

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

July 5, 2017

7:00 p.m.

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

Chairman: Jeremy Firestone

Commissioners Present: Bob Cronin
Will Hurd
Frank McIntosh
Stacy McNatt
Alan Silverman
Bob Stozek

Commissioners Absent: None

Staff Present: Mary Ellen Gray, Planning and Development Director
Mike Fortner, Planner

Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:06 p.m.

1. CHAIR'S REMARKS.

Mr. Firestone: Good evening. The meeting of the Planning Commission for July 5, 2017 is called to order. We've got a relatively full agenda, although for your information, Agenda Item 3, the WILMAPCO Information Session, will not be held this evening. So our apologies.

2. THE MINUTES OF THE JUNE 6, 2017 PLANNING COMMISSION MEETING.

Mr. Firestone: And with that, I'd like to Commissioner Silverman about the minutes from the last Planning Commission.

Mr. Alan Silverman: The minutes of the June 6, 2017 Planning Commission meeting have been posted on the Planning Department's internet site, as well as paper copies distributed to the Commissioners. Madam Secretary, do we have any additions or corrections?

Ms. Michelle Vispi: No. No additions, no corrections.

Mr. Silverman: Okay. Since there are no additions or corrections, I move that the minutes of the June 6, 2017 Planning Commission meeting, as posted and submitted, be approved.

Mr. Will Hurd: Second.

Mr. Firestone: Discussion? All those in favor, signify by saying Aye. Opposed, say Nay. Motion carries.

MOTION BY SILVERMAN, SECONDED BY HURD, THAT THE MINUTES OF THE JUNE 6, 2017 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 7-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK
NAY: NONE
ABSENT: NONE

MOTION PASSED UNANIMOUSLY

3. WILMAPCO INFORMATIONAL SESSION.

[Secretary's Note: Agenda Item 3, the WILMAPCO Information Session was not heard at the July 5, 2017 Planning Commission meeting.]

4. REVIEW AND CONSIDERATION OF THE SPECIAL USE PERMIT FOR THE HOTEL AT 400 OGLETOWN ROAD TO EXPAND THE NUMBER OF GUEST ROOMS.

Mr. Firestone: Okay. So then we're going to move right to Agenda Item 4, review and consideration of the special use permit for the hotel at 400 Ogletown Road to expand the number of guest rooms.

Ms. Mary Ellen Gray: Okay. I believe Mr. Fortner is going to introduce the application and then we have the applicant here to give a presentation, as well.

Mr. Mike Fortner: Good evening, Mr. Chairman and Planning Commissioners. We have an application for a special use permit from Danneman Hospitality LLC to increase from 125 rooms to 132 rooms for the hotel at 400 Ogletown Road. The special use permit was approved by the Planning Commission unanimously on April 5, 2016, with some conditions that are outlined on page 2 of your report. It was approved by Council in May 2016.

The special use permit is . . . it's zoned BC and it's over an acre, so that's why it's before you. It's before you again because when they got to the Construction Improvements Plan, the applicant submitted their construction plans, the Code Enforcement Division reviewed them and they saw the layout showed the rooms that were labeled suites had adjoining rooms to them that could be, essentially, sectioned off or closed off and locked by a door, and then made into an extra room. That room could be rented separately. So that means they went from 125 rooms to 132 rooms because they have the option of renting out these extra rooms.

It went to the Board of Adjustment. The applicant met the parking requirement by developing a lease agreement with the neighboring property owner at Aetna. They have excess parking there and they have a lease agreement for 25 off-street parking spaces at that location for employee parking and for seven of the extra rooms.

The Department comments are also in the report. We're recommending approval of this, that the previous conditions all remain the same. That even though they're increasing the number of units, the building stays the same in terms of appearance and the site plan stays the same. And Aetna Hose Hook & Ladder Company has excessive parking. They have the ability to lease this out. There are no other staff department comments. So the Planning Department is recommending approval, and the applicant is here to make a presentation and answer your questions.

[Secretary's Note: The Planning and Development Department report on the proposed special use permit for the property at 400 Ogletown Road reads as follows:]

On May 26, 2017, the Planning and Development Department received a special use permit application and supporting materials from Danneman Hospitality, LLC to amend the existing special use permit, granted by Council on May 9, 2016, for a 125-room hotel to a 132-room hotel. The property is zoned BC (general business). The Planning and Development Department report on the special use permit application follows:

Background

On February 4, 2016, the Planning and Development Department received an application for major subdivision and special use permit for a five-story, 125-room Springhill Suites hotel and a 100-seat restaurant at the location of the former Toyota dealership at 400 Ogletown Road.

The Planning and Development Department review determined that the subdivision and special use permit application met, or could meet, all applicable BC zoning requirements except for off-street parking. Under the City of Newark Zoning Code, a 125-room hotel and a 100-seat restaurant requires 175 off-street parking spaces. The plan showed 139 off-street parking spaces provided - requiring a 36-space variance.

On March 17, 2016, the Board of Adjustment heard the appeal of Danneman Hospitality, LLC, and unanimously granted the 36-space parking variance with the condition that the hotel provide shuttle service for guests and provide at least sixteen (16) off-street parking spaces offsite to accommodate employee parking for the hotel and restaurant. With the variance, and subject to special use permit approval, the plan met all applicable zoning requirements.

On April 5, 2016, Danneman Hospitality, LLC presented their subdivision and special use permit plan to the Planning Commission. Planning Commission unanimously recommended that City Council approve the major subdivision and special use permit with the Subdivision Advisory Committee's conditions in the Planning and Development Department report, and the additional conditions as follows:

- That the egress be restricted to prohibit left turns out of the site onto Ogletown Road and to permit entrance-only access from Capital Trail; and
- That the Developer work with DelDOT to examine and recommend improvements for pedestrian safety at the site.

On May 9, 2016, Council approved the major subdivision and special use permit for the property with the conditions recommended by the Planning Commission.

In January 2017, Danneman Hospitality, LLC requested a building permit. The drawings submitted showed that seven (7) rooms labeled "suites" were fourteen (14) adjoining rooms connected by a single door that could be closed and locked to rent as separate rooms – depending on the demand. This increased the total room count from 125 rooms to 132 rooms that could be rented at any given time – exceeding the amount of rooms approved by Council in the special use permit and requiring seven additional off-street parking spaces to be provided on site.

On May 18, 2017, the Board of Adjustment (BOA) heard the appeal by Danneman Hospitality, LLC to amend their existing parking variance granted in March 2016 by seven additional off-street parking spaces. At the hearing, the applicant stated that they obtained a lease agreement for 25 off-street parking spaces in the back lot of Aetna Hose Hook & Ladder Company for the hotel employees and seven additional rooms. The BOA unanimously approved the variance with the condition that Danneman Hospitality, LLC maintains the lease agreement to provide 25 off-street parking spaces at another site.

Zoning

The property at 400 Ogletown Road is zoned BC (general business). In the BC zoning district, under Zoning Code Section 32-19(b)(15), "motels and hotels" are permitted with a Council granted special use permit.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate that the proposed use will not:

- "a. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;
- b. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and
- c. Be in conflict with the purposes of the comprehensive development plan of the city."

Regarding comprehensive planning, the City of Newark Comprehensive Development Plan V calls for "commercial" uses at the 400 Ogletown Road location. The plan defines "commercial" uses as: "A parcel with retail, restaurant, office, service, gas station, and similar uses..." (p.125)

In granting any special use permit, Council shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so.

Departmental Comments

The City departmental comments are as follows:

1. The Planning and Development Department recommends that all conditions in the Planning and Development report dated March 29, 2016 (and revised April 6, 2016) and the two additional conditions, recommended by Planning Commission and adopted by Council, remain as part of the amended Special Use Permit.
2. The Code Enforcement Division notes that while the number of units has increased, there is no changes to the site plan, building appearance, or building footprint that was recommended by the Planning Commission at their April 5, 2016 meeting, and approved by Council at their May 9, 2016 meeting.
3. The Planning and Development Department notes that the Aetna Hose Hook & Ladder Company site has 128 off-street parking spaces. The City of Newark Zoning Code requires the firehouse and banquet hall to have 93 off-street parking spaces. Therefore, Aetna has 35 additional off-street parking spaces than required by Code available to lease. Danneman Hospitality, LLC will lease 25 off-street parking spaces from Aetna.
4. The other City Operating Departments did not express any issues or concerns with this special use permit request.

Recommendation

Because the proposed special use permit will not conflict with the purposes of the Comprehensive Development Plan V, because the proposed use, with the Departmental recommendations, will not be injurious to property or improvements in the surrounding area, and because the use can meet all Zoning and Special Use Permit requirements, the Planning and Development Department recommends that the Planning Commission recommend approval of the 400 Ogletown Road special use permit to allow the hotel owned by Danneman Hospitality, LLC to increase the number of rooms of the hotel from 125 to 132 with departmental conditions.

Mr. Firestone: Can you please identify yourself for the record? I think your presentation can be relatively brief.

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

Mr. Stephen Kessler: Absolutely. Let's make sure you can hear me. Stephen M. Kessler, attorney at law, Delaware attorney. I'm here on behalf of Danneman Hospitality LLC, managed by George Danneman, who is sitting behind me here. We're here again, as the Department stated, to revisit our original special use permit. I just want to quickly run through a couple of the slides. I'm not going to get into all of the details of the Comprehensive Development Plan unless you would like me to. I'm happy to do that. But we would submit that, taking into account all of the prior testimony given at our last Planning Commission hearing and the testimony that's going to be given this evening, we would submit that our project does not adversely affect the health or safety of persons residing or working within the City of Newark, or within one mile of the City limits. We would submit that the project is not detrimental to public welfare or injurious to property or improvements within the City limits or within one mile of the City limits in the State of Delaware. And we would submit that our project is in conformity with the Comprehensive Development Plan.

Just quickly, the project site, for those of you that aren't familiar with it, is the old Toyota dealership on the corner of Ogletown and Capitol Trail. I didn't include all the old . . . we had a lot of old pictures in our last presentation and I just threw a couple of them in. This was the old Danneman Fabrics site. It was most recently, again, a Toyota dealership, and it was sitting vacant for a significant period of time before the development. This was determined by the owner to be the highest and best use, so we went through the Board of Adjustment phase last year, as well as the Planning Commission phase and the City Council phase, and we were approved for a Springhill Suites by Marriott hotel on-site. This is just an overview of the site location.

Just some current photos for those of you who haven't been by recently. These are existing site conditions today. This shows some of the foundation and first floor work that's been completed. This is looking toward the railroad bridge. That's the railroad bridge back there behind the wall you can kind of see it. This is more foundation and wall going up from the first floor. These are the structural walls. This is the, I think you're looking at the elevator shaft, kind of from behind. This is, more recently, the second floor coming in. And this is a shot actually standing on the second floor. The floors are going up pretty quickly now, so we're moving pretty quickly, as far as construction.

So why are we here? As Mike Fortner from the Planning Department stated, the original plan, the layout, the number of floors, everything remains exactly the same. Nothing is changing. The only thing that's changing is that the rooms that we originally identified as suites technically are supposed to count as separate rooms under the Code. That triggered everything we've had to do to revisit, to come back through this whole process. That's the only thing that's changing. Other than changing our parking analysis, which was approved by the Board of Adjustment, this changes nothing about the site plan, the floor plan or about the completed hotel. It doesn't change anything about the hotel itself. Those suites, before, I guess could have technically been rented out as one suite or as two separate rooms. Now, again, because of the way they're laid out, they have to count as separate rooms. So essentially on our record plan it needs to read 132 instead of 125.

I could run through all of the Comprehensive Plan benefits which are basically a repeat of what we provided in the last presentation, with the knowledge that your Comprehensive Plan has been updated and you're on Comprehensive Development Plan V, so a lot of the stuff in our presentation either doesn't apply anymore or . . . when we went through originally, we actually looked at the new Plan and incorporated that into our analysis. So we are confident that the

project continues to be consistent with the Comprehensive Plan. So at this point I feel like I should turn it back over and answer any questions that you folks might have.

Mr. Firestone: Any comments?

Mr. Bob Stozek: I have a question.

Mr. Firestone: Yes.

Mr. Stozek: I guess are you still planning to rent those seven suites as suites and rooms? Or are they all going to just be rooms now?

Mr. Kessler: I think . . . the answer is yes.

Mr. Stozek: A definitive answer.

Mr. Kessler: Yes, we'll keep that short and sweet.

Mr. Firestone: Can you clarify because he asked an 'or' question and when you simply say yes, I don't know what that means?

Mr. Stozek: Are these now going to be separate rooms, are they still going to be suites that can be rented as rooms?

Mr. Kessler: The plan is that we could rent them out as a single room or, for a big group, for example if there is a sports team coming in or there's a large family coming to look at the University, they might rent as two rooms that have an adjoining connector between the two, or we may rent them as two separate rooms. I think we could've rented them as two separate rooms before, no? I think they'd still . . .

Mr. Stozek: You implied that, I guess, in the application.

Mr. Kessler: Yes. So the answer is yes. As of now, going forward, they could either be rented as a single space or as two different spaces. That's correct.

Mr. Stozek: So now if you're going to have seven additional rooms, what does that do to the parking calculation?

Mr. Kessler: So we went through this with the Board of Adjustment and it would increase the parking analysis by seven parking spaces.

Mr. Stozek: Okay.

Mr. Kessler: We entered into an agreement, as Mike stated before, with Aetna. Aetna agreed to give us 25 spaces, which gives us more than enough spots on the Aetna parking lot which adjoins. It's level. It's not, you don't have to step up or climb or anything. And, again, it would be meant for employee overflow parking. We don't think that there's going to be a big parking issue there but we did go through that. Before we came to the Board of Adjustment, we had already gone to Aetna and gotten them to agree to give us those extra spots.

Mr. Stozek: Okay. And my last question is the last time you were here and we approved it, it was on the condition of two things being investigated. One was the egress from the property would prohibit left-hand turns, and that you would work with DelDOT to improve pedestrian safety in the area. Has any of that taken place yet?

Mr. Kessler: There is not going to be a left-hand turn out onto, I guess that's Capitol . . .

Mr. Hurd: Ogletown.

Mr. Kessler: Ogletown. I'm sorry, it's Ogletown. There's no left-hand turn onto Ogletown. And we went through an extensive process with DelDOT as far as reviewing . . . we traveled to Dover countless times to sit down and meet with DelDOT. And DelDOT approved the project as-is. They didn't require any additional improvements be made. Hold on. George is an attorney. Does he have to be sworn in?

Mr. Firestone: You can speak. Please identify yourself for the record.

Mr. George Danneman: George Danneman, Delaware attorney. We're doing thousands of dollars in pedestrian improvements, including replacing the curb. We actually have to replace some of the curb in the middle . . . I don't know how to describe it, but we're upgrading to make things more handicap accessible, including off-site improvements to make things more pedestrian friendly. So DelDOT has asked us to do improvements, which we're doing to make things more pedestrian friendly.

Mr. Stozek: But one of the main things that I brought up at that meeting was since you talked about this being, you know, people could go from your hotel to downtown to restaurants and whatever, my concern was crossing that intersection to go down Main Street. Because with cars turning right onto Route 2 and the congestion there, that's still my concern about people getting across that intersection if they're walking.

