

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 7, 2017

7:00 p.m.

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

Chairman: Jeremy Firestone

Commissioners Present: Bob Cronin
Willard Hurd
Alan Silverman
Robert Stozek

Commissioners Absent: Frank McIntosh
Stacy McNatt

Staff Present: David Culver, Interim Planning and Development Director
Bruce Herron, City Solicitor

Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:05 p.m.

1. CHAIR'S REMARKS.

Mr. Firestone: Good evening. The Planning Commission meeting for Tuesday, February 7, 2017 is called to order. I'm Chairman Jeremy Firestone and we welcome members of the public and we are pleased to see a couple of members of a Scout troop here, as well.

A couple of remarks that I want to make. First I'd like to welcome Dave Culver, who is now the Interim Director of the Planning and Development Department of the City of Newark. We're very pleased to be working with Dave and we look forward to our time together.

I also do want to acknowledge since we never had an official meeting where it was Maureen Feeney Roser's last meeting . . . she sort of caught us by surprise in the middle, so I did want to say a few words. And I would also direct people to the Newark Post. Coincidentally, her article was the same day that President Trump was inaugurated. I don't know what that means but it was on January 20 and it's an interesting article. I always wondered why Maureen questioned my legal judgment but then I saw that she had an aspiration, at one point, to be a lawyer and studied criminology. She came to the City from the position as a planner for the Delaware Division of Aging and interestingly she was never trained specifically in the planning discipline, and she spent 32 years in our City in Planning. I think even more than her appointment as the director, really the transformative moment in our City and Maureen's contribution was when she was appointed in 1998 as the administrator of the Downtown Newark Partnership. And we're all, today, feeling the benefits of Maureen's guidance where really the downtown has been transformed for the benefit of us all. So we are in her debt. So we thank her.

We've got two Commissioners not here today and I just want to acknowledge Stacy McNatt, who was recently appointed by the City Council and she'll be joining us next time for her first time being present at a meeting, and so we thank the City Council for giving us, again, a full complement of Commissioners.

With that, we've got three major issues on the agenda and I'm hoping that we can move through them relatively quickly. I guess technically we have six, but we have three substantive

issues. The first thing we're going to do is to consider the minutes of the January 3 Planning Commission meeting, and in that regard I would call on Commissioner Silverman.

2. THE MINUTES OF THE JANUARY 3, 2017 PLANNING COMMISSION MEETING.

Mr. Alan Silverman: Madame Recording Secretary, do we have any additions or corrections to the minutes?

Ms. Michelle Vispi: No additions. No corrections.

Mr. Silverman: Okay, I move that we accept the minutes as posted and distributed to the Commissioners.

Mr. Firestone: Is there a second?

Mr. Will Hurd: Second.

Mr. Firestone: Any discussion? Hearing none, all in favor, signify by saying Aye. Opposed? Motion carries.

MOTION BY SILVERMAN, SECONDED BY HURD, THAT THE MINUTES OF THE JANUARY 3, 2017 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, HURD, SILVERMAN, STOZEK

NAY: NONE

ABSENT: MCINTOSH, MCNATT

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF AN ANNEXATION AND REZONING OF THE 0.837+/- ACRE PROPERTY LOCATED AT 139 EAST CHESTNUT HILL ROAD TO MAKE SANITARY SEWER SERVICE AVAILABLE TO THE EXISTING COMMERCIAL BUILDING LOCATED AT THE SITE.

Mr. Firestone: That then takes us to Item 3 on the agenda, review and consideration of an annexation and rezoning of the 0.837+/- acre property located at 139 East Chestnut Hill Road to make sanitary sewer service available to the existing commercial building located at the site. I'm going to first call on Dave Culver to provide a review from the Planning and Development Department's viewpoint. We'll then have the applicant provide a short presentation and then we'll open it up for public comment. Thank you.

Mr. David Culver: Thank you, Mr. Chair. David Culver for the Planning and Development Department. I'll be very brief. This annexation is for 0.837 acres of land that is currently in the jurisdiction of New Castle County and zoned ON, which is Office Neighborhood. The closest classification within the City's commercial district is BL, Business Limited. The use is compatible with what is being proposed. There are no other substantial changes to the property other than the connection into the public sewer. We did, because this was not part of the Comp Plan V original maps, take this through the State PLUS system. The PLUS system did review this on December 21, 2016, and on January 23, 2017 they did send us a letter saying they have no objections to the annexation. Based off the State PLUS letter, there were representatives from New Castle County who did not voice any opposition to this annexation.

Because this is adjacent to the City limits and it does not conflict with the purposes and land use recommendations in Comprehensive Development Plan V, we recommend approval of this annexation request.

[Secretary's note: The Planning and Development Department report on the proposed annexation and rezoning of the property at 139 East Chestnut Hill Road reads as follows:]

On November 14, 2016, the Planning and Development Department received an application from Pencader Dental, LLC for the annexation of the property at 139 East Chestnut Hill Road (Tax Parcel 11-005.40-205). The property is adjacent to the City to the south and west of the Cannons Gate residential subdivision. The applicants are requesting annexation primarily to make sanitary sewer service available to the existing one-story commercial building on the 0.837+/- acre parcel. The applicant requests BL (Business Limited) zoning for the property.

The Planning and Development Department's report on this annexation follows:

Development Proposals

No changes are proposed for the dental office at 139 East Chestnut Hill Road.

Existing Conditions in the Area

The property is zoned ON (Office Neighborhood) in New Castle County and contains a dental office, an associated access way and parking. The property is relatively flat but slopes gently to the north and east, and includes the service road which provides access to the subject parcel as well as the property to the east. The adjacent properties to the south and west are zoned RR (Residential Row or Town Houses) and contain the townhomes of the Cannons Gate subdivision. The property adjacent to the east contains an office building, owned by Robscott Associates, which is also zoned ON in New Castle County. Across East Chestnut Hill Road to the north are University of Delaware (UD) lands which are zoned UN (University or College District) and are part of the UD's athletic complex.

Planning Studies

The 139 East Chestnut Hill Road property is not included in the Planning Areas section (formerly known as the Adjacent Areas Land Use Plan) of the Comprehensive Development Plan V, and therefore, the Department participated in the State's Preliminary Land Use Service (PLUS) process as required by the City's memorandum of understanding with the State Planning Office for annexation of properties that are not included in the City's Comprehensive Development Plan. The PLUS process provides State agency review of major land use change proposals to:

- Identify and mitigate potential impacts of development, which may affect areas beyond local boundaries;
- Fully integrate State and local land use plans; and
- Bring State agency staff together with developers and local officials early in the process.

In this case, as the parcel is already developed as proposed and annexing for sewer service, there was little discussion and no concerns raised about the proposed annexation during the PLUS meeting. In addition, representatives of New Castle County attended the meeting and did not object to the annexation. The State's PLUS letter is attached to this report for informational purposes.

Zoning

The County's ON zoning applied to 139 East Chestnut Hill Road is a suburban transition zoning which provides for professional and administrative offices compatible with residential areas.

The proposed City of Newark zoning is BL (Business Limited) for the site, which is the closest City zoning to the existing Office Neighborhood (ON) zoning in the County. BL zoning permits the following:

- A. Church or other place of workshop, seminary or convent, parish house, or Sunday school building.
- B. Public and private elementary, junior, and senior high schools.
- C. Park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- D. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- E. Municipal sewage pumping station and sewers.
- F. Right-of-way, street.
- G. Utility transmission and distribution lines.
- H. Public transportation bus or transit stops for the loading and unloading of passengers.
- I. Social club, fraternal, social service, union, and civic organization.
- J. Accessory buildings or structures, no impact, and accessory uses, no impact, including a private garage, subject to special regulations, excluding semi-trailers and similar vehicles for storage of property.
- K. Hospitals.
- L. Residences shall not be permitted except for one apartment unit provided in conjunction with any one nonresidential use.
- M. Offices for professional services and administrative activities.
- N. Finance institutions, banks, loan companies.
- O. Undertakers.
- P. Barbershops (limited to a maximum of five chairs) and beauty parlors.
- Q. Parking spaces, off-street.
- R. Medical clinic.
- S. Public transportation bus or transit stops for the loading and unloading of passengers.
- T. Swimming club, private (commercial).

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

- A. Police and fire station, library, museum, and art gallery.
- B. Country club, regulation golf course, including customary accessory uses, subject to special requirements.
- C. Substation, electric and gas, and telephone central office, subject to special requirements.
- D. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- E. Drive-in and curb service business, for other than eating establishments, with a minimum setback of 65 feet.
- F. Bed and breakfast, defined as an inn, guest house, and similar commercial lodging establishment permitted only in a structure in existence at the time of this ordinance's adoption (6/26/95), subject to special requirements.
- G. Accessory buildings or structures, with impact, and accessory uses, with impact, including a private garage, subject to special regulations, excluding semi-trailers and similar vehicles for storage of property.

A summary of the area regulations in BL district is provided below. With some exceptions, area requirements are as follows:

- (1) *Minimum lot area.* 3,000 square feet.
- (2) *Lot coverage.* 40%, except where otherwise regulated.
- (3) *Minimum lot width.* 75 feet, except where otherwise regulated.
- (4) *Height of buildings.* Three stories or 35 feet.
- (5) *Building setback lines.* 20 feet from the line of the street on which the building fronts. Vehicular parking shall not be permitted in the required front yard area.
- (6) *Rear yards.* 15 feet, but in no case less than one-half the height of the building.
- (7) *Side yards.* Two side yards, together having an aggregate width of not less than 25 feet, neither of which shall be less than 10 feet wide.

Regarding BL area requirements, for minimum side yard, the requirement is 10 feet, and the side yard of the existing building measures 9.9 feet. In this regard, the building is an existing non-conforming structure and therefore, permissible. Specifically, pursuant to Code Section 32-51(a), if Council decides to annex the property and bring it within the purview of our Code, it can be continued as an existing, non-conforming structure. In other words, a variance is not required for the 0.1 foot of side yard missing.

Providing Services

The Public Works and Water Resources Department indicates that sanitary sewer connections can be made available to 139 East Chestnut Hill Road. All construction and permitting associated with the sanitary sewer extension and the new sewer lateral will be the responsibility of the property owner. All construction shall be done in accordance with the most current City of Newark details, specifications and standards. The owner will also be responsible to pay the sewage treatment plant fee prior to any permits being issued.

The Electric Department indicates that electric service will not be provided at this time. An annexation agreement for the property will be required to stipulate that if the office is connected to the distribution system in the future, it will be solely at the expense of the property owner.

The Planning and Development Department notes that because the City of Newark electric service will not be provided at this time, City services will be limited. If electric service is eventually provided, and depending on the annexation of other properties in the area, full City services may be made available at that time at the City's discretion.

The Department also notes that any new buildings or additions to the existing building must meet all applicable Building and Fire Code requirements.

Finally, the Department notes that the applicant must apply for City Business and Fire licenses before any permits may be issued.

No other department had comments or concerns regarding the annexation and rezoning application.

Recommendation

Because the proposed annexation of 139 East Chestnut Hill Road does not conflict with the purposes and land use recommendations of the Comprehensive Development Plan V, because the continuation of limited commercial zoning at this site will not have a negative impact upon adjoining properties and/or the nearby community, and in light of the request and the City's ability to provide sanitary sewer service to this location, the Planning and Development Department suggests that **the Planning Commission recommend that Council approve the annexation of the 0.837+/- acre at 139 East Chestnut Hill Road property with BL zoning, as shown on the attached Planning and Development Department Exhibit A, dated February 7, 2017, with the following condition:**

- A. The applicants agree to a recordable annexation agreement to append to the property deed that will stipulate that City leaf collection, snow removal and refuse collection will not be provided at this time, and if City electric service is provided, it will be at the owner's expense. The provision of services will be at the sole discretion of the City.**

Mr. Firestone: Thank you very much. Are there any questions from any Commissioner of the Department? Hearing none, I invite the applicant to make a brief presentation.

Mr. Gregory Fusco: Thank you, Mr. Chairman. Members of the board, my name is Gregory Fusco. I am the preparer of the plan before you for the proposed annexation and rezoning, exactly how Mr. Culver presented it to you. The septic system at this facility is tired and before

it becomes a problem for the applicant, which happens to be Mr. Anzilotti, who is sitting to my left here, we'd like to be proactive and make provisions to have a connection. And we were fortunate enough to obtain an easement from an adjoining property owner and the only way we can actually make the connection is through the annexation and rezoning process. So I'm here if you have any questions. Thank you.

Mr. Firestone: Thank you. Is there anyone from the public who would like to be heard on this application? Yes, please, if you could step up to the microphone and identify yourself for the record.

Mr. John Fosdick: John Fosdick, City resident. Just a question. What kind of business is at this property, or will be?

Mr. Fusco: It's a dental facility at that office.

Mr. Firestone: Thank you. Are there any other questions or any comments from any member of the public? Okay, hearing none, the public comment phase of this application is closed. The Chair would now entertain a motion.

Mr. Silverman: I move that we concur with the recommendation that Planning Commission and Council approve the annexation of the 0.837+/- acres at 139 East Chestnut Hill property with a BL zoning as shown on the attached Planning and Development Exhibit A dated February 7, 2017, with the following condition: (a) the applicant agree to a recordable annexation agreement to append to the property deed that will stipulate that the City leaf collection, snow removal, and refuse collection will not be provided at this time and if the City electric service is provided, it will be at the owner's expense. The provision of services will be at the sole discretion of the City.

Mr. Firestone: Is there a second?

Mr. Will Hurd: Second.

Mr. Firestone: Any discussion?

Mr. Silverman: Mr. Chairman, I'd like to point out that this did go through the PLUS review process but there is an annexation process that does exist with respect to the City, and it did involve both the State Planning and Development Office as well as New Castle County government.

Mr. Firestone: Thank you. Any further discussion? Hearing none, I'll call the question. All of those in favor of the motion, signify by saying Aye. All those opposed, say Nay? The motion carries.

