all along with this. And as part of this, what was really important to us is, ultimately, how the site be preserved as much as possible. Because I know back in December, and we've had some discussions with some of the folks in the Fairfield development, there was still misunderstandings because I think there was something submitted within the City of Newark back in December where someone was looking at actually making 5 lots out of this. And literally the idea was going to be a clear cut of the whole site with the road coming down the middle there, pretty much a street as opposed to the private drive that we're talking about. And the whole site was going to be lost from the standpoint of its natural beauty, as far as we're concerned. Luckily for us, that party decided not to go through with what was going on. And we were lucky enough to be in a position here where we can acquire the property.

What's been really important with us over the past 2 or 3 months is we've met with a number of tree services through Mike Fortner within your group, ma'am. We have met with the Parks and Recreation group. We've actually had Tom Zaleski and Joe Spadafino out to the site on April 7th, and they actually brought along with them two Delaware State foresters. And the whole idea was getting input before them as far as what we have on the site, what we can do to preserve what is there and all this. The hope was there were some champion trees there. Champion trees is where it's like the top 5 or 10 of the trees within the State. And I think we have one tree in there that is a birch that may be the largest one that resides within the City of Newark per Tom. And certainly that's one that we will make sure that nothing happens to. It's kind of off on the southeast side and we're going to have to shift the drive as it comes in a little bit to preserve that. But we've probably had over half a dozen tree services come in as well to get input from them as far as what's important. We've been looking at things like critical root structures with different trees, the species. And, ultimately, you can't crush those critical root structures. You see this all the time with large developments where they just don't care. And even though they leave a tree up, 5-10 years later, the tree dies. So we've gotten input from all of these various tree services from the standpoint of what we can do to maintain the site, put the drive in such a way that we minimize the impact of where things are going to be. Specifically if you look at the plot plan as a whole, your wetlands is down in this area here, and again we're staying significantly away from that; there will be no issues with that. So right now we're in the process of finalizing but the idea would be that with trees there would be lineage put up to protect the trees as trees were being removed and taken out of the property so that the trees that are not being taken out will be fine. Basically the estimate, it's kind of hard to count. We only found one satellite site that we could actually see the site without the tree canopy on it and the guess is there's about 375-400 trees on the site. And the estimate that we've gotten is potentially about 60-65 trees will need to be removed for the drive going in and the current homestead site we're going to build on. And we will remove the trees in the back site but there is no plan at all to build on that site right now. It's just cost effective, actually, to have the trees come out at this point in time.

So are there any sort of questions to which I can respond?

Mr. Silverman: Looking at your drawing here and looking at the limit of disturbance, it looks like the closest point to any property in Covered Bridge Farms where there is disturbance is about 50 feet. And that's back in the back corner on the future home site. Again, it looks like it's about 40-50 feet between your proposed driveway and the properties in the Fairfield subdivision.

Mr. Hall: Right. And the feedback that we got from Parks and Recreation, too, from the standpoint of what you're allowed to remove, we were well below that. We're running in the 1 to 1.2 acres of trees that would be removed as part of this whole process to ultimately make this viable.

Ms. Feeney Roser: Mr. Hall, the 65 trees that you're talking about removing, is that in total for the second site, the road and your home?

Mr. Hall: That is correct. Yes.

Ms. Feeney Roser: Thank you.

Mr. Firestone: Are you willing to put a conservation easement on the portions of the property that are not going to be developed as part of the subdivision approval?

Mr. Hall: Again, I'm not familiar with that sort of thing so I don't know what would be involved with that.

Mr. Silverman: Mr. Firestone, I don't believe a conservation easement is a document or ordinance existing in the City.

Mr. Firestone: You don't believe that someone can put a conservation easement on a piece of property? I mean they're talking about it...

Mr. Silverman: I'm saying there's no template for it.

Mr. Firestone: I do know that there's discussions with the Newark Country Club of putting, effectively, the same thing, a conservation easement.

Mr. Silverman: We can ask, but I don't think we can make any recommendation or demand on the applicant.

Mr. Firestone: No but the applicant can voluntarily...

Ms. Feeney Roser: Absolutely.

Mr. Firestone: Agree to place a conservation easement on the property. I'm not saying that we can condition it.

Mr. Silverman: Correct.

Mr. Firestone: I asked him if he would be willing to place a conservation easement on the other non-developed portions of the property.

Mr. Hall: Certainly we'd take it under advisement if it's something that is appropriate. Again, I don't have a background in that sort of thing and what's involved in that. Again, I really just run with this whole tree thing with this and meeting with the various departments within the City to make sure that we were doing the right thing from the standpoint of maintaining the natural beauty and still allowing us to have a homestead on the site.

Mr. Firestone: Except the problem is that you're asking me to make a decision tonight and you're saying that you're going to then take something under advisement. That doesn't give me a lot of comfort.

Mr. Hall: Right.

Mr. Firestone: Because it doesn't give me certainty.

Mr. Silverman: What's the purpose of asking for a conservation easement? So that the balance of the parcel that's outside of the limit of disturbance line is maintained as best as is possible in the future as it is...

Mr. Firestone: In perpetuity.

Mr. Silverman: In perpetuity.

Mr. Firestone: Yes. There would be an easement against development of any other portion of the property.

Mr. Silverman: It would be potentially cleaner under the system to deed restrict the parcel.

Mr. Firestone: Well that's effectively what a conservation, a conservation easement would go onto the deed.

Mr. Silverman: Okay.

Ms. Feeney Roser: There are various ways to do that. You can voluntarily deed restrict and that language you can come up with. I realize this is not something that you thought of before you got to the microphone.

Mr. Silverman: But you've put a lot of time, effort and, it seems, money into evaluating the tree cover on the site.

Mr. Hall: Yes, very much so.

Mr. Silverman: And it shows that it's, at least, more than a passing interest in maintaining it.

Mr. Firestone: No, I agree. I've got somewhat of a related but different question. Probably something else you haven't thought about. But when we cut down trees, it has an effect on climate change and carbon. And so the question is, would you be willing to buy carbon offsets for the trees that you take down?

Mr. Hall: Again, I'm not familiar with that sort of process and what's involved with that. What I can tell you from a standpoint of with the trees, we've got 125 foot trees in there. And if you look at the line of disturbance that we've put in there, it's 70 feet. So if you watch your television over the past few weeks as there have been storms, we're willing to take the risk because we're trying to preserve the site as much as possible, that we're going to have trees that could fall and hit our house. We don't want to cut back 130 feet from the house and, yes, the tree will fall and miss our house. We're trying to preserve the beauty of the land by leaving this much open.

Mr. Firestone: I don't doubt that for a moment. You obviously took great care in selecting this site and presumably you selected it for those attributes.

Mr. Hall: Right.

Mr. Firestone: I'm just trying to see what you thought about as far as the other impacts to cutting down the trees and to ensuring that not just you, but the next person that, you know, at

some point you're going to sell this house, and that next person doesn't come around and say, oh, thank you, I bought the house and now I'm going to go to the City and see if I can put some other lots on it.

Mr. Hall: Right.

Mr. Firestone: And this would be a way, an easement would be a way for you to preserve this in perpetuity so that it would have those same values that you treasure.

Mr. Hall: Sure. And if I might say, one more thing that's been important to us is, obviously, the residents that surround us have been able to view the natural beauty with the site. And, again, what's important to us is that the plan is not to, 1) no trees have to be put back up to replace existing trees because we're taking so few out, but the plan certainly wouldn't be to put up buffer trees as well that are going to disturb 1) the beauty that people around can see now and 2) the idea is we're building a one-story house with a walk-out basement which, again, limits the amount of view that's being lost for other folks that are on the site there now.

But, again, back to your question, sir, I really have to defer to my experts from a standpoint of what it is, because that's not my background. Anything more I can answer as far as the trees go? Yes, sir.

Mr. Robert Stozek: I have one other question. Since you did quite a survey, apparently, on the property of the trees, can you give it a qualitative answer, what is the general health of the trees on the site? Just for the idea that, you know, are there a lot of dying trees or damaged trees, or whatever, that would have to be taken care of?

Mr. Hall: If you're familiar, I have a background because my family has been in trees in the past where I came from in upstate New York, and you've got a number of walnut trees on the site. And certainly with walnut trees you have problems with the hollowing of the cavities. And there is a number on there. But, again, just so the outside perimeter structure of the tree is not impacted, even with it being hollowed out it can still be healthy. There are certainly some trees that are down by the stream that have had some impact from the roots being exposed by the stream down there. But overall, it's a very natural area. You've got very healthy trees in there. The trees have been allowed to fall and just stay where they're at. And my understanding is what Mr. Arnold did over the years is that, because I would call it like a picnic woods, it's not an overgrown sort of area, he actually came in there and bush-hogged that every few years to keep the undergrowth down.

Mr. Silverman: Your pictures illustrate something that I would identify as a European woods, where there is clearly cover. There is no underbrush, no undergrowth.

Mr. Hall: Yeah.

Mr. Silverman: It's park-like.

Mr. Hall: It is. It really is. And that's because of how Mr. Arnold took care of it over the years. And that would be our plan to do the same sort of thing as well. So, anything else on the trees?

Mr. Silverman: I've got a question about the bridge that's there. Was that built by the previous owner? And what purpose does it serve?

Mr. Hall: The bridge between the Arnold property over in Fairfield and that, I think it was to access between the shed and that. And the plan would be that the bridge, the discussions would be that there's really no need for a bridge since it's separate properties now.

Mr. Silverman: Okay, so you anticipate removing that bridge?

Mr. Hall: Yes. Right now the survey, I think, showed that the bridge is halfway, because that's a [inaudible], the bridge is halfway on what would be our property and halfway on what is the Arnold property. And the plan would be that the bridge would be removed.

Mr. Silverman: So that would completely disconnect the property from any pedestrian access into Covered Bridge Farms? The stream would act as a natural barrier.

Mr. Hall: It's not used as a pedestrian bridge now. It was on private property.

Mr. Silverman: That's where I'm heading. It's not an existing bicycle trail. It's not a current pedestrian walking trail.

Mr. Hall: No.

Mr. Silverman: Okay. And one other question. In doing some of my background research and looking at County property records, and I believe Mr. and Mrs. Gordon are here. Can I have a show of hands? I'm confused and between the engineer and the Gordons, you can help me. New Castle County official property records show an extension of...

Ms. Feeney Roser: They show an extension of Hilltop.

Mr. Silverman: Hilltop Road.

Ms. Feeney Roser: Into the site.

Mr. Silverman: Hilltop Road is actually shown on the property records as having a public right-of-way stub street across what may be the southerly edge of your building lot. Does that, in fact, exist?

Mrs. Patricia Gordon: No, sir, we purchased that...

Ms. Feeney Roser: I'm sorry, Mrs. Gordon, you have to come to the microphone.

Ms. Silverman: If you could come to the microphone, Mrs. Gordon.

Mrs. Gordon: That easement no longer exists. It's part of our property. We purchased it from the City several years ago [inaudible].

Ms. Feeney Roser: A long time.

Mrs. Gordon: It was a while ago. So that is now our property and it's fenced in.

Mr. Silverman: Okay, I just wanted to clear that up because it appeared from the earlier photographs that you had extended your side yard use into that property.

Mrs. Gordon: Yes.

Mr. Silverman: And it was unclear. I looked up your deed descriptions versus the old subdivision plan. And there was no record of the easement being linked to the address.

Mr. Doug Gordon: [inaudible] subdivision.

Ms. Feeney Roser: That was an administrative subdivision. Is that what you said Mr. Gordon?

Mrs. Gordon: Yes, Vance Funk represented us. We have the paperwork.

Ms. Feeney Roser: Oh, I'm sure you do. It shows up right on the City's records. It was New Castle County, so we'll get that straightened out.

Mr. Silverman: New Castle County tax records.

Unidentified Speaker: They're a little slow.

Ms. Feeney Roser: I didn't say that.

Mr. Silverman: Thank you very much. Any other questions from the Commissioners? Okay. I would like to open the floor up to the public to speak on this particular topic. Mrs. Gordon, you could've just stayed up here. And Mr. Gordon, you're also signed up to speak, and then Donald Fogg.

Mrs. Gordon: Oh, there, I have a mike. Okay. Many of us along that section of Stamford have been very concerned about this property for sale. This provides a great deal of drainage for us. We have drainage problems as it is, particularly on the distal end of Stamford Drive. The water starts up in Evergreen and thereabouts comes across 896, comes down Hilltop and Danna. Many of the houses at that end of the street are already dealing, the Jordans, in particular, that you did not mention that you'd gotten an email from Colleen Jordan. They were supposed to be here tonight.

Ms. Feeney Roser: I know that we spoke to Mrs. Jordan and she said that she would send us an email but that's not the email that we received.

Mrs. Gordon: No, the one you got was from the Camps and they sent one as well.

Ms. Feeney Roser: It says I have been given your address from my neighbor, Colleen Jordan.

Mrs. Gordon: Right. Well the Jordans did send one. It may have come too late. Colleen was taken suddenly ill and her husband is working tonight. But they have put a tremendous amount of money into improving the drainage on their property. My understanding is that the property across Stamford from them, which was until recently the Mays, that house just sold, they actually had to put in a pump to move the water from their property and into a storm drain that still has a pump. You can hear it running. And it goes into, what's the word I'm trying to think of? Well an access point where it empties into that creek to improve the drainage.

Mr. Silverman: Have you had an opportunity to look at the engineering drawings?

Mrs. Gordon: I have looked at this.

Mr. Silverman: Okay. I know you're very concerned about the drainage but the houses in Fairfield are the drainage problem for this applicant. Your properties are uphill from this property. The water actually drains down onto his property.

Mrs. Gordon: Well and there's a tremendous concern that if the trees are taken out of this property, there's going to be terrible erosion there. The land is very sloped and we're very concerned that it's going to start to wash away with the removal of the trees.

Mrs. Silverman: Again, that's the purpose of the limit of disturbance. There will be a landscape plan filed. There will be a drainage and sediment erosion control plan filed with DNREC and the City, which is also concerned about erosion.

Mrs. Gordon: I believe that the Camps' email, John has pictures that he has taken. We're very concerned that that parcel of land connects White Clay Creek with the creek that is ultimately a tributary to the Christina that runs down behind West Branch and Phillips Mill.

And there is a tremendous amount of wildlife that lives in there. We have mating pairs of red-tailed hawks. There was a fox on my front lawn this morning who then went around the side of the house and back down into the woods. They nest there. They've raised kids there. We have

woodchucks. We have pileated woodpeckers. We have great horned owls. We have screech owls. We have a lot of wildlife. To disturb this piece of land for the sake of one or two homes to a net gain of, I believe you said, \$162 a year for the City, seems like a tremendous cost to the people who live on Stamford Drive and to the animals that use that area. It provides a tremendous recreation area for those people who like to, right now it's open, and it is frequently populated by people who go back there and just walk through the woods. Because it's beautiful.

