

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

August 1, 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
Alan Silverman
Bob Stozek

Commissioners Absent: Stacy McNatt

Staff Present: Mary Ellen Gray, Planning and Development Director
Mike Fortner, Planner
Bruce Herron, City Solicitor

Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:08 p.m.

Mr. Firestone: Good evening. The Planning Commission meeting for July, excuse me, August 1, 2017 is called to order.

1. CHAIR'S REMARKS.

Mr. Firestone: I have no remarks this evening so we'll move right on to the minutes of the last meeting, July 5, 2017. Commissioner Silverman?

2. THE MINUTES OF THE JULY 5, 2017 PLANNING COMMISSION MEETING.

Mr. Alan Silverman: The minutes of the July 5, 2017 meeting have been posted on the internet and paper copies have been sent to the Commissioners. Madam Secretary, do we have any additions or corrections that have been received by your office?

Ms. Michelle Vispi: None.

Mr. Silverman: None. Commissioners, I move that we accept the July 5, 2017 minutes as written.

Mr. Firestone: Is there a second?

Mr. Bob Cronin: Second.

Mr. Firestone: All in favor, signify by saying Aye. Opposed, say Nay. The motion carries.

MOTION BY SILVERMAN, SECONDED BY CRONIN, THAT THE MINUTES OF THE JULY 5, 2017 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 6-0

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

MOTION PASSED

3. WILMAPCO INFORMATIONAL SESSION.

Mr. Firestone: Item 3, the WILMAPCO informational session.

Ms. Heather Dunigan: Thank you. Thank you for having me. I'm going to pass down the presentation in case anybody has trouble reading anything.

Mr. Firestone: Excuse me, you're going to have to talk into the microphone. Thank you.

Ms. Dunigan: Good evening, and thank you for having me. I'm Heather Dunigan with WILMAPCO and I'm also a Newark resident for the past 25 years. So it's nice to have a meeting close to home.

Ms. Vispi: You might have to pull that microphone a little bit closer to you.

Mr. Will Hurd: I'm not getting anything.

Ms. Dunigan: Can you hear me now?

Mr. Hurd: A little better.

Ms. Dunigan: Can you hear me now? Great.

Mr. Frank McIntosh: Sounds like a commercial.

Ms. Dunigan: So many of you are probably familiar with WILMAPCO but you're not quite sure what we are. WILMAPCO is the Wilmington Area Planning Council, and we are the federally designated Metropolitan Planning Organization for New Castle County and Cecil County, Maryland. MPOs are really set up to make sure that the public has a role and a voice in the decision-making process about how federal transportation funds and decisions are made, and also to ensure that the local land use agencies are talking and coordinating with the state departments of transportation. So we're really that regional coordinating body that brings the public and towns like Newark into the transportation process.

So I actually work for a council of nine. I have nine bosses plus our executive director, so that includes both Delaware and Maryland Departments of Transportation, New Castle and Cecil Counties, the City of Wilmington, Delaware Transit Corporation, and a representative from the Delaware Governor, which is currently the Director of the Office of State Planning. And then the City of Newark is represented currently by the Mayor of Newport. So the towns within New Castle County elect one town to represent themselves each year at WILMAPCO.

We're advised by a public advisory committee which makes sure that we're doing a good job, effectively reaching out to the community. We're also advised by a technical advisory committee. Mike Fortner is part of that and it's really all the agency staff that are directly involved with planning and transportation work within the region.

And then that technical advisory committee is advised by several working groups and subcommittees, and they work on a range of different issues from air quality to freight to non-motorized transportation. So we're involved with a variety of things.

As an MPO, there's a few things that we have to do. One is our Community Outreach, as I mentioned, and that's something that we work into everything that we do at WILMAPCO. Another thing is our Regional Transportation Plan, and this is a 20+ year plan that we update every four years. We'll be starting our next update next year, and that will bring us out to 2050. So we actually go beyond that 20 year timeframe, and we're looking really far ahead with our decisions. Our Transportation Improvement Program is where projects are funded. This is a document we update annually based on the available funds and changing project needs. Our Unified Planning Work Program, or UPWP, is where we do planning assistance to communities. A letter goes out to Newark each year soliciting projects from the town, and so we're available to help Newark on any projects when they come up. And then our Congestion Management Process is also updated every year and this is where we collect data on the traffic conditions and use that to identify where the hot spots are and come up with strategies to address those.

So that Regional Transportation Plan that I mentioned, there are a few things it has to be. It has to work to improve our region's air quality and it has to be specific projects, and we have to identify the funding for those projects. So it can't just be a wish list. It has to actually be tied with the fiscal reality. And when we do those updates, we've got to make sure that we're keeping current with trends and demographics, how people are changing, their needs, and what people want to see happen. So we've got a few major trends that we're dealing with now. You can see that vehicle miles traveled and the freight tons are far outpacing the growth in population and employment. You know we all like our Amazon delivered next day and we're continuing to live farther out and in smaller households, and that means more driving. And you can see population has a slow growth in the future compared with what we've seen over the past twenty years. And employment has a very slow growth at 4% over the next 20 years. However, households are outpacing the growth in population. People are living in smaller households or getting married later. They are having fewer children. And so the household sizes are smaller than what they've been in the past. And the population aged 65 and over is really the huge thing that I think is affecting our planning in the future. That's showing 75% projected growth and so we really have to plan those communities and as a region how to address this aging population.

So other things that we need to figure out as we go forward are things like Uber, how that affects our transportation decisions, and changes in fuel. You know gas prices are low now but we can't necessarily assume they'll stay low in the future. Energy, the way we fuel our vehicles is changing, so we need to plan for electric vehicle plug-ins and other new technologies. As we grow, we need to make sure that we're setting aside our valuable open space and different places where people can recreate and have environmental space as well as farmland.

So I mentioned the Unified Planning Work Program and we've done a number of projects with Newark as part of this. One of the ones I worked on many years ago now is the Old Newark Traffic Calming Plan, which identified a range of tools to help make neighborhood streets friendlier for people who live there and address traffic and safety concerns. In 2011, we did a new Newark Transportation Plan, which is a comprehensive plan looking at travel by cars, by transit, by walking and biking, so it looks at all types of transportation. And as a follow-up to that we did a 2014 Newark Bicycle Plan. And I believe all of these can be found on the WILMAPCO and the City's websites.

And then also as part of our work, there are a number of things that aren't necessarily in that UPWP that we partner with the community on. For instance we have been working with Downes Elementary School to look at safer ways to get kids to school by walking and biking. We're available for communities to do walkable community workshops, where we give the community the tools to make your community more pedestrian friendly. We partner with BikeNewark on a number of activities. And we're currently working with the City to look at ways to coordinate transit services between DART and the City transit, the University and Cecil Transit.

So the Transportation Improvement Program is where projects get funded, as I mentioned. This is \$2.4 billion across the region for all types of transportation projects. We do have a public meeting coming up on this on September 11. It will be at the Newark Free Library and will be an open house style from 4:00 to 7:00 p.m.

And I'll go over quickly a couple of projects coming up in Newark. First I'll talk about how projects become part of that. The City of Newark actually can submit projects to us. So we get our projects from those area plans, like the Newark Transportation Plan would be one source of projects. Our communities and towns can submit projects, as well as DelDOT. Then we select our projects by doing a technical score for the projects so we're not selecting our projects, or shouldn't be selecting our projects just based on what people want. We should have a quantitative rational basis for making those decisions. So we look at projects based on the number of crashes and how that will impact safety and congestion, whether there's a demographic that would be benefit or be harmed by a project such as environmental justice areas. We look at economic development areas like Newark, where we want to see economic development focused and that would get higher scores. So, again, different categories and federal funding require matches but this is a process that the City can submit projects to, either through the general TIP if it's a larger project, or for our transportation alternatives program for things that would support biking and walking.

Now moving on to some of the projects that you can look forward to soon. The Elkton Road project. There was a public workshop on this about six months ago. DelDOT has taken that feedback and adjusted the project a little. It had a fairly large section where it was going to be widened to three lanes and they've actually decreased the amount of widening they'll be doing as part of that proposal. It's going to have an off-road bicycle and pedestrian path all the way out into Maryland, so it will connect central Newark to where the Charter School is, to give people a way to walk and bike to school. And all the intersections along the corridor will be made more pedestrian friendly. Construction should be between fiscal year 2019 and 2021, so coming up soon.

Another big project is the Newark Train Station, or Newark Regional Transportation Center. This has been a great partnership between the University of Delaware, DelDOT and DART. We hope to eventually accommodate MARC service, so the station is being designed so it will allow both southbound and northbound trains, as well as two trains sitting there at the same time. Construction of that just started, so it should be completed hopefully by 2020.

And then a couple of longer-term projects are the Christina Parkway between Elkton Road and 896, and it should start construction in fiscal year 2023. This is going to eliminate a little bit of a bottleneck on that road where a lane drops and we go from two lanes to one lane. It will get rid of that bottleneck. It's going to improve the pedestrian/bicycle pathway along the side of the road, and it's going to improve the entrance to STAR campus.

And then even longer out, planning is starting for the I-95/896 interchange. That's kind of an area where we have a safety concern because of the weird weave, and so DelDOT started looking at options to improve that area.

And then a couple of things that you actually won't see listed in the Transportation Improvement Program and that's because we're doing a better job of tying projects together with repaving projects. So one is Main Street will be paved next summer. It actually got delayed a year, so if you were expecting it to be this summer, it's going to be next year. And as part of that, it's going to be a whole range of accessibility improvements for pedestrians, extensions of the curb or those little parking stripes. So anywhere you see a yellow curb, the curb will be extended out to allow for trash cans or benches or bike racks or other amenities.

Cleveland Avenue and Delaware Avenue are the other two and I'm not quite sure what the order will be, but these will happen after Main Street is done. Cleveland Avenue will be implementing the recommendations from Newark's Cleveland Avenue Task Force, so a variety

of pedestrian and bicycle improvements as well as safety improvements for drivers. And then Delaware Avenue will be a two-way protected bike lane with ADA improvements for the sidewalks.

And with that, I'll take any questions.

Mr. Firestone: Thank you very much for coming here this evening. It's been very helpful. I'll now open it up for Commissioners' questions. We'll start down at the end.

Mr. Bob Stozek: I just had one. You mentioned that most of these projects you have public meetings. How are those meetings advertised?

Ms. Dunigan: A lot of them get advertised by DelDOT. So the DelDOT projects, they handle the advertising and so they send out press releases and those get picked up by local media. That said, it's a hit or miss sort of thing. WILMAPCO's meetings we advertise in a newsletter that comes out, a paper copy that gets mailed out quarterly. We also have a monthly email newsletter. And then we've got social media that we get the word out on. You can sign up for any of those contact lists by just contacting my office.

Mr. Stozek: That sounds like you have to be on your email list.

Ms. Dunigan: You do. When we do plans like the Regional Transportation Plan or the Community Plan, we find a better way to get the word out is not to have a meeting and expect people to come to us. This meeting coming up September 11, we're having it at the Newark Library because we know some people will come directly to the meeting but some people will just happen to be at the library and see something that's going on and stop in. So we try to get out to where people are. You know, we're always at Newark Community Day trying to get information from people and educate people.

Mr. Stozek: I guess my concern is that I can't remember if I've heard of any of these meetings. And I'd suggest that maybe you contact the City and the City could put these meetings in their newsletter or their website, something like that.

Ms. Dunigan: I know there is a meeting coming up in two weeks on the Main Street project and that has been publicized very well by the City.

Mr. Firestone: I would suggest that most people have never heard of WILMAPCO.

Ms. Dunigan: I think that probably is the case. Or they don't know what they are, if they have.

Mr. Silverman: One of the reasons we're introducing them here tonight.

Mr. Firestone: Mr. Hurd?

Mr. Hurd: Nothing for me.

Mr. McIntosh: I have a simple question. When did you put South Chapel and Capitol Trail on a diet? It says a road diet between South Chapel and Capitol Trail. What does that mean?

Ms. Dunigan: So a road diet, if you're familiar with what they did right out here on Elkton Road, they reduced a lane and then they have a two-way center turn lane. So in a road diet you're taking excess capacity in the road and, in the case of Cleveland Avenue, you'll have one lane in each direction and then the center turn lane for left turns. Because we have a problem on that road with people turning left and getting rear-ended. And by doing that we're opening up space to have bike lanes along the corridor.

Mr. McIntosh: That's good.

Mr. Firestone: Have you considered the problem that we have with Main Street where we have a lot of people who pass through and go to Cecil County, either on Elkton Road or continuing on Main Street? For example, having Cleveland Avenue be one-way and Main Street two-ways with a lot of traffic calming so there is a huge disincentive for people who are merely just passing through to come onto Main Street. Are you looking at things like that? Particularly when you show us this figure that we should expect a 32% increase in vehicle traffic.

Ms. Dunigan: I don't think we've looked at that scenario. I know that DelDOT's modeling folks have looked at scenarios where Main Street was made two-way because obviously there's a convenience factor, but when you made it two-way it couldn't handle all the traffic that it was getting. So the one-way pair of Main Street and Delaware does a good job moving a lot of traffic for the size of the road. But we're able to work with DelDOT to test different scenarios, so if that's something the City was interested in exploring, we could work with you on that.

Mr. Firestone: It just seems, particularly now with the banning of parking on Cleveland, there's a real opportunity to think about that as sort of the adjunct or the yin to yang of Delaware Avenue. Delaware Avenue goes one-way and Cleveland goes one-way the other way, and we have Main Street as a street for people who are going to businesses on Main Street. It would certainly make it more attractive to sit outside and eat, as well, with less traffic.

Ms. Dunigan: Our challenge relying on Cleveland has always been the railroad tracks. The connections across the railroad track are just, makes it really difficult. I know they've been looking for years at trying to get another turn lane under the North Chapel bridge and it just doesn't work. But yes, I mean it's an interesting idea to explore.

Mr. Firestone: Thank you. Commissioner Silverman?

Mr. Silverman: Virtually every significant development we have before us, the issue of traffic comes up, and I feel like I'm sitting here naked because I know nothing about the traffic flows in Newark. And I'm going to address your activities dealing with congestion management. You mentioned simulation models. Our Chairman brings up a very good question . . . can WILMAPCO provide information to us, for example, vehicle counts . . .

Ms. Dunigan: Yes.

Mr. Silverman: On our main streets when the University is in session and when the University is out of session? Those two times.

Ms. Dunigan: If we can't do it now, we soon will be. We've changed the way we collect our data, so it used to be you'd go out and collect counts and it would be at a point in time. But we've moved . . . now with everybody on their cell phone and Bluetooth, we're not knowing who is passing but if your phone has Bluetooth, we know when you're passing and we're able to figure, maybe not an accurate count, but we're able to look at vehicle speeds, which I think is probably a factor of congestion people care about more. Whether they're getting stopped or whether . . .