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

THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 0.837+/- ACRE AT 139 EAST CHESTNUT HILL ROAD PROPERTY WITH BL ZONING, AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED FEBRUARY 7, 2017, WITH THE FOLLOWING CONDITION:

- A. THE APPLICANTS AGREE TO A RECORDABLE ANNEXATION AGREEMENT TO APPEND TO THE PROPERTY DEED THAT WILL STIPULATE THAT CITY LEAF COLLECTION, SNOW REMOVAL AND REFUSE COLLECTION WILL NOT BE PROVIDED AT THIS TIME, AND IF CITY ELECTRIC SERVICE IS PROVIDED, IT WILL BE AT THE OWNER'S EXPENSE. THE PROVISION OF SERVICES WILL BE AT THE SOLE DISCRETION OF THE CITY.**

VOTE: 5-0

AYE: CRONIN, FIRESTONE, HURD, SILVERMAN, STOZEK

NAY: NONE

ABSENT: MCINTOSH, MCNATT

MOTION PASSED UNANIMOUSLY

4. REVIEW AND CONSIDERATION OF AMENDMENTS TO CHAPTER 32 ZONING AS THEY RELATE TO WIRELESS INFRASTRUCTURE.

Mr. Firestone: Okay, that then takes us to Item 4, review and consideration of amendments to Chapter 32 Zoning as they relate to wireless infrastructure. And I'm going to ask Dave Culver to summarize this rather lengthy and complex proposed change to the Zoning Code, and hopefully it will become more intelligible to the Commission, and to the public and the audience who is here.

Mr. Culver: Good evening, again. Thank you. I will try to be as brief as possible because this is a very complex issue and it basically is amending just about every section within the Zoning Code that has a zoning classification to it. Basically, back in 2012 there was an act passed called the Spectrum Act by the federal government and it was amended by FCC rules in 2014, basically saying that municipalities must approve replacement of equipment, modification of equipment and so forth where there is substantial change consistent with FCC rules on communication towers. This was set up to make sure that if there was any gap in coverage, that a telecommunications company that was recognized as a utility could easily come in and rectify the situation. In doing so, a lot of questions are now being brought up by both municipal governments and state governments on how we treat these utilities within the right-of-way and outside the right-of-way. So what we did is engaged Cohen Law Group, who is a national expert in the telecommunication field, and they assisted the City in drafting the amendments that are in front of you tonight. This is kind of a time-sensitive issue because under the FCC rules they have what is called a shot clock, which means once we begin to receive applications for these types of towers, we have to act on them within 150 days of receipt. And that's to ensure that there will be no gaps in the telecommunication fields as the new technology goes forward. As we all know, we're at 4G and the 5G criteria is beginning to come present and more and more people are looking for these gap coverage areas.

So, basically, as it said in the report, this is to bring our Code up to what we believe to be in compliance with the state and federal standards and the FCC rules for the telecommunication towers within the City. It deals both with how you would treat a telecommunication tower on private land and also in right-of-way. There are still going to be some issues on how we would treat telecommunication towers specifically in the DelDOT right-of-way. That may or may not be part of an agreement with DelDOT on what our jurisdictional limits would be. Typically in the DelDOT right-of-way, we have no jurisdictional authority, however, there are agreements with DelDOT that we have some authority on utility locations outside the curb line. So this amendment is attempting to deal with both how we treat it on private property and how it will be treated in right-of-way.

There are some corrections that will need to be made within the document. There are some typos and some other clarifications that we would be more than happy to answer. These were reviewed by both the Cohen Law Group, who assisted us, and the City Solicitor, and we recommend that we are in favor of these changes at this time so that we can move forward in case there are pending applications that would come into the City. Some of the changes that you will also note in the document are that you have to first look for co-location on existing towers and you also have to come up with stealth technology on how to treat these towers as they come into a neighborhood so they can blend into the surrounding districts. One of the discussion points that we did have was when you go into the stealth technology, how do you go to areas that might have abilities to hide these towers in church steeples, on telephone poles,

or on water towers. You might all be familiar with the, what I consider a very hideous fake tree that you will see throughout the County. And when I was at the County I actually helped draft that and we did not like the fake tree but a lot of Council members did at the time. But we try to go out and say if you can put these on co-location areas or make them look something like a flagpole or a monopole, or something that is very unobtrusive to the surrounding neighborhood, that will be a much preferred situation than using the tree or some other type of stealth technology.

[Secretary's note: The Planning and Development Department report on the proposed amendments to Chapter 32 Zoning as they relate to wireless infrastructure reads as follows:]

BACKGROUND

The City of Newark currently regulates telecommunication towers/wireless facilities by requiring special use permits with specific conditions in the zoning district in which they are permitted – UN, BB, BC, MI and MOR. The Code does not currently regulate wireless facilities in the right-of-way. Due to recent confirmation that cell service providers are now considered utilities by the Public Service Commission, and in response to a recent request for the installation of poles and towers to accommodate the newly developed 5G technology in the right-of-way, amendments are recommended to the Code. Specifically, amendments are recommended to regulate towers in the right-of-way as well as to bring current City regulations for towers outside the right-of-way into conformance with federal regulations.

To assist in the development of the proposed Code amendments, the City contracted with The Cohen Law Group out of Pittsburgh, Pennsylvania, who specialize in wireless facility regulations. The proposed Zoning Code amendments in this report are designed to:

- Establish specific criteria for towers in the right-of-way
- Prohibit towers in the right-of-way in central business district
- Prohibit towers in the right-of-way in 100-year flood areas
- Prohibit towers in the right-of-way and within 75 feet of areas where all utilities are underground
- Incentivize applicants to use antennas rather than new towers by permitting antennas by administrative approval and requiring towers to go through zoning
- Bring current regulations for towers outside the right-of-way into compliance with federal regulations
- Require that applicants who want to place facilities in the downtown district to the Design Committee

Facilities in the Right-of-Way

Because the right-of-way touches on each and every zoning district in the Zoning Code, a new section, 32-56.7 Tower, Broadcasting and Telecommunications, Located Inside the Public Right-of-Way is suggested. To accomplish this goal, new definitions should be added to Code Section 32-4 Definitions, as follows:

DEFINITIONS

In order to consider new amendments and to bring the Code into compliance with federal regulations, the following definitions need to be added to our Code:

Delete Section 32-4(a)(129.1):

Tower, broadcasting and telecommunications: An above-grade tower or similar structure more than 35 feet in height for communications equipment principally intended for the transmittal or reception of commercial, governmental, and related radio, television, microwave, cellular phone, and similar telecommunications signals.

Towers or similar structures installed on tops of or attached to buildings, water tanks, or similar facilities shall be included in this definition, if the total height of the tower/structure exceeds 57 feet above grade. This definition includes the accessory buildings, storage facilities, and related equipment required for broadcasting and telecommunications towers and any such equipment for telecommunications antennas that may be attached to or on the facades of buildings or structures.

And replace it with:

Tower, Broadcasting and Telecommunications—any structure that is constructed for the primary purpose of supporting one or more antennas, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. A “tower” as defined herein shall not include towers and supportive structures for amateur purposes, including but not limited to ham and citizens band radios maintained and/or utilized by federally licensed amateur radio operators.

Related definitions are as follows:

1. *Antenna*—any antenna and related equipment attached to a wireless support structure. Antennas shall not include support structures for antennas or any related equipment that is mounted to the ground or at ground-level.
2. *Co-location*—the mounting of one or more antennas, on an existing tower, or on any structure that has been approved by the City to support at least one antenna.
3. *FCC*—Federal Communications Commission.
4. *Height of a Tower* - the vertical distance measured from the ground level, including any base pad, to the highest point on a tower, including antennas mounted on the tower and any other appurtenances.
5. *Related Equipment*—any piece of equipment related to, incidental to, or necessary for, the operation of a tower or antenna. By way of illustration, not limitation, related equipment includes generators and base stations.
6. *Right-of-Way*-- The surface and space in, on, above and below any real property in which the City of Newark has an interest in law or in equity, including, but not limited to, any public street, boulevard, avenue, road, highway, easement, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, green space or any other place.
7. *Stealth Technology*—camouflaging methods applied to wireless communications facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, flagpoles, and light poles.
8. *Substantially Change or Substantial Change* - A modification to an existing wireless Communications Facility that changes the physical dimensions of a tower or base station if it meets any of the following criteria:
 - (a) For a tower outside the public rights-of-way:
 - (1) it increases the height of the facility by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed twenty (20) feet, whichever is greater;

- (2) it protrudes from the edge of the wireless communications facility by more than twenty (20) feet, or more than the width of the tower structures at the level of the appurtenance, whichever is greater.
- (b) For a tower in the public rights-of-way:
 - (1) it increases the height of the facility by more than ten percent (10%) or ten (10) feet, whichever is greater;
 - (2) it protrudes from the edge of the structure by more than six (6) feet;
 - (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
 - (4) it entails any excavation or deployment outside the current site of the tower; or
 - (5) it does not comply with conditions associated with prior approval of construction or modification of the tower unless the non-compliance is due to an increase in height, increase in width, or addition of cabinets.
- 9. *Telecommunications Applicant (Applicant)*—any entity or person that applies for a wireless communications facility building permit, zoning approval and/or permission to use the public right-of-way, City-owned land, or other property.
- 10. *Wireless*—transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
- 11. *Wireless Communications Facility* —the antennas, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services.
- 12. *Wireless Support Structure*—a freestanding structure, such as a tower or any other support structure that could support the placement or installation of a wireless communications facility, if approved by the City.

A new section (32-56.7) to regulate towers inside the public right-of-way is also recommended as follows:

Section 32-56.7, Wireless Facilities in the Right-of-Way

- (1) Tower, broadcasting and telecommunications, located inside the public rights-of-way, subject to the following conditional use standards and requirements:
 - (a) Timing of approval for applications. The City shall comply with all federal timing requirements for the consideration of applications for new towers and collocated antennas that fall under Section 6409(a) of the Spectrum Act, and/or any orders promulgated by the FCC or any other governing entity.
 - (b) New tower applications shall be accompanied by a professional engineer's report containing the following:
 - 1. Certification that the proposed tower will fill significant gap in wireless coverage or capacity that exists in the applicable area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the City's decision on an application for approval of tower.
 - 2. A technical evaluation of the feasibility of attaching the tower or antenna to an existing, or previously approved, structure or wireless support structure, or sited on land owned and maintained by the City of Newark. A

list of approved, municipally-owned buildings and parcels appropriate for wireless facilities placement is kept on file at the City Zoning Office. Council may deny an application to construct a new tower if the applicant has not made a good faith effort to mount an antenna on an existing structure.

3. Evidence that the applicant cannot adequately extend or infill its communications system by the use of equipment such as redoes, repeaters, antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The applicant shall demonstrate that the proposed tower must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.
4. The applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter ($\frac{1}{4}$) of a mile radius of the site proposed for the tower, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:
 - a. The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - b. The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - c. Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - d. A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
5. A signal coverage/propagation map of the area to be served by the proposed tower. The propagation shall show signal intensity in dBm, as well as major roads, residential developments, and commercial areas. The City reserves the right to request propagation maps for other sites or height alternatives.
6. Certifications that the proposed tower shall comply with all applicable state and federal regulations

(c) Location and development standards.

1. Available infrastructure.
 - a. As part of its application for approval, the applicant must demonstrate that it cannot infill the capacity or coverage gap in its system by utilizing existing infrastructure (i.e., utility or light poles) in the ROW as a support structure for an antenna, rather than constructing a new tower. Applicants that utilize existing infrastructure for the siting of antennas may proceed with the siting of their facilities by obtaining administrative approval from the City.

- b. To the extent permissible under state and federal law, antennas attached to existing infrastructure shall not exceed six (6) feet in height and shall employ stealth technology, if possible, in their design.
 - c. Applicants replacing an existing pole with a new pole to support a new antenna must bear all costs associated with such pole replacement.
- 2. Towers in the ROW shall not exceed a height comparable to the average height of utility poles or electrical poles within a two (2) block radius of the proposed facility, unless the applicant can prove to the satisfaction of Council that a taller tower is the only method by the applicant can infill its gap in coverage or capacity.
- 3. Towers are prohibited within seventy-five (75) linear feet of areas in which all utilities are located underground.
- 4. Towers shall not be located in the front façade area of any structure.
- 5. Towers are prohibited in the Central Business District.
- 6. Tower are prohibited in the 100-year flood zone, as determined by the City.
- 7. Applicants proposing the construction or siting of towers in state-owned rights-of-way shall demonstrate that it submitted all appropriate applications to the Delaware Department of Transportation and subsequently received permission for the siting or construction of said towers.

(d) Design regulations.

- 1. The tower shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the applicant shall be subject to the approval of the City Council.
- 2. To the extent permissible under state and federal law, any height extensions to an existing tower shall require prior approval of the City, and shall not violate the provisions described herein.
- 3. Towers shall be designed structurally, electrically, and in all respects to accommodate both the applicant's antennas and comparable antennas the maximum amount of future users based on the size of the proposed tower.
- 4. The City Design Review Committee will review applications for the placement of new towers in the Downtown District and Parkland District in order to ensure that the character of such Districts is preserved. The applicant shall take into consideration the design recommended by the City Design Review Committee when it submits its final conditional use application to Council.

(e) Equipment location. Towers and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the City. In addition:

1. Ground-mounted related equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.
 2. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the City Council.
 3. Any graffiti on the tower or on any related equipment shall be removed at the sole expense of the owner within fourteen (14) days of notification.
 4. Any underground vaults related to telecommunications towers shall be reviewed and approved by City Council.
- (f) Time, place and manner. The City shall determine the time, place and manner of construction, maintenance, repair and/or removal of all towers in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the City and the requirements of the Public Utility Code.
- (g) A structural engineer registered in Delaware shall issue to the City a written certification of the proposed tower's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure.
- (h) Towers and antennas shall employ stealth technology and shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and construction principles, practices and techniques.
- (i) Permit required for modifications. To the extent permissible under applicable state and federal law, the proposed modification of an existing tower, which substantially changes the dimensions of such wireless support structure, shall first obtain a building permit from the City. Non-routine modifications shall be prohibited without such permit.
- (j) No tower shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (k) Towers shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair. Such maintenance shall be performed to ensure the upkeep of the Tower in order to promote the safety and security of the City's residents, and utilize the best available technology for preventing failures and accidents. Any maintenance or repair to antennas or towers located above high voltage power lines shall be performed by contractors who are OSHA-certified to work above high voltage power lines.