Mr. Silverman: But then to quote the Director, the community has been borrowing someone else's property.

Mrs. Gordon: It was with the agreement of Mr. Arnold. We had actually spoken with Mr. Arnold before he passed away that if he ever wanted to sell that land, we would be interested. But unfortunately he didn't have the foresight to see that this might come. Thank you.

Mr. Silverman: Thank you. Mr. Gordon?

Mr. Gordon: Good evening, Mr. Chairman, Commissioners. First of all I'd like to thank you for your service. I know you're always between a rock and hard spot in this job. But I know you're very well paid for the privilege. The one thing I would like to say after listening to the applicant's presentation is I would really like to postpone this decision for 90 days until the Board has a clearer vision of what is going to be there. You're looking at a 2D representation and you really need a 3D representation of what exists there. Mr. Arnold, the previous owner, was an environmentalist with his wife. That property right now in Covered Bridge is one lot. One lot. And they did everything they could to keep it that way and keep it as natural as could be. They did clear out the undergrowth, like you said. They'd do it from time to time. But right now, if you go back, it's a flood of May apples and unfortunately a little poison ivy but, you know, it's a woods. You've got to expect that.

The thing that concerns me, the driveway could come straight in off Darien if you do approve this, and not be 30 foot behind our property lines. If it turns out to be any kind of an elevated driveway, it's going to create a dam for the natural rainfall to flow off of the Stamford property. There are going to be many people in Fairfield who will be affected by this. The people that live up on Hilltop, when they come down Hilltop, what do they see? They see this beautiful woods down below them. We are down at the bottom of Hilltop and we've enjoyed this for years and I've worked with Mr. Arnold. I don't know how many bags of beer cans I have hauled out of there. Balls and stuff that have floated down the street from the kids who have kicked them into the creek. I took out a 4 cylinder car engine that was laying back in there. There has been a lot of stuff that we've helped Mr. Arnold clean out. And the fact that he had it as one single lot, I think, indicates what his intent was with the property. If you ever look at the Arnolds' property, at the back of their driveway you see this Oriental shrine, which I think is a Shinto shrine, which is what, if you've ever been to Japan you'll see when you go into a Japanese garden. You'll go through a gateway like this. And this was his gateway back into these woods.

For the \$2,000+ that the City will net by going through all the annexation, all the disruption of the construction and the roadway, I would volunteer to increase my property taxes by that amount plus 50%. So if the City wants to make a buck, I would be glad to subsidize them. But I think the thing I would like to do is postpone the decision for 90 days. Give us a chance to hire some land planners, some land engineers and really get a chance to evaluate the plan. We didn't get any notification of this until last Thursday. So we've had five days to try and make some sense out of what this is going to be even though there is a plat at the end of Darien. But, you know, a lot of us are on the east side of the subdivision, or the property, so we were not aware of that until just a couple of days ago. And then talk to some of the other folks and see what the current zoning could be. There are questions about the half-acre zoning. Right now it is platted for one lot. For one home site. And your approval of this will double that. And I really don't see any reason why, because this is part of Covered Bridge, they have to be affiliated with the City or the Fairfield neighborhood. Why don't they tie into Darien on the

Covered Bridge side and get an easement across the Arnolds, who are now deceased but their property is for sale, get an easement across to come up into the woods, should they choose. I would also like to see the setbacks farther back off of all the houses that are on the east side, if you choose to do that. There is a 50 foot setback but from what we can gather from looking at the actual flags that the surveyors put up, there's only about 30 feet back there. And lastly I would say when they put a driveway in, we all think linear unfortunately. But I've been in a lot of beautiful subdivisions where the sidewalks and the driveways and the roads do a lot of curlycuing to avoid taking out as many possible trees as there are. Unfortunately up along this area over here [inaudible] there's a lot of big trees right in this area, so it's going to negatively impact, I think, all the owners in Fairfield.

Mr. Silverman: Mr. Gordon, the Director pointed out that currently this is zoned NC21 in New Castle County. That is half-acre lots which is substantially smaller than what is in this subdivision request. So, by right, an owner of this property can come in and, with five acres, drop out a third of it, so they can build on three acres. They could probably get 6 half-acre lots.

Mr. Gordon: If they could get through Planning. If they could get through the Planning Commission.

Mr. Silverman: They have the opportunity, by right, to do that.

Mr. Gordon: Well currently they would have to up-plat it from one to whatever. Because right now it is platted as one lot.

Mr. Silverman: It's a parcel.

Mr. Gordon: No, it's one lot. It's Lot 21 for Covered Bridge Farms.

Mr. Silverman: I'm saying it could be subdivided.

Mr. Gordon: Oh sure, Donald Trump could move in. Who knows, we could have a 50-story building back there. Anything could be rezoned. I'm just talking about its impact right now on the City of Newark residents that reside in the area. And we're not trying to be NIMBYs [Not In My Back Yard] but this is a very special piece of property. Very special. And I would encourage you, if you've never seen it, to come out and see it in the three dimensions, not just the little two dimensional black and white drawing that you have here. Thank you for your service.

Mr. Silverman: And Mr. Fogg.

Mr. Donald Fogg: Good evening Commissioners, Director, Chairman. One of the good things about going last is you don't get to say too much. I had prepared remarks thinking that maybe I might be the only one speaking but I can't go by these because I'm not going to waste your time and repeat all the things the Gordons have already reiterated to you. I agree with them. I have been a resident at Stamford Drive for over 23 years and, yes, I have had the borrowed privilege of living next to that property. It is a home for not only the flora but the fauna. We all have benefited from what it has provided to our communities, both Covered Bridge and Fairfield. I am concerned about the erosion. It is Appalachian Piedmont and that is subject to erodibility given the slope. In fact the area around the creek and the wetlands are already designated in the water resource protection areas map as erosion-prone. And that is from the development plan from the City of Newark which, by the way, I compliment this group and all the people that worked on that plan. I admit as a resident I should have read it a long time ago but, given the last few days, I have done some studying not only on the old plan but the new plan and, nice work. So thank you for that.

One of its premises is that it's of paramount concern in planning for the City's future growth that refusal to permit such growth to negatively impact the local and regional environment must be a major consideration. The people that live in Fairfield feel that development of this

property would severely impact our quality of life, not to mention, probably the value of our properties. We've all selected that particular neighborhood because of this parcel, knowing that the original intention was for it to remain in its pristine, natural condition. So you can understand our consternation over the potential development. Right now, at this time of year, I can look west from my property and see the beautiful forest, the Jack-in-the Pulpits are up, the May apples and the flora and fauna. And I cringe to think that my view in the future will be the remembrance of trees that are now gone and an asphalt driveway. I will let you know that I do intend, if this proposal does go forward to City Council with your approval, to actually lodge a formal protest in hopes of stopping it at that point. Thank you very much.

Mr. Silverman: Thank you. Is there any other person who would like to speak?

Ms. Carol McKelvey: My name is Carol McKelvey and I'm listening to the concerns of the residents of the other places and I just don't think they understand what by-right means in New Castle County. The effects of leaving it in New Castle County will be much more dire than what Mr. Hall is suggesting. I'm not on anybody's side here but I do understand what by-right means. And if it stays in New Castle County, the potential is much worse.

Mr. Silverman: Is there anyone else who wishes to speak?

Mr. Gordon: On that, I don't know if everybody can hear me...

Ms. Feeney Roser: Mr. Gordon, it's being recorded in order to transcribe it.

Mr. Silverman: This is being recorded for transcription.

Mr. Gordon: I'm sorry, but to respond to the comment that this nice lady just made, right now this is a platted lot in Covered Bridge Farms subdivision. So anything that happens to that is going to involve all the residents, probably, of Covered Bridge that surround that. And it's not like it's a piece of farmland out in the County. It's part of an existing platted subdivision. It's one lot.

Mr. Silverman: Does the applicant have any other comments based on the public's questions?

Mr. Early: Not at this point. Thank you.

Mr. Silverman: Do the Commissioners have any comments?

Mr. Stozek: I guess I'd like to say that this certainly seems to be more complicated than I thought it was going to be when I received the packet on Wednesday or Thursday last week. I guess what concerns me is the fact that obviously the owners and the surrounding neighbors all have concerns about this property, preserving it as best as we can. I'm not sure that the issues that have been brought up, especially erosion and stormwater, that we've seen enough information to know what the real impact is going to be. I apologize, I did not have time to go out and look at the property this week. Typically I like to do that before somebody comes before the Commission. But I sympathize with both parties here. I really believe that the owners want to preserve this. It's a beautiful site. And I wish, I guess I heard that the neighbors just received this information last week.

Ms. Feeney Roser: Commissioner Stozek, the letters went out on the 22nd of April, which is how we notify for every Planning Commission meeting and they went to all adjacent property owners. And it could be more than that. Was it more than adjacent? Do you remember, Michelle?

Ms. Michelle Vispi: It was adjacent.

Ms. Feeney Roser: Just adjacent.

Mr. Stozek: So you all, the neighbors, have seen the plans earlier?

Ms. Feeney Roser: The letter goes out and invites the community to come into the department to look at them or give us a call so that we can talk with them about it. And the notice went up at the stub road of Darien at least 2 ½ weeks ago. So the sign was there and the neighbors got notified. Some did come in and look at it. But we notified as per Code. And I would also say that the submittal was as per Code. What has been submitted is what's required for this kind of land-use consideration by Code.

Mr. Silverman: Mrs. Gordon?

Mrs. Gordon: Oh that's terrible. The sign is posted at the end of Darien, which is not easily visible. You actually have to enter the street, and unless you live there you're not going to see it.

Ms. Feeney Roser: I recognize that Mrs. Gordon but, if you'll excuse me, there is no other place to put it that would've been more noticeable.

Mrs. Gordon: Well a place where we would have noticed it would have been had we received the notice in the mail before last Thursday. And we all received the notice on Thursday. That's when all of us got it.

Ms. Feeney Roser: I appreciate that and I apologize if you got it then but we did send them out. The post office must have had a problem with delivery because they went out on Friday the 22nd.

Mrs. Gordon: That's a long time.

Mr. Firestone: Well, I mean, I'm concerned about the late actual notice of the neighbors irrespective of the fact that you completely complied with law and the notice is lawful. But I'm just talking about actual notice versus construction notice or whatever. The note itself. The Planning Commission did their job and, for whatever reason, it seems in this case things didn't happen the way they should. I'd also like to say I feel for the neighbors and I appreciate the desire to have that wooded area and I'm sympathetic to the notion of cultural landscapes and all of that. At the same time, I think we also have to recognize that the neighbors have gotten the benefit of what I would refer to as a positive externality. They've gotten benefits from other people's land that they're not paying for and haven't paid for. And future development is just part of the ups and downs of life. And it's part of the rolling of the dice whenever we buy property. And it seems to me that the applicant is sincere in wanting to try to preserve this property as well.

I am concerned that if it was a vote tonight that the applicant isn't able to address my concern on the conservation easement. I don't think we need a 90 day extension. That, to me, seems way too long and I don't think the applicant should have to wait that long. But if we put this off to next meeting, we could give the neighbors a little more time and the applicant time to look into the issue of a conservation easement and come back. I would agree that I don't think that this platting issue provides you much comfort at all. And I do think the applicant, someone who owned that property would have a good case to make to develop it significantly more than the two lots. And that's part of my rationale for wanting to have a conservation easement placed on the property. So it stays like that in perpetuity and gives the neighbors as much benefit as possible, and the wildlife as much benefit as possible. So I would like us to try to work toward what I would consider to be a common sense solution that best meets the stated desires of the applicant and the desires of the neighborhood and the people who live there for continuity.

Mr. Silverman: As Commissioners, our course of action is prescribed by the Code. The kind of solutions that are being asked for tonight, outside of outright purchase from the applicant, are the kinds of things that are the purview of the City Council. Specific conditions on the site.

Move this driveway from 35 feet to 45 feet. Run it around the back of the site, providing DNREC will let them disturb the slope. The trade-offs with respect to how the property distinctly impacts surrounding properties. That fine-tuning is done at Council.

This is the project as proposed and I'm going to say it substantially meets all of the requirements of the Code for the City of Newark. They have the legal right to present information that says we meet your minimum Code. The structures meet the setback requirements for side yards. Driveways meet Code requirements from the property lines. The use conforms to the Comprehensive Development Plan IV. The annexation section of the State required Comprehensive Plan shows that if this New Castle County property were to come before the City for annexation, that it should be annexed only as single family detached. They meet that criteria. They're proposing one house and one parcel that could be developed with one house. The zoning that the applicant is asking for will work on this site. The preliminary site design meets all of the development requirements – the setbacks, the visuals – conform to what's required in the Code. The impact with the local and immediate community is something we take into account. This impact is minimal in the sense that the proposed development reflects a very similar use to what's already there. As a matter of fact, the lot sizes proposed exceed the community lot sizes, including those in Covered Bridge Farms. The natural, physical characteristics of the site are being retained and maintained. If the representation here tonight is any indication of the developer's feeling of that site, they feel like a community, with the natural resources and trees on that site. The wildlife that occupies that site is an asset. They've indicated here in the public hearing that they've gone out of their way to bring in arborists to evaluate the trees that are there and even before they have approval to do what they want to do. So from a Commissioners' point of view, they satisfy what the law requires with respect to their right to develop this piece of private property.

I'm going to ask the Commissioners whether we are ready to move forward. Commissioner?

Mr. McIntosh: I do have a couple of comments, if you don't mind.

Mr. Silverman: Yes, go ahead.

Mr. McIntosh: And I would echo what you just said. It seems to me that the applicant has done their due diligence. They don't know every possibility that could come about in a discussion and I'm not sure that they could be prepared for any of those kinds of possibilities. But they have certainly indicated, at least to my standard, that they care about that piece of property in a very important way for all of you people around it and in it. It's going to be an owner occupied piece of property. It's not going to be sold to somebody else. They're going there. There will be another lot, yes, but they own that land. And I think they care about it. It seems to me they do, anyway. And you don't really know if they don't get this, who will. Because somebody will. There's absolutely no doubt that somebody will buy that property. And the next person may not be quite so caring about trees, streams or anything else. And what you might get then is far worse than what you would have now. Because what you have now has been very thoughtfully put together, it seems to me anyway, and with consideration for all the things that you care about. They care about it but they also want to do something with the land and they have a right to do it. They own the property. They can do it. They could do a lot more, and still be well within their legal right to do so.

