

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

June 7, 2016

7:00 p.m.

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

Chairman: Alan Silverman

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

Commissioners Absent: Frank McIntosh

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

Mr. Alan Silverman called the Planning Commission meeting to order at 7:04 p.m.

1. THE MINUTES OF THE MAY 3, 2016 PLANNING COMMISSION MEETING.

Mr. Silverman: I'd like to call to order the City of Newark, Delaware Planning Commission Meeting for Tuesday, June 7, 2016. The first item on our agenda is approval of the minutes of the May 3, 2016 Planning Commission Meeting. With the concurrence of the City Secretary and the Director of Planning and Development, at the public's request we have placed draft copies of the minutes on our website at the same exact time that the Commission received their packets. We have gotten some feedback which has been sent to the secretary for the Commission with respect to changes. Those changes are now reflected in the updated minutes that we will be approving. On line 742 the words "mating pairs" were substituted. On line 1157, the term "stand in recess" rather than "stand on recess". And, on line 2025 "brought" has been changed to "broad." Are there any additions or corrections from the Commissioners? Hearing none, the corrected minutes stand approved.

2. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, REZONING AND MAJOR SUBDIVISION WITH SITE PLAN APPROVAL PLAN FOR 1101 AND 1107 BARKSDALE ROAD, TO BE KNOWN AS BARKSDALE GREEN.

Mr. Silverman: Item 2 on our agenda this evening is the review and consideration of a Comprehensive Plan amendment, rezoning and major subdivision with site plan approval for 1101 and 1107 Barksdale Road, to be known as Barksdale Green.

Ms. Maureen Feeney Roser: Thank you, Chairman Silverman. For the benefit of those in the audience, I am going to summarize the Planning and Development Department report on this particular project.

[Secretary's note: Ms. Feeney Roser proceeded to summarize the Planning and Development Department report on the proposed Comprehensive Development Plan amendment, rezoning and major subdivision with site plan approval, which reads as follows:]

**REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT,
REZONING AND MAJOR SUBDIVISION WITH SITE PLAN APPROVAL FOR
1101 AND 1107 BARKSDALE ROAD, TO BE KNOWN AS BARKSDALE GREEN (#15-12-03)**

On December 3, 2015, the Planning and Development Department received an application from Daniel F. Kandra for a Comprehensive Development Plan amendment, rezoning and major subdivision with site plan approval for the 1.378+/- acres at 1101 and 1107 Barksdale Road to be known as Barksdale Green. The applicant is requesting rezoning from RS (one family detached residential) to RR (row or townhouses), and major subdivision approval to build 14 condominium townhomes.

The Planning and Development Department's report on Barksdale Green follows:

Property Description and Related Data

1. Location:

The properties are located on the south side of Barksdale Road directly across from Norma B. Handloff Park, and adjacent to Casho Mill Station to the west and Cherry Hill Manor to the south.

2. Size:

1.378+/- acres

3. Existing Land Use:

Both 1101 and 1107 are residential properties, each containing one single family home and associated driveways. These properties have valid rental permits.

4. Physical Condition of the Site:

The site is relatively flat and deep, extending from Barksdale Road in the front to the service road of Cherry Hill Manor in the rear. Two residential structures (one per parcel) and associated driveways are contained on the properties, as well as wooden out-buildings/sheds in the rear yard of the western most parcel. The remainder of the site is grass with several large trees. Scrubby bushes and medium trees grow along the property line separating the two parcels from each other, and fences separate the site from adjacent properties. Regarding the fencing, the western boundary separating 1107 Barksdale Road from Casho Mill Station is a six foot wooden privacy fence; the remainder is chain link.

Regarding soils, according to the USDA Soil Survey and the applicant's plan, the site consists of Elsinboro-Delanco-Urban Land Complex (ErB), 0 to 8 percent slopes, and Urban Land-Othello Complex (VoB), 0 to 5 percent slopes. According to the Natural Resources Conservation Service, Othello soils can present limitations for some types of construction because of the high water table, but generally these limitations can be abated with construction techniques.

5. Planning and Zoning:

The Barksdale Green site is currently zoned RS. RS is single family detached zoning that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, 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. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.

- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use 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, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

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

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

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

- (1) *Minimum lot area.* 9,200 square feet
- (2) *Lot coverage.* 44%; 20% for building
- (3) *Minimum lot width.* 75 feet
- (4) *Height of buildings.* Max three stories or 35 feet, with exceptions
- (5) *Building setback lines.* 25 feet
- (6) *Rear yards.* 30 feet
- (7) *Side yards.* 10 feet minimum/25 feet aggregate

The applicant is requesting rezoning the 1.38 acres parcel to RR (residential row or townhouses). RR is a residential zone that currently allows the following:

RR is a single family residential row or townhouse that permits the following:

- A. One family row and townhouses, with special requirements.
- B. Garden apartments, with special requirements.
- C. Accessory uses.
- D. Churches or other places of worship, with special requirements.
- E. Public and private schools.
- F. Municipal parks, playgrounds, and community centers operated on a noncommercial basis.
- G. Municipal utilities.
- H. Street rights-of-way.

- I. Public and private swimming pools.
- J. Utility transmission and distribution lines.
- K. Public transportation bus and transit stops.
- L. Nursing homes and related uses with special requirements.
- M. Day care centers with special requirements.
- N. The taking of nontransient boarders or roomers in one family dwellings by a family resident on the premises, with special requirements.
- O. One family detached and semi-detached dwelling.
- P. Student Homes, with special requirements

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

- A. Physicians and dentists offices with special requirements.
- B. Parking for adjacent business or industrial uses.
- C. Police, fire stations, libraries, museums and art galleries.
- D. Golf courses and country clubs with special requirements.
- E. Customary home occupations with special requirements.
- F. Electric and gas substations.
- G. Public transportation, bus or transit shelters and off-street parking facilities.

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

- (1) *Minimum lot area.* One acre, with exceptions
- (2) *Lot coverage.* 40%
- (3) *Minimum lot width.* 16 feet in row or group/41 feet end unit/50 feet other
- (4) *Height of buildings.* Max three stories or 35 feet, with exceptions
- (5) *Building setback lines.* 15 feet, with exceptions
- (6) *Rear yards.* 12 feet, with exceptions
- (7) *Side yards.* 25 feet minimum, with exceptions

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

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

In this case, the applicant is requesting site plan approval for relief from the requirements for maximum lot coverage as follows:

<u>Code Section</u>	<u>Code Requires</u>	<u>Plan Shows</u>	<u>Deviation</u>
32-13(a)(1)c – Lot Coverage	Max 20%	23.5%	+3.5%

It is important to note regarding site plan approval that the singular deviation from Code is required because the applicant is proposing condominium units on a single tax parcel. Should the developer wish to convert the project into fee simple lots in the future, additional consideration of deviations, either by a re-subdivision with site plan approval or a series of

variances, will be necessary. In other words, the site plan approval consideration for this development proposal is for condominiums on a single lot only, and not for a future re-subdivision into residential lots.

Regarding gross site density, the Barksdale Green subdivision proposes 10.14 units per acre. This density conforms, in general, to the average density per acre in the attached townhouse subdivisions in that it is a bit more dense than Casho Mill Station at 6.96 units per acre and approximately the same as Cherry Hill Manor at 10.36 units per acre.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for single family residential (low density) for this location. Single family residential (low density) is defined in the Comprehensive Plan as “Areas designated for dwellings occupied by one family, primarily single family detached with overall densities of one to three dwelling units per acre. Single family detached and semi-detached clustered development, approved by our site plan approval process, may be permitted taking into account other things, natural site features, improved access and circulation patterns, additional open space and recreational areas, and minimizing runoff and sedimentation. Where appropriate, site plan approval cluster development should be actively encouraged.” In this case, cluster development is not being proposed, and the zoning requested permits townhouse style townhouses with a density of 16 units per acre. Therefore, while the residential designation is consistent with the Plan, the increased density requires a Comp Plan amendment from single family residential (low density) to single family residential (medium density), defined as 4-10 units per acre, to accommodate the proposed Barksdale Green ten units per acre. The designation to single family residential (medium density) is appropriate for the Barksdale Green site as it reflects the Comp Plan land designation use of the properties adjacent to the west (Cash Mill Station) and south (Cherry Hill Manor). Please note that proposed Comprehensive Development Plan V also calls for low density residential uses at the site. However, Comp Plan V defines low density residential uses as “residential dwelling units that include single-family detached and semi-detached, row or town homes with densities of 10 or fewer dwelling units per acre.” Therefore, if Comp Plan V were in place, a Comprehensive Development Plan amendment would not be necessary to accommodate the proposed development.

Regarding adjacent and nearby properties to the north across Barksdale Road is Norma B. Handloff Park, which is City-owned and zoned PL. Immediately adjacent to the west are the RR zoned Casho Mill Station townhouses. Likewise, directly adjacent to the south are the RR zoned townhouses of Cherry Hill Manor. Immediately adjacent to the east are RS zoned relatively large single family lots.

Status of Site Design

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

Be that as it may, the Barksdale Green Comp Plan amendment, rezoning and major subdivision with site plan approval plan calls for one access roadway (Marjorie Way) off Barksdale Road leading into a T intersection. The plan proposes fourteen townhouses, five on either side of Marjorie Way and four townhouses in two two-packs along the south side. The developer proposes three-bedroom units for the townhomes and four parking spaces for each unit, two in the garage and two outside the garage. Fifty-six spaces are proposed to serve the development, which exceeds Code required parking by 28 spaces. Please note that the data column indicates that there are 64 spaces proposed on the site, but that is a hangover from a previous plan submittal. The plan will need to be corrected prior to Council consideration.

Fiscal Impact

The Planning and Development Department has evaluated the impact of the Barksdale Green Comp Plan amendment, rezoning and major subdivision plan on Newark’s finances. The estimate is based on the Planning and Development 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 for the project follows:

<u>First Year</u>	<u>Second Year & Thereafter</u>
\$18,102	\$4,262.29

Please note that the difference projected between the first year’s revenues and those beyond for this development is the City transfer tax included in the first year revenues. Please note that the current fiscal impact of the Barksdale Green properties is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved.

Traffic

Because Barksdale Road is a State owned and maintained roadway, the Planning and Development Department requested DelDOT’s review of the Barksdale Green Comp Plan amendment, rezoning and major subdivision plan. The Department indicates that the proposed development does not meet the warrants for a Traffic Impact Study (TIS), which is triggered by 500 trips per day and 50 trips per peak hour. Having said that, however, and after detailing initial, stage and standard plan submission requirements, DelDOT will require the following be incorporated into the plan:

- The 30 foot dedication of right-of-way from the road center line and a 15 foot permanent easement beyond the right-of-way line along Barksdale Road property frontage will be required, and should be provided on the plan.

If the Barksdale Green plan is approved, the developer is encouraged to apply for the required DelDOT entrance permit as soon as possible. Documentation that the developer has applied will be required prior to CIP approval.

Subdivision Advisory Committee

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

Electric

1. The Department's initial concerns with the plan have been address by notes. In this regard, note #20 should be edited to reference that "the price is subject to a yearly CPI increase from the date of Council approval" prior to Council consideration.

Parks and Recreation

1. The Department indicates that the landscape plan as proposed is acceptable. The Department will have additional comments at CIP.

Planning and Development

Land Use

1. The Department acknowledges that plan note #25 limits the unrelated tenant occupancy for rental use of the units. However, to ensure that tenants are aware, particularly if the condo units are converted to "for sale" condominiums and in order to promote owner-occupancy at Barksdale Green, the Department suggests the applicant also voluntarily deed restrict the property to the maximum number of unrelated individuals who may reside in a unit to two (2). This restriction has been successfully employed at similar developments in the City. The Department believes that potential buyers should be informed of the deed restriction prior to purchase. The wording of the deed restriction will have to be approved by the City Solicitor prior to issuance of the first building permit for the development.
2. Likewise, note #30 dealing with the prohibition of fences, sheds and patios in the stormwater easement should be reinforced by deed restriction or other method to ensure future condo owners are aware of the restriction.
3. The Department notes that plan note #9 references the architectural design requirements but should be edited to indicate that the design is required for all façades visible from the public way, not just the front façades.
4. The Department indicates that the required Comp Plan amendment from single family residential (low density) to single family residential (medium density) land use is appropriate for the site, given the densities and land use designations of properties adjacent to the west and south.
5. As noted above, the Department notes that the plan's data column #6 refers to 64 total parking spaces, when only 56 are provided. The note should be corrected before Council review.

Code Enforcement

1. The plans have been reviewed using the 2012 IBC.
2. The architectural plan will need to match the architectural rendering/elevations submitted for the project. Confirmation will be required at the time of architectural review.
3. Pre-demolition and pre-construction meetings will be required.

Police

1. The Police Department does not have concerns with the proposed development.

Public Works and Water Resources

Public Works

1. Plan note #12 references the Public Works Department and the title of the department should be corrected to reference Public Works and Water Resources before Council consideration.
2. A plan note should be added that Marjorie Way is a private street which will be privately maintained.
3. Plan general note #27 indicates that trash pick-up is to be handled via cans placed curbside on the private street. Trash pick-up will, therefore, be private. If, in the future, the City is asked to pick up trash for this development, cans will need to be placed curbside on Barksdale Road and accommodations for their placement there will be necessary. The plan note should be revised to indicate private pick-up, and should the City provide services in the future, the required placement of cans before Council review.
4. A Letter of No Objection (LONO) from DelDOT should be submitted concurrently with the first CIP submission. In addition, as noted in the Traffic section comments above, the developer is strongly encouraged to apply for DelDOT entrance permit approval concurrently with the CIP. Documentation that the application has been submitted will be necessary for CIP approval.
5. The fire and water domestic services are both specified as 2 inches in diameter. A 2 inch domestic service is excessive and should be revised to ¾ inch service.
6. The dog house sanitary manhole is proposed at the entrance of the subdivision in close proximity to the stormwater sewer along Barksdale Road. This may not allow for construction/installation of the proposed manhole, and adjustments during CIP may be necessary.
7. Regarding stormwater, the current plans and stormwater design's intent is to discharge the majority of the site runoff into the existing downstream ditch, which may result in erosion of the banks, if it is not properly addressed during construction. Therefore, the developer will be responsible for the engineering and construction of the appropriate bank protection practices to eliminate erosion and prevent any undermining of the banks. An easement agreement must be executed between the developer and the owners of 1 Saw Mill Court, to permit the grading of the ditch on the adjacent property.
8. Additional topographic information will be required on the overall drainage area plan and DURMM support plans as part of the final sediment and stormwater management design during the CIP.
9. A drainage agreement will be required prior to CIP approval.
10. Pre- and post-development drainage area #5 annotations need to be revised to be consistent with the stormwater report. The Department indicates that, in general, the plan and supporting documents were found to be acceptable at the subdivision plan level. Additional comments will be generated during the CIP phase.

Water Resources

1. STP fees per unit are due at the issuance of the CO for each unit.
2. Existing utilities must be terminated at the main.
3. Individual meters must be supplied for each unit at the developer's expense.

Recommendation

Because with the Comprehensive Development Plan amendment, the rezoning and major subdivision with site plan approval will conform to the land use guidelines of the Comprehensive Development Plan IV, and because without the Comprehensive Development Plan amendment the plan will conform to Comprehensive Development Plan V; because the plan does not conflict with the development pattern in the area; because with the Subdivision Advisory Committee conditions, the Comp Plan amendment, rezoning and major subdivision with site plan approval plan should not have a negative impact on adjacent and nearby properties; and because, with site plan approval, the plan meets all applicable Code requirements; the Planning and Development Department suggests that **the Planning Commission takes the following action:**

- A. Recommend that City Council revise the existing Comprehensive Development Plan IV land use guidelines for this location from “single family residential (low density) to single family residential (medium density)” as shown on the attached Planning and Development Department Exhibit A, dated June 7, 2016; and**
- B. Recommend that City Council approve the rezoning of 1.378+/- acres from the current RS (one-family single family detached) to RR (row or townhouses) zoning as shown on the attached Planning and Development Department Exhibit B, dated June 7, 2016; and,**
- C. Recommend that City Council approve the Barksdale Green major subdivision plan as shown on the Hillcrest Associates, Inc. plan dated November 6, 2015, with revisions through May 6, 2016, with the Subdivision Advisory Committee conditions.**

Ms. Feeney Roser: That concludes the report of the Department. I will be happy to answer any questions that the Commissioners may have for me.