- (l) To the extent permissible under state and federal law, no tower or antenna may be located upon any property, or on a building, structure that is listed on either the National or Maryland Registers of Historic Places, or that is deemed by the City to be local historic significance. No tower in the public rights-of-way shall be located along a highway or other road that is considered by the City to be a scenic route.
- (m) All towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the tower shall be that required by the FCC, or any other federal or state agency.
- (n) Towers shall not be artificially lighted, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the City Manager. This requirement shall not apply to towers employing stealth technology in the ROW that are designed to resemble street lights.
- (o) Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (p) Relocation or removal of facilities. Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, the owner of a tower in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any tower when the City, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - 1. The construction, repair, maintenance or installation of any City or other public improvement in the Right-of-Way;
 - 2. The operations of the City or other governmental entity in the right-of-way;
 - 3. Vacation of a street or road or the release of a utility easement; or
 - 4. An emergency as determined by the City.
- (q) Permit Fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a new tower, as well as related inspection, monitoring, and related costs.
- (r) Nothing herein shall be construed to prohibit the City from leasing fiber that it owns and/or maintains to third parties.

TOWERS PERMITTED AS CONDITIONAL USES IN ZONING DISTRICTS ARE ALREADY REGULATED WITH A SPECIAL USE PERMIT

For those districts which currently permit cell telecommunication towers with a Council granted special use permit (UN, BB, BC, MI, MOR, STC) the following changes are necessary to bring our regulations up to current federal regulations.

Delete the following sections:

UN District

Section 32-14(b)(1)

BB District

Section 32-18(b)(8)

BC District

Section 32-19(b)(10)

MI District

Section 32-21(b)(1)

MOR District

Section 32-23(b)(1)

STC District

Section 32-23.1(b)(1)

And replace the sections with:

(1) Tower, broadcasting and telecommunications, located outside the public rights-of-way, subject to the following special requirements:

(a) Timing of approval for applications. The City shall comply with all federal timing requirements for the consideration of applications for new towers, as well as collocated antennas that fall under the Spectrum Act and/or the October 2014 Report and Order promulgated by the FCC. Tower applications shall be accompanied by a professional engineer's report containing the following:

1. A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed tower, as well as a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the applicant, the power in watts at which the applicant transmits, and any relevant related tests conducted by the applicant in determining the need for the proposed site and installation.
2. A technical evaluation of the feasibility of attaching the tower or antenna to an existing, or previously approved, structure or wireless support structure, or sited on land owned and maintained by the City of Newark. A list of approved, municipally-owned buildings and parcels appropriate for wireless facilities placement is kept on file at the City Planning and Development. Council may deny an application to construct a new tower if the applicant has not made a good faith effort to mount an antenna on an existing structure. The applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter (¼) of a mile radius

of the site proposed for the tower, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- a. The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - b. The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - c. Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - d. A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
3. Certification that the proposed tower will fill a significant gap in wireless coverage or capacity that exists in the applicable area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the City's decision on an application for approval of a telecommunications tower.
 4. Written certification of compliance with Federal Communications Commission Safety Standards for exposure to nonionizing electromagnetic radiation.
 5. Copies of all applicable state and federal permits.
 6. An engineering analysis of the proposed tower, including a summary of the proposed tower's capacity to provide space for future co-location by others.
- (b) Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line of a church, library, school, nursing home, hospital, or lot zoned residential (RH, RT, RS, RD, RM, RR, and AC) not less than three times the height of the tower or 350 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use. If the applicant uses self-collapsing technology in its tower design, the setback from the nearest property line shall be one and a half times the height of the tower or 150 feet, which is greater.
 - (c) No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.
 - (d) Towers shall not exceed 175 feet in height unless a variance is successfully obtained by the applicant. Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.

- (e) To the extent permitted by applicable federal law and FCC regulations, towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.
- (f) The applicant shall submit a soil report to the City complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA-222, as amended, to document and verify the design specifications of the foundation of the tower, and anchors for guy wires, if used.

Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least 10 feet high. The landscaping shall consist of a minimum 25 foot wide planting strip with ground cover and/or grass, including at least one row of six foot high evergreen trees providing a solid screen adjacent or proximate to the fence, and 15 foot high, two inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Council approval. Towers located on top of buildings three stories or more in height and telecommunication antennas located on existing buildings shall be exempt from this subsection, except that a six foot high solid evergreen screen shall be required between any telecommunications antenna or tower accessory building and adjoining properties. A ten foot high security fence and an adjoining six foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires for guyed towers.

- (g) No outdoor storage shall be permitted at the tower site.
- (h) Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees or employing other alternative methods of stealth technology may be exempt from this subsection, subject to council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection. Towers shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible.

Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering design and construction principles, practices and techniques.
- (i) A tower shall be located so as not to encroach into any established public or private airport approach as established by the Federal Aviation Administration.
- (j) Towers higher than 100 feet must be a minimum of 2,000 feet from the nearest similar tower, measured from the base of the towers.

- (k) New telecommunications facilities may be attached to an approved tower without applying for an additional special use permit so long as the new facility does not substantially change the dimensions of the wireless support structure, or trigger any other exemption outlined by federal or state regulation. Antennas being sited on structures that do not already act as wireless support structures may be approved administratively, so long as they do not exceed ten (10) feet in height and are constructed with a stealth design approved by Council. To the extent permitted by state and federal law, as built drawings must be submitted to staff in advance of receiving such administrative approval, in order to determine whether the applicants proposed facility is eligible for administrative approval.
- (l) No interference with existing television, cable television, radio signals, emergency communications services, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.
- (m) If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the city shall arrange to have the facility dismantled and will assess the landowner all costs associated with the removal of the tower. If the full amount due the city is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the city, the city finance director shall cause a special assessment to be recorded in the municipal lien docket. The recordation of such special assessment shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.
- (n) That the owner of such tower shall provide proof to the city that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower. If structural deterioration is found to be present, and such deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the building department.

In addition, the operator of such tower shall provide annual proof to the city that the tower has undergone field measurements to ensure compliance with all applicable Federal Communication Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the city, shall be conducted upon start of the facility and annually thereafter, except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are to be performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the city.

- (o) The owner of such tower shall give proof to the city that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of

human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.

- (p) Wireless telecommunications facilities shall not be located upon a property, and/or on a building or structure that is listed on the National or Delaware Registers of Historic Places, included in Section 7-19 of the City Code pertaining to historic structures, or is described in the official historic structures and/or historic districts list maintained by the City.
 - (q) Wireless telecommunications facilities shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
 - (r) The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a tower or antenna, as well as related inspection, monitoring, and related costs.
 - (s) City residents and amateur radio operators utilizing satellite dishes, towers and antennas for the purpose of maintaining television, phone, radio and/or internet connections at their respective residences shall be exempt from the regulations enumerated in this section of the Zoning Ordinance.
 - (t) Notwithstanding the criteria set forth in Sec. 32-78 of this chapter, Council shall grant the application if all of the foregoing requirements are met.
- (2) Accessory buildings or structures, with impact, and accessory uses, with impact, including the repair, installation, and servicing of any commodity distributed, manufactured, processed, produced, or warehoused in this district. Such repair, installation, and servicing must be provided totally within enclosed buildings; outdoor parking and storage of vehicles, products, or other related items in a state of disrepair shall not be permitted.
- (c) Area regulations.
 - 1. Minimum lot areas. Except as specified in Article XVI, [Section 32-56.2](#)(a) of this chapter, the minimum lot area for any permitted use in an MI district shall be 5,000 square feet, provided parking space and loading space are provided in accordance with the requirements of Article XIV of this chapter.
 - 2. Maximum lot coverage. In an MI district, buildings or other structures may occupy the entire lot, except as provided in (6) below.
 - 3. Height of buildings. Except as specified in Article XVI, [Section 32-56.2](#)(c)(2) of this chapter, the height of a building or structure hereafter erected or altered shall not exceed four stories or 55 feet.
 - 4. Building setback lines. No setback required except as provided hereinafter.
 - 5. Rear yards. In an MI district, no rear yard is required, except that along a rear lot line forming the boundary between such MI district and any residential district, a rear yard shall be required equal to the rear yard of that residential district.

6. Side yards. In an MI district, no side yard is required except that along a side lot line forming a boundary line between such MI district and any residence district, a side yard shall be required equal to the minimum side yard required for that residence district.

STAFF COMMENTS

These proposed amendments have been crafted with the assistance of Cohen Law Group, and reviewed by the City Solicitor.

RECOMMENDATION

In order to regulate wireless facilities in the right-of-way and to bring regulations for wireless facilities outside of the right-of-way into compliance with federal regulations, the Planning and Development Department suggests that the Planning Commission recommend amending the Zoning Code as detailed in this report.

Mr. Firestone: Just a point of clarification, if we're going to go down this tonight, you're going to have to detail for us what the changes are from the document so that we have a clear record and know what we are voting on.

Mr. Culver: Well it was pointed out to us before the meeting by Councilman Morehead that there was a typo on page 8 where it says Maryland Register of Historic Places, and it should say Delaware Register of Historic Places.

Mr. Firestone: Could you direct us to the paragraph?

Mr. Culver: Sure, it is paragraph (i) on page 8.

Unidentified Speaker: (I)

Mr. Culver: I'm sorry, (I).

Mr. Firestone: Paragraph (I) and it should say what?

Mr. Culver: It should say listed on the National or Delaware Register of Historic Places.

Mr. Firestone: And are there any other corrections?

Mr. Culver: There was another question on page 3, number 8. What does Substantially Change or Substantial Change . . .

Mr. Firestone: Where?

Mr. Culver: On page 3, number 8.

Mr. Firestone: Okay, go ahead please.

Mr. Culver: There was a question on what that would mean in the City. That is a question that I believe was written in a manner that is consistent with how the FCC defines it. However, I'm going to re-review that prior to Council action to make sure that is what the FCC specifically requires for language, or if there is any way to insert additional controls within the City's jurisdiction.

Mr. Firestone: I mean, to my liking, the language there on 8(a) is sort of convoluted. It's not the straightest way to write that in the English language with the or's and whichever is greater.

Mr. Culver: And the situation is that is how the FCC defines it and they mimicked the FCC language. I am not 100% sure if we have the flexibility to change how the FCC defined it, but I think we do have that option and that's what we will go back and revisit. Just to clarify that so the language is what we would consider more plain English for people to understand.

Mr. Hurd: I have a question on that, in that area. Do we need language in there to make sure that it doesn't exceed our maximum height, or is that assumed by other sections of the Code?

Mr. Culver: That's listed in other sections of the Code on the actual height of a structure.

Mr. Silverman: Mr. Chairman, may I address the attorney?

Mr. Firestone: Yes.

Mr. Silverman: Isn't there a body of FCC regulations and court decisions that takes away a lot of discretion with respect to telecommunication towers and local governments? For example, I don't think we can simply say no, and that the City would have to recognize the engineering requirements for the tower with respect to height and location.

Mr. Bruce Herron: That's correct and that's, to a large degree, the reason for these amendments to the Code. We want to get them in the Code. That's correct.

Mr. Silverman: Okay. So there could be instances, particularly with FCC controlled telecommunication towers, where the height of the tower would be dictated by the engineering requirements for the area, as opposed to the City Code maximum heights.

Mr. Herron: That could be true.

Mr. Silverman: Okay.

Mr. Firestone: Because it seems to me under (a)(1) we could get rid of or and whichever is greater and use the word and. And you would end up with the same result with fewer words and less confusion. Would you agree with that, Bruce?

Mr. Herron: I think we do need to check, as Dave said, whether we can do that.

Mr. Firestone: Okay.

Mr. Herron: But if that . . . I would be hesitant, if that comes directly from an FCC rule, I would be hesitant to change it.

Mr. Firestone: And it's not clear to me under (a)(1) and (2) whether that's an "or" or an "and" linking (1) and (2). It's not clear to me, because up above it says if it meets any of the criteria. It's not clear when you're talking about the criteria if you have to meet everything in (a) or anything in (b), or one of the subs. So I think we do need to clarify that item. And the last thing on this one, I was a little unclear about (b)(3). It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. I don't even understand what that means, that it exceeds the standard number but not more than four.

Mr. Culver: Yes, it was our understanding in the discussions with the Cohen Law Group that the typical installation would be one box for the use, but they said that typically as the technology evolves, they were just attaching additional boxes for the newer equipment onto the system. So they said you shouldn't see more than four cabinets at any one site, and that's where that number came from.

Mr. Firestone: Right, but why couldn't you just write involves the installation of not more than four cabinets?

Mr. Culver: And that would probably be the plain English way of writing it, not the federal government way of writing it. But we can go back and definitely check to see if we can just change that language without being in violation of any FCC regulation, and with the understanding that any time you would have that number in there, you may be subject to the ability to go and get a variance from the Board of Adjustment on a dimensional standard.

Mr. Firestone: Okay. Yes, I would recommend that we go and see where we can change the language because we ultimately want this to be able to be understood by members of the general public, by applicants, by homeowners, and by Commissioners and City Council members when these things come up. So the more we can use plain English, the better off we're going to be and we're going to have fewer disputes and spend less time on these items in the future.

Mr. Hurd: And I was just going to say can you check to see if that four is the total number? Because the way I read it, it says every time I make a change, I can add up to four cabinets. But it sounds like you're just saying typically they have no more than four.

Mr. Culver: It would be typically four but you might have co-locations on the tower, so you might see more than four on any one applicant on that tower.