Mr. Danneman: So some of those improvements were to the curb in that direction and to the median where pedestrians would be on their way towards the McDonalds side of the street.

Mr. Stozek: Okay.

Mr. Danneman: I think soon you're going to see that work begin and you might even see some of the road get shut down at night and things like that, as we're doing that work.

Mr. Stozek: But they're not doing anything relative to signaling?

Mr. Danneman: We're not doing anything relative to signaling. It's really just improving the curbs and things like that to make it more pedestrian access oriented, and provide more space for pedestrians. Things like that.

Mr. Frank McIntosh: Mr. Chairman?

Mr. Firestone: Yes.

Mr. McIntosh: On that subject, does that mean you're widening the space? Like say we're in the middle of the roadway, is that going to be wider now? There's nothing there.

Mr. Danneman: We're removing what's there now and replacing it with something that is up to the current handicap accessibility requirements, even though what was done wasn't done so long ago.

Mr. McIntosh: Well I'm not concerned about the handicap, I'm talking about making somebody handicapped there by getting hit as they're trying to cross that street. If you don't have signaling to give them access to cross the street, and you don't have a landing spot in the middle, so you're leaving the pedestrian to be there on the tarmac?

Mr. Danneman: I spent a while with DelDOT, our contractor, sub-contractors, all looking at that corner and they all spent a lot of time talking to each other about it and determining what they thought was best. They all were much more, understood the corner and all the different things that play better than I did because that's what they do.

Mr. McIntosh: Uh huh.

Mr. Danneman: Including cars turning right and decel lanes, accel lanes and things like that. And they were kind of determining what they wanted us to do, including looking at those pedestrian access.

Mr. McIntosh: Okay, so it's not clear to me what you are going to do.

Mr. Danneman: So I can't give you an exact answer but we're doing what DelDOT told us to do and all the experts determined we should do. That's what I can tell you. And I'm paying for it. I mean that's, it's a lot of extra money that got tacked on after the fact, based on that discussion.

Mr. McIntosh: Well we know that there's lots of intersections across the state that are quite dangerous that DelDOT doesn't do anything about. So . . .

Mr. Danneman: Well they definitely paid a lot of attention to this one and the curbs around our site, and pedestrian access and pedestrian . . . you know, they've come in and looked at everything.

Mr. McIntosh: And did I understand you to say that you're restricting access from the parking lot to take a left onto Ogletown Road from the hotel?

Mr. Danneman: Correct.

Mr. McIntosh: What about the right that's onto Capitol Trail?

Mr. Danneman: No, you can make a right.

Mr. Silverman: Frank.

Mr. McIntosh: I can't read those.

Mr. Danneman: Can you maybe put the plan up? It might be easier.

Ms. Stacy McNatt: Is this plan the current plan that was approved at . . .

Mr. Kessler: That's the recorded plan.

Mr. Silverman: That's what's being built.

Ms. McNatt: This is the recorded plan? This is not what's being built then?

Mr. Kessler: That is the record plan.

Ms. McNatt: But this shows those turns that are not going to be there.

Mr. Silverman: It shows rights in.

Ms. McNatt: But they said there's no left.

Mr. Silverman: We didn't want the left going out in front of the post office.

Mr. Hurd: My recollection is that our recommendation to Council and Council's approval was an entrance only from Capitol Trail. So this plan is dated in February, so it was prior to our meeting at Planning Commission. So I don't believe this is the right plan. It was maybe the submitted plan. I think we're just trying to be sure that the recommendations we had made . . . because that was a long part of our conversation about the traffic flowing in and out . . . trying to make sure that that's actually what's happening.

Mr. Danneman: There is definitely no left turn onto Ogletown Road/273.

Mr. Hurd: Okay.

Mr. Danneman: There is access to Capitol Trail. And that's based on what City Council approved.

Ms. McNatt: Rights in and rights out?

Mr. Danneman: Yes. And DelDOT approved it.

Mr. McIntosh: So if I remember correctly, you could get into that property before. There was a right turn into the property when it was Danneman's or Toyota.

Mr. Danneman: Correct.

Mr. McIntosh: So what are you doing? Widening that so you can go in and out, or so that you can come in from the right and go out from the right, as well?

Mr. Danneman: Does the record plan show a right?

Mr. Kessler: It shows a right in and it should show a right . . . a secondary ramp going out. A right out.

Mr. Danneman: So it . . . yes.

Mr. McIntosh: Well one you're coming in because you're coming down the street someplace, right? And the other you're inside the parking lot and now you're leaving.

Mr. Danneman: Correct.

Mr. McIntosh: And you're taking a right.

Mr. Kessler: But you cannot go left out the other entrance.

Mr. Danneman: Both entrances on both roads are rights in and rights out. There are no left turns allowed off the site.

Mr. McIntosh: That's good.

Mr. Firestone: I've got a question about the change. Is the change bring brought forward because you made an error, because you changed your mind or because you came up with a new idea?

Mr. Danneman: This is what we presented verbally all along, however our design professionals on paper wrote something different than what we've been presenting and what got recorded. This is what we presented throughout the entire process but then what our design professionals wrote on paper that got recorded didn't match what we presented. And that's what has . . .

Mr. Kessler: Basically what happened was when more detailed plans were submitted to Planning, and Planning was able to look more specifically at, for example, sinks, like bathroom sinks or fixtures, they said, wait a minute, this doesn't exactly meet the requirement that it be considered one room. This should technically be considered two rooms. And so that's when we started going back through the process. So it's not a change in our plan or a change in our use for the site, it's just that what we planned to do all along, by error, is actually supposed to be two rooms and not one.

Mr. Silverman: Mr. Chairman, I recused myself on the original voting and the original presentation because I hold administrative positions with Aetna Hose Hook & Ladder and

there's a contract in place. So I will not be voting on this tonight. And I believe the answer to your question, there's a disconnect within the City of Newark process in that the Building Department and the Planning Department have the ability to review two different items. And my reading of this is when the idea and the plans were drawn up, an assumption was made by the City in the preliminary discussions that those rooms represented as suites would be continuously connected rooms. Whereas when the building plans were submitted, it turns out there is a locking common door, probably, as we've most seen, on both sides. So the City made a re-evaluation of their position and declared that since those rooms could be excluded from one another, that they would be counted as separate rooms rather than two-room suites. And that's why they're back here.

Mr. Firestone: I understood that based on his clarification that it was an error.

Mr. Silverman: Okay.

Mr. Kessler: Yes.

Mr. Firestone: Anything else for the applicant at this time?

Ms. McNatt: I have a couple of questions. Is the agreement between the Aetna Hose Hook & Ladder Company recorded?

Mr. Kessler: No. The agreement is not recorded. It's a private lease agreement between the two parties. The City has a copy. We shared it with the City.

Ms. McNatt: So that's definitely finalized?

Mr. Kessler: Yes, and executed. Absolutely.

Ms. McNatt: And the 25 spaces that you agreed upon . . .

Mr. Kessler: Yes?

Ms. McNatt: How are employees and/or potentially guests able to get to the hotel because the plan doesn't really show that?

Mr. Kessler: So the lease agreement provides for a common ingress and egress via private license between the two parties to be able to cross between the two sites.

Ms. McNatt: Is that shown on this plan?

Mr. Kessler: It would not be shown on the plan, no. It's shown in the lease on a plan that the lease has attached to it.

Ms. McNatt: Will that be constructed?

Mr. Kessler: It's already . . . the two sites are going to be perfectly level with each other so we don't have to build a connector. It's just . . .

Ms. McNatt: Not a road?

Mr. Kessler: No road. No, no, no.

Ms. McNatt: Pedestrian connection?

Mr. Kessler: Pedestrian, yes.

Ms. McNatt: Sidewalk?

Mr. Kessler: There will be curbing, and it would be a matter of just walking over a two foot median, basically, to get from one . . .

Ms. McNatt: Oh, so there's not a flat sidewalk to access both parcels?

Mr. Kessler: That's not part of the plan as of now, no. But the two sites are so close to each other . . . I was just out there in fact. It's like stepping over, right now it's a lot of gravel, but when it's completed, it's a very short distance.

Ms. McNatt: But does that agreement say that no guests can park there? Or that agreement is just 25 spaces for the hotel?

Mr. Kessler: Twenty-five spaces for the hotel.

Ms. McNatt: Okay. That seems bizarre that it's not pedestrian friendly and/or handicap friendly if they can be for guests. I know that they may not, but I find that a little bizarre. I'd like to also go back to the calculation of the parking spaces. So originally you didn't have enough spaces. Technically you were supposed to have 182, I think. If you had them all, it would be 182.

Mr. Kessler: Yes.

Ms. McNatt: You achieved a variance for 36?

Mr. Kessler: Yes.

Ms. McNatt: And then you provide 25 of the 36 on the Aetna parcel, which is what happens now?

Mr. Kessler: Yes.

Ms. McNatt: Now the additional seven, you're not going to provide . . .

Mr. Kessler: No, our variance was for 16 additional spaces from the Board originally.

Ms. McNatt: Sixteen.

Mr. Kessler: Yes, we were supposed to provide 16 additional spaces at the original Board of Adjustment hearing. We then were required by this additional seven spaces to have a total of 23. We took on 25.

Ms. McNatt: But now you have seven more spaces that you have to add because you have these new rooms.

Mr. Kessler: No, well according to the Board of Adjustment original variance, it was for 16 spaces. That was our original grant, was we have a variance, to meet the variance, we have to find 16 additional spaces around town. Our goal all along was to talk with Aetna. It made the most sense. After that happened and this change came about with the rooms, we needed to find an additional seven on top of the 16 that we were already supposed to find.

Ms. McNatt: Oh, so you had that conversation with Aetna, about needing the additional seven?

Mr. Kessler: Yes. So we went directly to Aetna and said, look, we need 23, can we just have 25. And they gave us 25. Our parking analysis, to begin with, if you look back with the Board of Adjustment, we believe, we don't think it's even going to come close to needing that many spaces. We think what we have on-site is more than enough. But, you know, the Code is what the Code is, and the Board required what it required. So we went out and we have technically two extra spaces on top of the variance requirements at this point.

Mr. Firestone: Is there anyone from the public that would like to be heard on this issue? Yes, please come up to the podium and identify yourself.

Ms. Jean White: A comment and a question. Jean White, District 1.

Mr. Firestone: Could you please identify yourself for the record?

Ms. White: I thought I did. Jean White, District 1.

Mr. Firestone: Thank you.

Ms. White: My comment is this . . . if another hotel ever comes to Newark and if I'm still around, I'm going to ask the question, do you have any suites as part of these rooms? And, if you do have suites, is it one suite or are there two connecting rooms that can be rented separately. Because what occurs to me is that if somebody . . . didn't think to ask that question . . . could've asked that question, it would have saved a lot of time not only for the developer and the lawyer, but by the Planning Commission and the Board of Adjustment. Because not only did they go to the first Board of Adjustment, but because of this extra seven, which came about because now seven suites could actually be rented as 14 rooms, they had to come to a second Board of Adjustment. That could have been eliminated if this had been known at the beginning by somebody asking the question. And it would have eliminated this coming before you tonight, as well as it still has to go to Council. So there are three meetings, three agenda items that could have been eliminated by that.

Okay, and I had two questions. So now there are 23 parking places that are behind the Aetna building . . . okay, 25 . . . and those are only to be used by employees, do I understand? Not by residents at the hotel? I'll ask that question. And then the other thing I want to ascertain to be sure . . . coming out of Ogletown Road, no left turns, only right turns. Okay. So somebody could come out as a right turn, they could even go downtown in Newark and going in from Kirkwood Highway/Capitol Trail, one can only go in, but not go out. I just wanted to . . . that's the way it was originally. Is that still true? Those are my two questions. So somebody goes out, goes down into downtown, Newark Shopping Center, if they come back, what they should do is they should come back, take a left turn on Kirkwood Highway and take the turn into the hotel, which is a one-way. They can't come out that. It's only one-way. That's what I remember when it was approved. So those are my two questions. Thank you.

Mr. Firestone: Is there anyone else that would like to make a comment? Yes?

Mr. Stozek: I have two follow-up questions. One, Mary Ellen, I don't know if the City has heard, but I have heard rumors, stories or whatever for at least six months that Aetna is going to relocate. Do we know if that's true or not?

Ms. Gray: I have not heard anything to that effect, but perhaps other people have.

Mr. Stozek: My question is, if that's true, then what happens with this agreement for the 25 spaces, if that property then goes for sale.

Mr. Kessler: That part I can answer. I wasn't coming up for the first part because I don't know. But the second part . . . the agreement provides that it flows to successors and assigns of the property. So it would be a lease agreement disclosed at closing and it would follow the chain of title to the next party. It's not recorded but it does provide that the successors and assigns that own the property would be subject to the same . . . like if you purchased a shopping center and it had a supermarket in it. You would be, you know, a landlord again.

Mr. Stozek: And then the other thing was, in all these discussions with DeIDOT about the safety issues, was there a report issued? Is there anything in writing as to what was discussed and what their decision was?

Mr. Kessler: George says he feels like it was just a bill from DelDOT. I don't recall having seen a report from . . . but there may be a report on file with DelDOT that, you know, in their file somewhere. But, again, our interaction with them dealt mostly with what George is going to do to make improvements and fix the site.

Mr. Stozek: Again, I still have the safety concerns. There's still a question here that I don't think has been answered about entrance to the property and exit off of Capitol Trail. Whether that's exit only, or entrance only, which was something we asked for in our previous meeting. And then again, it doesn't sound like they really considered very much the pedestrian issue of crossing that heavy intersection.

Mr. Kessler: One of the things, and we repeated this at our last presentation, is that, again, the Springhill Suites concept includes something that we're doing. In fact we're doing it two times more than most Springhill Suites do it, and that's a shuttle service. We have two shuttles that will be shuttling people from the hotel site to the Main Street attractions and back. In fact we're going to drive a loop on busy nights and take people back and forth. So our first, from a customer service standpoint, our first priority is you don't need to take your car into Newark. You're not going to find a parking space there. Don't even bother. We'll drive you there in a van. We'll drive ten of you there. We'll drop you off and you can go drink and be merry, and then you'll see the shuttle coming back around and you can get back on the shuttle and take it back to the hotel. That would be on busier nights and on nights when we have a lot of foot traffic in the hotel.

So that's the first priority from a customer service standpoint, is getting people on those shuttles, obviously. But, you know, DelDOT having done their review and with full knowledge of the fact that there may be pedestrians using that intersection, made their determination.

Mr. Stozek: Once we decide, does this go back before Council?

Mr. Firestone: Yes.

Mr. Stozek: Okay. I guess I would like the City to find out if there is a report from DelDOT on this issue that could be reviewed prior to the City Council meeting.

Mr. Firestone: Chair would entertain a motion.

Mr. Stozek: I would like to make a motion that the City request from DelDOT if there is a report on the discussions with . . .

Mr. Kessler: Danneman Hospitality.

Mr. Stozek: Springhill Suites concerning the safety issues of the intersection at the hotel and have that report submitted to the City or to Council.

Mr. Hurd: Second.

Mr. Firestone: Any discussion? All those in favor, signify by saying Aye. Opposed, say Nay. Motion carries.