Mr. Silverman: Do the Commissioners have any questions for the Director?

Mr. Firestone: I’ve got one. And this goes to Comp Plan V which you quote as saying has to have densities of 10 or fewer dwelling units per acre. The proposal here is 10.14.

Ms. Feeney Roser: We round.

Mr. Jeremy Firestone: Which is greater than...

Ms. Feeney Roser: We round. It’s not 11 units, it’s closer to 10. It rounds. That’s the way we’ve always handled it.

Mr. Firestone: That to me seems, I mean, it seems to me, I understand that there’s a history but it doesn’t seem to me to be a reasonable interpretation of the language. I mean if I were to present an SAT question that said 10.14, is it greater than, equal to, or less than 10, I would be quite certain that the correct answer would be that it’s greater than. And it just seems to me that if this is above the 10 threshold, it’s not consistent with Comp Plan V.

Mr. Silverman: Since we have no by-laws or procedures, we’re relying on past practice. The past practice has been to round up or down based on whether it’s greater than 5 or less than 5. In this case, the fraction is less than 5 so it’s rounded down to 10 units. We could correct that, or make that a recommendation, for the future.

Mr. Firestone: Then my one follow-up question is, would your recommendation change if the interpretation of that provision were that 10 or fewer meant you couldn’t have greater than 10.0?

Ms. Feeney Roser: Would the Planning and Development Department’s recommendation change? No. Our recommendation for the density would change in the Comp Plan. So that is what this plan fits into in Comp Plan IV and V. If not, I would have picked a denser

development to say they required an amendment to say it would be denser. I mean you're amending the Comp Plan anyway.

Mr. Firestone: Okay, let me re-phrase. If it was 10.51...

Ms. Feeney Roser: We would have said it's 11 units per acre and therefore does not meet the Comp Plan. Yes, we would have done that. But we round.

Mr. Firestone: Okay. Thank you.

Mr. Silverman: Any other questions?

Mr. Will Hurd: I have just one. Maureen, regarding your comment about Note 30...

Ms. Feeney Roser: Pardon me?

Mr. Will Hurd: Regarding your comment about Note 30 on the plan regarding the prohibition of fences, sheds and patios.

Ms. Feeney Roser: Yes?

Mr. Hurd: If I went for a permit for a shed and it was in the stormwater easement, would the City allow me to build there?

Ms. Feeney Roser: We would not. No. We would check the plans, see where it was and tell you that you could not. Right? But we would want you to know that beforehand because there are sometimes mistakes that get made. It's just an extra precaution.

Mr. Hurd: Okay so the deed restriction really is more informational.

Ms. Feeney Roser: To the person buying the...

Mr. Hurd: To the person buying it. Okay. Thank you.

Mr. Robert Stozek: I have a couple of questions. On page 3 there is the definition, so to speak, of RR. Item P says one of the things permitted is Student Homes, with special requirements. What is the definition of a Student Home?

Ms. Feeney Roser: A Student Home is a home that has more than two undergraduate students living in it. So the Code for almost every residential zoning district has restrictions on how close those homes can be together. So if there is a Student Home rental within 10 times the lot width of a particular zoning district, then they would not be allowed to have a Student Home there. That does not mean that two students couldn't rent it. That's what that refers to. I just shortened it instead of putting the whole Code in.

Mr. Stozek: I guess that takes me to the recommendation, the Department's recommendation that the developer deed restrict this property to no more than two...

Ms. Feeney Roser: Unrelated individuals.

Mr. Stozek: Okay. Yet in the cover letter from Hillcrest it states that they plan to build 14 townhouses that will be restricted so that rental use will be limited to units with no more than two unrelated tenants. So which is it? Are they voluntarily saying they will do that deed restriction?

Ms. Feeney Roser: Yes. They voluntarily said it. They say it on the plan. They say it in the report. But we want to make sure that it's actually a deed restriction. That's the only reason that comment is in there.

Mr. Stozek: So should that deed restriction be in the Department's recommendation for approval?

Ms. Feeney Roser: It is, isn't it?

Mr. Silverman: It's the last phrase on Paragraph C of the report.

Ms. Feeney Roser: It says with the Subdivision Advisory Committee conditions. And the first comment under Land Use is that they should deed restrict it in addition to having it on the plan.

Mr. Stozek: I just want to make sure that that was going to be in part of the recommendation.

Ms. Feeney Roser: Yes.

Mr. Stozek: And the third question, I know that this development is planning to have contracted trash pick-up. If in the future this owner or a future owner would decide that they did not want to provide that service anymore and they wanted the City do the trash pick-up, how would they go about doing that? Would they have to approach the City to get approval?

Ms. Feeney Roser: Yes. They would have to petition the City to take it over. They would have to make accommodations along Barksdale Road so that the cans could get out there. Because with the private road, the truck won't go into it.

Mr. Stozek: Thank you. Would there be a cost for that?

Ms. Feeney Roser: No, because they pay taxes just like everybody else. They're not getting it because...

Mr. Edgar Johnson: The approval they're asking for is somewhat conditional on the fact that they're going to have private refuse pick-up.

Ms. Feeney Roser: It is conditional in that we would supply the pick-up if the developer would have made accommodations along Barksdale Road. The developer chose to have private pick-up so that the cans could be right outside the home.

Mr. Hurd: I have one follow-up and this is more of a clarification, Maureen.

Ms. Feeney Roser: Yes?

Mr. Hurd: Your recommendation talks about the Subdivision Advisory Committee conditions but the list of everything that you're talking about is labeled Comments. So when you're reading the report it sounds like these are just comments on the plan and not conditions of the Subdivision Advisory Committee.

Ms. Feeney Roser: I will change that for the next report. That's the way we've always done it but they are conditions.

Mr. Hurd: Okay. It just feels like it doesn't have the same weight.

Ms. Feeney Roser: I got you.

Mr. Hurd: When you read Comments, you just go, "oh these are just comments," not, "this is what you must do."

Ms. Feeney Roser: Well it's actually a combination.

Mr. Hurd: Maybe there's a way to separate them out.

Ms. Feeney Roser: I'll try.

Mr. Hurd: Thank you.

Mr. Bob Cronin: I have a question. Bob Cronin, here. We see the pictures of the elevation. Should I be picturing trash receptacles outside those garage doors seven days a week, or are there provisions for them to be placed elsewhere and not in the view of the...

Ms. Feeney Roser: There's room in the garage for the trash receptacles. So they'll come out the day they're picked up and then they'll be put back.

Mr. Cronin: Thank you.

Mr. Silverman: And I have one point of clarification for the applicant for when the presentation is made. The City Public Works, on page 9, Item #5, commented about reducing a two inch domestic service to a $\frac{3}{4}$ inch domestic service. I'm not quite sure why they would want to downsize a domestic service that would run from the street all the way back to the subdivision and service 10 housing units through a $\frac{3}{4}$ inch line. I think there's some confusion there. So when we're doing this complying with the recommendations, you need to clarify this in the report. I am going to assume that you're going to run the two inch fire main for the sprinkler system. And it's essentially two inches from the curb through the subdivision and then take domestic water off of that two inch line. That needs to be clear to this group when it makes its recommendation and does not tie you to that $\frac{3}{4}$ inch service.

Any other questions? Okay, I would like to offer the floor to the applicant.

Mr. Alan Hill: This is just a copy of the presentation.

Mr. Silverman: If you would identify yourself and who you represent.

Mr. Hill: My name is Alan Hill. I'm representing Hillcrest Associates this evening on behalf of Dan Kandra, the owner of the property who is sitting there, and Tom Schreier, who is one of my associates at Hillcrest. And I just want to answer the water line question before I get into the [presentation]. It's actually a six inch proposed line that runs up through the street and we inadvertently have two two-inch lines from there to each unit, and we require one two-inch for the fire suppression and then the $\frac{3}{4}$ inch main for the service to the house.

Mr. Silverman: Okay, so we're good.

Mr. Hill: I just wanted to get that before I forgot.

Mr. Silverman: Thank you.

Mr. Hill: No problem. I also want to thank everybody for being here this evening. I know it's not nearly as warm in here as I was expecting, to be honest.

Ms. Feeney Roser: We got the air-conditioner fixed about 4:45.

Mr. Hill: Is that what it was?

Ms. Feeney Roser: So it will be cool by the time we leave.

Mr. Hill: Well I'm glad I didn't go home and get my shorts. Alright so let's crack on with this.

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

Mr. Hill: So this is the site plan to give you an idea of where we're actually located. I have a little pointer here. The site's there. We have Barksdale Road coming down here. We have Casho Mill coming through that way. We have the Leroy Hill Park on here, and then the Barksdale Park, or as it's also known as the Norma B. Handloff Park, on the north side there. Also adjacent here is the Casho Mill Station townhomes and then behind there we also have the Cherry Hill Manor townhomes. And so that's the location, general location, of the site.

Let me flip to my next slide. This is the existing conditions plan for the property and you can see on here there's an existing house there and an existing house there. There's also a detached garage in the back here. And even though we show some trees on the property, we met with the Parks and Recreation Department and there are no trees that they feel that are of any substance that require us to work around and save. They weren't particularly fond of any of the trees. There's also, alongside, behind the Casho Mill Station houses, there's a privacy fence that runs all the way down this property line. And then around the other two property lines are chain link fences. So that's the existing one there.

This is one of the houses that's going to be razed. This is the second house. As you can see, there is no architectural features that we really want to be saving down through there so it's not a critical plan for that.

This is the zoning map. We can see that while we are zoned RS, we are surrounded by the RR zoning; both the Casho Mill Station here and the Cherry Hill beneath it. So we are not doing any spot zoning. We're zoning against the properties that we already have there, so there isn't any condition to do that. Now the single family homes that are adjacent to us here, they actually all have rental permits, so I don't believe they're owner-occupied. I wait to be corrected on that, though, so I think that's the case on there.

Let me click through that. This is the site plan, the proposed site plan. It's all condo units. We do have the one deviation from the Code where we're at the 23% for building coverage, as Maureen previously pointed out. It's only a minor, if we were to do individual lots, we'd have a lot more deviations so this felt like it was the best option, to go forward with this. They are condo style. The intention is not to really sell them. They are for Mr. Kandra to rent out like he does some other properties, but they're not intended to be student rentals.

We're just going to go forward from there. That's the same site plan with a little bit of color on there. It makes it look a little bit pretty to see how much green space we have around the units, even with the stormwater running around the property as well.

This is the Comprehensive Plan that the members of the Commission have seen, but the public hasn't necessarily seen. You can see the site is located right down in here. And all of this area around it is all the medium density. Only this small area here, adjacent, is the low density. And if the proposed Comp Plan V is to be adopted then we wouldn't even need the amendment there because of the ten units per acre number.

This is another subdivision along Barksdale Road. This is Sutton Place. This is something that Mr. Kandra developed along with us a few years ago. These are all rental properties as well. They're primarily single-parent families, professors, there are some retired people there, and some post-grad students. So it has a nice mix but it's generally well kept-up and has been quite successful there. Favorable comments back to us on that.

This is the elevation from Barksdale Road. You can see how we use a lot of stone, the usual Rick Longo/Hillcrest materials, making it as pretty as we can. And that's the Barksdale Road side. That's the Marjorie Way side. Each unit is individual in appearance. The garage doors, you can't really tell from this, but they're recessed in to make them a little less obvious. The darker color harmonizes a little bit more with the stone. Generally a good, overall effect.

This is a concept of the interiors, just to give you an idea. And you can see on here, we have the two-car garage and then in the back of the two-car garage we have a large storage area. Plenty of room for bicycles, for the single-parent families that have kids' toys, things like that. Trash cans can go in there. Actually there is a little location here that is storage for trash cans and things like that. So they're pretty good. There shouldn't be any trash cans on the street or anything like that. And then it's just the three-story, a main living floor and a bedroom floor. Nothing too elaborate on there. We are all in favor of, as Maureen said, restricting to two unrelated tenants per unit. We exceed the number of parking spaces that were required for the three-bedroom units. We're working in with the local townhouses on one side for single families. We're keeping it all very much in keeping with the area. We're trying to upgrade it a little bit from what it was.

So I'm sure you have some questions for me that I can answer.

Mr. Silverman: Commissioners?

Mr. Hurd: Will Hurd. In your letter of application, you spoke of one aspect of your site plan approval was seeking a LEED certification level. Can you talk some more about that?

Mr. Hill: Yes. As part of the site plan approval, we actually have to exceed the City's LEED-like requirements and we provided to the City, with the application, a LEED form which shows us exceeding those requirements. On a project like this the layout doesn't lend itself to solar panels. We can't do that with the rooflines and the orientation. But we can do things like low odor paints. We have high efficiency heaters, cooling, all of those things.

Mr. Hurd: So which version of LEED for Homes are you working on now?

Mr. Hill: We're using a combination of the LEED for New Homes, I think it was a 2012 LEED for New Homes, I believe it was. I could look. Plus the City's own LEED-like requirements.

Mr. Hurd: Okay. And when you talk about, you know, sort of hitting the requirement of 49 points, you're also going to be doing the pre-requisites, correct, that are required for certification of the homes?

Mr. Hill: Yes.

Mr. Hurd: I have a concern, of course, about verification. Because it's easy to say you're going to do these things to get the approval. I would like to see or hear you talk about how you're planning to demonstrate...

Mr. Hill: Well, we actually, the Code Enforcement Department actually requires us to provide the LEED information to them when we're going for building permits.

Mr. Hurd: Right but that's for their credits. But for the additional ones?

Mr. Hill: For the additional ones? Well, they're part of the approval that we submit to the Planning Department. We've already submitted those.

Ms. Feeney Roser: I can go get them. I, inadvertently, did not include that checklist. So if the Commission would like to see it, I can go get it.

Mr. Hurd: Well, I'm speaking partly because I've had experience with these projects and I would say it's easy to talk about the credits that you're going to seek, but the documentation and the verification that you have actually achieved those is a different matter. So that's what I'm trying to get to. How are you going to demonstrate this?

Mr. Hill: We have, actually, the Code Enforcement Department has actually required us to provide all the LEED information prior to CO to make sure, as a report. It's very difficult to, I mean, there's no requirements there yet for showing receipts. One of the things that the Building Department does require is the REScheck for the building and that, right now, with the 2012 IECC, exceeds the requirements of the LEED. So that's all part of the building permit application. A lot of the site planning LEED points are based off the site planning, the plantings that are all approved on the applications, the site plan approval. So while you can't track every single LEED point on there, there's a lot of LEED points that the City does track as part of their permit process.

Mr. Firestone: Just following up on that. Can you explain why you feel you can't put solar panels on this property?

Mr. Hill: Well, let me just flip to the, if you look at the rooflines, part of the exceptional architecture is we break up the rooflines with a lot of peaks and gables and things along those lines. So we don't have a lot of good surfaces to put solar panels on. Plus, ideally, you want your solar panels facing in a southerly direction. Only the four units on the left side of this slide actually have rooflines pointing in a southerly direction. So while we could put solar panels on, they'd be a mish-mash of small solar panels and not efficient locations on them. So that's why solar for this particular project isn't going to work in an efficient manner for us. We have other projects where we've said we're going to do solar and the orientation of the building is set for solar and the architecture to put the solar panels on there is, we flatten the rooflines. Usually in the rear of the property we'll flatten the roofline where you can't see it and you can get solar panels up in those locations so that we're keeping the aesthetic of the architecture.

Mr. Firestone: Because there are jurisdictions that are all beginning to require, for all new development, the placement of solar panels. And so it may be problematic with your architectural design but that doesn't mean you couldn't design the project differently and then be able to maximize solar.

Mr. Hill: And part of the solar panels, and I'm not going to disagree with you, we could revise some things and put some solar panels on there, but one of the things that people are using solar panels in the City for is to get the LEED points, and we're managing to do that with other means on this project. The solar is an interesting thing. I don't really want to get into the pros and cons of solar, but I hope, personally, I hope they don't require it as a Code thing because it's not proven to be a money-saving thing yet, based on the cost of the panels and the return. So I don't want to go there because that's soapbox stuff and I don't want to do soapbox tonight.