Mr. Bob Cronin: How about the size of the cabinets themselves. I can see where the size might be something now but three years from now the size can grow for a single cabinet.

Mr. Culver: Yes, I don't believe there was any size put in because of the flexibility that was put into the regulations for the change in technologies. So I don't know if we could restrict a cabinet to a certain size or a certain area of the tower site.

Mr. Silverman: Dave, does the Code currently control the size of the footprint?

Mr. Culver: The Code currently has language in it that talks about the size of the tower and the height of the tower, and then the distance for fall zones and so forth. A lot of that language is kind of dated because most towers are designed to collapse upon themselves. Where older towers with the guide wires were designed to tip over, they now are designed to self-implode, I guess, would be the way to say it. To fall on themselves. And that was a question when we were discussing it with the attorneys from Cohen, was that our Code still has some of the older type regulations where you typically would not see that type of tower anymore.

Mr. Firestone: The Chair would now entertain any comments from the public.

Mr. Hurd: I'm actually . . .

Mr. Firestone: We'll come back to you for further discussion. Councilman?

Councilman Mark Morehead: Mark Morehead, District 1. Thank you for looking at this. First off, I'd like to thank you all for your service. I know what you do is often unrecognized and I look at this document and see this as important to the quality of life of our visual enjoyment of the City, if nothing else.

A number of my English teachers along the way would probably understand what some of this says given where the commas are located and so forth, but I'm having a great deal of difficulty, as are some of you, with this document being ready. So I understand that time is of the essence, but we all recognize that it's really, really hard to write good law, but I think this one needs some more work. And I will point out a couple of places that I'm looking at in particular.

Page 2, where it talks about definitions. The first definition is antenna. Any antenna and related equipment attached to a wireless support structure. Now when I first read that, I thought are we talking the tower without guide wires or are we talking about a wireless communication tower? And so I think if we added a word there, and I've come to believe it probably means wireless communication. But it's not clear to me.

The second definition, or on any structure that has been approved by the City. Whenever I see those words together, I'm always a little bit leery if we don't have an approval process previously specified. And the question is, who is that? Is it Carol? Is it Dave? Is it Council? Who is it?

On 8(a) and (b), tremendous trouble there. And it starts exactly where you've been talking already, (a)(1) not to exceed 20 feet, whichever is greater. Does that apply to the first part of that, before the or, or the second part of (1), after the or? And that's where one of my English teachers probably could come in and say it should be this way or that way.

On (a)(2), protrudes from the edge. The edge of what? The facility? I mean that's what it says. Of the wireless communications facility. If the facility is the whole footprint of the whole thing, and this thing is sticking out by 20 feet, whichever is greater . . . more than 20 feet, is what it says. There is no maximum there. That's a minimum. That doesn't protect us. And I know what you all are trying to do is offer us some protection here.

It goes on in (b), the same thing. From (b)(2) from the edge, (b)(3) the standard number, (b)(4) the current site. What's the site? And so on, and so on, and so on.

I'll go to one last one that truly worries me. On page 6, item 3, this would be under (c)(3), I guess, carried over from the previous page. Towers are prohibited within 75 linear feet of areas in which all utilities are located underground. Okay, here's my point. If we're justifying wireless communications as a utility, that's never going to be underground, by definition. So that situation never exists. We're never 75 feet from all utilities. And I think what we mean there is any utility. Because we don't want to hit stuff. I think that's the purpose. So whether we have power or water or sewer or whatever, we don't want to go down and hit that stuff. My guess is that all is not what we want right there.

Number 4 on that same page, front façade area. Do we have a definition for that?

Number 5, towers are prohibited in the Central Business District. Later on in the document it talks about you have to come to the Design Committee for towers in the Central Business District, so I'm curious why there's a discrepancy there.

I'm concerned about, on Page 6, number 7 . . . and you've already talked about the question of Newark oversight on DelDOT roads.

On Page 7, number 4, Downtown District and Parkland District. I'm not sure we have either of those two defined.

Number 3, we're missing a word there. Accommodate both the applicant's antennas and comparable antennas the maximum amount of future users. That's not a sentence. So I don't know what we're trying to do there.

Mr. Silverman: Page reference, sir?

Mr. Morehead: I'm sorry, number 7, item 3, right up top. So, you know, I understand the concept of the document. I appreciate the concept of the document. We need to clean this up before it gets to Council. Because when Council tries to fix this on the floor, I can tell you it will be ugly and we won't end up with something that will do us any good when it comes to standing in front of the Board of Appeals.

So, again, thank you for what you do. By all means, send this forward, but I would hope we have some way of saying it needs more work before it comes to Council. Just some examples. Thanks.

Mr. Firestone: Thank you for identifying those areas and for your comments. Are there any other comments from the public? Please.

Ms. Jean White: Jean White, District 1. I only got part-way through this and I really don't understand the basic aspects of it, so I'm going to nip around the edges with some wording, just to see.

So on the first page, it says require that applicants who want to place facilities in the downtown district. I presume it's supposed to say go through the Design Committee. I know later Mark Morehead pointed out that there is a discrepancy in that. Nevertheless, I actually just attended the Design Committee this morning, not as a member, but as an interested community member, and so this jumped out at me. So also, I guess, for the purpose of this, I don't know if the Code actually defines the Central Business District. If it already does, that's fine, but also the Design Committee aspect there. I only got part-way through it. I didn't know if it was mentioned later in the document.

Secondly, of course, as we are all aware, there are cell phone antennas and that type of stuff on top of water towers and the seven-story building on Main Street for elderly people and so on and so forth. And if you look at the definitions on page 2, it says to delete section 32-4, which is Tower, Broadcasting and Telecommunications. And it talks about towers or similar structures installed on top of attached buildings, like the water tank in Windy Hills and places like that, which is where they are stored. And you're taking that out and now it says to replace it with Tower, Broadcasting and Telecommunications, any structure that is constructed for the primary purpose of supporting one of these antennas. But the water towers in Newark and the high buildings are not constructed for the primary purpose. Now I may not have understood this, why this is being taken out, if you understand what I mean. Maybe these are a different type of, what do you call it, communication antennas than what we have already. But some of the places that these things that we have already are on top of existing buildings and so on. So I wondered why that was all taken out.

And let me just see here, then we get on page 3 and this is just a wording thing. It's not substantive. On page 3, number 7, stealth technology. I was wondering whether the City of Newark is obligated by either Federal Communication Commission rules or by this Cohen Law Group to use that word. I think it would be better to say camouflaging technology, because people really understand camouflaging better than stealth technology. You look up the definitions, it seems camouflage which means disguise, deception and so on, whereas stealth is secret, clandestine and so on. And so I was wondering if every place you had stealth technology, you could just put camouflage technology. A small point but nevertheless. And I think it would be easier, if anybody ever reads this in the Code, to understand it. And actually there are two other places stealth technology is written up to where I got on page 6. There are two different places on it.

And, as I say, the basic part of it, I don't understand, and I wondered if somebody on the Commission could just explain to me what newly developed 5G technology is, or maybe Mark Morehead can explain it to me later. Thank you.

Mr. Firestone: Thank you for your comments. Are there any other comments from public? Okay, then I'm going to go to Commissioner Hurd. And I think that we should perhaps confine our comments to suggestions of where we think this document could be improved. But also if you think it's totally ill-advised or something, we welcome both kind of comments, as well. Thank you.

Mr. Hurd: I guess I'll just start of work my way through. I am going to say I think I agree with Mr. Morehead's note about the co-location. That saying, approved by the City, it's referenced in some way because they say there's a list, there should be a list of buildings that are essentially approved for antennas, but I think we need to be clear that this needs to say, to go refer to that list, or we need to talk about how that list is created.

Number 8 on page 3 almost cries out for a diagram, to just say this is what we're talking about. Because I read it one way but obviously I think other people are reading it a different way. If there's more than one way than we're going to have a problem or we have a loophole that people are going to go through.

There are a couple places in the document . . . this is just sort of for clarity . . . where the abbreviation ROW is used instead of right-of-way, but it is never defined. There is never an instance where it says right-of-way (ROW) and then it uses ROW for the rest of the time. So my recommendation would be just to take that out and say right-of-way every single time. It's not that much space.

On page 6, number 3 about locating in areas with utilities, the way I read this was that it was sort of saying that there's an area where they have buried the utilities and made them not visible. There are no poles and such. We're trying to keep towers out of that area because we've already sort of said we're keeping this area clear of poles. So I didn't read that as an underground interference issue as just an aesthetic issue. But it's not, I think, entirely clear in here.

Number 5, I did look up Central Business District, and that is the BB zoning, is defined as the Central Business District. So I think either here we need to say towers are prohibited in the BB zone and we're done, and then we don't get into Central Business District.

Page 7, number 4, at the top, there is no City Design Review Committee. There is a Downtown Newark Partnership Design Review Committee who has sort of aesthetic jurisdiction over the downtown district or whatever it's called. So obviously there we need to change the name and we also need to somehow say that the downtown district as defined by the current boundaries for the DNP, because that keeps changing. And we have to be careful because a lot of that downtown district is BB zoned. So we've already said you can't have it in that zone, right?

Mr. Culver: Well, let me just make one clarification.

Mr. Hurd: Sure.

Mr. Culver: The first part of the ordinance that says you can't have it in the BB is wireless facilities in the right-of-way. When you go further into the document, where you have towers are permitted as conditional uses, that covers everything outside the right-of-way.

Mr. Hurd: Okay.

Mr. Culver: So a lot of this stuff that we were talking about in BB on that section is specific for towers within the right-of-way, their conditional uses outside the right-of-way in those districts. And then if you go further on page 9, it starts with the UN district, and then it tells you the sections we're replacing the BB, BC, MI, MOR and STC districts. So this document is dealing with two things, 1) how are we going to deal with this technology within the right-of-ways, and then, 2) how is it dealt with on private property.

Mr. Hurd: Okay, because I don't see in the section on the towers elsewhere, any reference to the Design Review Committee. So that needs to be brought forward if that's the intention to say that we want to review all towers that are located inside the downtown district. I don't see a reference at all.

Mr. Culver: And I don't think you would see a reference specifically in this because in the BB district it goes to the DNP Review Committee as part of the application process. So when you're in the other districts and you're asking for your special use permit, you would also follow the other regulations within that district. So you don't need to specifically call it out in every section within that zoning classification as long as it's one of the primary reasons for the application review within that district.

Mr. Hurd: Okay but if we're in the section talking about the facilities in the right-of-way and we said that they're not allowed in the BB district.

Mr. Culver: Yes.

Mr. Hurd: Then there's no review for them because they're not allowed in that district.

Mr. Culver: Within the right-of-way.

Mr. Hurd: That's the second part we're talking about here, dealing with the right-of-way. When we go to the later section, it's talking about towers located outside of the public right-of-way, and there's no mention of Design Review Committee.

Mr. Culver: And I believe the Design Review Committee is specifically mentioned within that zoning classification. So it would, by default, an application would be referred to the Review Committee.

Mr. Hurd: Okay, then I think we need some clarification as to whether the reference to the Design Review Committee stays in here. Because if it's already in the Zoning Code to say that anything within the zone gets reviewed, then we don't need the placement. I do think, though, it's a useful thing to call it out and say if we're going to put a new tower in that's not in the right-of-way on public property and it's in the downtown district, then I would like to see it called out specifically so it gets reviewed. I think that number 4 probably needs to move based on that.

So this is about consistency. On page 11 at the top it talks about the list of approved, municipally-owned buildings and parcels appropriate for wireless facilities. Here it says it's kept on file at the City Planning and Development, and it should probably say department in there. In the previous section it was called the City Zoning Office. So Zoning Office we know is wrong. Planning and Development is closer. So those are the things that I saw that were inconsistent between sections and that have gaps in the definition that I felt weren't making it clear about where you get that information or where you're going to get those boundaries.

Mr. Bob Stozek: Mr. Chairman, I have a couple of comments. Number 1, I realize its difficult writing a Code document for the City when you're complying with state, federal and FCC regulations. But I think for our purposes, this is way too complicated. And I guess I'm wondering what the genesis of this document is. Did we get this from other municipalities and put it together since Maryland was mentioned and City organizations that don't exist here were mentioned. It sounds like we glommed together a document that we borrowed from other entities. Is that what we did?

Mr. Culver: Again, I wasn't directly involved in the beginning of this process. My understanding was that Cohen Law Group was hired to draft the ordinance based on what we had existing in our regulations and what they've done in other jurisdictions that met Constitutional muster as far as what was written for the regulations of these type of towers. So I think it's a conglomeration of both what the City has done traditionally and what other jurisdictions have done. And I know we also took some of the language for the stealth technology and all from County Code.

Mr. Stozek: I know it's not an easy task to do, but if what we're doing is basically taking a bunch of state and FCC regulations and somehow incorporating them into City Code, it seems like we should be able to reference those things and not have to repeat them, and then talk about the things that are specific to the City of Newark, of how they apply. We were talking about heights and various things, where things are buried and whatever. Like you said, the layman is never going to be able to wade through this. And we're not going to make it very simple just because of the nature of the subject but I just don't think this will serve the purpose it's intended to. I'm sorry. It's got to be simplified.

Mr. Cronin: I'm wondering if the Cohen Law Group has been paid yet for something that has so many holes in it and discrepancies, is the first question in my mind. I tend to agree with Mr. Stozek's point of view in terms of its complexity and usefulness for people that are going to have to work with it.

Mr. Firestone: I guess the Chair would entertain a motion, I think at this time.

Mr. Silverman: I have some additional comments, Mr. Chairman.

Mr. Firestone: Okay.

Mr. Silverman: Does this pertain to railroad right-of-ways?

Mr. Culver: This would pertain to anything that would be defined as a right-of-way within the City Code. So railroads do have right-of-way.