MOTION BY STOZEK, SECONDED BY HURD THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO THE CITY OF NEWARK:

THAT THE CITY OF NEWARK OBTAIN FROM DELDOT ANY REPORTS ON THE DISCUSSION BETWEEN DELDOT AND DANNEMAN HOSPITALITY LLC REGARDING INTERSECTION SAFETY ISSUES FOR THE HOTEL AT 400 OGLETOWN ROAD.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, MCNATT, STOZEK
NAY: NONE
ABSENT: NONE
ABSTAIN: SILVERMAN

MOTION PASSED

Mr. Firestone: The Chair would entertain a substantive motion on the applicant's request.

Mr. McIntosh: Are we going to answer the public comment questions? I think they were answered.

Mr. Firestone: I believe they were answered, as well. But, in general, the public makes comments and certainly any Commissioner then is free to respond, but it's not required of the Commission members to respond to public comment. So if you want to, Frank, you can summarize.

Mr. McIntosh: At some danger. My understanding is that there are no left turns from the property that are legal and there's only right turns so you can come in from the right on Ogletown Road and they can exit on Capitol Trail to the right. And there's also an entrance from Capitol Trail onto the property. Did I get it right? Yes? No? Speak now or forever hold your peace.

Mr. Kessler: Yes, that is correct.

Mr. Stozek: Let me just say in the previous addendum or whatever, what we said was left turns out of the site onto Ogletown Road and entrance only access from Capitol Trail.

Mr. Firestone: As was discussed in front of this Commission.

Mr. Stozek: Right, at the first meeting. That was two of the conditions that we asked for.

Mr. Firestone: But what was the conditions that were placed on it by City Council? That's what's germane.

Mr. Stozek: That I don't know.

Mr. Firestone: It doesn't seem that we have a complete answer but whatever the City Council put as far as requirements, are the requirements. No one here seems to completely know with certainty. Does anyone wish to make either an affirmative or a negatively phrased motion so that we can move onto the next agenda item?

Ms. McNatt: I'll make the motion, if I read this correctly. The Planning Commission recommends the approval of the 400 Ogletown Road special use permit to allow the hotel owned by Danneman Hospitality LLC to increase the number of rooms of the hotel from 125 to 132, with conditions.

Mr. Hurd: I'd say with Department conditions and possibly the conditions as approved by City Council prior.

Ms. McNatt: I like that.

Mr. Firestone: Is there a second?

Mr. Hurd: Second.

Mr. Firestone: Any discussion? My only point would be that all we're considering really is the error that was made and all of the discussion, while interesting and of concern, is not really germane to this small, little application that's in front of us, which is to effectively put locks on doors to allow them to rent additional units so that we will, in effect, in the State of Delaware have seven additional hotel rooms, and the laws of supply and demand would suggest, if anything, that we should have lower hotel rates. Does anyone else wish to be heard before we vote? With that, all in favor of the motion, signify by saying Aye. Opposed, say Nay. Motion carries.

Mr. Silverman: Please note I've abstained.

Mr. Firestone: Okay. Thank you very much.

Mr. Kessler: Thank you.

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

THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE PROPERTY LOCATED AT 400 OGLETOWN ROAD TO ALLOW THE HOTEL OWNED BY DANNEMAN HOSPITALITY LLC TO INCREASE THE NUMBER OF ROOMS OF THE HOTEL FROM 125 TO 132, WITH DEPARTMENTAL CONDITIONS AND THE CONDITIONS PREVIOUSLY APPROVED BY COUNCIL.

VOTE: 6-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, MCNATT, STOZEK
NAY: NONE
ABSENT: NONE
ABSTAIN: SILVERMAN

MOTION PASSED

5. REVIEW AND CONSIDERATION OF A SPECIAL USE PERMIT FOR THE PROPERTY AT 83 EAST MAIN STREET TO INSTALL A WIRELESS NETWORK ANTENNA TOWER ON TOP OF THE UNIVERSITY OF DELAWARE BOOKSTORE AS PART OF THE UNIVERSITY OF DELAWARE DISTRIBUTED ANTENNA SYSTEM.

Mr. Firestone: That gets us then to Item 5, review and consideration of a special use permit for the property located at 83 East Main Street to install a wireless network antenna on top of the University of Delaware bookstore as part of the University of Delaware distributed antenna system.

Mr. Fortner: Alright. Hi, again. To sum this up, Verizon Wireless wants to install a distributed antenna system, a DAS node, which is defined under our Code as a tower. It's on top of the UD bookstore. The applicant is here. It's zoned BB. It's on a parcel that's more than an acre, which is why it's coming to the Planning Commission before it comes to Council. It was reviewed under our new regulations for wireless facilities outside the right-of-way. The applicant is here to provide more of the detailed project. On page 2 through 7 is our Zoning Code regulations on new cell towers that we recently adopted, as well as the criteria for a special use permit on page 7. On page 8 is the Departmental recommendation. We are recommending in favor of this. There is a list under staff comments of five documents. They have provided all that. Some were provided in your packet, some today. The document you got today, the Department thinks they're engineering and technical, for technical review, as part of the requirements of getting the building permit. We don't think those are pertinent necessarily for the special use permit. So, anyway, the applicant is here and I'll let them present.

[Secretary's Note: The Planning and Development Department report on the proposed special use permit for the property at 83 East Main Street reads as follows:]

On June 19, 2017, the Planning and Development Department received a special use permit application and supporting materials from Cellco Partnership on behalf of Verizon Wireless to install a "Distributed Antenna System" (DAS) Node – defined under the City of Newark's Zoning Code as *Tower, Broadcasting and Telecommunications* – at 83 East Main Street. The property is zoned BB – Central Business district. The proposed cell phone tower was reviewed under the recently adopted regulations for wireless facilities outside the right of way. The Planning and Development Department report on the special use permit application follows:

Background

The proposed DAS node is part of a thirteen node project throughout the University of Delaware Campus designed specifically to alleviate the wireless service capacity issues for Verizon Wireless on the University of Delaware Campus. On May 12, 2016, the Planning and Development Department issued a zoning verification letter stating that "nodes" in the UN (University) zoning district are accessory uses incidental to a college or university under Section 32-14(a)(2). Building and electric permits have been issued for twelve (12) nodes located on UN zoned properties. The proposed node at 83 East Main Street, while a University-owned building and use (UD Bookstore/Barnes and Noble), is zoned BB and requires a special use permit.

The proposed node, to be located on the southeast portion of UD Bookstore rooftop along the Academy Street side, will consist of an equipment platform and antenna "sled" holding two (2) panel antennas which are "gravity mounted" with no permanent connections to the rooftop. Please see the attached Site Plan for more information.

Zoning

The revised Zoning Code Section 32-4(a)(129.1), defines a *Tower, Broadcasting and Telecommunications* as:

"(129.1) *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."

Under Zoning Code Section 32-18(b)(8), a *Tower, broadcasting and telecommunications* is permitted with a Council granted special use permit in an BB district – the applicable zone at this location - with the following conditions:

"(8) 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 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. 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.
 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, but no more than twenty-four (24) hours.
- (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."

Please note that the proposed Tower/ DAS Nodes does, or can, comply with all zoning requirements. For additional information, please see the supplemental report by Advantage Engineers dated June 21, 2017.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate that the proposed use will not:

- "a. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;
- b. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and
- c. Be in conflict with the purposes of the comprehensive development plan of the city."

As the attached technical report shows, the proposed tower will not adversely affect the health or safety or the public, nor will it be detrimental to the public welfare or injurious to property.

In addition, this proposed installation is not in conflict with the comprehensive development plan.

In granting any special use permit, Council shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so.

Departmental Comments

The City departmental comments are as follows:

1. Recommended conditions of approval. The applicant shall submit the following:
 - a. 32-18(b)(8)(a) (1) – A supplemental report that addresses the technical nature of the request and testimony will be provided.
 - b. 32-18(b)(8)(a) (3) - A supplemental report that certifies the gap in coverage that this proposed antenna will address.
 - c. 32-18(b)(8)(a) (4) – A supplemental report regarding FCC compliance.
 - d. 32-18(b)(8)(a) (5) – Copies of all applicable state and federal permits.
2. The other City Operating Departments did not express any issues or concerns with this special use permit request.

Recommendation

Because the proposed special use permit will not conflict with the purposes of the Comprehensive Development Plan V, because the proposed use, with the Departmental recommendations, will not be injurious to property or improvements in the surrounding area, and because the use can meet all Zoning and Special Use Permit requirements, the Planning and Development Department recommends that the Planning Commission recommend approval of the 83 East Main Street special use permit for a *Tower, Broadcasting and Telecommunications (DAS node) with departmental conditions*.

[Secretary's Note: Mr. Jordan distributed exhibit binders to the members of the Planning Commission and the Director, which he referred to during his presentation.]

Mr. Jonathan Jordan: Good evening everyone. I'm Jonathan Jordan, attorney for the applicant, and Mr. Fortner pretty much summed up what we're proposing to do. We're proposing, we call this Node 6. It's on top of the University of Delaware bookstore. We have a 13 node distributed antenna system that's covering central Newark, and it improves the service for Verizon Wireless customers.

The black exhibit binders have nine exhibits which very thoroughly explain our case and, in particular, there is a radio frequency report at tab 5 which spells out why we need this from a technological standpoint and how it serves to cover the territory that we're trying to cover. I think it's important to note that 12 of the 13 nodes that make up this system have already been approved and are under construction. This is an integral part of that system, so it's important to us and we appreciate what the Commission has done to get us on the agenda tonight so that we can move forward.

As I said, the exhibit binder contains all the information that you need but we also have three witnesses here tonight. We have Tod Bettenhausen, who is a site acquisition consultant for Verizon Wireless and he's really the quarterback of this team. Then we have Vic Ndounou, who is a radio frequency engineer, and who can describe or answer any questions the Commission might have about coverage and capacity, and why we need this system. Andrew Miller is a civil engineer. He can talk about the structural report to talk about the safety of putting these

antennas on the rooftop. Basically, what we're proposing are two antennas and an antenna sled sitting on top of the roof, and there's some associated equipment.

We have a report, it's called the EMF Compliance Report, at tab 8 that talks about the electromagnetic emissions from this site, and the fact is that they are 1.24% of the maximum limits. With that, I guess, I thought I'd bring up Mr. Bettenhausen, who can kind of give you an overview of what the project is all about and then if the Commission has any questions of the other witnesses . . . I know you've heard other telecomm applications, so I thought we'd keep it short and sweet and let you guys ask any questions that you have. So I'll turn it over to Tod.

Mr. Tod Bettenhausen: Thank you. If I could just summarize it a little bit more, we embarked on this project about three years ago with the University of Delaware. The idea was to perform a comprehensive capacity solution for the University of Delaware and its students and amongst its campus environment.

So if you turn to that tab that talks about the radio frequency report, you'll see that all the nodes are really focused and directed on the University of Delaware's campus. It's actually exhibit 5 in the back. You'll see kind of where the nodes are. And if you look closely, it's hard to tell from this particularly, but you can see a concentration of nodes along The Green area on the University of Delaware's campus, and then some along west Wyoming Road as you go out along toward South Chapel. That was a requirement of the University of Delaware that we worked with for the past three years to come up with this plan. And as Mr. Fortner indicated, in May of 2016, we sat down with the City of Newark and explained our project to them. Unfortunately, somehow we got out lines crossed and when we submitted for all of our permits, thinking that we had zoning approval on all 13 nodes, lo and behold, the bookstore was actually zoned BB, which required a special use permit. So then we quickly scrambled, and with the help of Mary Ellen and her staff, put together these reports very quickly to come before you, because this node is an integral part of the system that we have planned as a distributed antenna system, which is kind of new compared to the macro site that you just learned about AT&T putting on the bookstore last month. And it's a very, very comprehensive and very, very capacity-oriented solution that will affect the Verizon Wireless customers and the students at the University of Delaware, which a lot of them are, and/or anybody walking in and around their campus environment.

So that being said, to describe the project is it's on the bookstore rooftop and we can go on the site plan if you look at Exhibit 3 and if you turn to page . . . it's kind of the second page, Z1, gives you kind of an overview of the plan, but you'll see a very small equipment, what we call, platform, which is a [inaudible] platform that sits on a rooftop, 4 feet by 8 feet . . . so we're talking about 32 square feet . . . that's going to house our cabinets and our electrical equipment. And then you're going to see what we call an antenna sled in that southeastern corner, which is approximately 8 feet by 8 feet, which holds our antennas. Two antennas. All we're talking about is two antennas on that corner because we're pushing the signal toward the University of Delaware campus. And if you look in a little bit more detail on Exhibit C1, they kind of show you the elevation. But if you look at the detail in #1, you get a better idea of the proximity of the equipment, what we call the equipment platform, in relationship to the actual edge of the building itself.

So as we sit here and look at the visual impact, one of the things that the new Code required was that we try to hide these antennas, if you would. And so part of the discussion that we had with the Planning Department was changing our plans to paint the antennas and the sled-mounted equipment to match the building. The equipment on the interior is not going to be seen unless you are about at the fourth story on the east side of those apartments looking across the Aetna Fire Company open parking lot onto the building rooftop of the bookstore. So the visual impact on the actual equipment platform is negligible, if any, but the antenna sled, if you would, where the antennas are, was what we had proposed to paint to match the building, just trying to minimize the impact.

We consider this a very, very small installation. When you're talking about wireless facilities, it's not a new tower, even though under the ordinance it's defined as a new tower because it's lumped together. And what we have done is gone through those reports and side-by-side gone through the new ordinance with the Planning Department and with our engineers to talk about the compliance of our requirements in accordance with the new Code.

So from our perspective, we hope that the Planning Commission tonight would actually give us the approval necessary for us to continue to proceed to build this node 6. It's a rather simple installation but certainly there are a lot of detailed reports here. We have our other experts. The radio frequency engineer, should you wish to delve into Exhibit 5, and our structural engineer, should you wish to delve into the site plan or any of his 14 page report that we submitted as part of the package.

Mr. Firestone: Okay. Thank you. First, as a University of Delaware faculty member, given that I would benefit from any wireless system, I won't participate in the vote on this item.

Mr. Bettenhausen: Fair enough.

Mr. Firestone: Is there anyone with any questions of the applicant?

Mr. Hurd: I had a quick structural question from the report that I'm just a little confused on.

Mr. Bettenhausen: Sure.

Mr. Hurd: The antenna sled, the total load for it is 21.16 pounds per square foot, which is obviously less than the 30 pounds on the roof. But that doesn't seem to include the snow load that you talk about in the next pages with the equipment platform, which are calculated at 20 pounds per square foot as snow load. So if you add snow to the sled, you get 41 pounds, which is greater than your design load. So can you reconcile that or make me feel comfortable with this?

Mr. Bettenhausen: I'm going to have Mr. Miller step up and speak to that because that's above my pay grade.

Mr. Andrew Miller: Yes, Andrew Miller from Advantage Engineers, licensed Delaware Professional Engineer. So what is shown, you are very correct and that's a very astute comment, in the second analysis for the equipment, we also did an analysis of the roof for the sled and we can provide that. But the roof was checked for the total weight with all of the loads that would be simultaneous in the live load, the ballast load and the snow load.

Mr. Hurd: Okay. It just didn't . . . it seemed like it covered the snow load separately and then didn't seem to cover that one. Okay. I know it's your license on the line. Okay.