Mr. Silverman: Well people may with respect to point-to-point, but some of my issues are we hear about the amount of congestion the University brings into the City. If we have an average daily traffic count of 30,000 on Cleveland Avenue, what percentage of that represents University population and what percentage of that is in the University's peak, with their night college? Those are important kinds of things to our decision making, both in and out of session.

Are there any traffic studies on origin and destination anymore?

Ms. Dunigan: Not for a while in Newark that I'm aware of.

Mr. Silverman: That's something I'd like to see done. I'm most interested in the throughput traffic. As Jeremy suggests, how many people go from Cleveland Avenue and Capitol Trail around to Elkton Road, and what percentage of that are people going out of state? What percentage of that traffic is generally found in town?

Do you know what the role of the Planning Commission's recommendations are with respect to DelDOT?

Ms. Dunigan: No.

Mr. Silverman: We chew over a lot of information here, much of which is provided by public describing congestion, pedestrian access, need for sidewalks, etc. Does that carry any weight with DelDOT and their decisions? Or does DelDOT essentially own what's within the right-of-way and what DelDOT decides, DelDOT goes with? Are you . . .

Ms. Dunigan: DelDOT works very closely with the town. So, for instance, the Cleveland Avenue recommendations that are hopefully going to move forward, these were recommendations that DelDOT had put before the City ten years ago. The City said no, and so they were put on hold all this time.

Mr. Silverman: We've been dealing with a hotel that's being built and it came back to us for another reason, and we noticed that one of our major concerns, one of the concerns brought up by the public, of egress from the hotel onto Capitol Trail, our recommendation was not followed. How do we know that DelDOT picks that up or they come back and say we could not do what you wanted to do for the following reasons?

Ms. Dunigan: I can't speak to that particular one . . .

Ms. Gray: Mr. Chair. . .

Ms. Dunigan: But I know typically if there is a change in the ingress or egress, the developer would be expected to pay. So I'm not sure if you were asking DelDOT to cover that, but DelDOT really doesn't pay for that anymore. The funds just aren't there.

Mr. Silverman: Okay, I just wanted . . .

Ms. Dunigan: So I know the county and DelDOT work very closely on these things but it's always the developer who is expected to pay.

Mr. Firestone: I think we should confine our questions to WILMAPCO. She can't really . . .

Mr. Silverman: But I'm unclear as to what WILMAPCO's jurisdiction is and their working relationship . . . for example, who determined the threshold counts for DelDOT's comments with respect to the City of Newark? We have a project come in, DelDOT, the public asks, we ask what impact does this have on the community. Well we don't know, we don't require it because it falls below a threshold.

Ms. Dunigan: That's all governed by DelDOT's subdivision guidelines.

Mr. Silverman: Okay. I didn't know whether that was a regional policy . . .

Ms. Dunigan: Now something that WILMAPCO could help with, I know something that Mike's been thinking about and I think it's in your Comp Plan, is the City could pursue becoming a Transportation Improvement District, or TID. This is basically instead of doing an individual TIS for each development application, you'd have an area-wide TIS.

Mr. Silverman: Good information.

Ms. Dunigan: So instead of addressing the traffic for each individual thing that comes in, you'd have those decisions already made and it would clarify within that document who is responsible for paying what share of things.

Mr. Silverman: Good.

Ms. Gray: If I may add to that, we just had a meeting with the new Traffic Improvement District coordinator at DelDOT, Sarah Coakley, what was it, Mike, maybe about a month ago, and she just sent us a draft blueprint for doing some Traffic Improvement Districts in the City of Newark. So we have started that work and communication with DelDOT. And if I could go back to the Ogletown Road project, we have since followed up with DelDOT and had a meeting and are tracing back the recommendations and what occurred there.

Mr. Silverman: Okay, good . . .

Ms. Gray: And we are working with DelDOT to coordinate better and communicate with them on a regular basis what projects are going on in the City of Newark and what projects they are working on. So that's in the Planning Department's shop that we are going to start those coordination meetings here shortly.

Mr. Silverman: Okay because part of my questions are I don't know where the jurisdictional lines between DelDOT and WILMAPCO come together. I know they do on some projects but other projects are freestanding.

Ms. Dunigan: We're not an implementing agency so in terms of implementation of projects, DelDOT is your go-to and we're really responsible for approving the federal funds and making sure there is communication going on. If there is assistance on the TID or any coordination with DelDOT, we're always available to help with that, as well as kind of the entire level of planning. So before a project becomes a project, we're able to help plan that.

Mr. Silverman: With respect to simulation modeling, could the Planning Commission or the City of Newark initiate projects, for example, changing Farm Lane into a Christiana Parkway connecting 896 and Route 72? Kind of a south of Newark beltway to relieve the pressure on Park Place and the other people coming through Newark. How would that kind of thing be initiated?

Ms. Dunigan: Well that sounds like you're looking for a study on that or . . .

Mr. Silverman: Just whoever is doing the transportation modeling, drop that component in and see what it would do to traffic through Newark. That kind of thing. Because we as a commission could, if we chose, go in the direction of making that part of our transportation plan update for our Comp Plan, and then ask somebody to test it.

Ms. Dunigan: That would be my recommendation. We did do modeling analysis when we did the 2011 Transportation Plan. So I would recommend that rather than piecemeal doing network changes, looking comprehensively at what updates you might have to the 2011 plan and then modeling that as a package.

Mr. Silverman: Okay. Thank you.

Mr. Firestone: Commissioner McIntosh? Commissioner Cronin? Do you have any questions?

Mr. McIntosh: Yes?

Mr. Cronin: I have one question, Mr. Chairman. Earlier in your 20 year career do you recall any history of discussion about extending the Christina Parkway into Cecil County to 273 and maybe

even up by 896? If that were to be done, that would go a long way to relieving a lot of the through traffic that Newark experiences.

Ms. Dunigan: I think that area is probably too built up now to make that happen and, you know, it's been considered in probably every regional transportation plan that WILMAPCO has done to include the Christina bypass. And our Council has always elected not to include that as a project and other counties, Cecil County, has never supported it.

Mr. Cronin: Do you have any idea why they never supported it?

Ms. Dunigan: They're concerned that it would lead to additional sprawl in that part of the county, which is in a preservation area.

Mr. Cronin: Thank you.

Mr. Firestone: Is there anyone from the public that would like to make a brief comment? Are there any other questions from any Commissioner? Okay, thank you very much for coming this evening.

Ms. Dunigan: Thank you.

4. REVIEW AND CONSIDERATION OF AN ANNEXATION AND REZONING OF 4 GEORGIAN CIRCLE IN CHRISTINE MANOR EAST.

Mr. Firestone: That then takes us to Item 4, review and consideration of the annexation and rezoning of 4 Georgian Circle in Christine Manor East.

Mr. Mike Fortner: Good evening, Chairman and Commissioners.

[Secretary's Note: Mr. Fortner proceeded to summarize the Planning and Development Department report on the proposed annexation and rezoning of 4 Georgian Circle, which reads as follows:]

On May 19, 2017 the Planning and Development Department received an application from Beth Wise (Sowden) for the annexation of the property at 4 Georgian Circle in East Christine Manor. The property is adjacent to the City at 2 Georgian Circle to the west, and 13, 15, 17, and 19 Woodshaw Road to the north. The applicant is requesting annexation primarily to make sanitary sewer and water service available to the existing home on the 1.18+/- acre parcel. The Planning and Development Department suggests that, if annexed, the property should be zoned RH (single family detached) – Newark's largest minimum lot size zoning category (½ acre).

Please see the attached homeowners' location and parcel maps, and the Planning and Development Exhibits "A" and "B," concerning this annexation request.

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

Development Proposals

No changes are proposed for the existing house at 4 Georgian Circle.

Existing Conditions in the Area

The property is zoned NC21 in New Castle County and contains one single family dwelling. The adjacent property in Newark is zoned RH and contains a single-family home, also annexed for sewer service.

Planning Studies

Newark's Comprehensive Development Plan V Growth and Annexation Plan shows 4 Georgian Circle in Planning Area 6 (Exhibit "B") which calls for "Residential, Low-Density" uses in Christine Manor. The Planning and Development Department's proposed RH zoning for these properties, therefore, conforms to the City's land use guidelines for this location.

Zoning

The NC21 zoning for 4 Georgian Circle is a residential zone intended to preserve the character of "existing neighborhoods."

The proposed RH zoning for 4 Georgian Circle, which corresponds to the zoning designation applied by the City in the past annexed parcels in Christine Manor, permits the following:

- A. A one-family dwelling detached.
- B. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, but not including student homes, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling except that an owner occupant family resident shall mean that the individual taking in nontransient boarders or roomers has a minimum of 50% ownership by deed of the property; and further provided that if more than two boarders or roomers are taken in, rental permits are required to be applied for and issued as provided in Chapter 17, Housing and Property Maintenance, of this code. In those instances in which there is more than one individual owner of a property on the deed pertaining to that property, and in which those multiple owners are not spouses owning as tenants by the entireties, said multiple owners, upon proper request, may be required to provide affidavits through the rental permit process, as provided in Chapter 17, that establish to the satisfaction of the city that minority ownership has not been created to circumvent any provision of this code.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a nonowner occupant family resident on the premises, but not including student homes, is not a use as a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, subject to special requirements.
- D. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that in RS districts, no lot less than 12,500 square feet shall be used for such purposes.
- E. Public and private elementary, junior, and senior high schools.
- F. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- G. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- H. Municipal sewage pumping station and sewers.
- I. Right-of-way, street.
- J. Swimming pool, private; swimming pool, public.
- K. Temporary building, temporary real estate, or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- L. Private garage as an accessory use, subject to the special regulations of Article XV of this chapter.
- M. Accessory buildings or structures, no impact, and accessory uses, no impact, excluding semitrailers and similar vehicles for storage of property.
- N. Cluster or neo-traditional types of developments including uses that may not be permitted in this district, as provided in Article XXVII, Site Plan Approval.

- O. Utility transmission and distribution lines.
- P. Public transportation bus or transit stops for the loading and unloading of passengers.
- Q. Student home, subject to special requirements.
- R. No impact home businesses in a residential dwelling shall be permitted, subject to special provisions.

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

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

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

- (1) *Minimum lot area.* One-half acre.
- (2) *Lot coverage.* 44%; 20% for building.
- (3) *Minimum lot width.* 100 feet, with exceptions.
- (4) *Height of buildings.* Max three stories or 35 feet, with exceptions.
- (5) *Building setback lines.* 40 feet, with exceptions.
- (6) *Rear yards.* 50 feet, with exceptions.
- (7) *Side Yards:* 15 feet minimum/35 feet aggregate.

Four Georgian Circle meets all applicable RH zoning category requirements.

Providing Services

The Public Works and Water Resources Department indicates the following:

- 1. The Owner or their representative will need to submit a conceptual plan that specifies how they intend to tie-in to the City's sanitary system. All construction, permitting, and inspection costs associated with the sanitary sewer tie-in shall be the responsibility of the Owner.
- 2. All construction shall be in accordance with the most current City of Newark Water and Wastewater Standards and Specifications.
- 3. The Owner will be responsible to pay the Sewage Treatment Plant (STP) fee of \$1,000.
- 4. The Department understands the property is currently on a well for domestic water. A water meter will need to be purchased from the City and installed in an approved meter pit so sewer charges can be appropriately assessed to the Owner.
- 5. There is an existing 8" DIP water main that runs along Georgian Circle. The home owner would have the option of connecting to the existing water main to serve the home with domestic water. The Owner would be responsible for all construction costs and fees associated the installation of any future water service to the property.

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

Because the City of Newark electric service will not be provided at this time, City refuse collection, snow removal and leaf collection will not be provided. If City electric service is eventually provided, and depending upon the annexation of other Christine Manor properties, the Public Works and Water Resources services may be made available at that time. Therefore, services not being made available at this time may be provided in the future.

Recommendation

Because the proposed annexation of 4 Georgian Circle does not conflict with the purposes and land use recommendations of the Comprehensive Development Plan V, because the continuation of residential, low-density at the site will not have a negative impact upon adjoining properties and/or the nearby community, and in light of the request to provide sanitary sewer and service to this location, **the Planning and Development Department suggests that the Planning Commission recommend that City Council approve the annexation of the 1.18+/- acre 4 Georgian Circle property with RH zoning, as shown on the attached Planning and Development Department Exhibit A, dated August 1, 2017, with the following condition:**

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

Mr. Fortner: The applicant is here if you have any questions or any questions from my report.

Mr. Firestone: Would the applicant like to make a statement? It's not required.

Mr. Fortner: It's not required but you can if you want.

Ms. Beth Wise: No, I don't have any statement to offer.

Mr. Firestone: Is there anyone from the public who would like to be heard on this? I will note, just for the record, that we did receive one email from Shelley Einbinder regarding this item and it is available if anyone wants to take a look at it.

Mr. Silverman: Do you want to read it?

Mr. Firestone: Do any of the Commissioners have any questions either for the Department or for the applicant? The Chair would entertain a motion then.

Mr. McIntosh: I move that we accept the proposal.

Mr. Firestone: Is there a second?

Mr. Hurd: Second.

Mr. Firestone: Any discussion? Excuse me?

Unidentified Speaker: Can I ask, does the letter get included . . . is there a response to the request for the additional amendment to the deed?

Mr. Silverman: Do you want someone to read that? As the Secretary . . .

Mr. Firestone: There is not. I can just read it into the record.

Dear Planning Director Gray, the above-noted property resides in the Christine Manor East subdivision. Christine Manor and Christine Manor East have a long standing agreement to share snow removal costs. Many properties require membership and payment of dues as a deed restriction. Managed through the Christine Manor Civic Association, our dues are \$50 per year, per household. The owners of 4 Georgian Circle have not paid for these dues in many years. We request as part of this annexation agreement that their deed is also amended to require payment of subdivision dues. We also request payment of the past two years of dues, \$100, at the time of annexation. Please forward this request for amendment to the Planning Commission members. Regards, Shelley Einbinder, President of Christine Manor Civic Association.

My only comment is that I don't believe we have jurisdiction to undertake such action, even if we might desire to. That's a private matter between the parties.

We had a second. Is there any discussion on the motion?

Mr. Hurd: My only comment is that this annexation seems completely in compliance and in agreement with our Comp Plan in terms of the areas that we've identified for expansion, so I'm in favor of that.

Mr. Silverman: And in keeping with the City of Newark's position, this annexation was initiated by the property owner, not solicited by the City.

Mr. Firestone: Okay. Any other comments or discussion? All those in favor, signify by saying Aye. Opposed, say Nay. Motion carries. Welcome to the City of Newark.

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

THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 1.18+/- ACRE 4 GEORGIAN CIRCLE PROPERTY WITH RH ZONING, AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED AUGUST 1, 2017, WITH THE FOLLOWING CONDITION:

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

VOTE: 6-0

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

NAY: NONE

ABSENT: MCNATT

MOTION PASSED

- 5. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE SPECIAL USE PERMIT FOR 400 OGLETOWN ROAD TO ELIMINATE A CONDITION OF APPROVAL THAT PROHIBITS AN EGRESS TO CAPITOL TRAIL.**

[Secretary's note: Item 5 was withdrawn from the agenda and will not be reviewed.]

6. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AS THEY RELATE TO REGULATIONS FOR WIRELESS FACILITIES IN THE RIGHT OF WAY AND OUTSIDE THE RIGHT OF WAY.

Mr. Firestone: Item 5 has been withdrawn, so that takes us to Item 6, review and consideration of amendments to the Zoning Code as they relate to regulations for wireless facilities in the right of way and outside the right of way.

[Secretary's note: During the course of the presentation, Ms. Gray referred to a PowerPoint presentation being displayed for the benefit of the Commission and public. The proposed amendments to the Zoning Code as they relate to regulations for wireless facilities in the right of way and outside the right of way read as follows:]

AMENDMENT 1. Amend Section 32-56.7(1) of the City of Newark Zoning Code by adding the underscored text as follows:

"Section 32-56.7. - Wireless Facilities in the Right-of-Way

- (1) Tower, broadcasting and telecommunications facilities, located inside the public rights-of-way, subject to the grant of a special use permit as provided in Article XX, Section 32-78 of this Chapter, shall comply with the following standards and requirements. Towers less than thirty-five (35') feet in height shall not require a special use permit but are subject to administrative approval by the Planning Director and shall comply with the following standards except the requirements of Sections 32-56.7(1)(b)(1), 32-56.7(1)(b)(3) and 32-56.7(1)(b)(5).

AMENDMENT 2. Amend Section 32-56.7(1)(b)(2) of the City of Newark Zoning Code by adding the underscored text and deleting the stricken text as follows:

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~~ siting the tower or antenna on land owned and maintained by the City of Newark. This technical evaluation shall consider all structures or lands located within a one eighth (1/8) of a mile radius of the proposed tower or antenna site. A list of approved, municipally-owned buildings and parcels appropriate for wireless facilities placement is kept on file at the City Zoning Office. ~~Council~~ The City 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.

AMENDMENT 3. Amend Section 32-56.7(1)(b)(3) of the City of Newark Zoning Code by deleting the stricken text as follows:

3. Evidence that the applicant cannot adequately extend or infill its communications system by the use of equipment such as ~~redoes~~, repeaters, antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The applicant shall demonstrate that the proposed tower must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.

AMENDMENT 4. Amend Section 32-56.7(1)(b)(4) of the City of Newark Zoning Code by adding the underscored text and deleting the stricken text as follows:

4. The applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers on which it is technically feasible to mount a tower or antenna within a one eighth (1/8) ~~one quarter (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:

AMENDMENT 5. Amend Section 32-56.7(1)(b)(4) of the City of Newark Zoning Code by adding the underscored text as follows:

- e. Failure by the owner of such building, structure, or tower to respond within thirty (30) days of notice by the applicant.

AMENDMENT 6. Amend Section 32-56.7(1)(c)(6) of the City of Newark Zoning Code by adding the underscored text as follows:

6. Towers are prohibited in the 100-year flood zone, as determined by the City.

AMENDMENT 7. Amend Section 32-56.7(1)(d)(1) of the City of Newark Zoning Code by deleting the stricken text as follows:

1. The tower shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. ~~The application of the stealth technology chosen by the applicant shall be subject to the approval of the City Council~~

AMENDMENT 8. Amend Section 32-56.7(1)(d)(4) of the City of Newark Zoning Code by adding the underscored text and deleting the stricken text as follows:

4. The Design Committee of the Downtown Newark Partnership will review applications and make a recommendation to Planning Staff for the placement of new ~~towers~~ antennas in the ~~Downtown~~ BB – Central Business District in order to ensure that the character of such Districts is preserved. ~~The applicant shall take into consideration the design recommended by the Design Committee when it submits its final conditional use permit application to Council~~

AMENDMENT 9. Amend Section 32-56.7(1)(e)(2) by deleting the stricken text as follows:

2. Required electrical meter cabinets shall be screened to blend in with the surrounding area ~~to the satisfaction of the City Council.~~

AMENDMENT 10. Delete Section 32-56.7(1)(e)(4) in its entirety.

AMENDMENT 11. Amend Section 32-56.7(1)(g) of the City of Newark Zoning Code by adding the underscored text as follows:

- (g) A structural engineer registered in Delaware shall issue to the City a written certification of the proposed tower's ability to meet the structure standards offered by either the Electronic Industries Association or the Telecommunication Industry Association, if applicable, and certify the proper construction of the foundation and the erection of the structure.

AMENDMENT 12. Amend Section 32-56.7(1)(h) of the City of Newark Zoning Code by adding the underscored text and deleting the stricken text as follows:

- (h) Towers and antennas shall employ stealth technology and shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. Council Factors to be ~~shall considered include whether its decision upon~~ the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent;

and encourage sound engineering and construction principles, practices and techniques.

AMENDMENT 13. Create a new Section 32-56.7(1)(s) by inserting the underscored text as follows:

- (a) All proposed tower applications shall be accompanied with proof that the telecommunications applicant has a contract with a wireless service provider to install, construct, modify, maintain or operate wireless communications facilities in the right-of-way in which such installation, construction, modification, maintenance or operation is to begin within one year of approval.

AMENDMENT 14. Delete Sections 32-14(b)(1); 32-18(b)(8); 32-19(b)(10); 32-21(b)(1); 32-23(b)(1) and 32-23.1(b)(1) in their entirety replace with new Sections 32-14(b)(1); 32-18(b)(8); 32-19(b)(10); 32-21(b)(1); 32-23(b)(1) and 32-23.1(b)(1) by adding the underscored text respectively as follows:

“(1) Tower, broadcasting and telecommunications, located outside the public rights-of-way, require a special use permit and are 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 on which it is technically feasible to mount a tower or antenna within a one eighth (1/8) 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.
 - e. Failure by the owner of such building, structure, or tower to respond within thirty (30) days of notice by the applicant.
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. Copies of all applicable state and federal permits.
 5. 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 200 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.
- (g) 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 and telecommunication antennas located on top of existing buildings shall be exempt from this subsection. 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. Council may exempt any tower applicant from these landscaping and stealth technology requirements.
- (h) No outdoor storage shall be permitted at the tower site.

- (i) 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.
- (j) 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.
- (k) 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, unless the applicant provides evidence to the City that the nearest similar tower cannot structurally accommodate additional antenna or there is unacceptable radio interference and that the proposed tower is necessary to fill a significant gap in coverage or capacity.
- (l) 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. 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.
- (m) 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.

- (n) 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.
- (o) 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.

- (p) 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.

- (q) 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.
- (r) 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.
- (s) 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.
- (t) 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.
- (u) 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.

AMENDMENT 15. Amend Chapter 32, Zoning, of the Newark City Code by deleting the stricken text as follows:

~~This Ordinance shall sunset 120 days after the date of passage unless further action is taken by City Council.~~

Ms. Gray: Okay, that would be me.

Mr. Firestone: Take it away.

Ms. Gray: Okay, I can make this presentation long, I can make it short or I can make it somewhere in the middle.

Mr. Firestone: Short.

Mr. Hurd: Short but informative.

Ms. Gray: Okay, short. Yes, very good. I would like to go over the timeline and give you guys a thumbnail sketch of how we got here and we do have a presentation that the Cohen Law Group had prepared that provides a little bit more background as to the need for the ordinance that had been adopted and that you all had made recommendations on, and then a brief step through the amendments.

The wireless ordinance was adopted June 12, 2017 with a 120-day sunset and so that expires October 10, 2017, and the direction that the City Council had given staff was to . . . we'll be on that just real quick.

Ms. Vispi: If you want to tell me when to forward.

Ms. Gray: That would be great, thank you. The direction that City Council gave to staff was to work with the industry and get their comments and staff had some recommended changes as well. So the ordinance was passed with a 120-day sunset to work on those. And we've since done that. We've met with the industry folks and we've gone over this ordinance many, many times, and so this is the result of, the product that you have now is the result of all those discussions.

So, briefly, I'll go through these slides very quickly. It seemed to be there was an appetite from some of the Planning Commission members the last time we talked about the wireless ordinance to get a little bit more of the background like why are we doing this ordinance now. So I just wanted to go through these slides briefly to talk about the background of why this ordinance was put together and adopted, and the need for this ordinance in response to the market, really, the impact on the infrastructure in the City, the legal rights for the wireless facilities and then the ordinance itself.

So there is a need, they call it a wireless data explosion. So if we look at it, we have about 14 million mobile devices right now at the end of 2016 and it is expected to reach 1.5 billion. I just can't get my head around that number, but it's a lot. So the wireless industry is growing and the number of wireless subscriptions is increasing pretty much exponentially. The need to increase capacity is at the broadband level. So that is facilitating the need to put in additional infrastructure to support that increased broadband.

So what we have now, I guess maybe the first generation of wireless was the mega-cells. You'll see the big towers. And some of them were camouflaged as trees and they still look like big towers camouflaged as trees. But what we have in more urban areas is the drive for what the industry is calling macro-cells, which are smaller towers. And that is the focus of the ordinance that was passed and the amendments. And then the micro-cells are large antennas that would be collocated on current facilities and pico-cells which would be your very smaller type of structure.

So as I mentioned, the wireless facilities are now getting to the . . . they're focusing on increasing broadband width and that is in more urban areas such as Newark. Wireless contractors typically want to install these facilities in public rights-of-way, hence this ordinance that we had passed and the amendments.

Okay, so these are some pictures of what these towers, these micro-cells looks like. You see the black one in the back and this other tower on the street. And these are in the rights-of-way. There's another one being installed, and another white one. So this is just to give you an idea of what these systems look like. And these are part of what's called a Distributed Antenna System. Did you have a question, Mr. Silverman?

Mr. Silverman: Yes. Part of our Code says collocation on existing structures, towers, poles.

Ms. Gray: Yes?

Mr. Silverman: Are they all freestanding as shown in that picture or can they be associated with existing utility poles?

Ms. Gray: Yes.

Mr. Silverman: Okay.

Ms. Gray: Some of them are . . . for example, the University of Delaware is currently putting in a Distributed Antenna System and it is a 13 node system with what is called a head-in where the stuff, the brains of the system are. And then it does include actual cable. You have wireless stuff but you also need a wire, really, called a fiber. So their system, and you all made a recommendation on one of their nodes in that system, and that was an antenna on top, well a structure which we call, by definition, a tower, on top of a building. The other twelve nodes that they are looking to install, which is on University zoned property, are a combination of towers and collocations on buildings. So it's a whole system.

So the DAS system is looked at. They involve different installations and, as we just mentioned, on poles, antennas, control boxes, cabinets on the ground and fiber optic cable, because you actually do need to run cables to these. And as I mentioned, they're mostly located in public rights-of-way and there are antennas which would be attached to current structures on existing utility poles or the fiberglass poles which average 25-120 feet high. And those are the ones that we just saw, which would be the poles. And these DAS systems are into boosting capacity rather than addressing coverage issues.

So these are some of the smaller cells, those micro-cells that I talked about. And these are how they look. These are being collocated on existing poles.

Looking at, and this gets to why we're doing this ordinance and doing the amendments, we currently don't have . . . since a lot of these facilities are being installed in the rights-of-way, we currently, well heretofore to June when this ordinance was passed, we didn't have a way to address and/or regulate these DAS systems.

Okay, so very briefly, the Telecommunications Act indicates that local governments cannot prohibit the wireless systems but they also have the ability to regulate them.

So the Shot Clock and the Spectrum Act, that's mentioned in the ordinance that talks about, and that's the basis for saying we do have to approve it but we have the ability to regulate the way it looks and where it is.

The middle bullet there, this is currently not enacted yet but it's on the governor's desk to be signed, that indicates, imposes regulations on DelDOT for wireless facilities on state roads, and indicates that in the state right-of-way towers can't exceed 50 feet.

Okay, so very briefly, the ordinance that we have today is regulating both wireless facilities inside the public rights-of-way . . . there's kind of two components to the ordinance . . . inside the public rights-of-way and outside. It addresses both the towers and the antennas, which would be the structures attached to existing structures. It encourages collocation which would require instead of public approval it would be an administrative approval. It also brings the old cell tower ordinance into compliance with the new laws and regulations that we just reviewed.

So we already covered that one and we've already talked with them. Okay so these are the proposed amendments. Towers 35 feet or more in height require special use permission that would go to City Council. Towers under 35 feet need only administrative approval.

Mr. Firestone: Does that mean you?

Ms. Gray: Yes, that would be under the Planning Department. Yes.

Mr. Silverman: And towers . . . there's a footer in the ground and a mast and the distribution?

Ms. Gray: Yes.

Mr. Silverman: Okay.

Ms. Gray: Yes, and they also would require, after that approval, it would also require a building permit. When I mentioned the University is putting in their DAS system, all of those towers and systems require a building permit that we go out and inspect to make sure that they're structurally sound and we do our building permit thing.

Mr. Silverman: Will there be a system in place for the follow-up inspections that are required every several years and all that kind of thing?

Ms. Gray: Yes, that's in the ordinance. That's in the ordinance right now as it was passed.

Mr. Silverman: Okay. So the City will be developing a tickler file.

Ms. Gray: Yes.

Mr. Silverman: If part of this information gets lost?

Ms. Gray: Yes.

Mr. Silverman: Okay.

Mr. Hurd: Can I ask what set the 35 foot threshold?

Ms. Gray: That was based on discussions with the industry and your average utility pole in Newark can be up to 60 feet. That was a number that was picked in that it wouldn't be too intrusive.

Mr. Hurd: Okay, so if I'm right, it's sort of under 35 feet it's more likely to be a single pole or something smaller.

Ms. Gray: Yes.

Mr. Hurd: And over that it's going to be a structure with legs and something more complicated.

Ms. Gray: Yes.

Mr. Hurd: Okay.

Ms. Gray: Okay, so let's see. So, exemption for new tower notice requirement if owners collocate . . . and Commissioner Firestone had a question on this . . . the radius for collocation efforts is proposed to be reduced from 1/4 mile to 1/8 mile, and that was in response to a request from the industry folks.

Mr. Firestone: Is there a basis other than a mere request? I mean is there . . .

Ms. Gray: I'm looking down at Bruce. The discussions regarding this, because we had this discussion early on and I know staff did not have a problem with it because this was mostly for facilities to be located in rights-of-way. And I think the logic is that it's less of a burden to the industry and that the staff and Cohen Law Group said that didn't seem to be too much of an imposition one way or the other.

Mr. Bruce Herron: I think that's right.

Ms. Gray: Okay, so let's move on to the other amendments. Proof of compliance with federal FCC standards for towers. The lighting requirements that it has to be in compliance with the FAA. Exception to ban new towers outside the right-of-way within 2,000 feet which is in the current ordinance as it was passed, but the proposed amendment is that there can be an exception of existing towers if collocation is not possible. And new language requiring proof of contract with wireless service provider prior to approval of any new tower. The industry is

indicating that the facilities that are looking to be built within the rights-of-way are more likely to be built by contractors and be built as a system. So it makes sense to have a contract and an agreement with whoever is putting those in as to what they're doing and where, when and how.

So, in conclusion, the proposed amendments have converted the previous cell tower ordinance to update in response to the new federal regulations, promotes wireless broadband and allows these facilities to be located within the rights-of-way with controls that would enable the City to preserve the character of our community. And I believe that is it. Questions?

Mr. Firestone: Are there other questions from the Commissioners? Yes, sir?

Mr. Hurd: I have a couple . . . well one question and one comment.

Ms. Gray: Sure. Yes, sir.

Mr. Hurd: In one of your next to the last slides you said that the notification requirement was suspended if they couldn't . . . if a collocation request was denied or something. I'm not seeing that in the text of the Code here and I'm a little confused about how that is phrased.

Ms. Gray: Okay. Let's take a look at that.

Mr. Hurd: Because it sounds like a negative negative or something.

Ms. Gray: I hate double negatives.

Mr. Hurd: There. Second bullet point.

Ms. Gray: Reduction for collocation efforts from 1/4 to 1/8 of a mile.

Mr. Hurd: No, the one above. Exemption for new tower notice requirement if owners of potential collocation structures fail to respond to good faith collocation efforts.

Ms. Gray: Yes. Very good. And that's in the public rights-of-way ordinance. Let me find that, the proposed amendment. Give me a moment here.

Mr. Hurd: I'm guess I would like to see if you're going to put up a new tower that there should be notification that that's coming, whether or not they got . . . I guess I'm confused by the . . .

Ms. Gray: Right. The ordinance, as passed on June 12, has a four-step process that an applicant needs to go through to demonstrate that it contacted all owners of . . .

Mr. Hurd: Can you point me to the amendment?

Ms. Gray: I'm sorry, yes. Okay. That's Section 32-56.7 . . .

Mr. Silverman: What page?

Ms. Gray: On . . .

Mr. Hurd: Amendment 32?

Ms. Gray: Well the amendment is Amendment 5 on page 2.

Mr. Hurd: Okay.

Ms. Gray: And that's failure by the owner of such building, structure or tower to respond within 30 days of notice by the applicant. So the ordinance, as passed, requires an applicant to

demonstrate that it contacted all the owners within 1/4 mile . . . the current ordinance is 1/4 mile radius of the proposed site of the tower. And then this amendment addresses concerns that, well what if they just don't respond? That the applicant is kind of stuck. So it's a 30 day response period.

Mr. Hurd: Okay.

Mr. Silverman: Can I comment on that?

Mr. Firestone: Well I've got a sort of another notice question. What kind of notice do outfits have to give to the public? I mean if somebody can put up a 200 foot tower, there are some places where that's going to be able to be seen for a very, very, very long distance.

Ms. Gray: Yes, and it . . .

Mr. Firestone: And, I mean by the time you're getting to 200 feet, you're getting to be a presumed hazard under the FAA. That's a very tall structure. So, you know, it's probably twice as tall as any tree in the City. That's quite tall.

Ms. Gray: Yes, and that's a public process. That is not an administrative approval. That's a special use permit that would go through the special use permit process.

Mr. Firestone: But who do they have to give actual notice to? I mean typically it's just like people who live adjacent to . . . but like I said, the visual intrusion of this is going to impact hundreds, if not thousands, of homeowners if someone puts up in one specific spot a 200 foot tower or wants to put up a 200 foot tower. And we know that the publication in the newspaper is not a very effective way of giving people notice and I'm concerned because these are potentially very tall structures. It's one thing to have a 35 or 50 foot structure which is going to be pretty quickly blocked by trees and other things. But 200 feet is quite tall.

Ms. Gray: I'm looking down at Bruce. The ordinance as adopted does not have any specific notification requirements to the public. We would have to rely on the notification requirements for a special use permit. I don't know whether Bruce has any other thoughts on that.

Mr. Herron: Well the special use permit is the required notice to the public. It would be advertised everywhere and the impact on those individuals presumably considered by the Planning Commission and Council.

Mr. Firestone: Can we put in a specific notice provision, you know, you've got to give actual notice to everyone within one mile? I don't know. I'm just very concerned that people are not going to know a very tall structure is going to go in and there's going to be then a very large human cry.

Mr. Silverman: When we say special use permit, are we saying this has to go before the Board of Adjustment?

Mr. Herron: No. Council.

Ms. Gray: No.

Mr. Silverman: It has to go before Council?

Mr. Herron: Yes.

Mr. Silverman: So there will be a publicly advertised public hearing process available for this?

Mr. Herron: Yes.

Mr. Silverman: Any why should people have a different notification distance outside of putting up a 10-story building? A structure is a structure.

Mr. Firestone: Well 200 feet is different than 100 feet. It's just a lot different. Two hundred feet is really tall. A 10-story building is . . .

Mr. Silverman: One hundred and fifty feet, yes.

Mr. Firestone: I mean, you know, frankly the University's STAR Tower is . . . and I'm a University professor . . . is sort of shockingly tall for where it's located. And the same thing is true of Christiana Towers. So, you know, and the only reason I've got to presume that we have those really tall structures is because it's the University. And we don't have 10-story structures just sitting out all by themselves and this could potentially be a 200 foot structure.

Mr. McIntosh: When someone wants to do something to property, they have to put signage up, correct? Saying what it is that they're doing, you know, and so many of these things are put in the ground and if they don't, people get really angry with them and say put them up, and so on. Wouldn't that be, I mean in you're in that area . . . I don't know if this meets that standard, but maybe it should. If you live in that area, you would see the sign. We see the signs around our property, you know, when they put them up every once in a while.

Mr. Firestone: But a 200 foot structure, it could be a mile away from you. If it's in the right place, you might not go by it but it doesn't mean that you wouldn't be able to see it from your bathroom window.

Mr. McIntosh: I understand but this wouldn't be the only place . . . these things are on Council agenda. I don't know, I guess you could do that because there was a fellow that wanted to put a liquor store up the street from us and he had to knock on all the doors and say I want to put a liquor store up there, do you mind if we give you a discount?

Mr. Silverman: You asked for the discount?

Mr. McIntosh: Yes, what's in it for me? I don't know. I could go either way on that. It just, I don't think we should overregulate things but I do think having signage out there like we do for all of the different kinds of . . .

Mr. Hurd: For like subdivisions and things.

Mr. McIntosh: Yes.

Mr. Hurd: I could get behind that if that's something we wanted to put in there. A specific sign at that property as a way to sort of notify that this is . . . because you're right, it will have more impact than . . .

Mr. McIntosh: People look at those if they're anywhere near it. We live right near a nursing home that is trying to add on and I think it came through here and so on. Well I guess, this might be good news, there's not as much market for dementia as there was apparently, and this is not going up, at least at this time. It's been delayed by a couple of years. And those signs are still up there, which might mean that the dementia is on the rise. At any rate, I don't know.

Ms. Gray: They might have forgotten it was there.

Mr. McIntosh: I'm not saying. But those things are very visible and people do look at them when they're there. I think that would be a very effective way of getting the public to understand what's going on, personally.

Mr. Silverman: Visible from the public right-of-way.

Mr. McIntosh: Yes, I mean I think your point is well-taken, Jeremy. It's just a matter of how you get that message out. I don't read the legal notices in the newspaper. There's so much else to look at that I don't get around to that. But these things, if it's anywhere near you, you're going to look at it and say what are they going to do here. Anyway, that's my . . .

Mr. Silverman: I have a comment on the Amendment 5 discussion. I'd like to continue it. Failure by the owner of such a building, structure or tower to respond within 30 days . . . I don't understand the logic that's involved in this. If I'm a property owner and I need a cross-access agreement or I need an agreement to use a right-of-way for off-stream discharge, or I have to make off-site improvements to get what I want with this body and the City Council, if I don't secure those, I don't go anywhere. I'm dead in the water. If I can't convince the guy next door to me to give me access to his parking or give me a driveway across his property, then I can't do anything. Why do we allow the communication industry to say well we tried and we waited 30 days and we didn't hear anything, so we need our approval? There should be more to that. They should show due diligence, that the City also identified potential collocation sites, that letters were sent out, etc. They need to have some kind of proof on record that they did make a good faith effort.

Ms. Gray: I believe that is in the current ordinance. This is in addition to the requirements that the applicant needs to indicate that the proposed antenna or related equipment would exceed the structural capacity of existing building, structure or tower and its reinforcement could not be accomplished at a reasonable cost. The proposed antenna or 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.

Mr. Silverman: That assumes that I want to cooperate with your proposal. But I've got my tower and you aren't giving me enough money and I'm going to say no you can't, even though I've got space. Under this proposal, you can come in and say well I tried to negotiate with the guy but he wouldn't talk to me.

Ms. Gray: We have not gotten to the implementation component of this but what Planning would require is proof of notification through certified mail . . .

Mr. Silverman: Okay.

Ms. Gray: And that the 30 day period had been exceeded. That's not in the ordinance but that would be . . . your point is well taken that the applicant has to prove that they've contacted all the owners and would work with the Planning Department to make sure all those facilities had been identified and contacted.

Mr. Silverman: Okay. So Council still has the right to say go negotiate harder? There's a place for you on that tower. Or the guy who wants to lease the space comes in and says, hey I'm waiting for this guy. I meet all of his criteria, we just haven't negotiated price yet. And Council says, go talk to him, particularly on the 200 foot towers.

Mr. Hurd: I guess I'll sort of wrap up mine.

Ms. Gray: Sure.

Mr. Hurd: I do commend this for being much cleaner than the previous one we got. Under Amendment 2 it still says City Zoning Office for where the location of the list of approved buildings and parcels. Later on that is noted as the City Planning and Development office is where the list is maintained. My other comment is kind of broader and . . .

Ms. Gray: I have it right here, thank you.

Mr. Hurd: I know we're pressed for time on this but it's really hard for me to follow this when it's just the amendments to a code that I don't also have in my hand. So it would have been useful to see the full marked up, proposed, final one to be able to go, oh that's all the pieces. Because we've got an amendment here that says we're adding Item E to a list of four other things and I have no idea, honestly, what that's adding to or amending or adjusting. So I honestly don't feel comfortable saying yes let's go ahead with this because I don't know what the full text of the Code, the ordinance . . . not the ordinance but the Code related to wireless facilities, I don't know what the whole Code looks like.

Mr. Firestone: I mean in that regard, we sort of passed this on an emergency basis and so it doesn't necessarily mean that we agree with the provisions are not being amended. I mean we really need, I think, to see the entire Code to get the full flavor.

Mr. Hurd: Yes.

Mr. Firestone: You know, I, as well, submitted a bunch of small grammatical things that I thought could be improved, as well. And some of the things I didn't even quite understand. And, again, this goes back to the original language because it's not an amendment, but I didn't understand, for example, how a tower can facilitate orderly development, how it can encourage compatibility, or how it could ever benefit neighboring properties. I guess you get stronger cell reception, but it really doesn't benefit them from . . . probably there are going to be very few people who think it benefits them from aesthetics. There might be some people who might think it's relatively neutral. I understand the intent was that they should, to the maximum extent as practical, devise some aesthetically pleasing tower. But I think some of the language is just awkward and it would be difficult for anyone to make a determination, really. Could you really find that a tower would promote orderly development? Probably not. You might not be able to find a negative, but I don't know how you could find the positive in that.

Mr. Silverman: Well in this day and age of communication, it could be a node which would attract industry in an industrial park, for example, that would utilize that resource. Like running a water line in or a gas line. It's a utility.

Mr. Firestone: It could, but it could service existing properties and not have anything to do with development. It may just be to provide better service.

Mr. Silverman: Agreed.

Mr. Firestone: Existing service.

Mr. Hurd: Agreed. It would be an odd thing to advertise in your property listing. You know, we're close to the big cell phone tower.

Mr. Silverman: But if you could advertise that we have a zillion gigawatt wide data band, locate your center here . . .

Mr. Firestone: What is the timing on the expiration of the existing ordinance and when do we need to get our approval, our decision to Council so that it can act in a timely fashion?

Ms. Gray: Okay, I have a timeline here. Let's see, should it move forward . . . to answer your first question, the current ordinance expires October 10, 2017. So, should you pass this, make a recommendation and move it forward, it would go for first reading to City Council on August 14 and the second reading would be September 11 for an action. We did do a schedule . . . Mike, you had talked with Renee about should it not move forward this month. Would it make it . . . I know we talked about it.

Mr. Fortner: Yes, it didn't quite make it . . .

Ms. Gray: It didn't quite make it.

Mr. Fortner: Because you get into the first meeting of September which is the 5th, right, and then you have the first reading and second reading. And you couldn't make the first reading and so it would be the last meeting in September for the first reading, which would put it on the first meeting in October, which was essentially a day after it expired.

Ms. Gray: Okay, thank you.

Mr. Herron: Mr. Chairman . . .

Ms. Gray: Wait, Bruce has an amendment there . . . or a thought.

Mr. Herron: I think the bottom line is that there does need to be a recommendation. Some type of recommendation from the Planning Commission.

Ms. Gray: Yes.

Mr. Herron: To Council tonight in order for the timely process to proceed without an expiration of the 120 day sunset.

Ms. Gray: Thank you.

Mr. Firestone: What happens if it sunsets for one day?

Mr. Herron: Then we're all back to square one. It's as if it never happened.

Ms. Gray: Right.

Mr. Herron: We're all back to the way the ordinance was before June of this year, which is a place I don't think we want to be.

Mr. Firestone: Does anyone from the public wish to be heard on this issue? Dr. Morgan.

Dr. John Morgan: Thank you. John Morgan, District 1. I guess whatever you send forward tonight doesn't need to be absolutely perfect in terms of word perfect. You could at least make recommendations, I think, for tweaking the language even if you don't have the specific language to suggest to Council.

On the issue of the notification, I think that is very important. In the past there have been complaints that I've witnessed in the last couple of years where these yellow signs were posted on a property where there was some sort of development proposed, and a lot of people said that they really hadn't noticed. I mean maybe they saw them but they didn't realize what it was all about because it was on a busy road and people were driving past it 20 or 30 miles an hour and there was no convenient place to stop and look at it. So I really think that if there's going to be notification, it needs to be through the recognized form of letters through the U.S. mail, maybe certified mail. And I would suggest that maybe there ought to be some guidance on the . . . let's say the radius within which you notify is proportional to the height of the tower, which might be a factor of 10. Let's say if you have a 40 foot tower, maybe a radius of 400 feet. A 200 foot tower, a radius of 2,000 feet from the location of the tower. Would something like that make sense?

Mr. Silverman: May I respond? Would you object to requiring the applicant to notify and give proof to the City that those notifications went out?

Dr. Morgan: Well I think what I would say . . .

Mr. Silverman: Rather than have it as a public expense that can never be recovered.

Dr. Morgan: Well, can't you charge a fee for processing this application for special use permit. Isn't there a fee for that, Bruce?

Ms. Gray: Yes, there is a fee and the ordinance does provide for the setting of a fee, as well.

Mr. Silverman: You're talking about a relative dollar. If it's a 200 foot tower and it's visible from a mile away, that could be a lot of residences, and a lot of expense that wouldn't be covered by a basic fee.

Dr. Morgan: Well I think what I'm trying to say is that I don't think you would need to notify . . . let's say there's a 200 foot tower. It almost certainly will affect visually hundreds of people within 2,000 feet. So we don't need to notify all the way out to a mile, if you see what I'm saying. Because if it's going to be objectionable, there are people closer . . .

Mr. Silverman: Having done these notifications, it's very interesting to try to determine what parcels are within, what parcels are without, portions of parcels.

Dr. Morgan: Yes.

Mr. Silverman: Do you send it to the owner of parcel record? Do you send it to the street address for the owner who gets the notification . . . of the occupant, rather . . . particularly with rental properties?

Dr. Morgan: I think say you should probably send it to the owners, at a minimum. Because they own the land. And if you want to go further than that, that's okay. But is it really feasible to expect a commercial company to have an up-to-date mailing list for everyone?

Mr. Silverman: Oh, yes, they're easy to get.

Dr. Morgan: Okay. Well if you want to do it that way, that's okay too. I guess I trust the City staff more than I trust the contractors hired by the commercial company.

Mr. Silverman: If the public wants to pay for a search like that, or wants to devote staff to it, those are extremely time-consuming and, from an administrative point of view, a devil to follow.

Dr. Morgan: Okay. Well something to think about. But I hope you at least agree with the principle of having the range of notification proportional to the height of the tower.

Mr. Silverman: My real feeling on that?

Dr. Morgan: Yes?

Mr. Silverman: It's a civic responsibility to know what's going on in your community and it is part of your civic responsibility to know how to be informed. You read the paper, the City has a call notification system that could be used if you sign up for it. There are a number of ways for people who are interested. You can see the yellow sign and call the City and say, hey what's going on, on such and such a road? Where does the responsibility to notify end and an unreasonable expectation of service begin?

Dr. Morgan: Well I know what has been done in the past couple of years. I once received a letter from the City about a special use permit for a house that must have been at least 300 feet away where the owner wanted to do a home-based car detailing service. And so it's not that burdensome. But I also would have to say, especially if you're dealing with these really tall towers . . . as Jeremy said, perhaps a mile is a little far. Maybe a half-mile. You just may not see it. You may not see a sign if it's posted on the property, right? Because the tower is now going to be enormously higher. And I think the burden, certainly when you're dealing with these

companies like Verizon or Comcast or whatever, which are billion dollar companies, they certainly have the money to do widespread notification. And so I think the notification is important. And I think there really should be a proactive notification instead of relying on homeowners to read the newspaper or whatever.

Mr. Silverman: Beyond a direct call system, beyond newspapers, beyond notices here in City Hall, beyond civic associations getting involved?

Dr. Morgan: Well what I would say is that, to my knowledge, the City has not so far used its direct call system for any sort of zoning.

Mr. Silverman: That can't be answered here. It can be a recommendation that the City adopt an administrative posture but I'm not going to hold this up based on notification.

Dr. Morgan: Okay.

Mr. Firestone: Do you have a comment on any other aspect?

Dr. Morgan: Not really, no.

Mr. Firestone: Thank you.

Dr. Morgan: Okay. Thank you.

Mr. Firestone: Would anyone else like to make public comment?

Ms. Jean White: Hi, Jean White, District 1. I spent a lot of time reading the first one and didn't realize it was now the 11-page one. Why are the telecommunication towers and things being allowed to be on land and buildings in the City of Newark? I don't understand why that is in there. Someplace else it says that a private owner can reject having a tower or a device on their property. What about the City of Newark? If the best place is on this building for not our own uses but for some other company, is the City required to allow that if there is no other better place? It says a list of approved municipally owned buildings and parcel appropriate for wireless facilities placement is kept on file . . . and already Commissioner Hurd got the City Zoning, obviously he changed that part . . . but why does the City even have to keep this list, and are they required to let it be used for a private company? Or another possibility, is the City putting that in because they can make money that way? Anybody who puts one of these devices on top of your building can charge rent for it. So why is that in there? Does anybody know? Do you even understand what I'm trying to say?

Ms. Gray: Mr. Chair, would you like me to address that or no?

Mr. Firestone: Why don't you finish your comments?

Ms. White: You want me to finish all the things I'm saying first?

Mr. Firestone: Yes, please.

Ms. White: Okay, well let me just see here. Okay I was wondering why it went from 1/4 of a mile to 1/8 of a mile. What the reason was for that. And on Amendment 12 originally it listed that the towers, etc., etc., have to be compatible architecturally, etc., with the surrounding environment and to the greatest extent possible and promote the harmonious and orderly development of the zoning district, etc., etc. And originally it said Council shall consider whether the subject application promotes this harmonious thing. But that was changed to say factors to be considered include this. So does Council not get to be the one who decides if it's harmonious and fits with the character of the area where it's happening? And if Council is not the one to decide it, then who is the one to decide it? This is Amendment 12(h).

Also I didn't understand the meaning, and this is on page 6 of (b), the version before this said distances between church, library, school, nursing home and hospital or lots in all these different residential zonings, originally it said not less than three times the height of the tower or it said 350 feet, and it was changed to 200 feet. And I was trying to see what the effect of that was. But if I figured it out correctly, it's less of an effect . . . in other words, 350 was better but I'd have to think about it more carefully, so I'm wondering why that was changed.

And let me see, I guess I absolutely agree with John Morgan about the notification, and I do not think . . . I do like the idea of the sign. The City of Newark did not used to have a yellow sign when something was coming, like a development project. And I actually thank Ezra Temko, who was on Council at that time, for making that suggestion a requirement. Before it was only the county that did it. And I have, myself, many times stopped to read those signs to see what's happening. But I do agree with what was said by John Morgan that if it's on a busy highway, there's a busy highway where I've seen one of these in the county that I've been curious about, just for curiosity, but I am unable to stop because of it. I suppose there are other ways I could find out but nevertheless the easy way. So I do think there should be some form of written notification and how this is done . . . and I don't see . . . it seems to me there would be a way for the City to give the addresses to the company and then they do all the notification. I've gotten these before.

Mr. Firestone: Thank you very much.

Ms. White: I guess that's about it. Thank you.

Mr. Firestone: Is there anyone else who has anything they want to say or otherwise I would entertain a motion.

Mr. Cronin: Wasn't Mary Ellen going to respond to one of the questions that Ms. White had?

Mr. Firestone: What?

Mr. Cronin: Wasn't Mary Ellen going to respond? You asked her to wait for her response until after she had got through talking.

Mr. Firestone: She could. I mean the public comment period is a chance for the public to make comments . . .

Mr. Cronin: Sure, but she was about to respond to her first question and I think you said hold your response until after she finished her comment.

Ms. Gray: I can be brief. The collocation requirement, the intent of the collocation requirement is to try to minimize new structures. And the City has the right to say that a collocation on one of their buildings is not their preferred method and there might be a reason for that. For example, if it's on a utility pole if it would interfere with other things . . . that's not the right term . . . stuff is the first word that comes to my mouth . . . but the electrical things on the pole . . .

Mr. Silverman: Incompatibility.

Ms. Gray: Yes. If it was incompatible then, no, it is not a requirement for the City to accept that collocation. The 1/4 mile to 1/8 mile, I think we covered that. That was a request from industry, and staff and our consultant, the Cohen Law Group, didn't see a problem with that. Regarding Amendment 12 and changing the word from Council to factors, that's covering two bases. One, if it's an administrative approval, if the tower is under 35 feet within the right-of-way, then staff would consider the factors. If it's a special use permit, if it's over 35 feet and in the right-of-way or outside of the right of way, which is a special use permit requirement, then it would be in front of City Council and they would consider those factors, as well. The last one,

Amendment 18, 350 feet was in the original ordinance and that was a request of the industry and, after much discussion, staff and the consultant agreed that that was a de minimis change.

Mr. Firestone: Thank you. And I know our Council wants us to vote somehow. I think I, for one, can't support moving forward with this language and I would be more comfortable with a motion that extended the October deadline for a couple of months while we work with staff on both making sure the language is clean and also seeing, again, the rest of the ordinance, and perhaps thinking through and having staff think through this issue of public notice.

Mr. Herron: Mr. Chair?

Mr. Firestone: Yes.

Mr. Herron: Could I suggest an alternative to that?

Mr. Firestone: Certainly.

Mr. Herron: To endorse what Dr. Morgan said, if there is a concern about notice, I think there is a way to forward a recommendation to Council without obviously here trying to hammer out the specific notice requirement, and something along the lines of recommending that Council consider a change to afford surrounding properties more or better notice. That's a suggestion I have.

Mr. McIntosh: Mr. Chairman?

Mr. Firestone: Yes?

Mr. McIntosh: Could I ask our counsel a question?

Mr. Firestone: Certainly.

Mr. McIntosh: Good. Can we actually extend this period of time? I mean that was, I think, essentially what was being asked.

Mr. Herron: The Planning Commission can't. I suppose under the Code you are to consider and make a recommendation to Council. So you have considered and you can make a recommendation to Council, and it will go to Council and be up to Council to decide whether or not to extend the sunset period.

Mr. Silverman: Let's see if I can construct a proposal here. Given that the Planning Commission found issue with a number of points within the document as proposed through the amendments presented to us, given the public interest and the apparent interest on the part of Commissioners with respect to proper public notice, our recommendation would be that the Planning Commission be given additional time to work through these issues with staff and that our motion would be that the City Council extend the about-to-expire deadline with respect to October . . . what's the date on that?

Ms. Gray: October 10.

Mr. Silverman: For an additional 60 days to keep the ordinance extension in effect.

Mr. McIntosh: Can they do that?

Mr. Herron: Well I think the question would be whether the Planning Commission right now can do that. Because whatever recommendation you make is the recommendation that is going to go to Council.

Mr. Hurd: I mean I would comment that they've done it once already based on our recommendation. We extended it.

Mr. McIntosh: I mean I have no idea.

Mr. Silverman: The original ordinance that was presented, we could not come to an agreement on. We felt it needed more work. This is vague now. There was a round robin discussion with respect to needing more time, and I believe the recommendation was to extend. I think Jeremy crafted that.

Mr. Hurd: Yes.

Mr. Herron: I think the recommendation to Council was to pass the ordinance but with a sunset.

Mr. Silverman: That's correct.

Mr. Hurd: But I think originally it was 60 days and then when it was not . . .

Mr. Herron: It might have been 90 days.

Mr. Hurd: But then we . . .

Mr. Silverman: Can we extend the sunset? That's my question to Counsel.

Mr. Firestone: That could be our recommendation.

Mr. Silverman: Yes.

Mr. Hurd: I would second that.

Mr. Firestone: Any discussion?

Mr. Cronin: Yes, Mr. Chairman. It seems to me that I don't know that we have to, as a Commission, get it perfect, as perfect as we can make it in our own judgment, because if we recommend it up or down to the Council, they're aware of our deliberations and our concerns. I mean I know they read our minutes before they undertake their concerns and their discussion. So they get the benefit of our wisdom and our input and what's been developed here. But we don't have to pass them, I guess, a finished product up or down. We can pass them here is what we're aware of and things you might want to address as a Council, in their wisdom, because they have the final say. So I'm comfortable with just sending it forward since they're going to be aware of our comments and our input and any concerns we might have.

Mr. Hurd: I have to say while I respect that opinion, I'm unable to review and comment on the entire ordinance because I do not see the entire ordinance in front of me. So one of our, I mean many of our issues before were about consistencies within the language of the entire ordinance, and just looking at amendments doesn't tell me that that's been cleaned up. I can't tell that we've got some of those issues that we had identified have been addressed. Which is why I think we need the extra time to look at the amendment as a whole, with these proposed revisions incorporated into it, to examine it front-to-back. Because I really do think we're the group that can give these things the significant amount of time that they need. I think Council is pressed for time and can't necessarily get into the language and the consistency and some of the deeper issues that are in this and work it out themselves. I think that's our job.

Mr. Cronin: My thought on that, I think in future situations like this, I mean, we'd be well advised to have the full, I guess, ordinance with additions and subtractions identified accordingly but at the beginning of the presentation tonight Mary Ellen said that they've spent

a lot of time on this in the Planning Department and staff within the City to try to get it as correct as they see fit. It's been reviewed by Counsel here and certainly he and they are aware of how it fits into the pieces of the puzzle as a whole. So, again, I still think it's proper to send it forward with the knowledge of our deliberations and concerns, something the Council members are going to have, and they have the ability to delay it up or down or maybe even to extend the sunset.

Mr. Stozek: Can I make another suggestion? I know this is not going to be popular but quite often we have problems because Council meets every two weeks and we only meet once a month. What about the idea that we have a special meeting where we get the whole ordinance in our hands and have this meeting in two weeks and hopefully we can make a recommendation at that time?

Mr. Herron: If I could, Mr. Chairman, that wouldn't fit within the timeline of when this needs to go back before Council if you do that. I would . . . just responding to Commissioner McIntosh's comments, I think his point is that Council would view and look at all the comments that have been made. I think with the motion that's existing now . . . I'm sorry Commissioner Cronin . . .

Mr. McIntosh: I don't recall saying that but hey if it's really good, I'll take it.

Mr. Herron: But the effect of that will be the same with the motion that has been made. I believe a motion was made which is that the Planning Commission has considered it and made a recommendation to Council. It is being forwarded. I guess that's what I'm trying to say. It is being forwarded on to Council, and ultimately it will be up to Council as to what they want to do with it.

Mr. Firestone: My view is that the motion as proposed really has the same effect as what you're proposing, Commissioner Cronin, and, from my perspective, I'm more comfortable . . . I already was not comfortable, particularly, the first time that we had to pass an ordinance that we knew was defective but there was this emergency and that we needed to fill this gap, and so we did. And I would rather us get it right, extend the period and express to Council that's how we'd like to proceed. And it would be more of a contextual [inaudible].

Mr. McIntosh: Is the motion then to send something to Council that says we would like you to extend the sunset period so we may consider these, whatever things that we feel are important? If you don't think they're so important, go ahead and do whatever you want with it. But we do. I don't think we would put it that way.

Mr. Firestone: I would like to put forward a friendly amendment to extend it to 75 days given that we just missed it by a day and this will hopefully then . . .

Mr. Stozek: So we don't end up being a day short again.

Mr. Firestone: I don't want to be a day short or a dollar short.

Mr. Silverman: No objection. Sixty days was simply a working number.

Mr. McIntosh: I like 75. That's a nice number. I move we go ahead and do that, call the question on this discussion.

Mr. Cronin: Well another way to proceed perhaps is to vote it no because of these concerns about extending the date, etc., and, again, that passes the football to them. They're aware of our concerns and they know . . . they're probably going to read the minutes even more carefully . . . but that gives them an up or down from us. How they choose to proceed in their wisdom, it's up to them. But we say no because or yes, we want you to do this as a suggestion with the yes. Or a no because we really think we ought to have more time or extend the sunset date. I think Bruce is trying to say we ought to have a yes or a no as a commission to be doing our job.

And I think we can do a no, state our reasons, and then we still have the same effect. And if they want to give us more time as they see the big picture, then we'll have that time.

Ms. Vispi: And before we vote, could we restate what the motion with the friendly amendment was because, I have to admit, I'm a little confused?

Mr. McIntosh: I don't think you're alone.

Mr. Hurd: I would just, I think, add that I think this falls into the conversation that we had last month about rules about continuing items that we don't feel are complete enough to consider at this meeting. Because I'm not comfortable saying either yes or no to this. I'm comfortable saying I don't know enough about this to go forward on it. So I don't want to even send a note to Council because it still goes to Council with maybe a no-recommendation but it's now in their hands and I would really like to hold it, I think, at this table a little longer. So that's why I think . . . to me the intent of the amendment was simply to say we would like you to extend the sunset period 75 days. Period. No recommendation on the amendments at all.

Mr. Firestone: Okay. I think we're ready to vote on the motion.

Mr. Herron: I would only say that I think that is a recommendation on the amendments.

Mr. Hurd: Okay.

Mr. McIntosh: That sounds like affirmation to me.

Mr. Silverman: That will suffice as a recommendation.

Mr. Hurd: Michelle, are you clear on the amendment?

Ms. Vispi: I've got that it's to extend the sunset period by 75 days.

Mr. Hurd: Is that good with you, Alan?

Mr. Silverman: Yes.

Mr. Cronin: Is that an amendment or the motion?

Mr. McIntosh: That sounds like the whole motion.

Mr. Firestone: That's the motion and then the rest of what Commissioner Silverman said was the rationale, but that's effectively the motion.

Mr. Silverman: The whereas's are in the initial statement. The motion is very clean.

Mr. Herron: It's a motion to recommend to Council that the sunset period be extended by 75 days.

Mr. Silverman: Yes.

Ms. Gray: Point of order, it would be helpful to articulate, again, what the reasons are so if Council does move forward that staff can start working on what those issues are. Because I got a little lost too.

Mr. Firestone: I think there were three main reasons. One, we did not have before us the rest of the ordinance.

Ms. Gray: Okay.

Mr. Firestone: Within the amendments there were some issues with language, and then the third was raised by at least one or two Commissioners and by two members of the public, how to deal with notice to affected members of the public.

Ms. Gray: I only got two. I got seeing the ordinance in its entirety with the proposed amendments, public notice and then you said there was a third. What was the third?

Mr. Hurd: That there was still some language inconsistencies . . .

Ms. Gray: Oh, clean up the language.

Mr. Firestone: Clean up the language. So those three things.

Ms. Gray: Thank you.

Mr. Silverman: Mr. Chairman, may I offer a little elaboration on that first point that this document was difficult to fully comprehend out of context without having the entire ordinance, which I think is the initial problem. We're looking at a piece of the elephant, not the whole elephant.

Mr. Firestone: Okay, all those in favor of the motion, signify by saying Aye. Opposed, say Nay. Motion carries. Thank you.

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

THAT CITY COUNCIL EXTEND THE SUNSET PERIOD OF THE WIRELESS TELECOMMUNICATIONS ORDINANCE BY 75 DAYS.

VOTE: 6-0

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

NAY: NONE

ABSENT: MCNATT

MOTION PASSED

7. REVIEW AND DISCUSSION OF SECOND DRAFT OF PLANNING COMMISSION RULES OF PROCEDURE.

Mr. Firestone: The seventh item, and our last substantive item, is review and discussion of the second draft of Planning Commission Rules of Procedure, and I would note for the record that we did receive several public, I should say several private emails which were then distributed to the Commissioners. I don't know that we need a presentation of the changes unless . . . I think we can just start discussing the amendments themselves.

[Secretary's note: The second draft of the 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 comment 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.
3. The Commission will then receive public comment from all of those who are in support, then those opposed, and then those who neither support nor oppose.
4. When everyone has had an opportunity to speak, the hearing on the item will be closed.
5. Commissioners may continue to ask questions of applicant, staff or a member of the public who has made a public comment.
6. Chair shall call for deliberation.
7. 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 will grant or reject the request. *The Planning Commission may also continue the hearing should they feel they require additional information, or more time to review information and/or comments that was offered at the hearing.*
8. Planning Commissioners shall include the reason(s) for vote on each application.

Public Comment

1. Each person providing comments in support or opposition shall be allotted 3 minutes unless a longer time limit is permitted by a majority vote of the Planning Commission.
1. Public comment is limited to three minutes and be should be germane to the application.
 - 2.
3. A person providing public comment may only comment once during a specific public hearing.
4. The Chair may discourage duplicative testimony and may ask for members of the public to caucus to determine a spokesperson.
5. All those providing comment shall publicly state their name and address or City Council District 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.
6. Copies of any written statements or exhibits used during the hearing should be presented for identification and inclusion in the record.
7. 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 9:00 p.m. unless a majority of the Planning Commission present votes to extend the meeting. (perhaps the Planning Commission would like to start the meetings at 6:00 pm or 6:30 pm?)

3.

Additional Items

4.

1. The Chair may add Public Comment addressed to the Planning Commission to the end of the agenda. Public comment is limited to three minutes.

5.

2. The Chair may add Commissioners comments to the end of the agenda (time limit?).

Mr. Firestone: Is there anyone who has any comments?

Mr. McIntosh: I was just wondering what the rationale for having a group of people speak in favor and then another group opposed and yet another group who can't make up their mind. Is there any real value to that?

Mr. Firestone: I generally think there is but not in the context of three minutes in the regular procedure. I mean one of my issues that I have with the rules in general is that it doesn't deal with the hard cases. The complicated cases, where you really need rules. So if, for example, someone comes forward with a proposal to develop the golf course into a series of homes, that's going to be a complicated process and we're going to have a bunch of people in front of us. And we're going to have to, with these rules, still sort of make up ad-hoc rules on how to deal with groups of parties. Do we want to aggregate time? On something like that, you might want the applicant, the supporters and then the opponents. Where you think there's a significant possibility of contention and litigation, then it might help to have that set-up. But I would agree. In the regular context it's probably not necessary for 95% or 98% of the applications that come before us.

Mr. McIntosh: So, if that's the case, we would know something coming before us is either . . . although I must admit I did not think this last one was going to go on 45 minutes . . . but be that as it may, typically we will know if there is something of substance coming before us that is going to be electric, if you will. So it's a power plant. It's a golf course. The normal ebb and flow of things that come before us just kind of come before us. There may be some issues. So why don't we deal with those things that we kind of know are going to be that, you know, separately? These rules could be suspended for particular presentations or where the public interest actually demands something more than what we would have and, I think, in our recent past the best example of that would be the power plant.

Mr. Stozek: I think the other issue you run up against is you're still going to have the sign-up sheet, correct, where people sign up when they come in and they'd like to speak. And how are you going to juxtapose that because you typically take that in the order in which they signed up. Unless you're going to have a sign-up sheet that says whether you're for or against. But I agree with Frank. I think we can make an exception to the general public speaking if we know there's an issue we need to control, rather than have that control over every issue that comes before the Commission.

Mr. McIntosh: I mean I've sat in meetings where we have one person after another after another saying the same thing, over and over and over again. That never moved me to do anything. But it's also really a waste of time. We should be dealing with the issue. So when somebody is coming up and they have a different point of view, I really want to hear that. But if it's the same point of view, I've already heard it. And it becomes, usually in these things there's folks that, you know, are gathering their troops together to hold onto a position and so they get a spokesman, or two spokesmen, or three. I don't know. I don't care what it is. But, you know, it's . . . when we have two people in the room, it matters less than if we have 200 people in the

room. And I just think we need to think about that. And I think that you deal with the exceptions as exceptions and we shouldn't be making rules for the exception except when it comes about.

Mr. Silverman: Building on what Frank says, if we know it's going to be hot button issue . . . 100 acres, a use that's not popular, impact on utilities . . . I think it's our responsibility as a Commission . . . and I'm going to use the word stage-manage . . . that maybe the meeting before it's scheduled, we as a group ask the Director what's been the public response. We look at the written responses. We all read the local paper and we decide, okay, this is going to be a complicated meeting and maybe this is the way we approach it. If the applicant, for example, has a very large project and they've anticipated, and they've voluntarily done a traffic impact study, I want to hear it. I don't want to tell an applicant, you have ten minutes. You cram everything in there. Give me the highlights. If the applicant's already made arrangements with the City to donate property for a water tower and pay for additional water connections, I want to hear all that technical side as part of my review of the entire project. So maybe if it's a hot button issue, with the advice and consent of the Director that we as a group, the meeting before, decide how we're going to handle a circumstance. I've used a format where when it's something that's big, federal officials speak first, EPA, highways, civic association groups, individual civic associations, neighborhood associations and then we finally get down to the individual. And usually by the time all those groups have made their position clear, somewhere in there, the five or six people who want to talk about the traffic conditions, it's already been covered by their civic association. There are ways of managing those programs beforehand.

Mr. Firestone: Another issue that I'd like to bring up is the timing related to applications. And we've talked about this at other meetings but nothing about it was incorporated into the rules. I'd like there to be a provision that said that for it to be considered by the Planning Commission and to be considered to be timely, the applicant has to file it with the Department the Tuesday before our meeting. That doesn't mean they can't do a presentation, but the presentation shouldn't be a back door to get around that, and that we could nevertheless, by some sort of vote, agree to consider late submissions but the sort of standard way of operating is to get it to the Department by a date certain. If they don't, then they have to wait an extra meeting in order to be considered. So this sort of getting something the day before and then getting something else on the day of or the night of, and then we're supposed to be reading them, we can't really do our job effectively and we're all volunteers here, too. So it's got to be respectful of our time and really respectful of the public who may have interest in a particular issue, as well.

Mr. Silverman: Well I find the packet delivery time we have given to us as Commissioners an adequate time to review. I'd like to see the packet distribution day be the drop dead time for all written communication, whether it's a report from the communications people or whether it's an email from a concerned citizen. If we don't get it to be included in that packet, unless that individual comes to us and gives us verbal, in public, information, that it's excluded. The drop dead date for everybody, the applicant, and the public for anything in writing that they intend to have presented for us to consider, goes out with the packet.

Mr. McIntosh: Well you realize if you do this, you'll actually have to do it.

Mr. Silverman: Yes.

Mr. McIntosh: And so anybody can be trained, right? Even developers. So if you tell them that this is what it is . . . I said that lovingly . . . if you tell them this is what it is, your package in its entirety must be here one week, or maybe it's more than a week before because you have to then get it out somehow, so it can't be on that Tuesday, it has to be maybe two weeks before the meeting. I don't know, whatever it is, pick a time. And if it's there, then we'll consider it. If it isn't there or if it's incomplete, you may not want to put that in front of this group if it's incomplete. So maybe you want to think about coming to the next meeting. I have no problem with that at all. I think it's a really good idea.

Mr. Silverman: Well your idea of a sense of urgency does get things done and I think the public's written, free hearing comments should be treated the same way, that there's a drop dead date.

Mr. Firestone: Commissioner Cronin?

Mr. Cronin: Yes, I disagree with Commissioner Silverman on that. I mean, you know as a Commissioner in this public role as a volunteer, if I have somebody that approached me two days before and offers a verbal opinion or comment, I always tell them I'm happy to have their knowledge because my mind is always open until I get all the information at the meeting and my judgment is reserved until I get all the information that's relevant to the topic. But I'm always happy to have the information from a member of public, whether it's email, whether it's a letter that's unsolicited that comes USPS. And the idea of saying because it's not here seven days before the meeting, to me, strikes, it doesn't warm my heart because I think members of the public might not know what they think until they see you on the sidewalk and share a thought or something like that, about a point of this or that. And I think we should receive information willingly, at least from members of the public, right up until we vote.

Mr. Silverman: You say we . . .

Mr. Cronin: The Commissioners.

Mr. Silverman: Look at the discussion that went out on one of the proposals tonight. There was an objection to the Director sending information to us . . .

Mr. Cronin: Oh, I understand that.

Mr. Silverman: To have beforehand.

Mr. Cronin: But I think that's . . . the objection would have merit, in my judgment. I can see one thing, perhaps having the applicant have everything there seven days ahead of time and not incrementally coming in with last minute changes a day or two, or whatever, during the seven day period.

Mr. Silverman: 100% in agreement.

Mr. Cronin: But members of the public, I think I'm open right up until the last speaker, until I walk in the door from the parking lot, or whatever.

Mr. Firestone: I agree that they shouldn't be held to the same date. I mean it doesn't make sense to hold them to the same date because they have to have an opportunity to read the application and the Department's analysis before they can intelligently comment. So to say they have the same date doesn't make sense. If we're going to allow emails, I do think there should be a . . . or handwritten things . . . that there should be a deadline. We shouldn't be given emails for the first time and be expected to be reading it while we're considering other business. So at least 24 hours in advance. As well, I think that if we're going to allow emails, it shouldn't privilege those individuals who know a Commissioner or, you know, know the emails of staff people or have just the general chutzpah to do these things. That it should be a known email address and that anyone who submits an email if it's going to be like a comment, it should be posted on the website and available for the rest of the public to see, just like oral public comment. Because otherwise it goes somewhat hidden and is . . .

Mr. Silverman: I object to hidden. It's public as soon as it's received by the Director. You have to ask for it. You could call the day before and say have you gotten any emails.

Mr. Firestone: Hidden is probably not . . . it's not as open as someone coming here and speaking live versus someone submitting an email to us that others may or may not read.

Mr. Silverman: Early on we went through this when you initially came on the board, Mr. Chairman, and questioned, for example, I would send out information. We agreed that any information that was going to be distributed, and I think this was run by our attorney, the contact point would go to the administrator who is our Commission administrator, and it was the administrator's responsibility to make sure that all of us got the information and it was properly posted. I think that answers the question. I agree that we should not individually get emails from individuals. Or, if we do, we should forward them to the Director, so that the Director can make sure they're distributed to all the Commissioners and, in this electronic age, it's very easy to scan and continuously update what's online for those people who take the community responsibility to keep up on the topic.

Mr. Firestone: Yes, I just saying they should be posted online. That's all.

Mr. Hurd: Mr. Chair, if I could add. I think what I'm hearing is the issue is that those emails don't make it into the minutes. So if someone reads the minutes from this meeting, they can hear the verbal testimony given but they do not have the email testimony that was sent. So maybe there's a mechanism in which we can find a way to attach them to the minutes as comments received on this item as part of the deliberations. And I don't know how they do it on the website, whether there's a way to sort of amend the packet or how that's done. But I think certainly the official record really is the minutes and if there's a way to sort of go, okay here's PDFs of those emails, so that we come back to this a year later and go, oh yeah, there was that thing and that thing. Because otherwise I think you're right. It becomes a little opaque as to when did that comment come in and how was it considered and who saw it and how did we . . .

Mr. Silverman: Well then one of our recommendations should be that any written communication such as these emails be attached as part of the official record and be attached to the minutes. That I think is a standalone issue. We're talking about notification prior to the public hearing and the distribution on that. And I'm very comfortable with allowing the public, up to like 24 hours before, whenever it's practical to get it publicly posted, but the distribution point would be the Administrator to the Commission, and it would be their responsibility to make sure that it's properly posted and available to the Commissioners.

Mr. McIntosh: I think a lot of very good points are being made. The public does have the right to make comments and so on. They can't really make comments until they see what they're commenting on, right? Therefore . . . although that doesn't really stop anybody . . . it's something that they should have that ability to do. So why don't you just back up when the proposal has to be in by the developer or whoever . . . the petitioner, I guess, is the right term . . . so it's not a week before and it's not two weeks before. Its three weeks before. We publish that. That gives the public plenty of time to look at that, if they're interested in doing so, and those that are will be, and they'll have plenty of time to contemplate what this petitioner is asking for. And it's simply a matter of that's the way it is, right? If you want it, if you want to put something before the Planning Commission, these are the rules. And you have to get it there then, and then we're going to publish that, as we always do, and the people in the community will have the opportunity to comment, via email or any other way, and it will be part of the official record of the discussion. And that's it. You know, there's plenty of time. It's just a question of putting the stake in the ground.

Mr. Silverman: The system in place.

Mr. McIntosh: So here it is. From now on you know you can't have it that way. From now on, it's this way. If you don't like it, well, build in Newport, you know. It's simple. They will do that. All you have to do is tell them. They will adjust whatever it is that they have to do to make it if they want their project to go forward. And then the need for the public to have time to contemplate what it is they're saying is there. Give them enough time to do it so they can be thoughtful about it. And then we'll have a deeper and better discussion when all is said and done. And we will also have the opportunity to absorb these comments in advance.

Mr. Silverman: Yes.

Mr. McIntosh: Because if somebody comes up to me and says read this in the parking lot out there, I'll say thank you very much and it won't get read in all likelihood because my mind is on something else.

Mr. Firestone: Chair would now entertain comments from the public consistent with published rules at three minutes.

Dr. Morgan: Thank you. John Morgan, District 1, again. And I think I agree with what seems to be the emerging consensus on the dais that developers should get their plans in more than one week in advance and members of the public should be allowed several days to know that they're there and read them and think about them and try to understand them, keeping in mind that many members of the public have jobs and families and so on, and need to find the time to analyze things carefully. Now I did send you all a number of comments in email and I also saw the email that Helga Huntley sent to Jeremy Firestone earlier this afternoon. And I would have to say that I think I agree with pretty much everything that Helga Huntley wrote in that email.

I don't know to what extent, because you haven't discussed it at all yet, you've accepted my suggestion or rejected it that developers should submit an affidavit that their plans are accurate and that they should affirm that when they come to the meeting, and that they and members of the public should not be simply making comments but should be giving testimony under oath, which has been the process for the past many years before our Board of Adjustment, even over relatively minor issues. I think that is important because there have been, in recent years, some cases of, I won't really call them bait and switch, but certainly where plans have changed in a substantive way between the presentation at the Planning Commission and what actually gets built a couple of years later. And with the Chair's permission, I would like to distribute print-outs that I made of the minutes of a meeting of the Planning Commission from ten years ago regarding a parking waiver for which the applicant is supposed to have demonstrated that his business is not significantly dependent on automobile traffic as a primary means of conducting business, and then several years later the applicant comes back and says the City really needs to build a parking garage to accommodate my business. There's a contradiction there. And I think if that application for the parking waiver had been accompanied by a sworn affidavit and testimony was given under oath, it might not have been such a casual process. And I will stop at this point.

Mr. Firestone: You can hand out a copy of that.

Dr. Morgan: Okay. Thank you.

Mr. Firestone: Would you like to comment? He's finished.

Ms. White: Okay. I guess these are his things on here. Okay, Jean White, District 1. I'm looking at the sheet that was in the packet and as I understood it, you had not yet voted on this, so I'm surprised that you already have a three minute limit.

Mr. Hurd: We're trying it out.

Mr. White: Okay. The first page, #3, the Commission will then receive public comments from all those who are in support, then those opposed, and then those who neither support nor oppose. I don't like that wording. I think for a development project, it might be appropriate to say those in support first and those opposed, but the third category, as discussed not only in my comments but maybe I think in possibly the email I just read of Dr. Morgan's, there are reasons to talk. They might oppose under one situation but support under another, or want to make clarifications or ask questions. So if you have to keep that, I think it's only for development projects that this oppose and whatever. For example, the telecommunications, you're not

going to say who supports it? Who opposes it? Or even this, you're probably not going to say who supports rules of procedure and who opposes it? In other words there's only certain types of things before you that that's appropriate. But the third thing would be, if you have to put that in, which I don't know whether it should be that way, I think you just ask for comments and that a particular development project, the Chair can say we'd like to hear from all those who support it first. Now we'd like to hear from those opposed. I don't know if it has to be in the rules of procedure. But the third category, if it has to be in there, is then those who have other comments.

Okay, down on #7, this is just a wording thing and therefore not really important. The Planning Commission shall make recommendations, I think it would be better to say concerning the application or on the application, not of the application. Further down in that paragraph it talks about the Planning Commission may also continue the hearing. Now you all may know what you think about this but this is going to be something the public reads, another continuance like at the Board of Adjustment where they continue it to the next meeting while the applicant does something he has to do. But if that's what you mean, continue the hearing to the next meeting, I thought it should be worded better.

And let me just see here, on the opposite side of the page under Public Comment, each person providing comments on a specific agenda item I think has been raised, you know, on the subject at hand, should be allowed three minutes. I argued for more but I guess I have no clout in this. So in other words I don't think you have to say in support or opposition. I think that can just be taken out. Each person providing comments should be allotted X minutes. You don't need in support or opposition.

And then on #2, you don't have to have the three minutes there because you already have it on #1. And I think it can just be public comment should be germane to the application and that's sufficient. Of course defining what is germane is I guess up to the Commission. For example, the Barksdale Green development had many, many people who spoke who lived in another development by that same developer who were only talking about what a wonderful person he was, but they weren't addressing the particular project at hand on Barksdale. They weren't addressing anything, it was like testimony or comments about how wonderful the developer was. So germane is a little bit in the eyes of the beholder, but I think you know what you mean.

Okay, again, #3, a person providing public comment, it may be understood, it's only on that particular agenda item, not public hearing.

And down at the bottom where it says additional items, and this is a new section that you're all considering adding, I would word it differently. I think it is something you could do. The Chair may add public comment . . . let's see, what am I saying here . . . the Chair may add public comments specific to the general work of the Planning Commission at the end of the agenda, rather than just public comment in general. There's a big difference between City Council meetings where somebody . . . this is toward the beginning of the meeting . . . someone in this room can get up and talk about anything they want to talk about. They can talk about gun control. They can talk about some problem they have with their electric. They can talk about anything, even things that are not on the agenda at all.

Mr. Firestone: I would probably rule them out of order if they did that.

Ms. White: No, this happens all the time. This is the public comment . . . I'm talking about at a Council meeting.

Mr. Firestone: Yes, but I'm talking about the Planning Commission. They'd be ruled out of order.

Ms. White: Okay, at the Planning Commission, I think it's understood at a City Council meeting that a member of the public can get up and talk about whatever is on their mind. In this case I think it should be something relevant to the work of the Planning Commission.

Mr. Firestone: I think we're in agreement.

Mr. Silverman: Yes.

Ms. White: Okay, but then I think it should be stated the general work of the Planning Commission. You know, I think when Dr. Dennis came, one could argue that floodplains were something that could be eventually considered in the area or the future of the Planning Commission. But there are other things, the kinds of things that happen at a City Council meeting which would not be. It's not just another chance to talk. Okay, I will stop.

Mr. Firestone: Okay, thank you very much. Do any Commissioners have any other comments?

Mr. Hurd: Oh, I do, because I think we haven't really . . . we've talked about several items but I don't think we've really gotten into the meat of the document itself. So I would like to, with your indulgence, sort of walk through that with my ideas and thoughts. But I do want to thank staff for getting this down to one page double-sided because that makes things a lot easier.

Mr. Silverman: And I like the use of color also.

Mr. Hurd: Yes. I've been trying to incorporate things as we go along but I guess for starters, and maybe this is sort of to Dr. Morgan's point, these are more rules of procedure than ordinances controlling our authorities and such. So I'm not sure we can say things like under oath or affidavits without getting into the City Code. I'm not sure. That may be a question to our Counsel as to whether that's even something we can be talking about at this point.

So I guess for Public Hearing, I would say Item 1, the Planning Director will provide an overview of the item, I think is the simpler way to say that. I think 15 minutes is good for a presentation unless we know. And I think if we say to the applicant, you're going to have 15 minutes, is that going to be . . . can you get in everything that you need, or something, and they say well I've got substantive things . . . I don't know how to elicit out of them that they're going to need more than 15 minutes unless the Director says to them, you're getting to have 15 minutes unless you ask them ahead of time.

Mr. Silverman: This is where the kind of pre-meeting with the Director . . . I don't need to listen to a fashion show about all of the projects that a builder built . . .

Mr. Hurd: Right.

Mr. Silverman: Talk about what you're going to be doing in front of us tonight.

Mr. Firestone: I mean I personally think 15 minutes is generous.

Mr. Hurd: Yes.

Mr. Firestone: If anything, it's too long for the standard presentation.

Mr. Hurd: Possibly.

Mr. Firestone: I mean we've read their application, we've heard from the staff. I mean I'm comfortable with 10 minutes for the standard and that in certain circumstances we could lengthen it.

Mr. Hurd: Okay. I guess what's not clear to me, and maybe this is . . . how do we determine that they're going to need additional time and how do we vote on that without cutting them off at 15 and then going, wait did you need five more minutes?

Mr. Firestone: Well we will have read their application and will know the context. I think from reading the application and understanding the complexity of the development proposal, we ought to be able to make a decision. We should be making it before they start . . .

Mr. Hurd: Okay.

Mr. Firestone: Not in the middle.

Mr. Silverman: Agreed.

Mr. Firestone: You know I was a practicing lawyer for many years. The court gives you 15 minutes and you've got 15 minutes.

Mr. Hurd: Right. Okay.

Mr. Firestone: And then you sit down. And you've got to learn how to give a presentation.

Mr. Hurd: Okay.

Mr. McIntosh: That's exactly the point, I think.

Mr. Hurd: So then should this say something like, basically a period after the application, and then say the Chair can, in consideration with the Director, extend that presentation time? Or the Chair, in consideration with the Commission? Some way to indicate that we've kind of thought about the context and the complexity and have decided ahead of time to say you're going to get a little more time. But otherwise, and this is sort of to Frank's point, the standard should be you have 15 minutes. Period. We don't have to tell them, necessarily, that there's a way to get more. We can decide if we want to give them more. Is that sort of what I'm . . .

Mr. McIntosh: Well I think that it would, the onus would be on them. If they see 15 minutes and they say there's no way on God's green earth I can do that in 15 minutes, then they should have a conversation with Mary Ellen to say I can't do that in 15 minutes and here's why.

Mr. Silverman: How do they communicate that to . . .

Mr. McIntosh: And then . . . and I would think that that would happen on a very rare occasion . . .

Mr. Silverman: Yes.

Mr. Hurd: Yes.

Mr. McIntosh: People have a tendency to use the time allotted to them, and then some. So what we want is the essence of their proposal . . .

Mr. Hurd: Right.

Mr. McIntosh: And it's up to them to boil it down to that. And if they want to use their time saying what nice people they are . . . and I do remember that meeting you were talking about . . . a great guy, I think. He could probably build me a house, if he'd like. But the point is, the onus is on them to get their points, what they think are vital for us to hear from them, it's their moment under the sun, right? They've got all their written stuff here. We've read it. We've absorbed it. We're going to question them about it, etc. Now do what you want. You've got 15 minutes, if you use less, probably people will like you more.

Mr. Hurd: Well in that light, I'd say Item 2 we should just say the applicant will be allotted 15 minutes to present the application. Period. And if there is more time that's going to be needed, I think you're right. I think they would go to the Director. The Director might talk to the Chair. There would be a conversation at that level and then when we show up at the meeting, some sort of decision has been made to say this looks like a 20 minute presentation because they've got a traffic study, they've got something else, and that's . . .

Mr. McIntosh: And I would, personally, not have any problem with that unless it happened every month.

Mr. Hurd: You're looking doubtful, Mr. Chairman.

Mr. Firestone: Well, no, I think the language says that. It says a longer time is permitted by a majority vote of the Commission.