Mr. Silverman: Okay. And Ms. White points out a very important feature here. Everyone that's been listening in this room, and some people have literally changed the antenna, tower and structure. They're all different items. The antenna is the part of the unit that is involved in the transmission of electronic data. That's the one that can extend out six feet beyond the structure, the footprint, the platform, the whatever. In addition to having a structure that's dedicated to holding up the antennas, as Ms. White points out, we have within the City a system whereby antennas can be located on existing structures and buildings. There's something ancestral that needs to also be researched here. When the report was done on the new construction on Center Street, there was a prohibition on towers on that building . . . I'm sorry, I'm doing it . . . antennas on that building. So there's something else floating out there that's been either done by custom or by Code or some Building Code, or it's somewhere that needs to be incorporated in here that controls the energized transmission part of a communication tower – the antenna part. So I agree. This document is not complete.

Mr. Culver: For zoning purposes, this tells you where and how to locate a tower antenna or a structure. Then there would be part 2, which is what you need to get your building permit. How do you build said structure and then all the other regulations that would come in under the Building Code, which is not part of the Zoning Code. And in dealing with telecommunication towers for numerous years in other jurisdictions, there is no one simple regulation because you have so many other federal regulations and state regulations that also affect these towers. And I don't disagree that the structure of our Code doesn't make things a little more complex for reading because of the way we define things in different districts, but that's how this is structured to meet into the current configuration of the City Zoning Code.

So, again, there is no real cut and dry answer on antennas or towers, and on numerous occasions that I've dealt with these in other jurisdictions, a lot of these antenna companies or tower companies will refuse co-locations and that was always a criteria to prove you can't go on another tower for some reason. It's in this too. Generally if it's a single user tower built by a specific company, like an AT&T or a Verizon, they do not let co-locations. And then you have towers that are built by people that would speculate on the needs for these towers and then they would co-locate to as many people as you could possibly have. And then you would have limitations within the Code on, again, the equipment, how many boxes you could have, who

could have them, where you could have them, and it makes it a far more complex issue with the competition that's in that telecommunications industry. So there is no one simply, easy way, especially when you're dealing with what the FCC is telling us we have to deal with as far as allowing these to locate within areas to provide this gap coverage.

Mr. Firestone: Okay. The Chair will now entertain a motion. Commissioner Hurd?

Mr. Hurd: I move that we send this back to the Planning Department for review and revision based on the comments received tonight, to allow further time to make these Code sections clearer and more understandable.

Mr. Firestone: Is there a second?

Mr. Silverman: To move the motion forward, I'll second it.

Mr. Firestone: Is there discussion on the motion?

Mr. Cronin: Mr. Chairman, if we don't approve this motion, I guess the alternative is to approve it as-is, or is there another alternative that has yet to be verbalized as we think about how we want to consider this motion.

Mr. Firestone: It would seem that someone else could bring forward a different motion. It obviously couldn't be . . . I don't believe it could be very similar to the last motion. But there could be alternative motions other than moving toward approval. Also, if we were to eventually vote on an approval motion and it's denied, it presumably goes back to the Department in any respect, but I defer to Counsel.

Mr. Herron: That would be correct.

Mr. Stozek: I guess if we're going to send it back, I'd like to hear from the Planning Department the things they're being asked to do.

Mr. Culver: Well at this point in time, based off the comments that I received, we're simply going to amend this document to address those comments. I don't know if there's much more we can do with it based off the FCC regulations. And we still need to take it forward to Council at some point for their consideration. So I'm not quite sure what you would want us to do with the document other than we'll go back and make those other clarification points, which we would be making to Council anyway.

Mr. Firestone: I mean I would like to see it much simpler to the maximum extent that we're able to under federal law. This should be a simple, readable, short, concise, intelligible document that, again, the applicants, homeowners, property owners, Commissioners, City Council and members of the public can understand and appreciate what is occurring. And I think right now we have a document that, even if some of these small things are cleaned up, leaves us with a document that doesn't really serve the public. So I think we need some substantial revisions. Again, the maximum amount of revisions to the extent allowed by federal law.

Mr. Stozek: Yes, I think simplification is the word. If there are instances here where you're basically just quoting regulatory language, I don't think that necessarily needs to be in this document. That regulatory language could be referenced. We should be talking in this document about what in these codes, state and federal codes, applies to the City. Where do we want to restrict things or how do we want to restrict things. I think that is what's more important to the people in the town, not how the federal government defines something.

Mr. Culver: These types of applications will come from a very specific technical group of people that deal specifically with telecommunication towers. It's not going to be someone typically coming in and saying I want to put a tower in my backyard because there are other regulations.

I'm hesitant to refer out to other regulations, because once you get outside of what you would read here and you go into those additional regulations, they're probably not going to be any clearer coming from the FCC. I don't know if I say by reference go and look at this law case or that law case or these regulations, it's going to make it any clearer. This is how we would regulate an application coming into the City through the process from someone. So if it's in a specific district, they would address it for that district as it's identified within the Code. If it's something in the right-of-way that is DelDOT, then again we're going to have to go back and re-visit with DelDOT what jurisdictional limits we do have in the right-of-way. Is it just from curb line out that they give us rights, or is it just simply out of our jurisdiction? Or what happens when it's in a City of Newark right-of-way? So, I mean, there are issues there. I'm not sure that going back, we're going to be able to simplify the language as it stands because the language, once you start reading it, as the type of technology and what you have to do for a special use permit, it does clarify how you make that application and what are the steps you go through.

Mr. Firestone: I would strongly suggest that if you're going back to Cohen Law Group that you would share the transcripts of this proceeding with them so they get a clearer picture of the displeasure of this Commission and what we've been presented with tonight. Is there any further discussion? Go ahead.

Mr. Herron: Mr. Chairman, if I could just interject. I think based on the discussion tonight, under normal circumstances the procedure would be to, just as you suggested, send it back and have the Cohen Law Group, who are the experts that have been retained by the City in this area, review the minutes and determine whether the Commissioners suggestions and revisions are consistent with federal law. Except they may not want to review the comment about them being paid. But other than that. But there may be timing issues that make that problematic in this case. So maybe Dave can expand on that a little bit. I'm not exactly sure if that is a problem or whether there is some way to send this on to Council with the understanding that in the interim period, exactly that will occur. That there will be a review of the Commission's suggestions and comments to determine if they're consistent with federal law.

Mr. Culver: And, again, whatever this Commission chooses to do, we will definitely take these comments back to the experts in telecommunications and ask them if there are any other revisions prior to going forward to Council. We definitely are going to have to revise this document based off some of the areas we picked up tonight anyway. But there are pending applications and we would rather have regulations in place that are more restrictive than what we are currently operating under as we deal with those applications coming forward.

Mr. Firestone: So it's not so much an issue vis-à-vis the federal government, it's the fact that you have applications coming forward and you don't have adequate regulations to regulate.

Mr. Culver: We would prefer to have these regulations to regulate to than the current, but understanding that all the comments raised tonight are critically important to us and we'll address every one of them as we go forward with the plan.

Mr. Firestone: Okay. Anything else? Then why don't we vote on the motion?

Mr. Stozek: I have a question. I guess I heard a comment here because of a timing issue, we're being asked to basically send this back to the Department, they will do their magic and then it will go directly to Council. It won't come back to the Commission. I think that's what I heard was the preference of the Planning Department because of the timing.

Mr. Hurd: I think it will move on if we approve it with the necessary changes.

Mr. Firestone: I guess my preference would be to approve these as regulations that expire within 60 days from enactment so that if you need something in the interim, these would be in place for 60 days while you're working on revisions. That revision would come back to the Commission for the Commission's consideration and we get the regulations as good as possible for the long term. If we need a gap filler, let's fill the gap with what we've got but let's not . . . I don't want to sort of subvert the normal process of promulgating final rules and I don't want to have something in place that's not revisited and not on a real short fuse to disappear.

Mr. Hurd: In that case, I withdraw my motion.

Mr. Silverman: I withdraw my second.

Mr. Culver: If I may, since we are going to revise this document, we will revise it, share it with the Commission as we go to Council and then within say 60-90 days, if passed by Council, come back and have another discussion on the regulations and any other changes that may need to be done on the ordinance.

Mr. Firestone: What I was suggesting was that the Council pass this document as presented to us today with the addition that these regulations shall be in place for 60 days, after which time they expire. That will then give you the opportunity in that interim period of time between now and 60 days from when Council approves these, assuming it approves these, to bring back at our next meeting in March, revisions. Hopefully we'll be able to act favorably on the revisions at that time and then those final regulations will then go to Council and they would then supersede these temporary regulations.

Mr. Silverman: I'll move the recommendation of the Chair.

Mr. Hurd: I'll second.

Mr. Firestone: Any discussion?

Mr. Cronin: Yes, Mr. Chairman. This 60 day period, is it the intent that the 60 days is for an application, or an application and approval on the application? We need clarity on that, I think.

Mr. Firestone: The intent is that the regulations will be in place and effective for 60 days from the time period that they are approved by the City Council so that any applicant whose action was acted on during that 60 day period would fall under these temporary regulations unless, before the end of the 60 day period, if those get final promulgated before the 60 day period, then whatever is in place at the time the application is actually finally acted on, the regulations that are enforceable on that date would apply.

Mr. Cronin: Okay, well that clarifies it. So if somebody applies and it's approved within the 60 day period, they're good to go.

Mr. Firestone: They're good to go.

Mr. Cronin: If somebody applies on day 55 based on these regulations, then they're not likely going to get the approval in five days, presumably.

Mr. Firestone: The intent is that the regulations have to be in place and effective on the day of approval, not the date of application.

Mr. Cronin: Thank you. That's the clarification I think we need. One or the other.

Mr. Firestone: Okay.

Mr. Silverman: I disagree with that. You make an application, you make an application under the rules that are in play at the date of your application. Otherwise, this is . . . if I know I can't get through the process in 60 days, why bother, because I know these may be amended. I'm not going to make the investment. I lock in my mortgage and it can't be changed.

Mr. Cronin: That's why I think it's important to discuss how the rubber meets the road in this concept. I tend to agree with you, Alan. It's very trying for somebody to apply based upon this . . .

Mr. Silverman: It's a moving target.

Mr. Cronin: And then, for whatever reason, if they don't get the approval within 60 days, then they've got that time invested and expectation, whatever, as invested, and then it dries up on them. Then what?

Mr. Firestone: It ultimately shouldn't matter that much. We're not suggesting that the rules be changed substantively. We're only asking that they be clearer, shorter and more intelligible, and that some of these ambiguities on what's allowed and not allowed are clarified.

Mr. Cronin: Dave, are there people waiting now to apply for something like this?

Mr. Culver: No. There are groups that are inquiring as to what they can do with their towers for the new technology coming forward, which is the 5G. So we anticipate an application within a short time frame from different telecommunication companies.

Mr. Cronin: Short being a week, two months, three months?

Mr. Culver: We hope that they hold off for a few more weeks so we can get some regulations in place that are a little more stringent than what we currently have.

Mr. Silverman: So this goes back to the economic development aspects of the Comp Plan. We have people with new technology wanting to come into our community that will further economic development.

Mr. Culver: I don't necessary think the technology changes the economic development climate of the City because it will be a standard technology throughout the entire United States.

Mr. Silverman: It maintains our competitiveness.

Mr. Culver: Right, and most of them will already have the ability to go co-locate. These are new towers that are coming into maybe gap areas that there was no regulation so we don't want to see a tower on every corner. We'd rather see them try to co-locate and work together on the existing towers.

Mr. Hurd: It sounds like from your comment that the current Code is such that the Code that's in effect when you apply are the codes that you are judged under.

Mr. Culver: Yes, that is . . .

Mr. Hurd: So, I mean, I'm with Alan on this. I'm not willing to make that change, that specific change to this section of Code. We have to follow . . . if we put this in place and someone applies in that 60 day window, this is what they get. I think I'm also agreeing with Mr. Firestone that the details of this Code are not going to substantially change. It's about legibility and making sure that our residents can understand what they can expect. If they read it, they go okay that's where they can put a tower, that's where they can put an antenna, that's what's going to be happening. The engineers can figure this out and such, but the residents need to understand what we're proposing to do with these facilities.

Mr. Firestone: I mean I can accept the date of application. I think my proposal doesn't change the nature of the bet that any applicant makes. But I can live with application. I think one thing we should just do is also clarify that it's in effect for 60 days or . . .

Mr. Silverman: Until amended.

Mr. Firestone: At most, but it may be shorter in the event that superseding amendments are passed.

Mr. Silverman: That it's an interim solution.

Mr. Firestone: Yes, it's an interim solution.

Mr. Cronin: Of course it's just a recommendation to Council that we make, right?

Mr. Herron: Yes.

Mr. Cronin: Okay, now if somebody had applied, Dave, if somebody had applied a month ago based on what's already there, not this, would we be wringing out hands? Like, oh no, somebody applied and we didn't even get to this yet. We engaged Cohen from Pittsburgh and we really wished we had made it. Is it going to be a travesty if they applied under the current situation? I mean, I'd just assume do it right the first time.

Mr. Culver: Well I think because we're dealing with a new section with what happens within the right-of-way and how it affects what we would own as municipal holds, electrical systems and what could now potentially be co-located on those systems and what could appear in other right-of-ways, that's trying to address it. I mean, it is happens tomorrow, an application, they're under the regulations in effect at the time of application. If this is passed and someone makes application and they think it's going to be repealed or these are going to lapse in 60 days and they'll be under the old regulations and that's more favorable, then they'll probably just wait out the 60 days. But, again, based off the discussion tonight, there are some changes that will be made to the text that we already discussed to clean up the language, to clarify the language, and that would go forward.

Mr. Firestone: In order that we have a clean record, the Chair is going to recommend that the last motion be withdrawn and that we then have a clear, clean motion on sort of where we've evolved.

Mr. Silverman: I'll withdraw my motion.

Mr. Hurd: I'll withdraw my second.

Mr. Firestone: Okay. Is there a motion? The Chair will entertain one.

Mr. Hurd: Should I give it a shot? Okay.

Mr. Silverman: Your turn.

Mr. Hurd: I went the first time. I move that we approve these changes to the Zoning Code, including the subsequent comments and corrections as noted by the Commission . . .

Mr. Silverman: And public testimony.

Mr. Hurd: And public testimony, with the caveat that they are in force for 60 days past their approval by Council, and that subsequently the Planning Department prepares revised Code sections for our review and subsequent final approval. Is that clear, Michelle?

Mr. Silverman: I will second that.

Mr. Firestone: Okay. Any discussion?

Mr. Cronin: What was the word before 60 days? Was it expire in 60 days? What was the word that was used, I didn't catch it?

Mr. Hurd: Did I say expire?

Mr. Firestone: I think you said in force.

Mr. Herron: I thought he said effective, but maybe I'm wrong.

Mr. Firestone: But expired is probably a friendly amendment.

Mr. Hurd: Okay, expire is fine.

Mr. Herron: Or sunset.

Ms. Vispi: I got in force.

Mr. Firestone: Okay, any further discussion? All in favor, signify by saying Aye. Opposed, say Nay. The motion carries.

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

THAT CITY COUNCIL AMEND CHAPTER 32 ZONING AS DETAILED IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT DATED JANUARY 30, 2017 AND REVISED BY THE COMMISSION AT THE FEBRUARY 7, 2017 MEETING, AND WITH THE ADDED CONDITION THAT:

- 1) THE AMENDMENTS EXPIRE SIXTY (60) DAYS AFTER APPROVAL BY CITY COUNCIL, TO BE SUPERSEDED BY REVISED AMENDMENTS.**

VOTE: 4-1

AYE: FIRESTONE, HURD, SILVERMAN, STOZEK

NAY: CRONIN

ABSENT: MCINTOSH, MCNATT

MOTION PASSED

5. DISCUSSION REGARDING PLANNING COMMISSION RULES OF PROCEDURE.

Mr. Firestone: Okay. I think with that very difficult one, we're going to transition then to something that will hopefully be a little simpler and is a good follow-up. This is Item 5, discussion regarding Planning Commission Rules of Procedure. So part of our work plan for the year is to develop rules of procedure so that we can operate as efficiently and fairly as possible. I submitted some ideas, as did Commissioner Silverman. I think also in the packet were some information on Rules of Procedure at City Council and the guide for the Planning Commission. So this is sort of an open discussion. I want to have an open discussion and get comments from members of the public prior to the Department beginning the drafting process of rules. So I would guess we could have a little discussion and then I'll call on any members of the public that want to comment, and then we can have a little more discussion and then we will close out the discussion.

Mr. Hurd: I guess I'll start. I want to commend Commissioner Silverman for the thoroughness of his packet. While I think that much of it doesn't apply directly to the sort of rules of procedure of our meetings that we're having discussion on, I think it forms an excellent

backbone for a Planning Commissioner handbook which, to my knowledge, we don't currently have, because I've never received one. But I think that both the highlighting of the Code sections that deal with us, the description of sort of the breakdown of the job, the description of all the different pieces, the discussion about ethics and ex parte and all the sort of things around the edge that we kind of absorb over our time on the Commission, are valuable to have in one place for reference and for education. So that, alone, is a useful piece of this.

I think, Chairman Firestone, yours had some good, I think, focus more on the meeting specific procedures that we're seeking to find. Some repetition or some consistency, too. And I would say that my only substantial comment is that I guess I can't fully get behind supporting splitting our public comment into supporting and opposing presentations and different time limits for different people within that group. My experience, I think, has been that we rarely get so many comments that we're here for hours, unlike Council. I'm more in favor of just saying that during the public comment period everyone gets three minutes as long as they're not duplicating. I think that the testimonials by written form makes a lot of sense because we have had instances where the testimony was mostly about being in support of the applicant and not really addressing the substantive details about the issue at hand. But I find it very easy, at least for me, to tell when someone is opposing and someone is in favor of, and I kind of tally that up on my own. Those are my thoughts.

The procedures for consideration of Code amendments, I'll just sort of throw out what I've got in mind because it sort of came up tonight. Very similar to the previous one that there'd be a staff presentation, and you know oftentimes that Mike with his PowerPoint or such, there is us asking questions or seeking clarifications, there is the public comment and then there is our discussion, and that's often where we get into the typographic issues. I think those sort of form the points when we're discussing Code amendments.

And I guess then my final comment off the document is, is there anything in the City Code that supports our ability to revise or amend previous actions? Or are we opening up a can of worms here?

Mr. Herron: I'm not aware of anything in the Code that would support that. There might be an issue here, too, because as I read the proposal, there would be a month between when the Commission would take an action and then when possible rescission of the action could go forward. I think that could create problems as to where the action would be vis-à-vis City Council. So that's my comment on that. And, again, these are recommendations, as well. I think you might be opening up a can of worms.

Mr. Firestone: Fair points by both gentlemen.

Mr. Stozek: I have a question. Is it permissible for a Commission like this to ever meet in executive session? And the reason I bring that up is not to talk about any case that might be coming before the Commission, but to talk about procedural issues and how the Commission works among itself.

Mr. Herron: I guess that's two questions. The first question is any public body can meet in executive session but it has to be for a reason in the State Code. And I don't think that just a general discussion of procedural rules would be a permissible topic in an executive session. So I don't know if that answers your question.

Mr. Stozek: Where might I find in the State Code where those items might be?

Mr. Herron: It is in the Freedom of Information Act, 29 Del Code. I can't think of the exact cite. But it's right there in the State Code and it has, I think there's now 11 or 12 instances in which it is permitted for a public body to go into executive session. It has to fall within one of those.

Mr. Stozek: Okay.

Mr. Firestone: Do you know whether the Planning Commission has ever met in executive session?

Mr. Herron: I don't know. Not to my knowledge.

Mr. Firestone: Commissioner Silverman?

Mr. Silverman: The document I prepared was more or less designed to be a primer or primer, depending on where you come from in Delaware. It was to allow for contingencies. Most of the time our presentations and our hearings are very straightforward. We don't involve federal officials and state officials and state departments, but it does give some guidance for those one or two times every five years where that happens. Where people at least have an idea.

My document is for consistency and continuity, and a succession document. In ten years, none of us are going to be here on this Commission probably. And somebody is going to ask how did we arrive at that conclusion? Why do we do this? How come we don't do that? I believe there needs to be some transparency in our system, and by documenting things generally the way I did . . . and I prefer check-off lists . . . the public knows what the process is. The applicants and the people who wish to speak know where they fit into the process and what opportunities they have.

I like the idea of limiting time but, with respect to the applicant, if I read the Chairman's proposal correctly, the applicant is relatively limited . . . was it ten minutes or so?

Mr. Firestone: I think I said five minutes.

Mr. Silverman: Five minutes. The applicant is the one who initiates our work. They pay a substantial fee for that and I believe they should get a little more than five minutes. Plus, keeping in mind, this is the first real time outside of what's advertised for the public to hear a complete explanation, which often goes beyond what some of the written submittals are. So I believe the applicant should be given an adequate amount of time and, frankly the more complicated the issue, perhaps the more time that the applicant needs. Particularly if they're going to justify a Comp Plan change, a zoning change, a land development change and how they're going to incorporate a Board of Adjustment action. That's a lot different than the gentleman who came in tonight who wanted to do away with a potential public health problem and it was very simple and straightforward. They literally could do in five minutes what they needed. So I think, at the discretion of the Chair and the Board, really limiting time to a specific time, I think it should be on a case-by-case basis.

Mr. Firestone: Well, just in my defense, a couple of things. One, there is a statement that speaking times in any of the above instances may be extended by the Chair if two-thirds of the Commissioners present so consent. So it does provide flexibility. I would suggest that the applicant today didn't need five minutes. The applicant today needed about one minute. My impression from being on this Commission for a year-and-a-half is that the applicants, in general, go on too long. Maybe five minutes is too short, but they shouldn't just be given carte blanche to go on for a long period of time. The documents have all been made available to the public in advance. The Commissioners get the reports in advance from staff. As well, any time that you give to the applicant you then have to give, in fairness, an equal amount of time to the opponents. You can't give the proponent, just because they're the applicant and they paid for the application, more time to present their case than anyone else. Everyone generally gets, whether you're in favor or opposed, the same amount of time to present their case.

Mr. Silverman: Then I would suggest that a specific time limit not be given to an applicant as a matter of record or guidance. If I'm coming in from out of state, I call and the Director of Planning says you have ten minutes to present a 200 acre, \$100 million proposal. Somewhere along the line, that person needs to be notified that you can request more time and here is how you do it.

Mr. Firestone: As I said, things can be extended but, you know, I practiced law for ten years, seven years actively in front of courts and, as a lawyer, you often get, and lawyers are used to getting, very short amounts of time in order to present extremely complex cases with extremely complex issues. Much more complex than these to lay out a factual situation. So I don't think that we have to assume that the lawyers and other representatives who are in front of us are any less skilled or able.

Mr. Silverman: And with the exception of people who are hearing that who are skilled in what they're listening for, Ms. White is not going to understand, "I'm referring to FCC section 4793 as adopted on June 17, 1970." All of us know what you're talking about or I'm talking about, but Ms. White does not. So I don't want to box an applicant in. We are collecting public information. We are giving the public information. This is one step in an advisory process in preparation for appearing before Council. We're not the final arbitrators here. We gather information. We provide the opportunity to give us information. And I just cannot support finite, hurry up, we've got to get out of here in a public hearing, particularly when the public, this is their first bite of the apple in a communal setting. Civic associations meet. Applicants make presentations to interest groups. Out of City interest groups come in. This is where everyone comes together for the first time. And we're going to say you've got three minutes and you have ten minutes and we're out of here. I can't abide by that. And I think the applicant, it has to be proportional to the magnitude of the application and the impact it has on the community.

Mr. Firestone: I agree. Like I said, there are specific things. Also I put in Item 12, we can waive procedures. Waivers may be made by the Commission at any regular or special meeting called upon the affirmative vote of two-thirds majority of the total number of members currently appointed. There are ways around this.

Mr. Silverman: That couldn't happen in tonight's meeting.

Mr. Firestone: Well how could that . . .

Mr. Silverman: We're down two members.

Mr. Firestone: Well we have five-sevenths, and five-sevenths is 71.4%. So we would have the opportunity. Maybe two-thirds is not the right number. All I'm saying is that, and this was an example. It was to provoke discussion, as it seems to have done. I wasn't suggesting that these were the final numbers that should go in. It was more an idea of this is sort of the format. Now Commissioner Hurd suggested maybe we don't want proponents then opponents, but it was really more to sort of set up how we might proceed than being attached to any specific time limit here. These were examples with the ability in a couple of different instances to modify these procedures to the extent we have a very complicated case, or we have a case where, you know, we've got multiple sides and we need to do things. I will say that, you know, I didn't suggest that we finish at any specific time. I did note that your suggestion was that we automatically end the meeting at 10 o'clock. And so I'm not putting any specific time limits.

I would also say one thing that really jumped out at me in yours that I didn't like was that Commissioners were not allowed to abstain. I don't understand why a Commissioner should be required to vote . . .

Mr. Silverman: Because the City Code says so.

Mr. Firestone: The City Code says a Planning Commissioner has to vote yes or no?

Mr. Silverman: I believe it's Article 2. If these refuse to vote yes or no, specific, it's cause for the City Attorney and the Director to take them before Council and ask that they be removed.

Mr. Firestone: Well then that's different than saying they can't, that they have to vote yes or no. It's saying that they . . .

Mr. Silverman: No, it says they must vote yes or no.

Mr. Firestone: Excuse me. Please don't interrupt. It's says that if you don't vote yes or no, there are potential consequences. It's doesn't say you have to vote yes or no. And, again, I don't have the language in front of me, but even the way you've described it, it doesn't force you to vote yes or no.

Mr. Silverman: I'll yield to the City Attorney.

Mr. Herron: You can always recuse yourself for a conflict of interest. So that is permissible to do.

Mr. Firestone: And are you forbidden to abstain?

Mr. Herron: Well I think that would be the same thing. If you were recusing yourself. I'll have to check the Code. I know for Council, you have to either vote yes or no or recuse yourself because of a conflict of interest. Those are your choices as a Council member. I'll check as to whether that applies to the Planning Commission.

Mr. Firestone: You'll check and see whether that applies to the Planning Commission?

Mr. Herron: Yes.

Mr. Firestone: Thank you.

Mr. Silverman: And . . . excuse me.

Mr. Firestone: Commissioner, go ahead.

Mr. Silverman: So several other comments. I agree with the "for" and "against," making that clear up front. Having researched transcripts a decade after they're made, it's nice to have a speaker stand up and say I'm speaking in favor of this application or I'm speaking against this application, and then they make the presentation. That's extremely helpful down the road. And I like that idea, Jeremy. And I like the Robert's Rules style of asking people to speak for, against, for, against, for, against. I think it makes a much more balanced presentation.

Mr. Firestone: I mean I didn't set it up with what we refer to as surrebuttal, which would normally be you have a proponent, you have the opponents, the applicant gets a reply and occasionally courts, and this Commission in certain cases, might want to then allow what's known as a surrebuttal so that the opponents would have another chance to reiterate and clarify their view. Again, we want to treat people who are opposed to these potential developments in the same fair way that we treat those than want to develop.

Mr. Silverman: And keep in mind that there's no requirement that an individual cannot represent themselves. We have that happen quite frequently. They aren't an attorney. They aren't an engineer. They are not an architect. They make their presentation.

Mr. Firestone: I have appeared representing myself and not necessarily had to hold up myself as a lawyer. So I am very familiar with the notion of pro se representation. And people don't need an attorney, certainly not to make comments or otherwise to this Commission.

Mr. Stozek: The other thing I wanted to bring up was getting back to the time of speaking again. I think there needs to be some limit. There's one piece in here that talks about two minutes. You know I think if you're a person who is used to speaking in public, you come

prepared, you have notes and whatever, maybe you can get something in in two minutes. But if you're just a resident of the City expressing themselves, two minutes is not a lot of time. At City Council you're limited to three minutes. Sometimes that, you know, people have to be cut short to try to get their full thoughts in. They need like another minute or something. And there's probably a way around that just to ask the Chairman, may I have 30 more seconds. But two minutes seems awful short for somebody to be able to express their thoughts.

Mr. Silverman: And you're assuming a friendly atmosphere. If Mr. Jones is here and is totally against something, they are going to say this person exceeded three minutes by ten seconds. We're going to court on that because your rules say three minutes. Unless the individual who wants to speak says, polls the group under whatever procedure and says I really need a good ten minutes or I need a good five minutes. So . . .

Mr. Stozek: I thought we were all friendly in this town.

Mr. Silverman: With due respect to the law, I hate to get lawyers involved in this. We went round and round on the FCC stuff which is a good example of why we should keep it fairly simple and broad.

Mr. Firestone: Part of what I tried to do was give, to the extent there is an opponent group, and there can be and things can get quite adversarial, that they would, amongst themselves, designate a person who would give the primary and that person would get equal time to the applicant to make the case against the proposal. That's sort of what I'm trying to set up. Now maybe, and I agree, the times I put in were really as short as possible. Because I assumed that we would probably get comment and people would want to move them out. And so I thought we would start the discussion with something that was as short as possible.

Mr. Silverman: And I agree with you, Jeremy, that there needs to be a sense of urgency, as opposed to casualness.

Mr. Firestone: I guess at this time I'd like to open it up to a little public comment and we'll come back if other Commissioners would like to be heard. Also, when we come back, I asked Commissioner McIntosh if he had any thoughts, because I knew he wasn't going to be here today, and I'm going to share some of those, as well. Is there any member from the public that would like to be heard? Please, Mrs. White.

Ms. White: Thank you. Jean White, District 1. There are a lot of things in here that interest me very much and I actually think this subject could benefit from a whole workshop. Maybe a whole day workshop. Maybe two days. But I'm going to talk about, first, the time that one has to speak.

I've been attending City Council meetings and Planning Commission meetings for a very long time. Either 20 years or 30 years, I'm not sure, I'd have to go back and check, except for four or five years when I was more recently away, out of state, taking care of an elderly relative, and then dealing with affairs after that. And when I came back, I discovered a whole bunch of things had changed. The City was like a fortress, but that's not what we're talking about. I went to a City Council meeting and, whereas before someone had five minutes to speak, it was cut down to three. I was very unhappy about that. I understand there were things that had been happening while I was gone that led to that change. Even three minutes is sometimes not long enough to develop the theme or the arguments and the points that one wants to make.

So getting to these two documents from two of you on the Commission. First of all, Commissioner Firestone's variation B says without strict time limits, whereas the first one says one minutes, two minutes and stuff like that. And Commissioner Silverman on page 7, I have to find this, he has three to five minutes. And if you're going to make something general, I think that's much better. I am coming to all of these Planning Commission meetings, I actually cannot remember, I'd have to go back and check minutes and all that kind of stuff, I really can't

remember, prior to my coming back, any times where it was really a problem without set times. But I do think at least three to five minutes is reasonable. And the other thing is, if it's a lawyer or it's the applicant, that's one thing. But the typical people that come, the residents and so on who come to speak, are generally speaking not trained as lawyers who can go bomp, bomp, bomp, like that. They may have more than one aspect that they would like to present, either for or not for, and so I think that limits them. And I don't think it's particularly a problem with Planning Commission. City Council you could say perhaps, but not Planning Commission. As I say, I would need more than my three or five minutes to go through a number of things, particularly on the second document, but let me see if I can get something else in there quickly.

Mr. Firestone: The Chair will grant you some additional time this evening.

Mr. Silverman: Thank you, Mr. Chairman.

Ms. White: Thank you very much. Okay. I was interested on page 2, and I don't know if this is going to become a rule of your operations, Commission members shall not communicate directly or indirectly with any party or representatives in connection with an issue. Okay. Actually I'm not sure if that applies to Council. It should apply to Council but I think I have known some cases in the past where actually developers may have talked to Council members. But maybe that hasn't been the case, so I won't make that assertion. But, at any rate, what I was wondering was, without communicating to another member, you have something before you, can you go out and look at the property yourself without talking to the applicant at all, because you really can't picture from a blueprint or the zoning thing what it actually looks like there. Now you can answer that question. Is that okay to do?

Mr. Firestone: Yes.

Mr. Hurd: Yes, we do it all the time.

Ms. White: Yes, it's okay. Because that's really important and I had been once at a Board of Adjustment meeting where it had been said that unless all members of the Board of Adjustment went to the property together, or they all went individually, I'm not sure, they could not speak on what they saw. I mean they might know things from the past. Newark is a small town so most of us know most of the properties just going by. But I didn't understand why that was true of the Board of Adjustment.

Mr. Silverman: The way that works under ex parte, as I understand it, is that any of the Commissioners can go out on a parcel, make their observations, and I believe they can even talk to people, talk to a neighbor.

Ms. White: Okay.

Mr. Silverman: But I can't tell a single Commissioner what I found. I can report back in either written or verbal form to the entire Commission that I was on the site and I spoke to a neighbor and they said the stream flooded.

Ms. White: Okay, so you can tell everybody at a meeting, so to speak.

Mr. Silverman: At a public meeting, yes.

Ms. White: At a meeting. Okay.

Mr. Silverman: Yes, but I cannot work individually, nor can we caucus up here and just exchange that information.

Ms. White: Okay, well that's very fair. I thought I'd heard years ago that Board of Adjustment people, even one of them, couldn't go out and look unless they all went together. But maybe this has been a while back. Okay, well I'm glad that's the case.

And let me just see here. I was wondering why, in Council, one person can give their time to another person. You can't have a series of people, but one person, if they sign up, they can give their time to someone else. And I was wondering why you all felt that couldn't be done here. Now it can be taking advantage. I also attended Christina School Board meetings for many, many, many years and there was a situation I remembered where you could do that too, and so one person acquired 45 minutes to speak because they got so many people who gave them their time. Now that's abusing the system.

Let me just see here. Well this part about, on page 5, disruptive conduct and so on and so forth, can include removal by an officer of the Newark Police Department. Well at City Council meetings, there is a policeman always standing in the back, but at your meetings there is never a policeman, so I was wondering why it was in there. Are you going to suddenly have policeman at all the Planning Commission meetings?

So rules of evidence on page 6. Irrelevant, incomprehensible or repetitive testimony shall not be permitted or admitted. Obviously that makes sense on the face of it. But you have different people come in who feel strongly oftentimes for, but usually against perhaps, something, and they're emotional but they're not being abusive. And it's expecting, obviously everybody should speak as well as they can, but if you have a sincere person come in and it's a little bit hard to understand what they're saying and they're limited in the time, I think that the Commission just has to take it and hope that the essence of what they're trying to say comes through in their tone of voice or whatever.

Let me just see, I mean I think this is an interesting point on page 7, a call for the public challenge to the partiality of any member, but I don't think you'd be doing that at every meeting. It would seem to me if somebody knew they could challenge it at the meeting, I mean every single meeting that you have it might be hard. Maybe this is done in some in some [inaudible], I don't know.

Mr. Silverman: That's been done in the past just to cause mischief. To slow down a process.

Ms. White: By people in the City of Newark?

Mr. Silverman: Yes. There was an instance where there was someone who was a library aide who sat on this Commission and the district came in for a rezoning and land development plan. And that Commissioner was challenged on the fact that they worked deep within the school system.

Ms. White: I see.

Mr. Silverman: Even though the system was the applicant.

Ms. White: Okay, that's interesting. I never heard about that.

Mr. Silverman: And that caused that individual to have to go before the City Ethics Board, hire their own attorney, and brought the whole proceedings into question.

Ms. White: After something had passed or something had not been passed?

Mr. Silverman: I don't remember whether it was challenged after the decision was made or not. But it cost the City, it cost the individual, and it cost time.

Ms. White: Okay. Well thank you for adding that to the discussion. And then on page 8, a Commissioner must vote for or against the proposal, abstentions are not permitted. I am totally for this. I think this is very important. That all you members on the Commission who are present at a meeting, or all Council members, must vote yes or must vote no, except if there is a reason to recuse themselves because of the various reasons there can be. You know, if they have a connection with an applicant or there is some ethical reason that they need to. And I call that not so much abstaining as recusing themselves for ethical things. Otherwise, I think this is very important. And I usually think it's important at the federal level too. So our senators and representatives, which I presume cannot abstain, they can recuse but not abstain, that they are held accountable for whatever their vote is, plus or minus.

And on, this is maybe an unimportant thing, but on page 9 of how things can be placed on the preliminary agenda, maybe I just don't understand it. But, you know, it can be the City Manager or does it mean a Planning Commission committee? But what about the Planning Department head, like David Culver now. I mean don't those things come forward and then they're automatically put on, or are you consulted first?

Mr. Silverman: This was a question I had when I first came on the Commission. It appeared the agenda was totally controlled by the Director of the Planning and Development Department. They decided what was going to be on the agenda.

Ms. White: Well what I don't understand is if a developer comes with a project and there's a certain time period that has to be followed, and I know I've oftentimes gone into the Planning Department in the office and it will be said, you know, you have so much time and you can be, maybe guaranteed is not the correct word, but if you meet all the requirements of the submission and everything, and then it has to be advertised and so on, it will come on at this point. And I didn't really think it was the Commission that decided it. I thought it was the Planning Department who, once all these things came in, it could be . . .

Mr. Silverman: Take that the other way around.

Ms. White: Okay.

Mr. Silverman: The Chair mentioned that this discussion was on our annual work program. There's nothing to cause the Director to include it in any of the hearing dates. It's up to that person's discretion. We can sit up here and say we want to talk about such and such, it's on our work programs. Well, we don't have time this month. We don't have time next month. We can't get to it. And there's no way for the Commission or the City Council to say we'd like you to discuss this. There's no formal process.

Ms. White: Okay, I understand exactly what you're saying. When you want to discuss the Rules of Procedure or whatever it is, but when you're talking about a development project, there's a certain period of time that it goes on and submissions. And once the submissions are in, there might not be time to put it on if there are too many things, but basically they're sort of, if not a guarantee, it's moving forward. Correct?

Mr. Silverman: Correct. And even if the Commission gets a consensus from the group in a hearing that there's a topic that should be placed on a future agenda, it's at the discretion of the Planning Director. It appears to be.

Ms. White: Okay.

Mr. Silverman: It's been past practice.

Mr. Firestone: Although present practice now is we have the last item on every agenda is new business.

Mr. Silverman: Correct.

Mr. Firestone: That, then, is an opportunity for Commissioners and for the Commission to put something onto the next agenda.

Mr. Silverman: And you were successful with that. I could not do that in a year. I could not get that cooperation. So there's an example. Congratulations.

Mr. Firestone: Anything else, Mrs. White?

Ms. White: I guess, okay, one last thing and I know I'm taking more time than I should take. I'm not sure exactly where this all came from but the skills and abilities for an applicant to be a Planning Commissioner, which is on page, where is it, it's in the back there, some place toward the back. Anyway, it looks like this. Since Alan Silverman did this, he should know where it is. The following list has been identified as those skills and abilities that make a quality Planning Commissioner. And there are ten things that are listed. And I actually agree with everything that's listed there. But what I wondered was, I'm not sure where this came from, but I guess what I was wondering, I presume this is not in the Code?

Mr. Silverman: No.

Ms. White: Okay, not in the Code. But I was wondering, when I look at the qualifications that were in the Code to be on, you have to live in the City a year and represent the district that you live in, and so on and so forth. Recently, as you all know, maybe four or five months ago, there was a nomination for District 3 by that Council member, and yet a majority of City Council turned that person down. And I actually did know that person. I'm actually glad I'm saying this now because the person that's just been appointed isn't here, but I wondered whether Council, when they turn somebody down, has to, on what basis can they turn somebody down? That's what I'm wondering. And I mean was it just because they don't like the person, or the person spoke out against something they didn't like. It seems to me, you know, I was just sitting in the audience when that happened but I just did wonder about it.

So at this point, I've taken enough time and, as I say, I think you could have many more discussions on these things. Thank you very much.

Mr. Firestone: Thank you. I'm going to choose to punt on the last item since the Commission doesn't have the authority to determine qualifications for its own membership. So you'll have to bring that up with City Council in the context of your three minutes. But thank you. Are there any other comments? Please.

Mr. Morehead: I'll be quick. Once again, I appreciate your service. It's really interesting to see this group struggle with some of the same concepts that Council struggles with in the same thought processes and in the same process, I guess, of reviewing and making a decision on development issues and so forth.

I would have to look up the concept of ex parte. I'm not aware of the meaning. And I'm pretty sure mostly everybody in the audience would, as well. So I would ask you to, those of you that understand it, to put in English for us. I will look it up. I will understand it. But that's not helpful, necessarily, to the public.

Mr. Firestone: Fair comment.

Mr. Silverman: However that's referenced in the City Code. That's where I took it from.

Mr. Morehead: Okay. Wow, we need to fix that. I am not as familiar with that piece of the Code as possibly I could be, I guess. I was under the impression that there was a training

document along the way for being a Planning Commissioner that I had read. Does that strike a note with anyone?

Mr. Stozek: I remember seeing a blue sheet of paper.

Mr. Morehead: Okay.

Mr. Hurd: I got some photocopied articles on Planning Commissions.

Mr. Morehead: Okay.

Mr. Stozek: There's articles, but as far as the City . . .

Mr. Morehead: Yes, there's that.

Mr. Silverman: There was a ring binder.

Mr. Morehead: There was a ring binder.

Mr. Hurd: I never got it.

Mr. Morehead: Yes, and in that ring binder I have a memory of there was an instruction not to review the property. That you were to make a decision based on the presentation in front of you.

Mr. Silverman: That's for the Board of Adjustment.

Mr. Morehead: Was it?

Mr. Hurd: Yes. I think Board of Adjustment operates under a more legal structure.

Mr. Morehead: Okay.