Mr. Firestone: Mr. Silverman.

Mr. Silverman: The earlier application we had from, I believe, AT&T had a power back-up system. Is there one for this facility?

Mr. Bettenhausen: Because of the size of the DAS node, the answer is no. We do not have an emergency back-up generator or any emergency plan. And the rationale behind that is it's such a small piece of the puzzle, if it goes down we expect to get it quickly up and running because it's actually going to be fed off the power of the University of Delaware bookstore, and they probably want to get their bookstore back online quickly, so we think we'll be okay.

Mr. Silverman: Okay, so there's no . . .

Mr. Bettenhausen: There's no back-up generator on any of our nodes whatsoever. However our head-end, which is the main brains of our system, which resides at 192 South Chapel Street, which is in the computing center of the University of Delaware, it will be on their emergency back-up generator. So the brains of the nodes will be, but the individual nodes will not be.

Mr. Silverman: Okay. Thank you. Also, you used the words lumped together, and I think you've brought to our attention a possible Code amendment here. The technology that you represent, the fact that it's on a sled . . . it's not on a tower, it's not physically attached to the structure, it's not a fixture of the structure . . . perhaps there needs to be another paragraph in the ordinance

Mr. Bettenhausen: It's ironic that you mention that.

Mr. Silverman: To take into account this kind of installation, or we could potentially be here with every user out there who wants to establish their own, I'm going to call it a hot spot.

Mr. Bettenhausen: It's funny you say that, because I will comment and then, Mary Ellen, I'll let you comment. When we went over this new ordinance as required by the Code, when we first learned about our node 6 not being permitted because of the BB issues versus the UN issue, we went through and sat down with Mary Ellen and her staff and went through the entire new ordinance. And, yes, although you are absolutely right, I probably think there will be a Code revision because, from a practical standpoint, I have a difference of opinion than whoever wrote that ordinance as to how those things are viewed. And so I have offered to help from my perspective in the real life world, where I've been doing this for 25 years through zoning ordinances and codes and code changes, the technology is actually going faster than you can keep up with your Code, to be honest with you.

Mr. Silverman: This appears to me, in my first reading, this is no more than a sophisticated hot spot that I would have at my coffee café.

Mr. Bettenhausen: We'd really like to think it's a bit more than that. . .

Mr. Silverman: But very similar.

Mr. Bettenhausen: But yes, it's very different than, and I've made this argument or this discussion we had on June 19 when we first talked about this, before as we applied for the special use permit, that, from my practical perspective, building a new tower is very different than putting collocation antennas on equipment on an existing structure, or better yet doing a small distributed antenna system, which is a very, very small application. And what's going is, we're going from the big stuff to the small stuff. Your ordinance actually takes into account some distributed antenna systems on the rights-of-way, which we never really even conceived of four or five years ago. That's happening now. So I think that they're in the process, and one of the things I promised them was to provide them some feedback from my perspective, so that you can try to segment and/or possibly change your Code to address some of these things. So I believe that is already in the works and I'll let Mary Ellen speak on that. That's my perspective, but she can answer that . . .

Mr. Silverman: That's just my observation. This is a whole different technology that doesn't seem to be reflected within the current revised ordinance.

Mr. Bettenhausen: I would agree with you. Unfortunately I have to comply with the Code as written and we looked at that, which is why we had a 12 page report saying we'll comply, we'll comply, we'll comply, even though, in some instances, there is some non-applicability to our installation as it pertains to the written Code as-is.

Mr. Silverman: I understand that. Ironically, we're going to be talking about next year's work program and this may be one of the items we can put on there.

Mr. Bettenhausen: Fair enough. And Mary Ellen can comment if she would like.

Ms. Gray: Okay. In the current ordinance, this structure meets the definition of a tower. So that's the short answer. And we had quite a lively discussion regarding that on June 19.

Mr. Bettenhausen: Yes, we did.

Ms. Gray: But that's how the Code reads right now.

Mr. Silverman: I do understand that.

Mr. Firestone: Any other Commissioner have a question for the applicant?

Ms. McNatt: I have a question. You said painted to be the color . . . something is painted. I don't think I clearly . . .

Mr. Bettenhausen: The antennas and the sled, on top of that southwest corner, are going to be painted to match the façade of the . . . it's kind of a grayish kind of look to it, on the bookstore.

Ms. McNatt: The long piece that's attached to the sled?

Mr. Bettenhausen: That's the antenna.

Ms. McNatt: That's the antenna. What color is that?

Mr. Bettenhausen: From the manufacturer it comes in like a cream color, but we're going to paint it to match.

Ms. McNatt: Oh, it can be painted?

Mr. Bettenhausen: It can be, we just have to be careful about the paint we use because we can't have any metallic paint in it, otherwise it affects the radio signal.

Ms. McNatt: So the whole thing . . . the sled and the antenna . . . everything is going to be painted to match the . . .

Mr. Bettenhausen: Yes, ma'am.

Mr. Firestone: Would anyone from the public like to be heard on this issue? Chair would entertain a motion.

Mr. Hurd: I'll go for it. I move that we recommend approval of the special use permit for the antenna . . . recommend approval of the 83 East Main Street special use permit for a tower, broadcasting and telecommunications DAS node with departmental conditions.

Mr. Silverman: I'll second.

Mr. Firestone: Any discussion on the motion? Okay, all those in support of the motion, signify by saying Aye. Opposed, say Nay. I did not take part. The motion carries. Thank you very much.

Mr. Bettenhausen: Thank you very much.

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

THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE PROPERTY LOCATED AT 83 EAST MAIN STREET FOR A TOWER, BROADCASTING AND TELECOMMUNICATIONS DAS NODE, AS

SHOWN ON THE ADVANTAGE ENGINEERS PLAN DATED JUNE 21, 2017, WITH DEPARTMENTAL CONDITIONS.

VOTE: 6-0

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

NAY: NONE

ABSENT: NONE

ABSTAIN: FIRESTONE

MOTION PASSED

Mr. Firestone: One comment I just generally have, and this is just a general applicant comment. In my work I do a lot of stuff with wind turbines and we do a lot of photo montages or photo simulations. And I would say that a picture is worth a thousand words or maybe two thousand of these schematics. And I think it would be helpful for the Commission and City Council and members of the public to understand what various structures are actually going to look like. We can do these things relatively easily now with computers and I would encourage the applicants to think more in those lines. So thank you.

Mr. Bettenhausen: Duly noted.

6. FOLLOW-UP TO THE RENTAL HOUSING NEEDS ASSESSMENT STUDY RECOMMENDATIONS.

Mr. Firestone: Okay. That then gets us to Agenda Item 6, follow-up to the Rental Housing Needs Assessment Study recommendation. Mary Ellen?

Ms. Gray: Very good. At the May Planning Commission meeting it was requested that we, as a result of the presentation of the outcome of Phase II Rental Needs Assessment Study, that staff look at next steps for the Planning Commission further discussion. So I thought it would be helpful to . . . I put together a memo regarding that and I thought it would be helpful to take a step back and talk about, for a couple of minutes, the background of the genesis of the Rental Needs Assessment and why it was initiated, and what was looked at in Phase I and Phase II, and some recommended next steps for the Planning Commission to look at.

In late 2013, the Rental Housing Needs Assessment Study was initiated by City Council, and that was largely in response to two major concerns. The first one was a large number of applications for student rental housing units that the City had been asked to consider and the concern of the impact on the rental housing market. And also at the same time there were some questions raised about single family rental housing in Newark. Specifically, some owners of single family rental housing had voiced concerns about the fairness of some of the City's restrictions on single family rental housing, including permitting, property maintenance controls and student home ordinance. Likewise, many Newark residents believed that they were negatively impacted by the lack of effectiveness and/or enforcement of City regulations on single family rental housing. So the study was embarked upon to look at how student rental housing was managed and the needs of how many units are currently being proposed and how many are needed.

So to this end, there was a two-phase study that was embarked upon, and the first phase was an assessment to look at the student and non-student rental housing needs, including the current rental inventory in determination of the number of additional units needed to ensure the economic feasibility of the market and to provide recommendations on the number of additional rental units that would be needed based on inventory of the number of students and demographics of the City of Newark. And then the Phase II, which is what you all heard the outcome from last month, showed housing rental availability for market rate and non-student community, additional rental housing availability for low and moderate income households,

potential neighborhoods where the market should be shifted to non-student renters or owner-occupants, and the current policy of concentrating student rental housing as close to campus as possible, and best practices in rental housing code enforcement.

So the next steps that the staff recommends is to, there was a discussion at the last meeting by the Planning Commission indicating the need or desire for data and looking at the information that was produced for the Phase I and Phase II studies. So a recommended path forward is review that data and look at it with a focus on making recommendations to City Council regarding the rental needs of students and non-students organized by planning categories, such as if there's any comprehensive planning changes or amendments, any recommended zoning changes, or any land development changes. Along those lines, one of the recommendations was to look at the rental inspection ordinance, and that was looked at . . . it was looked at before I got here . . . and a proposed ordinance was put together and was presented to Council, and that did not pass. So that was one of the outcomes of the Phase II. Mr. Chair?

Mr. Firestone: Are there any questions from the Commission?

Mr. Stozek: Relative to the proposal that went to Council, is there a plan to re-look at that and perhaps present a revised recommendation?

Ms. Gray: Regarding the rental . . .

Mr. Stozek: Enforcement.

Ms. Gray: Not at this time. There was no direction . . . it's my recollection that we did not get any specific direction as to propose a different ordinance at this point.

Mr. Firestone: Any other questions?

Mr. Hurd: Looking at the data, one thing I noticed is that the summary of rental permit data stops in 2010. Do we not have more current data, or is there a particular reason that we're lacking on that?

Ms. Gray: I thought we had . . . I'm still on a learning curve here . . .

Mr. Hurd: I'm looking at Mike more than you.

Ms. Gray: Right, right, and I think if you look on the back page it goes through 2011. I thought I'd seen . . . yes, it goes to 2011.

Mr. Hurd: Okay, but that's still six years old. And I think, especially since this was, the studies were because of recent projects and such, I think six years back is not telling us as much as we'd like to know.

Ms. McNatt: I have a question about the currently zoned areas permitting apartments, which is maybe the third graphic. It has the red, peach and yellow colored areas. I have the same concern. This map was . . . I don't know if this is currently zoned? It looks like there's a whole area in Suburban Plaza, those apartments . . . aren't those apartments across the street from the Acme in Suburban Plaza around Home Depot? Those aren't . . . unless this plan is not color coded, are those zoned apartments? Or are they allowed to be permitted as apartments? Aren't they apartments? I guess I have three questions.

Mr. Silverman: Yes, isn't that The Reserve?

Ms. McNatt: I don't know the name of it, but yes. It's the whole area behind . . . so I don't know why that . . . is that included?

Mr. Fortner: The date on this map, I think, is 2012. But yes, those were rezoned for apartments. They're zoned RM behind Suburban Plaza.

Ms. McNatt: So is the current . . . I guess the question is, is the current information that's out there being used in the analysis?

Mr. Fortner: Yes. This is an older map. Mary Ellen put this together based on just some documents that were out there, but that would be property that was updated after this map was . . . but this still is a fairly accurate map of what properties would be zoned for multi-family rentals.

Mr. Silverman: Does any of the information that is displayed on these exhibits exist in the City's GIS space? So if I asked for a dot diagram based on parcel use, could I get a comprehensive map that would show me the intensity and density of rental units?

Mr. Fortner: Well the City's zoning map is on . . .

Mr. Silverman: I'm not . . . go ahead.

Mr. Fortner: GIS. What was it you said you specifically want? The density?

Mr. Silverman: There ought to be a link between the address and the number of units permitted at that address. There's a whole data set that's just missing here.

Ms. Gray: Right. We don't have that data compiled on our GIS system. That's my understanding.

Mr. Silverman: Okay, who does the priority of how the departments utilize the City's GIS system?

Ms. Gray; Well, IT is looking at . . . it's my understanding the IT Department is looking at a range of projects. The main project they're working on this year is transferring to what's called MUNIS . . . and I don't know what that stands for, but it's an acronym for a new data management system. And it's also my understanding they're working on the GIS system as well, with the ultimate goal being just what you requested. That was certainly one of my questions when I got here, as well. Where that is in the priority in the scheme of things, I don't have a complete understanding of that.

Mr. Silverman: Because I'm used to using the system New Castle County maintains and it's a very interesting system. An individual can slice and dice or ask for special studies to be run and the information comes out eight ways from Sunday. And I was just wondering in the scheme of things, who sets the priorities in the City of Newark for meeting the Planning and the Planning Commission's needs for very basic information. That was the rhetorical question.

And then the other question I have is with respect to both the zoning exhibit, listed as Currently Zoned Apartment Areas, and the population density exhibit. It was part of our packet. I know Commissioner Stozek brought this up in our discussion last week on dealing with the area, I hope I've got my directions straight, of Cleveland Avenue on both sides and north, taking a look at that entire area with respect to the zoning patterns. Are they consistent? Do they meet the kinds of needs with respect to densities that are represented here? And earlier I raised the same question about the area bound by Chapel Street, Choate Street and Center Street, which had been predominantly single family with some break-out apartment units, but based on the studies that were done, to my knowledge in there, that's all income-producing property now, and whether it's zoned appropriately and whether it should be zoned on an omnibus basis as part of a Comp Plan and zoning update. That's one of the things I'd like to enter into our discussion with the work items.

Mr. Fortner: So the properties in the last area, we call that New Center Village. It has its own kind of little zoning district. An overlay zoning. It's all zoned residential RS, single family homes, but they're all, until recently when we put the BB development there, were all single family homes. But there has been proposals to rezone that RM. It was in front of Council probably in 2011, maybe before. It was turned down because there was some desire to keep it a single family neighborhood and encourage homeownership in there.

Mr. Silverman: But even the City's, what do you call it, the POOH Program . . .

Mr. Fortner: Yes, the POOH Program.

Mr. Silverman: Failed to reinforce that concept.

Mr. Fortner: Not in that area.

Mr. Silverman: So maybe it's worth looking at along with Mr. Stozek's idea of evaluating the whole Cleveland Avenue area. Because I believe one of the things that came up in the issue on Cleveland Avenue with the single family house at either 40 or 60 Cleveland was that particular parcel was zoned very different to the parcel next door.

Mr. Fortner: Well I think most of those . . . well it might have been . . . most of the parcels on Cleveland Avenue are zoned RM for garden apartments, although they're all single family houses. And single family houses are permitted in RM, and so in the Comp Plan we leave that as low density residential because they're smaller than an acre, all of those parcels are.

Mr. Silverman: As they exist.

Mr. Fortner: As they exist, yes.

Mr. Silverman: But potentially from a market point of view, if there was an omnibus rezoning to the overall density, owners may start combining parcels or selling parcels.

Mr. Fortner: Yes. So you wouldn't have to do a rezoning of most of them. Maybe in some areas on Cleveland Avenue. But you wouldn't have to do a rezoning. You could do a Comp Plan where you change that from low density to high density.

Mr. Silverman: Understood but this is something that we should probably be looking at as a companion to the rental survey, with the idea of concentrating rental units and drawing the rental users away from the single family neighborhoods.

Mr. Fortner: And that was a big part of the recommendation of the Rental Housing Needs Assessment, was identifying those areas like perhaps New Center Village, and saying those are going to be students, let's concentrate the density in those areas. So that would be a very reasonable approach.