Mr. Hurd: But what's not clear to me is what's the mechanism to ask for, allocate, and the vote? Because you sort of say I think we want to give them five more minutes, is everybody okay? Yes, yes, yes. If you showed up and said we met with the applicants and they said they're going to need 20 minutes, I'd be like, that's fine. I don't think it's something that we need to vote on at that moment. I think when we show up, that conversation should have already happened based on the content of the packet and based on the scope of the project.

Mr. McIntosh: I'm in agreement with Will. I would personally say that if you and Mary Ellen, or Mary Ellen and you, had that discussion and you came to us and said we're going to give them 20 and here's why, I wouldn't have any problem with that. You're the Chair of the Commission. You're so capable of doing that. I trust you. I know you wouldn't waste a minute if you could avoid it.

Mr. Firestone: I do my best.

Mr. Cronin: Why not just say allotted 15 minutes unless the Chair enables otherwise?

Mr. McIntosh: In advance.

Mr. Cronin: Which can be in advance or it can, if the way things are going, the Chair might turn to us and say unless the Commissioners object, I'm going to give them three more minutes.

Mr. Hurd: That's the other thing. That's a good point. It could be that we're going to extend unless there's an objection . . .

Mr. Cronin: Yes.

Mr. Hurd: Which is basically if nobody says anything, we're going to keep rolling as opposed to having to stop, take a vote . . .

Mr. Cronin: Let the Chair run the meeting. Unless the Chair enables otherwise . . . for example, tonight there are six people here. What's going to be the majority of the Commission if it's a 3-3 tie? So that's a complexity when you have majority in there. So just say unless the Chair enables otherwise, and it will flow okay. We've got confidence in the Chairman.

Mr. Hurd: But that gives us some control on that. Okay, we beat that one to death. Item 3, I think from everything I'm hearing, I would say that we just say the Commission will then receive public comment. Period. And we just drop all that other stuff. Items 4, 5, and 6 are fine. The only thing I'd say on Item 7 just that this is grammatical. I would say that the Planning Commission may continue the hearing blah blah to review information and/or comments that were offered at the hearing, as opposed to was.

Mr. Firestone: And I think Ms. White was correct. That should be an on rather than an of.

Mr. Silverman: Yes.

Ms. Gray: I'm sorry, where are you?

Mr. Firestone: On 7.

Mr. Hurd: Where is the of?

Mr. Firestone: Planning Commission shall make a recommendation on the application.

Ms. Gray: Yes, that's a typo.

Mr. Hurd: The public comment one, I guess this is how I would approach it based on comments that I've been hearing and things we've been reading. I think Ms. White sort of clarified it for me in my head. You could say each person providing comments shall be allotted three minutes unless a longer time limit is permitted, maybe again, by the Chair. Because, again, you could say it's a big or complex thing and people are going to need more time. They're going to need five minutes or something. Second, I would say Public comments should be germane to the application. If we want to we can put in that line and not testimonial because I know testimonial had come from your original draft, Mr. Chair. Germane, you think covers it?

Mr. Firestone: The germaneness requirement is good.

Mr. Hurd: And then you could say a person may provide public comment once per item, and that covers Helga's issues about you don't want to limit them to one comment for the entire meeting.

Mr. Stozek: I would say agenda item.

Mr. Hurd: Agenda item, thank you.

Mr. Silverman: Yes.

Mr. Hurd: Because we were talking about the agenda items. I think the thing that I would add, and this is, I don't know if this picks up everything, but it might be #8, you could say . . . because the issue of written comments I think is going to be a tricky one . . . but I would probably say here, #8, written comments received by the Commission, I think if we say 24 hours before is the timeframe, they could be available on the counter there as the packets are. We could say it has to be 24 hours because there is a copy of them right there for anyone coming to the meeting to collect, and they are included, by amendment, to the minutes from the meeting.

Mr. Firestone: I think close of business on the day before.

Mr. Hurd: Close of business.

Mr. Firestone: Close of business on the day before. Something could come in at 7 o'clock.

Mr. Hurd: Yes, 24 hours is a weird one. You're right. So close of business Monday, basically, for a Tuesday meeting.

Mr. Silverman: And we can get here early enough to sit down and read through something in 10 or 15 minutes that's in our packet.

Mr. Hurd: Well it could still be emailed to us.

Mr. Silverman: Yes.

Mr. Hurd: But that gives the staff time to make the copies, put them out there and do all that. I did like sort of incorporating in the Planning Commission item the Council's condition that the item in consideration when the time expires is completed. However they phrased that. If you say we have a 9:00 p.m. cut-off but we're in the middle of something when 9:00 p.m. rolls around, we finish that and that's what we stop with. I am not going to support starting the meetings at 6:00 p.m. or 6:30 p.m. I'm just not.

Mr. McIntosh: Amen. I'm with you, Will.

Mr. Firestone: Yes, I could maybe suggest that we shoot for 7:00 p.m. and it starts at 7:00 p.m. and ends no later 9:30 p.m., which is sort of halfway between the two. I mean tonight we're going to 9:30 p.m. It seems we . . .

Mr. McIntosh: [inaudible]. You don't want my opinion.

Mr. Firestone: I know your opinion. That's why I'm saying . . .

Mr. McIntosh: How about this? I'll leave at 9:00 p.m. and you guys can stay. How's that?

Mr. Firestone: I didn't draft it. It was originally at 10:00 p.m. and I think your point is very well taken. That's why I . . .

Mr. McIntosh: Then stick with it.

Mr. Firestone: I'm willing to say I think 9:30 p.m. I don't want to have to keep having motions to extend the meeting, so . . .

Mr. Hurd: Yes.

Mr. Firestone: I'm just trying to come up with . . .

Mr. McIntosh: But you see what will happen when you have 9:30 p.m. . . .

Mr. Firestone: No. I'm going to be ready to get up and leave.

Mr. Silverman: That's the responsibility of the Chair.

Mr. McIntosh: I understand that. I do. Trust me. I do understand that. I'm just saying that's what happens. It's just what happens. So if you leave it 9:00 p.m., maybe you might get out by 9:15 p.m. or maybe 9:30 p.m. But if you make it 9:30 p.m., it's going to be 10:00 p.m. I won't be here but you could be.

Mr. Hurd: Yes, I will leave that time up to the Commission to decide. My sense . . . the only thing I would add is that my sense is that there's a lot that we're trying to get in each month and to shorten the time and push things out further, I think, is going to make problems down the road at some point. That said, we could probably be a little more efficient. But I think it's also . . . for me, I think it's the conversations and the discussions around the items that to me is the most important part of this process.

Mr. Firestone: Do we want to place any limits on ourselves?

Mr. Hurd: Hmm.

Mr. McIntosh: Why would you do that?

Mr. Firestone: Well you know having seen some of these . . .

Mr. McIntosh: I'm kidding.

Mr. Firestone: These recent senate hearings where the senator has five minutes for questions and then you're out of there. You know, do we want to constrain ourselves? And the five minutes is both the questions and the answers.

Mr. Silverman: But aren't we supposed to deliberate among ourselves? If I had my four minutes and 45 seconds, and Will has a very good point that I want to support or add to or I oppose, I've got 15 seconds to say no?

Mr. Firestone: Good point.

Mr. McIntosh: Well I don't think we have to get to quite that level. But I do think that managing the meeting . . . and this is not a comment on anybody's management of this meeting . . . I'm just saying managing a meeting is an art form. And you can do it and do it well and successfully by keeping people on task, that's all. And people will conform to that. I've experienced it many, many times. If you say this is what it is, then people will conform. And they won't be any worse off at the end. They will still make their points. They'll just make them better. And the same will be true of us when we're talking.

Mr. Hurd: I don't know if that intention needs to be written into that section under Planning Commission. If we're going to say 9:30 p.m., then we could say, you know, the Chair and the Commission members will endeavor to be efficient or be focused on that time.

Mr. Firestone: Okay, I've got an idea. If the meeting ends at 9:00 p.m., but the Chair may extend to 9:30 p.m., then any further extensions take the majority of the Commission. Then you can put all the burden on the Chair to be the bad guy.

Mr. Stozek: As it should be.

Mr. Hurd: Yes.

Mr. Firestone: If the Chair fails to run the meeting properly so as to end by 9:00 p.m., then the onus is on the Chair.

Mr. McIntosh: Well it would be anyway.

Mr. Firestone: I can live with 9:00 p.m. I'm just trying to . . .

Mr. McIntosh: I guess in the end is what you . . . if that's the right thing to do, if we commit ourselves to doing that and then we give it enough time to work it, we'll find that it will work. And what we're doing is hedging right now. We're saying well, gee, oh boy, and okay, well we'll do that. Either you do it or you don't do it.

Mr. Silverman: I'm open to just leaving it in. Let's try it. If we find that it works in 99.9% of the cases, then we've accomplished what we want. And these are our own internal rules. We can change them at any meeting.

Mr. Firestone: I guess I could be okay starting with 9:00 p.m. We'll see how it works.

Mr. McIntosh: Start at 9:00 p.m.?

Mr. Firestone: No . . .

Mr. Hurd: Finish at 9:00 p.m.

Mr. Firestone: End at 9:00 p.m. and we'll see how that works.

Mr. McIntosh: I'm okay with that.

Mr. Cronin: Another thought on concluding the meeting, we could say something perhaps like Commissioners are not expected to remain after 9:00 p.m., or [inaudible] by 10:00 p.m., if they so see fit.

Mr. Silverman: Or we start getting paid after 9:00 p.m.

Mr. McIntosh: Now I'll stay.

Mr. Cronin: But then that provides the situation if you're motivated and really into something and you're in the zone, you can stay. But if enough people leave and you don't have a quorum, well then that kind of makes the meeting over.

Mr. Silverman: Oh, I think . . .

Mr. Firestone: Well I think you can always leave . . .

Mr. Cronin: You always can, but just the same . . .

Mr. Firestone: I don't think I'd want to put that in a rule.

Mr. Cronin: It was a thought.

Mr. Hurd: I think it would be something to be known as the Commission that gets things done in two hours.

Mr. McIntosh: Well it could set a new standard. You turn that over to a school board.

Mr. Hurd: Or Council.

Mr. McIntosh: Give them a little run for . . .

Mr. Cronin: The Commission takes pride in accomplishing their work in two hours.

Mr. McIntosh: Well, you know, it could become a new standard. May I make a . . . not to take us off this . . . but where it says public comment is limited to three minutes and should be germane to the application, why not must be?

Mr. Firestone: I'm fine with must be.

Mr. Hurd: Oh, yeah.

Mr. McIntosh: I mean Jiminy Croak. Should be? Oh, well, you know you said it should be.

Mr. Silverman: Actually we can only consider . . .

Mr. Firestone: When I was a lawyer writing legislation, the other side was always shall and for the government it was always may.

Mr. McIntosh: I get it. I understand that. I'm just saying that if it's germane, it must be germane. If it's not . . . my trainer's name is Jermaine. Does that mean anything? Probably not. It's after 9:00 p.m. though.

Mr. Silverman: I support the proposals and the changes that we've been putting out among the group. I'm behind all those 100%. I have two sidebar things I'd like to bring up. One is the legislative style that's used in our minutes works very well, where each line has a number. And I would find it personally easier to follow some of this stuff if somebody could refer to line 105 as opposed to trying to figure out paragraph B, subsection A, third line in, kind of thing. I think that makes these kinds of deliberations much clearer. Legislative format is there for a purpose.

And secondly, something that our Director brought up at an earlier meeting which really got me thinking about what I didn't know about the Code and the issue we've had with inconsistencies in the Code. The reference to a 40 day time period delay that was discussed I believe at our last meeting, I'd like to recommend that in a future agenda that we ask that an ordinance be crafted to bring everything that the Commission deliberates on in-line with that 40 days. That if we want to postpone something, to be fair to the applicant, to be fair to the public, it doesn't get postponed indefinitely. Forty days, as our attorney commented, from the time of the hearing or the presentation, it looks like in looking at a calendar, it carries us to the next meeting. So it essentially says we must make our decision at the next meeting. We just can't let it float forever. But that's a sidebar issue and would require legislation as a Code amendment so it's consistent throughout the document on every deliberation we have.

Mr. Firestone: Any other comments? Just from Commissioner's only.

Mr. McIntosh: On what?

Mr. Firestone: On the proposed rules. Okay. Anyway, Mary Ellen, I want to thank you for this draft and we'll continue to move forward and it seems like we'll be discussing this at the next meeting.

Ms. Gray: Alright. Draft three.

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

Mr. Firestone: That then takes us to Item 8, which has been withdrawn, which then gets us to New Business.

[Secretary's Note: Item 8 was withdrawn until a future Planning Commission meeting.]

9. NEW BUSINESS AND INFORMATIONAL ITEMS

Mr. Firestone: I would just note that we had something on Free the Parking Space. Does any Commissioner have anything else they would like to bring forward? Frank?

Mr. McIntosh: Very briefly. The Parking Subcommittee is active. We have our full complement and we have a meeting set for our first meeting. It is going to be on the 17th of August. Am I right?

Ms. Gray: Hang on.

Mr. McIntosh: Yes, I'm pretty sure it's the 17th at 4:00 p.m. in the afternoon in this very room. And it will be a one hour meeting.

Mr. Firestone: I wouldn't expect anything more.

Mr. Hurd: Or less.

Mr. McIntosh: Well, less. I did say it could be less.

Ms. Gray: Let me double-check that date for you. I think that's right.

Mr. Silverman: Frank, is the rumor true that I heard you bribed the building maintenance people that the lights and the air-conditioning go off after one hour.

Mr. McIntosh: I can't reveal my secrets.

Ms. Gray: It is on August 17 at 4:00 p.m. in Council Chambers.

Mr. McIntosh: In this very room.

Mr. Firestone: Well the Chair that didn't get us done at 9:00 p.m. would entertain a motion to adjourn.

Mr. McIntosh: So moved.

Mr. Hurd: Second.

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

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

VOTE: 6-0

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

MOTION PASSED

There being no further business, the Planning Commission meeting adjourned at 9:47 p.m.

Respectfully submitted,



Alan Silverman
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary

Attachments

- [Exhibit A: WILMAPCO presentation](#) (WILMAPCO Informational Session)
- [Exhibit B: Shelley Einbinder email](#) (4 Georgian Circle)
- [Exhibit C: Cohen Law Group presentation](#) (Wireless Facilities)
- [Exhibit D: Dr. John Morgan email](#) (Rules of Procedure)
- [Exhibit E: Dr. John Morgan email](#) (Rules of Procedure)
- [Exhibit F: Helga Huntley email](#) (Rules of Procedure)
- [Exhibit G: Dr. John Morgan hand-out](#) (Rules of Procedure)