Mr. Firestone: Either do I. I just, one other point I'd make is that there are some advantages to westerly facing solar panels. While you may not generate the same total amount of electricity, you're getting the electricity at peak times during peak hour costs. And so there are some reasons to put on westerly facing panels as well. Thank you.

Mr. Hurd: I just want to say, Maureen, if you could get the checklist that they submitted?

Ms. Feeney Roser: Sure. Right now?

Mr. Fruehstorfer: I'll get it.

Ms. Feeney Roser: I don't think you're going to find it. Do you have it?

Mr. Fruehstorfer: I have it.

Ms. Feeney Roser: Oh, then you'll have to make copies.

Mr. Silverman: Any other questions? I do have one question. With respect to the chain link fence that appears on the plan that is going to be removed and another fence substituted, what's the style of fence? Is it a solid fence?

Mr. Hill: I believe it is a solid fence. We're actually hiding the fence with a lot of landscaping along those two sides, to be honest.

Mr. Silverman: Understood. But privacy versus security?

Mr. Hill: Yeah.

Mr. Silverman: You will be removing the existing chain link according to the document?

Mr. Hill: Yes.

Mr. Silverman: Okay, and it's probably a solid fence to be replacing it?

Mr. Hill: Yes.

Mr. Silverman: Thank you. Any other questions from the Commissioners? Okay, I would like to open the floor up to the public. I have a request to speak from Dr. Morgan.

Dr. John Morgan: Are there any other members of the public who wish to speak first. I'd like to follow them if I can.

Mr. Silverman: Okay, I have a request from Robyn Harland. Ms. Harland, if you would state your full name and if you represent an organization.

Ms. Harland: My name is Robyn Harland.

Ms. Michelle Vispi: You need to turn on the microphone.

Ms. Harland: Thank you. My name is Robyn Harland and I'm the president of Cherry Hill Manor Maintenance Association. I've been down this road before. Not too long ago, as I recall. I have some questions for the gentleman with regard to how close they are putting these homes to our fence. How close to the property line?

Mr. Silverman: It appears on the drawings that the property line and the fence are one and the same.

Ms. Harland: So that means they're butting right up against us. Right against our alley.

Mr. Silverman: Well the existing fence is in place.

Ms. Harland: The existing fence is in place.

Mr. Silverman: And they're going to be replacing it with a more appropriate fence.

Ms. Harland: Okay. What does that mean? It's a metal fence now. It is going to be a wooden fence? Are they going to maintain it? Are they coming up to our property line?

Mr. Silverman: A question from the Chair. Who currently owns that fence?

Mr. Hill: The fence is currently on the applicant's property. So I would just like to answer the first question about how far the houses are from the Cherry Hill houses. They're over 40 feet.

Ms. Harland: Okay. I'm concerned about water run-off. We have experienced a lot of flooding because we sit right, my home sits right next to the railroad, with an alley in between. When

there is a huge rainstorm, that alley will flood. So I have concerns about us taking up space. Would you like me to show you, Mr. Silverman, where I'm talking about?

Mr. Silverman: If you could, on the exhibit on the screen.

Ms. Harland: It's on the other side.

Dr. Morgan: You need to speak into the microphone.

Ms. Harland: It's on the other side of the bottom where our places are. It's by the railroad. It's by the railroad. But it has flooded many times.

Mr. Silverman: So this flooding does not come off the subject property?

Ms. Harland: No, it does not. No, it does not.

Mr. Silverman: Okay.

Ms. Harland: But it goes to the subject property if it gets really bad. Because by the railroad is a trench and there's a drain right behind my house. I'm constantly calling the City to clean out that drain from upstream. I'm downstream.

Mr. Silverman: So the water that's affecting your property is from the lands of others and not from this particular site?

Ms. Harland: Not from this particular site.

Mr. Silverman: Okay. Thank you.

Ms. Harland. I do have issues with how close they're going to be to us. I do have issues about how close their houses are going to be to Cherry Hill Manor's fence line.

Mr. Silverman: As the applicant has said, they are approximately 40 feet away from the property line.

Ms. Harland: To be honest with you, I don't think that's far enough. There's too much going on in the complex. I have 100 units in there and I fought for this before. We don't need condominiums on those two lots. Those two lots are too small. And I know how it's going to go when all is said and done. They're going to be right up against that fence.

Mr. Silverman: So you're claiming that when this property is eventually developed, there will be housing up against that fence?

Ms. Harland: Yes, sir.

Mr. Silverman: Thank you. Jim Galanas?

Mr. Jim Galanas: Jim Galanas. I live on 13 Saw Mill Court. So if you bring up the drawing it's on the, I'm sorry, it is here. My primary concern is that we get flooding here every time it rains and during these last few downpours, the volume of rain is just so significant that there's a stream that forms here.

Mr. Silverman: So this water is coming off the applicant's property and running onto yours?

Mr. Galanas: It's coming off, yeah, it's coming off all the properties that are here. Probably because we're downhill from everyone else as well, right? So all the water is rushing this way. And then even though there is a ditch here that's supposed to absorb some of the water and shunt it over, we still get a lot of run-off that comes over here. Unfortunately, all of these

homes also have basements and my sump pump keeps on running forever. So the water table is quite high. I'm not sure why these have basements. I didn't realize I would have such a water issue. Luckily no flooding in the basement yet, but the sump pump continuously runs. In fact, you know, it will run a couple of days afterwards because the water table just rises above that. So my fear is that there is less ground to absorb the water because of new construction which would just raise the water table even more.

Ms. Harland: I'd like to add to that.

Mr. Silverman: It's not your turn. Go ahead, sir.

Mr. Galanas: And then the density concerns me because of blockage of light over here. It seems like I'll be back up against this one here. I think, what is it, 25, I can't read, the font is kind of small here. Is it 20 feet, I guess, between house to house?

Ms. Feeney Roser: It's 37 feet from the side of that property to the property line.

Mr. Galanas: Okay, to the property line. I thought it was less.

Mr. Silverman: And that's a little more than the height of a telephone pole.

Mr. Galanas: Okay. So not knowing this and seeing that it's a three-story property, I would assume there would be enough light cut off in blockage. I mean right now it's nice because it's just trees. No one wants to see that go away. So that's my concern. Additionally, the additional traffic that's going to come out of there as well, but I'm not sure what you recommended in your report. You said that the Department of Transportation won't do a survey because the density is low. Is that the rationale?

Mr. Hill: That's correct.

Mr. Galanas: Okay. I don't know what the rules are but I assume that just would increase it.

Mr. Hill: It's less than what would be required for a traffic study.

Mr. Galanas: Okay. But those are the concerns. So if you could explain how you plan to mitigate all that water run-off because it was explained to me once before when I called the City and I believe that it won't be sufficient only because you're trying to shunt everything down here, from what I understand.

Mr. Hill: That is correct. We actually take everything, all the stormwater is moving from the back to the front. Right now I can show you it on, as you can see, I don't want to get technical but you see these lines that you can see here are contour lines. All the water is running across here into this area here.

Mr. Galanas: Yes.

Mr. Hill: So when we do our subdivision, as you say, we're actually taking the water, we have a break point at this point here where this water goes around all the way from here, and from this point it goes all the way around here. We're actually, I'm going to show you, putting a swale alongside behind the fence for you guys, behind this property here that will actually take all the water that's going across this way now and take it this way, to this existing [inaudible]. We do actually have to comply with the latest stormwater management regulations from the State of Delaware to make sure that the water that's leaving the site is not more and not leaving faster than what it was before this was there.

Mr. Galanas: Does that requirement take into account the uptick in water volume we've been seeing because I don't believe it probably does.

Mr. Hill: Yes, it does. It's designed for the 100 year storm.

Mr. Galanas: Okay, so what is the 100 year storm?

Mr. Hill: The 100 year storm, I want to say, it's 9 inches, I believe.

Mr. Galanas: Okay. So I'm not sure, what was the amount of rain that we got last year during that one period of time. I think it was over 12.

Mr. Hill: I don't think we've had any 100 year storms in the last year.

Mr. Galanas: But didn't we have a huge amount of rain volume, just last year? I don't know what the number was, but it was significant, at least from my perspective. Because I had a...

Mr. Hill: Yes. And I can appreciate it. I've been out there doing the soil testing to see what we can do with the ground. The ground surface has no ability to absorb any water and a high water table as well. The houses that you've mentioned, the basements in the houses, they wouldn't be permitted today.

Mr. Galanas: No, I wouldn't, if I had known what I know today, I wouldn't even buy it, obviously. But I was also told you're putting in a, sort of a pipe to be able to connect the water in like a French drain type of approach.

Mr. Hill: There is no French drain in there. We just have a swale.

Mr. Galanas: Just a swale.

Mr. Hill: We do have another drain in the swale to help that low, what you get with the swales and [inaudible], you get some standing water. The grading is the natural grading of the land. What we plan to do is put another drain in there to take any last [inaudible] away so it's not sitting on the surface, to aid with the maintenance of the grass and things like that.

Mr. Galanas: And what size is that under-drain? That pipe?

Mr. Hill: I think it's a, I'll have to check on that one, I'm going to say it's a 12x12 stone trench with a pipe in it.

Mr. Galanas: Okay, but the size of the pipe?

Mr. Hill: It will be a 6 inch pipe. It's only really designed to take the last dregs of the water run-off.

Mr. Galanas: So how do we, my question is, what happens after it gets built and something does happen and there are flooding issues. How do we resolve that? It's built at that point. You're not going to dig it all up and re-do it. At that point, you're probably going to move on since you sold the property.

Mr. Hill: Well this particular developer doesn't sell his properties. He is also a landlord. He is building this to be able to rent. It's a very difficult question to answer, to be honest, because generally we design for the Code. To exceed the Code. The State wouldn't approve it if it weren't in compliance with all their regulations and their Codes. Their stormwater Codes are very, they come from the State and are very complex, and it's not likely that the design, if put in correctly, will have the problems that you potentially anticipate. What we can do is, if you have a low spot on your side of the fence, it's still going to be a low spot...

Mr. Galanas: No, agreed, but if the pitch, the grades, for whatever reason, the swale goes away, does it actually?

Mr. Hill: No, the swale is actually required to be maintained by part of the State regulations. They have to do inspections on the stormwater management features and submit a checklist to the City.

Mr. Galanas: So every year the City goes and inspects these swales on all the properties? I don't believe so. Do they?

Mr. Hill: I believe they do.

Mr. Galanas: They do? Okay. And they do because it's a condominium?

Mr. Hill: No, because the State requires it as part of their regulations for stormwater management.

Mr. Galanas: Okay.

Mr. Hill: And each jurisdiction does it a little bit differently. I'm not exactly sure how the City manages theirs, but I know they do inspect. In talking with some inspectors, I know they do inspect them.

Mr. Galanas: Okay, and if I have an issue in the future because of stormwater, what do I do? Do I come to the City and say, hey, there's run-off. Please take a look at it?

Ms. Feeney Roser: Yes.

Mr. Galanas: And then who resolves it? Do I need to actually go to court or does the City do something in the sense of...

Ms. Feeney Roser: The City comes out and investigates the complaint and we'll take it from there.

Mr. Galanas: Okay. Well those are my questions. Thank you.

Mr. Silverman: Dr. Morgan, did you want to go next?

Dr. Morgan: I'd like to let the immediate neighbors go first.

Mr. Silverman: Okay.

Ms. Rebecca Lamison Evans: My name is Rebecca Lamison Evans. I live at 82 Ethan Allen. Well that's my property. I'm a landlord. It is right there on the edge of the back. My question is, you have a three-story structure there. Everything else in that area is two-stories. I'm not sure about, I can't visualize the proximity of the back of those properties to our townhouses, but...

Mr. Silverman: A telephone pole is about 30 feet. That's 47 feet. So that's about one-and-a-half telephone pole heights, if you could lay the telephone pole on the ground.

Ms. Evans: Well, the property on the corner of Barksdale and Casho Mill is two-story. The ones that have the basement. And we're two-story. Blair is two-story. Sutton Place is up the street and it doesn't have any housing backing up to it and it's three-story. It's the one they were showing. The deck in the back is coming out at the second story level and the privacy issues, to me, is just, I can't see. If it was two-story and you had decking on the ground level like we back up to now, you know, there's nothing, it's open. That's my concern. That it should be no higher than the surrounding developments.

Mr. Silverman: Have you had the opportunity to look at the drawings on the back wall?

Ms. Evans: I've looked at Sutton Place.

Mr. Silverman: The drawings on the back wall. You'll find that they have a landscape plan and they're doing some rather intensive and expansive planting along that fencing. So I know it's immature right now but there will be substantial plant material on their side of the fence, the applicant's side of the fence, which will eventually grow and create a visual screening.

Ms. Evans: It's just the height of the structures. It just, to me, it's just the, and the density in there.

Mr. Silverman: The number of units per acre?

Ms. Evans: Right, right. Just the whole, and I'm not sure, I can't visualize the 40 feet from, I'm not sure what Patrick Henry, you know, our own properties. We have an alleyway in between and we have back yards on either side, and then the houses, but I'm not sure...

Ms. Harland: So from the back door of your house to the back door of the house across the alley is 40 feet.

Ms. Evans: It is in our development?

Ms. Harland: Yes, in our development.

Ms. Evans: Okay.

Ms. Harland: So from your back door, your sliding back door, across the alley to the sliding back door on the other side is 40 feet.

Ms. Evans: Is 40 feet? Okay. And that's what you're talking about here.

Ms. Feeney Roser: We're talking about 40 feet from their property line to the back of the homes that they're proposing to build. So there's 40 feet. And then whatever is between that fence and your back property adds to that. So I don't know how far away you are. I don't know how wide your service road is but it's got to be at least 10-12 feet.

Ms. Harland: It's a standard service road.

Ms. Feeney Roser: Sixteen feet.

Ms. Harland: Yeah, it's standard.

Ms. Feeney Roser: And then I don't know how long your back yard is. That would be added to the 40 feet that's in between the property line and the back of these.

Ms. Evans: So it's 40 feet from the alley?

Ms. Feeney Roser: It's 40 feet on their property. From the back of their house to the property line where there's a fence.

Ms. Harland: It would be to our fence.

Ms. Feeney Roser: It's 40 feet.

Ms. Evans: Okay. Okay.

Ms. Harland: Forty feet from that.

Ms. Evans: Yeah. Okay. Oh, okay.

Ms. Feeney Roser: And on the other side of the fence is your service road. And then the back of your property.

Ms. Evans: Well, that and the density issue. That's my...

Mr. Silverman: Thank you. There's a gentleman in the back who wishes to speak.

Mr. Carroll Amoroso: Hi, I'm Carroll Amoroso. I reside at 90 Ethan Allen Court, Cherry Hill Manor, which is right behind this proposed project.

Mr. Silverman: Your property backs up to this project.

Mr. Amoroso: Yeah, I've been there since the early 80s so I've seen the neighborhood come and go, and now it seems to be coming back. It seems to me I look out the back of my house and now I have some openness, some trees. I can look over and see the park. When I first moved in, I don't know whether this is correct or not, but I assumed there was 10 feet on the other side of the service alley that was part of our property. This chain link fence went up many years ago. I don't know how long. Ten or 15 years ago. It seems to me that was really pushing, you know, right over. You know, when I try to build, everything has to be so many feet off the property line. So it looks to me like they put that chain link fence right on the line. Okay, whatever. My concern is now you're going to build a solid wall pretty much shutting our neighborhood off. You know, when I do look out I'm going to see a solid wall and then jewelry box rooftops. What happened to my park? What happened to my green? What happened to my open space, my feeling of openness? And I just think it's going to make our neighborhood that much worse. That's all I've got to say.

Mr. Silverman: Thank you. Now Ms. Harland.

Ms. Harland: All of these properties right here are Cherry Hill Manor. They all butt up against that alley, which butts up against that property. And what we are going to see, just like Amoroso said, we're going to have to look at that. We also have terrible flooding. You know, they talk a good game when it comes down to getting us to approve this but...

Mr. Silverman: We already have the issue of the visual impact on the record. We have the issue of density on the record.

Ms. Harland: What about flooding?

Mr. Silverman: The gentleman has questioned how the water run-off from that property is going to be handled. It's on the record. Do you have anything else to add?

Ms. Harland: Yes. Every single one of those homes has a basement with a sump pump that butts up against that property. That's all I have to say.