Mr. Silverman: Okay.

Mr. Firestone: Anyone else have any questions?

Mr. Hurd: I think in terms of data that would be useful, I think . . . I don't remember his name but he was here last month, the president of the landlords' association . . . had a map I think that showed all the rental properties. I recognize that we don't have that necessarily in the GIS system, but that kind of information, like where are they distributed, would be really useful because I'm kind of looking at this and I see the student street density but where are the rest of them. Where are the single family homes that are, you know, there are neighborhoods where people are saying there are too many in my neighborhood. Well it would be nice to look at the data and say, you're right, there's a big collection over there. And that would, I think, allow us

to then focus to say that's the area that we want to shift people out of. Because otherwise we're just sort of saying we want to pull them into here but where are we pulling them from? That's the piece that I'm lacking.

Mr. Fortner: And that really could be . . . it's true we have a disconnect between our CityView system that tracks all of our rentals and the GIS, and we want to put them on a GIS map. But those maps are available publicly in terms of you go on any of these realtor sites and they show you where all the rentals area. And you can get a good idea of where the clusters are. So I can provide you with a map that would show that.

Mr. Silverman: Hopefully the drill-down, not only the cluster, but the fact that there are twelve rental units on this one site and the one next door only has six, but all they do is show up as a dot being a rental. That kind of information, the intensity, is very important.

Mr. Fortner: Yes, I think these mostly show the single family homes, but for most places of multi-families, where there were several, yes, it would be easy to, basically we'd have to go apartment-by-apartment. We'd say okay there's 42 units in this apartment building, but this could be done fairly simply.

Mr. Hurd: Just to sort of follow-up on that because I know it came up, do you track which rental permits are three unrelated and which ones are four unrelated.

Mr. Fortner: That's in the CityView system and it's a very chaotic system as far as I can understand. I think it's a very chaotic system and an imperfect system, but they do track it in CityView. And then it's the whole student rental ordinance too. Being able to figure out where are the student rentals and who can rent.

Mr. Silverman: And, again, who sets the priority for bringing this kind of information to the table and getting it in queue? Or is it just drifting out there until somebody gets done the project they're working on.

Mr. Fortner: I don't think it's a specific person who sets the priority. There's an IT Department and there's been leaps and bounds made. This is something that's almost new for us. So GIS, for example, I used to be the GIS expert in the City and I just have rudimentary knowledge of it. And now we have a GIS type of department. A cluster of people that are working on this, so I do attend the committee meetings that we meet about once a month. So it is just a matter of talking to the IT Department and saying we're trying to achieve this. What do we need to do to achieve that? I've talked to them about some of what you're alluding to. Another project is basically a planning document where you'll be able to see where all the projects are, and you give it a time and go back like a year and see what was developed and review all of the documents from that planning process, modeled somewhat like what Sussex County has. But it's just a matter of working with IT. And if the Planning Department wants to make it a higher priority, we can work with them and it depends on what data we have, what needs to be collected, and putting it together.

Mr. Silverman: In the computer courses I took in 1966, we had one entire course that was built around you tell your IT people what your product needs to be and what your priorities are. Don't let them tell you what they think they can do for you.

Mr. Fortner: Okay.

Mr. Silverman: And that's the dilemma that I see here.

Mr. Fortner: I've got a very good working relationship with them, and I think they are very positive and they do want to help us.

Mr. Silverman: But who turns the switch? Who is their boss and who does their boss talk to, and who does our administrator talk to, and you talk to, to get this put in some kind of queue or priority?

Mr. Fortner: It's not like there's one person. I mean I guess ultimately it's the City Manager but it's also the Planning Director and the staff. So if it became a high priority of Planning and we really wanted it . . . and then it's a matter of how easy it is to accumulate that data and what do we have and what do we need to transfer to a map. It might be difficult or it might be simple.

Mr. Silverman: That's the technocrats' problem. Getting them headed in the direction is something that I'd like to see on the work program.

Mr. Fortner: Okay.

Mr. Firestone: Would anyone in the public like to be heard on this item? Are there any other questions for staff? Okay, that then gets us to . . .

Mr. Silverman: Do we need to take any action on this? Are we endorsing it?

Mr. Firestone: If someone has a motion, I guess we could hear it.

Mr. Cronin: Mr. Chairman?

Mr. Firestone: Yes?

Mr. Cronin: It seems to me the Planning Director's memorandum to us talks about maybe focusing on making a recommendation to Council regarding rentals needs of students and non-students organized by planning categories, including three different categories. So it looks like we're being encouraged to do some additional work on this subject matter and come up with some sound recommendations to Council. Maybe a workshop is in order. I don't know.

Mr. Firestone: Well we have, further on our agenda, Item 9 that's already been discussed, the 2018 Work Plan discussion and so . . .

Mr. Cronin: This will be addressed there.

Mr. Firestone: Could be germane then.

Mr. Silverman: Yes.

Mr. Firestone: As part of our work agenda for next year.

Mr. Cronin: Understand but are we going to conclude this item on the agenda by doing nothing at this point.

Mr. Firestone: Chair would entertain a motion.

Mr. Silverman: I'll move that we support the recommendation of the Director to follow the path forward to review the data and information produced from Phase I, with a focus on a recommendation to City Council regarding rental needs in the areas of Comprehensive Plan changes, zoning changes and land development changes.

Mr. Firestone: Is there a second?

Mr. Cronin: I'll second.

Mr. Firestone: Any discussion on the issue?

Mr. Hurd: Can I make a small amendment to include in that path forward the additional data and maps that we've been discussing here tonight, including having updated information on some of the because I think if this was the information that was given to the consultants, I think some of it is out-of-date for us, and so we need updated data and current data to work on.

Mr. Silverman: Friendly amendment.

Mr. Hurd: So just under that section of data, I think I want to make sure that we're clear that we're looking at

Mr. Silverman: As the mover of the motion, I agree.

Mr. Hurd: Updated data and additional maps of the things we've been talking about here tonight.

Ms. Gray: Mr. Chair?

Mr. Firestone: I guess just for the record, it's going to be considered as a friendly amendment so it's within the motion and the second.

Mr. Hurd: Yes.

Mr. Firestone: Yes, Mary Ellen?

Ms. Gray: Certainly we will do what we can. I have a concern about the next, what was recommended in the next steps is taking the data that's already been gathered and organizing it in a way, in a cogent way, so the Planning Commission can make some recommendations based on the outcome of the study. And certainly Mike had discussed that we could put together the requested maps. Regarding the updated information, I don't know how that was collected and I don't know the level of the resources needed to do that. So I just kind of put that out there. I would certainly be happy to collect any information that we have but I just have a concern about the level of resources needed to get that information. I'm in the dark as to how that was done, so I would have to take some time and go back and look at that.

Mr. Silverman: I think that goes without saying, within the limits of the resources available.

Mr. Hurd: Yes.

Ms. Gray: Okay.

Mr. Firestone: Any further discussion? All in favor of the motion, signify by saying Aye. Opposed, say nay. The motion carries.

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

THAT PLANNING COMMISSION SUPPORT THE RECOMMENDATION OF THE PLANNING AND DEVELOPMENT DIRECTOR TO FOLLOW THE PATH FORWARD TO REVIEW THE DATA AND INFORMATION PRODUCED FROM THE RENTAL HOUSING NEEDS ASSESSMENT PHASE I AND PHASE II STUDIES, WITH A FOCUS ON MAKING RECOMMENDATIONS TO CITY COUNCIL REGARDING RENTAL NEEDS OF STUDENTS AND NON-STUDENTS ORGANIZED BY PLANNING CATEGORIES INCLUDING COMPREHENSIVE PLAN CHANGES/AMENDMENTS, ZONING CHANGES, AND LAND DEVELOPMENT CHANGES, USING UPDATED DATA AND INFORMATION, WITHIN THE LIMITS OF THE STAFF RESOURCES AVAILABLE.

VOTE: 7-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

MOTION PASSED UNANIMOUSLY

7. REVIEW AND CONSIDERATION OF PLANNING COMMISSION RULES OF PROCEDURE.

Mr. Firestone: With that, I think we can move to Agenda Item 7, review and consideration of Planning Commission Rules of Procedure, and I will turn it over at this point to Mary Ellen.

Ms. Gray: Okay, at the May meeting, there was a request for staff to put together a recommended Planning Commission Rules of Procedure and, based on that request, I reviewed the information that had been gathered heretofore by Planning Department staff from Planning Commission members. I talked with our legal counsel. I did what planners do, which is look at all the Code. And also, based on my experience in working with other boards and commissioners, I put together a recommended Public Hearing Rules of Procedure. Bruce Herron was able to make some comments on it, which we had distributed last week to everyone about some recommended changes and his thoughts, so I don't know whether, Mr. Chair, you want me to go through this or how you would like to proceed on this. Whether you want to read this into the record or just open it up for discussion, assuming everyone has read it. What is your pleasure, sir?

Mr. Firestone: Why don't we just open it up for discussion? I think it's maybe a little awkward to summarize it or read it into the record.

Ms. Gray: Right.

[Secretary's Note: The Planning and Development Department proposed Planning Commission Public Hearing Rules of Procedure reads as follows:]

Purpose

Public Hearings of the City of Newark Planning Commission are conducted for the purpose of obtaining public input and testimony on issues before the City of Newark Planning Commission.

Legal Authority

Newark City Code, Chapter 2, Sections 78 through 90; Newark City Charter, Section 901; Delaware State Code, Title 22, Chapter 7.

For public hearing items before the Commission:

1. The Planning Director will provide an overview of the application/ordinance.
2. The applicant or applicant's representative will be allotted 15 minutes to present the application unless a longer time is permitted by a majority vote of the Planning Commission. Questions from Commissioners shall be withheld until the conclusion of the applicant's or representative's presentation.
3. The Commission will then receive public testimony from all of those in favor.
4. Public testimony will then be received from those who may be opposed.
5. When everyone has had an opportunity to speak, the hearing on the item will be closed.

6. Commissioners may continue to ask questions of applicant, staff or a member of the public who has made a public comment.
7. Chair shall call for deliberation.
8. The Planning Commission shall make a recommendation of the application to the City Council. In the case of a parking waiver request, the Planning Commission is the final authority. *The Planning Commission may also continue the hearing should they feel they require additional information, or more time to review information and/or testimony that was offered at the hearing.*

Public Testimony

1. Each person providing testimony in support or opposition shall be allotted 3 minutes unless a longer time limit is permitted by a majority vote of the Planning Commission. Questions from the Commission shall be withheld until the conclusion of said person's testimony.
2. A person in support or opposition may only testify once during a specific public hearing. Commissioners may at any time ask questions of a speaker, a member of the audience, or member of staff.
3. The Chair may discourage duplicative testimony and may ask for members of the public to caucus to determine a spokesperson.
4. All those providing testimony shall publicly state their name and address for the record. Professionals testifying on behalf of an applicant or in support or opposition shall state the name of their company or employer and business address.
5. Copies of any written statements or exhibits used during the hearing should be presented for identification and inclusion in the record.
6. All parties to hearings, their counsel, and spectators shall conduct themselves in a civil manner. There shall be no audience demonstration, applause, cheering, displaying of signs or placards, or other conduct disruptive to the hearing. Disruptive conduct may be cause for appropriate action as determined by the Chair or City Solicitor, including removal of disorderly or disruptive persons by an officer of the Newark Police Department.

Planning Commission

1. Planning Commission hearings shall conclude no later than 10:00 p.m. unless a majority of the Planning Commission present votes to extend the meeting.
2. The meeting shall be conducted per the latest edition of Robert's Rules of Order.
3. Any Commissioner who may have a conflict of interest shall disclose said conflict at the Planning Commission hearing. When there is any doubt as to whether a conflict of interest exists, the Commissioner shall seek the advice of the City Solicitor or an advisory opinion from the City's Board of Ethics.
4. The Commission members shall avoid discussing applications before the Planning Commission whenever possible outside of the Planning Commission meeting. If such discussion does take place, the Commissioner shall disclose said discussion at the Planning Commission meeting.

Additional Items

1. The Chair may open the meeting with a Pledge of Allegiance and a Silent Meditation.
2. The Chair may add Public Comment to the end of the agenda.

Mr. Cronin: Mr. Chair?

Mr. Firestone: Yes, go ahead.

Mr. Cronin: I have one observation or question, having read this over. On page 2, Mary Ellen...

Ms. Gray: Yes, sir.

Mr. Cronin: Items 1 and 2. Number 1 seems to discourage questions from the Commission until the conclusion of said person's testimony and #2 seems to say Commissioners may at any time ask questions of the speaker, member of the audience or member of staff. I'm looking at that as being a disconnect between the two. Personally, I think it's nice to be able to question them as they have the floor, but it says we're discouraged from questioning them in Item 1 but encouraged to question them while they have the floor in Item 2, the way I read it. I don't know what your intent is there.

Ms. Gray: Okay. The intent for #1 is to . . . from what I understand that there was discussion about whether there should be time limits for people providing testimony. So that was the intent of Item 1. And Item 2 is that . . . actually we had that, I believe, at the last hearing . . . that a person may only testify once. And regarding the questions, just to make it clear that if a Commissioner has a question of someone speaking from the public, which sometimes occurs, that they may ask questions of the people giving testimony.

Mr. Cronin: So do I understand that your distinction is the people providing testimony in Item 1 are the applicant or their representatives?

Ms. Gray: No.

Mr. Cronin: And people in Item 2 are members of the public?

Ms. Gray: No, both Items 1 and 2, this is under public testimony, so this would be members of the public speaking, not the applicant.

Mr. Cronin: Okay, then I still see kind of a . . .

Mr. Firestone: I think his point is that it says in #1 that the Commission can question at the conclusion of the testimony and in Item 2 it says we can question at any time.

Ms. Gray: Okay.

Mr. Cronin: Exactly.

Mr. Firestone: I think . . .

Ms. Gray: Okay, what would you like?

Mr. Firestone: I interpreted Item 2 to mean that once the person was concluded you could either ask them questions at that point or at some later point. But I understand the . . .

Ms. Gray: Certainly.

Mr. Firestone: Ambiguity that you're pointing out.

Mr. McIntosh: I would agree with Commissioner Cronin because you say, may at any time.

Ms. Gray: Okay.

Mr. McIntosh: Literally that means at any time.

Mr. Cronin: Right.

Mr. McIntosh: So if somebody starts speaking, you can say excuse me, I have a question.

Ms. Gray: Okay.

Mr. Firestone: Agreed. And I think that the three minutes, we should let people have their peace.

Mr. McIntosh: And I think you could probably fix that just by taking 'at any time' out.

Ms. Gray: Okay.

Ms. McNatt: I have a question.

Mr. McIntosh: Or, excuse me, I'm sorry.

Ms. McNatt: No, go ahead.

Mr. McIntosh: This is the English person in me. And you might take away the questions from the Commissioners entirely in #1 since the intent was three minutes.

Ms. Gray: Take that sentence out? Okay.

Mr. McIntosh: So that would give you that and it says, then, okay you've got three minutes. We're not going to break up those three minutes, but you will stop at the end, and then you can speak to this, after taking 'at any time' out in #2.

Mr. Firestone: Go ahead, Commissioner Silverman.