Mr. Hurd: So I think they can only address the evidence presented to them directly in the . . .

Mr. Morehead: That may be where I . . .

Mr. Hurd: Because you have to swear in as a witness. I was just there last month.

Mr. Morehead: That may be where I'm confusing it. Okay.

Mr. Hurd: So there you have the problem of if someone looked at the site and two people didn't, they now have facts that aren't entered into evidence, as it were.

Mr. Morehead: Okay. Got it.

Mr. Hurd: So it's a legal kind of issue. We don't have that restriction.

Mr. Morehead: Okay. And I don't believe Council does either. The other thing, Council members do talk with the developers and so forth, the applicant. And I don't know if that's something we need to develop rules about, if ex parte means that shouldn't be happening.

Mr. Silverman: I'm going to defer to the experts on that.

Mr. Herron: Yes, I'll get it.

Mr. Morehead: It's something that isn't specifically outlawed as far as I know.

Mr. Herron: No, under state law it's actually permitted for Council members to discuss with applicants, developers, projects. What they can't do is you can't tell someone 'don't worry, I'm going to vote for it' or 'under no circumstances will I ever vote for this.' You can talk to them, have a discussion with them and say thank you for the information.

Mr. Morehead: It may express a bias.

Mr. Herron: Right. Exactly.

Mr. Firestone: We're a little differently situated than Council, in that Council is elected officials and we are more of a pure administrative body.

Mr. Morehead: Okay.

Mr. Firestone: So there may be different strictures for people who are elected officials and then who have different kinds of responsibilities than we do.

Mr. Silverman: For example, we have the unique ability under state law to trespass, whereas a City building inspector cannot go on-site unless he is invited. It says under state law we cannot be interfered with if we want to go on somebody's property. So we've got a foot in state and a foot in local law.

Mr. Morehead: Okay.

Mr. Hurd: I think to that, as a representative of your constituents, it's in your constituents' interest to speak to developers about perhaps issues that came up here before it comes to Council to say we've got this, to make sure it's working out. We don't have that same, I guess, responsibility to direct constituents.

Mr. Morehead: Okay. Thank you. Two other quick things. My apologies to Commissioner Silverman, I did not get to study this document and I wish I had.

Mr. Silverman: It's a compendium. It's a gathering of information.

Mr. Morehead: I got it. I will get to it. And then the other thing, the last thing I'd like to say is about time limits. My first chance to stand here earlier this evening, if I had had a time limit, I would have been much more focused than I was. I would have had a very specific plan of the words that I thought should have been put into that document and so forth. Without time limits, people ramble. And I'm probably the perfect example. But you put time limits in so that they're there when you need them. And people have ceded time. We see that a lot. And I don't believe we've seen that abused. And that's obviously a strategy, so the wording in the Council Rules of Procedure about ceding time, I think, is a good thing if you all move forward with that concept. Council also struggles with the conversation about do we limit the applicant and their time. We've discussed that at the table and we haven't resolved that. So I'm not speaking for them but I'm just relaying that that is an open discussion that we're . . .

Mr. Silverman: There's a phrase that's used in some of the meetings I've been involved in and it's we don't want the show. I don't want to hear about your outfit being established in 1888 and here are all our partners, and this is what we've done. Get to the meat of it. I can see carving out the advertising.

Mr. Morehead: Yes. I don't know what to say to that other than we struggle with that same thing. But I think three minutes is a solid amount of time per person. You can get your basic point across and it forces you to choose your most important points that you want to discuss and let the rest of them just go. That would be my input and I'll leave it at that, unless anybody has any questions that I can answer.

Mr. Firestone: Thank you very much. I was going to say, at the University and then on the environmental side, the Delaware Environmental Institute runs a competition every year where students have 90 seconds in which to make their talk. And we try to teach our students that you need to be able to do something like a 45 minute job talk, a 15 minute seminar and you also need to know how to do an elevator talk.

Mr. Morehead: Sure.

Mr. Firestone: So those are all different skills in different environments and the short talk is the hardest.

Mr. Morehead: Absolutely. Okay. Thanks.

Mr. Silverman: I'm interested in bringing out information. One of the things that I've used successfully, and I stole this from the Army Corp of Engineers, when there's an issue that deals with a large constituency, I like to have the largest group speak first. In other words, if there is a regional civic association that wants to speak, let them bring their points. And then the community associations. And then the people who live in the subdivision. And then the people who live on the street. And what I've found is, usually by the time you get to that second level, what the people on the street wanted to talk about, may have already been covered with their civic association group. So it just brings out information and saves time.

Mr. Firestone: I just want to bring forth a few comments from Commissioner Frank McIntosh, who couldn't be with us tonight. He suggested that we start on time and end on time, or sooner. Hold speakers to three minutes. Allow people to speak who haven't signed up to do so only as time permits. Limit Commissioner discussion only to the matters at hand. Limit the number of times the public can address the issue to no more than two. If a person would like to come to the podium a second time, they can only speak after all others who wish to have spoken. One way to manage the time of the meetings is to limit the discussion. This is now directed at us. We can get carried away on certain topics, often because they may be a pet peeve. For instance, if a parking waiver has been granted for a project, we can't change it. Why then are we discussing it? As Chair, you have latitude in how the meeting is conducted. My experience suggests that the majority of the general public and members of the Committee appreciate a well-run, efficient meeting. I'm not suggesting we squash people's right to be heard. I'm just saying we could be better at managing how they might express their opinions. Like most things, once the rules are known and enforced, people will adjust. This makes for a cleaner discussion that doesn't get muddled down in an extraneous manner. So I thought that was a pretty wise and succinct statement from Commissioner McIntosh.

Are there other comments from any Commissioner?

Mr. Hurd: I'll just make sort of a general one that I'm seeing here. I don't think these documents and what we're talking about are very far apart. I think there is a general understanding and consensus to, sort of, a sequence. There may be some disagreement on specifics like sometimes, you know, sometimes it's like stats from Maureen and the questions from the Commission on the report and then there's the applicant and Mr. Silverman says basically it's all the testimony, then the questions and I think that having the questions too far away isn't always the best thing. But I can look at this and think of instances where we did have a primary opponent to the action. I'm thinking the rezoning of the Newark Country Club is one. I'm thinking of Trader's Alley as one, where there was a clearly defined opponent to that action. And I think acknowledging that person or group and giving them an equal and fair amount of time makes sense. I think generally, like the Valley Road development, that was more of a general community opposition in that sense. And so there I think it's more like let's have public comment of the various groups. I don't know if that just needs to be an item in the introduction. You know, as Commissioner Silverman has sort of laid out, sort of the introductory steps for the hearing, that could be one of the questions to say is there a group or a person who is in direct opposition to this and we can say okay you're going to get the ten

minutes he gets and then we're going to go into the public comment part of it. And if there isn't, we skip it.

Mr. Firestone: I mean I would agree that 80-90% of ours are not that oppositional. There's some comment. Sometimes people want slight changes on the edges and we're able to help accomplish that. And we could have sort of two alternative procedures built in. One for when there's a clearly identified opposition and one where there's not. Or we could sort of set it up where we have the defined procedure for the opposition. But then in most cases we relax that . . .

Mr. Hurd: Right.

Mr. Firestone: By agreement of Commissioners, like the item that came on today. I mean we didn't get any public comment on it, but on that one we could have said on this one we're going to simply provide four minutes to anyone who wants to make a comment.

Mr. Hurd: I would say almost to do that. To say this is the defined steps but it's at the discretion of the Chair. I wouldn't even want to say, necessarily, two-thirds voting and such. I think the Chair can say . . .

Mr. Silverman: And the remarks are appropriate.

Mr. Firestone: I agree with the discretion of the Chair but I think the other Commissioners should be able to override the Chair. Or if the Chair doesn't think that additional time but the rest of the Commissioners do, that there should be ways to override. The Chair is Chair but we're a democratic, consensus building group and I wouldn't want to take all that power or whoever is in the Chair to have all that power.

Mr. Silverman: Under most rules of procedure, I would appeal the decision of the Chair.

Mr. Hurd: Yes.

Mr. Silverman: And then since we don't use Robert's Rules, thank goodness, it would at least force it to a discussion. Do we let this person continue? Everybody nods their head, they continue.

Mr. Hurd: Perhaps my last point is [inaudible]. The one thing in here about the applicant's presentation . . . and when we figure out time, we'll figure that out . . . but the one thing I've seen that has helped keep the planning down is when you ask the applicant to focus solely on items that were not in the department report.

Mr. Silverman: Yes.

Mr. Hurd: Because otherwise they cover half the report again and we don't need that. So I think that has been a good step to say, we just want you to present . . . that's when they can talk about stormwater and swales and grading and all that good stuff. And that's great. But they don't have to talk about unit densities and heights of the building and the stuff that's been sort of already entered into the record. I would like to see that clarified in this, especially if we're going to give this to applicants and say this is how it's going to run, so that they're prepared. They'll know your presentation is just, you get ten minutes for what's not in the report that you need to tell us about, and then we're going to go.

Mr. Morehead: Can I have a second bit of the apple?

Mr. Firestone: Yes.

Mr. Morehead: Specifically on that issue. Council needs to know when something isn't conforming. That needs to be highlighted. Every issue that's not conforming . . . and this would be a request to the Department . . . has to be highlighted and maybe in one space in the report, or something. Because it's just too subtle. Thank you.

Mr. Silverman: Mr. Chairman, if I may ask the Director a question.

Mr. Firestone: Yes.

Mr. Silverman: I've gotten the feeling that people who are not the applicant would like to make PowerPoint presentations. That's the way we communicate today. Do we want to consider provisions that if a community group comes up and they want to display what would be verbal comments through PowerPoint, that we would entertain something like that, provided it's within a time period?

Mr. Culver: I would see no reason not to. I mean, again, when we had civic groups testifying on the County side that was organized, they would come with their PowerPoint and they would show that to the Board within their five minute limitation and they would . . .

Mr. Silverman: For example, if flooding is a problem and traffic is a problem, show me a picture of the water overflowing. I get that. Talk to me about, well it's within the 100 year flood. That doesn't work.

Mr. Culver: One of the most powerful presentations I've seen in years was a traffic study showed that there was no failure and no issues, and they actually went out and videotaped this one particular intersection and you could just see the cars backing up and people dodging traffic. It showed that commission a lot of issues that you're not going to read in a report. So sometimes a visual is helpful.

Mr. Silverman: So do we want to consider visuals?

Mr. Firestone: In fundamental fairness, I would suggest that people should be allowed to oppose with the technology if the applicant can propose with technology. And some people can make much more efficient presentations with some props, so that should help us, as well.

Mr. Culver: You will also find, if I may, some folks who are much better at writing something down and handing it to you and then saying I'm opposed or against something at the podium because they don't like to speak in front of large crowds. And that's something else you should consider, especially if they can submit that to you in advance if you're making a decision that night, so you have time to digest.

Mr. Silverman: Yes, I would suggest it has to come out in advance in the packet. We had an attorney give us 300 pages at the last minute before we made a decision.

Mr. Culver: This would be more for the civic side, where someone may not know they have to submit something a week in advance. They might bring it that night but you'd have to at least advertise to get it to us at a reasonable time for you to consider.

Mr. Firestone: We could put that into rules as well.

Mr. Culver: You can certainly have it advertised.

Mr. Firestone: I guess what I'm going to suggest is that I think we've got some thoughts and guidance on drafting and then I think we'd like it to come back before the Commission. We'll probably have discussion and take more public comment. I would think that we probably won't vote at that first meeting. I think, you know, again, public processes are important and it's important that we get people's further input. And then we'll go back and make any necessary

changes and then we would bring it back before the Commission once again. And at that point we would be prepared to vote.

Mr. Silverman: And although I have a personal view on specific zoning and, literally, hearing applications, I would welcome Council's comment. Like tonight, hearing what a Council person needs in the picture we're painting, to make their decision. I think that's valuable.

Mr. Firestone: Yes. We would certainly invite other members of Council to come to the next meeting when we consider rules of procedure.

Mr. Hurd: May I ask who is going to be preparing that secondary . . .

Mr. Firestone: I would think it would be, as with most of our rules, the Department in conjunction with the City Solicitor would be drafting the rules. And perhaps we don't need the Cohen Law Group on this one. We can keep it more in-house.

Mr. Herron: I think so.

Mr. Firestone: I mean that's what I was thinking. That they would put something together, as they do with most of the ordinances and changes that come before us.

Mr. Hurd: Okay.

6. NEW BUSINESS

Mr. Firestone: I guess that then takes us to Item 6. Does anyone have any new business? I guess we did get a copy, someone handed us the City of Newark Comprehensive Development Plan V, which was, in fact, certified by the State of Delaware on January 5, 2017. So now we are fully operating under Comp Plan V, which should shorten the staff reports and the analysis. We don't have to analyze things under both Plans IV and V. So we're pleased and thank you for the binder. I take it the final, approved and certified version is now up on the website, as well.

Mr. Culver: That's correct. You have both the website or if you prefer to have the paper in your hand, you have the paper in your hand.

Mr. Firestone: Okay.

Mr. Silverman: And that was probably one of the longest open comment periods for the State of Delaware that I've ever seen. It was almost a year.

Mr. Firestone: Anyway. We look forward at our next meeting to Commissioner McNatt and having our full complement. Is there a motion to adjourn?

Mr. Hurd: I so move.

Mr. Firestone: Second?

Mr. Silverman: Second.

Mr. Firestone: Any discussion? All in favor, signify by saying Aye. Opposed, Nay. Motion carries. We're adjourned.

MOTION BY HURD, SECONDED BY SILVERMAN, THAT THE PLANNING COMMISSION MEETING BE ADJOURNED.

VOTE: 5-0

AYE: CRONIN, FIRESTONE, HURD, SILVERMAN, STOZEK

NAY: NONE
ABSENT: MCINTOSH, MCNATT

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 9:21 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alan Silverman". The ink is dark and the signature is fluid.

Alan Silverman
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary