

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

January 2, 2018

7:00 p.m.

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

Chairman: Jeremy Firestone

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

Commissioners Absent: None

Staff Present: Mary Ellen Gray, Planning and Development Director
Mike Fortner, Planner
Tom Fruehstorfer, Planner
Paul Bilodeau, Acting City Solicitor

Mr. Jeremy Firestone called the Planning Commission meeting to order at 7:16 p.m.

1. CHAIR'S REMARKS.

Mr. Firestone: Good evening. The Planning Commission meeting for January 2, 2018 is called to order. Welcome everyone on this 2nd day of the New Year. We're getting off to a fast start in 2018, and I want to welcome, although he's been with us before, but now in the capacity of officially Acting City Solicitor, Paul Bilodeau. Good evening and welcome.

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

Mr. Firestone: With that, we'll move on to agenda Item 2, the minutes of the [December 5, 2017] Planning Commission meeting. Commissioner Hurd?

Mr. Will Hurd: Thank you. Michelle, have we received any corrections?

Ms. Michelle Vispi: No, none.

Mr. Hurd: Having no corrections, the minutes are submitted.

Mr. Firestone: All in favor of approving the minutes, signify by saying Aye. Opposed, say Nay. The minutes are approved.

VOTE BY ACCLAMATION THAT THE MINUTES OF THE DECEMBER 5, 2017 PLANNING COMMISSION MEETING BE APPROVED.

VOTE: 7-0

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

ABSENT: NONE

MOTION PASSED

3. DISCUSSION OF COMBINED PLANNING COMMISSION/CITY COUNCIL MEETING INCLUDING, BUT NOT LIMITED TO, MEETING DATES, FORMAT OF MEETING, AND POTENTIAL AGENDA ITEMS.

Mr. Firestone: That then gets us to a discussion of item 3, of a combined Planning Commission/City Council meeting/workshop. And we're going to discuss meeting dates, format, and potential agenda items. So, Mary Ellen, maybe you should give us a little background or history since this idea was broached by the City Council.

Ms. Mary Ellen Gray: Alright, I'd be happy to, Mr. Chair. Thank you. I believe there was an October 23 Council meeting and a follow-up meeting on November 29. There was discussion and a request by City Council to have a joint meeting with the Planning Commission to discuss the Comprehensive Development Plan, current development patterns, and future land use. So I put together a memo that included some potential meeting dates, the format of the meeting, which I think is helpful to articulate before one goes into a meeting, and some potential agenda items. So, Mr. Chair, do you want to go through these one-by-one?

Mr. Firestone: Yeah, I guess, probably.

Ms. Gray: Okay. Or do you want to have any discussion regarding the meeting?

Mr. Firestone: Why don't we have some general discussion which could be on any of the . . .

Ms. Gray: Sure.

Mr. Firestone: On the format, or the time limit, or whether it's advisable to meet with City Council at all.

Ms. Stacy McNatt: Oh, well my question was going to be would you like us to provide which dates work for us of this list first? Or would you like to start with should we meet or not meet? I support meeting. But then I can give you which dates . . .

Ms. Gray: Sure.

Mr. Firestone: Okay.

Ms. McNatt: I have some suggested agenda items, as well.

Mr. Firestone: I guess first on the issue of meet or not meet, is there anyone who wants to speak against meeting with City Council? Okay, then we can, I guess, talk dates and then we can talk format, etc. Of the dates that were listed there, does anyone have any hard conflicts?

Ms. McNatt: Yes.

Mr. Hurd: Yes.

Mr. Firestone: Why don't we start at the end?

Ms. Bob Stozek: Well I did not bring my calendar with me, so my only question is what days of the week are these? I see they're . . .

Ms. Gray: That's a good thought. I should have probably articulated that, Bob. I do have my handy calendar here.

Mr. Hurd: I think the first three are Wednesdays.

Ms. Gray: My paper calendar. Okay, the 7th and the 14th are Wednesdays. The 20th is a Tuesday. Obviously Tuesday, Wednesday, Thursday for the 20th, 21st, 22nd. The 27th is a Tuesday, and the 28th is a Wednesday.

Ms. Stozek: Thanks.

Ms. Gray: You're welcome.

Mr. Hurd: I cannot make the February 22 meeting.

Ms. McNatt: The only two dates that I can attend are the 7th and the 27th.

Mr. Firestone: Okay. Does anyone have any conflicts with either the 7th or the 27th?

Mr. Cronin: No conflict, but my preference is the 27th.

Mr. Firestone: Preference for the 27th.

Mr. Frank McIntosh: I can do the 27th.

Mr. Alan Silverman: The 27th works for me.

Mr. Firestone: Okay, well we've made it through two of the issues related to this.

Ms. Gray: Alright.

Mr. Firestone: So we have it on the 27th and we will meet. So that gets us, then, to the issues of format, agenda, etc. So does anyone have any thoughts on any of those topics?

Mr. Hurd: I had, excuse me, I had one sort of leaning, as it were, on the format of the meeting and that would be to have Chairman Firestone be the Chair of the meeting. I guess, in my mind, it feels to me that Council wants to come talk to us, so it feels like it's our meeting that they are coming to, so I would like to have you in charge of it.

Mr. Silverman: On that same topic, I believe it may cloud the notification and FOIA issue with respect to the Mayor calling a meeting, the Chair of our committee calling a meeting, what controls . . . does our counsel have any advice on that?

Mr. Paul Bilodeau: I don't, as far as to whether which one can . . . I think either one can probably call the meeting. I don't think FOIA would say it was a joint meeting.

Mr. Silverman: But would it be a Council meeting if the Mayor called it? A de facto Council meeting?

Mr. Bilodeau: I would say if it sounds the Mayor is calling the meeting, it would be a Council meeting that the Planning Commission was participating in.

Mr. Silverman: My preference is, since we are the group that's responsible for periodically reviewing the Comprehensive Plan and making recommendations with respect to codes to Council, that it be a Commission meeting in a workshop format with Council and the Mayor invited to participate. Does that hold together?

Mr. Bilodeau: Yes, as long as Council is onboard with that, it holds together.

Ms. McNatt: Is it still like a round-table discussion? It's a more informal discussion?

Mr. Silverman: That's correct. A workshop.

Mr. Firestone: Well we actually haven't decided that yet.

Ms. McNatt: Okay.

Mr. Silverman: My preference is leaning toward a workshop.

Mr. Stozek: Can I make a suggestion?

Mr. Firestone: I'm, personally, agnostic as to who chairs the meeting, but I'm willing to go with whatever the group decides. I don't . . . I mean all of our workshops have always been technically open to members of City Council, and some have attended, and some have attended these meetings, as well. But I'd be happy to chair but I don't feel it's required or that it's necessary, but if that's the tenor of the group, I'm happy to chair it, as well.

Mr. McIntosh: Well, speaking for myself . . . I was going to speak for Bob but decided against it . . . I think you should chair it. I would insist, almost, that it be a workshop back-and-forth kind of conversation, that's informal and that we can actually have a discussion. That would suit me fine. Anything else probably wouldn't.

Mr. Stozek: Different topic?

Mr. Firestone: Yes.

Mr. Stozek: Can I go back to the dates for a minutes? Were these dates supplied by Council as to when they were available?

Ms. Gray: They were supplied by Renee. By City Secretary Renee Bensley as to when the room was available and potential dates.

Mr. Stozek: But we don't know whether Council is available on these dates? I'm just saying that because we ought to state, maybe, that the 27th is our preference but maybe we should have a back-up in case half the Council can't make it on the 27th. Is there an alternative date?

Mr. Silverman: With respect to that, this was not a request of Council. This was a request of several Council members, so it's up to those members to decide whether they can attend.

Mr. Cronin: It does say . . . the main sentence here says City Council has requested a joint meeting.

Mr. Silverman: City Council . . . there was no formal motion. I listened to all the tapes.

Mr. Cronin: I'm just telling you what I read. I'm not . . .

Mr. Silverman: That's correct.

Mr. Firestone: Do people think two hours is going to be sufficient to hear all of our voices, all the voices of City Council, and all the members of the public who might attend?

Mr. Silverman: No.

Mr. Hurd: No.

Mr. Firestone: The question is, should we be slightly longer but we still want to . . .

Mr. McIntosh: With you at the helm, Mr. Chairman, I'm sure that we could probably do it in an hour and 45 minutes. But certainly no more than two.

Mr. Hurd: I think I would agree. I think you could go as long as we give it time for, but I don't know that we'd need more than two hours to really get the issues on the table. As long as we're not actually . . . we're not trying to achieve solutions. We're trying to air issues and understand points of view and kind of get that dialog, I think, started. I think two hours is plenty.

I did, actually, have a question as to whether having something as formal as using Robert's Rules of Order for a workshop format, if that was an appropriate format to be using, or if there's a more relaxed workshop style format that can be adopted.

Mr. Silverman: I believe since we chose, or we're heading in the direction of a workshop, that the formality of Robert's Rules is exactly contrary.

Mr. Hurd: Okay.

Mr. Silverman: So if it's the consensus of the group, Mr. Chairman, let's discard the use of Robert's Rules.

Mr. Firestone: I would agree with that.

Mr. Hurd: I think especially since we're not going to be making motions and making directions and things.

Mr. Silverman: Yeah.

Mr. Firestone: Mary Ellen, could you state the agenda items again that Council was interested in discussing or that were mentioned?

Ms. Gray: Well there were not any specific agenda items articulated. These are the Planning Director's suggested agenda items based on the discussion, based on I believe we should review the authority of the Planning Commission and make sure everyone is on the same page, and the role of the Planning Commission per City Code. And I put together those discussion topics based on the discussion that Council had. Those were the items that were discussed.

Mr. Firestone: So, looking at the discussion topics on page 2, is there agreement on those three? Are there others that people would rather talk about and discuss?

Mr. Hurd: I think for the discussion topics, I think those are fine. I think those get the major ones. The only other one I'd add, and I'm not sure how to phrase it in there, would be parking. Just because that's something we're sort of in discussion about, but I don't know if we want to open that Pandora's box in this format, especially since we already have the subcommittee kind of moving on that.

Mr. Firestone: If we did, I'd want it last on the agenda.

Mr. Hurd: Yeah.

Mr. McIntosh: We'd be quick.

Mr. Hurd: Are we only talking about the discussion topics at the moment? Or are we talking about the whole agenda?

Mr. Firestone: Just the discussion topics.

Mr. Hurd: I think as broad stroke discussion topics, I think they're fine.

Ms. McNatt: I agree, however, I think some of the . . . an additional topic which may fall under the Future Land Use would be the discussion of redevelopment and drainage capacity and

drainage concerns, which stem from other discussions that are being held. But I think it's an important topic that needs to be expanded, which is above and beyond just stormwater that's associated with redevelopment. It could fall under the Future Land Use. As a broad brush, it could work. I just wanted to bring it up specifically.

Mr. Hurd: I think it could also fall under Current Development Patterns.

Ms. McNatt: It could.

Mr. Hurd: And I think if we're bringing up drainage, I mean we talked about systems that are approaching capacity or at capacity, traffic is another concern under that sort of broad topic.

Mr. Silverman: There may be some value there in arriving at some conclusions as to what the City and the Planning Commission has control over, versus DelDOT and WILMAPCO. Because I think there's some cross-thinking and gray areas as to what we can control.

Mr. Fortner, if you can help me out here, when we did the Comprehensive Plan, we identified areas that needed further study. If you recall, we had kind of an overlay. What was the specific name of that effort? Do you recall? I don't have my copy . . .

Mr. Mike Fortner: Focus area? I can look it up for you real quick, but it's like the Newark Country Club, for example.

Mr. Silverman: Yeah, Newark Country Club, the shopping center . . .

Mr. Fortner: Focus areas or something.

Mr. Silverman: We identified a group of those. Maybe when we get the proper name, if that can be entered as a discussion topic to share with Council that those are the areas that were identified in the Comprehensive Plan. Maybe Council has some other areas that might want to be added.

Mr. Fortner: Okay.

Mr. Silverman: Thank you.

Mr. Firestone: Would anyone from the public like to be heard on this topic? How about on the other agenda items? So the review of Planning authority and the role of Planning Commission? I don't know if those are really discussion topics. I mean we might get a few minute briefing from our Acting City Solicitor just so that we're all agreed on the same page, but it doesn't seem to be something that's up for discussion. It is what it is.

Mr. Silverman: Yes.

Mr. Bilodeau: Right. I would just state that at the beginning of this meeting when the topic comes up. I could go over what your Planning authority is and where you can find it in the Code.

Mr. Hurd: Yeah, I think when I was reading it like the second or third time, it sounded almost like a chance of a discussion about what our authority is. We're not having that conversation. If Council wants to have a conversation and discussion about that Code, then I think that's Council's thing.

Mr. Silverman: Well I don't think it's the content of the Code that's the implication here. It's I'm not quite sure that Council understands where the boundaries are. That we recommend, they act. They set up the rule, we act within the rules. That kind of thing.

Mr. Hurd: Right.

Mr. Silverman: I'm not sure that, particularly with some of the newer Council people, that that's clear.

Mr. Hurd: So maybe it's not a review, but maybe we should be sure at the beginning of the meeting, to sort of make sure that the Council members do have an understanding of where the authority lines are and what the boundaries are.

Mr. Firestone: It may be useful for you to give just a few minute primer at the beginning of the meeting. I know there was some confusion in listening to the Council transcript about what their role was, versus our role, in regard to our annual Work Plan. And what they could do and couldn't do.

Mr. Silverman: Yes.

Mr. Firestone: Any other . . .

Mr. McIntosh: Excuse me, what who could do and couldn't do?

Mr. Firestone: City Council. So when we approve the Work Plan, what was the role of City Council when our approved Work Plan came to them? Could they modify it? Did they have to vote on it? Those kinds of issues.

Mr. McIntosh: I never thought they were an issue.

Mr. Silverman: Well they apparently didn't realize that they could be involved in the generation and formation of that Work Plan as part of our open discussion. They got the idea that they would approve or disapprove it. Or add to it or subtract from it. That's what came across in the transcripts.

Mr. McIntosh: Well do we get to do the same thing with their work plan? I'm just wondering.

Mr. Silverman: I wasn't here when that comment was made.

Mr. McIntosh: I'm just saying . . .

Mr. Silverman: I understand.

Mr. McIntosh: A little tongue-in-cheek there, but, you know, it's our Work Plan.

Mr. Firestone: And the rules are quite . . .

Mr. McIntosh: They're pretty clear.

Mr. Firestone: Clear that it's our Work Plan. That they can make recommendations to the City Manager as to what they want to fund, or not fund, on the Work Plan, but they otherwise can't make changes to the Work Plan.

Mr. McIntosh: I just think that adds to the time of the discussion at the meeting that we don't need to have. That's what I'm trying to get at. We've got a two hour meeting and should we put things into the meeting agenda that are superfluous to the discussion? And that just elongates the discussion and takes away from things that are much more important. If they're unaware of those things, then they can ask our City attorney if he could enlighten them. Or Mary Ellen, as to where their boundaries were. That's all I'm saying. I would hate to see us get into a meeting and have any kind of lengthy discussion about what the role of our Work Plan is, vis-à-vis their authority. It just doesn't seem like the way we should be spending our time.

Mr. Firestone: Yeah, and again, I was saying that I didn't think we should have a discussion that . . .

Mr. McIntosh: Yeah, well I don't even think it needs to be on there. You know, these were potential agenda items, not these are agenda items that we have to approve. So if we're saying that that's not an agenda item that we think is worthwhile . . . and I can apply that same logic to what's going on with this discussion right now. We should just make a decision and move on. I don't think it belongs here, personally.

Mr. Firestone: Any other thoughts? Chair would entertain a motion.

Mr. McIntosh: I would move that we say that we are happy to discuss the Comprehensive Development Plan, the current development patterns, and the future land use as part of our workshop meeting on the 27th of February.

Mr. Firestone: And does that motion have a statement regarding who is going to chair the meeting?

Mr. McIntosh: We could. Chaired by our esteemed Chairman, Jeremy Firestone. That's where I go with that.

Mr. Firestone: And I understand that you would limit that meeting to two hours?

Mr. McIntosh: Precisely. Less, if possible.

Mr. Hurd: I'll second that.

Mr. Silverman: Friendly amendment – workshop format.

Mr. McIntosh: I said that.

Mr. Firestone: He did say that.

Mr. Silverman: Okay.

Mr. McNatt: And did you potentially include the possibility of other topics besides the ones you just mentioned?

Mr. McIntosh: Well I thought we said that those would be for the things that . . .

Ms. McNatt: But have the ability to add other topics?

Mr. McIntosh: Yeah, well I was thinking of saying in the broad sense, but I don't know if we need to say that. Given the fact that we're saying it's a workshop meeting, that does give you a little bit more leeway in what you do and not do in that meeting. Just trying to keep it as simple as possible.

Mr. Firestone: So we had a second.

Mr. Hurd: Yes.

Mr. Silverman: Yes.

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

MOTION BY MCINTOSH, SECONDED BY HURD THAT THE PLANNING COMMISSION SUPPORT THE REQUEST OF CITY COUNCIL FOR A COMBINED PLANNING COMMISSION/CITY COUNCIL MEETING, WITH THE FOLLOWING CONDITIONS:

- A. THE MEETING BE HELD ON TUESDAY, FEBRUARY 27, 2018 USING A WORKSHOP STYLE FORMAT, WITH THE DURATION OF THE MEETING NOT TO EXCEED TWO HOURS
- B. THE MEETING BE CHAIRED BY PLANNING COMMISSION CHAIR JEREMY FIRESTONE
- C. DISCUSSION TOPICS INCLUDE THE COMPREHENSIVE DEVELOPMENT PLAN, CURRENT DEVELOPMENT PATTERNS, AND FUTURE LAND USE

VOTE: 7-0

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

NAY: NONE

ABSENT: NONE

MOTION PASSED

- 4. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, REZONING AND MAJOR SUBDIVISION WITH SITE PLAN APPROVAL OF THE PROPERTIES LOCATED AT 24 AND 30 BENNY STREET AND 155 SOUTH CHAPEL STREET. THE PLAN PROPOSES THE REZONING OF THE BENNY STREET PROPERTIES FROM RD (ONE FAMILY SEMIDETACHED RESIDENTIAL) TO RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS), COMBINING THREE PARCELS INTO ONE PARCEL, DEMOLITION OF THE EXISTING BUILDINGS AT THE SITE, AND CONSTRUCTION OF SIX TOWNHOME STYLE APARTMENTS ON THE BENNY STREET PARCELS AND FIVE TOWNHOME STYLE APARTMENTS ON THE SOUTH CHAPEL STREET PARCEL. A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT IS REQUIRED TO CHANGE THE LAND USE DESIGNATION OF 24 AND 30 BENNY STREET FROM “RESIDENTIAL, LOW DENSITY” TO “RESIDENTIAL, HIGH DENSITY.”**

Mr. Firestone: That then takes us to agenda item 4, review and consideration of a Comprehensive Development Plan amendment, rezoning and major subdivision with site plan approval for the properties located at 24 and 30 Benny Street and 155 South Chapel Street. So, Mary Ellen, why don't you briefly summarize and then we'll have the applicant make a presentation.

Ms. Gray: I'd be happy to. I do have a brief presentation if the Planning Commission desires it or we can just go through the presentation that I included in the packet.

Mr. McIntosh: A brief presentation on what?

Ms. Gray: Can we do the . . . for 30 Benny. It's included in here.

Mr. Firestone: It's the PowerPoint presentation.

Mr. Hurd: Mr. Chairman, I had a couple of questions on the report itself. I wasn't sure if it fell into this . . .

Mr. Firestone: I have some questions, too, so when . . . I think we'll let Mary Ellen make her presentation and then we can ask her some questions.

Mr. Hurd: Okay.

[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.]

Ms. Gray: Okay, thank you, Mr. Chair and Planning Commissioners, and members of the public. When I presented the last staff report on 36 Benny Street, there was a request from a couple of Planning Commissioners that the Planning Director presentation focus more on what has changed in the plan and what the recommendations are. So this presentation is very brief because Mr. Tracey is going to be giving a more in-depth presentation on the application, and this presentation is just going to focus on the overall view of the project, the changes and revisions, and the staff recommendations.

This project is for 30 Benny Street and 155 South Chapel Street. It's a major subdivision and site plan approval. It also includes a rezoning and Comprehensive Plan amendment for 30 Benny Street, and the proposal is to combine those two lots and to construct 11 townhouse style apartments with six bedrooms in each unit, comprising of 3-story buildings.

This is a revised zoning map. The 30 Benny Street property is zoned RD and with a Comprehensive Plan designation of low density residential. The 155 South Chapel Street is zoned RM with a high density designation in the Comprehensive Plan. As you'll notice, the surrounding properties, and Mr. Tracey will be going into this in his presentation as well, some of the surrounding properties on Benny Street . . . actually all of them . . . are zoned RD. The current uses have been grandfathered and the uses more closely reflect the RM zoning, which the applicant is seeking to revise the property to.

This is just two aerials. The one on the left is the more zoomed in and the one on the right is a higher level view of the property and the surrounding neighborhood, which is primarily residential. And to the west is the University property.

These are some street views of the project. On the left is 30 Benny Street. It is currently . . . one of the lots is vacant and the other has a one-level house on it. This is the view of 155 South Chapel. It's a seven unit, excuse me, seven bedroom property that, I believe, is currently a fraternity house.

This is a rear view of both of the properties. This is the rear view looking toward Benny Street, and the rear view looking toward South Chapel Street.

These are some street views of South Chapel Street looking south and looking north, as well.

And this is 30 Benny Street. This is primarily residential, as I indicated. Also, most of these properties here are currently student rentals.

So the project has gone through a couple of revisions. There was one submitted . . . actually, there was a submittal originally last year, but then the applicant had asked the Planning staff to hold onto that in lieu of waiting for a further revision that was submitted on May 4. We had another revision submitted on October 3, and the final one that you are reviewing tonight before the Planning Commission is from December 12.

Included in your packet are the three Subdivision Advisory Committee reports which reflect . . . the revised Planning submittals all reflect changes based on the SAC, excuse me, the Subdivision Advisory Committee reports, as well as discussions and numerous meetings we've had with the applicant to discuss potential revisions.

This is the original submittal . . . excuse me, this is the submittal from May 4, which has [inaudible] the 155 South Chapel and the 30 Benny Street property. In this next schematic, that's the schematic . . . the original proposal had the units facing both South Chapel and Benny Street.

And then the October 3 submittal more closely resembles the submittal that you're reviewing tonight with the units perpendicular to Benny and South Chapel Streets. This submittal, at this point, was submitted for site plan approval. We had asked the applicant to go back and make

some revisions to mostly the architectural and landscaping, and some other features, to make it comply with the site plan approval process.

So this is the December 12 submittal, which you're currently reviewing this evening. And Mr. Tracey will go over . . . actually he has a schematic right here, right to my left . . . of the enhanced landscaping as well as some of the other features included in the project, which Mr. Tracey will go into in more detail. But these are the overall architectural for the project. This is the project on Benny Street, and then this is on South Chapel.

So the Planning staff recommends approval of the Comprehensive Plan revision from low density to high density for the 24 and 30 Benny Street, recommend approval of the rezoning to RM for the 30 Benny Street and 24 Benny Street, and recommend site plan approval and major subdivision approval that you see tonight. I'd be happy to answer any questions that you might have.

Mr. Firestone: Commissioner Hurd?

Mr. Hurd: Um, sure, is this a project that required the property to be posted with notice of the meeting?

Ms. Gray: Yes.

Mr. Hurd: Because there was no posting on the Benny Street property.

Ms. Gray: There was no posting on the Benny Street property?

Mr. Hurd: No, I drive by that every day.

Ms. Gray: Okay.

Mr. Hurd: If it's on Chapel, I don't know, but Benny certainly had no sign.

Ms. Gray: Okay.

Mr. Hurd: I'm a little confused by the dates, the many dates here. Specifically, on page 7 it talks about the final SAC letter for December 22 was compiled based on the plans submitted on October 3, but we're holding an 11/21 drawing that doesn't seem to be referred to. So I'm a little unclear as to when things were submitted and which ones we're looking at, and whether we're really looking at the right ones. Because if the SAC did its review in December for drawings that were revised in November . . . there does seem to be some confusion, I think, about which drawings were submitted when, and whether we're looking at the correct ones.

Ms. Gray: Okay. I know . . . if I could call on Mr. Fruehstorfer. We had talked about this the other day to make sure that we had the dates correct. In the plan the dates were mostly focusing on the dates that were on the plan submittal. Is that a fair statement?

Mr. Tom Fruehstorfer: Tom Fruehstorfer, Planning and Development Department. I believe, actually, we may have mixed up that first drawing. The first drawing that you showed may have been the one from last year. I'm not sure. But it's doesn't really matter, it's just different iterations it went through. The December SAC, I think it was December 20 SAC, is based off the December 12 drawings, which are the final drawings that you're looking at now. Those are the final drawings that you have that are being submitted for review. The other drawings, the other dates, the other submissions, the other SAC letters, are just so you can see that it's gone through a long review process.

Mr. Hurd: Yeah. It would help, probably, if the SAC letter referred to the date of the drawings that were submitted.

Ms. Gray: Okay.

Mr. Hurd: Because it just says December 22 is the date of the letter. It reviews the December 12 submission, but it doesn't say the drawing is dated 11/21.

Ms. Gray: I'd be happy to do that in the next submission.

Mr. Hurd: That's why I'm . . .

Ms. Gray: This is the . . . this staff report is . . . and this is not an excuse, and thank you for that helpful comment. We will include that in our next staff report. I don't know whether you noticed, but this staff report is substantially different than previous staff reports. So we're working on a revised format, if you will. So those comments are most helpful.