Mr. Silverman: With respect to the first page, heading Legal Authority, Item 8 beginning the Planning Commission shall make a recommendation . . . I thought I had a copy and I don't . . . what did our legal counsel say with respect to the italicized wording, 'the Commission may also continue a hearing?' Because we've had an interpretive read on the charter and some of the guidance there with respect to we can only vote up or down. We can't vote to table. We can vote up and down with recommendations. Do we really want to open the door of a continuance? And who initiates the continuance? Right now if an applicant says, whoa, things are going badly, I'd like to withdraw, the applicant simply terminates the process, as opposed to risking having a No vote, if it's done before the vote. Because I asked about this earlier and I asked that somebody go back into the original ordinance . . . it goes back into the late 70s . . . as to why the Yes or No was put in. And I have a feeling there may have been some abuse by some interest group or the Commission on sandbagging an applicant. Well I don't have enough information, another meeting, another report. This isn't quite what I was looking for. And that could go on forever.

Mr. Firestone: Just a point of clarification, Bruce Herron, although he commented on Item 8, it was not on the sentence that you referred to.

Mr. Silverman: Oh, okay.

Mr. Firestone: It was on the statement that we're the final authority and he said it's not, because the City Council basically had, de novo, the view to decide the issue anyway. So he didn't comment on that.

Mr. Silverman: Okay.

Ms. Gray: Mr. Chair, if I may. I did have an email communication with Mr. Herron regarding this specific issue and I was remiss in sharing that with you all. And certainly you can ask Mr. Herron when he's back next month. Because I reviewed the Code here . . . again, that's one of the things I do is review the Code . . . and I did not, and perhaps I just missed it . . . I did not come upon, I didn't see anything in the Code that would prohibit, that requires a positive or a negative recommendation.

Mr. Silverman: I believe it's under Administration and clustered with the way City Council administers itself. There's a reference to commissions in there.

Ms. Gray: Okay, here again . . .

Mr. Silverman: Following the protocol.

Ms. Gray: I'm not a lawyer. I'm not prepared to argue legal points or discuss legal points, I'm just . . .

Mr. Silverman: I'm not arguing. I'm just bringing information.

Ms. Gray: A question has been asked and the answer from Mr. Herron via email is that the only Code provision that he saw which would impact that the Planning Commission may continue the hearing would be Section 27-20 and Section 27-21, which requires the Commission to issue a recommendation to Council regarding subdivision plans within 40 days should they continue an application to the next meeting. So they could continue an application until the next meeting but not thereafter. Here again, perhaps this is a point of discussion. I put this in here as it's been my experience in other commissions that sometimes information or questions or issues are raised at a hearing that heretofore had not been discussed or thought about. And it's usually brought by a member of the public and you're like, oh I didn't think of that, let's get some more information on it. So I put that there as a point of discussion that perhaps there might be some times that the Planning Commission doesn't feel comfortable moving forward with a recommendation without further information.

Mr. Silverman: I understand that but there's another bite at the application apple to provide additional information in the interim between our recommendation and Council's action. Council can remand it back to us if they have questions for a re-hearing. But, for example, let's take the hotel. There was interest in pedestrian safety and the configuration of the intersection, all that. That's DelDOT's purview. What would happen to that applicant if we said, you know what, we're not going to do anything until you get from DelDOT what we think you should get.

Ms. Gray: That would be your vote. I mean that would . . .

Mr. Silverman: Under the Code, as I read it, we cannot do that. We can say, no, we do not approve it at this time because there is no formal agreement with Aetna Fire Company for parking and there's no formal written report from DelDOT with respect to pedestrian safety improvements. And it sits at a no. It gets to Council, the DelDOT report shows up and the written agreement shows up. Well that satisfied two of our concerns, which kind of flips it on its head. Our conditional no now is a, we have no problem because the conditions have been met. And that works well for moving things forward in the City of Newark. In other jurisdictions you can languish for a year or year-and-a-half in their process with this back and forth and back and forth. And I don't want to see that here.

Mr. McIntosh: However if you did have such a situation you're talking about and you said, we're not going to act on this until you provide this information and we'll put it up on the next agenda for consideration, and your job is to get that information between now and then. That seems to be better than voting no with exceptions. It's a more proactive way of dealing with it and I think that the applicant might feel better about that. They didn't get turned down. They just didn't have enough information, and we're giving them a chance to gather that other information. Also, if you know the place where this yay/nay business has to be put in, I would suggest you give it to Mary Ellen and she can talk with Bruce about it.

Mr. Silverman: Do you have a copy of the City Code? I'm sorry, Mary Ellen, do you have a copy of the City Code?

Ms. Gray: A copy of Chapter 27 and 32.

Mr. Silverman: No, I believe this is Administration. Can someone go online and pull it up? Or I can provide it. But it's very clear in that part under general Administration. It specifically says the Commission shall vote.

Mr. McIntosh: All I'm suggesting is that we point out where that is or ask Bruce to look it up.

Mr. Silverman: Okay, let's refer it back to counsel?

Mr. Firestone: Mary Ellen, do you make determinations of administrative completeness of an application?

Ms. Gray: Yes, there are certainly application requirements, the minimum that's required for what we would consider a complete submittal. And if we don't have a complete submittal, you keep on trying until you get one.

Mr. Firestone: So my question is, could the Commission disagree with you as to whether an application was administratively complete and send it back to you?

Mr. Hurd: And I'll just add this is something that has come up. I mean last month or the month before, we showed up here and there were additional materials presented from the applicant on the day-of.

Mr. Firestone: That, again, happened today.

Mr. Hurd: Yes.

Mr. Firestone: That's a separate issue and that's the question, is when does the record close vis-à-vis the applicant? And it may be useful in our rules to have some sort of rule related to when the record closes so that they could supplement but they would perhaps have to seek special permission at a meeting if they wanted to supplement beyond that date.

Mr. Hurd: Yes, that was the point I was going to bring up. To say, essentially, I feel that if we think the continuation is something allowable, I think that we should be able to say, you know what, they just dropped this on my lap, you know, a motion to continue to next month. Right from the beginning, you just . . . or review it, but have the option to say there's too much . . . and I think about the Trader's Alley one where the opposing guy came in with the binder . . .

Mr. Silverman: Three hundred pages.

Mr. Hurd: With a huge number of exhibits counter to the argument and it was like, we can't digest this.

Mr. Silverman: Right.

Mr. Hurd: And it would have been really nice to have the ability to say, you know what, next month, to digest this all and deal with it.

Mr. Firestone: Those are sort of two different but related issues . . .

Mr. Hurd: They are.

Mr. Firestone: Because we might have an application where they didn't supplement but that we, as a Commission, think is not administratively complete. So the question is, can we make our own determination on administrative completeness which gets around this issue related to not having enough information and not wanting to do this conditional no. Maybe that's a question, ultimately, for Bruce.

Ms. Gray: That's certainly a legal question.

Mr. Firestone: Yes.

Mr. Hurd: I would agree. I would like to have that ability.

Mr. McIntosh: So would I.

Ms. McNatt: I agree.

Ms. Gray: And if I may, Mr. Chair, a point of clarification regarding the application that was just heard. This binder was a recompilation of the information that was submitted to us and there were two reports that were sent on Friday, and then the only report that we didn't have was the one that was provided on your desk. There wasn't, in looking at this binder, a point of clarification that it was just a reorganization of the submitted data.

Mr. Hurd: This is a minor . . .

Mr. Firestone: But there was some material that came on Friday and some that came today.

Ms. Gray: Yes, it did.

Mr. Firestone: And, you know, we were able to handle it but there may be other times where we're not able to handle it, and it would be nice to be able to have something a little more explicit that says the burden is on you to have an administratively complete application and if you don't, the Commission can deny it and send it back to the Department, effectively. I mean we can always try to do our best but there are times where we shouldn't be required to hold up the whole rest of the meeting while we're trying to decipher new information.

I had some other questions or comments, and I would agree with Bruce that we should label public comment as comment rather than testimony. We may on occasion have testimony. I think one thing that this set of rules doesn't do, is it really doesn't help us with any of the complex cases. You know, we haven't had one since I have been sitting here but I might imagine that if the golf course were, for example, to have a development proposal, that would be a controversial proposal. And it would be nice to have a set of rules that can deal with that kind of situation. And in that regard, there may be people who are opposed may want to have the ability to somewhat pool testimony and have an equal amount of time for one person to put on the opposition case to the application. An equivalent amount of time that the applicant gets. And the applicant may want the ability to reserve a certain amount of his or her time for a short reply. So we haven't really dealt with sort of the hard cases. And the other thing that Bruce indicated was that we shouldn't necessarily call people . . . not everyone is going to be supporter or an opponent, and I agree with that. I've actually been analyzing a national wind power survey and we have people who . . . and we asked them specifically about what they did as far as public comment, and they had the options of saying support, opposition, both or

neither. And they got to categorize. And so I still think there's a logic to having an order and so you might want to have people who identify themselves as supporters first, then the middle group would be people who would say I'm really neither or I have comments both in support and opposition, and then you have opponents last. Because I do agree, I think it's nice to have an order, but I do agree with Counsel that not everyone is always going to be a yaysayer or naysayer. There are going to be a lot of people who are going to think about the good and the bad of a proposal. I do think, as well, it would be good to have a germaneness rule for public comments.

Mr. Silverman: Yes.

Mr. Firestone: And by that, I'm thinking back to last year when we had a developer come in here and there were, you know, ten people who made testimonials and, as I read the rules, we don't pass on the qualifications of the developer. And since that's not criteria on which we can make a decision, those are not germane comments. And so . . .

Mr. Silverman: Mr. Chairman?

Mr. Firestone: Yes?

Mr. Silverman: Along that same line, how would we handle the gentleman who appeared at the last meeting that wanted to talk about wetlands and floodplains, and there was nothing in any of the applications that dealt with that?

Mr. Firestone: Well actually Mary Ellen has handled that.

Mr. Silverman: Okay.

Mr. Firestone: She said the Chair may add public comment to the end of the agenda. So that we could either have a public comment period that always appears, or we could have it more ad-hoc.

Mr. Silverman: I've had very bad experiences with open public comment. An interest group comes in and they want to talk about the golf course, and it has nothing to do with the public meeting. Or the gentleman who wanted to come in and talk about floodplain maps. Wrong audience. Wrong venue.

Mr. Firestone: Well they only get three minutes so it's not . . .

Mr. Silverman: Okay.

Mr. Firestone: I don't know if it's going to be a major burden. And if we hold it to the very end of the meeting, that's also disincentive. At City Council they have it at the beginning which somewhat invites people to come and show up and say their piece.

Mr. Silverman: Because remember why we're here. We're here to hear the applicant's presentation. That's our lead. We're not here to hear about apartment rental studies or not enough parking or parking buildings.

Mr. Firestone: I think we're here to serve the public interest in their issues related to planning. And if someone has an issue and we're not all-knowing, they may spark something in our brains that says that is a good issue that we haven't all thought of, and it gives people an opportunity to express themselves. I don't think it's going to take up a lot of time. I hope it doesn't take up a lot of time.

Mr. Silverman: Let's leave it in there and see where it goes. As long as we have the 10:00 p.m. recess, I'm good with that.

Mr. McIntosh: Excuse me, speaking of the end of the meeting . . .

Mr. Firestone: Yes?

Mr. McIntosh: I strenuously object to 10:00 p.m. as the end of the meeting. I think we have plenty of time, if we manage our time properly, to do this in two hours, for reasons I stated some time ago, which the Commission agreed to.

Mr. Firestone: I agree. I think tonight we may go slightly over.

Mr. McIntosh: I'm not . . .

Mr. Firestone: I can recall one meeting where we went to 11:00 p.m. or a little thereafter . . .

Mr. Silverman: Yes.

Mr. Firestone: And so I think putting a limit like 10:00 p.m., maybe it's 9:30 p.m. . . .

Mr. McIntosh: How about a quarter after?

Mr. Firestone: But we can discuss what the limit should be. But I think having a limit is a good idea.

Mr. McIntosh: Yes, I do too. Nine would be my limit. But there is always reason . . . so if we knew coming to this meeting that there was going to be a proposal for redeveloping the golf course, and we knew that it's very likely, because of the agenda, that this meeting was going to go beyond 9:00 p.m., then do the right thing and say we're going to extend that timeframe for this occasion. I don't have any problem with that. But to allow a meeting to . . . and introducing extraneous comments at the end of the meeting is a recipe for disaster in respect to when the meeting would end. That doesn't mean that it happens now, because we don't get very many people to come to the meetings, so I don't necessarily think it's an issue in that regard. But it does open the door to it and, at any rate . . .

Mr. Firestone: Well it does say that the Chair can add public comment to the end of the agenda, so it doesn't have to go out as public comment. But if someone shows up like that gentleman last meeting, then we have an explicit authorization in our rules to say yes, we'd like to hear from you. Now if someone is going to put forward a major agenda or there are multiple people who want to be heard on the same thing, we may just say, you know, we'll take two comments tonight and then we're done.

Mr. Silverman: And, Frank, we always have the option of the Commissioners can overrule or support the Chair.

Mr. McIntosh: You're missing my point.

Mr. Silverman: No, I . . .

Mr. McIntosh: My point is that there's only so much time and there's only so much energy, I should say, that an individual has to apply to anything. And at the end of the day, when you start getting past 9:00 p.m. and it goes to 9:30 p.m., and then it goes to 10:00 p.m., and so on, you're just saying, when will this end. You're not giving very good purposeful listening to the people that are in front of you. I think it's a disservice to them, as it is a disservice to the Commissioners that sit here.

Mr. Silverman: And I understand your idea . . .

Mr. McIntosh: So, do whatever you want, right, in the end. I'm just one voice here but, in my experience, managing the time of the meeting is critical to the success of the meeting that night and as an ongoing basis. And, Jeremy, I think you've been doing a wonderful job with managing the meeting, so it's not a criticism. I'm just saying if we're putting rules together, then let's have a rule that makes sense for the Commission and for the public that are going to be here. And that's all I'm saying on the subject.

Mr. Silverman: And, Jeremy, I have one other comment.

Mr. Firestone: Yes.

Mr. Silverman: With respect to page 2 under the heading Planning Commission, paragraph 2, I'm very familiar with Robert's Rules of Order, all 600+ pages. I would rather not be tied to that single document. But if we want to carry on in the spirit of Robert's Rules, I have no problem with that.

Mr. Firestone: I think that's a good point. We don't want our work to be subsequently knocked because we didn't follow Robert's Rules.

Mr. Silverman: And, again, in this litigious society, I don't want somebody coming back saying Robert's Rules require you to do this and you didn't do it, and it poisons the whole thing. So, in the style of Robert's Rules, plus we're a 6, 7, 8 person group here, depending on who is in attendance, and Robert's Rules are designed for assemblies.

Mr. Firestone: My last comment goes to the suggestion that we may have the Pledge of Allegiance and a silent meditation. In my view, we've been fine operating without it. Ultimately, we're a voluntary administrative body with charges to apply both the City Code and rules, and so I don't doubt anyone's allegiance to the U.S. up here, or their patriotism, and I just don't see it as particularly germane. As well, the addition in the 50s of the phrase 'under God' which was meant juxtapose the U.S. against the Soviet Union . . .