Mr. Silverman: Based on my experience building in this area, you'll find that it's a geological discharge area. Even the high water table in places comes to the surface. That's just inherent near that whole entire area along Barksdale Road. I was involved with a property over toward Thorn Lane, on the other side of the railroad tracks, and when we put in foundations we had put in sump pumps due to the high water table.

Ms. Harland: Those people over there on Ethan Allen that goes around the entire complex have sump pumps in their basement because there is constant water run-off. When it rains, their sump pumps are on.

Mr. Silverman: The water is coming out of the ground, it's not from the other property.

Ms. Harland: Okay.

Mr. Silverman: Are there any other questions from the public? Now, Dr. Morgan?

Dr. Morgan: Thank you. John Morgan, District 1. I live about a seven minute walk away on Kenilworth Avenue in the Cherry Hill development and until I broke my ankle a year ago, I would typically walk along this Barksdale Road area several times a week. And so I'm familiar with the area. I would begin by saying that obviously this property is now occupied by two rather run-down houses and building something like this development there would certainly improve the appearances. I am concerned about a couple of issues and, having heard what the immediate neighbors said about their water problems, I would like to just ask some questions. One would concern replacing what I believe is a chain link fence here with a solid fence. Is that some sort of solid barrier? Is that correct?

Ms. Harland: It's a chain link fence. You are correct, sir.

Dr. Morgan: Okay, right.

Mr. Silverman: Ma'am, you do not have the floor. Please do not respond. That question was not directed to you.

Dr. Morgan: And then the question that I would have is, if you put any kind of solid barrier here, is that going to interfere with the flow of water out of this area onto this property?

Mr. Hill: No, it won't. It will be a solid privacy fence but they don't go down to the ground. They're not in contact with the ground.

Dr. Morgan: Okay. Thank you. And I guess I would have some questions about reducing, I mean, obviously if you build this development, there will be a lot more impervious cover than there currently is. Right? Just inevitably.

Mr. Hill: That's correct, yes.

Dr. Morgan: Okay. And I'm wondering if you could at least mitigate some of those effects by having something other than asphalt on your driveway here. And I'm going to ask the following question because several years ago I was staying in the northern part of the City of Oxford in England, where almost all the houses don't have asphalt driveways. They have gravel driveways which, of course, allows the water to permeate. And I'm just wondering if it would be of any help to have, if not gravel, which could cause problems, of maybe having pavers. Something like that. Would that be of any use at all? Or are there other reasons why that's not a good idea?

Mr. Hill: Well, really, there's a maintenance issue to begin with with gravel driveways. And one of the things that you find, and I have a little experience with this in England, you don't generally, or you haven't until the last couple of years, had the same sort of snowfalls that we have. They don't have snow plows over there.

Dr. Morgan: Okay.

Mr. Hill: So gravel driveways and snow plows don't tend to work that well together.

Dr. Morgan: Okay.

Mr. Hill: They are certainly a very pretty way of doing a driveway, to be honest with you. But it just doesn't work for this region.

Dr. Morgan: What about something like pavers?

Mr. Hills: The pavers, because of the way the pavers are put in, we don't get any credit as far as porous and transferring into the ground. And to be honest, with the type soils that we have on this property, there is no infiltration there anyway. Right now the soil doesn't absorb any of the water that's hitting it. All of it is running off. One of the things that we do, and I failed to include this in my explanation on the stormwater earlier, we're actually having to amend the soils slightly, which will actually help with some of the absorption at the surface level. It won't help once you get past where we've amended, but it will help at that level. But pavers won't help us because of the base that we have to put in is solid and the ground under that is solid too.

Mr. Silverman: You're using a technical term on us. You're amending the soil.

Mr. Hill: I'm sorry. We're amending the soil. We're using fertilizers. It's a way of promoting grass growth, root growth and a little bit of water infiltration past that surface level. It's just adding, basically tilling it with some peat moss and that sort of thing.

Mr. Silverman: So you're saying the soil is extremely heavy and relatively impervious.

Mr. Hill: They are very impervious, yes.

Dr. Morgan: Okay. Good. Thank you. And I'd like to just make some general remarks about the kind of people who would be occupying these. Nine years ago when I was walking along Barksdale Road past the Sutton Place development as it was being built, and soon after it was built, there was a sign out front about luxury townhomes for sale just under \$400,000. And then a year later it was just under \$300,000. And now I understand that they're all rentals.

Mr. Hill: That's correct. They're all rentals now and still owned by the original developer/builder. And even though they were originally marketed at the \$400,000, it was at a time when the market was going through a downturn. But they have been, actually, valued at about \$350,000 each, those townhomes, now.

Dr. Morgan: Okay, good. And it just goes to show, it wasn't a sign of bad faith or anything. It's just that sometimes market conditions change, right?

Mr. Hill: That's right.

Dr. Morgan: Okay. Good. And I think it's important to be realistic about who will actually be living here because things could get worse as well as better in the next few years, right? And I would just like to make a general observation that was pointed out a long time ago by people like Jerry Clifton and Hal Godwin, who said that students are not the worst possible tenants. University of Delaware students like to party but they're generally well-behaved, right? This could be an attractive area for students to live in because it's not that far from campus. It's an easy bike ride. It's maybe a 10 minute walk from the bus stop at the back of Towne Court, right?

Mr. Hill: Yes.

Dr. Morgan: And I think that it's important, though, as we plan for this area that we be realistic about who is likely to be living here. And I would just ask questions about is it really, you have three-bedroom units, right? You're planning to rent to, at most, two unrelated individuals, which probably is going to mean husband and wife, maybe with kids, right?

Mr. Hill: That's correct.

Dr. Morgan: But is it realistic to think that you're going to be able to rent now, as opposed to sell to such people living in a fairly high density arrangement? Sort of a question I'm asking.

Mr. Hill: It's a little hypothetical, for one. Based on the reasonable success of Sutton Place not renting to university students, as you know, also, we get a lot of student rental properties as well and it's a slightly different market. It's a different level of building to what the students would normally have. It's geared more towards maybe a retiree, the post-grad students, a young couple, that sort of thing. It's not your average student rental on these. But the models that we have say that they will rent for about the same as what Sutton Place rents for and there seems to be a demand for the Sutton Place type rentals. So we believe, and the developer believes, that this is a sustainable product.

Dr. Morgan: Okay. Thank you. I'd like to, finally, make a comment about the screening with vegetation growing along the property line. If the trees aren't there now, you probably will have to wait 40 years for them to be 40 feet tall. Thank you.

Mr. Silverman: Based on the public comments, do the Commissioners have any additional questions for the applicant?

Mr. Hurd: I have two questions. One, can you clarify, what is the building height?

Mr. Hill: It's 35 feet, per the Code.

Mr. Hurd: Okay. And given, sort of, what we're hearing about the flooding and the stormwater and such, was there any, or would you consider, on-site stormwater retention as a way to deal with this? It does seem that what you're doing, I mean I understand State Code, and you can correct me on this, requires you to not discharge more water than you currently are discharging now. Correct?

Mr. Hill: That's correct, and we did actually investigate doing some stormwater retention. There is a slight issue with doing the retention style of stormwater management on the property and that has to do with the current flooding that you get at the bridge on Casho Mill Road. If we were to retain the storms, it would release at the same time as all the other storms are being released in the area and then increase the flooding that is going on there. So part of the stormwater design here is to manage it per what the Code requires, but also pass it through that restriction area there before the other storms release, thus not adding to the flooding issue that is currently there. Which would happen with the retention style.

Mr. Hurd: Do you have, in your mind, sort of a rough percentage of what your reduction is for water run-off?

Mr. Hill: I don't have it off, I don't have the number but it's going to be 1% or 2%. If it was...

Mr. Hurd: So not noticeably better than now?

Mr. Hill: No, no.

Mr. Stozek: I guess I have a couple of comments, in general. I'm troubled by the stormwater issues, especially since you just said the conditions are not going to improve. I'm worried that all the water is going to be shuttled out onto Barksdale Road and I'm not really sure how that works for Barksdale Road. I'm not really sure how that's going to be handled. But beyond that, this whole area of town is predominantly one- or two-story buildings, houses, apartments, condos or whatever. Now we're going to three-story, and my concern is, in general, we're seeing a proliferation of this style of unit here and in town. And I understand why the developer wants to do it. But my concern is, especially when you look at these things, there's, what, 10 or 12 steps to get up to the door. If we continue to have this kind of rental units going on, I'm concerned about people with disabilities. I don't see how they could live in these units. I'm not sure what the City Codes require or what the City plans are to make sure that people with disabilities have housing available to them. So those are, that's really one of my concerns. The fact that we're going higher now. This is just getting started. I imagine the rest of

Barksdale Road will end up being three-story buildings. We already have Sutton Place and this one. But I just really have a concern how, long-term, where will the people with disabilities go to live in this town.

Mr. Silverman: Any other comments? Before we take a vote, I will make my comments. I see this plan as an opportunity to correct existing drainage problems. As it stands right now, with this property as originally developed, it appears it drains on the neighboring properties, contributing to surface water problems. I don't think we can do anything about the sub-surface or high water table problems. The applicant is going to provide a different type of fencing. Fencing already exists around the three sides of the property with the exception of the Barksdale Road side. In addition there is a rather impressive and intensive landscape screening provided. I notice there is a Kentucky Coffee tree called for. That tells me that the City's Parks and Recreation arborists has been deeply involved in this, as that seems to be one of his favorite trees. As was pointed out, with Comp Plan IV, as adopted, this would conform to the pending Comp Plan, so I see no problem with the Comp Plan amendment. I concur with the pursuit and recommendation of the Planning Department in permitting the site plan approval allowance on this property. The kind of thing that does provide for the benefit of the audience, it's because the developer, if you look at the exterior surfaces in a different way, including the ends of the buildings which front on Barksdale Road. In other kinds of developments that could be just plain siding. And I concur with the findings and recommendations of the Planning Department report dated May 20th, with some of the corrections and assurances that we have discussed here in this meeting, such as clarification of the water line that I brought up earlier. So are we ready to take a vote on this proposal?

Mr. Firestone: I'd like to explain my vote before we do. I would like to support this project but I do not believe that this plan is consistent with the Comprehensive Plan, irrespective of the longstanding interpretation by the good folks in the Planning Department. When language is ambiguous, administrators have the right to interpret language and courts will give them deference, including deference that goes towards longstanding interpretations. When language, however, is clear on its face, that's the end of it, and there is no room for administrative interpretation. Under Comp Plan IV, under single family residential medium density, it's defined as 4-10 units per acre, not 4-11 units per acre. This falls in 10-11. I don't know how else you interpret 10.14 as other than falling in 10-11. So I do not believe it's consistent with the Comprehensive Plan despite the long-term practice of the Planning Department, nor do I concur with the interpretation regarding Comp Plan V either. Thank you.

Mr. Silverman: Any other comments? Let's move directly to the question.

Ms. Feeney Roser: Is there a motion?

Mr. Silverman: That's where we're headed.

Ms. Feeney Roser: Okay.

Mr. Silverman: Do we have a motion with respect to the recommendation made by the Planning Department? For the record do we want to read that back to them? It's in three parts. Three paragraphs.

Mr. Hurd: Mr. Chairman?

Mr. Silverman: Yes?

Mr. Hurd: May I ask whether we need three separate motions because these are sequential things? The Comp Plan amendment has to happen before...

Ms. Feeney Roser: Yes, the Comp Plan amendment does. Yes. And then you need to rezone before you can approve the subdivision.

Mr. Silverman: Okay. So do I hear a motion for Paragraph A with respect to the Comp Plan amendment?

Mr. Hurd: I'll move that we recommend that City Council revise the existing Comprehensive Development Plan IV land use guidelines for this location from "single family residential low density" to "single family residential medium density" [as shown on the attached Planning and Development Department Exhibit A dated June 7, 2016].

Mr. Silverman: Is there a second?

Mr. Cronin: Second.

Mr. Silverman: It has been moved and seconded. Is there any discussion? Hearing none, we'll move directly to the question. All those in favor of Paragraph A with respect to amending the Comprehensive Plan, signify by saying Aye. All those opposed, signify by saying Nay.

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

- A. THAT CITY COUNCIL REVISE THE EXISTING COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINES FOR THIS LOCATION FROM "SINGLE FAMILY RESIDENTIAL (LOW DENSITY) TO SINGLE FAMILY RESIDENTIAL (MEDIUM DENSITY)" AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JUNE 7, 2016.**

VOTE: 3-3

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

MOTION FAILED

Ms. Feeney Roser: May I see a show of hands please. One, two, three Nays.

Mr. Firestone: The motion didn't pass. It's 3-3.

Ms. Feeney Roser: It's 3-3.

Mr. Silverman: Using the style of Robert's Rules, since the motion is tied 3-3, the motion to amend the Comprehensive Plan fails. No Comprehensive Plan change, no movement of the rest of this ordinance through the process. I'd like to thank the applicant.

This is a rare occurrence and what we're doing is conferring amongst ourselves. The Chair has no advice as to how the applicant should continue.

Ms. Feeney Roser: Tom, do you have something to share?

Mr. Tom Fruehstorfer: I believe Code says that we round numbers. I don't know exactly where and about what, but does that make a difference if Code specifies that we round? Then it's clearly something worth looking into?

Mr. Silverman: That's a point. I'm going to poll the Commissioners who voted against the proposal. Was your vote based on the issue of rounding the numbers with respect to density or other factors? Please identify yourself when you respond.

Mr. Firestone: Commissioner Jeremy Firestone. I didn't have to get to consideration of the other items because, under my view, unless the Code says as was just explained, it failed as a matter of law.

Ms. Feeney Roser: Tom, would you do me a favor and go find it?

Mr. Fruehstorfer: No pressure on time, right?

Mr. Silverman: And may I hear from another Commissioner who voted against it?

Mr. Johnson: Well that was part of it but...

Mr. Silverman: So you also concur that you were strictly interpreting the density at no more than 10?

Mr. Johnson: Yes, and part of my reluctance is we seem to keep changing the Comp Plan and what the Comp Plan means. And I think we should just take a hard line here. The other thing, the other reason, is I'm worried about the drainage. I'm worried about the water run-off and I wasn't satisfied with what I heard.

Mr. Silverman: And Mr. Stozek?

Mr. Stozek: Essentially the same as Edgar said. I'm for specificity not generalities and rounding [inaudible].

Ms. Feeney Roser: I agree with Tom. I think it's in the Code and I didn't say that. So I want to wait until we can say whether it's in the Code or not. I'll be happy to recess and go find it myself if I need to.

Mr. Johnson: Okay, let's say you find it.

Ms. Feeney Roser: It may not change your vote.

Mr. Johnson: It won't change my vote.

Ms. Feeney Roser: No, but I think that, because your vote is beyond that. I mean if the Code says that's what you do, then you really can't very well vote against something because you don't agree with rounding. Right? I mean if Code tells you that's the way to do it then whether or not you agree with it, we'd need to change the Code. Right?

Mr. Silverman: Okay, what I'd like to do is this body will stand in recess for 10 minutes.

[Secretary's note: Mr. Silverman called the meeting to recess at 8:35 p.m. and reconvened the meeting at 8:49 p.m.]

Mr. Silverman: Okay, we are back in order.

Mr. Mike Fortner: Mike Fortner, Development Manager. Mr. Chairman, in the time we had we were only able to find this in principle in how we evaluate parking but in 32-47, there is a Section F called Fractional Space. When application of a unit of measurement for a parking space or loading space of a particular use of structure results in a fractional space, any fraction under one-half shall be disregarded and fractions of one-half or over shall be counted as one space or loading space. We haven't found it applied to dwellings.

Ms. Feeney Roser: No but we believe that's what Tom is referring to. He remembers seeing in the Code that you would round up or down based on regular math.

Mr. Silverman: Okay so what he found generally with respect to other than this parking provision, the Code is silent on whether the rounding is up or down?

Mr. Fortner: Well we just found that principle in here. We haven't found it as it applies to a dwelling unit. We haven't seen that. It could be somewhere and we just haven't found it.

Mr. Hurd: I have a question for the Chair or for the Department. Since the densities that we're talking about are part of the Comprehensive Plan, does the Comprehensive Plan address the calculation of densities? Or is that contained only in the Zoning Code?

Mr. Fortner: I'm not aware of any provision like that.

Ms. Feeney Roser: The Comprehensive Plan doesn't define how you round.

Mr. Johnson: Excuse me. Is it possible that what we have here is a Code that says 10 and a practice that does rounding? Therefore the practice is not codified.

Mr. Hurd: Yes, that's exactly what we have.

Mr. Silverman: That's what it appears to be.

Mr. Firestone: And just the fact that you found a rounding procedure dealing with another issue but its silent here is further support for the fact that you don't round the way the Planning Department has been rounding.

Ms. Feeney Roser: I don't agree with you there. I don't think it shows any more support for the idea that rounding is wrong. I just think the Code is silent on it. I don't agree with you.

Mr. Firestone: Well you may not, but that's the way courts interpret when you try to do a harmonious interpretation of a Code [inaudible], that's the way courts will look at these issues.

Mr. Silverman: If this needs to be adjudicated, this isn't the proper body for it. We would have to appeal it as a Commission to our own Board of Adjustment for interpretation. However, that, I believe, is a side issue. And I'm doing this by recollection and we do not have legal counsel present from the City. I believe that the applicant cannot move forward unless there is a recommendation from this Commission. That's my belief in reading the Code and I do not have the Code before me. In fairness to the applicant, and to shake out the rest of our questions so if it becomes an issue further downstream, I would like to get a consensus from our group if we can move on to the other paragraphs, other items, on zoning and land development and vote them up or down. That way we can make a recommendation for it to the City Council which clearly would indicate that we do not recommend the project. Our questions are clearly on record and on the transcript. That way the applicant can move on to City Council and the issues we've raised can be further discussed.

Mr. Firestone: I would not support that. I can support what we've done going to the City Council and City Council doing with it as it desires. Which may include referring the matter back to this body to make recommendations related to those things. But I think as a legal matter that this thing is done, at this point, as far as this Commission is concerned. And if we did move forward on the other two, because of my views regarding Item 1, I would vote No on Items 2 and 3.

Mr. Johnson: Mr. Chairman, with all due respect, I think the applicant has a right to take this to City Council whether we vote on B and C, or not. We've made our vote. It will be so recorded in the minutes and so passed on to City Council. We're advisory. City Council can take it from there. I fail to see the logic behind a 3-3 vote which can't go to City Council and a 2-4 vote which could. It just doesn't make sense to me.

Mr. Silverman: The applicant did not make application for a Comp Plan amendment. The applicant made application for a Comp Plan amendment, a rezoning and a land development plan as a package. If one piece of that package fails, the entire package fails. That's my reasoning. If the applicant came to us for a Comp Plan amendment and we said no, it failed because of a 3-3, I don't know what would happen. I don't know whether City Council considers just amendments to Comp Plan without the zoning to associate with it, which I believe State law requires. You can't amend the Comp Plan without zoning associated with it.

Ms. Feeney Roser: Well the zoning has to match it within 18 months of adoption of the Comp Plan or the Comp Plan amendment.

Mr. Silverman: That's my dilemma. In deference to the applicant and to allow us to work out future problems, again, I suggest that this body vote on Paragraph B and Paragraph C. If it's going to be 3-3, which I suspect it will be based on the discussion, then we can submit a negative recommendation to Council and it can work itself out from there. Do I hear any discussion?

Mr. Cronin: Mr. Chairman, if you have a 3-3 vote, in my judgment it's neither negative nor positive. It's just a tie.

Mr. Silverman: And since we have no rules, I'm invoking Robert's Rules. And Robert's Rules say when there is a tie, the negative [inaudible].

Mr. Cronin: Well I understand what you're saying but it just seems to me it's more appropriate just to send to the Council a 3-3 tie and let them, in their wisdom, do with it as they choose.

Mr. Silverman: Okay, then I will stand on my principle. If the group would like to appeal the decision of the Chair, we can move in that direction. Now the applicant always has the option of, at this point, withdrawing the application pending resolution of this issue. And then what we have is [inaudible] and we can move forward. Or the applicant can [inaudible] with some of my colleagues and we can simply move forward the amendment to the Comprehensive Plan request as a single item to Council. Dr. Morgan?

Dr. Morgan: As a point of information, which you should be able to verify pretty quickly, within the last couple of weeks I was reading the minutes of the meeting of the Planning Commission in March 2010 at which the Barnes & Noble Bookstore was being considered. And I believe that that vote was a 3-3 tie and that soon thereafter it went to City Council.

Ms. Feeney Roser: I'm sorry, Dr. Morgan. Was that on all applications? All the different things that they needed for that or was that simply a vote on a subdivision?

Dr. Morgan: I believe there was a single vote. One vote on that issue. I don't have the details all in front of me but my belief is that there was a single vote that resulted in a 3-3 tie and a few months later City Council considered it and voted to approve it.

Mr. Firestone: I've got a question for the Chair.

Mr. Silverman: Yes?

Mr. Firestone: What's the basis for the view that the applicant can now withdraw an application without any effect after a vote has transpired?

Mr. Silverman: Again, since we have no bylaws, we have no rules of procedure, this has been custom.

Mr. Firestone: It has been custom after a vote?

Mr. Silverman: We did not vote.

Mr. Firestone: We voted 3-3.

Mr. Silverman: We voted on one component. We have not completed the vote on the applicant's package.

Mr. Firestone: In my view, we have completed the vote. So I'm not certain that, as a legal matter, the applicant can simply withdraw it. I mean there were people who spoke out against this proposal who have due process rights. And we can't simply ignore those due process rights given that there was a 3-3 vote.

Mr. Silverman: On one component. It was like voting on an amendment.

Mr. Firestone: I respectfully disagree.

Mr. Silverman: Okay. You're on record.

Dr. Morgan: Mr. Chairman, could I say that I would recommend that you take a minute or two to check, which you should be able to do online, the record of what happened with the Barnes & Noble Bookstore? And I think it would provide precedence for saying that something for which there is a 3-3 tie on the Planning Commission can certainly be forwarded to Council.

Mr. Silverman: On the recommendation of the Planning Commission, not recommendations.

Dr. Morgan: Okay, I understand that.

Ms. Feeney Roser: I would say, we can certainly look it up, but Barnes & Noble had the correct zoning. There would not be a Comprehensive Development Plan amendment for that project. There may have been a special use permit but it wouldn't have been a Comp Plan amendment. I think what we're struggling with is if you do not recommend in favor of the Comp Plan amendment, then it doesn't meet Code and therefore this body has difficulty voting for something that cannot do that.

Mr. Silverman: The recommendation [inaudible] if it doesn't meet Code initially.

Ms. Feeney Roser: But it is a recommendation.

Mr. Silverman: Yes.

Ms. Feeney Roser: Not the final decision. Of this board, it is.

Mr. Silverman: It's the recommendation from this board.

Mr. Firestone: I'd like to make a motion. I move that we send our 3-3 recommendation to City Council and we move onto the next agenda item.

Mr. Silverman: Is there a second?

Mr. Hurd: Second.

Mr. Silverman: Commissioner Cronin?

Mr. Cronin: Yes, Mr. Chairman. It seems to me that the Council would appreciate our view on Items B and C as they consider our thoughts on Item A, because if they're just looking at Item A based upon our recommendation, they're going to say what happened to B and C with us and the wisdom of the Planning Commission. Now we've been presented a lot of material and information here and we're just going to kick the can who knows where on B and C. And I think

for the record and for the applicant, we ought to at least, even if it's a tie vote, have a vote on B and C also. And then, again, let the Council do with it as they might see fit. But it's more likely to be remanded back to us again if we don't do B and C now. I think we ought to do B and C now.

Mr. Johnson: With all due respect, Bob, there is a word for this. It's called mooted. When one part fails and you can't build unless you have the revision to the Comp Plan and the Comp Plan fails, B and C are mooted. They fail, as well, in my mind.

Mr. Hurd: I would agree. I think I'm not prepared to go on record voting for something that has failed in this first part. I think we have comments on record. I don't know if we need a formal statement from us about our intentions about the rezoning and understanding of where it stands. But I'm not going to vote on something that is not actually a full submitted package, all the parts, because I'm voting for something that can't be done. But I'm not ready to do a provisional vote at this point.

Mr. Silverman: Okay, I'm going to make my comment as representative from District 5. I will vote for the proposal to move our recommendation to Council solely with the Comprehensive Plan amendment issue so they can get this moving forward and to give the applicant his due process. Let the lawyers figure out where we're going to go with this. The City Code is silent on this. We have no legal counsel here for direction this evening. So I am putting my Chair hat back on and I'm going to call the vote. All those in favor of forwarding a negative recommendation on this proposal based solely on Paragraph 1 that it does not comply with the Comprehensive Plan, signify by saying Aye. A show of hands. The motion carries.

MOTION BY FIRESTONE, SECONDED BY HURD, THAT THE PLANNING COMMISSION SEND THE 3-3 RECOMMENDATION REGARDING THE COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT FOR 1101 AND 1107 BARKSDALE ROAD TO CITY COUNCIL.

VOTE: 6-0

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

NAY: NONE

ABSENT: MCINTOSH

MOTION PASSED UNANIMOUSLY

Mr. Silverman: Now, let's finish up the administrative side of this. What do we need so that this issue does not occur again in the future?

Mr. Cronin: We need a seventh person here, Mr. Chairman.

Ms. Feeney Roser: Yes, that would have been helpful. It also would have been very helpful if the concern about the Department's rounding was brought to the Department's attention ahead of time so that we could have had it addressed. So you have your report the week before. You read it. I realize there are things that come up during the meeting, but if you knew that was going to be a concern of yours, if you had let me know, then I could have gotten the legal guidance that we needed. I think the other thing that we need is the City's attorney to sit full-time on this board.

Mr. Silverman: And it should be noted for the record that the Commissioners did not discuss this issue prior to the meeting among themselves even though, apparently, it may have been an issue in others' minds, so that Freedom of Information Act was really upheld. That concludes this matter.

Mr. Hill: Thank you for your time.

Mr. Cronin: Does that mean we're adjourned?

Ms. Feeney Roser: No. It just means we've got more things to do. Tom's on next, right?

Mr. Hurd: Maureen?

Ms. Feeney Roser: Yes, sir?

Mr. Hurd: In the process of getting Council to approve the Comp Plan verified, rounding might be good...

[Inaudible – multiple people speaking at the same time.]

Ms. Feeney Roser: But you could have called me and I could have had this ironed out. It's really not fair to the applicant to have to argue with my interpretation of how to round at a meeting like this.

Mr. Hurd: It should be clarified.

Ms. Feeney Roser: Yes, it should be. In the Code, not the Comp Plan.

[Inaudible – multiple people speaking at the same time.]

Ms. Feeney Roser: Gentlemen, the meeting is not adjourned. Jeremy, when you come back. Okay. Okay, yeah, you're right. There's so much. The thing about zoning is you think that it should be black and white, and everything is gray. I mean everything we look at...

[Inaudible – multiple people speaking at the same time.]

Mr. Silverman: Okay, where is our staff?

Ms. Feeney Roser: It should be very short. This is short, right?

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: And crystal-clear, correct?

Mr. Fruehstorfer: Yes.

Mr. Silverman: Let's rock and roll here.

Ms. Feeney Roser: Yeah, we're just going to focus on what needs to be fixed, right?

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: Cleaning up? Okay. We're all back.

Mr. Silverman: Okay, where is my copy?

Ms. Feeney Roser: I'm sorry.

Mr. Silverman: No, it's me, not you.

Mr. Johnson: Tom, there is \$100 in this for you to get us through this fast.

3. REVIEW OF AN AMENDMENT TO THE ZONING CODE TO CLARIFY EXCEPTIONS FOR HEIGHT AND SETBACK.

Mr. Silverman: Okay, moving on to Item 3, amendment to the Zoning Code.

[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 dated May 25, 2016, which reads as 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 and building setback requirements. Report were presented to the Planning Commission at the March and April meetings regarding the matter, and on April 5, 2016 the Commission recommended approval of proposed Code amendments. Specifically, the Planning Commission recommendation was as follows:

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.***

Since the April 5 Planning Commission meeting, the Planning Department has determined that additional revisions are necessary to improve upon the previous recommendation. This report summarizes the 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 exceptions for towers

The first issue is that the previous report identified a problem of specific zoning district tower height restrictions being negated by Sec 32-56.2(c)(2), which exempted all towers from all height restrictions. The previous report recommended removing towers from the list of items exempt from building height restrictions, and added a new provision that “Towers approved by

special use permits are subject to tower height limitations as indicated for each individual zoning district.” While this revision corrected the problem of tower height not being restricted in specific situations, it also resulted in tower heights being overly restricted in others. Specifically, it restricted towers to the zoning district’s building height limitations, which is probably the reason towers were added to the exemptions in the first place. For example, a tower on a building in the BC zoning district is limited to a height of 22 feet above the highest point of the building by 32-19(b)(10), but 32-19(d)(4) limits the height of a building **or structure** to 35 feet, with the exception of hotels. Therefore, should the Code be revised as recommended, the two sections of the BC district Code would conflict with each other, unless there is an exemption for towers.

Suggested approach to issues

As previously discussed, the general height restriction exception for towers in Sec 32-56.2(c)(2) was not restrictive enough because the general tower height exemption eliminated all tower height restrictions, and the previous recommended solution was too restrictive, limiting all towers to building height limitations. Permitted towers need to be exempt from general building height restrictions, but provisions must be added to include the specific tower height restrictions, which are part of the special use requirements. Sec. 32-56(c)(3), added in the previous Planning and Development Report, can be revised as shown below to provide both the necessary height exemptions and the desired limitations.

(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~~ **exempt from building height restrictions except as detailed in the special use permit requirements** for each individual zoning district.

Height of buildings and items exempt from height determinations

Next, the previous Planning and Development Report and the Commission’s recommendations revised Section 32-56.2 (c)(2) to read as shown below.

“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.”

Staff has since identified dormers as another item that should be included in the list of items exempt from maximum building height restrictions.

Analysis

Our Code generally defines the height of a building as the distance from the ground to the average height of the roof, or the distance from the ground to the average height of the highest peak and highest eave. Adding a dormer to a roof technically raises the height of the highest eave, raising the average height of the roof, but a dormer does not extend above the peak of the roof. Code provides exceptions for spires, domes, cupolas, and belfries, which extend above the peak height of the roof but are not included in building height calculations. Dormers do not even extend above the peak of a roof and Code as currently written could be interpreted to

increase the calculated height of a building. In addition, the International Code Council's Building Code (IBC), does not consider dormer roofs to be roofs at all and instead considers dormers to be projections through roofs. Dormer roofs, therefore, should not be included in building height calculations.

Suggested approach to issue

In order to clarify the calculation of building height and bring the Zoning Code into conformity with the Building Code, Section 32-56.2(c)(2) should be amended to add dormers to the list of items exempt from height requirements as shown below. Change below is shown in bold red and italicized.

"In any district the maximum building height provisions shall not apply to ***dormers***, 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."

Amendment to building setback recommendation

Finally, during the discussion of the setback issue at the last meeting, the Planning Commission recommended a minor wording change to the building setback recommendation in the Planning and Development Report. Specifically, the Commission changed an "or" to "and" to make it clear that a building must not exceed 35 feet in height nor be more than three stories tall. In consultation with the City Solicitor, staff believes that the edit may not properly correct the identified problem.

Analysis

As the Commission knows, the previous Planning and Development Report recommended the following wording.

(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.

The Planning Commission determined that this could be interpreted to mean that if the building was either under 35 feet or less than three stories it did not need to be set back and recommended changing the wording to the following: (change in bold red and italicized)

(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 **and** three stories in height.

Upon further reflection, after the meeting, the Department conferred with the City Solicitor who agreed the recommendation as amended may be interpreted that the building does not need to be set back unless the building is both over 35 feet and more than three stories.

Suggested approach to issue

The intent of the recommended Code is that if the building is either over 35 feet or over three stories it must be set back. As such, the Department suggests changing the wording to the following: (change is in bold red and italicized)

(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 ***either*** 35 feet ***and*** ***or*** three stories in height.

The Solicitor agrees that the proposed rewording (adding “either” and “or”) will clarify the restriction.

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. The following changes represent recommended changes from this Planning and Development Report and the previous Planning and Development Report.

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), 32-56.2(c)(3), 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 ***dormers***, 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 exempt from building height restrictions except as detailed in the special use permit requirements 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 either 35 feet or three stories in height.**

Mr. Fruehstorfer: Okay, Chapter 32, Article 16, Area Regulation Exceptions, still has a few problems regarding building height and setback requirements. Tower heights are now overly restricted. If you remember in the past they were not restricted at all. Now they're overly restricted. We've also found through reading over last month that our Code treatment of dormers related to building height is unclear. And upon further reflection have decided that the wording change of "or" to "and" at the last meeting did not have the required result. So tonight's presentation is going to talk about each one of these problems and present solutions very quickly.

If you recall, initially, before we started making changes, all the towers were exempt from height restrictions so our previously recommended change was to remove towers from listed exceptions and add the following in section 32-56.2(c)(3) to say that towers approved by special use permits are subject to tower height limitations as indicated for each individual zoning district. On the bottom here I've got one of those height limitations for the BC zoning district which says that towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure, which seemed very clear. It seemed like it fixed the problem but in our area regulations then of the BC district, we say that the height of the building or structure hereafter erected or altered shall not exceed three stories or 35 feet. So to sum, the towers are down to 35 feet.

You'll see here in the BC district there are exceptions included for hotels, so as we were coming up with the solution we thought we could go into each of the six or seven sections that have towers and add exceptions for towers, but we thought of a solution that was much cleaner. So our suggested approach is to adjust 32-56.2(c)(3), which we added last month, to say that towers approved by special use permits are exempt from building height restrictions except as detailed in the special use permit requirements for each zoning district. So this removes the general height restrictions for towers but maintains the specific height restrictions stipulated in the special use permit sections.

Next I'm going to talk about the Code treatment of dormers. As you recall last month, we talked a lot about exceptions to our height restrictions. Currently our Code provides exceptions for spires, domes, cupolas, belfries which extend above the peak of the roof. But dormers don't extend above the peak of the roof and the way Code is currently written could be interpreted to increase the calculated height of a building with dormers. I'll show it on the next slide. But to complicate things a little further, I have been told the International Building Code doesn't even really consider dormers to be roofs. Instead they're interpreted as projections through roofs. So when we talked to our Code Enforcement people and looked at a dormer, they look at it and say that's not a roof. So to me, I look at it and it looks like a roof. Code people look at it and say it's not a roof, so obviously they're in conflict and that needs to be addressed.

Mr. Silverman: Do you want to simply refer to the ridgeline?

Mr. Fruehstorfer: Excuse me?

Mr. Silverman: Do you simply want to refer to the ridgeline?

Mr. Fruehstorfer: I'm actually going to show right here how we measure that height of the building. If you look at this building right here, pretend that the dormer is not included on it. We measure height by calculating at the grade plane to the average roof height. The average roof height is measured from, it's the average of the highest peak and the highest eave. So without that dormer, we basically have a 32.7 foot building. If we add the dormer, consider the dormer to have a roof with eaves, then the average of the highest roof peak to the highest eaves becomes 37 feet. So, depending on who you talk to, interpretation could be different. So we need to clear that up.

Mr. Silverman: With respect to our Code, what we're dealing with as a Commission, let's use your definition of the average...

Mr. Fruehstorfer: No, that is our Zoning Code. Our Zoning Code is the average of the highest peak to the highest eave.

Mr. Silverman: Okay, so is there still an issue?

Mr. Fruehstorfer: There's still an issue of what is the highest eave. Is the dormer a roof or is the dormer not a roof?

Ms. Feeney Roser: Let him continue, please.

Mr. Fruehstorfer: So these diagrams here, I think, point out the problem a little bit more. If you look at these two houses, which one of them is higher? The home with the dormer on the left, if you consider that dormer to be a roof and have higher eaves, is a 37 foot high building. With our Code that exempts cupolas from height calculations, the building on the right is lower, at 35 feet. So obviously there is some issue there. So our suggested approach is to add dormers to the list of things exempt from height requirements. Shown here is 32-56.2(c)(2) in its entirety as we recommended changes last month. And I've put in red the dormers, adding that to the front of the list.

The final thing tonight is building setback lines. And this relates, if you recall, to buildings. Generally, in most of our zoning districts, buildings are limited to 35 feet, and certain zoning districts have certain things you can do to raise your building higher. Things like adding parking to the ground floor or having apartments [inaudible] two-bedroom or less allow you to raise your height. But Code requires when you raise that height you need to set the building back 20 feet except for the exceptions for building setback lines. If the homes in a zoning district are currently not set back as far as Code requires, a new building only needs to be built at the average setback of those buildings. So we're starting out with buildings in a zoning district having less of a setback than Zoning Code requires and we're compounding that issue by allowing a four story or 50 foot building to be built without any setback at all.

So what we talked about last month was changing Section (d) as shown up here. Our original recommendation for 32-56.2(d)(1)b said the proposed building or structure does not exceed 35 feet or three stories in height. It was determined in the last meeting this could be interpreted to mean that if it does not exceed 35 feet or if it does not exceed three stories, it does not need to be set back. And we decided as a group that that isn't what was intended. So at the meeting it was changed to "and." I looked at this a little closer and I think this could be interpreted as saying that a building only needs to be set back if the structure exceeds 35 and three stories in height. So you could have a three story building that's 50 feet high and because it's not both of those, again we have a problem. That's not what we intended. Our solution is to change the wording simply to "the proposed building or structure does not exceed either 35 feet or three stories in height." And I think that makes it very clear.

And to quickly go through our summary of recommendations, and these recommendations are a compilation of last month's and this month's, we added a definition for roof appurtenance, we added a definition for scenery loft or fly loft, and we're deleting 32-56.2(c)(2) and 32-

56.2(d), and replacing them with the following. And, again, this has all of the changes from last time but I just have what we're recommending today in red. We've added the dormers to section 2 and we've adjusted section 3 to say "towers approved by special use permits are exempt from building height restrictions except as detailed in special use permit requirements for each individual zoning district." And, finally, for 32-56.2(d)(1)b, we've added the wording "either or" instead of "and." Any questions?

Mr. Hurd: I have one comment, I guess. To go back to 32-56.2(c)(2), we were talking about the exceptions.

Mr. Fruehstorfer: Yes?

Mr. Hurd: Somewhere along the lines we lost, when we were talking about scenery lofts, it had talked about the aggregate area couldn't exceed 25% of the ground floor area.

Mr. Fruehstorfer: Scenery loft or fly loft which occupies not over 25% of the ground floor area of the building is still in there.

Mr. Hurd: No. So the Code online says scenery lofts which occupy an aggregate of not over 25% of the ground floor. I think aggregate is important because you can have more than one scenery loft and in totality they could exceed 25%. I think the language that's there is not clear.

Ms. Feeney Roser: So you want to add "occupies not over an aggregate of 25%?"

Mr. Hurd: I'd kind of like to push it back to what we had in some way to say that theater scenery lofts or fly lofts...

Mr. Fruehstorfer: You told me to take the "s" away before. It was fly lofts and last time you recommended we change it to fly loft.

Mr. Hurd: I did?

Mr. Fruehstorfer: Yes, you did.

Mr. Hurd: I did?

Mr. Fruehstorfer: You specifically did. Yes. It used to say fly lofts and you changed it to fly loft.

Mr. Hurd: Well I'm changing my mind.

Ms. Feeney Roser: You're entitled. So...

Mr. Hurd: Because part of it is it just doesn't read clearly.

Ms. Feeney Roser: How do you want it to read, Will?

Mr. Hurd: This month or next?

Ms. Feeney Roser: This month.

Mr. Hurd: I'm going to have to say I think I want to put the plurals back. So scenery lofts or fly lofts which occupy an aggregate of no more than, or not over. Not over doesn't make sense though.

Mr. Firestone: In the aggregate less than?

Mr. Fruehstorfer: I don't think anyone is going to look at this and interpret it any other way. Really?

Mr. Hurd: Yeah.

Mr. Fruehstorfer: Yeah?

Ms. Feeney Roser: We just spent a lot of time on .14...

Mr. Hurd: It might be [inaudible] to figure out where the loophole is and say, I don't know, each loft could be 25%.

Ms. Feeney Roser: Can we just say which occupies not more than an aggregate of 25%?

Mr. Hurd: Well the aggregate of areas of the lofts can't be more 25% is my point.

Mr. Johnson: That speaks to me. I know what you mean.

Mr. Firestone: I would agree with the plural and the addition of language in the aggregate as being the clearest.

Ms. Feeney Roser: So you make the loft plural.

Mr. Hurd: The lofts are plural and then it says which occupy (singular) an aggregate of not over, or not more than...

Mr. Fruehstorfer: An aggregate of not over 25%. Scenery lofts or fly lofts which occupy an aggregate not over 25% of the ground floor.

Mr. Hurd: There are other places in the Code where aggregate is being used and I'm liking that together. I was just reading it this time and thinking it was definitely awkward. And when I looked up the Code I went, hey, we dropped words.

Ms. Feeney Roser: So we're making lofts plural and we're adding the words "occupy an aggregate of..."

Mr. Hurd: Not over...

Mr. Fruehstorfer: Not over...

Ms. Feeney Roser: Well it's in there already. So we're changing "occupies" to "occupy" and then adding the words "in aggregate of." Right?

Mr. Hurd: It's very similar to what's in the Code now. I think we're really just adding fly lofts to the sentence.

Ms. Feeney Roser: I'm just trying to make sure we get it right.

Mr. Hurd: Yes.

Ms. Feeney Roser: Okay.

Mr. Hurd: And then I promise I won't bring this up again.

Mr. Firestone: I just wanted to add one comment. I was really pleased to see in the Code the definition of height of a building which explicitly states and talks about averaging.

Mr. Hurd: But with what precision?

Mr. Silverman: Should it be in metric?

Mr. Fruehstorfer: Okay, because I'm going to be writing this again next week, I've written down "theater scenery lofts or fly lofts which occupy an aggregate of not over 25%." Does that sound right?

Mr. Hurd: Yes.

Ms. Feeney Roser: Yes.

Mr. Silverman: Any other comments?

Mr. Hurd: Just a general comment to thank Tom for wrestling this thing to the ground.

Mr. Fruehstorfer: Beating it to death.

Ms. Feeney Roser: This is a cake job, huh?

Mr. Fruehstorfer: You wouldn't believe how much time this takes. You would not believe how much time this takes.

Ms. Feeney Roser: We need to hear from the public and he gave you a recommendation that gives the whole thing in entirety so Council is not going to have to go through each of the changes that you made. So that's what he would be looking for. A recommendation that's in the report, correct?

Mr. Fruehstorfer: Right. That's in the back of the report. It basically includes the same recommendations I just showed here, hopefully.

Mr. Silverman: And Dr. Morgan has indicated he would like to comment.

Dr. Morgan: Yes. Thank you, Mr. Chairman. John Morgan from District 1, for the record. And I have a hand-out which I'd like to distribute to members of the Commission.

Mr. Silverman: Is there a title on it?

Dr. Morgan: Not really. It's just an email message.

Mr. Silverman: Okay, I'm referring to an email message titled "Whichever is Less" from John Morgan and sent Wednesday, 5/4/16 at 12:09 p.m. to Maureen Feeney Roser.

Mr. Cronin: Mr. Chairman, can you pass that down here?

Ms. Feeney Roser: Yes, I can do it.

Dr. Morgan: So, as the one who at a recent meeting raised the issue about who gets to decide when you have some phrase like "X or Y," to follow it up I did some Google searches which perhaps Tom, this is going to Tom independently about changing the "or" to an "and" really doesn't do the job. I also did a Google search for the phrase "whichever is less" which I think is what really makes it clear what is meant. And what you will find in this email message is what I got by just doing a Google search for the phrase "whichever is less" in context of height and feet and stories. And what you're looking at are the first couple of dozen or results and I could have generated hundreds more in the Zoning Codes of all kinds of cities and towns and counties and states throughout the U.S.A. And I would recommend that wherever you have this phrase, if you could bring it up, thank you, wherever you have phrases like this, "either 35 feet or three stories in height," it doesn't really resolve the question of who gets to choose, right? And that's where I think it's important to add, at the end, the phrase "whichever is less." Because that then makes it really clear that it's the lesser of the two that governs, as opposed to one or the other. And I would, especially since we have just recently witnessed opportunities for

argument when there is ambiguity, we really, I think, should put this phrase “whichever is less” and align our Code with the codes of many, many, many other cities and towns throughout the U.S.A.

Ms. Feeney Roser: May I ask though, and thank you for the email, and we did look at it and we talked with the City Solicitor about it, and the “whichever is less” phrase we thought was very important if we were using just the word “and” or just the word “or.” But, as I understand it, when we came up with the “either/or”, the interpretation of the Solicitor and, of course, our staff, was that that does it.

Mr. Fruehstorfer: Yes, I thought it was very clear and the Solicitor agreed and the other thing that I had a problem with, I guess, even if a lot of other Code says it that way, with “whichever is less” you’re comparing apples to oranges. You’re talking about stories and you’re talking about feet. How can one be less than the other? Again, you read that wording and it’s clear. I mean, you understand what it’s trying to say but it still doesn’t make sense to me. I thought, as I was trying to write out all the different options of ways we could do this, I was describing it to our Solicitor and said it’s either or, and suddenly that’s what it is. It’s either 35 or three stories. And it seemed to me to be clear of ambiguity, and the Solicitor, that we had a list of six or seven different possible ways of doing it and, I think, passed it around at least four different people and everyone agreed that they thought this was the most clear.

Mr. Firestone: I would concur.

Dr. Morgan: Okay. Could I ask, is the solicitor Bruce Herron?

Ms. Feeney Roser: Yes.

Mr. Fruehstorfer: Yes.

Dr. Morgan: Okay. Well, I would urge that some thorough research be done to find out for sure what that phrase would mean. Because I don’t see what’s being clarified by adding the word “either.” It’s just not clear to me.

Mr. Fruehstorfer: Okay.

Dr. Morgan. It’s not clear to me. Right? And I have no opposition to adding the word “either” but I do believe that one should add “whichever is less.” And I think that it wouldn’t be in the Zoning Codes of so many other cities and towns across the U.S.A. if it were not a generally accepted interpretation of that. And I think it’s clear what the less, I mean in context I think it’s clear what “whichever is less” means even though there are different units. I mean one could say 10 meters or 30 feet, whichever is less. Right?

Mr. Fruehstorfer: Those are both units of measure where...

Dr. Morgan: Of length, yes. Right. And these are measures of height, right? It can’t exceed three stories and it cannot exceed 35 feet.

Mr. Fruehstorfer: A certain distance in feet is always equal to the same distance in meters, whereas that is not the case with stories.

Dr. Morgan: Yes.

Mr. Fruehstorfer: It’s apples and oranges. Really, it’s apples and oranges.

Dr. Morgan: Okay.

Mr. Hurd: I think the way I'm looking at this, the "whichever is less" is really referring to the building that you're comparing to the Code. You're saying it's either feet or stories, whichever measurement you're using, whichever is less.

Dr. Morgan: Right. Yes.

Mr. Hurd: I think colloquially it makes sense but I think logically it has, you know, you could say I'm less than three stories. I'm good. But, you know, those two stories are huge.

Dr. Morgan: Right.

Mr. Hurd: The clear intention, and I think we're getting to it, or got to it, is that you can't go over 35 feet and, even if you stand at 35 feet, you can't go over three stories.

Mr. Fruehstorfer: And that's what I got to when some of the possibilities are the proposed building or structure does not exceed 35 feet and it does not exceed three stories in height. That was one of the possibilities. Either/or. It's either/or, and either/or gets rid of some words and makes it more clear.

Mr. Hurd: Because if I work at it, I could build you a four story building under 35 feet.

Mr. Firestone: I mean, certainly another alternative would be to have a B and a C. So B could be the proposed building or structure does not exceed 35 feet, and C could be the proposed building or structure does not exceed three stories in height.

Mr. Fruehstorfer: And I'll bet I could think of six other different ways of doing that.

Mr. Firestone: Yeah. But I think what you've got works.

Mr. Cronin: Question. This is Mr. Cronin. Suppose we have sloping terrain of some significance. Are we measuring this feet front and back, average, on which side?

Mr. Fruehstorfer: Average.

Mr. Hurd: It's the average of the ground around it.

Mr. Cronin: Do we need to say that too?

Mr. Hurd: That's, I believe...

Mr. Fruehstorfer: That's called the average grade plane.

Mr. Hurd: And I'm not trying to speak for you, but in the section about building height it talks about average height around the, at the grade plane...

Ms. Feeney Roser: In the definition section there is a definition of structure height and a definition of grade plane.

Mr. Cronin: Thank you.

Dr. Morgan: Could I ask whether you, Tom, did a Google search for the phrase "either 35 feet or three stories" in other Codes?

Mr. Fruehstorfer: No, I did not.

Dr. Morgan: Could I suggest that that be done? Because if this turns out to be an unusual phrase it suggests that it's something that might be hard for lawyers to interpret clearly.

Mr. Fruehstorfer: Our lawyer reviewed it and thought it was fine.

Dr. Morgan: I'll say that I don't always agree with Bruce Herron.

Mr. Firestone: Do you have a recommended action for us to do? Do we have to do a motion or anything?

Mr. Fruehstorfer: The recommendation is literally on the back of the report.

Mr. Silverman: We're getting there.

Mr. Firestone: I was just trying to find out what we're supposed to be doing.

Mr. Silverman: This group tends to have its discussion that should occur in the question, prior to the question, by custom.

Mr. Hurd: Are we ready for the motion?

Mr. Silverman: The Chair is ready to do whatever the group would like to do. I can entertain a motion. Do I hear a motion?

Mr. Hurd: I move that we accept the Planning and Development Department's recommendations with the amendment to the wording of the 35-56.2(c)(2)...

Ms. Feeney Roser: It's 32.

Mr. Hurd: 32-56.2(c)(2). Did I not say 32?

Ms. Feeney Roser: You said 35.

Mr. Hurd: What? As discussed...

Mr. Fruehstorfer: Would you like me to read the wording that I wrote down?

Mr. Hurd: I think it's in the minutes so I'm comfortable with it.

Mr. Fruehstorfer: Okay.

Mr. Silverman: Is there a second?

Mr. Johnson: Second.

Mr. Silverman: Okay, it's been moved and seconded. Is there any discussion? Hearing no discussion, all those in favor of the motion, signify by saying Aye. All those opposed, signify by saying Nay. The motion carries.

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

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

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), 32-56.2(c)(3), 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 ***dormers***, 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 lofts ***or fly lofts*** which occupy an aggregate of 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 exempt from building height restrictions except as detailed in

the special use permit requirements 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 either 35 feet or three stories in height.*

VOTE: 6-0

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

NAY: NONE

ABSENT: MCINTOSH

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you, Tom.

4. DISCUSSION OF CODE MANDATED PARKING REQUIREMENTS AND PARKING WAIVER PROGRAM STUDY.

Mr. Silverman: Okay, moving on to Agenda Item 4. Michael, please?

Mr. Fortner: Thank you, Mr. Chairman. In front of you you have what I'll call the completion of Phase I of the parking study done by Kirsten. She went through and reviewed eight municipalities. They're all college towns. It had something similar to Newark in size. Looked at size and the university. She did add two more municipalities on that were recommended by the Planning Commission at the last meeting. And then she also provides eight alternatives or basically ideas based on best practices from her research. The ideas included revising parking standards, either looking at other parking standards and in a lot of cases ours is higher than other municipalities that she looked into. So we could reduce them. Creating a downtown district where instead of tying parking to zoning, you create districts. So we'd have a downtown district, more of an outer district, maybe a suburban style district and then having certain parking standards for that. And also other municipalities are doing parking maximums. Whereas we do parking minimums, other communities have done parking maximums. You can't provide more than this much parking but you can provide less.

She also gives recommendations or some of the ideas include things on fees. One of the more prominent ones was creating a parking benefits district where it's very clear that all the money that you're paying for parking when you pay the fees, that all that money stays in downtown and improves not just parking, but improves the landscaping and the streetscapes and it is communicated to customers when they pay for parking that it's going to benefit downtown. There's recommendations in there that other locations are doing about adjusting fees for high demand areas and low demand areas. It can also be based on different times of day, where parking could be more expensive during certain times of day where there's high demand.

There's also parking management things. She discusses the issue of unbundling parking. This is an idea where when you have an apartment you don't have free parking spaces associated with it. You would actually purchase those in addition to the parking. So you buy an apartment and if you want two parking spaces, you'd rent those as well. She also has something about

increasing facilities. Things that you could look at your existing facilities and creating compact lots and you could maybe take 20% or more spaces. So you'd have a certain number of spaces there for compact cars and you could get more parking spaces. And they provide parking for a large percentage of cars. And also motorcycle parking as well. These are just best practices, just ideas that she did in her research.

The next step, again, this is the end of Part 1. We have a guy, he is a graduate intern as well. His name is Scott Eisenhart and he will be starting here either the end of this week, either Friday or Monday. He will be reporting to the Planning Commission as well, but two of the items we will have him working on, of course, is developing an audit of the parking waiver program. As Kirsten mentioned in her report, we've given something like 1,300 parking space waivers but that doesn't mean it's parking we said didn't need to exist. A lot of those parking waivers were based on land that was donated and it was developed into parking that the City managed. So those aren't reflected. So by going through each individual property, you kind of do an assessment of where parking waivers were granted, how many parking spaces were developed in its place as well, and you get a net balance of how this parking waiver program has worked. And the other thing that we have him working on is developing a survey to study the automobile habits of students. And also surveying the local landlords. Landlords downtown, potentially a focus group about how they perceive parking downtown, what their needs are, how our Code best addresses that, and how some best practices could address what their needs are, and get an assessment from them as well.

So, anyway, after that I'm just opening it to discussion. Again, we're going into a Phase II and I'd just like to open the floor.

Mr. Hurd: Besides the more specific comments I have within the body of the report, twice in the report Kirsten is basically saying that Council has input into the parking waivers, and I'm saying that I believe they do not.

Ms. Feeney Roser: Yes, well, as always, things are more complicated than you would hope. This Commission makes a ruling on parking waivers. The Council does not. However, if there is an appeal, one way or another, of the ruling that the Commission gives, it goes to Council. Someone can appeal a negative or a positive recommendation, not recommendation, a decision of this Board on parking waivers. So it's not...

Mr. Hurd: Okay.

Ms. Feeney Roser: You make the decision. It is not a recommendation. It is the decision on the parking waiver. If no appeal is made, it stands. If an appeal is made, then Council can reconsider it.

Mr. Hurd: Okay, so they do have input on parking waivers.

Mr. Silverman: Yes, one of our few administrative duties that [inaudible].

Mr. Hurd: Right, this came up in conversation and I saw City Council listed as people involved in the parking waivers.

Ms. Feeney Roser: Oftentimes it is not just a parking waiver. Oftentimes it's with the development plan that Council is going to need to act on.

Mr. Stozek: Just curious, the fee schedule for the waivers. How long has this schedule been in effect?

Ms. Feeney Roser: I'd have to go back and check. We've played with it from time to time and about once a year the Public Works and Water Resources Department gives us a new estimate of the cost of constructing a surface space. But the formula hasn't been altered in the last five

years, we haven't changed it. But I don't think it was too long before I became Planning Director that there was a change, and Edgar may have been here then, where we differentiated between residential parking waivers and commercial parking waivers, and we changed the percentage of payment based on that. But I have to go back in Code and find out when that was.

Mr. Stozek: So it hasn't been 30 years that these percentages have...

Ms. Feeney Roser: No. No, as a matter of fact, I think when it started out, there was no fee associated with it. I mean there have been changes and we can get that for the Commission.

Mr. Johnson: If I could just make a couple of comments. One, I salute the study that this young lady did. She did a wonderful job. I'm concerned about the number of parking waivers that are granted. It seems to me that they're well in excess of what should be granted. The second thing is the fee and the price of the waiver. What the builder and developer pays for the right to not provide parking allows him or her to then build a larger building on a smaller lot. And I wonder what is the relationship between the request for the parking waiver and other requests for the size of the building, special use permits, or whatever, that would make the property much more valuable to the builder if they got the parking waivers as opposed to not getting the parking waivers.

Ms. Feeney Roser: We'd have to look into that for you.

Mr. Hurd: I think I'll add on to that, anecdotally at least. Sometimes what I see when they come in for parking waivers is that they're adjusting the required number down to what they're expected number is going to be based on their history with those kinds of tenants, that kind of building and that kind of location. So, in some ways, I think sometimes it's a reaction to, in looking at the data here, our higher parking standards. So if our parking standards were perhaps more in line with some areas with other things, perhaps we would be needing fewer waivers because they could meet those reduced standards. But, what I see, understanding what those standards would be and the methodology we could use is part of what we need to take out of this.

Mr. Silverman: Any other Commissioners?

Mr. Johnson: Let me just say one final thing. I am totally against, in City parking lots, providing space for compact cars. I think that would be a mistake. I understand the desire to do so but a compact car can park in two spots: a regular size parking spot 9 feet wide or an 8 foot wide parking spot. Whereas my truck can only park in one. And for every compact, or every 10 compact spaces, you create, there are 10 less opportunities for me to park my truck in public parking. And there's no less for a compact car.

Mr. Firestone: That's not quite true.

Mr. Johnson: Yes it is, Jeremy.

Mr. Firestone: No. I mean you can create 10 compact spots from less than 10 large spots. So your math isn't quite right. But you are correct that there will be fewer spots that you could park in. I would agree with you.

Mr. Johnson: Thank you, Jeremy. Thank you.

Mr. Silverman: Mike, I just want to go over one of the points that you discussed with the potential Phase II and what's going to be covered. I find it interesting in dealing with parking waivers when I first came on the Commission I had this notion, and I think a large part of the public has this notion, that a parking waiver means that there are no parking spaces. You buy your way out of it. You give money to the City and the City says buy it. We just waive that

requirement. Part of what your student is going to look into is the exchanges that are made in parking waivers. I know of some parking circumstances, one on Main Street next to Klondike Kate's, where parking was provided underneath the building. It was provided by the builder, as I understand, and dedicated to the parking authority. So the number of spaces required for the builder to have was waived, but the actual physical number of spaces still existed because the ownership was shifted to the parking authority.

Ms. Feeney Roser: There is no parking authority. I just want to make that clear.

Mr. Fortner: Parking Office.

Mr. Silverman: I'm sorry, to the parking officials.

Mr. Fortner: Yes, I was trying to explain that but you said it more eloquently than I did.

Mr. Silverman: So those spaces didn't disappear. They didn't evaporate. They weren't excused. They simply were in another form. And also, and in my recollection, some of the parking waivers were used to negotiate private property owners giving up parcels to the parking authority.

Mr. Fortner: Parking Office.

Ms. Feeney Roser: It's the City. It's just the City.

Mr. Silverman: To the City, that allowed the City to bring together remote parcels and create a large single space from an engineering point of view. So, again, those parking spaces didn't evaporate. They were simply transformed from private ownership to City ownership. So that's something I think is very important. When we think of waivers, we think of excused, good-bye. We just waived all those requirements. The requirements were still there. The actual parking spaces turned up in different ownership.

Mr. Fortner: And when they're public, they're much more efficient. You can go and park and visit three businesses. If those were private lots, then you'd have to actually leave that one business and drive to the other one, or you'd be parked in the wrong lot. So it's more efficient to just park once and pay.

Mr. Silverman: If it was under my building, I would control who could be there. But if it was under my building and it was given over to the City, I, in some senses, lose control. And I also recollect that in those circumstances where the private property owner gives up control of the parking spaces on his parcel, there are often arrangements to rent back from the City. So parking is provided in that individual's building, I'm sorry, in or under that individual's building, for the tenants in the building. So there are a number of arrangements. My point is, parking spaces just don't disappear into thin air. There is an inventory that exists somewhere.

Ms. Feeney Roser: Right. It's very, very complicated.

Mr. Silverman: I think that's an important point to make.

Ms. Feeney Roser: Right.

Mr. Silverman: Now, what I'd like to do, and this is taking off my chair hat and putting on my District 5 hat. As some of you know, I am very passionate about this. I think we have an opportunity to take a big picture look at parking. Parking comes up on the floor of City Council in the form of discussions over building parking structures at the public expense. It comes up in discussions of, can I remotely rent parking spaces to meet my parking requirements, as we saw with the last hotel consideration that came before us. There are a lot of things spinning around that deal with the whole notion of parking. Now, as we saw tonight, I see Codes like the attics

of houses that have been lived in for 40 years. They're cluttered and filled with old, obsolete and useful but no longer needed things. They're accumulations. They often contradict. I'd like to see us take the time, and take our time, to look at parking globally. And I think we have this charge in State and County Code and we have the focus for the implementation of the goals and policies of our Comprehensive Plan. I'm generalizing. I'm not quoting from the Plan. But, in generalizing, we want a prosperous downtown. We want to have our downtown space, our commercial, office and service uses, to be competitive. I've read some interesting research that says that the number of businesses being formed in Delaware has declined precipitously. The number of entrepreneurs has declined precipitously. So the City of Newark, the real estate of Newark, is going to be competing with the rest of New Castle County and the rest of Delaware to bring those businesses into our community. We're looking for a walkable community. We're looking to maintain our tax base. As untaxed entities purchase more and more, and use more and more, City property, we lose rateables. Now I commend this group in looking at the budget. The rateables within the City increased over the last several years by almost \$1.8 million. Now that's a lot of property assessment at \$0.25 and \$0.30 a hundred. We have a goal to reduce stormwater run-off. Well, by redeveloping property, we have an opportunity to fix those properties that have been grandfathered from our water quality and water quantity regulations. And we have a goal to provide open space. So there are some things in the Comp Plan that I think allow us to go take a look at parking globally.

Now we have the opportunity to examine the Newark parking circumstances from, and I hate to use the word because it's soft, philosophy and from an actual Code point of view. Are our Codes working the way we think they should? I think this group should develop a philosophy and deal with some of the issues that keep surfacing. Those in the Capital Budget of a structure. Those that come before Council. Those that are raised by the public. And those that are raised by the Commissioners that are sitting here, talking about the ratio of parking spaces for a particular use. Are they real? Are they efficient? Do we want the City to adopt a posture that parking is a utility? We don't intend to make money on it. But putting in water lines and sewer lines and electric lines, it's something you do for the economic benefit of the community. Do we want to suggest to the City that they create a true parking authority and get the City out of the parking business? Give it to an authority that has congregation power that can go and get its own bonding and just let the parking authority deal with that particular issue. Do we want to look at maximizing existing private and public parking capacity? Which means looking at design standards. Or, do we want to, as our student's report suggested, shift the whole responsibility of parking to the private sector? One of the ways of doing this is, in certain parking districts, we have no parking requirements. If you want to build, you build. You build to the lot coverage provided in the other Codes. Whether people come to your store, whether you have people who want to occupy your rental space, if that turns on parking, you're going to be sensitive to it. If it doesn't, why should the public pay for your parking spaces? Or maybe a combination of all of these things.

I think we should look at existing parking Codes. We can leave it as-is, recognizing we have a Code that's probably 40 or 50 years old, and based on suburban standards, not an urban area like Newark. Not an area that's re-developing like Newark, where the parcels were originally laid out for houses with carriage houses behind them and have a lot of non-conforming commercial uses that have evolved over the years. Are they practical for re-development, which is one of the things we're looking for? Is there really a need for parking waivers or can the Codes be changed to minimize where a waiver is going to be used? How do we deal with undersized and irregularly shaped lots? We struggle here, and applicants struggle here, with the whole notion of shared parking, cross-access agreements, remote parking. We try to do those on an individual basis. Maybe we need a policy to deal with that. Should we be concerned, from a governmental point of view, whether a property owner provides parking for his employees? He can tell his employees to take a bus to work. I want my parking spaces to be for my clients. But maybe we use up additional land and cause these kinds of waivers to come about. And I feel uncomfortable sitting here looking at a commercial use and trying to figure out the number of parking spaces that are going to be used. Based on my experience, I've seen the same shop in the same place on Main Street go from selling sunglasses, which I

assume is a very low impact use with respect to parking, to a rather successful hairdresser shop, which means clients, lots of employees for long periods of time, to a Chinese take-out where we don't have very restrictive parking requirements. So how do we sit here today and try to guess the number of parking spaces someone should have or how do we make a Code interpretation on that?

Perhaps a way of looking at this, from the philosophical side, is we have no parking requirements. We let the parking spaces be market-driven and site-driven and finance-driven. And let somebody, if there's a market created for parking, let the private sector deal with that. Whether it's renting remote, running bus routes or jitneys like the one hotel applicant suggested. We need to take a look at modifying our parking Codes. Some of the ideas represented by our student, I think, are very worth looking at. The whole idea of parking code districts that we could align with our zoning districts. Permit the parking to be determined by the owner or developer. The relationship of the number of building uses to the number of parking spaces by eliminating standards in certain districts. Modifying parking ratios in other districts. Eliminating employee parking requirements and design standards designed to maximize the density of vehicle stalls.

And, finally, we have never touched on the issue of dealing with existing properties that may be non-conforming yet they're still in private use. Do we come up with Codes that require an existing property owner, who is not subject to development Codes, that when they re-do a parking lot, that they come in compliance with whatever City design Codes are going to be. And, finally, as we talked, we deal with this whole issue of student parking and vehicle utilization. We hear the common cry of students equals apartment/rental space equals automobile trips. And we've discussed that many, many students from the University, if they're on the road, are not on the road at peak traffic times. We know from the University and the transportation study that the University moves some 1 million students around the City. Now we had a commissioners who, earlier when we discussed this, raised what does that number really represent? Maybe that's something we should look at. How are they counting those numbers?

Mr. Stozek: I see empty buses every day.

Mr. Silverman: Yeah, we see empty buses every day but their report says they transport 1 million students. Let's find out what that means. Possibly field observation of parking space use is one of the things that I would assign in this second phase. Pick a spot. Pick several parking arrangements that we think are typical of modern ones. The buildings located adjacent to this public off-site, for example, where there is parking under a building or in a building. Parking that's associated with rental properties that are townhouse style of various densities. Have someone go out and observe regularly, during different times of the day, whether there are empty spaces, vehicles moved and that kind of thing.

So, direction, I'm just concluding all this for what I see happening in Phase II is, in addition to the work that Michael has described, I think we ought to recommend a philosophy or direction for dealing with parking. Something that we consider or maybe Council takes a good look at. Do we have an authority? Do we leave it to the private sector? Do we continue as we are? Decide on the role of Codes and Code changes. Do we need to eliminate employees? Do we need to make our Codes more reflective of an urban Code? Do we come up with the districts, for example?

Also, I'm a data person. I'd like to see us establish an information base and a resource base. Some of those base materials, large scale aerial photography of our downtown business district so we don't have to try to imagine what's behind a particular shop. Parcel maps showing what's private, what's public, what's university controlled? Particularly in our CBD. I'd like to know, if you read our student's report and do some additional reading and Google searches, there's lots of discussion about the land coverage that's consumed by parking lots. Those parking lots are one-off problems. Those parking lots are non-rateable properties on the City

tax base. How much tax revenue are we giving up? Some sources suggest by requiring the amount of parking we require, we lose anywhere between 10% and 30% on valuation of buildings. That's income stream to the taxpayers. And let's look at the value of assessed lands and land improvements. Will touched on that. And we have a resource in Dr. Lee at the University, who we should make contact with, with respect to civil engineering design, so we can maximize the parking spaces that we already have and squeeze a few more out. So we don't have to potentially build more. And I'd like to see the idea of the student rental parking study also begin concurrently, if we can, as a subset of your main work.

So that's, kind of, my take on things. What I'd like to do is share these ideas with you and hopefully we can discuss where we're going to go in future meetings. And I will do that by offering a copy to the Director of the Land Use Department, to be distributed in next month's packet.

Ms. Feeney Roser: We still have to do public comment.

Mr. Silverman: Yes. And we did have one request to speak and I'd like to offer the floor to Dr. Morgan.

Dr. Morgan: Thank you, Mr. Chairman. I have a question and several comments. First, the question would be to Mike Fortner. In the report it talks about 1,334 parking waivers since 1987. Sometime in the summer of 2014 I was talking with the proprietor of a new restaurant on Main Street who was asking to be able to pay for the parking waivers over, I think, a three year period instead of all at once. And then a question came up about what happens if he went out of business. And Councilman Chapman made the point that if he went out of business and another business then came in to occupy that spot, the City would be charging that new business owner for the parking waivers over again. So the question I'm asking is, is that true that if, say, there's a restaurant that needs 30 parking waivers and it fails, and another business comes in, does that new business have to pay again for its parking waivers?

Mr. Fortner: Parking waivers run with the land. No. I think the scenario you brought up was the guy was going to pay for it over three years and in a year-and-a-half he goes away, and a new person comes back, I think that they could pick up where they left off is what was maybe discussed there. But if he already paid for those parking waivers, all three years, and then he went out of business and a new restaurant came in there with the same number of seats, then there's a parking waiver already for that property and it continues.

Dr. Morgan: Okay.

Mr. Fortner: If it's the same number of seats. If he wants to increase it by 20 seats, then we assess those 20 seats and they pay more. So in the scenario where there's a three year pay-off and they do a year-and-a-half, those parking waivers aren't paid off yet, so the next person could pick it up.

Dr. Morgan: Right, pay for it. Okay, thank you. Because I just wondered if there was double counting.

Mr. Fortner: No.

Dr. Morgan. Alright, thank you. So I guess there's not. And so let me move on to some comments. And Chairman Silverman certainly identified a large number of good things to be thinking about. Of course some of them are mutually contradictory, so it's a question of choosing which, one or which combination, one wants to go with. And I guess a general comment that I would make is that my reading of Donald Shoup's book where he talked about eliminating minimum parking requirements was that that was a recommendation for a big city like Los Angeles, where you have to drive for an hour just to get out of town, right? And in that sort of situation you can say yes, if you eliminate the parking requirements for businesses, they

will do what's right for them and you can encourage high density growth in walkable areas. So people simply don't need a car. And, for example, I lived in such an environment in Cambridge, Massachusetts, where I had four grocery stores all within a 10 minute walk. And drug stores, whatever you'd want, within a 10 minute walk, right? You just don't need a car. It would be a nuisance to have a car. And we have a different environment here in Newark precisely because we are so spread out. People who live in single family houses on large lots need a car just to go buy groceries. And once they have a car, they do other things with their car, like come downtown. We have a large student population. The lot behind the Galleria is almost ideal for students who want to drive to campus, take a class for two hours and go back. It's cheaper than University parking. I have a colleague who only comes to campus about two days a week for a couple of hours. He parks in Lot 1 as opposed to buying a University parking permit. And somehow this needs to be factored into any study we do. And I think that we really need to be very careful moving forward. But the general remark I would make is that I think it simply makes no sense to have a parking waiver program based on payments for the cost of constructing surface parking spaces when there is no current land in the downtown area for new parking spaces on land owned by the City. It just doesn't exist. And I think if we're going to continue to have a parking waiver program, the cost of a parking waiver should be the cost of building parking spaces in a parking garage, and that's going to be more like \$20,000 a space than \$6,000 a space.

Mr. Silverman: Along that line, as Commissioner Johnson and I discussed, these fees are kind of chasing the bus down the road. Every year you wait, the cost of that parking structure goes up and the cost per square foot of the City's parking makes no economic sense with respect to the cost of building a structure. And we know that based on the experience of the University of Delaware and their relatively current experience in building a building. So what happens to this money? Does it steam clean sidewalks or does it sit in a pot and go to a new structure? And then if we get into that, we get into the whole law of impact fees. And with impact fees, there's a finite cut-off date for that public work to be done or the money goes back to the people who were charged the fee.

Dr. Morgan: I think that's right. I think I asked the question some time ago about whether there is an escrow account in the City into which parking waiver fees have been paid.

Ms. Feeney Roser: Yes. There is an account. I don't know whether it's escrow.

Dr. Morgan: Okay, there is an account.

Ms. Feeney Roser: But there is a parking waiver account and that money can only be used for parking improvements. It does not say that it has to be used to build a garage.

Dr. Morgan: Okay, but presumably that money is continuously being spent when the City upgrades Lot 1 and Lot 3 and so on, right?

Ms. Feeney Roser: Not continuously. Some of it has been spent when something needs to be done that's not budgeted. So we'd have to look at that.

Dr. Morgan: What is the balance in that account? To the nearest million dollars.

Mr. Johnson: \$1.98

Ms. Feeney Roser: I'd have to look it up. I don't know the answer to that.

Dr. Morgan: Okay, but I think you see the point I'm making, which is that once upon a time it was stated that all this money from parking waivers would be used to build a parking garage and I think it's nowhere close.

Ms. Feeney Roser: Oh, no, it's nowhere close, I can you tell you that. I just don't know the exact number. But never was it ever said that it would be used exclusively to build a parking garage or that's what, the money would still be sitting there.

Dr. Moran: Right. Okay. Thank you.

Mr. Silverman: That's why I'm suggesting we nail down the current thinking and current philosophy and see where we want to recommend...

Dr. Morgan: Yeah. Okay. Well I think there actually are multiple philosophies. At least among Council members.

Ms. Feeney Roser: Yes. Exactly. It's a very complicated issue and I'm happy this group is willing to take it on and I think we're just going to have to chunk it off a little bit at a time and deal with it.

Mr. Hurd: Mr. Chairman, if I may. I don't know if this is a motion type thing or not, but I would like to recommend that we plan on a workshop because I think this kind of conversation is something that needs to take place around a table and it's likely more casual and more back-and-forth. Not just standing here and, sort of, putting our comments on a report. There's a lot to chew on in here. There's conflicting items that really need to come out and we need to balance them with data, we need to balance them with public opinion. And we need to form, I think, a consensus of the Commission about our intention or our vision for parking so that we can present that to Council. Because we're clearly not getting any kind of direction from Council as to how they see parking [inaudible]. But I don't know if that's, I wouldn't say that they're dropping the ball, they may not see that as their charge, and they feel that's, more comes from us.

Mr. Silverman: It's clearly within our purview with respect to the Codes. And the piece that I'm going to ask be distributed that I just went through just very quickly, that's just what I call my brain dump on this. The kinds of things that occurred to me. As Dr. Morgan pointed out, some of them are conflicting and I just want to get people thinking so we can have that discussion.

Ms. Feeney Roser: May I add something here? I think you're absolutely right. I think this is more of a workshop discussion but I would like us to have some time to actually think out how the series of workshops would have to be done. Because I've found, you know, Alan, you've done a great job of holistically looking at all the things we need to do, but about halfway through my mind went numb. So I think we really need to separate out the issues. First you want to look at the parking regulations. Do our parking regulations make sense? We could get that settled. Then we could move onto something else. And I think that there has to be some thought into how we will go through all the issues that we need to tackle before we can set a date.

Mr. Hurd: I would say that my one concern is that some of these issues, I think we need to look back through in totality.

Ms. Feeney Roser: Oh sure.

Mr. Hurd: I don't think we can just sit down and say do we have the right parking standards. Well if we do then, you know, I don't see quite the sequential thing yet. I think there may need to be more open-ended conversation about it before to see what the path forward is. Maybe after some conversation it can become clear that, as an example, parking standards truly are the thing that's holding everything up. That that's the thing we have to focus on adjusting. And then we can see that once that's adjusted a lot of things will fall out, or not. But I don't see it quite yet as sitting down and doing a sequential, sort of, plan. I think, I don't want to say we need a brainstorming, but a more open-ended workshop.

Mr. Silverman: I'm laughing because a colleague of mine used the term spit-balling.

Mr. Hurd: I would say charrette, but that's my profession.

Dr. Morgan: Mr. Chairman, may I make an additional comment?

Mr. Silverman: That's fine, Dr. Morgan.

Dr. Morgan: Thank you. Dr. Morgan, again. About the figure of a million students being transported by University buses, it's very plausible because the University buses run seven days a week except for weekends in the summer. And so if we use a number of roughly 300 days in the year, that would be something like about 3,000 trips a day. And probably a student who rides the bus once, rides it twice in a day to get from a student apartment to downtown and back again. So that's like 1,500 students, maybe. Which is about 10% of the student population of the town. So I'd say a million trips a year by UD students is very plausible. But it's also a very small fraction of the total number of students.

Mr. Silverman: I have no feel for what all that means. Somebody said the University has a transportation system.

Dr. Morgan: Right.

Mr. Silverman: And I go, and?

Dr. Morgan: Yes, right. And I would also say that I think that it would be a mistake to look at parking in isolation because parking and traffic are intimately interrelated. And, in particular, building a parking garage will not be able to pay for itself unless there is an increase in the number of cars coming into town.

Mr. Silverman: But then you get into the tautology of that's going to become a destination and is that going to further impact...

Dr. Morgan: Yes, exactly. And so I really do believe that, for a lot of reasons, it would make sense for the City of Newark to have a transportation, traffic and parking committee to look at those three intimately interconnected issues.

Mr. Firestone: That's us.

Dr. Morgan: If you'd like to meet more frequently than once a month.

Mr. Silverman: We'll do that in our spare time.

Ms. Feeney Roser: There is a traffic committee and the Partnership had a parking committee.

Dr. Morgan: Which hasn't met in about 10 months.

Ms. Feeney Roser: Quite a few months, yes. I'm just saying. I wasn't trying to say they meet often.

Mr. Silverman: Well we have the discussion of the Commission taking on this role. And there is discussion of at least having one workshop to, using a technical term, noodle around on this and see where the consensus of the group would like to take it on traffic, parking and transportation issues, to kind of sum it up. Do we have a consensus on that? Do we need any formal action? Do you need that to plug into your work program?

Ms. Feeney Roser: That in addition to doing the Transportation Improvement District, you want this study to start talking about transportation? I'm confused as to what we're doing. I thought we were doing a parking study. I recognize that there are other implications to it but

it's getting so large that I'm worried about being able to actually address it. Maybe we just need to get together, as Will had suggested, and do a workshop that will have no staff prep work for it whatsoever and we can talk about what it is you want to do. I think that's fine. We can do that.

Mr. Silverman: Yes, let's do that.

Ms. Feeney Roser: But I'm always looking for what is it we need to deliver for you to be able to do this and I was getting confused.

Mr. Silverman: I don't think we're looking for any deliverables from staff. We just need to get together among ourselves and find out what we think and then look at you and say how feasible is this? Is there a budget for it? Is there staffing for it?

Mr. Hurd: And what data we might need further for that.

Ms. Feeney Roser: We should do it soon then, because the budget process is already upon us for operating budget for next year. So if we need to set money aside for consultants or whatever, we need to do that now.

Mr. Silverman: When we have that discussion to plug holes, can we invite people from WILMAPCO...

Ms. Feeney Roser: Absolutely.

Mr. Silverman: To get an understanding of what that transportation agency provides in the way of services and what resources they already have? For example, anecdotally, sitting on Cleveland Avenue in traffic while I'm waiting for lights to change, I'm looking at license plates and it appears that 20% or 30% of the traffic are Maryland and Pennsylvania plates. Now I'm going to jump to the conclusion that those people are traveling through Newark to get to Pennsylvania counties and Maryland counties and they really aren't local trips. I don't know whether WILMAPCO has any feel for that. How much of the traffic that we think we can control and whether we have those controls.

Ms. Feeney Roser: Origin and destination stuff?

Mr. Fortner: Yes, they have a lot of data like that.

Mr. Silverman: Well let's bring them in as a resource as part of our roundtable and just see what they can do for us.

Ms. Feeney Roser: For parking? I'm just trying to focus you guys.

Mr. Firestone: It's not really a parking issue.

Mr. Silverman: I know it's not a parking issue. Let's put it in next year's work program.

Ms. Feeney Roser: Well, no, I think...

Mr. Firestone: Let's stay on parking.

Mr. Silverman: Okay, just parking.

Ms. Feeney Roser: Although they may have some data and we may have other folks to bring in. Certainly we can talk...

Mr. Silverman: WILMAPCO may have data on parking that we don't even know about. They do all kinds of things.

Mr. Firestone: Let's keep our focus on parking.

Mr. Silverman: Thank you, Jeremy. Any other discussions? Anything else for the good of the order? Unless I hear differently, we will stand adjourned.

Ms. Feeney Roser: We stand adjourned. Thank you all very much.

There being no further business, the Planning Commission adjourned at 10:27 p.m.

Respectfully submitted,
Michelle Vispi
Planning Commission Secretary

/mv