Mr. Hurd: And I probably should say I love this format. I really do.

Ms. Gray: Oh, thank you.

Mr. Hurd: Having everything clear and having the reduced drawings all in one package is really great. And I think I understand that this project, having gone through so many cycles, it's easy to sort of say, well, here's the three SAC letters . . .

Ms. Gray: Right.

Mr. Hurd: And we start losing track of when it was . . . when each was what.

Ms. Gray: Okay.

Mr. Hurd: But I guess back to my first question, if the site was not posted, are we allowed to have this meeting and discuss it?

Ms. Gray: I don't have that Code provision memorized. I'm going to ask . . . I'm pointing to our legal counsel . . . I'd be happy to pull that Code provision, pull that up if that would be helpful.

Mr. Bilodeau: Yes, if you could.

Mr. Hurd: Only because I don't want to go too far.

Mr. Bilodeau: Right.

Ms. Gray: It might be helpful to ask the applicant whether the 155 South Chapel Street was posted.

Mr. Silverman: Madam Director, isn't that the responsibility of the engineer for the applicant to properly post it? Not the City's responsibility?

Ms. Gray: Correct, it's the applicant's responsibility, yes.

Mr. Hurd: I mean, I could understand if 155 wasn't posted because there's no rezoning attached to it, but there is a plan. But Benny certainly should have been.

Ms. McNatt: Does the City require any type of documentation that the sign is posted? Any type of affidavit or anything?

Mr. Silverman: To my knowledge, no.

Mr. Firestone: It says posting shall be given at least 15 days prior to public Commission . . .

Mr. Silverman: And it specifically says with a sign.

[Secretary's Note: The Code provision was researched by Planning and Development Director and Acting City Solicitor between 8:53 p.m. and 8:57 p.m., at which time the meeting discussion resumed.]

Mr. Firestone: We're back in order.

Ms. Gray: Yes. We'll wait until the Acting City Solicitor has a seat.

Mr. Bilodeau: Pursuant to the Code, that was a very good catch on your part. There really needs to be . . . a sign needs to be on the property, and it has not been posted. So the proposal may be tabled so they can get the proper notice before we conduct this hearing.

Mr. Firestone: Okay.

Ms. McNatt: Can I make a recommendation about the signage, is that a copy or picture with some type of affidavit that the sign has been posted be included in our new, nice wonderful packets?

Ms. Gray: Yes. And, ironically, I included that in 36 Benny but I fell down on this one, and I apologize. We did do the . . . the Planning staff is responsible for notifying all the property owners within 300 feet, and we did do that step, but we did not confirm or confer with the applicant on this. And that rests with the Planning Director. My apologies for that.

Ms. McNatt: Thank you.

Mr. Firestone: Okay, I guess we will go on, then, to item 5.

Mr. Silverman: Do we need a motion to table?

Mr. Cronin: Does somebody have to make that motion . . .

Ms. Gray: I think you need to make a motion to table it.

Mr. Firestone: Would anybody . . .

Mr. Hurd: Do you need a motion to table?

Mr. Firestone: Yes.

Mr. Hurd: I motion that we table the presentation on 30 Benny and 155 South Chapel until a further meeting to allow the applicants time to properly notice it.

Mr. Firestone: Is there a second?

Ms. McNatt: I'll second.

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

MOTION BY HURD, SECONDED BY MCNATT THAT THE PLANNING COMMISSION TABLE THE REVIEW OF THE COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, REZONING AND MAJOR SUBDIVISION WITH SITE PLAN APPROVAL OF THE PROPERTIES LOCATED AT 24 AND 30 BENNY STREET AND 155 SOUTH CHAPEL STREET UNTIL A FUTURE PLANNING COMMISSION MEETING TO ALLOW THE APPLICANTS TIME TO PROPERLY NOTICE THE PUBLIC WITH A SIGN AT THE DEVELOPMENT SITE.

VOTE: 7-0

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

MOTION PASSED

Mr. Hurd: Mr. Chair, a question. Does this fall into that 30 days continuation provision or is this separate from that because it's not our item? I don't want to get hung up if they take longer over something else and more than 30 days pass.

Mr. Firestone: I would take it that it wasn't properly before us, ever.

Mr. Hurd: Okay. Works for me.

Mr. Bilodeau: Yeah, I believe it was, the request was made before the application really was discussed. I can review that and get back to you after the meeting.

Mr. Firestone: Okay. Thank you.

5. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE RELATING TO REGULATIONS FOR WIRELESS FACILITIES IN THE RIGHT OF WAY AND OUTSIDE THE RIGHT OF WAY.

Mr. Firestone: Okay, well that gets us to item 5, review and consideration of amendments to the Zoning Code relating to regulations for wireless facilities in the right of way and outside the right of way. Mary Ellen, why don't you take us through the changes . . .

Ms. Gray: I'd be happy to.

Mr. Firestone: From the last version.

Ms. Gray: Okay. We have a rainbow colored document. So the revisions that I made are indicated in blue highlights, and those changes were based on discussions held at the last, the December 5 Planning Commission meeting, as well as a letter from what I would . . . from Joseph Divis of AT&T and Bonnie Metz of Verizon. These changes were all reviewed by our legal counsel, as well as the Cohen Law Group, who has been consulting with the City of Newark on this ordinance. And both legal counsel and Cohen Law Group indicated that the proposed changes look good from their perspective, and they make sense, and that they don't raise any concerns. So I don't know if you want to step through the changes, Mr. Chair, or shall we . . .

Mr. Firestone: I think really if people have . . . why don't we just, if people have questions about certain changes . . .

Ms. Gray: Okay.

Mr. Firestone: Why don't we do it that way?

Ms. Gray: Sure.

[Secretary's Note: The proposed ordinance amending Zoning Code regulations relating to wireless facilities in the right of way and outside the right of way reads as follows.]

That Chapter 32, Zoning, Code of the City of Newark, Delaware, be hereby amended in the following respects:

AMENDMENT 1.

Create a new Section 32-56.7, Wireless facilities in the right-of-way, by adding the underscored text and deleting the stricken 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).

(a) Timing of approval for applications. The City shall comply with all federal timing requirements for the consideration of applications for new towers and collocated antennas that fall under Section 6409(a) of the Spectrum Act, and/or any orders promulgated by the FCC or any other governing entity.

(b) New tower applications shall be accompanied by a professional engineer's report containing the following:

1. Certification that the proposed tower will fill significant gap in wireless coverage or capacity that exists in the applicable area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage **or capacity**. The existence or non-existence of a gap in wireless coverage **or capacity** shall be a factor in the City's decision on an application for approval of tower.

2. A technical evaluation of the feasibility of attaching the tower or antenna to an existing, or previously approved, structure or wireless support structure, or ~~sited~~ 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 **Planning and Development Department**. ~~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.

3. Evidence that the applicant cannot adequately extend or infill its communications system by the use of equipment such as ~~redoes~~, repeaters, antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The applicant shall demonstrate that the proposed

tower must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.

4. The applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers 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:

- 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 via U.S. Certified Mail.

5. A signal coverage and/or capacity/propagation map of the area to be served by the proposed tower. The propagation shall show signal intensity in dBm, as well as major roads, residential developments, and commercial areas. The City reserves the right to request propagation maps for other sites or height alternatives.

6. Certifications that the proposed tower shall comply with all applicable state and federal regulations.

(c) Location and development standards.

1. Available infrastructure.

- a. As part of its application for approval, the applicant must demonstrate that it cannot infill the capacity or coverage gap in its system by utilizing existing infrastructure (i.e., utility or light poles) in the rights-of-way as a support structure for an antenna, rather than constructing a new tower. Applicants that utilize existing infrastructure for the siting of antennas may proceed with the siting of their facilities by obtaining administrative approval from the City.
- b. To the extent permissible under state and federal law, antennas attached to existing infrastructure shall not exceed six (6) feet in height and shall employ stealth technology, if possible, in their design.
- c. Applicants replacing an existing pole with a new pole to support a new antenna must bear all costs associated with such pole replacement.

- 2. Towers in the rights-of-way shall not exceed a height comparable to the average height of utility poles or electrical poles within a two (2) block radius of the proposed facility, unless the applicant can prove to the satisfaction of Council that a taller tower is the only method by the applicant can infill its gap in coverage or capacity.
- 3. Towers are prohibited within seventy-five (75) linear feet of areas in which all utilities are located underground.
- 4. Towers shall not be located in the front façade area of any structure.
- 5. Towers are prohibited in the BB - Central Business District.
- 6. Towers are prohibited in the 100-year flood zone, as determined by the City.
- 7. Applicants proposing the construction or siting of towers in state-owned rights-of-way shall demonstrate that it submitted all appropriate applications to the Delaware Department of Transportation and subsequently received permission for the siting or construction of said towers.

(d) Design regulations.

- 1. The tower shall employ the best available stealth technology available in an effort to appropriately blend into the surrounding environment and

minimize aesthetic impact. ~~The application of the stealth technology chosen by the applicant shall be subject to the approval of the City Council.~~

2. To the extent permissible under state and federal law, any height extensions to an existing tower shall require prior approval of the City, and shall not violate the provisions described herein.
 3. Towers shall be designed structurally, electrically, and in all respects to accommodate both the applicant's antennas and comparable antennas the maximum amount of future users based on the size of the proposed tower.
 4. The Design Committee of the Downtown Newark Partnership will review an application 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 special use permit application to Council.~~
- (e) Equipment location. Towers and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the rights-of-way as determined by the City. In addition:
1. Ground-mounted related equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.
 2. Required electrical meter cabinets shall be screened to blend in with the surrounding area ~~to the satisfaction of the City Council.~~
 3. Any graffiti on the tower or on any related equipment shall be removed at the sole expense of the owner as prescribed in Chapter 17.
 - ~~4. Any underground vaults related to telecommunications towers shall be reviewed and approved by City Council.~~
- (f) Time, place and manner. The City shall determine the time, place and manner of construction, maintenance, repair and/or removal of all towers in the rights-of-way based on public safety, traffic management, physical burden on the rights-of-way, and related considerations. For public utilities, the time, place and manner

requirements shall be consistent with the police powers of the City and the requirements of the Public Utility Code.

- (g) A structural engineer registered in Delaware shall issue to the City a written certification of the proposed tower's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association, if applicable, and certify the proper construction of the foundation and the erection of the structure.
- (h) Towers and antennas shall employ best available stealth technology to the maximum extent feasible 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.
- (i) Permit required for modifications. To the extent permissible under applicable state and federal law, the proposed modification of an existing tower, which substantially changes the dimensions of such wireless support structure, shall first obtain a building permit from the City. Non-routine modifications shall be prohibited without such permit.
- (j) No tower shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (k) Towers shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair. Such maintenance shall be performed to ensure the upkeep of the Tower in order to promote the safety and security of the City's residents, and utilize the best available technology for preventing failures and accidents. Any maintenance or repair to antennas or towers located above high voltage power lines shall be performed by contractors who are OSHA-certified to work above high voltage power lines.
- (l) To the extent permissible under state and federal law, no tower or antenna may be located upon any property, or on a building, structure that is listed on either the National or 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. No tower in the public rights-of-way shall be located along a highway or other road that is considered by the City to be a scenic route.

- (m) All towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the tower shall be that required by the FCC, or any other federal or state agency.
- (n) Towers shall not be artificially lighted, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the City Manager. This requirement shall not apply to towers employing stealth technology in the rights-of-way that are designed to resemble street lights.
- (o) Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only, but no more than twenty-four (24) hours.
- (p) Relocation or removal of facilities. Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, the owner of a tower in the rights-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any tower when the City, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - 1. The construction, repair, maintenance or installation of any City or other public improvement in the Right-of-Way;
 - 2. The operations of the City or other governmental entity in the right-of-way;
 - 3. Vacation of a street or road or the release of a utility easement; or
 - 4. An emergency as determined by the City.
- (q) Permit Fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual

costs in reviewing and processing the application for approval of a new tower, as well as related inspection, monitoring, and related costs.

(r) Nothing herein shall be construed to prohibit the City from leasing fiber that it owns and/or maintains to third parties.

(s) All proposed tower applications shall be accompanied by 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. **(recommended to Council October 11, 2017)**

City Council may waive any applicable requirement of this ordinance for good cause upon request of an applicant.

AMENDMENT 2. 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 conditions :

(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 via U.S. Certified Mail, 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 via U.S. Certified Mail 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 or capacity. ~~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, ~~right-of-way as defined in in 32-4 (a) (107.3)~~ 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. 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.. 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 to the maximum extent feasible 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~~ minimizes any negative impact on the aesthetic character of the community ~~to the maximum extent feasible~~; 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 applicant's 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. 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 **at an interval required by current ANSI/TIA-222: Structural Standard for Antenna Supporting Structures and Antennas as amended. As of October 25, 2017, the required interval is three-years for guyed masts and five-years for self supporting structures and after severe wind and/or ice storms or other extreme conditions.** Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower ~~and shall be completed every three years from the date of the Certificate of Completion.~~ 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 **or provide certification by a licensed engineer that field measurements are not required to assure public safety.** Such field measurements, and submission of the results to the city, shall be conducted upon start of the facility and **after the addition of any new antenna equipment annually thereafter, except that every third year, such p**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 the tower shall provide proof of insurance 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 sound 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 for 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.

(v) Notwithstanding any notice requirement to the contrary and as described in 32-78(a)(4), a reasonable effort shall be made to give 10 days' notice by U.S. mail of planning commission and/or city council public hearings to all property owners of record, according to ownership data available at Newark, whose property is immediately adjacent to or within 1,000 500 feet of the property for which the special use permit is requested. However,

failure to notify by U.S. mail any individual or individuals qualifying for notice shall not invalidate any action taken by council.

(w) City Council may waive any applicable requirement of this ordinance for good cause upon request of an applicant.

Mr. Hurd: I have, actually, several mark-ups because it doesn't seem like many of my editorial comments that I had sent got included. Not sure if that was intentional or . . .

Mr. Firestone: Let's start with the changes and then we'll go to the other, to additional changes.

Mr. Hurd: Okay, so we're only speaking now of the changes made from the last meeting?

Mr. Firestone: Yes.

Mr. Silverman: As presented on this iteration.

Mr. Hurd: Right. On page 9, item, oh I'm sorry, item (s), is that struck out or is that renumbered?

Mr. Silverman: Struck out.

Mr. Hurd: Because it's underlined.

Mr. Firestone: What are you talking about?

Ms. Gray: What . . .

Mr. Hurd: So there's item (s) for all proposed towers, and then it says (s), which is struck out, City Council may waive any applicable requirement of this ordinance for good cause upon request of an applicant. Is that item (t)?

Ms. McNatt: Or is that (s) all gone?

Mr. Hurd: Or is that whole paragraph stricken?

Ms. Gray: This paragraph is intended to be included as an addition and I am bewildered as to what Word does at times.

Mr. Hurd: Okay, so it's Word. I would just point out that we have, I think, struggled to have consistency in this document and have tried to say everywhere it says City Council, we have replaced it with the City. And I would recommend that that be in this paragraph, as well.

Mr. Silverman: Page reference, Will.

Mr. Hurd: Page 9, I said. So the City may waive any applicable requirement, as opposed to City Council. And then, again, on page 10, Council shows up again in item 2, paragraph 2, I should say.

Ms. Gray: I'm sorry, Mr. Hurd, where are you? You said page 9, and what was the next one?

Mr. Hurd: Well this might fall under editorial things, so I'll skip that one but I guess on page 17, paragraphs (v) and (w), again, are talking about City Council or Council, as opposed to the City. And also paragraph (u).

Is this the place where we have the conversation about the radius for notification?

Mr. Firestone: Yes, notification . . . that was a change.

Mr. Hurd: Okay.

Mr. McIntosh: Mr. Chairman, point of information?

Mr. Firestone: Yes?

Mr. McIntosh: Can we go over the colors again? I love colors but there's a lot of them.

Ms. Gray: There are.

Mr. McIntosh: What do they mean?

Ms. Gray: I'd be happy to articulate. On page 1, upper left-hand corner, the yellow highlighted ones were the changes made on 11/7. The green were made for the last meeting and presented at the last meeting. And the ones in blue were changes based on the discussion at the December 5 meeting.

Mr. McIntosh: Okay. And is there any other colors?

Ms. Gray: No. Well there's the . . .

Mr. McIntosh: There's red.

Mr. Hurd: There's the red strike-out. Is that anything prior to November?

Ms. Gray: Yes. The red were the proposed changes as presented in the October meeting.

Mr. Hurd: Okay. Alright so if we're discussing setbacks of towers outside the right of way, I believe that takes us to page 12, paragraph (b). So I read the letter from Mr. Divis. I see some validity to his point that the tower has no moving parts and therefore may not be as much of a safety hazard as maybe windmills are, or turbines, within the right of way. I think I would also agree that windmills are generally placed on larger pieces of property that can sustain a 200 foot setback but I'm not, I mean, I'm not fully comfortable with it being right up against property lines or right of ways. So I feel like some sort of setback is warranted. And whether it's the standard building setback of the property or if it's something greater than that, I'm not sure.

Mr. Firestone: I am also not going to be able to support this proposal as drafted without some setback from the right of way. I was troubled by the letter that referred to 1,000 feet as excessive and arbitrary. Any distance, to a certain extent, could be considered arbitrary. Any of these distances. So we should really stick with the issues and I've said, even in the prior draft I thought 3x from the right of way was too large, but 0x is too small. I think . . . and many ordinances, I've taken a look, cell towers have a fall zone setback from right of ways. It wouldn't be novel. It would be relatively standard, and I proposed 1 ½. Now we've heard many times that people are now talking about towers that are no larger than 35 feet. At 1 ½, we're talking about a 52 foot setback. We're not talking three football fields. We're talking 50 feet. And I don't think that's going to limit people to the STAR campus. It just seems prudent that these not be put up right next to the right of ways.

Mr. Hurd: I think that's a good point. I think the letter misunderstood the Code, because they're saying a minimum 200 foot setback and, in fact, it's either 3x the height of the tower or 200, oh, whichever is greater. So okay, I retract that.

Mr. Firestone: So, anyway, I think we need some sort of fall zone.

Mr. Hurd: Yeah.

Mr. Silverman: I believe at one time this Code did have a fall zone and that fall zone was taken out. I don't know what the thinking was at that time. You usually refer to towers that were guyed towers, as opposed to the structural towers that exist today.

Mr. Stozek: Do we know what the tallest tower in the City is now?

Mr. Firestone: It's probably the water tower on STAR campus?

Mr. Hurd: Do you mean cell phone?

Mr. Stozek: Cell phone tower.

Ms. Gray: It would be under 200 feet.

Mr. Silverman: Don't confuse collocation.

Ms. Gray: I don't think it's over 200 feet.

Ms. Stozek: I'm trying to figure distance and what's the largest tower we have around here.

Ms. Gray: Doesn't this provision say that it needs to be set back no less than 3x the height of the tower or 200 feet, whichever is greater, from the property line? Isn't that . . . that's what this provision is saying.

Mr. Hurd: Right, but the way that's written, if I have a 35 foot tower, 3x that is 105 feet . . .

Ms. Gray: Right.

Mr. Hurd: But this say 200 feet is greater, so it would be 200 feet.

Ms. Gray: Okay.

Mr. Hurd: Instead of saying the lesser of. Otherwise you could say basically over a certain height, it's 200 feet no matter how tall it is, sort of, if you flipped it. I mean the tower, for it to be set back further than 200 feet, it'd have to be a 67 or 68 foot tower to get that. And I don't know if that's something that's going to be happening.

Mr. Silverman: I'm back to being confused. We're talking about a structure that has the antenna array anchored to the ground with a footing and foundation?

Mr. Hurd: Correct.

Mr. Silverman: We're not talking about an antenna array that may be on a pole, a tower that sits on top of the City's water tank or sits on top of a building?

Mr. Hurd: Correct. This is for, the way I read it, it's for free-standing towers.

Mr. Silverman: Okay.

Mr. Firestone: But if it's not adjacent to a church, library, school, nursing home, hospital or residential area, it could be right up against the street.

Ms. Gray: Or a lot zoned residential.

Mr. Firestone: Yes, but if it's not adjacent to one of those, then it could be right up against the street.

Ms. McNatt: So commercial property.

Mr. Firestone: And what I'm saying is that there should be a fall zone to catch all the other areas that don't fall within those adjacencies. So that if it falls, it doesn't fall on someone.

Ms. McNatt: So any commercial or industrial property, technically this could be right on the property line, or right on the right of way line. Technically.

Mr. Firestone: Yes.

Ms. McNatt: Outside the right of way. I'm confused now.

Mr. Hurd: Now as a structure, does it have to comply with zoning setback laws? I mean regulations. That might be a question to our esteemed director.

Ms. Gray: This is the setback. This is the proposed setback for these facilities. Three times the height of the tower or 200 feet, whichever is greater.

Mr. Hurd: But only when it's adjacent to these listed uses or zonings?

Ms. Gray: Correct.

Mr. Hurd: So if it's in an industrial or in a BB zone, it could be on the property line? It would not have to comply with the zoning setbacks?

Ms. Gray: If it's outside the right of way. Inside the right of way, towers are not allowed in the BB zone.

Mr. Hurd: Alright, so . . .

Ms. Gray: But this is outside the right of way. Yes, that is the way this reads. That it could be on the property lines. Perhaps you just take out all the description of church, library, school, nursing home, hospital or residentially zoned lots.

Mr. Hurd: The sense I'm getting from this, where I'm leaning is just to say that it needs to be set back from the property line 1 ½ times its height. I think that seems to cover much of it and that would give us a fall zone, it keeps it from being directly adjacent. It's likely to keep it off the building setback lines, as well, so within the buildable zone. But it doesn't necessarily make the properties . . . create properties that are unusable. So that's what I think I would support.

Mr. Firestone: Any other thoughts by anyone on the issue of fall zone? Okay, then anyone have any other issues regarding any changes? Commissioner Silverman?

Ms. McNatt: Yeah, oh . . .

Mr. Silverman: Go ahead.

Ms. McNatt: One of the new changes was on page 7, where the language was changed from towers and antennas shall employ best available stealth technology instead of, and it removed the words to the maximum extent feasible. I'm assuming the words to the maximum extent feasible was removed for a reason, however, on page 13 the words to the maximum extent feasible still exist, so I wasn't sure if, as pointed out, maybe it's supposed to be consistent and they're not, or they were kept different for a reason.

Mr. Hurd: Yeah, my recollection is that was to be a general . . .

Ms. McNatt: Change?

Mr. Hurd: At least that was strictly in regards to stealth technology.

Ms. McNatt: I didn't know if it mattered. Maybe it doesn't matter. Maybe the result is okay.

Mr. Hurd: I don't know.

Mr. Firestone: It's never good to use two different things when describing something.

Mr. Hurd: This is true. The only I could say is that paragraph (i) is referring more to aesthetic or architectural sort of issues and less about the stealth technology or camouflage. But I would also agree that keeping the language consistent is generally the safer way.

Ms. McNatt: And that was my only comment regarding the blue changes right now.

Mr. Firestone: Actually back on (h), if you keep reading that sentence, it says shall be aesthetically and architecturally compatible, and then it says to the greatest extent possible at the end of that sentence.

Mr. Hurd: Yeah, we might want to say we could pull that, the underlying red section, and not change that sentence at all. I think it wouldn't change the intent of it at all.

Mr. Firestone: Well best available has a meaning, so . . .

Mr. Hurd: Well, yes, but if we just say towers shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like façade to blend with existing surroundings and neighboring buildings to the greatest extent possible, is kind of saying we want them to look like what's around them . . .

Mr. Firestone: Yes.

Mr. Hurd: As much as possible. And I think that could, based on the intent, I think having to the maximum extent feasible in the middle of that . . .

Mr. Firestone: Yes.

Mr. Hurd: That's . . .

Mr. Firestone: My only point was that if we say to the greatest extent possible here, then on 13 we should say to the greatest extent possible, rather than the maximum extent feasible.

Ms. McNatt: I agree with the best available stealth technology . . .

Mr. Firestone: Yes.

Ms. McNatt: Because that's talking about equipment, the type of equipment being the best that it is at the time. I just didn't understand if we were trying to be consistent.

Mr. Hurd: Yes. I would say that, as an architect, trying to make something architecturally compatible to the maximum extent feasible is kind of a real judgment . . . that's a wide open kind of judgment thing. I think striking it from that section because I think the intent is to say we want it to be aesthetically compatible and blend in as much as possible. And to muddy the waters further, when you continue this paragraph onto page 14, in the green highlighted, it still says to the maximum extent feasible. And then in the next subsection, it talks about to the greatest possible extent. So, again, there's some language inconsistency problems there.

Mr. Firestone: Mary Ellen, do you know why we have the best available stealth technology for the ones in the right of way but we don't have that same language for the ones outside the right of way?

Ms. Gray: Well, frankly, a 200 foot tower and stealth aren't very compatible. So I don't think there was . . .

Mr. Firestone: Okay, that's . . .

Ms. Gray: Yeah.

Mr. Firestone: So are we going to use the maximum extent feasible rather than the greatest extent possible?

Mr. Hurd: No, I . . .

Mr. Firestone: Or do we want to use greatest extent possible?

Mr. Hurd: I guess if we're talking about paragraph (i) on 13 and 14 . . .

Mr. Firestone: Yeah.

Mr. Hurd: My suggestion would be to strike the red underlined phrase to the maximum extent feasible and to also strike the green highlighted underlined phrase to the maximum extent feasible.

Mr. Firestone: Yes, I . . .

Mr. Hurd: And I think we still preserve the intent and we don't have conflicting . . . we don't have slightly different ways of saying the same thing in that paragraph.

Mr. Firestone: Okay. Do we want to, then, get rid of greatest extent possible in the other one? In (h) on page 7.

Mr. Hurd: Well (h) says employ best available stealth technology.

Mr. Firestone: Right.

Mr. Hurd: I think that's fine.

Mr. Firestone: But then it says and shall be aesthetically and architecturally compatible and shall use a like façade to blend in to the greatest extent possible.

Mr. Hurd: I see what you're saying.

Mr. Firestone: Do we want to just end it at the word buildings?

Mr. Hurd: I think we can keep . . . I'm okay keeping that. Because that language and the language in paragraph (i) on 13 would then align.

Mr. Firestone: Except I thought you wanted to take out maximum extent feasible.

Mr. Hurd: Yes.

Mr. Firestone: Okay, now then it ends with greatest extent possible. Got it. So we are good to go.

Mr. Hurd: Yeah.

Ms. Gray: Okay. I apologize, I lost the thread. So page 13?

Mr. Firestone: Page 13, we're going to delete to the maximum extent feasible.

Mr. Hurd: Yes.

Mr. Firestone: And then on page 14 also, we're going to delete to the maximum extent feasible. Both are on (i).

Ms. Gray: So page 13? Page 14?

Mr. Firestone: Page 13, maximum extent feasible under subsection (i). And also to the maximum extent feasible, also (i), but on page 14.

Ms. Gray: Okay.

Mr. Cronin: Mr. Chair, are we leaving in any of this maximum extent possible, best available, and so forth?

Mr. Firestone: Those are still in.

Mr. Cronin: It seems to me that we're dealing in superlatives and, you know, it's a question of degree. One person says it the maximum and another person says, well, it's 100% minus 2%, and is that still a maximum? So I think we serve ourselves and the public better to have language like appropriate care and consideration will be given to mitigate the effect of A, B, and C, and then let it be what it is when it's presented to the Commission and to the City. And if it's not deemed to be appropriate, then either send it back for a revision. And then part of this maximum and so forth is a question of, you know, finances. You know, is it realistic to say somebody has to spend \$1 million just to go to the maximum because of the superlative? I mean does it really serve us well to have all of these superlatives when we ought to have, I think, something more measured which accomplishes the goal with a little more room for variables that are going to exist in any situation.

Mr. Firestone: I think there's some merit to what you said. I think on the technology side, best available has a really clear meaning and I don't think that one is really subject to issues. On the issue of the greatest extent possible, I would agree that one person's possibility may be . . . and so we may want to go and use, again, the greatest extent feasible or practical, which both have some economic components embodied within those words if you look through the literature. Whereas possibility does not.

Mr. Hurd: I could support practical, you know, that bringing a little level of . . . because you're right. Otherwise you're going to sit here splitting hairs between, well, you could save that tree but you didn't save this one.

Mr. Firestone: Okay, so then I guess first on sub (i) where we just were, where it says greatest extent possible, we're going to change it to greatest . . .

Mr. Cronin: You don't even have to have greatest. Just say to the extent feasible or to the extent practical. When you put the superlative greatest in there, that's the maximum, the definition of the word.

Mr. Firestone: I was going to say maximum extent practical, which implies a high degree but there's an economic component to it.

Mr. Cronin: I think you get the same implication without the word maximum, too.

Mr. Firestone: With the word maximum.

Mr. Cronin: Without it. I think without the word maximum, you still get the same intent. To the extent practical or the extent feasible.

Mr. Firestone: Okay. What's the Commission's wish?

Mr. Hurd: I'm trying to read it and add the right words and it's not . . . I almost want to, in that final sentence, modify where we say maximize the use of a like façade, because that's kind of where we're starting to talk about a like façade or the blend. So instead of having all this stuff at the end, to sort of say . . .

Mr. Firestone: Can we just live without . . .

Mr. McIntosh: Excuse me. It seems to me it really comes down to what do we want, right? Are we wanting them to reach for the stars in every occasion? And if we do, then you want to have maximum and greatest, and that kind of thing. If you want to use some common sense, a more common sense approach to it, then you drop those words, and you say to the extent possible. Now they may disagree with what the extent is, and then we can give them advice and counsel on that. But you are, when you say maximum, you are saying that's what we want. We want you to go to the edge. That's the way I would interpret it, but if that's not really what we want, then why are we saying it? I mean it sounds good. To the maximum extent possible. But maybe that's not what we want. So, what do we want? And then this will be over. Pretty easy.

Ms. McNatt: Can I suggest a statement, a sentence?

Mr. McIntosh: Say again.

Ms. McNatt: Can I suggest . . .

Mr. Firestone: Yes, you may.

Ms. McNatt: Okay. This is my suggestion, and it's to the point. Towers shall be aesthetically and architecturally compatible with the surrounding environment and shall use a like façade to blend with the existing surroundings and neighboring buildings. Period. That's a suggestion.

Mr. McIntosh: I like that.

Mr. Cronin: Are you going to run for office?

Mr. Firestone: You got rid of all those modifiers, right? It works for me.

Ms. McNatt: Because in my world it's not necessary. If you're directing and providing shall already in the statement, then those additional, I guess the word superlatives or extras, they're already required by the word shall. Just in my world, this is how it works for me.

Mr. Hurd: Yeah.

Mr. Firestone: Yes.

Ms. McNatt: I don't know technically or legally, but . . .

Mr. Firestone: It works for me.

Ms. McNatt: So I don't know if this happens anywhere else in this document, but in that one specific sentence.

Mr. McIntosh: My guess is it does.

Ms. McNatt: Probably.

Mr. Silverman: And that's what gets negotiated. This is more . . .

Ms. McNatt: I like the word shall because it's a very direct requirement.

Mr. Hurd: That works for me. I think that hits my concerns.

Mr. Silverman: Yes.

Mr. Firestone: Just to repeat, towers shall be aesthetically and architecturally compatible with the surrounding environment and shall use a like façade to blend with existing surroundings and neighboring buildings. Period.

Ms. McNatt: Correct.

Mr. Firestone: And then so we would make a like change to the provision on page 7. Other issues related to changes that were made? Yes, Commissioner Silverman?

Mr. Silverman: Oh, changes that were made? This is a change that wasn't made.

Mr. Firestone: Okay, we're going to hold off on those until we get through the changes that were made.

Mr. Silverman: Okay.

Mr. Firestone: I've got one, and this is on the notice requirement – the shift down from 1,000 to 500 feet, which I think is reasonable for a 35 foot facility, but is not reasonable for a 200 foot facility. And so my proposal, and this then is on page 17 (v), is that it would say according to ownership data available at Newark, whose property is immediately to or within a) 500 feet of the property for which a special use permit is requested for a wireless facility that is less than or equal to 50 feet tall, b) 1,000 feet of the property for which a special use permit is requested for a wireless facility that is greater than 50 feet tall but less than or equal to 100 feet tall, c) 1,500 feet of the property for which a special use permit is requested for a wireless facility that is greater than 100 feet but less than or equal to 150 feet tall, and d) 2,000 feet of the property for which a special use permit is requested for a wireless facility that is greater than 150 feet tall. So, essentially, if you're less than 50 feet, you give notice at 500 feet. If you're over 50 but less than 100, you give notice to 1,000. If you are between 100 and 150 feet, your notice then is 1,500 feet. And if you're over 150 feet, your notice is 2,000. So we constrained the notice for the towers that the companies said they want to build, but that if people want to come in and build very tall towers, they're going to have to give much wider notices.

Mr. Silverman: Mr. Chairman?

Mr. Firestone: Yes.

Mr. Silverman: When you say notice, you're talking about direct mail to each property owner of record within that circle?

Mr. Firestone: Yes.

Mr. Silverman: How practical is that? I'm looking at the exhibit that was produced by the staff titled 236 East Cleveland Avenue. There's no page numbers so this is the cover showing the bullseye.

Mr. Firestone: Yes?

Mr. Silverman: There must be thousands of properties within that, I believe it's a 3,000 foot buffer in that target illustration.

Mr. Firestone: Mine only goes to 2,000 feet, so it's . . . I know that does, but my proposal only goes to 2,000, and for any tower that's less than . . . anyway, so the circle is going to be much smaller. Now we probably won't have that many 200 foot towers. If the representations and nothing changes from what's been discussed about putting in 35 foot towers, then we're looking at the 500 foot notice, or the second smallest concentric circle.

Mr. Hurd: I would add that you can only build those bigger towers on larger properties because of the setback requirements that we have proposed. And once you're starting to talk about larger properties, there are fewer properties within that 1,000 foot radius. You can put a 200 foot tower on Cleveland because it's not a 600 foot, or whatever, yeah, 600 foot wide property. You can't put it in the dead center.

Mr. Silverman: So the Chrysler site would be an example.

Mr. Hurd: Right.

Mr. Silverman: Two hundred and seventy some odd acres . . .

Mr. Hurd: Right. That circle might encompass the whole thing.

Mr. Silverman: Okay.

Ms. McNatt: I have a question. The tower that's shown in the 300 foot view, how tall is that tower?

Mr. Fruehstorfer: One hundred forty-three feet.

Mr. McNatt: One hundred forty-three feet?

Mr. Fruehstorfer: Not 150, yeah.

Mr. Hurd: That's 143?

Ms. McNatt: And would that be allowed to be built today if we had these setback requirements? So 143 feet times three or . . . because it's outside the right of way, correct?

Mr. Silverman: There is a public street in there somewhere.

Mr. Fruehstorfer: That one, I believe, is zoned BC, so it is not beside a residential. So as the Code is written now, it would. But if you're changing that to say that all properties have to have that setback, it wouldn't be able to be built.

Ms. McNatt: But as this proposal is written right now, it's outside the right of way, correct?

Mr. Fruehstorfer: And it's not neighboring a residential neighborhood, so those setbacks . . .

Ms. McNatt: So the 200, hold on, so 3x the height of the tower or 200 feet, which is greater, that would apply, correct?

Mr. Fruehstorfer: It's not beside residential or a church or school, so I don't think that does apply, does it?

Mr. Hurd: No, it does not.

Mr. Firestone: No, just the . . .

Ms. McNatt: So it does not apply.

Mr. Firestone: Just the fall zone . . .

Ms. McNatt: But we don't have a fall zone in here, correct?

Mr. Firestone: But we did talk about it.

Mr. Hurd: We did talk about it.

Mr. Firestone: Yes. If we had . . .

Ms. McNatt: Right now, as it's written, this draft does not have a fall zone.

Mr. Firestone: Correct.

Ms. McNatt: It would be allowed to be on that property, for example.

Mr. Hurd: Correct.

Ms. McNatt: Okay. Now I'm . . . and it's 143 feet. Alright. I'm sorry, I'm trying to get also the understanding of the Code and the views at the same time. Alright. Okay.

Mr. Firestone: Does anyone else have any thoughts on notice?

Ms. McNatt: I like your suggestion of varying the notice requirements based upon the tower height. I'm not 100% on the numbers that you suggested for right now, now that I'm kind of trying to figure this all out. I don't have a proposed alternative at this moment, however for the shorter antennas or towers, I don't mind the 300 foot distance. For the shorter ones – the 0 to 50, the less than 50 ones. You said five . . .

Mr. Firestone: Well five is in there now. In the way it's drafted, five is in there now.

Ms. McNatt: So why are we looking at 300 feet?

Mr. Firestone: Well 300 is the sort of default notice under the Zoning Code.

Ms. McNatt: Oh, okay.

Mr. Silverman: For other uses.

Mr. Firestone: For other uses.

Ms. McNatt: Got it. But I do like the 300 for the shorter ones, which would still be in effect if we didn't use the 500.

Mr. Firestone: Yeah but under the normal . . . we're generally talking about 35 foot structures versus 50. This goes up to 50. I mean I'm willing to discuss the precise numbers . . .

Ms. McNatt: Right.

Mr. Firestone: It's just sort of the idea that notice should vary with height.

Mr. Hurd: Right.

Ms. McNatt: I do support the idea of that. I don't know that I'm okay with, like, 2,000 or 3,000 feet, either. But some level, I think, is appropriate.

Mr. Firestone: Are there other changes . . . does anyone have comments on any other aspect of the last modified draft?

Mr. Silverman: With respect to the notice, if Council were to choose to go forward with notice by zones going out to, say, 1,000 feet, I would support direct property owner notification using the 300 foot standard that's generally accepted in the Code, and then permit public notification by other means such as advertisements in local newspapers or other kinds of public notice, as opposed to direct mail to someone who lives almost a quarter of a mile away. If Council goes in the direction of public notification at great distances, I think there should be an alternative given to the applicant of using other than direct mail to the property owner. That's just my comment.

Mr. Firestone: Well, I mean, we already have that, which is put a notice in the paper, which doesn't really give people notice.

Mr. Silverman: That's a public responsibility. I roll my eyes, too, but that's part of how we work.

Mr. Hurd: I will add that for the section about towers in the right of way, there is no notification section for towers that are higher than 35 feet and therefore require a special use permit. So would they fall under the standard special use permit notification guideline, which is, what, 300 feet? And do we want to . . . or is the paragraph we're discussing for towers outside the right of way, is that language appropriate for towers within the right of way?

Mr. Firestone: I would say, from my perspective, it is.

Mr. Hurd: Yeah. I just don't know if we're ever going to get a tower over 150 feet in the right of way.

Mr. Firestone: Probably not.

Ms. Gray: Mr. Chair, the provisions you're referring to are for towers outside the right of way.

Mr. Firestone: Correct. Commissioner Hurd brought up that if someone wanted to get a special use permit for a 100 foot tower in the right of way, we don't have that notice provision as . . .

Ms. Gray: Well the Code, as it's written, would not allow that height in the right of way.

Mr. Hurd: Yeah, I was going to say, page 4, paragraph 2 does say towers in the right of way shall not exceed a height comparable to the average height of utility poles or electrical poles within a two block radius . . . again, we're using blocks, but that's . . . unless the applicant can prove that a taller tower is the only method. So there's still a loophole there that you could get a taller tower than what is currently along the right of way.

Ms. Gray: If it helps, the average utility pole is somewhere between 50 and 60 feet in the City of Newark.

Mr. Hurd: Okay. So if someone came along and put up a 50 or 60 foot tower in the right of way, that's 1,000 feet, right? It's greater than 50 but less than 75. Wasn't that 1,000 foot notification?

Mr. Firestone: Yes. I mean there are some places where if you put up a 200 foot tall structure, you could probably see it anywhere in the City.

Mr. Hurd: Yeah.

Mr. Silverman: At the reservoir.

Mr. Firestone: Forgetting about the reservoir. Put it on the STAR campus.

Mr. Hurd: Yeah.

Ms. McNatt: What would we be achieving if we were trying to notice people, I'm just going to use the . . . because it used to be 1,000 . . . but 2,000 and 3,000 feet away? It's . . . I'm not sure, what are we achieving by doing that?

Mr. Firestone: We're achieving the fact that we're providing notice and we're engaging the citizens and letting them know that there may be a very tall tower in their view-shed, so that when the tower gets built, people can't say they don't feel that it was put through them and by them, and they didn't really know, and they didn't have notice. This wasn't anywhere near my house. It's a half-mile, you know, this is a quarter-mile away. I didn't hear anything about it. I don't read the Newark Post.

Mr. Silverman: I'm an uninformed resident.

Mr. Firestone: It has to do with our obligation as public servants to engage the public. So I have a different view of . . .

Mr. Silverman: We're on the opposite sides of this.

Mr. Firestone: Governance than you do.

Ms. McNatt: I was just thinking when . . . where is the fine line between normalcy versus excessive notification?

Mr. Hurd: Right.

Ms. McNatt: And I don't know the answer to that, but I think there's a line.

Mr. Hurd: I will say this is in some ways predicated on the conversation that we had a few years ago for accessory uses and the non-conforming . . . no, special uses with impact. That was the phrasing. Where you had this . . . you sort of said what's the notification for an accessory use with impact because some accessory uses like power plants have a much greater impact than painting sheds or something. So we had discussed about what was a reasonable distance for those and I thought we had come down to 1,000, but I'd have to pull the Code. But it was that same kind of thing, to say the previous notification limit was limiting when the impact was larger than the notification distance. I think . . . I would say 300 feet is certainly too short for towers over 35 feet, but, yeah, where's the high end? Where's the top of this?

Ms. McNatt: To me, the high end is no more than 1,000, but I think 2,000 and 3,000 is a bit excessive, [inaudible] idea of notification. And the work associated with notification. And the fact that this is all a public process. Just my thoughts.

Mr. Firestone: Well let's move on then. We're not going to resolve this right at this moment. Are there other changes that were not listed that people either found new changes or they felt like their changes weren't implemented? Let's start with Commissioner Hurd.

Mr. Hurd: Okay. I will try to do this in order. Page 4, paragraph (c), 1, b, we have again that . . . where we say stealth technology if possible. I think that's where we want to say shall employ the best available stealth technology in their design.

Mr. Firestone: Yes.

Mr. Hurd: Page 5, paragraph (d), 3, I had problems with that sentence previously and I think the changes didn't get picked up. But the way I would rephrase it is towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and comparable antennas up to the maximum capacity for the size of the proposed tower.

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

Mr. Hurd: Page 5, paragraph (d), 3.

Mr. Firestone: Can you go through it slowly?

Mr. Hurd: Sure. And most of these were already in the email I sent previously, but these weren't the actual words. But I would say towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and comparable antennas up to the maximum capacity for the size of the proposed tower.

Mr. Stozek: How are you defining capacity?

Mr. Hurd: The way I read this, and I'm sure this probably comes from industry language, I think that tower sizes would have a capacity and number of antennas that they can support. So you could say, I don't know, a 100 foot tower can hold say 70 antennas. I'm putting 20 on. The way I'm reading the intention of this is to say there has to be support for those additional 50 antennas that could come at some point because they're either adding capacity later down the road, or there's collocation possibilities, or such, so that there's structural and electrical support for the additional antennas that the tower can support. Because the tower likely doesn't have all the antennas on it that it can right now.

Mr. Stozek: But couldn't that also depend on the technology at the time?

Mr. Hurd: Well, yes, but we can only look at the technology now.

Ms. McNatt: The word capacity has changed multiple times in the document so I don't if it's a defined word, but it was definitely added in blue.

Mr. Hurd: That was talking about network capacity.

Ms. McNatt: So that's how I was assuming you were using the word capacity.

Mr. Hurd: So I meant . . .

Mr. Silverman: You're talking about weight-bearing.

Mr. Hurd: Weight-bearing. So maybe capacity is the wrong word. Comparable antennas to the maximum number?

Mr. Firestone: Can't we just say towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and comparable antennas. Period.

Mr. Hurd: What's comparable antennas in that sentence then?

Mr. Silverman: And future users. Boy, is that an unknown.

Mr. Hurd: Yeah.

Mr. Firestone: I mean it really just has to be designed to accommodate whatever they're proposing to put up.

Mr. Hurd: This seems to be . . . the way I'm reading this, this is asking for the towers to have capacity, structural and electrical capacity beyond what is being proposed.

Ms. McNatt: To add more.

Mr. Hurd: So that more antennas or such can be added to that tower at a later date.

Mr. Silverman: So no one comes back to put another tower next to that tower . . .

Mr. Hurd: Right, because that tower doesn't have enough electricity or structural strength or something. You know, we build a tower that can hold 50 . . . the towers of this size could hold 50 antennas but we only built it strong enough to hold 20, so we have to put those 30 someplace else. And I'm [inaudible] because I don't understand cell towers but that's how I read the intent of this. But the language, one, is confusing, and two, I don't think is getting us to that intent.

Mr. Firestone: I mean it seems like it would be easier just to say up to 2x the applicant's antennas, or 4x the applicant's antennas.

Mr. Hurd: Yeah, I hear you.

Mr. Firestone: The tower has to be able to handle twice as much as . . .

Mr. Hurd: It needs excessive, excess structural and electrical capacity.

Mr. Stozek: But aren't you just saying you cannot exceed the structural capacity? You know, the design structural capacity of the tower? Electrical and structural.

Mr. Firestone: We're trying to get them to design a stronger tower that can handle additional future use so that we build fewer towers.

Mr. Silverman: We want additional future capacity built into the tower.

Mr. Stozek: Right.

Mr. Silverman: It's just not a minimum.

Mr. Firestone: Why don't we . . .

Ms. Gray: Mr. Chair?

Mr. Firestone: Why don't we wait until we hear from the applicant on this question?

Mr. Stozek: Yeah, because if you say you could have twice as many antennas, well you don't know what that is relative to the structural capacity of a tower you're building, if you try to put in a number of antennas on there. The same with electrical capacity. I mean they're going to come to us with a reasonable design. I guess we want to somehow limit them putting in additional towers in close proximity.

Mr. Hurd: By making those towers that they're building able to hold more . . .

Mr. Stozek: Right.

Mr. Firestone: Let's come back to this after the cell tower folks have a chance to enlighten us.

Mr. Hurd: Should I keep going for my things?

Mr. Firestone: Yes, keep going.

Mr. Hurd: Page 6, (e), 2, for grammar, I'd like it to say required electrical meter cabinets shall be, adding be, screened to blend in with surrounding area.

Page 7, did that. On the top of page 8, actually the bottom of 7 and top of page 8, paragraph (l), it's unclear about all the things, so I suggested saying to the extent permissible under state

and federal law, no tower or antenna may be located upon any property, building, or structure that is listed on either the National or Delaware Register of Historic Places.

Mr. Firestone: I don't understand why we have to the extent permissible. I mean if we don't want them located on these things, we can just say it.

Ms. McNatt: Just say it. Right.

Mr. Firestone: I don't understand why we're giving them permission . . .

Mr. Hurd: Well there may be something about national registers that allow it to be . . .

Mr. Firestone: If we're preemptive, then we're preemptive by federal or state law. We don't have to sort of invite preemption. But it doesn't seem like we would be . . . the federal government is not going to say you have to put cell towers on national historic places. So I think we can just get rid of the first parenthetical.

Ms. McNatt: Just say no . . .

Mr. Firestone: No tower or antenna may be located.

Ms. McNatt: I'm okay with that.

Mr. Hurd: That's fine. Page 9, I think I'd said this but I just want to say it again, paragraph (s) and paragraph (t), oh no, sorry, just (t), replacing City Council with the City. And if we decide in conversation that notifications for special use permits have varying or different distances, this would be where I'd be putting that.

Page 10, (1), (a), 2, again, Council, in the middle there it says Council may deny an application. I would replace it with the City may deny an application.

Oh, page 13, paragraph (g), last sentence, I would say we can strike the and stealth technology since we've stricken camouflaging from the towers in that paragraph.

Mr. Firestone: You're saying to delete and stealth technology?

Mr. Hurd: Well the intent of paragraph (g) seems, the strike-out in the middle there seems to be removing the camouflaged towers, that stealth technology from single towers.

Mr. Firestone: Okay. Got it.

Mr. Hurd: So at the very end it says we can exempt them from the stealth technology requirements that have already been stricken from the paragraph.

Mr. Firestone: Okay.

Mr. Stozek: Did you get this Council?

Mr. Hurd: Oh, good call. I think missed in that paragraph it says Council still. It should say the City.

Ms. McNatt: What line?

Mr. Stozek: At the bottom of the page.

Mr. Hurd: You're right. I didn't hit them all.

Mr. Firestone: Just while we're on that one, minimizes should be minimize. It should be singular, not plural.

Ms. Gray: What page are you on?

Mr. Firestone: Fourteen.

Mr. McIntosh: We missed a Council on 13.

Mr. Hurd: Yes, we did. Paragraph . . .

Mr. McIntosh: (i), towards the end.

Mr. Hurd: (i), yes. Thank you.

Mr. McIntosh: Just trying to help.

Mr. Hurd: I think that was it. The only other item for discussion, based on the letter from Mr. Divis, was basically paragraph (o), where we enumerate the inspection and compliance requirements that he felt should just be covered by a broad statement of comply with all FCC regulations, if I'm reading his letter and this Code correctly. But, again, I think we're into the realm of are we asking for something more or specific, as opposed to just general compliance.

Ms. Gray: Mr. Chair?

Mr. Firestone: Yes?

Ms. Gray: Our legal counsel reviewed that, and I'm not arguing one way or the other, as I indicated legal counsel and the Cohen Group reviewed these proposed changes . . . certainly not the editorial components . . . and they indicated that the ordinance, as written, requires a confirmation of compliance with FCC and other federal requirements and does not impose any additional requirements. Certainly if it's the pleasure of the Commission to delete it, I'm just articulating that that was the comment from legal counsel regarding that issue.

Mr. Firestone: Commissioner Hurd, any thoughts?

Mr. Hurd: I think if our counsel has said that what we've got in the Code doesn't impose an undue hardship, I'd say let's keep it in the Code.

Mr. Firestone: Okay. Commissioner Silverman, you had some changes?

Mr. Silverman: Yes, with respect to things that have not been enumerated in the draft we have before us, I brought up the topic, I believe, last time, of the use of the word right of way. I see, just without studying the document closely, three uses of right of way. One is in the title Facilities in the Right of Way. And then when I come down to Amendment 1, section 32-5 etc., the use of public rights of way. And then I flip over to page 5, and I find this hard to follow, it's (c) location and development standards, paragraph 7, state-owned rights of way, and then there's a reference to Department of Transportation. I still don't believe there's a clear, at least in my mind, a clear understanding in this document that we're talking about transportation rights of way. We're not talking about utility rights of way, sewer rights of way, public access to public park rights of way, or private rights of way. That if this is only concerned about public rights of way that are associated with transportation, mainly streets, it should say that. I could have a major sewer right of way or Delmarva could have a major highline utility right of way that's 100 feet wide.

Mr. Firestone: It just says they have to submit what's appropriate to DelDOT.

Mr. Silverman: No, that's not the issue with DelDOT. What's a right of way? What does this apply to? What's the intent? Is the intent rights of way associated with streets in the City of Newark?

Ms. Gray: The current ordinance, in the current form, defines right of way. And I'm looking it up right now.

Mr. Silverman: Okay.

Ms. Gray: Specifically for this ordinance.

Mr. Silverman: Okay.

Ms. Gray: Let me find it.

Mr. Silverman: For example, the land owned by the CSX property is commonly called a railroad right of way. How do we look at the proposal dealing with that particular use? The City of Newark may have a sewer utility right of way that may be 30, 40, 50 feet wide. How is that read or interpreted with this particular ordinance? If we're talking about street right of ways, let's say street right of way, to the exclusion of all other rights of way.

Ms. Gray: In definition 107.3 in the definition section in Chapter 32, right of way, the surface and space in, on, above and below any real property in which the City of Newark has an interest in law or in equity, including, but not limited to, any public street, boulevard, avenue, road, highway, easement, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, green space or any other place.

Mr. Silverman: You answered my question.

Ms. Gray: Okay.

Mr. Silverman: Any way of referring back to this? Or linking the two ordinances or the two parts of the Code?

Mr. Hurd: Does that address the issue about state-owned rights of way? Because that almost seems like that would be in the other section. If we're saying right of way as defined in the Code is City controlled, that section about right of way doesn't . . . if I'm putting it in a state right of way, I'm not in this first section. I'm in the second section.

Mr. Silverman: Right.

Mr. Hurd: Because I'm not in a City right of way. I'm in a state right of way, which might be on someone's property, right?

Ms. Gray: The state right of way would also . . . there's a City right of way and there's a state right of way. It's either one or the other in the City of Newark. There are roads that are state roads and roads that are City roads.

Mr. Hurd: But the definition of right of way includes easements.

Mr. Silverman: And refers to parks.

Mr. Hurd: And parks. So if there's, I don't know, Delmarva has an easement through my property, is that a . . . or the state might have an access easement or something through my property, so it's not a City right of way, it's a state right of way, I would feel that we are outside of the chapter dealing with right of way, because the right of way definition is for City-

controlled, City interest, City right of way. So that state right of way is just on my property and therefore I'm in the section about towers outside the right of way.

Ms. Gray: I think you're going down a rabbit hole here. You're looking for a problem that doesn't exist. What exact provision are you referring to?

Mr. Hurd: Page 5, item 7 at the top, says applicants proposing the construction or siting of towers in state-owned rights of way shall demonstrate that it submitted all appropriate applications to the Delaware Department of Transportation. So if they're doing it in a state right of way, it's not, by definition, one of the City rights of way, which is what this first amendment is covering.

Mr. Firestone: So then they just fall under Amendment 2.

Mr. Hurd: So then why is it in Amendment 1?

Ms. Gray: I think we're going in a circle here. My understanding of provision 7 here is that if it's in a . . . this ordinance was written for rights of way.

Mr. Hurd: So . . .

Ms. Gray: And the right of way . . . let me finish . . . is defined as a City right of way. If it's a state-owned right of way, then what provision 7 is requiring is that the applicant submit the documents that they have submitted to DelDOT to us, just indicating that they applied for a permit. That's what this is.

Mr. Firestone: I think the issue that we're trying to say is that Amendment 1 is limited to City right of ways, by its terms.

Ms. Gray: Right.

Mr. Firestone: So 7 doesn't make any sense because it's not a City right of way. So you wouldn't, unless you somehow have a facility that's both in a City and state right of way, 7 would never come into play.

Mr. Hurd: But I think it can be confusing because the very first item is public right of ways.

Mr. Firestone: Yes.

Mr. Hurd: Which is both City and state, in my mind. It's anything that's not private, so item 1 has said anything in the right of way, we have control over. And then you're reading through it and it says unless it's a state right of way. It almost says that nothing else that we're controlling here matters.

Mr. Firestone: So 7 should really be under Amendment 2.

Mr. Silverman: It appears to be.

Mr. Hurd: Unless our intent is to have regulations . . . well I guess if it's a state right of way, we have no control over . . .

Mr. Silverman: We have no jurisdiction.

Mr. Hurd: Right.

Ms. Gray: Correct. There is a state statute. There's a state law that prevails.

Mr. Hurd: So then . . .

Mr. Firestone: So can we just delete paragraph 7?

Mr. Hurd: If we delete it, I would like to see paragraph 1 on page 1 modified to indicate that we are talking specifically of towers proposed to be within City right of ways.

Ms. Gray: That's by definition of right of way.

Mr. Hurd: Then we just say it's a state right of way. Because if we say public . . . my concern is if we say public right of way, then that's saying both City or state.

Mr. Firestone: Can we change the word public to City? I understand it's somewhat redundant given the definition, but I'm . . .

Mr. Hurd: Or pull it out.

Mr. Silverman: Or just leave right of way.

Ms. Gray: Whatever is your pleasure. Whatever you'd like to do.

Ms. McNatt: I think some form of 7 should stay in there because I think the City wants documentation or a demonstration that if the tower is going to be in the City, that it's . . . or in the state's right of way, it's going to be built to the state's standards. So I do think some documentation should be received to demonstrate it has a permit. I understand the clarification that may need to be happening, but . . .

Mr. Firestone: But they wouldn't need to apply for . . .

Ms. McNatt: A special use permit?

Mr. Firestone: Yeah, if it's in the state right of way, it doesn't come in . . . they don't submit it to here. They submit it to the state.

Ms. McNatt: But doesn't the City want documentation that they have all the appropriate permits?

Mr. Silverman: For what reason?

Mr. Firestone: I mean they may want it but that's . . .

Mr. Silverman: We have no control over it.

Mr. Firestone: They don't have to apply for the special use permit.

Mr. Hurd: And I think if someone said where's your special use permit application, they'd say I'm in the state right of way, here's my documentation, and the conversation stops there. I would just add that whatever language we're using in Amendment 1, paragraph 1, we need to use similar in Amendment 2, paragraph 1, where we say it's located outside of, I think we say City right of way. Outside of the City right of way, yeah. So we're clear about it. It's like within the City-controlled right of way or outside the City right of way.

Mr. Firestone: Okay, for expediency, I'm going to say let's delete paragraph 7, we'll change the word public to City on the first page before the words rights of way, and we'll make a comparable change at the beginning of Amendment 2, where we also change public to City.

Any other Commissioner have anything to add? We'd now like to hear from the public. I'm going to have them go first, then you'll get the benefit of their comments. Thank you for your patience.

Mr. John Tracey: No worries, I was here anyway. John Tracey from Young Conaway Stargatt and Taylor. I actually have not been involved in this process but since I have probably done the lion's share of macro cell tower approvals in the state over the last 10-15 years, I thought I'd offer a couple of comments just for consideration.

I've done work in all three counties. I've done work in Cecil County. I've done work in a number of municipalities for both carriers as well as tower companies. So just a couple of things I caught. And I'm speaking only of what I call macro towers. Not these micro cells that are going in the right of way, but your taller towers that you were talking about.

I will tell you that most of the jurisdictions I do work in set the setback requirement at either 50 feet or one-third the height of the tower. That's certainly what New Castle County does. That's certainly what Sussex County does. As Mary Ellen knows from all my times in Kent County, Kent County is the outlier with larger setbacks, but over the last few years, they were granting more and more variances to allow the tower to go in certain locations. So I think when you're talking about a municipality like Newark where the vast majority of it is smaller lots, that your setback requirements that you were talking about may actually preclude the vast majority of the properties in the City from being used, which potentially could lead to issues with compliance with federal law and the ability to provide continuous coverage. I don't know of any particular applications, I'm just saying I think that's something you should be considering when you're looking at these setback requirements.

With regard to camouflage, what I will tell you is that beauty is in the eye of the beholder. New Castle County adopted a mandatory camouflage ordinance in, I think, 2004, which is why you might see a 130 foot tall tree in an area with 45 foot trees around, because there is a requirement to camouflage. Again, this was adopted during a time where everybody was kind of concerned about cell towers, and didn't know about the technology. Everybody didn't have 15 devices in their household, spread between 4-5 family members. The last time I was at the Board of Adjustment proposing a tree which the county was fighting for me, saying it should be a windmill instead, the chairman of the Board of Adjustment was saying why aren't you just doing a normal tower? And I said, well because the statute says I have to camouflage it. So what I would say is you may want to have flexibility depending on the location chosen, where camouflage may actually draw more attention than less attention to the structure. It's why when Ms. McNatt, I think, was covering this, I get concerned when I hear words like maximum and best because, again, with it being in the eye of the beholder, you're going to end up into a debate as to what that actually is. And I think, personally, you leave yourself potentially vulnerable to people arguing whether it's vague or void, or something along those lines.

I know there was some discussion about collocation. What I can tell you is when you're talking, again, about these macro structures, the taller structures, the vast majority of the ordinances that I deal with say the tower has to be designed to accommodate at least two collocators. So in addition to the applicant that's going on the tower, two other people would have to fit on that tower. It doesn't get into the nuances of electricity. It just says has to be designed to accommodate two collocators. Again, that's for these macro towers. The big towers.

Notice – again, I will tell you in every jurisdiction that I've done work in in this state and in Maryland, I haven't seen a separate notice requirement for a tower application that's any different than the notice requirement for any other application that would be in front of that body. So the Board of Adjustment, the City Council, the Planning Commission, or what-have-you, it's the same . . . any special use permit is subject to the same notice. Any Board of Adjustment application is subject to the same notice. They do not differentiate. I'm not sure I understand why . . . I mean I think conceptually I understand perhaps what's generating it, but what I can tell you is that every other jurisdiction that I've dealt with has one notice requirement that applies to every application of that type in front of that board.

Lastly, I don't have a dog in the hunt on the National Register issue, but what I would tell you just anecdotally, because this was brought to my attention about ten years ago by the now-

president of the Kent County Levy Court, Mr. Banta, when they had me do what became the first tree tower in the State of Delaware, which my understanding is everybody complained about it after it went up, is that the example that they use for purposes of camouflage, for purposes of doing a tree tower, in this instance, was from Mount Vernon. There was actually a tree tower on the Mount Vernon property. Now I think what they're thinking of, again, is you've got a destination where you're going to have a lot of people and you want to have good coverage. I always use the example when I do these hearings of, you're at a concern or sporting event or something, and you try to get on your wireless device and you can't. It's not because there's not coverage there, it's because there's 10,000 people also doing the exact same thing you are, which shrinks the coverage footprint. So I'm not encouraging being on National Register sites, but I will tell you that, again, it's not an uncommon thing, depending on the type of site and the device type of use.

So I just wanted to give you those thoughts for the record because, again, I haven't been participating in this process but I thought I would at least offer those comments. And I'm happy to take any questions if anybody has any.

Mr. Firestone: Thank you. First I noticed the lateness of the hour, so I'm going to exercise my discretion and say we're going to at least 9:30. And then at 9:30 we'll decide whether we're going to go later.

I would just comment that if no jurisdiction ever did anything different than all the other jurisdictions, then society would never advance. So that, in itself, is not, to me, a justification for not doing anything. But that's just me.

Mr. Tracey: Again, I'm just offering you . . . you're right. I mean everybody regulates things. You know, the question is to what level you go to that regulation and how it potentially deviates.

Mr. Firestone: Any questions for Mr. Tracey? Okay, thank you.

Mr. Tracey: Thank you.

Ms. Bonnie Metz: I'll be very quick. Thank you. I'm Bonnie Metz from Verizon, so I appreciate being here tonight. I do appreciate and want to say that some of the changes that were made, particularly the one that we requested, asking for Council, or the City, to be able to waive some of these requirements, I think we've said this all along, this ordinance is extremely detailed. It's long. It's certainly, by far, probably the most detailed and restrictive that we've seen in definitely Delaware and in Pennsylvania. And in New Jersey, as well. So I think that as it plays out, after it's enacted, it's important that there be some wiggle room because, in the end, and I just did want to stress, there's lots of things that you're discussing.

It's important to note that the carriers do not come in to ask to put up a small cell or tower unless we have identified a particular need for that. That it's impacting service to people. So it's that people can't get on their device. They can't get to. . . just to keep in mind, the more requirements and things that you put on with the notice requirements, it costs, obviously, additional money. It can cause delay. And in the end, we're here to serve the customers. These things, that's why we're doing them. So that people can have access to 911 and to all those services that they've come to rely on. You know, I think I said before that, you know, public utility service, it was regulated, it was, your phone was so important because you call 911. Well the traditional land line isn't regulated anymore in the State of Delaware and wireless has never been regulated that way, but the importance of the service is still there. And so we just ask that as you kind of deliberate in a lot of these discussions that you keep that in mind. That we're really here and we're coming to you asking that these things be approved because there's a need that we've identified that is impacting our customers. So, thank you.

Mr. Firestone: Thank you.

Ms. Jean White: If I stop, are my minutes going to go away?

Mr. Firestone: We'll give you your three minutes.

Ms. White: I know, but if I ask . . . if you respond, do I lose my time?

Mr. Firestone: We'll be silent.

Ms. White: Okay. Jean White, District 1. The first thing I wanted to bring up is on page 17, which is in green under (v). Notwithstanding any notice requirement to the contrary, and it goes on that all property owners of record according to ownership will get . . . and I don't know what you finally decided, 1,000 or 500 feet. I wanted to be sure that the cost of that was paid by the applicant. So my question is, are the addresses of those in that area going to be given by the City Secretary to the applicant to send out the notices, or is the City going to be doing it. And in that case, I want the applicant to be paying for the postage, the paper, and the time that it takes to do this. That's what I'd like you to look at.

Okay, then on page 7, a very small thing, but up under (h) on page 7, about three-quarters of the way down, these are factors to be considered. And I believe there was a discussion at a previous meeting we had, and I think it might have been Chairman Firestone, but perhaps not, talked about we really want to lessen the impact, not talk about benefit. So I thought this should be something like lessening the negative impact on the aesthetic character of the community, and taking the word benefit out.

And then I know that Mike Fortner said that the tower on Cleveland Avenue was 143 feet, if I heard him correctly. And if that tower were . . . first of all, I drive on Cleveland Avenue many times and I think what an ugly, awful tower it is, okay, but maybe it has to be there. So I was wondering if that wasn't there now, the area may be zoned BC, but wouldn't there have to be notice for that? That's my question, and how far it would be. Because a tower that high, you can analyze how much distance the notice would have to be. But there are some areas that are residential beyond the actual BC area, and I could imagine it might impact them. I haven't actually drawn the circles around, but it would seem to me there would be some.

And I do want to say related to this ugliness of things, is that eventually people get insensitive to ugliness. So what starts out, be it a cell phone tower or be it something entirely different, the immediate reaction is, oh that looks awful. But eventually wherever we are, and even in the City of Newark, we become insensitive to what really is a type of ugliness. And so we have to keep considering how we can mitigate it, prevent it, and so on, in the future.

Mr. Firestone: Thank you.

Ms. White: Okay, is that the end of my time?

Mr. Firestone: It is.

Ms. White: Okay, I won't say the other things. Thank you. And could you response to the two points I made about the tower, but in particular about the notice and whether it can be paid by the applicant?

Ms. Gray: The intent of the notice provision, the additional notice provision, is that the additional notice would be paid by the applicant. Done and paid by the applicant.

Ms. White: Does it have to be put into Code?

Mr. Hurd: I do remember I think we had that conversation at the last meeting. So I would support putting that language in, however we decide to do notice. I guess it's not clear

whether it's all paid by the applicant or anything beyond 300 feet or the minimum for special use.

Mr. Firestone: Point of clarification, do we need to act on this tonight?

Ms. Gray: I just pulled up the memo, because there have been many memos written on this ordinance. Let me pull it up again, my computer timed out. The memo dated October 3 articulated the timeline. Setting back from the sunset date, which is April 8, 2018, this needs to be, at the very latest, recommended by the Planning Commission on February 6, at the next meeting.

Mr. Firestone: Okay.

Ms. Gray: That's the drop dead date and . . .

Mr. Firestone: Okay, that's helpful. What I would like to . . . I wanted to say we've got a lot of changes so I don't think we should vote tonight.

Mr. Hurd: I agree.

Mr. Firestone: We should try to get a clean draft and we're going to have to come in with very minimal, just the most important, amendments next time. Because we've got to get a draft out. So that's number 1. The second thing is, I guess I'd like us to come up with a proposal for Mary Ellen on three items. One is on the extra capacity, the sort of 2x that was discussed here, the notice, and the fall zone setback, and we put a recommendation so that she can have some guidance in writing that up.

Ms. McNatt: From the Commission or we can send it to the Chair?

Mr. Firestone: No, we would just sort of discuss it now and give a sense of what she should . . . it's not the final, but she's got to put something in and I want to give her some guidance.

Mr. Hurd: Okay, can I just throw out just one sort of one or two things that are sort of related to the language at least? To Ms. White's point, on page 7, paragraph (h), that language is very similar to paragraph (i) that's on page 14 that we had discussed, and it may be worthwhile to take the changes that we had made to that paragraph, the one on 14, and bring them back to this one. Because that's where we talked about minimize impact. This one still says greatest possible extent talking about woodland and trees. I think that language, we kind of worked over in the later section, and I just think it needs to get pulled back in so that we have consistency.

And then the other thing I'll mention is that all our conversations about structure capacity and collocation of the towers is only within the amendment for towers within the right of way. We have no provision for towers outside the right of way about capacity for collocation.

Mr. Firestone: So, yes, so my recommendation would be that perhaps we go with a . . . we don't have to draft it right now, but that we have in both, the right of way and outside the right of way, we have the provision on collocation . . .

Mr. Hurd: Right.

Mr. Firestone: That effectively here is what was discussed so that they would have to be built to accommodate two additional, basically 3x the capacity of whatever you're going to install so that you can put two additional.

Mr. Hurd: Yeah, I would support that.

Ms. McNatt: Actually, I thought it's all about provider. So you want to provide the collocation for additional providers.

Mr. Silverman: Providers.

Mr. Firestone: Correct.

Ms. McNatt: Okay, not capacity . . . whatever.

Mr. Firestone: But it's . . .

Ms. McNatt: You want the tower to be built that it could support additional collocation.

Mr. Hurd: Right. Yeah.

Mr. Firestone: Right.

Ms. McNatt: Whatever number you want.

Mr. Silverman: And it should be that clean.

Ms. McNatt: I'm all about it.

Mr. Silverman: Because we don't know what the future is going to be as far as demand for capacity, how it's going to be met . . .

Mr. Hurd: I'd say from where we sit, you can look at it and say whatever you're putting on it, design it so that you can put two other things like that, in the sense of two collocators.

Mr. Firestone: Okay. Setbacks . . .

Mr. Hurd: Setbacks.

Mr. Firestone: For non-church, library, school, nursing home, hospital and residential. I don't want it from the property line. I want it from the center of the structure. The fall zone you're concerned about is the tower falling. So you're not talking about from the property line. It's not an aesthetic encroachment issue. It's a fall zone issue.

Mr. Hurd: Well I would say that for fall zone, I think the measurement covers that. Because you're talking about the nearest point of the base of the tower to the nearest point of the property line. So it's assuming that it's going to tip on a structural pivot.

Mr. Firestone: But this is only dealing with those properties if you're not adjacent to those properties.

Mr. Hurd: Oh, yes. So you're talking about measurements, yes?

Mr. Firestone: I'm talking about, again, something like, something that's in a commercial district . . .

Mr. Hurd: Right.

Mr. Firestone: That the fall zone should be from the center of the tower, and it should be, you know, I said 1.5x . . . maybe it's 1x . . . to any road or basically any right of way. It has to be setback from the right of way.

Mr. Hurd: So you're . . . so the 1.5x wouldn't be from the . . .

Mr. Firestone: Not from the property line. From the center of the tower. Because it's a fall zone issue. It's not a property encroachment issue.

Mr. Hurd: So you'd be . . . you could put it on your building setback line so if it fell sideways, it would fall onto someone's property, but if it fell forward, it wouldn't hit the road. That's sort of your concern?

Mr. Firestone: Yeah, or any other structure, I guess, too. I mean, you don't want it falling on someone else's structure and you don't want it falling on a right of way.

Mr. Hurd: It seems to me if you're trying to protect adjacent structures and such, then that makes sense to use the property line as the boundary that you're setting back from. Because your neighbor can build up to, in some cases, can build up to that property line.

Mr. Firestone: Well, I'm mostly concerned with rights of way.

Mr. Silverman: Does this ordinance give an applicant the opportunity to vary that requirement?

Mr. Firestone: It does. It gives the applicant the opportunity to ask the City Council to disregard that requirement.

Mr. Silverman: Okay, as long as that's real and implied in this.

Mr. Hurd: That's true. Yeah.

Mr. Firestone: It's explicit.

Mr. Silverman: Okay.

Mr. Hurd: Yeah, you wouldn't have to achieve a variance. You could ask in your application to have that requirement excluded.

Mr. Silverman: Okay.

Ms. McNatt: From the City.

Mr. Silverman: From the City.

Mr. Hurd: Right.

Mr. Silverman: Okay. I think Mr. Tracey pointed out a very important thing. We're dealing with an urban area with small lots. So we're de facto excluding tall towers, which gets into a whole lot of interesting areas in federal communication law. But that's up to somebody else to deal with.

Mr. Hurd: But, yeah, I'd just say I think because we're in a dense area, I'm a little more concerned about where that tower falls and lands.

Mr. Silverman: That's why the feds got involved.

Mr. Hurd: Okay.

Mr. Silverman: If you do this backwards and you read the federal court cases and the FCC rulings, it was because jurisdictions said we don't like the towers, and came up with all kinds of things like fall zones. And the feds said, no, you can't do that because you're interfering with public communication. So we really don't have a lot of wiggle room here.

Ms. Gray: Mr. Chair, to help move this discussion along, the way the provision is currently written, it is written that the setback needs to be not less than three times the height of the tower or 200 feet, whichever is greater. Now if the concern is the fall, and it's for all residential districts and the other descriptions – church, library, school, nursing home or hospital. So starting from there, if the concern is the fall area, so why don't you just take out and say in any district? Where you just take out church, library, and the residential district?

Mr. Firestone: We could. I'm trying to be less restrictive though.

Ms. Gray: Okay.

Mr. Firestone: My proposal was less restrictive. It would cover all these other areas . . .

Mr. Hurd: Right.

Mr. Firestone: And say in all these other areas that aren't adjacent to one of these special properties, that you have to be so far . . . you have to have a fall zone setback . . .

Ms. Gray: And I believe you had mentioned 1.5x.

Mr. Firestone: Which would be much smaller than 3x.

Ms. Gray: Right. I have a note here that you or somebody else said 1.5x.

Mr. Firestone: I suggested 1.5 but could probably live with 1 and a little. You know, it's mostly just to protect it from falling into a street if it's in a commercial area.

Mr. Hurd: Yeah, it makes me curious about why New Castle County is comfortable with one-third. Either they have examined it or they're feeling constrained by federal law and happy to have some buffer but . . .

Mr. Silverman: It's my recollection we heard it in one of our discussion from the public, from the technical side, that these towers are no longer the old-fashioned guyed towers that fall at 90 degrees. These towers are designed to collapse on themselves, so it lessens the area of impact when the tower comes down.

Mr. Hurd: Well and paragraph (b) is kind of written that way to say if you're using self-collapsing technology, you can use 1.5x. If it's a tower with guyed cables, its 3x.

Mr. Silverman: Right.

Mr. Hurd: But I don't know that we can go as far as to say all towers have to be self-collapsing . . .

Mr. Firestone: Yes.

Mr. Hurd: And therefore we can restrict the setback.

Mr. Stozek: I'm not sure I understand the logic of if it's a guyed tower, why you need 3x the distance.

Mr. Hurd: Because it's . . .

Mr. Silverman: It's rigid.

Mr. Hurd: It's rigid and . . . why you need 3?

Mr. Stozek: Yeah, 3.

Mr. Hurd: Because it rolls.

Mr. Stozek: It's not going to tumble.

Mr. Silverman: It's a balance factor.

Mr. Hurd: Cartwheels, right? All the time. Yeah, not knowing how they're . . . you almost want to say 1.5x is the rigid and less than that for self-collapsing because self-collapsing would be within a smaller radius. Maybe that's the way to write this. It's 1.5x if it's a guyed tower and maybe it's one-third to sort of say, like New Castle County's, for self-collapsing.

Mr. Firestone: It's 9:27, so the Chair will either entertain a motion to adjourn or a motion to extend.

Mr. McIntosh: You would entertain what?

Mr. Firestone: A motion to either adjourn or to extend for a half-hour.

Mr. McIntosh: I would move we adjourn.

Mr. Firestone: Is there a second?

Mr. Cronin: I'll second it.

Mr. Firestone: All those in favor, signify by saying Aye. Opposed, say Nay. The Ayes have it. We're adjourned.

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

VOTE: 4-3

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

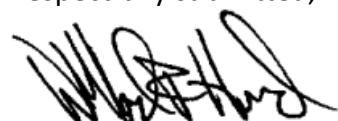
MOTION PASSED

[Secretary's Note: The Planning Commission meeting adjourned prior to discussion of agenda items 6, 7, 8, 9, and 10, listed below.)

6. **REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE RELATING TO REQUIRING FLOOR PLANS FOR LAND USE DEVELOPMENT.**
7. **DISCUSSION OF PLANNING COMMISSION GIS NEEDS.**
8. **QUARTERLY REPORT ON PLANNING COMMISSION 2018 WORK PLAN.**
9. **PARKING SUBCOMMITTEE UPDATE.**
10. **NEW BUSINESS AND INFORMATIONAL ITEMS.**

The Planning Commission meeting adjourned at 9:42 p.m.

Respectfully submitted,



Willard F. Hurd
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary

Attachments

[Exhibit A: Planning and Development Department presentation](#) (30 Benny Street)