I mean I appreciate what you're talking about. We had a piece of property that seemed like it was part of our development but really wasn't and we knew it when we moved in, right? And it sat there for 20 years. We didn't have to do anything or worry about it at all. And then all of a sudden somebody decided to buy it. And they were going to put senior housing on it. Now I have nothing against seniors and I think they should have housing, but just not in my development, right? You know, that's all. And so we were very, very fortunate because that would have sailed through. We were very fortunate because then 2008 hit and the people who were developing it didn't have the money to do it. So it sat there for a few more years and, thank the good Lord, the good people at the nursing home next to it bought it and are

developing it and it's not going to impact us in any way at all. So we got lucky. But it could have gone the other way. It could have started with the nursing home and then they didn't do it and these other people came in second. And then we would've had a problem.

So my bottom line is that they seem like really good neighbors. And, I don't know, you don't get a chance to choose your neighbors either really, for the most part. They say you can't choose your family but you can't choose your neighbors either. And if you've got some that really care about the things that you care about, then maybe that's a good thing. At any rate, that's all I had to say.

Mr. Silverman: Any other comments from the Commissioners?

Mr. Hurd: I'm in general agreement with most everything that's been said. I will say that I think there is a benefit to bringing this property into the City of Newark, than to leaving it in New Castle County. Because as someone said, if you try to develop this, you're going to have to cut across that stream to do any kind of access or sewer lines or anything else. A lot more potential for disturbance. A lot more problems, I think, and a lot more opportunity for gross development. I guess I'm slightly hopeful that perhaps the site plan can be discussed and adjusted slightly in conversations with the neighbors to see if there are any issues about the driveway and such that can be addressed, or the trees. I think the erosion and the stormwater really isn't the neighbors' issue. It's the owner's issue. They're getting the water. And I'm assuming, without a landscape plan here, that the grass and things that they plant around the house are actually going to be more beneficial than the clear cut undergrowth that's currently there, that's not really holding the soil together as well. So I think there will be a benefit and some retention of the water in the developed area.

Mr. Silverman: Are we ready to put the question to a vote?

Mr. McIntosh: So moved.

Ms. Feeney Roser: Well you have the Department's recommendation, so...

Mr. McIntosh: Yeah, those are the ones. That's what I move to.

Ms. Feeney Roser: Did you want to add...

Mr. McIntosh: Or I could move to Kentucky.

Ms. Feeney Roser: Add conditions or have further discussion about the recommendation? Because if not, then I'll read it again without all the because's.

Mr. Silverman: Commissioner Firestone, do we want to recommend to Council that... Sir?

Mr. John Taylor Arnold: I'm a grandson to the owners of the parcel that you're talking about.

Mr. Silverman: Your name, sir?

Mr. Arnold: John Taylor Arnold, and I am grandson to Howard and Ann. They loved that land. Beautiful land. I'm executor to the will, co-executor to the will. My aunt put me in charge of taking of the real estate side of it. I have to take care of the estate. I owe that to my sisters and cousins and the estate. The Halls are terrific. We did have an offer that was thrown out there for more parcels, to try to break it up into more pieces and we didn't want that. There's no way. But my grandfather and grandmother also loved building houses. They had five of them in my lifetime. How many people build five houses? They loved building houses.

Mr. Silverman: Sir, we're recording so...

Mr. Arnold: I'm sorry. Houses are very high on my grandparents' list. They loved the beauty of the nature but they had five houses that I know they built, and they were very happy with developing and doing those type of things. The big shed down back, another big item was to go down there. It had tractors in it and all your bush-hogs and stuff to keep the land clear. It wasn't that they were against developing and just wanted pure nature. They wanted a little bit of both. They loved both. So I don't want you to think that we sold this property for any kind of, you know. That's why we love the Halls so much. Because we thought, you know what, and that's what I loved. To give them a chance. They came with that two lot deal. And it's like, holy cow. Yeah we could maybe try to milk it out of the estate a little bit more by opening up more land and more properties, but that's not the way my grandparents would work either. So we tried to keep it pure with them but be fair to their estate. So the Halls gave us that opportunity. That is the reason why they brought that opportunity to us and we're going to accept that if we can get this to pass. So, sorry for being upset, but thank you.

Mr. Silverman: Well you're clearly meeting your fiduciary responsibility to this. Okay, we have a proposal before us. Commissioner Firestone, we had discussed potentially deed-restricting, a conservation easement style of restricting this parcel. Shall we make that a recommendation for City Council?

Mr. Firestone: Yes.

Mr. Silverman: So I'm going to...

Mr. Firestone: Yes, and I would hope that before the City Council meeting that the applicant can consider and come up with their own proposal, what portions would be subject to a conservation easement, so that it's just not left in City Council's hands. So that the owner can work with their development plan and make sure that it meets both the needs of the property, the legacy of Grandfather Arnold and the neighbors' desire for wild lands near their homes.

Mr. Silverman: Okay. As we're forming this motion, does the applicant have any comments?

Mr. Early: I guess the only comment that we have is, what restrictions are you looking for? Can you give us some guidance as to how you want that fashioned or what that is? I think right now that the proposal to create this two lot subdivision as the process moves forward is a pretty strong statement given what you've heard tonight. As to whether they would deed restrict it to two acres in perpetuity, you know, if that's your goal, then let us know for consideration.

Mr. Firestone: Yeah, it's to deed restrict it to the two lots plus put an easement over a substantial portion of the major lot that nothing on that would be developed. So you could have one lot that we could put a bunch of buildings on it. So it's not only to keep it to two houses, but to make it so that on a large portion of that there wouldn't be a bunch of outbuildings. So you put a conservation easement against any kind of development.

Mr. Early: I'm sure we could find two or three attorneys who would love to have a good time with that conservation easement and kind of make it more than it needs to be. I guess we're just kind of looking for a little more...

Mr. McIntosh: Can I, Mr. Chairman? Can I comment on that?

Mr. Silverman: Please.

Mr. McIntosh: If the City Council wants to suggest that they have an easement on that property, I guess that would be up to them to do it. These folks have purchased the property, or are in the process of purchasing the property, and have, in essence, put an easement on it by their very actions. And you know a lot of people wouldn't have done that, but they did. And for us to come back and say, well you did that and you're really good but not good enough, maybe, is not, I think, within our purview to do. We have to judge the applicant's proposal on

the basis of what the Codes are for the town and so on. And they meet all of those and they've shown goodwill. And I think for the purposes of this Commission, that's sufficient to go forward without further restrictions.

Mr. Silverman: So maybe the proper place to discuss this would be at City Council meeting if Council chooses to go in that direction?

Mr. McIntosh: That is true and I think that the residents that are nearby have every right to go there and voice their opinion. And they will have plenty of time between now and whenever Council gets this to vote on to get more information and bring that information to the Council. But these folks have spent time, money, energy to put a proposal together and having met everything that they were supposed to do, and over-met everything they were supposed to do, then they should have some reasonable expectation of being able to move forward. And I just think that that's unfair of us to hold them up. I think that the residents having extra time to prepare will be given to them simply because, I don't know when the Council will look at this. Do you have any idea when the Council will look at this?

Ms. Feeney Roser: It would probably be, well it won't be the 9th and probably won't make the 23rd either. It will probably be June 13th.

Mr. McIntosh: So you've almost got your three months to get ready to say and do that which you will. And if you can make your case at City Council, well they're the ones that make the final decision anyway. Ours is simply a recommendation. And it's based on what is put in front of us against what the rules for that action are. I would recommend that we don't put any restrictions.

Mr. Silverman: Okay, well that's the motion. That we concur with the Department's recommendation.

Mr. McIntosh: Well that was the motion that I wanted.

Mr. Silverman: Yes, the original motion.

Mr. McIntosh: Yes.

Ms. Feeney Roser: But I don't think it was seconded. I think you need to so move or...

Mr. Hurd: Was it actually motioned?

Ms. Feeney Roser: No it wasn't yet.

Mr. Hurd: There wasn't an actual motion? Okay.

Mr. McIntosh: Yes, I would like to make a motion to accept the recommendation of the Planning Department, as written.

Mr. Silverman: And on page 6 of our report.

Mr. McIntosh: Absolutely shown on page 6.

Mr. Silverman: Okay.

Mr. Hurd: Second.

Mr. Silverman: Okay, it's been moved and seconded. Any discussion?

Mr. Firestone: I'd like to move to amend the motion to include a recommendation that Council consider placing a conservation easement on the parcel.

Mr. Silverman: Is there a second?

Mr. Hurd: Second.

Mr. Silverman: It's been moved and seconded. We will consider the amendment to the main motion dealing with the recommendation. Is there any discussion on the amendment? Okay, hearing none, we will move directly to the question. All those in favor, signify by saying Aye. All those opposed, Nay.

Ms. Feeney Roser: Three to two. It passes.

Mr. Silverman: Okay, the amendment to the motion carries.

MOTION BY FIRESTONE, SECONDED BY HURD, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING AMENDMENT TO THE MOTION:

A CONSERVATION EASEMENT BE PLACED ON THE PARCEL.

VOTE: 3-2

AYE: FIRESTONE, HURD, STOZEK

NAY: MCINTOSH, SILVERMAN

ABSENT: CRONIN, JOHNSON

AMENDMENT PASSED

Mr. Silverman: We have the main motion containing the amendment with the recommendation for the open space easement. We move directly to the question. All those in favor of concurring with the Planning Department's recommendation as amended, signify by saying Aye. All opposed, Nay. The motion carries.

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

- A. THAT CITY COUNCIL APPROVE THE 0 DARIEN ROAD ANNEXATION AND REZONING TO RH (SINGLE FAMILY DETACHED – HALF ACRE LOT) AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A DATED MAY 3, 2016; AND**
- B. THAT CITY COUNCIL APPROVE THE 0 DARIEN ROAD MINOR SUBDIVISION AS SHOWN ON THE MERESTONE CONSULTANTS PLAN DATED FEBRUARY 24, 2016, WITH REVISIONS THROUGH APRIL 4, 2016, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, AND WITH THE ADDED CONDITION THAT:**

- 1) A CONSERVATION EASEMENT BE PLACED ON THE PARCEL.**

VOTE: 5-0

AYE: FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: CRONIN, JOHNSON

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you.

Mr. Silverman: I would like to offer to the Gordons a copy of the engineering drawings so that they're reviewing what we talked about when they want to move forward and they can better

picture the slope differences and grades and the limit of development. I find these a lot easier to read if you take a magic marker and start outlining [inaudible].

Mr. McIntosh: Do you want an extra one? You're welcome.

Mr. Silverman: I've been asked that we recess for 5-10 minutes. So we stand in recess.

[Secretary's note: Mr. Silverman called the meeting to recess at 8:35 p.m. and reconvened the meeting at 8:46 p.m.]

Ms. Feeney Roser: I'm sorry, we're going to have to resume the meeting. If you're not staying for the next agenda item, could you please have your conversation outside? Thank you.

3. REVIEW OF AN AMENDMENT TO THE ZONING CODE TO CLARIFY EXCEPTIONS FOR HEIGHT AND SETBACK. (POSTPONED AT APRIL 5, 2016 MEETING.)

Mr. Silverman: Okay, we will reconvene from our recess and move on to Agenda Item #2, review of the zoning amendment. I'm sorry, Review of an Amendment to the Zoning Code to Clarify Exceptions for Height and Setback. This was postponed at the Board's request at the April 5th meeting and is a continuation of that discussion.

[Secretary's note: During the course of his presentation, Mr. Fruehstorfer referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public, as well as the Planning and Development Department report.]

The Planning and Development Department report dated March 24, 2016, with revisions dated April 22, 2016, follows:

REVISIONS TO CHAPTER 32, ARTICLE XVI – AREA REGULATIONS; EXCEPTIONS, ZONING CODE OF THE CITY OF NEWARK, DELAWARE REGARDING HEIGHT OF BUILDINGS AND BUILDING SETBACK LINES

Recently, questions arose regarding how to interpret Code exceptions to allowable building heights. In addition, the somewhat recent Board of Adjustment ruling on the Trader's Alley building setback highlighted some other areas of concern for the exceptions criteria regarding Code intent and clarity and height-triggered setback requirements. The following report summarizes these concerns and offers potential Code amendments to address them for Planning Commission and Council consideration. Each issue is discussed separately, and then a comprehensive amendment proposed.

Height of appurtenances designed for architectural detail and/or to hide mechanical equipment

The first proposed amendment relates to roof appurtenances designed to add architectural detail or interest and/or to screen mechanical equipment located on the roof of buildings. As you know, as part of the overall development approval process for major subdivisions citywide and for all subdivisions in the downtown district, applicants are required to submit color and scale elevations of all proposed buildings showing the kind, color and texture of the materials for all sides of the building visible from public ways. Often these elevations show an architectural feature to embellish the design and/or to screen mechanical equipment on a flat roof. Historically, Code Section 32-56.2, which provides for exceptions to zoning area requirements, has been interpreted to permit appurtenances designed for architectural detail and/or to hide mechanical equipment to exceed height restrictions, if such appurtenances were included on the architectural elevations approved by Council during the development process. In the past, these exceptions were interpreted to include "false roof structures," or features which appear to be a roof when viewed from the ground, but which are, in fact, architectural details. The issue is that Section 32-56.2(c)(2) does not specifically exempt "false roofs" or

appurtenances from height restrictions. Therefore, while buildings are approved to present a certain image and including roof features, the features or appurtenances are not always calculated into the building height, and yet, are not expressly exempt from height requirements.

Specifically, each zoning district provides for a maximum height of buildings, and Section 32-56.2 (c)(2), which applies to all zoning districts, provides for exceptions to maximum height as follows:

“In any district the maximum height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, water tanks, or towers, observation towers, transmission towers, silos, antenna and the necessary supports, solar collectors, defined as any device, or combination of devices, structures, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes to a structure's energy supply, or a parapet wall extending not more than four feet above the limit of the height of the building on which it rests; nor shall these provisions apply to elevator enclosures, water tanks on roofs, or scenery lofts which occupy an aggregate of not over 25% of the ground floor area of the building, broadcasting, and telecommunications towers.”

Therefore, appurtenances, including false roofs, are not specifically exempt from Code height requirements, as are other types of architectural features listed. They also do not meet the definition of a parapet wall and yet, because approved elevations depicting the visualized design of the building have included them, these embellishments have been interpreted to meet Code for building height. Part of the confusion concerning this interpretation may stem from the previous Code definition of building height, amended in July 2013, and which now more clearly defines how the height of structures is calculated. Specifically, height of a building is now defined as: “the vertical distance from grade plan to the average height of the highest roof structure.” Having said that, and regardless of the reason for the confusion, the matter should be addressed and clarified for future developments.

Analysis

To address this concern, staff believes that either appurtenances must be calculated in the overall height of the building, or Code Section 32-56.2(c)(2) must be amended to permit appurtenances to exceed height restrictions. Regarding the first option (including them in the height calculation), recent building practices have encouraged increased floor-to-floor heights in both the commercial and residential marketplaces for mechanical systems and overall design of new structures. Including appurtenances into the height calculation, therefore, will force smaller floor-to-floor heights, which may not be desirable or constructible. In addition, over the years, the City has encouraged the use of architectural features to enhance the design and appeal of proposed buildings and to encourage diversity of building styles and rooflines. Indeed, as noted above, we require color and scale elevations of all facades of proposed buildings to insure that the community knows what a proposed building will look like when constructed, and to insure that what is built is what Council approved. Including roof appurtenances in the overall building height calculation may therefore, discourage developers from perusing more distinct and varied rooflines and result in the community being presented with less unique designs in new buildings.

Suggested approach to issue

Staff believes, therefore, that the appropriate approach to the matter is to amend Section 32-56.2(c)(2) to exempt appurtenances of a certain size from height requirements. We suggest adding the words “...or similar roof appurtenance that may be designed to hide mechanical equipment or provide architectural detail” to Section 32-56.2(c)(2) after the reference to parapet wall and therefore, subject to the same height restrictions as parapet walls (which are

permitted to extend up to four feet above the limit of the height of the building on which it rests).

Having said that, it should be noted that while a very steep pitched false roof would be very similar to a parapet wall, a false roof with a more shallow roof, with its peak set further back from the building outer wall, would have much less visual impact from the street. As such, provisions could be included to also allow a false roof with a low pitch to extend higher than 4 feet.

We suggest adding the following words to the end of Section 32-56.2(c)(2). **“A roof appurtenance that resembles a roof may extend above the limit of the height of the building up to a height equal to the floor to roof deck height of the top floor of the building provided that its slope does not exceed a 12/12 pitch.”**

In addition, we suggest adding a new definition to Section 32-4(a) defining roof appurtenances as follows: **“(107.3) Roof Appurtenance: Anything attached to a portion of the roof of a building to screen mechanical equipment and/or provide architectural detail, such that it becomes a part of that building, and is passed on to a new owner when the property is sold. A roof appurtenance shall not provide leasable space.”**

Section 32-56(c)(2) organization and clarity.

In addition to appurtenances, several other concerns for clarity have been raised over Code section 32-56(c)(2). For example, the Code clearly defines the allowable height of towers on buildings in zoning districts where they are permitted, but Sec. 32-56.2(c)(2) indicates that “In any district the maximum height provisions shall not apply to spires, or towers, observation towers, transmission towers... broadcasting, and telecommunications towers.” Therefore, the exemption applies to all zoning districts and appears to be in conflict with some Code sections. For example, for BB zoning, Sec. 32-18(b)(8)b requires that, “The tower must be installed on a building or structure at least three stories in height. Towers shall not extend beyond 22 feet above the highest point of the building or structure.” Sec. 32-56.2(c)(2), as written, eliminates this specified height restriction.

In addition, Section 32-56(c)(2) was originally adopted in 1978 and amended over time to add exceptions as they were submitted, and as such, does not group like structures together. The section also applies to structures, which are separate from primary structures as well as those structures added to buildings. For simplicity and clarification, staff suggests that towers, utility poles, and public water tanks should be grouped together and included in a separate subsection. The action will make it clear that Sec. 32-56.2(c)(2) refers to details that are added to buildings, and not items that are “stand-alone” and separate from any buildings.

Finally, for clarity, we suggest that the term “scenery loft” be clearly defined. The term scenery loft was included in Code section 32—56(c)(2) in 1978, and at the time, may have been a commonly understood term, but it is not defined in Code or in Webster’s Unabridged Dictionary, and therefore its meaning has been the subject of considerable debate. No definition of “scenery loft” could be identified until we learned it is now more commonly referred to as a “fly loft” of a theater, or the area above the stage of a theater where the overhead rigging is located.

Suggested approach to issues

For clarification and organization purposes, staff suggests that we remove all references to towers in Sec. 32-56.2(c)(2), clarify the term scenery loft, and add a new Sec. 32-56.2(c)(3) to read:

“(2) In any district the maximum building height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, elevator

enclosures, water tanks on roofs, silos, roof antennas, solar panels or collectors (on roofs), theater scenery loft or fly loft which occupies not over 25% of the ground floor area of the building, or a parapet wall or similar appurtenance that may be designed to hide mechanical equipment or provide architectural detail, extending not more than four feet above the limit of the height of the building on which it rests. A roof appurtenance that resembles a roof may extend above the limit of the height of the building up to a height equal to the floor to roof deck height of the top floor of the building provided that its slope does not exceed a 12/12 pitch.

(3) In any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district.”

In addition, staff suggests the addition of a definition for scenery loft in Sec. 32-4.(a) with the following words. **“(112.1) Scenery loft or fly loft: the area above the stage of a theater where the overhead rigging is located.”**

Building setback requirements for buildings over three stories

Sec. 32-18(d)(4) provides provisions for increasing the height of buildings to over three stories in the BB zoning district. Further, Sec 32-18(d)(5) then requires a 20-foot setback for all buildings above 3 stories or 35 feet in height, presumably to minimize the visual and practical impact of the larger structure on the built environment. However, Sec. 32-56.2(d) includes an exception to allow a building’s setback to mirror the average of buildings within 200 feet and within the same zoning district, regardless of height. While the average setback exception makes sense in many situations, such as a residential development built prior to Zoning Code area regulations, the Department does not believe it makes sense in all situations. Particularly, because the exception clauses apply to all zoning districts, as written, it will permit structures taller than three stories to meet only the average setback, regardless of height of the building or the zoning district in which it is located. For example, because of the average setback in downtown, the exception, as written, could permit structures as tall as seven stories or 79 feet in height, without a setback.

Analysis

While provisions for the average setback applied to pre-zoning Code structures, or more specifically, applied where existing neighboring properties have a reduced setback, provides uniformity in setbacks, it seems quite clear that intent of the Code is to require a setback for buildings over a certain height. Therefore, staff believes that an amendment to the Code still permitting the average setback for buildings 35 feet in height or less, but requiring a setback for taller buildings is appropriate.

Suggested approach to issue

Revise Sec. 32-56.2(d) to read: **(changes in italics)**

“(d) Building setback lines.

- (1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:

- a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, ***and***

b. the proposed building or structure does not exceed 35 feet or three stories in height.

RECOMMENDATION

In order to insure consistency in the application of the City's Zoning Code and to provide more clarity in building height regulations, the Planning and Development Department suggests that Planning Commission recommend that Council amend Chapter 32 as follows:

- Add a new definition Section 32-4(a)(107.3) defining roof appurtenances as follows: *Roof Appurtenance*: Anything attached to a portion of the roof of a building to screen mechanical equipment and/or provide architectural detail, such that it becomes a part of that building, and is passed on to a new owner when the property is sold. A roof appurtenance shall not provide leasable space.
- Add a new definition Section 32-4(a)(112.1) defining scenery loft or fly loft as follows: *Scenery loft or fly loft*: the area above the stage of a theater where the overhead rigging is located.
- Delete Sections 32-56.2(c)(2) and 32-56.2(d) and replace them with revised Sections. 32-56.2(c)(2) and 32-56.2(d) to read **(changes in bold italics)**:

Sec. 32-56.2. (c) *Height of buildings; exceptions to height limits.*

(1) In all districts, a public school, private school, parochial school or college may have a height of four stories not exceeding 50 feet.

(2) In any district the maximum ***building*** height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, ***elevator enclosures, water tanks on roofs***, silos, ***roof*** antennas, solar ***panels or collectors (on roofs)***, ***theater*** scenery loft ***or fly loft*** which occupies not over 25% of the ground floor area of the building, or a parapet wall ***or similar appurtenance that may be designed to provide architectural detail and/or to hide mechanical equipment*** extending not more than four feet above the limit of the height of the building on which it rests. ***A roof appurtenance that resembles a roof may extend above the limit of the height of the building up to a height equal to the floor to roof deck height of the top floor of the building provided that its slope does not exceed a 12/12 pitch.***

(3) In any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district.

(d) *Building setback lines.*

(1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:

- a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, **and**

b. the proposed building or structure does not exceed 35 feet or three stories in height.

Mr. Tom Fruehstorfer: I'm going to start my presentation tonight talking about building height. And the reason we're talking about building height is there have been recent questions regarding interpretation of the Code exceptions to allowable building heights. Section 32-56.2 has been interpreted in the past to permit appurtenances designed for architectural detail or to screen mechanical equipment. But if you look at 32-56.2, false roofs, which has been approved, it's not included in a list of things that are allowed. Well I won't read it all. We did that last month. But primarily we're close to the parapet wall with the false roofs.

A quick review of the parapet detail is it's just a wall extending straight up. And this is the false roof detail that we're talking about. It's been proposed many times.

Mr. Silverman: Will these graphics be included in the document?

Mr. Fruehstorfer: I don't think there would be any reason for these details to be in Code, no. So our analysis is that the appurtenances and false roofs must be included in calculations of the overall building height, but unfortunately that could force reduce floor to floor heights which might not be desirable. As an alternative, Code 32-56.2(c)(2) must be amended to permit appurtenances to exceed height restrictions. So our suggested approach is to add the words, "...or similar roof appurtenance that may be designed to provide architectural detail or hide mechanical equipment" after the reference to parapet walls which are permitted to extend up to four feet above the limit of the height of the building.

If you look at this detail here, you can see a four foot parapet wall compared to a typical false roof and see that this proposed change would limit the height of the appurtenance or false roof to only four feet. Typically they're higher than four feet so it might be appropriate to consider allowing a higher elevation. Some potential wording could be, "a roof appurtenance that resembles a roof may extend above the limit of the height of the building up to a height equal to the floor to roof deck height of the top floor of the building provided that its slope does not exceed a 12/12 pitch." What this is saying is, basically, we could have up to, generally the top floor of a building is 12 feet, so our appurtenance could be up to 12 feet. And my first thought was 12 feet sounded a bit high but then I made a sketch and this is that sketch. So what I did is sketched a 35 foot high building with 4 foot parapet and put that roof detail 12 feet back and 12 feet up. And then I went across 50 feet, which would be across Main Street, someone walking down the sidewalk on the other side of Main Street, and you look at the sight line for the person and it goes right over the parapet wall, right up to the peak of that 12 foot high roof. So essentially that 12 foot high roof has the exact same impact from across the street as a 4 foot parapet would have.

So Code revision, with this wording in red, that's included in there. It covers what we just talked about but I can see there is still a lot of disorganization in the Code. We've got the water tanks and towers at the top, water tanks and towers at the bottom, and we've got some confusion. So we'll work on that in a second, but first of all we'll add the definition for roof appurtenances. We talked about this last month. I don't think we need to go through that again unless someone has a specific question.

Next I want to move on to talk about clarity and organization. And 32-56.2 is in conflict with 32-18(b)(8)b currently. So 32-18(b)(8)b reads, "The tower must be installed on a building or structure at least three stories in height. Towers shall not extend beyond 22 feet above the highest point of the building or structure." But 32-56.2(c), which we're talking about today, indicates that in any district the maximum height provision shall not apply to towers, observation towers, transmission towers, broadcasting towers or telecommunication towers. So obviously there is some conflict there. Obviously, the intention was to clearly limit the height of the towers in the BB district with 32-18 but 32.56.2 eliminates that.

So another clarity and organization issue was scenery loft which, at the time of writing our report, we didn't know what a scenery loft was. We eventually figured it out. Also, we've got that similar items are not linked together because the Code was adopted in 1978 and amended several times. It's just not organized well. So, as we discussed last month, scenery and fly loft is the area above the stage of a theater. And our suggested approach to address all the organization issues, the top of this in the green area there is all the things that the building height provisions do not apply to. Then you can see that the theater scenery loft comes in and then the parapet wall or similar appurtenances that are limited to 4 feet. And then we get into the roof appurtenances that resemble a roof may extend above the limit of the height of the building up to the 12 feet, basically. And then under #3 I've moved down the public water tanks or public utility poles. And then towers approved by special use permit are subject to tower height limitations as indicated for each individual zoning districts. So it's all organized well. It starts with all the things that there is no height limit, moving to a height limit of 4 feet, and then down to the height limit of the top floor. It clears things up a lot. And we have a definition, or suggested having a definition, for scenery loft.

Next I would like to discuss building setback requirements for buildings over three stories. And, again, we have some conflicts here. Section 32-18(d)(4) provides provisions for increasing the height of buildings to over three stories in the BB zoning district. But 32-18(d)(5) requires a 20 foot setback for all buildings above three stories or 35 feet in height. And we presume that's to minimize the visual and practical impact for the larger structure on the built environment. Section 32-56.2(d) includes an exception to allow building setback to mirror the average of buildings within 200 feet. Essentially what this is doing is allowing buildings to be built higher than three stories and 35 feet with no setback if the other buildings on the street are omitting the setback. So in our analysis it seems quite clear that the intent of Code is to require setback for buildings over a certain height and therefore staff believes that an amendment to the Code still permitting the average setback for buildings 35 feet in height or less but requiring a setback for taller buildings is appropriate. Our suggested approach is to add b here which says, "the proposed building or structure does not exceed 35 feet or three stories in height."

A summary of our recommendations, then, is to add a definition for roof appurtenance, add a definition for scenery or fly loft, revise sections 32-56.2(c) and 32-56.2(d). Section 32-56.2(c), as we've already gone over, as well as (d). Any questions?

Ms. Feeney Roser: I think the lack of questions means that you must have addressed the concerns that the Commissioners had at the last meeting, Tom. That's a good thing. It's not that we weren't paying attention.

Mr. Fruehstorfer: That's fine.

Mr. McIntosh: Could I make a comment? That drawing you did for the sight line? Very, very good.

Mr. Fruehstorfer: It surprised me. Going in, I thought 12 feet is huge.

Mr. McIntosh: I even understood it, which is even better.

Mr. Fruehstorfer: But the drawing really shows that it's minimal impact.

Mr. Silverman: Give me a moment to confer.

Mr. Fruehstorfer: And I moved through that very quickly. I'd be happy to go back and talk about anything in more detail if you'd like.

Ms. Feeney Roser: Everything that you pointed out in the PowerPoint or talked about is included in the recommendation that's on pages 5 and 6 of your report, correct?

Mr. Fruehstorfer: Yes.

Mr. Silverman: Do we have any questions from the members of the public?

Dr. John Morgan: John Morgan, District 1. Tom could you put up that slide that had the phrase “35 feet or three stories”?

Mr. Fruehstorfer: Which one?

Dr. Morgan: I think that’s it. Yes, just go back. Okay, right. This is just a legal question, which is, when you have a phrase like this that says the proposed building or structure does not exceed 35 feet or three stories in height, who gets to pick which of those alternatives governs? And do you mean, should you add the phrase “whichever is less?”

Ms. Feeney Roser: It has always been interpreted to mean 35 feet, regardless of the number of the stories. So maybe we don’t need the three stories in height. Do we?

Mr. Silverman: The sum of the height of the three stories cannot exceed 35 feet.

Dr. Morgan: Provided that does not...

Mr. Firestone: Can we change the “or” to an “and”?

Dr. Morgan: You see, the issue, I mean, what if somebody was to try to build something 20 feet per story?

Mr. Firestone: You can just change the “or” to an “and”.

Ms. Feeney Roser: I’ve had this debate. I think that’s not a bad idea. I have had this debate with developers.

Dr. Morgan: Okay, but I think if you just add “whichever is less” it makes it perfectly clear.

Ms. Feeney Roser: Or you can say “and” instead of “or”.

Mr. Fruehstorfer: Thirty-five feet and three stories.

Ms. Feeney Roser: “And” instead of “or” there. Does not exceed 35 feet and 3 stories?

Mr. Silverman: Jeremy, does that work?

Mr. Firestone: Yes. Then it has to meet both of those requirements. It can’t exceed 35 feet and it can’t exceed three stories.

Mr. Fruehstorfer: Code currently has this same wording many times. And that’s what it is.

Dr. Morgan: As long as the interpretation is clear and we’re not going to spend \$100,000 with lawyers arguing what it means.

Ms. Feeney Roser: That’s the way it’s always been interpreted in my tenure here. But that doesn’t mean we can’t make that “and” and the next time we go back for codification, change the “or”s to “and”s.

Mr. Silverman: Tom, you say that travels through the Code, so it would be an omnibus to change.

Mr. Fruehstorfer: We’re not changing that now through the Code.

Mr. Silverman: I understand that. That's job security.

Ms. Feeney Roser: We're going to come back once a Commission meeting for every one of these. But if that works and that addresses Dr. Morgan's problem, I think we're...

Dr. Morgan: I'm still not sure it works though, actually. I think you ought to get the legal staff to look at it.

Mr. Fruehstorfer: We could have Bruce look at it before it goes to Council, right?

Ms. Feeney Roser: Yes.

Mr. Fruehstorfer: And make sure whatever wording we have, whatever wording we decide on, does what we want it to do.

Ms. Feeney Roser: If that works for the Commission.

Dr. Morgan: There is this Delaware Supreme Court ruling that says if there is any doubt about the interpretation of the language in a Zoning Code, any doubt, not even a reasonable doubt, any doubt, it should be construed in favor of the use of land by the landowner.

Ms. Feeney Roser: Well then why don't we look at just saying 35 feet, period?

Mr. Silverman: In this section, just drop out the three stories?

Mr. Firestone: I mean it's less restrictive but you can do it. Then you could build a building that was four stories in height but 35 feet. Putting an "and" is more restrictive than putting on two conditions. So you can take it off. You may not be able to build a building that's four stories and under 35 feet, from my point of view, but putting "and" in there is more restrictive than taking it off.

Mr. Silverman: So for the moment, until we reconsider the whole stories versus building height issue, we'll simply change the "or" to an "and".

Mr. Fruehstorfer: And discuss it with lawyers before it goes to Council.

Ms. Feeney Roser: Right.

Mr. Silverman: If that is the consensus, we'll consider that as...

Mr. Hurd: Yeah, I think I would go with the "and" because, as you know, when they're talking about the BB, there is a setback that applies to buildings either above three stories or 35 feet. And in that case it's probably the right language. Because it's as soon as it passes three stories or that height line that we want to, basically, hold it to say it has to be both three stories and 35 feet to be in our, basically it's for the residential scaled buildings.

Ms. Jean White: Jean White, Radcliffe Drive. I'm looking at page 56 on the minutes that were approved from last time and in doing so I wanted to salute, I think that the secretary needs to be saluted for doing 59 pages of minutes with lots of back and forth all the time.

Ms. Feeney Roser: Hear, hear.

Ms. White: Anyway, at that meeting, which was very interesting on this general subject, I'm looking at what you just passed which was 32-56.2, which talks about solar panels or collectors on roofs, theater, etc. Okay. And what you considered earlier had a long definition of what a collector was. And at that meeting, on page 56 of these minutes anyway, the definition of a solar collector was defined as any device or combination of devices, structures, or part of a device or structure that transforms direct solar energy into thermal, chemical or electric energy

or that contributes to a structure's energy supply. And at the meeting I said that would be a nice thing to take out and put in the definition section. And then that what you just passed would read very clearly and you didn't have that long definition in it. So it is taken out but on what you were just looking at I don't see a definition of solar collectors in here. And I thought at that meeting when I went through all this it was, like, line 2874 and 2875, I said when you got to your definitions you didn't put that. Did anybody understand what I'm trying to say and Maureen said yes, I understand. I thought what was understood was that you would put that whole section as a definition, but I don't see that that's been done.

Mr. Fruehstorfer: We discussed this...

Ms. White: Maybe you can't understand what I'm saying now, but can anybody understand what I'm saying?

Ms. Feeney Roser: I understood what you said then and I understand what you're saying now...

Ms. White: Right.

Ms. Feeney Roser: I just didn't get direction to do that.

Ms. White: Okay, well it was 10:30 at night and I had been here for 2 ½ hours.

Ms. Feeney Roser: We can talk about it now, Jean, so that's fine.

Ms. White: Okay, so all I'm saying is, now that you have a nice, clear, succinct 32-56.2 that you are about to pass, and in it is solar panels or collectors, it would be nice to put, as a new definition, what solar collectors are.

Mr. Fruehstorfer: I think current thought was in the 1970s when the Code was written the way it was, it may not have been real clear what solar panels or collectors were. And now there is not as much of a question and we didn't feel it really needed a definition. But that could be up for debate.

Ms. White: Okay. Well it just seems like a very long kind of thing that does make it very clear in the definitions, the part that was taken out. Maybe everybody knows what it is but, you know, it defines very clearly all the kinds of different energy and so on and so forth. So if you feel that you don't need it, it's clearly up to you. But that was what I understood you were going to do, is put a definition of that separately. And that's what I understood. So, you've heard me speak.

Mr. Hurd: As I recall, we've always said that anything that is not defined in the Code, we go by the dictionary definition, right? So I'm assuming there is a standard definition of solar panel or solar collector that encompasses what the earlier language from the 1970s had?

Mr. Fruehstorfer: I didn't look it up but I think it's clear. So solar panels are...

Mr. Hurd: I think at this point in time, it's enough in the consciousness that people go, right a solar panel or solar collector, we know what you're talking about.

Mr. Silverman: And we have a legal fallback with the Webster's dictionary.

Mr. Fruehstorfer: Yes.

Mr. Hurd: Okay.

Mr. Silverman: Thank you for bringing that to our attention, Ms. White.

Mr. Hurd: I do note that we didn't dive into windmills.

Mr. Fruehstorfer: No. Our thought was, our intention in doing this wasn't to be adding other things like that. If, at some point, we want to come back and add a special use permit for a windmill, then we can easily come back and add windmills to this with the exceptions. It wasn't worth getting bogged down with that now.

Mr. Silverman: Okay, are we ready to move to the motion? For brevity...

Mr. Hurd: Okay, let's see if we can do this. I am going to move that we accept the recommendations of the Planning Department, can I put the amendment part in here, the rewording, or do we have to do the amendment and then the...

Mr. Silverman: If there is a consensus that we...

Mr. Hurd: Well I was going to say move to accept it with the revision of changing 32-56.2(d)(1)b, replacing "or" with "and", as discussed.

Mr. Firestone: The second "or".

Mr. Hurd: The second "or".

Mr. Silverman: As found on page #5 of the report.

Mr. Hurd: That's why I said b. In b.

Mr. McIntosh: The "or" after feet.

Mr. Fruehstorfer: There are two "or"s in b, so it's the second "or".

Mr. Hurd: Oh, yes. You're right. There are.

Mr. McIntosh: To "or" or not to "or".

Mr. Hurd: Yeah, we can't do the first one. It's the second one. So that's 35 feet and three stories in height.

Ms. Feeney Roser: I think just saying the second one is going to be fine because we will change it and point it out to Council that we changed it in the ordinance.

Mr. Silverman: And is there a second to the motion?

Mr. Firestone: Second.

Mr. Silverman: Okay, for clarification for the record, the report that is being referred to is the City of Newark Planning and Development Department Report dated March 24, 2016, revised April 22, 2016. Any further discussion? Hearing none, we will move directly to the motion. All those in favor, signify by saying Aye. All those in opposition, signify by saying Nay. The motion carries.

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

THAT CITY COUNCIL AMEND THE ZONING CODE IN THE FOLLOWING WAYS TO CLARIFY EXCEPTIONS FOR HEIGHT OF BUILDINGS AND BUILDING SETBACK LINES WITH THE FOLLOWING REVISION:

- 1) IN SECTION 32.56.2(d)(1)b THE SECOND INSTANCE OF THE WORD "OR" BE REPLACED WITH THE WORD "AND".**

Add a new definition Section 32-4(a)(107.3) defining roof appurtenances as follows:

Roof Appurtenance: Anything attached to a portion of the roof of a building to screen mechanical equipment and/or provide architectural detail, such that it becomes a part of that building, and is passed on to a new owner when the property is sold. A roof appurtenance shall not provide leasable space.

Add a new definition Section 32-4(a)(112.1) defining scenery loft or fly loft as follows:

Scenery loft or fly loft: the area above the stage of a theater where the overhead rigging is located.

Delete Sections 32-56.2(c)(2) and 32-56.2(d) which read as follows:

Sec. 32-56.2. – Area regulations; exceptions.

(c) Height of buildings; exceptions to height limits.

(1) In all districts, a public school, private school, parochial school or college may have a height of four stories not exceeding 50 feet.

(2) In any district the maximum height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, silos, antennas, solar collectors scenery loft which occupies not over 25% of the ground floor area of the building, or a parapet wall extending not more than four feet above the limit of the height of the building on which it rests.

(d) Building setback lines.

(1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:

a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district.

And replace them with revised Sections 32-56.2(c)(2) and 32-56.2(d) which read as follows (changes in bold italics):

Sec. 32-56.2. – Area regulations; exceptions.

(c) Height of buildings; exceptions to height limits.

(1) In all districts, a public school, private school, parochial school or college may have a height of four stories not exceeding 50 feet.

(2) In any district the maximum ***building*** height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, ***elevator enclosures, water tanks on roofs***, silos, ***roof*** antennas, solar ***panels or collectors (on roofs)***, ***theater*** scenery loft ***or fly loft*** which occupies not over 25% of the ground floor area of the building, or a parapet wall ***or similar appurtenance that may be designed to provide architectural detail and/or to hide mechanical equipment*** extending not more than four feet above the limit of the height of the building on which it rests. ***A roof appurtenance that resembles a roof may extend above the limit of the height of the building up***

to a height equal to the floor to roof deck height of the top floor of the building provided that its slope does not exceed a 12/12 pitch.

(3) In any district the maximum building height provisions shall not apply to public water tanks or public utility poles. Towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district.

- (d) *Building setback lines.*
- (1) In any district, when the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback, provided that:
- a. Where any business or industrial building is erected within 50 feet along the same street frontage of a residential district, such building shall be set back a distance of 75% of the setback required for that residential district, **and**
 - b. the proposed building or structure does not exceed 35 feet or three stories in height.**

VOTE: 5-0

AYE: FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: CRONIN, JOHNSON

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you, Tom.

Mr. Hurd: I would like to commend Tom for making that so clear and easy for us to vote on.

Mr. McIntosh: Amen.

4. DISCUSSION OF DRAFT PARAMETERS AND METHODOLOGY FOR CODE MANDATED PARKING REQUIREMENTS AND PARKING WAIVER PROGRAM STUDY.

Mr. Silverman: Are we ready to move on to Item #4?

Mr. Hurd: Sure, bring it on.

Mr. Silverman: Discussion of Draft Parameters and Methodology for Code Mandated Parking Requirements and Parking Waiver Program Study. Hello and good-bye.

Ms. Kirsten Jones: Hello, my name is Kirsten Jones. I am an intern for the City as well as a graduate student at UD and working as a public policy fellow, public administration fellow, for Institute for Public Administration.

Mr. Silverman: And you have a new job?

Ms. Jones: And I do have a new job. I will, unfortunately, be leaving Newark for New York, working for the New York/New Jersey Port Authority.

Mr. Silverman: Congratulations.

Ms. Jones: Thank you very much. I do not have a PowerPoint presentation. I was just kind of going to come and brief you. My report is not completed yet but I wanted to show you my progress so that I could get feedback and some guidance, if necessary, so that you see where I'm headed with this research.

As was stated, I'm looking at the parking waiver and parking regulations for the City of Newark. This started simply by looking at the parking waiver program but has since grown to looking at a wider policy and potentially revising standards, as opposed to just the waiver program. The reason for that is because, while the waiver does allow the Commission and Council to have more discretion, it's really a case-by-case issue and it provides a little bit of uncertainty for developers. Whether they're going to be approved for the waiver or not might make them less inclined to actually pursue that. So, instead, what I also would have them looking at is the standards that Newark, itself, has for all parking regulations.

So currently the report that you have is a spreadsheet. And I apologize that the font size is relatively small so that it could fit on one page. But if you look at it in a PDF and enlarge it, it is a lot easier to read. There are a couple important things to note in that spreadsheet. First of all, what I did was look at six other cities that are comparable to Newark with various characteristics such as the population. They all have approximately 30,000 people. They all have a major university in their downtown corridor. They all have one single Main Street or condensed downtown that is mixed use. So with those characteristics there are three on the east coast and then a few, kind of, western cities, as well. And all of those cities, when looking – we're doing a straight comparison for each use – have dramatically lower standards. Or reverse that, dramatically higher standards for the number of parking. So, for example, if you have a requirement for bowling alleys in Newark, for parking for bowling alley you need 5 spaces per lane. And in most other cities, it's 2-3 spaces per lane. So obviously the parking lots in Newark are going to have to be a lot larger to accommodate a bowling alley than they would have to be in other cities. So based solely on looking at these requirements, it's pretty clear that Newark's are incredibly high and they're really zoned for more of a suburban mindset, which isn't necessarily what the goal of Newark and the Comprehensive Plan lays out. So looking at revising those is going to be very beneficial in increasing development and creating a more walkable, dense environment.

However, that dense environment might not be something that we want across the entire city. So one thing that has been kind of an innovative feature that I've noticed through looking at these is that a lot of the cities provide kind of a localized approach to these plans. So what they will do is they will adjust the standards based off of the areas that they want to focus on. So they either create their own districts for parking or they go off of the zoning code that already exists. So, for example, in Burlington, Vermont, they created three different parking districts – downtown, shared use and residential or neighborhood – and then they provide three different parking standards for each use within those three districts. So, for example, in Burlington, for veterinary office, if you have a veterinary office in the downtown, you need one space per 1,000 square feet floor area, two spaces if you're in a shared use, and three spaces if you're in a neighborhood district. So they divide out based off of the district. That's kind of a more complicated way of doing it because it adds a step for you. You have to create those districts.

Other cities, and what's more common, is looking at the zoning that already exists. So, for example, in Bozeman, Montana they will use the strict zoning. If you're in B3, it's 70% of what the standard says and you can do the math to calculate it down that way. This approach would allow you the discretion of creating a very dense development in downtown areas so that the parking waiver, which is supposed to be targeting downtown anyway, can take effect, while leaving the neighborhood or residential areas kind of untouched. And it would also allow you to have a more sweeping impact over other commercial areas, if that's something you're looking for.

The other aspect to consider is eliminating zoning in the downtown area. Ithaca, New York has done this. They have created no parking minimums for the downtown area. And the mayor, who was a huge proponent of this, was a PhD student under Donald Shoup, who is a leading parking expert. They exist! He actually wanted to expand it to the entire city but they're taking a more moderate approach. But Ithaca is definitely a leader in eliminating parking minimums and they have had a lot of success. Ithaca's downtown is slightly larger than ours insofar as it covers more streets, but the city, itself, is still 30,000 people and Cornell University is located very close to downtown. So characteristically it's very similar to ours and I think we could benefit from their lead.

The most extreme version, instead of just eliminating parking minimums, is implement parking maximums, which says that instead of just stating you don't have to make this many parking spaces, it says you cannot make more than this many spaces. This has been done in a few very isolated incidences. What's more common is that some cities are taking a more moderate approach so they're saying the parking maximum is 125% of the minimum. So they're creating a range. And that's a pretty broad range, as well. And then ideally, like Burlington is discussing creating maximums but they don't think that they're quite there yet based off of my listening to their city council minutes. Which has been riveting, let me tell you. So parking maximums are kind of the direction that some very innovative cities are going, but not necessarily. If we went that direction, we would definitely be a leader in the field. The other ones, there are a lot of examples of such policies being implemented.

So I still do have some further research to do regarding parking space sizes and unbundling parking from rent but, in general, the past few months I have been compiling this spreadsheet for you. And I would welcome any feedback from you now.

Mr. Silverman: Your work to-date has been superb and I'm very disappointed that we're losing you.

Ms. Jones: I might be back.

Mr. Silverman: You've got some good opportunities. I was intrigued by some of your source work. I find the no parking requirement very fascinating and I also wanted you to [inaudible] some of the costs of parking. We've got a number of things within our Comp Plan that I think reinforce what we're doing here. For example, we're interested in [inaudible]. What I found in looking at primarily west coast cities is they find that the true cost, the pass through on the free parking that people get with apartments, can be anywhere between \$100 and \$400 a month. So if I'm paying \$1,000 a month for rent, in reality it's a \$600 a month apartment and a \$400 a month parking place.

Ms. Jones: Correct.

Mr. Silverman: From a land use consumption point of view, one publication referenced that people are actually getting more square footage from a parking place than you are in the living room or bedroom in your apartment. So it's very costly. From a land assessment point of view, from the point of view of revenue coming in, it's very spotty, and we'd have to check with New Castle County, on how the parking under a building is [inaudible]. Usually it's just associated with minimal land cost.

Ms. Jones: Right.

Mr. Silverman: So if the building had leasable commercial space instead of parking spaces underneath it, it would be a tax benefit for the jurisdiction.

Ms. Jones: Correct.

Mr. Silverman: And some people feel it's a free market decision as you would see in any mature city such as the City of Wilmington and City of New Castle. That if I want to choose to build a commercial structure [inaudible] and not provide any parking for my tenants or the people leasing, that's a marketing decision. The people who would lease from me or rent my commercial space would know that going in and they would make the adjustments. Also, you mentioned suburban standards which I think is very significant. I sent an electronic article to the Commissioners talking about the voodoo science that's involved in how we come up with four spaces for a bowling alley and three spaces for a veterinarian. It's a science that seems to have grown and everybody references everybody else.

Ms. Jones: Right.

Mr. Silverman: The studies that were done involved transportation and engineering kinds of backgrounds where the 20th highest parking day of the year sets the number of parking spaces that we need. There's no relationship between market and reality to parking space requirements. The other and final thing, I find it difficult dealing with absolute numbers for parsing out parking spaces. I'll use the example of a recent subdivision plan we had before us, Trader's Alley. My experience has been in commercial properties in Trader's Alley, one of the stores is occupied by a sunglasses shop. That same space was then occupied by a hairdressing salon. And then, most recently, it was occupied by a Chinese restaurant. Now I'm sure the parking demand for a sunglasses shop is significantly different than that for a hairdressing salon, hopefully a very successful one, with a number of chairs and employees per chair, a very high demand.

Ms. Jones: Correct.

Mr. Silverman: And then it's a take-out with very few sit-down for a food operation, which would require a different number. So do we have to sit here in the beginning and apply a standard or guess about the number of parking spaces that are going to go through time when in reality the marketplace would decide. Or the person who owns the building or the person who is going to lease would look at the parking that is available and decide whether they wanted to put their business in that space. So the time is right to do that kind of thinking. I'm fascinated by the no parking requirement and an example in one of the articles I read was, in today's marketplace, there's no requirement in your apartment unit for granite countertops, for a washing machine, for free cable coming in, yet the market demands that. And if we let the builder and the market to its own devices, there are going to be parking spaces based on how the building is marketed.

Ms. Jones: Exactly.

Mr. Silverman: I don't think we have to worry about somebody coming in and building the maximum footprint and not providing any parking spaces.

Ms. Jones: Exactly. Yes. That's a very common argument.

Mr. Silverman: Not unless that's their plan. That they're going to market to people who don't have a car.

Ms. Jones: Right. Just one point on that point. A lot of times in situations where minimums have been eliminated, what they'll find is developers are still eager to provide the parking but they will do so in a lower, less than what is required, but as much as they think that the market needs.

Mr. Silverman: So there's less land devoted to parking.

Ms. Jones: Correct. Yes.

Mr. Silverman: And then the other thing to keep in mind is that you referred to suburban standards. A lot of ours is particularly CBD and I like the idea of making a CBD parking standards and then, as you come in with an open piece of land, there's another parking standard. We're doing redevelopment here in the City of Newark. The parcels were originally laid out, and the access to those parcels, when Main Street was semi-residential. Then it morphed into somebody converting their front porch into a grocery store. Converting their downstairs of what used to be that house into an extended grocery store. Building out the backs where the carriage house used to be and then living above the store. So we're kind of dealing with that existing style and infrastructure of building and I don't believe that our redevelopment on Main Street is amenable to us saying you must have four parking spaces, you must have five, etc.

Ms. Jones: Yeah, one way to go about doing that is treating Main Street as shopping center parking standards, which Mike Fortner has talked about. Shopping center standards aren't necessarily very common in a lot of other places. What they'll do is, instead of using a shopping center as a land use, they'll engage in shared use calculations. So those calculations are more common than our land use, where we would treat an area as one parcel or one shopping center and create based off of gross floor area. They would just calculate each use separately and then add those together, but then do a reduction based off of the calculations that they've created for their own shared use process.

Mr. Firestone: Hi, Jeremy Firestone. It's always nice to see the grad students doing good work and getting good positions. My background is in public policy so it's a particular pleasure. I have a question, I want to take us back, about the case selection of six cities. Because actually I have been to all six.

Ms. Jones: Wow.

Mr. Firestone: And I'm not necessarily convinced that they're good case studies for this area. I mean Newark is really part, it's hard to think of Newark as an isolated town. Whereas, in contrast, Ithaca, State College, Amherst, Burlington, Bozeman, they're all much more, sort of, isolated. And I guess my question is did you consider some other places like, although the area might be bigger overall, like, another place I've been is Chapel Hill, which actually has a very long single street which then goes into the town of Carrboro, and it's anchored by a large university but then it's sort of then connected in somewhat similar ways to a larger metropolitan area which includes Raleigh and Durham.

Ms. Jones: Yes, I did consider that. My priorities, the characteristics that I laid out as a criteria for selection, I was mostly concerned with population of overall city, as well as the proximity of the university to campus because I really think that the student population affects the downtown use. So I definitely think that there are other cities to consider. But for this purpose I had to limit it. And I have not been to all of these cities so I, of course, have to look at Google Maps to get some reference. So I would certainly consider including others, either with this report, or another person can continue it on with other cities.

Mr. Firestone: Anyway, to me, I think Chapel Hill is a better model than most of these. And then another one I might consider would be South Kingston, which I am personally less familiar with but it's in Rhode Island and it's got the University of Rhode Island. So you've got another small eastern seaboard state with a real, sort of, anchor university. I think from what I could tell on Google Maps, the downtown is maybe a few miles from, and I'm not sure how the downtown is laid out, but these others, to me, don't necessarily seem quite like our situation, where we're connected to, not only do we have all this unincorporated area in New Castle County, then we've got bordering portions in Pennsylvania and Maryland that people are coming in. We've got New Castle and Wilmington. It's not one of these, sort of, isolated college towns that are off by themselves.

Mr. Silverman: Jeremey, I would argue from an economic point of view we are relatively isolated. People don't drive from Brandywine Hundred to Newark to shop. They don't come over from New Castle to shop. They don't come from Elkton to use the facilities. I believe we're an economic island.

Mr. Hurd: No, I would disagree. I think that we are, I think a fair amount of our economic traffic, especially in the evenings and weekends, is out of town people driving in.

Mr. Silverman: So we've become a destination?

Mr. Hurd: Yes, I believe so. And I think that that affects how you look at parking. Because if you say State College, which I don't have a lot of familiarity with but I know people who have gone there, and of course it's the greatest place on earth according to them, but my understanding is that it's a fairly isolated town.

Ms. Feeney Roser: Right, it is.

Mr. Hurd: If you don't have a car, you can't leave. You walk down the hill, there's State College, and if you don't have a car, you can't get out of town. So it doesn't have that, and then of course there's a game day when 60,000 people flow in and flow out. I think we've got much more turnover and much more flow-through that, I think, needs to be accommodated for in some of the understanding of the parking needs. Which leads me to think that the, sort of, shopping center approach might have more merit because you can say this whole downtown is a mixed use shopping mall.

Mr. Silverman: So it's a de facto shopping center, shopping mall style.

Mr. Hurd: Yeah, and all that parking gets shared and all that parking, kind of, gets averaged out. And all the hairdresser salons that shut down at 5:00, those spots are opened up for restaurants that are, you know, the hairdresser doesn't have to keep all those spots open 24 hours. There's a block and then it shifts and there's a block and then lunchtime is a mess, as always. If I can just continue, unless, are you...

Mr. Firestone: Yeah, you can go ahead.

Mr. Hurd: I was really impressed by this and then I noticed it was double-sided so I was even more impressed. For the final report I think one thing that would help me, as I was just looking through this, if there's a way to highlight the rows where we are significantly out of sync with the other cities. Because I can see some here, from looking at it you can go, oh yeah we're right down the line on this two per dwelling or two per bed. But then there's some, as you said, five per lane versus other things.

Mr. Silverman: How about bolding or...

Mr. Hurd: Bolding or highlighting or...

Mr. Silverman: Italicizing.

Mr. Hurd: Something. Something that, sort of, says this is a row that we want to pay attention to.

Ms. Jones: Sure.

Mr. Hurd: My other two comments are more about the future conversations that are inevitable here. I think that the designation of parking districts is probably going to be a better approach for us than to tie it to zoning.

Mr. Silverman: Agreed.

Mr. Hurd: Because we're going to run into those problems of those isolated commercial properties on Cleveland and if we say, you get to have less parking because you're a commercial property it's like except they're isolated amongst residential, they would actually need more because they don't have that flow and adjacent properties.

Mr. Silverman: More potential for shared parking.

Mr. Hurd: Right. But you can also look at areas and say this is an area that's, kind of, developing. We're going to draw a boundary and say this is going to be a new mixed use area. Which leads to my second point, which is that I think we're really coming to the point where we now need to start to think about a true mixed use zoning designation or definition. Because I think that's the thing that holds us back, at times, from doing some interesting work and some work that really is what the City needs. That sort of transitional properties. That we've locked it in to say it's either residential or it's commercial. And I think that there are some spots where it's like, you know, it could be a little of both without just being BB. But a lower density mixed use neighborhood kind of thing that I think will help absorb some of the development in a way that won't over-stress particular spots. But that's, you know, down the road.

Ms. Feeney Roser: Excuse me, Commissioner Hurd. You mean beyond the BLR kinds of zoning? We don't have a lot of it, I'll be honest with you.

Mr. Hurd: No, we don't and I think it's, I don't know if it's either well used or well defined or broad enough, I'm not sure. But I see other places much more intentional about their mixed use areas. And I think even in the Comp Plan we, sort of, start to talk about mixed use boundaries but then when push comes to shove, we have to put a zoning onto that and it becomes commercial or residential because we don't have that intermediate underlying zoning to attach to it. So you get that hard line because, and Cleveland is probably a good example, it's got commercial and residential in, sort of, spots. And if you said that street is a mixed use, you might start getting more interesting buildings. You might get a little more street level commercial, upper level apartments, but only one or two stories. You know, less need for parking because now people can walk to stores. You don't have to get in your car. You don't have to overload adjacent commercial districts because you've got corner stores supporting you. So my hope is that at some point we can start to look at the City in that broader, sort of those zones of mixed use.

Mr. Silverman: Any other comments? From a Commissioner's point of view [inaudible] Mike Fortner is going to have to help me on this. I like the idea of phasing some of the ideas that we've talked about. We're essentially talking that Kirsten is concerned more with phase I. I've been discussing the need to really take a look at the student parking ratios around the clock kind of thing. And Mike had suggested that we do it as a second phase. The report letter to the Commission dated April 26, 2016 refers to possibly doing the second phase dealing with the student survey be done this summer. I think that's out of hunting season and should be delayed until the full student body is back. Mike, if you could address this for us.

Mr. Mike Fortner: Yes, I think it's going to have to wait but the summer intern would start developing the survey, developing the approach and we probably wouldn't be able to roll it out until the Fall. But some of it might be being able to just contact landlords and seeing what they think. That could be the first part of it. And then surveying students is another phase of it.

Mr. Silverman: You've thought this through much more than what I did reading through it. Thank you. Are there any questions from the persons who are present? Dr. Morgan, you've asked to speak.

Dr. Morgan: Yes. Thank you very much. John Morgan from District 1. I guess I have a number of comments I'd like to make. One is that when I saw this memo earlier with the various

options, with the citations of the book by Donald Shoup, I ordered the book myself and you can get it online from Amazon or AbeBooks or such organizations for around \$25. And I would very much recommend that all members of the Commission get a copy and start reading it because it has a number of very good points in it, some of which are rather surprising. But I would say read it, keeping in mind that the author lived and worked in Los Angeles, which is very different from Newark, Delaware. The surface area of Los Angeles is probably comparable to the surface area of northern New Castle County, with a population of about ten times as high and much denser population in many ways, with a lot of attractive features and a lot of less attractive features, like dangerous areas inhabited by gangs, which we don't have here in Newark.

I would endorse the comments made by Commissioner Firestone about looking for comparable small towns with universities. And I have actually one been to one of these six towns myself. That's Ithaca, New York. I actually did live there on and off for a period of several months. And my recollection is that the university is actually fairly well separated from the main part of the city because the university is up on a hill which is rather steep. And people don't normally walk all the way up and down all that easily. Does that correspond with your memory, Jeremy?

Mr. Firestone: It's, I don't know, a half-mile or three quarters of a mile. It's not that far. But Amherst College is actually right next to downtown.

Dr. Morgan: Okay.

Mr. McIntosh: True.

Mr. Firestone: In that regard I think it's not all that different.

Dr. Morgan: Right. Okay.

Mr. Firestone: My main issue is that once you leave there, it's just different. It's isolated. You go down a bunch of single two-lane roads going out of town, until you get to the next town. Until you get to Northampton.

Dr. Morgan: Okay, and I think that's a very good point. Because I think that one of the issues about why we allegedly have a parking problem here in Newark is being articulated by one City Councilman, in particular, who is being told that the residents in his district somehow have a hard time finding parking spaces. And, moreover, that people who lives outside the City of Newark have trouble finding parking spaces when they come here. So it really is, like, people are coming into Newark from a radius of 5 or 10 miles away from a population that's much larger than the population of just the City of Newark. Right? And so that makes it a significant difference from the situation in any of these six other towns. And I must say that I was struck by what I read in Professor Shoup's book about how if you get rid of minimum parking requirements, you'll have higher density of residents and shops will grow up around them, and people won't need to drive cars, and they won't buy cars and so on and so forth. And it seems to me that that's the sort of approach that maybe can work in a really big city when you have the same control everywhere. But that's going to be very hard to implement in Newark, which is surrounded by areas where people are driving cars and driving through Newark. Right? Which causes problems.

And this gets, I think, to the fact that you shouldn't, at least, look at parking on its own. Because whatever problems Newark has with parking are comparable, and probably similarly severe, to the problems that it has with traffic. Right? I mean, I've been stuck trying to get to one side of Newark to another much more often than having trouble finding a parking space. And I think we need to look at this whole thing holistically. And there's no doubt that you can solve both problems if you improve public transportation. If you improve walkability. If you improve bike-ability. And I would like to suggest that, going forward, instead of just looking at parking in isolation, it would be a good idea for the City of Newark to have a committee composed of residents whose purview would be transportation, traffic and parking. Looking at

all three of them together and figuring out how we go forward. Keeping in mind that our downtown has some particular difficulties, right? Because we have this train line going through downtown which makes it very difficult to move around. We have narrow streets. Main Street and Delaware Avenue, which are only two lanes wide, right? And you can't get back and forth very easily because they're one way. So you have to go around and things like this. Other downtown areas may have the same area, but they're more compact and they're easier to get around. All these are very special problems, I think, that we should be looking at.

Mr. Silverman: Thank you. Is there anyone else who wishes to speak?

Ms. Jones: Anything else?

Mr. Silverman: Thank you very much for your report.

Ms. Jones: Thank you.

Mr. Silverman: This effort will be continued based on the comments and directions of the Commission provided tonight.

5. DISCUSSION OF DRAFT DELAWARE DOWNTOWN DEVELOPMENT DISTRICT PLAN.

Mr. Silverman: Okay, let me ask a question before you start, Mike. I sent an email today with respect to apparently another Downtown Transportation Development District that is floating around in the State legislature. I don't know whether you've seen that. Does that have any relationship to this?

Mr. Fortner: No, that's, what do they call that?

Ms. Feeney Roser: Complete communities.

Mr. Fortner: Complete communities. And there are a lot of requirements and I have to look into those but basically you have to have a square mile and you can't have parking requirements.

Mr. Silverman: Okay.

Mr. Fortner: It's really doesn't apply to us very well. We looked into it.

Mr. Silverman: Okay. Thank you.

[Secretary's note: During the course of his presentation, Mr. Fortner referred to a PowerPoint presentation being displayed for the benefit of the Commission, Director and public.]

Mr. Fortner: Alright. This is the Downtown Development District Grant Program. We're having a public workshop on Wednesday, that's tomorrow, May 4th from, we'll just be hanging out here, Maureen and I, 4:00pm to 8:00pm. You're welcome to stop by anytime.

Ms. Feeney Roser: Did I say I was going to do that?

Mr. Fortner: It's going to be fun. No food. Didn't plan for food but maybe we'll bring food. We'll be here and I'm going to basically give an enhanced version of this presentation. And I know it's late and I'll try to get through this as quick as I can. We have to have a resolution of endorsement by Council by May 23rd and the application due date is June 1st.

Just to give you a little background on why is this up for us so quick, I went to a session that the Delaware State Housing Authority and DE NAHRO [Delaware Chapter of the National Association of Housing & Redevelopment Officials] put on in October. And they designated these districts, and I'll get into this, in 2014. And they said in October of last year that there

probably wasn't going to be another round. They thought there would be another round someday, but they didn't know when. Probably not in the next year but maybe the following year, which would be either 2017 or very late 2016, they would open the applications again. And then it just seems like the governor made a decision on it, let's do another round, or something. So we get a notice, I think, in April and we have to be at this little workshop in mid-April. It was the same date as your training session, when we learned about this. And the due dates, we have to have a resolution to Council, so we get really rushed to do this. And so that's why we put something together and that's why this is the way it is. I think it's important that we apply. We don't know that the grant process is ever going to open up again so this might be the last chance to do it.

A Downtown Development District was from the Downtown Development Act of 2014. The philosophy is that downtowns are a critical component of Delaware's economic wellbeing. This legislation wants to help downtowns be healthy, vibrant places. To make the kinds of places that are a very important part of Delaware culture. Downtown areas are designated by the State. They qualify for development incentives and other State benefits.

The goal, as stated in the legislation, is to spur private capital investment in commercial business districts and other neighborhoods, stimulate job growth and improve the commercial vitality of such districts and neighborhoods, help build a stable community for long-term residents by improving housing opportunities and assist municipalities in strengthening neighborhoods while harnessing the attraction that vibrant downtowns hold for talented people, innovative small businesses and residents from all walks of life. I'm glad we've settled the neighborhood definition thing, too, or I would have had to change the wording.

Okay, so what is the DDD grant? So, the grant is administered by the Delaware State Housing Authority. The applicants will apply directly to them. Our role is to inform, facilitate and help encourage this type of development. Grants are available for a broad range of projects including residential, mixed use, commercial and industrial projects within these DDD boundaries and eligible applicants include virtually anyone making qualified real estate improvements in a DDD. This includes for-profit builders, non-profit organizations, businesses and homeowners. Governments are not eligible and I assume that would include housing authorities.

Mr. Silverman: You said this grant is not to the City. We, the City, set up the boundaries and then private individuals make application for the help.

Mr. Fortner: That's right. We encourage it. Okay, so investors who make qualified real property investments, and they have a little acronym for it [QPRIs], in a Downtown Development are entitled to receive up to 20% of the cost, the grant is up to 20% of their cost. DDD grants are designated to spur investments in the DDD. So qualified real property investments are capital expenditures incurred after DDD designation necessary for rehabilitation, expansion or new construction – we call them hard costs – and that are in excess of \$25,000 for this program. And so there's a list of what's included. Basically all kinds of renovations, excavations, landscaping and land improvements, and demolition, can all be, all of the development process, in terms of the construction.

So, project calculations. Investors are eligible for grants, 20% of the hard costs, over a \$25,000 threshold, up to \$500,000 per building or facility. Grants in excess of \$500,000 are calculated at a lower rate. It's calculated at a lower rate, but it can go up to a \$1,000,000 grant. And so the examples are for a small project of \$45,000 hard costs, you subtract the \$25,000 because that's where it starts, after \$25,000. And so that project, a \$45,000 project, could get a \$4,000 grant. In example #2, I took a \$1,000,000 project. The grant amount in excess of \$25,000 is \$975,000. They would get a grant amount in that scenario of \$195,000.

The process is that local government identifies a Downtown District and apply for designation, which we're working on. Municipalities with populations of 30,000 people or more can

designate up to 225 acres. The ground rules on the designation are that it has to be contiguous, it includes the streets and right-of-ways in the calculation, and there are no enclaves. They want something that is not too jerry-rigged is a key component. We'll see some other districts and how they did them. The size and shape of the proposed district must make sense from an urban planning and revitalization perspective, and you have to provide a justification for it.

The three components of the application are, of course, you have to demonstrate a need and impact, you have to have a quality district plan, and then the quality of the local incentives. The City government is expected to offer local incentives, too, to encourage this type of development.

So the process is continued here. The application is considered by the Cabinet Committee for State Planning Issues. The committee will make a recommendation to the governor, who will designate one or more DDDs this year. So I don't know how many they're going to designate. Last time they designated three, one from each county, and I'll talk more about that in a little bit. The legislation will allow up to a maximum of 15 at any one time. The designation lasts 10 years, with the possibility of two five-year renewal extensions. So I guess a total of, ultimately, 20 years.

Mr. Hurd: So, Mike, there are currently only three DDDs?

Mr. Fortner: Yes. And I'm going to get to those. Okay, so those are the ones that applied. The ones in green are the ones they accepted. As you saw, we applied in 2014 but they only chose one per county and so, you know, Wilmington, of course, they gave it to Wilmington. Well-deserved. But anyway, they gave it to Wilmington, they gave it to Dover, and they gave it to Seaford.

And here's Wilmington's district that they created downtown. It's centered on Market Street. They divided it in little districts so they wanted to create, for example, a creative district and their plans involves clustering live, work, play space. They wanted to improve housing and redevelop some of the older housing stock and underutilized or vacant housing stock. And so they created that, sort of, plan. That's what they used their district for. You can see how their boundary is kind of compacted to their downtown area centered on Market Street.

Dover is similar. Of course, they're a town about our size. Their downtown is very different. They have a lot of trouble attracting investment so they want to encourage mixed use development downtown. They want to bring in retail in their central business district. They want to increase the percentage of homeownership, owner occupied places, like we do. They want to increase density in their development. They have lots of vacant lots. They want those to be filled. They have a lot of buildings built like suburban style. They want to bring those to the street and have that downtown development like we've had in our City. And they have strategic locations they want to have some open space and parks and gateways. And they've created a master plan for that as well.

And finally, Seaford. They have a river community. They want to preserve, renovate and revitalize their core downtown area, and preserve and enhance Seaford's historic heritage. They want to provide housing opportunities for all income ranges and provide space for affordable incubator style businesses that may not be able to afford other locations in the city.

This is our 2014 DDD proposal that Council approved and we sent there, and it was not accepted, or it didn't win. As you see it basically goes into the Downtown Newark Partnership boundary. Yes, sir?

Mr. Silverman: Mike, how did we not meet the criteria they were looking for? Are you able to quantify that?

Mr. Fortner: Yeah, let me get to that. I'll get to that. When I asked them what was the weak spot in our application, I think I might talk about this more a little later too, it was demonstration of the need. They see our downtown is thriving and our application didn't justify...

Mr. Silverman: So, in fact, we're being punished for the vision people had 15 years ago on creating Main Street and creating...

Mr. Fortner: Yes, but I'm going to talk about it a little bit more, how we can maybe use that to our benefit. Okay. Another feature that you'll notice is that a lot of our acreage there is supposedly University, which we're not going to be able to participate in this grant with. Go ahead.

Mr. Silverman: If we designate the area, I'm sure there are some creative people who will approach the Housing Authority, who work for the University, who are on the partnerships, where the University can benefit from this.

Mr. Fortner: Well probably not in those areas. That's kind of your Old College part and stuff. So we don't see this as real developable land. We see a lot of that staying stagnant. Sort of, the University is very creative in that kind of stuff and things. But it does go down to, I believe that goes to Apple, I guess. But that was basically our DNP boundaries and that's what we used for our Downtown District. And we already had a formulated plan. This is what you see in our Comp Plan. When we talk about downtown, this is generally what we talk about. So one of the key problems was there was a lot of University land in that and maybe missed out on some opportunities that were around. So, and I'm sorry you can't really see that but let me see if I can get you a better map. That's a better map.

Mr. Silverman: The amount of University land included in this was kind of a negative?

Mr. Fortner: Well there's nothing much you can do and you're limited to how much acreage you can have.

Mr. Silverman: Okay.

Mr. Fortner: And so it's just sort of a lot of wasted space. And so what we've done here is we've basically, we're looking at what possible, this is for redevelopment and investment. So, for example, including South Main Street, a lot of that has already been reinvested in. It already exists. So there's very little potential. Then the University land that you have to cross to get to that, not a lot of redevelopment potential for us there. So we start Main Street now at about where the Galleria is. And that's where our downtown starts. And we go over and we include, of course, and I have these developed into districts which I'll talk about later, but as you see we included the College Square Shopping Center which is zoned BB for mixed used downtown zoning. The property owner, and we talk about this in the Comp Plan, is not interested in doing a mixed use at this point. I mean it might revitalize the shopping center kind of like what they're doing at Park-N-Shop, but it's ripe for that. It's also an opportunity where this might not be the best place for student housing. Maybe other types of housing might work better there than student housing. And so you could do a new kind of town center project there, I'm thinking. And this program could encourage that if we were to get this grant. And so it's a ripe place for redevelopment, even if it isn't residential, it could still qualify as revitalizing a commercial area. It wouldn't be as great of an application, but it would still work. And so we really want to include that College Square area.

Now we also include where the hotel which you guys just reviewed, the strip off of Ogletown Road. That little off-shoot there which is, I think, stretching it a little bit but, you know, there's redevelopment potential in there as well, commercial. And it includes industrial so it could be some development.

And let me get you the actual plan. I'm going to get to the districts in a bit. But downtown goals, this is what we have where we're developing our plan. It's based on a lot of what the Comp Plan has. But our DDD goals are to preserve and enhance Newark's economic vitality as a community focal point with the uses of retail, did I say dining, I think I meant dining, and entertainment, office and housing. To make downtown a place of inclusive housing opportunities for people of different ages and income levels, which we've been talking about for a long time, is one of our goals. We just don't want housing for students. You know, we'd like to have something for seniors. We talk about that a lot. To provide affordable places for unique incubators for small businesses to increase employment and commercial opportunities. We want to bring different kinds of businesses down here. Not necessarily chains but we want to be a place that could encourage that. And to preserve and enhance Newark's historical and cultural heritage.

We talked about some of our plans and what we're going to try to use for our need and impact. We're going to talk about, of course, we've had tremendous success in redeveloping our downtown and by a DDD you're investing in success. You can invest in areas that are really desperate for something but you might not attract it even if you did designate that because even with these incentives there's still not enough demand to actually redevelop there. And so the other thing is to look at your successes and invest in success. And our downtown has been successful so if you can create incentives, we're more likely to have successful developments that would spur it even further. And what we're going to say is, or try to argue is, that sure, a lot of the redevelopment, especially in the housing, has been for college students and they are pricing out non-students or low and moderate income level families in our area and we have a pent up demand for senior housing. The Newark Housing Authority has extensive waiting lists. The Main Street Towers has extensive lists. And something like this could incentivize a developer to provide housing with low income tax credits compiled with a bunch of other programs to build an affordable housing development in downtown or even a moderate priced, or different than say the Washington House where it's very wealthy. And this kind of grant program could incentivize that. And that's the basic approach we're going to try to take. We've had a lot of success but we're not having diversified success. And this program could help us diversify our success.

Okay, the districts. So we divide up into districts similar to in the Comp Plan. So you have our Downtown Core District which includes the Newark Shopping Center. You have B which we call this New Center Village District, which I was careful not to use the word overlay on that. And I'm not talking about it as an overlay district. But just as a community where we're looking for redevelopment and we're looking for creative type of use of that land. And then you have section C, which is sort of where we think a lot of affordable housing can go. You have a portion of Main Street there that could redevelop into a more dense mixed use as well and then you have the housing on both north and south. On the north side of it you have some older apartment housing that can redevelop. Yes, sir?

Mr. Silverman: Plus it's a predominantly residential area.

Mr. Fortner: It's predominantly a residential area and then the south side is a residential area as well. You have the Housing Authority in there but you also have a lot of potential affordable housing that could be rehabbed into nice housing. And then, of course, then last you have the College Square Redevelopment District. And, of course, I've talked about that but we think that's a tremendous opportunity for redevelopment in a lot of different ways.

Okay, so the next thing is our current incentives. And so, you know, because of the timeline and turnaround on this is so quick, we're listing all the incentives that we have currently. And we can talk about in the Comp Plan we have things to look into incentives. But a lot of communities do tax abatements. They waive fees, development fees, and certain other kinds of things. We're not going to propose anything on that because I think there needs to be a lot of evaluation on the impact of waiving those kinds of fees. And second of all, when you submit an application and agree to it, then you're bound to those types of programs. And if Council

evaluates it later on and decides we don't want to do them, then you have to go back and say we're not going to do this and that's a bit difficult. But it's much easier to add incentives on later.

So these are the incentives we have. We have POOH. We have several homebuyer programs. We have home repair programs. We have a façade improvement program for downtown. An architectural assistance program. We have business start-up grants. And we have downtown gift card program that benefits downtown. Another thing we have that's a benefit is our site plan approval process, showing that we have flexibility in how we implement our zoning is a big plus and that will be viewed favorable. Yes, ma'am?

Ms. Feeney Roser: Can I ask a question, Michael?

Mr. Fortner: Yes.

Ms. Feeney Roser: Do the incentives have to be available to the entire district? Because the parking waiver program, as it is now, I know we're looking at changing it, but that's tied to BB zoning only.

Mr. Fortner: No, it doesn't have to be tied to the entire district. It's just something that's available and that we have these kinds of programs and encourage that. But it's for BB and a lot of it's zoned BB. So the parking waiver program, that we have those kinds of flexibilities as well.

So here's where there are possible future incentives. So we have Live Near Your Work Program, which we used to have that we discontinued but we could easily bring that back in the near future. Home Buyer Assistance Program which was a different kind of loan program to help people buy homes. Our Comp Plan has consider incentives such as reducing or waiving sewer, water and/or public facilities impact fees on new affordable housing developments. So it's something we have in our Comp Plan. So we can evaluate that and add that on as a later thing in our incentive program. Outreach to affordable housing providers to develop housing in Newark, reaching out to Habitat for Humanity and other kinds of places to do development. We've had lots of conversations. They're very interested in coming into Newark and doing something. Of course we're completing our Rental Housing Needs Assessment and I think the review board will look highly on that. We're actually doing studies to evaluate this thing. We've had a first phase done that gave us a lot of useful information. We're on for our second phase. We are in the process of looking into a proposed Transportation Improvement District that will bring analysis to that downtown core and improvements with that. Making it pedestrian friendly and bicycle friendly. Also Downtown Newark Pedestrian and Streetscape Plan which is something that's in our Comprehensive Plan that we would do. And it says in our Comp Plan to establish a Downtown Development District. We would, at least, apply for this and continue to put forward an application. That's in our Comp Plan as well as an action item.

Future land use. We have future land use now. One thing in our future land use is that zone BB, we have that down as a commercial use but we can change that. We can change the Newark Shopping Center's designation. We do that regularly.

Okay, something that I should bring up is that we are in discussion about whether the boundary is appropriate and I put this map back up because it shows it a little more. But we've had recommendations or requests to consider, we chose the boundary, I think I got it. No, don't want to do that. This boundary didn't have the Newark Shopping Center but we expanded this boundary to include Cleveland Avenue, which would be a good area to include and we were looking at how to do that. And we, frankly, ran into a lot of barriers in this. But I'm interested in your input in this. But we would have to subtract land because we've already maxed out our boundaries and then we would have a thing where you'd pretty much have to, you have a natural barrier there, or a man-made barrier, rather, the railroad track, that kind of cuts off Cleveland Avenue from downtown. And as you know, they don't like us to jerry-rig and we'd

either have to expand the boundary and we'd get into, again, the car dealerships, which I don't think they want. And to get over there you'd have to incorporate the cemetery which we've cut out and to get over there we'd have to through the bridge. And so we've had a hard time figuring out how to jerry-rig that in. It would look like a big off-spurt there to include, and we'd have to get rid of something that's in our designation already.

Another thing people talk about and I know we've talked about here before, is the Rodney and Dickinson, how, and I forget which one is which, but the north parcel the City wants to buy and then the south parcel we talked about that for some kind of housing. That's what we talked about in the Rental Housing Needs Assessment. A few of you were on that committee. And so to include it, we would have to do kind of a shoestring thing and that's just not going to fly with their decision committee, too. They're not going to want to see "gerrymandering" and that type of extent, and go under the bridge and then try to include those. Ideally you could get that south parcel to be a part of that and then it could be available for these kinds of incentives but there's no way to get that in the Downtown District without doing some major jerry-rigging. So when I look at this, and let's go back, that's future land use. I'm sorry, I might have to work with Tom to make that line pop a little bit more on these applications because it's in black. But we would have to take out at least the spur. Maybe even take out some of downtown on the Galleria site. But I think that would be missing some opportunities. Just to hop over, some people are suggesting that we, I'm sorry, I should have brought the mike, but that we somehow hop over this to include this, but then you're creating a spur. Because this isn't in it. We don't want to put the University in there. That is wasted acreage. So anyway, you would be creating, essentially hopping through this bridge and creating this spur over here just to get this. Or otherwise you'd have to expand the boundary over here just to incorporate that. And then by doing that, you'd have to maybe get rid of this part of downtown, which I don't think you'd want to do. Or getting rid of the spur or something like that. And I think there's lots of opportunity over here and this is redeveloping already, and probably is student housing. So I'm just curious what your thoughts are on that. But for today and then tomorrow we'll be looking at it. So the boundary is under review and we could adjust based on what the public wants. But it would just be hard to do that.

Mr. Hurd: Well I guess...

Mr. Fortner: Go ahead.

Mr. Hurd: I'll start. There's the microphone. I like the boundary. I think that that's a good clear designated zone that includes a lot of areas that I think, you're right, are potentially suitable for redevelopment. I guess if we're successful, we could always look at it in a year or two, or as Cleveland Avenue is shifting and possibly doing that as a second, we could do an additional district, right?

Mr. Fortner: Yeah, as far as I know they could do another district. That would be a hard sell without a downtown, but yeah.

Mr. Hurd. Yeah, I mean, and I think it's one of those places that's sort of downtown but you're right, the train tracks and everything else do kind of isolate it and create its own little zone within the City. I think that that's a very effective sort of thing. Because I see those sort of gradations. You've got sort of the commercial core already which could take a little more development or density. The New Center Village obviously needs something. And then C is basically right on the cusp of someone building something a little more dense in some of those parts and bringing that commercial and mixed use down Main Street and feeding that. And then, yeah, area D, some of those industrial uses and things could very well turn into something much more suitable on the...

Mr. Fortner: Yeah, that's your old suburban style commercial, most of that. And you have a State Office building there and Post Office.

Mr. Silverman: We're referring to Newark Proposed District?

Mr. Hurd: Yeah.

Mr. Fortner: Yeah.

Mr. Hurd: So I looked at it and I think I agree with your logic to eliminate the University, to hold the boundaries where they are. I think if we didn't include College Square, we'd really be missing something. Because I think that there's a lot going to be happening or could be happening there. There's a lot of land that's not really being used and I think to give them an opportunity to get money to do something useful, I think is a good thing.

Mr. Stozek: On the arm that goes off to the right...

Mr. Fortner: Yeah.

Mr. Stozek: You mentioned the site for the hotel is there.

Mr. Fortner: Yeah.

Mr. Stozek: And Aetna...

Mr. Fortner: There's Aetna Firehouse which is looking to relocate. And then you have 84 Lumber that...

Ms. Feeney Roser: Then Porter Ford.

Mr. Fortner: Porter Ford.

Mr. Stozek: How far up to the right does it go?

Mr. Hurd: You've got 84 Lumber, you've got the...

Mr. Firestone: Does it go to the garden center?

Mr. Hurd: It passes the garden center. It passes the auto parts store. It looks like it goes up to, almost to the Car Max.

Mr. Fortner: Yeah, I think it might go to the municipal boundary.

Mr. Hurd: It looks like it hits the municipal boundary, the way it cuts off, so I think, yeah.

Mr. Fortner: Yeah.

Mr. Firestone: I, also, would say I like the inclusion of College Square. I mean it's the area that's really most in need of redevelopment in the entire City.

Mr. Silverman: It also has the most potential being under single ownership. No one has to assemble parcels. Somebody buys that, flips a switch and it happens.

Mr. Fortner: It's a big opportunity for somebody.

Mr. Hurd: And it's not making money.

Mr. McIntosh: Really?

Mr. Hurd: Well, compared to other things, perhaps. There's a lot of emptiness in there.

Mr. Silverman: Do we have a consensus that, there's not a slide number on this, that the illustration/slide titled Newark Proposed District with Areas A, B, C, D layout proposal is acceptable to the Commissioners?

Ms. Feeney Roser: It would be good if we had something on record that says you agree.

Mr. Silverman: Do we have a consensus?

Mr. McIntosh: A formal motion?

Ms. Feeney Roser: Well, our Council is going to want to know.

Mr. Firestone: I move we accept the recommendation of the Planning Commission.

Ms. Feeney Roser: Department.

Mr. McIntosh: Planning Department.

Mr. Firestone: Planning Department.

Mr. McIntosh: I second that.

Mr. Silverman: Is that part of a written report in here?

Ms. Feeney Roser: No. You could just say the Downtown Development District geography as proposed by the Department.

Mr. Silverman: Okay. I want to link it back to a paper document because it's reflected in the transcript. So based on the presentation titled Downtown Development District Grant Program presented to us...

Ms. Feeney Roser: Today is the 3rd.

Mr. Silverman: May 3, 2016.

Mr. Hurd: Can I just add an additional, I don't know if it's a comment or such. I appreciate that you mention offices and businesses and I think that should be stressed because, in my opinion, that's the thing that we're really lacking on, besides affordable housing and such, in terms of commercial development. We're really lacking on office space downtown. And I think, you know, we talk about people living where they work but they can't really work here, so they live where they shop. If we can get them to work here, I think we can really start to, I think then the residential development can piggyback on that more effectively.

Mr. Silverman: And personal services.

Mr. Hurd: Yeah.

Mr. Firestone: Agreed.

Mr. Fortner: Thank you.

Mr. Silverman: Do we have a motion?

Mr. McIntosh: Yes, you do.

Mr. Hurd: I so move.

Mr. Silverman: Second?

Mr. McIntosh: We already had the motion.

Mr. Hurd: Then I second.

Mr. Silverman: Okay we have a motion and second. Is there any further discussion? Okay, moving to the question. All those in favor, signify by saying Aye. All those opposed, signify by saying Nay. Motion carries.

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

THAT CITY COUNCIL APPROVE THE DOWNTOWN DEVELOPMENT DISTRICT GEOGRAPHIC BOUNDARIES AS PROPOSED BY THE PLANNING AND DEVELOPMENT DEPARTMENT IN THE DOWNTOWN DEVELOPMENT DISTRICT GRANT PROGRAM PRESENTATION REVIEWED AND DISCUSSED BY THE PLANNING COMMISSION AT THE MAY 3, 2016 MEETING.

VOTE: 5-0

AYE: FIRESTONE, HURD, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: CRONIN, JOHNSON

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you. We will have a public information session tomorrow night, as Mike mentioned, in this chamber from 4:00 – 8:00 p.m. to gather public input. And then we will have another public discussion when we take it to Council.

Mr. Silverman: Okay. Any other comments from the Commissioners? If there is no objection, we will stand adjourned.

[Note: At the public session for the DDD held Wednesday 5/4/16, the importance of including Cleveland Avenue properties west of McKees Lane was stressed. The DDD boundaries were tweaked, therefore, to include Cleveland Avenue and residential areas near it. Cut from the district to accommodate the inclusion was the Ogletown Road spur including the new hotel site, the Hudson State Service Center, Post Office and properties to the east to the City line.]

There being no further business, the Planning Commission adjourned at 10:19 p.m.

Respectfully submitted,
Michelle Vispi
Planning Commission Secretary

/mv