Mr. Silverman: The Communists.

Mr. Firestone: Which is atheistic . . . we may have some of the members here who are atheists, agnostic, or they may be of faiths such as Buddhist, who have a different conception of faith than Judeo-Christian, so I appreciate that City Council has a tradition at the opening of its meetings, and so there are reasons to continue tradition, but I don't think that we necessarily need to start that tradition at these meetings. That's just my thoughts.

Mr. Silverman: Agreed.

Mr. Cronin: Of course it says may. It's not a requirement. So if it's not even in there, it may happen or it may not happen, depending upon how the Chair conducts the meeting.

Ms. McNatt: I don't believe there's any harm in keeping it. It's not required to happen. Do you have an issue with keeping it?

Mr. Hurd: Well . . .

Mr. McIntosh: I didn't hear the comment.

Ms. McNatt: It may, it states.

Mr. Firestone: I just don't think we should do it as a body, so my preference would be that we not include it rather than having it up to the desire of any individual Chair to decide whether to do it or not.

Mr. McIntosh: Well I think your point about we've gotten this far without it, not that I have not, nor have I ever been, or considered being, a Communist. I don't think we need that in here. I agree.

Mr. Cronin: I agree. With all the time I've been on the Commission, we've never opened a meeting that way and it's never been a negative aspect of our proceedings or the results of our efforts, I don't think.

Mr. McIntosh: If some national tragedy occurred and you wanted to start the meeting with some meditative thing or moment of silence for some great individual or whatever, I don't think that's a problem. But as a general rule, I'm not so sure I think it's necessary or productive.

Mr. Firestone: Any other comments? Yes.

Ms. McNatt: I just want to clarify a couple of things. Right now in our agendas it says New Business and Informational Items that we bring up. In the proposed Rules of Procedure, it says the Chair may add public comment. Is that saying the same thing? Or are we saying we can bring up new business as well as the public can bring up new business? Because of where it says public comment, I'm just trying to clarify or understand. Under Additional Items, #2, on the third page. I like the idea of the public having the opportunity to bring up a comment or a topic that they want to discuss or potentially . . . so I just wanted to clarify.

Mr. Firestone: Well we may want to, I think then, have a specific item, as well. Similar to what we've been doing on the agenda that the last item on the agenda will be New Business and Informational Items that the Commissioners, themselves, wish to bring forward.

Ms. McNatt: But then that means this document would provide in like this example, a #11 that says Public Comment?

Mr. Firestone: Or it could be 10 and this document would be 11. I don't quite know what . . .

Ms. McNatt: But it would be two. One for us, as well as the public.

Mr. Firestone: Yes, one would be for the public and one would be for us.

Ms. McNatt: Okay, well I don't see where this document says that specifically, correct?

Mr. Hurd: It doesn't. I think this document is still outlining . . .

Ms. McNatt: So it needs to be included, right?

Mr. Hurd: Well, yes, I think that was . . . are you done?

Ms. McNatt: No, just one more thing that I support the fact that we have the opportunity to either delay . . . I don't know if that's the right word . . . but to postpone an item on an agenda when either two of those options exists. Either there is so much information that was not provided or supplemented and/or the applicant didn't provide the information appropriately for the Commission to make a positive or negative vote. I like the option to have an opportunity to delay or suspend or postpone or next meeting, or something. I'm in favor of some language like that, if it can be done. I think that's it for now.

Mr. Hurd: I wasn't sure how you wanted to sort of run this section about the Rules of Procedure so I'm just going to kind of go through the document, I guess, with my notes. I'm going to second that the ability to continue the application would be lovely. I [inaudible] deliberation. I would almost want to have the option at the very beginning to just say, you know, we've been provided with a large packet of additional information and we don't feel we have enough time to review it, and at that point bump it rather than go through everything,

unless it saves time and then they come back and all they do is review the additional information.

The one thing I'm seeing, well two things, traditionally after the Planning Director has made their overview of the application, it's open to the Commissioners to question that report itself to elicit further information. And I see, at least in this outline, that's all been pushed down to Item 6. I guess that keeps things moving along a little bit but I just want to note that that's traditionally how we've been doing things, and to say I kind of like being able to question the report at the time the report is being given. I kind of like being able to question the applicant at the time the applicant is presenting, and I like being able to do sort of a wrap up at the end. I like the three just because it's while things are fresh for me.

I would concur with Bruce's recommendations that Items 3 and 4 get combined and we just state the Commission will receive public comment on the matter, and there's just for or against or whatever. But I do like the section about the public, I'll call it public comment instead of testimony, as a place where we can kind of define how that's structured. So we have three minutes. We can discuss where Commissioners can ask questions, whether it's at the end of the three minutes or whether it's during. I think at the end is better because if we're going to give them a time limit, we can't intrude in that time limit with our questions because otherwise you'd have to start and stop the clock. And I think Item 3 for that public testimony comment section is where you could say you're discouraging duplicate or non-germane testimony, is the place to sort of put that in there to say we only want comments that are germane to the matter.

Oh, one thing I wanted to add, on Item 4 under Public Testimony, you say state the name and address and I think through Council's comments, its name, address or district if all we're looking for for public comment.

I think something from Alan's statement, if they're appearing on behalf of the applicant, we would like to know what their professional role is. Are they the applicant, the engineer or such?

And then one thing that didn't get into this that I think comes under the deliberations section that I pulled out of the training materials that Max Walton had done for us was his opinion that all decisions on zoning changes, parking waivers, special use permits and site plan approvals, so basically everything other than straight development projects, we must include our reasons for voting for or against.

Mr. Sullivan: Yes.

Mr. Hurd: Because he says that's the information that gets reviewed if the decision is being judicially reviewed. They need to see our reasoning, as it were. You know we would say it complies with the Comprehensive Plan, it's not injurious to the people, and I'm for it. You know, it's that simple for special use permits. But I'd like to see that called out in the section either on deliberation or under Planning Commission so we're kind of clear. And I don't know if that means that we insert a separate line item in the process that goes, there's the motion, there's the call for deliberation and then there's the . . . I don't know if we vote and then we talk, or if we talk and then we vote. I don't know. I think Council seems to do this sometimes. I think I saw in the minutes from one thing that everybody kind of walked down the line and said this is why I'm voting for the special use permit. So I think we need to bring that in to stay in compliance.

I think this could benefit also from having, essentially, the agenda outline that you developed when you became Chair. You know, flesh it out a little more just to say there's Chair Comments, there's the items on the agenda, there's Public Comment and then there's the New Business, the Commissioners' things. And that could be an opportunity to say Public Comment and, in parentheses, five minute maximum or six minute maximum. So you're allowing two

people to comment. It's some way to not so much lock it down but provide a little structure instead of just saying there's public comment until we reach the end of the meeting.

Those were my comments. I would like to commend Mary Ellen for pulling these many documents together into this relatively small document.

Mr. Firestone: A couple of other things. I think it would be good if we had a statement that comments from the public are addressed to the Commission.

Mr. Silverman: Yes.

Mr. Firestone: We had a history of comments being directed to the applicant or to staff, and if we actually had a statement that their comment is to the Commission, then I think that would be useful.

My last issue is that every meeting I get this thing Planning Commission Meeting, Please Sign Below if You Would like to Speak, and it's not used very much, and I'm not quite sure of its purpose because there's no requirement that anyone sign up on it either.

Mr. Silverman: There have been a number of people who have been very vocal about I signed before them, how come you let them speak first. There's an interest group that will play that particular card. And the way that document got generated was those people who signed up get to speak in the order in which they signed up. So no favoritism, no one group over the other, and then those who wanted to speak spontaneously based on reaction, who weren't signed up, then were selected through the Chair process.

Mr. Firestone: Any other comments from any Commissioners?

Mr. Silverman: Yes, two comments. I will support . . . now that Mary Ellen brought to my attention the 40-day delay time limit, that takes away any questions. So the longest a decision could be delayed by anyone would be 40 days. And does that . . . and the question I would have back to the lawyer is that one time? And then it must be voted up or down? It can't be delayed for one meeting and then another meeting and another meeting, and that 40-day clock keeps moving forward in time. There's a one time delay.

Mr. Hurd: Can I add to that the question of when does that clock start? Does it start when it gets into your office or does it start when it first comes before us?

Mr. Silverman: And then I support Will's thoughts and at the last meeting I explained my position about why I voted for a particular thing by doing the tick-off on it. It conforms to the Comprehensive Plan, there's no zoning issue, yada, yada, yada. And, as was pointed out in our training, that's very important for the record. It not only allows the court to see the thinking, but allows Council to see what's behind it, rather than just a yes or a no.

Mr. Firestone: Would anyone in the audience like to be heard?

Ms. Jean White: Jean White, District 1. Some of the points I was going to make have been touched upon. Just to start with a couple of quick things. Let me see, under Planning Commission on #3, which talks about any Commissioner who may have a conflict of interest shall disclose it. I think it should add and recuse themselves, if warranted. Now both Commissioner Silverman and Commissioner Firestone for two separate things recused themselves and did it on their own but it could be . . . the point it is you're recusing because it's warranted, not just to say I have a conflict of interest but there might be an opinion from the City Solicitor, for example, that that would be important to do. So they don't just sit there and have disclosed it but still vote. So I'd like it to say recuse themselves, if warranted, if anybody understands what I'm trying to say.

Mr. Firestone: Yes, thank you.

Ms. White: Okay, and let me just see here. Okay the biggest thing that concerns me is that the . . . well I was going to say about address should be address or district, but that was already covered by, I think, Mr. Hurd . . . is the three minute limit. And as I said back, I think, in February, I have come to City Council meetings and Planning Commission meetings for many, many, many years and then, more recently, about six years ago, I had to be away for four years because of difficulty with a family member. And when I came back, up to that time at Council one had five minutes to speak. I came back, many different changes had happened and now it was three minutes. And I, personally, find it very hard to make one's point in three minutes and develop it. Okay, but Council is different. I understand, for example, I think it was the power plant issue and the huge numbers of people here, but I seem to have heard that that was getting a lot of people coming and meetings were running late and so forth. Okay, so it's three minutes for City Council. I actually remember very few times, it was many, many years, that there was ever a problem, there was not even a five minute limit, there was no limit, and people just said what they needed to say, and they said it and it was fine. And as you can see, even tonight with this on the agenda, there's nobody here to speak to it at all other than the Verizon issue and the hotel issue again. And so I feel if you have to put a limit, I think it should be five minutes. And I think you are going to find that is not going to be a problem. As I say, I think it's hard if you're going to develop your point, and oftentimes there are many different points on a big development project. There might be many different issues that one wants to talk about for those who study it, and in the past I've had more time to study things that I do now. But that's why I'm asking you to consider it. Now I noticed originally when Commissioner Firestone and Commissioner Silverman gave their responses to what should be the situation for A, Chairman Firestone actually had maybe two minutes or one minute or something, but his procedure for B . . . I have it down here someplace . . . had it more open. And then Commissioner Silverman said 3-5 minutes, so you may have backtracked to three, I don't know. But it seemed to me that you were open to something between three and five minutes. So I think you should have five minutes and see how it works out. You know, you can change things. People are always changing things, as Council has changed things. So this is my major point as somebody who does speak and does study things, and there's really no problem here. I think that it's unfair, if you're going to set something, make it five minutes. I'd like you to consider it seriously.

Also, about first there is supporter and then those who are in opposition, oftentimes one has a comment or sometimes has a comment where it isn't strictly for something or against something, but one wants to comment on something that might improve a project or a different way of looking at it or even if you have some questions for a project or you want to clarify something. So I'm concerned about the supporters and opponents, separating it out that way. It may be important when you have a very publicized project that has many people coming to talk about it. In that case it may be important to do that, still allowing somebody can make comments that don't fit into either of those categories. I think normally it may not be necessary. Let me just see here. As I say, sometimes for clarification there is a question.

Also, I want to say that the people that come from the public, most of us, are not lawyers who have everything boiled down to a very succinct kind of thing. It is true people can write out their comments ahead of time and read them, but that is actually not very effective either oftentimes. And so all sorts of people are coming in with emotions, with reasons to want to speak and they should not have to have the timer, you know, 60 more seconds, kind of thing. It might be when you get to five minutes, but not to three.

Now let me just see here. Wait a second. I was jotting things down as you were saying so many things here. Okay, the developer gets to speak for 15 minutes, and I think that's appropriate, especially for a big project that they speak that way. And the public is not supposed to address the developer but may have questions that are directed to the Commission but they'd like the developer to answer the question. And so those questions are collected by either the Chair or somebody here and then at the end of everybody speaking about something from the public,

now the questions have been collated and are asked of the developer. What has bothered me sometimes is that the developer doesn't sometimes answer the question. And they skirt around the question and they can't be, as a lawyer would do, come back and say you didn't answer the question. In other words, there shouldn't be some effort, if it's a well-worded question, but maybe it isn't always a well-worded question, maybe even not by me, to at least get them to answer the question to the extent that they can do it honestly.

Let me just see here. It seems to me that there should be rules for the applicant, which I think has been touched, that materials have to be in, I don't know if its two weeks ahead of time or one week ahead of time, so we don't get these situations like I think it was the AT&T coming with something that you eventually didn't look at. But this is unfair to you as a Commissioner.

And let me just see here. I keep saying the same thing. The Pledge of Allegiance has already been dealt with. As somebody here who when I was going to school, in elementary school, under God had not yet been added to the Pledge of Allegiance and, in fact, we had to say, this was a public school, the Lord's Prayer as well. It was said, nobody . . . it was a case that there wasn't respect for that so much as rambled on and everything like that. I think its fine at a City Council meeting for the Pledge of Allegiance and the moment of silence. I think for all the other entities, including the Commission, this is not necessary. The City Council meeting is where everybody comes together from all the different boards and everything else, or potentially, and so that's the place to keep it.

And as far as a public recognition at the end of your meetings, well you've only ever had one person in all the times that I've come, and that was Mr. Dennis who came last time. And he didn't actually . . . though he's a very fine person, he didn't really know how you operated and then learned he could go to City Council to say this, as well. And so the reason you don't get people like him or others coming to you is it's never been part of your meeting. And if this becomes a regular part of the meeting and it becomes publicized, you will have many people coming for things that don't have to do with what you do as a Planning Commission. So you can handle it as you will, but I certainly don't think you want a public recognition at the end of the meeting, whereas City Council has the public recognition at the beginning of the meeting and people don't have to wait too long and then they can leave. And they can talk about anything. It doesn't have to be something on the agenda.

Well I guess anything else I have to say can be left unsaid, except that I think meetings should be allowed to go until 10. I don't think there's a problem. Even like those of us who have sat at meetings until midnight. And thank you for letting me speak, as the only person here to speak. Thank you.

Mr. Silverman: Thank you.

Mr. Firestone: You're welcome.

Mr. Hurd: He gets three minutes.

Mr. Mark Morehead: Mark Morehead, District 1, I'll be really quick.

Mr. Silverman: Three minutes.

Mr. Morehead: I want to thank you all for the work you do. I've been struck tonight by how carefully you have prepared and I commend you that you're doing a better job than some folks on Council in your preparation and that's obvious. So thank you very much.

I would ask you one question in all of this. Do you think it would be useful to you to have a comment about whether audience members or public, or whatever you want to say, can ask questions. Kind of like Jean pointed out, Council has a statement about the fact that the public

can ask, the staff can ask, and Council can ask the developer, so would you like to include something like that here?

A couple of other real quick comments. I think the sign-up sheet, if it has an area for you to print your name, I think that's so that it can get in the public record in the minutes with the correct spelling of the person's name.

Mr. Silverman: Yes.

Mr. Morehead: That's just a guess I have. The reasons for voting the way you do is, as I understand it, a legal requirement. So I think that's well said, when it was said. And the public comment period, there may be things going on that you may be unaware of that truly are within your realm and I will say the County's handling of the new flood zone maps would be an example of that. Where we dropped the ball, quite simply, and it wasn't done, and we're kind of scurrying around to pick it up now. But that is something that you should be aware that is happening and I think it's very much in the Planning Commission's realm to be aware of that, because this affects people's home values and so forth. I just ask you to keep that in mind. Thank you.

Mr. Firestone: Okay, and thank you for coming and spending the evening with us.

Mr. Morehead: My pleasure.

Mr. Firestone: I don't think we necessarily need a formal motion . . .

Mr. Hurd: I was going to ask, is all of this to generate notes that are going into the document to be revised and brought back to us?

Mr. Firestone: That's what I was going to suggest. That we don't necessarily need a formal motion. That we would just ask Mary Ellen to . . . I know you've been taking notes, to review the transcript and consult with Bruce and come back to us.

Mr. Silverman: Particularly on the issue of voting yes or no, and clarification on the 40-day limit. How is that implemented?

Mr. Firestone: Okay. Well it's 9:20 p.m. We can either entertain a motion to adjourn or we could try and quickly get through the last couple of items. I would suggest that, Mary Ellen, if you could just briefly summarize in a minute or two where we are on the Work Plan and then if there's any questions from Commissioners.

8. QUARTERLY REPORT ON PLANNING COMMISSION 2017 WORK PLAN.

Ms. Gray: Sure, Mr. Chair. I'll just review the items that were progressed upon. Item #2, to work on review of parking capacity and demand, at the May meeting you all recommended establishment of a parking requirements subcommittee, and I believe Planning Commissioner McIntosh has some items to share on that.

The only other item is Item #4, regarding the Transportation Improvement Districts. Staff is meeting with DelDOT staff tomorrow to discuss the TID process, Mr. Chair.

Mr. Firestone: Okay, Mr. McIntosh, do you want to briefly update us?

Mr. McIntosh: Yes. We're making progress.

Mr. Firestone: Okay.

Mr. McIntosh: Alright, that was unfair. We have four of the five slots for the subcommittee filled and tomorrow I am meeting with a representative from the University of Delaware. And if that meeting goes as I hope it will, we will have a full slate of members for this subcommittee. And then given that, we'll probably start in August with meetings. Mary Ellen gave me six months, or maybe that was you giving Mary Ellen . . . I don't know how that happens, but I may be optimistic here, but I'm hoping we can do it in less time than that. At any rate . . .

Mr. Firestone: If anyone can get it done quickly, it would be you, Frank.

Mr. McIntosh: Well we have some good people that are excited about it, and that is very good. We only need the one more and we hope we'll have that person tomorrow. And thanks to Bob. He was able to get some help to me on that, as well. It worked out, so thank you, Bob, for paying attention to what you said you would do, and you did it. It's a wonderful thing. It doesn't happen all that often. I appreciate it.

Mr. Firestone: Any comments or questions regarding the Work Plan report? Okay, is there anyone from the public who would like to comment on it? Okay.

9. COMMISSION DISCUSSION REGARDING 2018 WORK PLAN.

Mr. Firestone: In that regard then, we can move to Item 9, which is the 2018 Work Plan, and I know we've had some beginnings of discussions on other items, and I'll open it to the Commissioners regarding our work in 2018. Mr. Silverman?

Mr. Silverman: I'll start this and I'll hope I've boiled it down. I'd like to see a work item where we review the antenna ordinance et al, with respect to working in what was described technically here tonight as the DAS node communications systems, which are now coming into play. Apparently a much more modern, much more compact system.

And with respect to the housing survey, and we had some of this in a proposal so I'm going to re-emphasize the reviewing of the 3C area, the Center Street area and Cleveland Avenue back toward White Clay Creek toward the north area, with respect to the existing use pattern and revising it to be more accommodating to higher density multi-family use for potential omnibus rezoning.

Mr. Stozek: Can I just add to that? I agree with that and I don't want to bite off more than we can chew, but perhaps we should be looking at other areas of the City that should be similarly studied for future planning purposes. But these two would be the starting point.

Mr. Hurd: I would probably say to add onto that, it's something that could be put into our annual review of the Comp Plan in terms of looking at various areas and their zoning designations and their density designations. Whether we want to look at it through the Comp Plan mechanism or whether it's through Rental Housing recommendations or something . . .

Mr. Silverman: The Comp Plan seems most logical.

Mr. Hurd: Just because we already have a bucket for that. The one thing I'm going to add because it got sort of put off but it's sort of in my bucket, after the Rules of Procedure, I had taken on, initially at least, the preparation of submission requirements, and I'd like to try to get that into 2018. I think it's been sitting for too long.

Mr. Silverman: You mean creating a template for drawings, report contents . . .

Mr. Hurd: Yes. I think that right now it's a little, I think it's undefined so we get a variety of different types of drawings and different [inaudible] of information. Essentially we'd go back and look at previous applications and pull out of them the ones that really expressed what was going on in the development or in the project well, and say okay we want to see this kind of

plan, this kind of plan, this kind of plan, and you know, these elevations. I think we get too many engineering plans with too much information about utilities and not enough information about traffic flow and drainage and trees and stuff. So I'd like to propose that, basically, as a way of sort of saying here's a template with visual examples that you can give to a developer when they want to prepare to say this is what we're looking for.

Mr. Silverman: And I recall included in that list was an issue you brought up with respect to Board of Adjustment setback variances that were granted to show where Code setback was and the impact of where the buildings were placed based on the variances.

Mr. Hurd: Yes. And I think that will also start to prepare us with a template for what is a complete application and what's not. That's a starting point for that.

Mr. Stozek: I have one. I guess maybe we ought to have a discussion. What I'm referring to is the Capital Plan, in that the City puts together a five year plan, which I think everybody realizes is really a one year plan. And there's all kinds of reasons of why that is. And I guess I would like to hear some issues of why we have a problem of getting a more realistic five year plan. I know five years is something that comes from the State. I'm not sure where the five years . . . maybe it ought to be three years as something that can be more reasonably done. I'm just concerned about beyond one year, there's really not a lot of things that makes sense in the longer term issues. And every year we're asked to approve this thing.

Mr. Silverman: The five year may be a Gatsby standard. The government accounting standard that's just used that can be placed into bond issuing documents and that kind of thing.

Mr. Stozek: Yes.

Mr. Morehead: It's State Code.

Mr. Stozek: I mean a perfect example is last year's, I think the Capital Plan basically said we're going to spend \$12 million this year and next year we're going to spend \$35 million. Well there's no way in hell the City is going to come up with \$35 million. By moving things out and looking at more realistic timing of projects, I think we could have a better idea of what's reasonable. I think we just ought to discuss . . . and I'm sure there are issues with the City and why they can't do that. Bonds are one of them, for sure. I think we need to understand that a little bit better.

Mr. Firestone: I think one of my frustrations since I started serving on the Commission is really with the City's LEED standards, which I don't think are really leadership. And if we're to put the City on a path that's more sustainable, we're going to need to revise those. I mean I haven't seen a single developer on a single unit or an apartment building put up a solar panel. Not even on a single unit. I'm not talking about on all the buildings. Not even on a single unit on one part of a building. They just don't have any interest or motivation. Even when they need special use permits, that still is never forthcoming. Instead what we get are trees and shrubberies and things like that, which are nice and they're aesthetically pleasing, but you can basically get the LEED standard by doing a nice landscaping job. And if that's all we're going to require, let's not call it LEED.

Mr. Stozek: Yes, I think so many times we've heard from developers, well we can take a look at that, and then nothing ever gets done.

Mr. Hurd: I would concur that the City standards could be almost completely met by off-the-shelf items and almost standard technology at this point. So we've really got to step forward and think to push that a little more.

Mr. McIntosh: Well clearly we're going to have parking on the list because I don't think I can get it done by then.

Mr. Firestone: Well we're expecting you [inaudible].

Mr. McIntosh: So. Anyway, that's it. Parking. I love parking. I used to go parking.

Mr. Silverman: You're telling me more than I want to know.

Ms. McNatt: I have a question. Are subdivision agreements, as the hotel lawyer . . . are those agreements in the City recorded? Or are they just documents that are housed inside the City?

Ms. Gray: Are you talking about the Ogletown project as an example?

Ms. McNatt: I guess any project. Don't all projects, once recorded, go into a subdivision agreement with the City that is created? I don't know whether it gets recorded. I guess that's my first question. Is it a recorded document?

Mr. Silverman: When you say recorded, do you mean Recorder of Deeds?

Ms. McNatt: Correct.

Mr. Hurd: Well certainly in the County it is because I've looked up subdivision drawings through the Recorder of Deeds.

Mr. Firestone: Subdivision drawings would get recorded.

Ms. McNatt: Subdivision drawings are recorded, but is the subdivision agreement that's created between a developer and the City, or the owner and the City, are they recorded? And then I guess my next further question is I'm not sure how, just from my knowledge . . . I'm not a lawyer, I'm an engineer . . . but I'm not sure how two parties can go into an agreement, if it's not recorded, if that title search is ever done, that's not going to show up in a title search for that property. It's only going to be, my understanding, it would only be from that owner saying by the way, don't forget I have this.

Mr. Firestone: It's only if we and, ultimately City Council, put a requirement that they put something on the deed that it's going to be recorded. But other than that . . .

Ms. McNatt: It could be just a recorded document against the parcel.

Mr. Firestone: Right, but I'm saying unless there's a requirement that it be recorded, then in most cases it probably wouldn't be recorded.

Mr. Silverman: I've asked that a note be placed on the record plan which is recorded referring to a document between A and B on file with the City of Newark . . .

Ms. McNatt: Because that document is recorded.

Mr. Silverman: Because that document is recorded.

Ms. McNatt: And then you can find it.

Mr. Silverman: There was a reluctance to do that, to even put a reference in the data column to this side letter agreement.

Ms. McNatt: I just have been in situations personally in the City where those agreements and those documents are very unmanaged maybe, or maybe not enforced . . .

Mr. Silverman: You're being polite.

Ms. McNatt: Or maybe not followed. And it's very frustrating. And I don't know if I'm the only one. And I don't know if that's a topic for a work plan, but I think it's something that maybe could be discussed.

Mr. Silverman: You aren't the only one.

Ms. McNatt: Okay, because it's just something I noticed, just from tonight. Just from the short time that I've been on this Commission.

Mr. Silverman: Because I asked the question last meeting how were the inspection licensing and all the documents that were referenced in the Code memorialized. Oh it's in the City's subdivision agreement. Well how does a building inspector know about that? How does somebody who is going to buy the property, doing a deed search or title search, know that?

Mr. Firestone: Would anyone from the public like to be heard on next year's work plan? Again, I was quite generous with the time on the last one . . .

Ms. White: You were. I do appreciate that.

Mr. Firestone: I'm going to hold you to the fire on this one.

Ms. White: Okay. Jean White, District 1. I was interested in Commissioner McNatt's question and I thought . . . I thought you were initially asking if it's recorded in the County deeds.

Ms. McNatt: That's the only place it gets recorded that I'm aware of.

Ms. White: Okay because I often, when a development comes ago and I'm really interested in it, when the developer signs it with the City, I get copies that there's a resolution and agreement. I'm sure, that our City Councilman can talk about this. So I get a copy of it and it lists all the different things that the developer has to do or that the City has to do. And I have copies of that. Now that will be kept in the City, but it's very exacting, and oftentimes as a person who is interested in things, you pick up things that they're supposed to do that they don't do, such as how many students can live in a particular thing, or that kind of thing. But you're not talking about that. That would still be in the City's records but it wouldn't be something that you could find 20 years later. Well maybe you could find it if they came and got a copy of the resolution and agreement.

Ms. McNatt: I mean typically most official documents that are enforceable do get recorded.

Ms. White: Okay.

Ms. McNatt: And I just am aware that, for example, the subdivision agreement that I had in my community is definitely not being enforced and there's lot of issues associated with that.

Ms. White: Okay but you can come to the City . . . I mean that document is signed by the City Manager and then somebody for the developer. There's two people who sign it. And if you're interested in your development you could come because at least it should be here, if not in the Recorder of Deeds office.

Ms. McNatt: And then there's other agreements that could be spun off of that situation like, for example, the 400 Ogletown Road that's not a recorded agreement. It's just an agreement between two parties that may not be found if it's not an official recorded document.

Mr. Silverman: It's called a side letter.

Ms. White: Okay, you two know what you're talking about obviously.

Ms. McNatt: I think it's beneficial for the public, as well as anyone, if those documents that are agreements based upon development activity that's going on, should be made official recorded documents.

Mr. Silverman: Recorded with the Recorder of Deeds?

Ms. McNatt: With the Recorder of Deeds, yes. Yes, recorded with the Recorder of Deeds that has a microfilm number that somebody can go search when the parcel is being sold or . . .

Mr. Hurd: Tied to the parcel.

Mr. Silverman: So there's a complete paper trail.

Ms. McNatt: Correct. Sorry.

Mr. Morehead: Mark Morehead, District 1. Regarding the five year Capital Plan, that is a requirement in our Charter, so it comes to us as State law that the administration will do that. And you all talked about the near years versus the out years are in much more detail.

Regarding subdivision agreements, Council votes on them separately and my understanding is they're recorded. I realize I don't know that for sure, so thank you for asking the question.

Mr. Firestone: Any other thoughts from any Commissioner? This was just a discussion tonight. We're not making specific decisions on this, or are we? It's listed as a discussion. I wasn't sure whether you were . . .

Mr. Silverman: We're tossing items into the basket. We're not prioritizing. We're not looking at the impact that it has on workload and that kind of thing.

Mr. Hurd: Yes, I'm expecting that in the next quarter or something we're going to see a draft 2018 Work Plan, as we did last year that we'll beat up.

Mr. Firestone: That was my understanding. I wanted to make sure we were all on the same page.

Mr. Silverman: Yes.

10. NEW BUSINESS AND INFORMATIONAL ITEMS.

Mr. Firestone: Okay. That gets us then to the last item on the agenda, New Business and Informational Items, and I guess we had one informational item. This is not for discussion but since it was being disseminated to the members of the Commission, we wanted the public to know as well. Does any Commissioner have any thoughts on ideas that they might want to have come up on a future agenda? Hearing none, the Chair will entertain a motion to adjourn.

Mr. Hurd: I so move.

Ms. McNatt: Second.

Mr. Firestone: All in favor, signify by saying Aye. All opposed, say Nay. We are adjourned.

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

VOTE: 7-0

AYE: CRONIN, FIRESTONE, HURD, MCINTOSH, MCNATT, SILVERMAN, STOZEK
NAY: NONE

ABSENT: NONE
ABSTAIN: NONE

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 9:45 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alan Silverman". The signature is written in black ink on a white background.

Alan Silverman
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary