

**CITY OF NEWARK**  
**DELAWARE**  
**CONSERVATION ADVISORY COMMISSION**  
**MINUTES**

October 9, 2018

**MEETING CONVENED:** 7:00 p.m. Council Chambers

**MEMBERS PRESENT:** George Irvine (presiding), Bob McDowell, Ajay Prasad, Kass Sheedy, Sheila Smith, John Wessells.

**ABSENT:** Kismet Hazelwood, John Horner, Jason Kramer.

**STAFF:** Renee Bensley, City Secretary; Whitney Potts, Administrative Professional, Paralegal; Mary Ellen Gray, Planning and Development Director; Michael Fortner, Planner; Joe Spadafino, Parks and Recreation Director; Tom Zalesky, Parks and Recreation Superintendent; Michael Fortner, Planner.

**GUESTS:** Mayor Polly Sierer; Councilman Markham; Councilwoman Wallace.

Mr. Irvine called the meeting to order at 7:04 p.m.

**1. APPROVAL OF MINUTES FROM MEETING HELD ON SEPTEMBER 11, 2018**

Ms. Sheedy noted on page 3 she intended to ask if the canopy would be disrupted, not state that “it would not be”. She asked if the language could be changed to read “Ms. Sheedy asked if the canopy would be disrupted”. Ms. Potts acknowledged Ms. Sheedy’s suggestion and made the correction.

**MOTION BY MR. MCDOWELL, SECONDED BY MR. WESSELLS: THAT THE MINUTES FROM THE SEPTEMBER 11, 2018 MEETING BE APPROVED.**

**MOTION PASSED. VOTE: 6:0.**

**AYE– IRVINE, MCDOWELL, PRASAD, SHEEDY, SMITH, WESSELLS.**

**NAY–0.**

**ABSENT–3.**

**2. PUBLIC COMMENT**

Mr. Irvine asked if there were members of the public that wished to comment and determined there were four people that wished to speak. Ms. White asked if public comment was intended for items that were not on the rest of the agenda. She asked if the public comment was similar to Council meetings; specifically, if public comment was permitted after each item on the agenda. Mr. Irvine opened discussion to the commission regarding the format for public comment. Ms. Sheedy suggested the commissioners determine if the public wished to comment on the same item. Ms. White suggested public comment occur after each item on the agenda and be directed to the specific point. Discussion among the commissioners and audience developed and it was determined public comment would occur after each item on the agenda. Ms. Bensley agreed with Mr. Irvine and suggested it would make sense for public comment to occur after the presentations but before the CAC made any decisions; therefore, public comment would be able to be considered.

**3. NEWARK COMMUNITY SUSTAINABILITY PLAN UPDATE- PLANNING AND DEVELOPMENT**

Mr. Irvine thanked Mr. Fortner for attending the meeting. Mr. Fortner stated he staffed the Newark Community Sustainability Plan. He informed the commissioners the committee created an RFP (request

for purchase) and three consultants applied. After a thorough review, Mr. Fortner said AECOM was selected as the consultant. Mr. Fortner said there were three steering committees made up from a broad range of people (including Ms. Smith from the CAC). He stated the steering committee met three to four times and hosted Newark Community Day twice. Mr. Fortner said the committee considered certain themes for Newark Community Day and the goal would be to streamline the themes to be inclusive and comprehensive. 82 people participated in a non-scientific poll at Community Day. Mr. Fortner said the most common interests from the survey were: 1. Promote green sustainable buildings, infrastructure, and development. 2. Advance clean energy, reduce fossil fuel dependence and 3. Local food systems. In 2017, clean transportation was listed as the highest, followed by sustainable development and urban design and renewable energy use.

Mr. Fortner announced the Drop-In Community Workshop was scheduled for Tuesday, October 16<sup>th</sup> between 4:00 p.m. and 6:00 p.m. and encouraged everyone to attend. He said the Steering Committee worked hard to formulate ideas to make the session productive and City staff, consultants, and committee members would be in attendance. There would be multiple presentations and exhibits on sustainability and the public would be given the opportunity to share their ideas. Mr. Fortner announced Bahareh van Boekhold, Chairperson, and Lead Consultant Dave Athey were in the audience at the meeting and would answer any questions from the commissioners or public. Mr. Irvine asked Mr. Fortner how the topics for discussion were determined for the Community Workshop. Mr. Fortner said public input was one part of the decision and stated there were other factors to consider as well. For instance, Mr. Fortner stated it was important to determine what matters the City could impact and noted the Steering Committee was in the process of refining the plan. Mr. Irvine asked if the plan would be utilized to manage City resources and incentives for citizens.

Bahareh van Boekhold, Chair, said other municipalities looked at sustainability in different ways. She mentioned there would be a leader in the community that organized efforts incorporated in different aspects throughout the City. Ms. van Boekhold stated sustainability efforts could include the following: Government management of resources, economic development, and the incentives provided to citizens. Ultimately, she believed sustainability could be described as an overarching approach. For the City of Newark, Ms. van Boekhold believed the approach would be described as “bottom-up”; specifically, the City’s ambitions and goals as they related to sustainability. Hopefully, the Comprehensive Plan would include plans for sustainability. She thought the CAC’s engagement was critical to the implementation of sustainability efforts throughout the City. Ms. van Boekhold believed programs for residents (i.e. energy efficiency or waste removal) could be implemented through sustainability programming. Mr. Irvine asked Ms. van Boekhold if the approach for Newark’s sustainability would be from the bottom up to influence future decision making. Ms. van Boekhold said the approach would be a multi-level approach and would require support. Mr. Irvine believed the CAC should be a strong leader in the sustainability effort and Ms. Smith expressed she was highly involved in the process. Ms. van Boekhold said there would be more collaboration going forward as she believed the CAC would be a vital part of the City’s sustainability efforts.

Mr. Irvine thanked Mr. Fortner and Ms. van Boekhold for their comments. Ms. Smith believed the Sustainability Plan and the Comprehensive Development Plan went hand in hand. She encouraged the commissioners and public to attend the workshop on October 16<sup>th</sup>.

#### **4. LANDSCAPE SCREENING AND TREATMENT ORDINANCE CHANGE- PLANNING AND DEVELOPMENT & PARKS AND RECREATION**

Mr. Spadafino read the Parks and Recreation Memo (dated October 2, 2018) regarding the proposed revision to Chapter 32, Article XXV Landscape Screening and Treatment Ordinance. He emphasized the addition of section (i); specifically, the tree mitigation and money in lieu of trees. Mr. Spadafino read the current Ordinance (Chapter 32, Article XXV Section 32-87 (g) 5 for the record. He informed the commissioners and public section 32-87 (g) 5 discussed the current provisions in the City Code for value trees. Mr. Zalesky displayed a portion of a tree that was 18” in diameter as a visual reference of a value tree. Mr. Spadafino reiterated Parks and Recreation utilized a process outlined in the City Code for

determination and classification of value trees. He informed the CAC he would answer their questions at this time.

Mr. Irvine asked Mr. Spadafino to clarify the CAC's input regarding the proposed ordinance changes. Mr. Spadafino said he wanted to present the proposed changes to the CAC in order to obtain feedback and additional comments. He said Council would be presented with the CAC's comments and suggestions regarding same. Mr. Irvine thanked Mr. Spadafino for the clarification and opened the discussion to the commissioners. Mr. McDowell asked Mr. Spadafino what the method of selection for replacement trees entailed (i.e. If a beech tree was cut down would it be replaced by another beech tree). Mr. Spadafino said Parks and Recreation reviewed the landscape plan [for a developed area] and recommended trees that should be replaced in that area. The developer would submit their replacement tree plan and Parks and Recreation would make changes. He informed Mr. McDowell the O Paper Mill Road development had a substantial number of native trees in the rear [of the development] and the City added native trees and new species of trees to additional areas. Mr. McDowell asked if a developer would be able to plant any tree of their choosing (i.e. Bradford Pear trees). Mr. Spadafino reiterated Parks and Recreation would review all plans and provide an adequate variety of native trees for the developer to choose from. Parks and Recreation was responsible for vetting and approving replacement trees whenever possible.

Ms. Smith asked Mr. Spadafino if he knew the approximate age of the City Code. Mr. Spadafino said he was unclear of the Code's exact age; however, it had been in place for at least 27 years. Ms. Smith asked if the current effort was the first attempt to amend the ordinance. Mr. Spadafino informed Ms. Smith the current City Code did not address situations where it was determined impossible or unworkable for the entire amount of value trees to be replaced or planted within [certain] portions of the site to be developed. Trees that exceeded an area's capacity would be planted by the developer at a location determined by Parks and Recreation. Ms. Smith asked if the replacement system worked in the past and Mr. Spadafino confirmed same. He noted certain situations where replacement trees exceeded certain areas did not occur on a regular basis; however, the trees that were determined to be in excess would be incorporated throughout the Park's system. Ms. Smith asked Mr. Spadafino if O Paper Mill Road was the largest tree replacement project the City had seen to date. Mr. Spadafino expressed the O Paper Mill Road project was the most extensive tree mitigation effort that he personally experienced during his employment with the City of Newark. Ms. Smith asked if 215 trees would be taken down at O Paper Mill Road. Mr. Spadafino said 215 value trees would be removed and the replacement value was reported to be over 600. Approximately 50 trees would be planted in the development; therefore, approximately 550 trees would be left for replacement. According to Ms. Smith, 90 of the 215 replacement trees were at least 18" in diameter. She said the trees in that area were mature and described the canopy as sizeable and expansive.

Ms. Smith stated she was unaware of the O Independence Way project and asked what the loss of trees in that area would be. Mr. Spadafino queried Ms. Gray as to the status of the O Independence Way. Ms. Gray announced the O Independence Way project had been applied for by the developer and the City responded with initial comments and feedback. According to Ms. Gray, the subdivision plan had not been received; therefore, Parks and Recreation was not yet able to perform analysis related to tree replacement. Ms. Gray expressed the lot [O Independence Way] was fully wooded. Ms. Smith asked Ms. Gray if the lot was 6 acres. Ms. Gray stated she would look up the acreage of the property and information regarding its size would be forthcoming. Ms. Smith said it was important for the number of trees to be considered; specifically, if it was an appropriate time in earth's history to remove trees. Mr. Spadafino announced the ordinance was designed to encompass tree mitigation procedures throughout the City and was not limited to O Paper Mill Road and O Independence Way. Ms. Smith questioned the nature of the project at O Paper Mill Road as it was listed as an annexation and rezoning. Additionally, she believed the City was attempting to re-write the Code for a 6-acre property [O Paper Mill Road] that was outside municipal limits. Ms. Smith reiterated her concern regarding the project's removal of value trees and asked for clarification regarding who it would be completed for. She asked why the City wanted to annex, rezone, and re-write the Code to meet the need of a developer.

Ms. Gray announced the acreage at O Independence Way was 8.81 acres and was a wooded lot. She addressed the areas for annexation were largely wooded; however, she requested the discussion focus

on the ordinance since 0 Paper Mill Road would be discussed later in the meeting. Ms. Smith said she understood why the ordinance would be changed; however, she believed there were other factors that needed to be considered. Mr. Irvine asked Mr. Spadafino if the proposed change was a result of 0 Paper Mill Road or if they [the proposed changes] were developed to address longstanding concerns. Mr. Spadafino said the proposed changes were necessary to address the fact the ordinance and Code were at least 27 years old. He believed the City was at a point where the proposed changes would provide a path forward. Additionally, developers would have a clear understanding of where they needed to be in terms of tree mitigation. Ms. Smith asked if the method of annexation for neighborhoods outside the City and removing trees was sustainable method for development. She believed the proposed annexation and tree mitigation plan was not a sustainable practice. While she understood the tree mitigation process as outlined by the City, Ms. Smith believed losing 13-acres of mature forest was unsustainable. Ultimately, she was concerned with the direction the City was taking in terms of sustainability and wanted to know the long-term goal. Mr. Spadafino said the issue was under the Planning Department's purview. Mr. Irvine interjected and emphasized the validity of Ms. Smith's questions.

Ms. Smith was concerned over the loss of habitat and wildlife and she believed it was necessary to create and maintain habitat for wildlife. Ms. Smith was struck by the language in the 0 Paper Mill Road proposal that described the area as an empty lot. She stated wooded areas should not be thought of as empty lots and expressed the vital nature of those habitats. Mr. Spadafino believed trees were part of the City's infrastructure or any community therein. Ms. Smith said the area would not be able to be replaced any time in the near future and referenced that it would take at least 100 years to mitigate damage or loss. While she believed tree mitigation was good in theory, she expressed the need for a more sustainable approach to planning. Ultimately, she questioned the City's need for the development at 0 Paper Mill Road. Ms. Smith said research from the Planning Department indicated seniors desired walkable, in-town living. Since 0 Paper Mill Road was 3 miles outside of the City, she questioned the development's consistency and relevance in relation to the Planning Commission's research.

Mr. Prasad asked for clarification regarding the language in the proposed ordinance for the tree preservation and maintenance account. Mr. Spadafino informed Mr. Prasad the account did not exist at the moment and would be created as part of the proposed ordinance change. Mr. Prasad asked for clarification regarding the amount of money Council would determine to be set aside and deposited on a per tree basis. He believed it would set a precedent for future developers and heavily wooded lots. Mr. Prasad believed the implementation of money in lieu of trees would act as a catalyst for loss of habitat or canopy. While money in lieu of trees would be allocated in an account, he stated it was not the same principle as replacing or replanting them. Ms. Sheedy echoed the concerns expressed by Ms. Smith and Mr. Prasad. While she was not disputing the language in the ordinance, she was concerned about the lack of new knowledge. According to Ms. Sheedy, the ordinance seemed to treat the trees as individual pieces of biota and was not at all systematic or habitat focused. Ms. Sheedy articulated a tremendous amount of research on ecological systems (and their interdependence) had occurred over the past 50 years. She believed the ordinance did not address the research of ecological systems and their interdependence. Ms. Sheedy thought the ordinance should be updated to address climate change, carbon sequestration, and habitat preservation. While Ms. Smith believed the ordinance could be followed and would be perfectly legal, she expressed that acres of habitat would be destroyed and would be unable to be replaced. She believed the new language could result in no trees in the City of Newark. Ms. Sheedy stated the language would only result in maintaining existing trees. She reiterated her concern that the ordinance was archaic and needed to be re-done conceptually as opposed to a bit by bit approach. Ms. Smith believed the ordinance (the new language and current) did nothing to mitigate or address the fact that the City was in crisis. She reiterated her belief and concerns that the ordinance needed to be updated.

Mr. Spadafino informed the CAC that the goal of the account would be to address the following:

- Reforestation projects.
- Replanting trees (1.5" to 2.0" in diameter).
- Plant more trees than those proposed to be removed.

Ms. Sheedy believed the ordinance did not include or address preservation of habitat. Furthermore, she expressed creation of new habitat and its continuity were not addressed. Mr. Spadafino asked Ms. Sheedy

if she was referring to the process or mechanism by which regeneration of habitat (i.e. animals, environmental etc.) was addressed. Ms. Sheedy thought 0 Paper Mill Road was an example of a large lot; therefore, it was a negative habitat due to the hydrologic changes and chemicals used in lawn development. She reiterated her concerns regarding her belief that the ordinance did not address the preservation of habitat or its requirements. Mr. Irvine informed Mr. Spadafino the following two methods could be implemented for the proposed ordinance: (1) An incremental approach (which is what he believed the current method to be) or (2) A substantive/intensive review or re-do of the entire ordinance (as proposed by Ms. Sheedy). He expressed that it was hard to re-do or effect change while the car was moving; therefore, he believed the Planning Commission and City Council would be required to make decisions against something concrete. Mr. Irvine said it would take time to re-do the ordinance and it would also be difficult to go through an incremental change path. He informed Mr. Spadafino that he would be able to provide guidance and critique through an incremental change path. Mr. Spadafino said the ordinance would be presented to Council on October 22<sup>nd</sup> and stated a workshop would take place during that meeting. Council's views and opinions on the ordinance would be gathered from that meeting.

Mr. Irvine said he was concerned with the clause of "Alternative Procedure: Tree Mitigation" and asked Mr. Spadafino what criteria or rubric would be used to determine if it was impossible or unworkable. Mr. Spadafino said the plan (i.e. 0 Paper Mill Road) and landscape plan would be reviewed. For 0 Paper Mill Road, a number of trees were added to areas that Parks and Recreation believed could accommodate them. He reiterated the fact that it was unworkable to plant 550 trees in that area in relation to the proposed housing plan. Mr. Irvine suggested the term unworkable be clearly defined as he believed the meaning was not clear in the language. He asked Mr. Spadafino if the area referred to as unworkable was the development plan and reiterated that the word "it" was ambiguous. Putting aside the philosophical issue of taking money for the value of trees, Mr. Irvine believed it was out of City Council's realm of expertise to determine the amount of money to be deposited for trees. He reiterated his concern regarding the rubric and methodology to determine the amount. He asked how City Council would be able to make the determination regarding the value of the trees (i.e. an American Forestry Council measure) and was concerned with the process. Mr. Irvine believed the term "shall only" was critical to the wording of money in lieu of trees in that it was the spirit or intended target for change. He expressed that it was important for the City to emphasize the purpose of the money in lieu of trees for mitigation and reforestation.

Mr. Irvine believed the tree preservation and maintenance account set a perverse incentive since the source of funding came from chopping down trees. He expressed it might incentivize removal of trees since the fund would increase as a result. As previously stated, Ms. Smith said the ordinance as it exists was a preventative measure for the destruction of trees. She questioned the reasoning behind the ordinance change and reiterated her concern that it developed to address 0 Paper Mill Road. Mr. Spadafino reiterated the ordinance change developed from the need to address other developments and issues; moreover, it was not designed for the sole intent of 0 Paper Mill Road. Ms. Smith believed the change seemed to coincide with 0 Paper Mill Road. While 0 Paper Mill Road triggered the change, Mr. Spadafino articulated it was not the only reason for the ordinance and proposed changes. Ms. Smith stated the spirit of the original ordinance was that of protection from large scale tree loss; however, she reiterated it needed to be updated and addressed as stated earlier by her fellow commissioners.

Mr. Irvine thanked Mr. Spadafino for his presentation and opened the discussion for public comment. There would be a 3-minute time limit for each speaker in the interest of time. Mr. Irvine said Council meetings implemented the 3-minute time limit for public comment. He reminded the public to identify themselves for the record.

Lena Thayer, District 5, thanked the CAC for their time. She had questions and comments pertaining to the new section (i). Ms. Thayer said she spoke to Ms. Gray at the last Planning Commission meeting and mentioned the wording did not include possible conservation replacement. Additionally, she wanted to know if conservation replacement was a viable solution for situations like this [0 Paper Mill Road]. Ms. Thayer expressed that she did not want to see trees removed; however, there were areas in the City she believed could be protected (i.e. Darrien Court) by money in lieu of trees. She was concerned with section (i) since it mentioned Council would determine the amount of money to be deposited in the account. Ms.

Thayer believed Council did not have expertise related to trees and estimate of cost. She believed a standardization or an expert from staff (i.e. Mr. Spadafino or Mr. Zalesky) was a better route. Mr. Irvine asked Ms. Thayer to describe her idea related to conservation replacement. Ms. Thayer suggested conservational easement where the money was paid to the City and was not limited to the maintenance of or restoration of existing open spaces. Conservational easement would permit the City to purchase additional open spaces (i.e. the wooded lot at Darrien Court). Ms. Smith expressed additional open spaces should be identified and protected throughout the City. She asked Ms. Thayer if conservational easement would serve as a replacement for replanting trees. Ms. Thayer said it was a tip of the iceberg idea and did not have a whole thesis on it; however, she believed it was a good idea and would allow the City to go in many directions.

Peter Saenger, neighbor of District 6, said he needed 4.5 minutes to discuss his topic and he was not aware there would be a time-limit on public comment. Mr. Irvine encouraged Mr. Saenger to stay as close to the 3-minute time limit as possible. Mr. Saenger believed amending the value tree code to accommodate the establishment of a tree-fund appeared to be another link in a chain of errors in the 0 Paper Mill Road proposal. In September (prior to the Planning Commission meeting), the Subdivision Advisory Committee failed [in his opinion] to point out the differences in a value tree code that requires tree planting and the City's position that "did not have a need or area to plant". Therefore, Mr. Saenger believed the Code's requirements were not met. Mr. Saenger said the Subdivision Advisory Committee recommended a plan go forward that was not Code compliant. He believed there was no basis in the value tree code for a tree fund. Mr. Saenger announced the Planning Commission was presented with and passed an annexation development plan that is not in compliance with the Code. He reiterated his belief that there was no basis in the value tree code for a tree fund.

According to Mr. Saenger, the proposed changes in the ordinance would amend and weaken the value tree code. Additionally, Mr. Saenger stated the tree fund in the 0 Paper Mill Road plan was previously funded by a proposed tree mitigation fee of \$175.00 per tree. He informed the table \$175.00 only covered the purchase and shipping of a tree and did not cover the cost of planting and watering. Mr. Saenger stated the fee would fall short and mentioned that money in lieu of trees would promote same. He believed the existing code was not the problem. While the value tree code seemed to be little known, Mr. Saenger believed it was a perfect guide for 0 Paper Mill. Mr. Saenger articulated the value tree code was unconditional and clear in its intention. "Tree preservation shall be required to admit the value trees." He believed the value tree code was fair. It allows "removal of trees to a maximum of 25% before remediation is required". Mr. Saenger thought it mandated timely performance and noted "replacement trees were required to be planted prior to the issuance of certificates of occupancy." He believed the value tree code practiced the wisdom of harvesting and replanting. Mr. Saenger believed replanting was not an elective. He said the value tree code evaluates the impact of the value trees by counting the number measuring the size of the trees, calculating the number of trees needed to offset the loss. He suggested this is where the value tree code was most helpful in assessing 0 Paper Mill as it calculated the number of trees needed to offset the value tree losses (550 trees offsite). Mr. Saenger believed 550 trees was a big number which seemed to be too big for the City to tackle. He thought the City currently had no plans to replace all the trees; specifically, the amount required was greater than they wanted to replace. Mr. Saenger thought the City was reluctant to admit that following the Code was beyond its capacity to execute the remedy as prescribed. He believed the Code should not be changed and expressed the losses at 0 Paper Mill Road were beyond the City's capacity to implement. Mr. Saenger was of the opinion the City should decline to annex 0 Paper Mill Road.

Mary Claire Matsumoto, District 6, agreed with the concerns expressed by Ms. Smith and others and asked why the changes should be made in the current Code that would permit a developer to deforest an area. She articulated concerns regarding issues of climate change and flooding; additionally, she believed the City had over-developed. Ms. Matsumoto questioned why the City would allow 550 trees to be removed from 0 Paper Mill Road and believed the area would be barren mess for a long time. She thought some value trees were removed in her development when a house was built. While some trees were left in that area, she stated the wind ruined them. Ms. Matsumoto was concerned with the wildlife and believed Green Ways should be discussed. She stated the animals in the area needed to be considered and that she did not believe the City of Newark should annex 0 Paper Mill Road. Additionally, Ms. Matsumoto did

not believe changes should be made to the Code to allow the annexation to work.

Bahareh van Boekhold, District 1, announced she was an environmentalist and would share her thoughts. She thanked Ms. Smith and Sheedy for their comments on the ecological services of trees. She listed the following as ecological services provided by trees:

1. Water Quality
2. Water Quantity
3. Effect on habitat.

Ms. van Boekhold highly recommended that the ordinance should include language that specified the evaluation of trees based on their ecological services. She emphasized the value of the parcel of trees at O Paper Mill Road as it was part of White Clay Creek. While it was possible to replace trees, Ms. van Boekhold said the effect on water quality and water quantity needed to be evaluated. She informed the CAC that New Castle County (NCC) upgraded their tree canopy and ordinance in the past 5 years. Ms. van Boekhold suggested Newark should utilize NCC's resources and ordinance in the process of amending their own. While the ordinance was being amended, she said certain language needed to be incorporated. Ms. van Boekhold believed both times a tree was cut down as well as the type of tree were important factors in reference to ecological services. She thought factors such as nesting season or disruption of habitat needed to be accounted for and protected in the ordinance. Ms. van Boekhold suggested the City reach out to DNREC for recommendations regarding protective language in the ordinance. She believed consultation with DNREC and protective language would benefit the City if an incremental change path was utilized. Ms. van Boekhold advised the CAC that NCC's tree ordinance was stringent. She questioned the City's thoughts regarding the annexation of O Paper Mill Road; specifically, she wanted to know if the annexation was requested because it would not comply with NCC's tree ordinance.

Mr. Irvine thanked Ms. van Boekhold and the public for their comments and invited the CAC to discuss constructive next steps regarding the proposed changes to the ordinance. He believed there were a couple paths forward: (1) Keep the ordinance the way it currently was since it worked fine. He said it was not necessary to change something that worked fine and (2) To modify the ordinance as proposed. Mr. Irvine mentioned the option to redo the ordinance completely as Ms. Sheedy suggested. Ultimately, he believed the CAC could make a recommendation one way or the other; moreover, they could act under the belief their comments provided enough feedback for Mr. Spadafino going forward. Ms. Sheedy said she would feel comfortable regarding a complete revision of the ordinance; additionally, she also hoped the CAC's feedback was useful for Mr. Spadafino and they would withhold a recommendation at this time. She reiterated the need for a revision of the Code to incorporate current research regarding climate change and carbon sequestration. Ultimately, Ms. Sheedy expressed the CAC could recommend keeping the Code as is until there was an appropriate, up-do-date, and sustainable system that addressed the real issues. Mr. McDowell agreed with Ms. Sheedy and believed a forest should not be viewed as just a collection of trees. He stated a forest was an ecosystem and a living thing. While he agreed the City needed to replace the trees and he understood developers needed to develop, he suggested the Code needed to maintain or increase the value of that land. Mr. McDowell said the substitution of money instead of trees did address the issue of the forest. While a 2" caliper tree would eventually grow and develop, he pointed out it would not be in a forest. Mr. McDowell articulated that a forest could not be recreated and said the City needed to think long and hard before allowing trees to be removed. As previously mentioned by Mr. Prasad, Ms. Smith agreed that allowing money in lieu of trees would set a precedent. She believed it was a bad time for the City to consider the possibility of allowing 215 mature canopy trees from a sensitive area. Ms. Smith said it would be hard for the City to make a responsible decision that would allow the changes proposed in the ordinance.

Mr. Prasad agreed with the statements from the CAC members. Mr. Wessells stated that it was necessary to be careful regarding the ordinance as he believed that approximately 80% of the forest had been lost since the western Europeans came to North America. He said the Native Americans lived by the rule of respect; additionally, they believed that everything – even rock – had a soul. Mr. Wessells said the City and public was not respecting the forest and environment and believed measures should be taken to make it whole. Mr. Irvine stated the consensus from the CAC was that they did not recommend the

proposed changes be made to the ordinance. Mr. Prasad and Ms. Smith and Sheedy agreed with Mr. Irvine's statement. Mr. Irvine suggested the possibility of tabling the recommendation for the ordinance until the next item on the agenda (O Paper Mill Road) was presented. Mr. Prasad believed the O Paper Mill Road project related to the ordinance change and thought it would be best to table the recommendation until it was presented. Discussion at the table regarding the occurred and it was decided that the recommendation would be tabled until O Paper Mill Road was discussed.

Mr. Spadafino thanked Messrs. Spadafino and Zalesky and closed the discussion to move to item 5.

## **5. O PAPER MILL ROAD DEVELOPMENT PRESENTATION & POTENTIAL RECOMMENDATION**

Mr. Irvine asked the presenter for O Paper Mill Road to come forward. Allen Hill stated that he was a representative of Hillcrest Associates. He said Hillcrest Associates was the Developer for the O Paper Mill Road Project. Mr. Hill announced that Tom Schreier (Landscape Architect) and Wendie Stabler (Attorney with Saul Ewing Arnstein & Lehr) were in attendance. He informed the CAC and public that O Paper Mill Road was identified on New Castle County's tax records. Mr. Hill said he appreciated the passion of the CAC regarding the development; additionally, he hoped to make a case for what was happening with the project through his presentation. He hoped the presentation would provoke discussion and would help people become more comfortable with the project. Mr. Irvine displayed a slide presentation of the O Paper Mill Road project. He said O Paper Mill Road was located in the center of Paper Mill Road and backed onto White Clay Creek and White Clay Creek State Park. The property was currently wooded and was almost 14-acres. There were two existing houses in the area; however, they were hidden visually due to the large amount of tree cover. Mr. Hill showed an image that displayed the area where the two houses were built in the 1950's. He said the area was not forested at the time the properties were built in the 1950's. There were 18 lots proposed, with a minimum lot size of 9,000 square feet which was less than ¼ acre lot. The proposed homes were not age restricted and were approximately 3,000 square feet that included a first-floor master bedroom with one or two stories. The O Paper Mill development would feature walk-out basements and was considered a traditional cluster development. Furthermore, all development would be kept above the driveway for the two existing homes and away from the unwooded area.

Mr. Hill displayed the proposed landscape plan and indicated the areas where it was proposed for trees to be replanted. He informed the CAC that 5 acres of the wooded area (closest to White Clay Creek) would be donated to the State of Delaware as part of White Clay Creek State Park. The donated area contained all of the older, wooded growth. Mr. Hill referenced the value tree code as mentioned by Mr. Spadafino. He stated that Hillcrest Associates walked the site at O Paper Mill Road with the City to identify all of the value trees in the area that would be disturbed. He expressed they did not visit the areas that would not be disturbed. Hillcrest Associates and the City determined 215 value trees would need to be replaced in the area based on the removal. Ultimately, 626 trees needed to be planted in order to replace the 215 value trees that would be removed. Mr. Hill said 99 trees and 178 shrubs were proposed to be planted in that area; furthermore, he mentioned the amount proposed was the most that could be planted without overcrowding the area. Most of the trees proposed were native trees; additionally, a few trees would be planted at the request of the City due to the benefits to the wildlife and habitat. Mr. Hill believed it would be impossible to plant all 626 trees on the O Paper Mill Road property. He said they had no issue with planting a forest for the City; however, there was no place for a forest to be established. Mr. Hill explained O Paper Mill Road acted as the catalyst for the proposed ordinance amendment to provide the City with the ability to address future development projects and their impact and approach to reforestation.

Regarding tree removal, Mr. Hill expressed the majority of the value trees in the area consisted of Poplar, Ashe, and Oak. According to arborists, there was a high rate of disease in Oak and Ash trees; therefore, they would not include that variety in the replacement trees. Mr. Hill said the mix of replacement trees would help prevent greater loss in the event of disease. He reiterated the fact that there were diseased trees in the area of O Paper Mill and said if disease took hold, the entire area would be wiped out. Mr. Hill expressed this was not an excuse to remove the trees; however, it gave an incentive for the replacement and mix of trees therein. He invited the CAC to ask questions regarding the project.

Mr. Irvine thanked Mr. Hill for his presentation and opened discussion to the CAC. Ms. Smith asked Mr.

Hill if he had an exact number or percentage regarding the number of trees; specifically, the number of Ash and Oak trees. Mr. Hill said the number of Ash and Oak were not identified. However, the size of each tree was identified. Ms. Smith believed there were other types of trees in the area. Mr. Hill informed Ms. Smith there were other trees in the area; however, value trees in the area consisted of Oak and Ash trees. Ms. Smith questioned the developer's reasoning and choice regarding the type of non-native trees that were selected. She believed non-native trees provided almost "zero" ecological services (i.e. London Plain versus American Linden etc.). Mr. Hill articulated the developer worked from the list of value trees provided by the City. He stated Parks and Recreation would propose alternative trees if they believed the developer needed to change them. Ultimately, the tree selection process was a collaboration between the City and developer. Mr. Hill said there were two reviews of the trees and stated Parks and Recreation provided guidance as to what they believed could be acquired in the quantity and time frame desired. He reiterated trees were selected in regard to the City's recommendation and guidelines.

Mr. Prasad asked if 626 plantings were required for option 1 or 2. Mr. Hill said 626 plantings would be required if they took the diameters of all the value trees and divided them by the 6" calculation. He expressed the 626 trees would be the straight-forward option 1. Option 2 pertained to the possibility of 5 shrubs being planted as opposed to a replacement tree. Mr. Prasad clarified 626 referred to trees and Mr. Hill confirmed. Ms. Smith asked if the 99 trees would be subtracted [from the 626]. Mr. Hill confirmed the number included the subtraction of 99 trees as well as the shrubs; specifically, the shrub number would be divided by 5. Mr. Irvine asked where the current City line was located on the property. Mr. Hill stated the development was required to be adjacent to the City in order to be annexed in. He pointed out NCC surrounded the area and said Mr. Saenger lived in the area of New Castle County (NCC). Mr. Irvine asked if the area could be described as two points at which the land was contiguous and within distinct bounds of the City. He believed the area could be described as a piece of the City within NCC. Mr. Hill said 0 Paper Mill Road was listed in the Comprehensive Plan as an area to be annexed by the City. Mr. Irvine asked Mr. Hill if the water flowed towards the creek versus towards the road. Mr. Hill informed Mr. Irvine the water flowed towards the creek. He provided a visualization from the landscape plan. Ms. Smith believed the slope behind the development to the creek was very steep.

Mr. Hill reiterated the fact the development was above the existing property's driveway for the following reasons: (1) They agreed that the development would not impact the driveway and (2) The area in question was originally not wooded. Mr. Hill stated the same property owners who built the house in the 1950's currently owned the house; additionally, it was his belief the issue at hand would not exist if the property had been moved. Mr. Irvine agreed with Mr. Hill to a certain extent but expressed the annexation would still be an issue regardless. He asked Mr. Hill how the developer would manage the flow of water due to the fact that existing canopy would be removed and replaced by impermeable surface. Mr. Hill informed Mr. Hill that the State of Delaware required the developer to manage the Storm Water management on the property. Additionally, the City of Newark was a delegated agency that would enforce the State's regulations. Mr. Hill announced the area included two stormwater management facilities that were piped from the proposed roadway and proposed houses. The water would be treated in the stormwater management facilities for quality and quantity before its discharge in a point of entrance (an existing pipe under the driveway). He informed Mr. Irvine the current rate of discharge was greater than recommended by the Code; therefore, he emphasized the need to reduce the discharge rate for compliance. Mr. Irvine asked where the water would be discharged. Mr. Hill said the water would be discharged through the pipe that goes underneath the driveway into an existing channel and stream.

Ms. Smith asked if there was a way to measure the load and its change on the little stream as she believed there would be a definite impact. Mr. Hill stated there would be an actual reduction of peak flow rate of water that went underneath the driveway by withholding the water in the stormwater management facilities. Ultimately, the water that flowed out of the area occurred at a lesser rate. Ms. Smith asked if the water would percolate. Mr. Hill said they would not percolate into the groundwater at the site as water was being withheld on the site above the ground. Furthermore, he stated the groundwater would be discharged slowly at a rate that was less than it currently was. Ms. Sheedy stated the current conditions lead to water that was fairly clean in that area due to the area's natural environment and tree coverage. However, she believed the water quality would decrease due to run-off from car-oil and pollutants. Ms. Sheedy asked if there would be other treatment beside holding the water before it was discharged to the

creek. Mr. Hill informed Ms. Sheedy that additional treatment would occur. Furthermore, he said one of the reasons the ground would not be infiltrated by the basins was to address the concerns of road salt, paving, and pesticides. The basins were designed with DNREC's biomedix mix (a mix of mulch, peat, and sand) that filtered the water going into the stormwater management facilities. Mr. Hill reiterated that both basins in the area had biomedix mix and forebays that allowed sediment to settle before entering the areas. In the event of large storms, Mr. Hill articulated the basins were designed to filter the water quality that came from the land.

Ms. Smith asked who would be responsible for maintaining the water treatment areas. Mr. Hill said the homeowners (and a homeowner's association) would be responsible for the water treatment areas; additionally, they would be responsible for maintaining the private roads in the development. He reiterated the private roads would not be a burden to the City. However, the City would be responsible to inspect the roads and the stormwater management basins to ensure that homeowners were maintaining them to DNREC's regulations. Mr. Hill stated this process was the same as what would be used for any NCC subdivision. Ms. Sheedy asked if it was required to monitor the discharge point. Mr. Hill stated the discharge points at the basin were not required to be monitored; however, the City's inspection would include evaluation for potential erosion that might result from any discharge. As previously stated, Mr. Hill said the outflow would be reduced from the current rate. While Ms. Sheedy understood the outflow would be reduced, she believed the true concern was the water quality and if breakthrough water quality issues would be addressed. Ms. Smith believed the development had taken steps to be more environmentally friendly than others; however, she wished it would be in the City instead of the current location. Ms. Smith thought this type of development in the City would preserve the trees and comply with LEED housing standards. She reiterated her prior statements regarding the size of O Paper Mill Road development and the fact that it was not a walkable community. Additionally, Ms. Smith emphasized the number of trees that would be lost as a result of the development and believed it was not a sustainable method of development. Mr. Irvine articulated there were certain aspects or conditions that were outside of a developer's control; however, he acknowledged Ms. Smith's statements.

Mr. Irvine asked Mr. Hill if the project had been to the Planning Commission. Mr. Hill said he gave a presentation to the Planning Commission who provided them with a recommendation for approval. He informed Mr. Irvine the approval was a 5:1 vote together with a recommendation from the Planning Department. The Planning Department recommended approval of the Annexation, Comprehensive Plan amendment, Re-zoning, and Site-plan approval. Mr. Irvine asked Mr. Hill to paraphrase the merits of the argument that was presented. Mr. Hill displayed a slide on the PowerPoint presentation that listed the development's merits. He expressed Hillcrest frequently went before Council with various redevelopment projects in the City, most of which were comprised of student housing. Mr. Hill said Hillcrest was frequently questioned as to why they did not complete projects in the City for non-students. He articulated the O Paper Mill Road development was as close as they could get in terms of the request for non-student housing; therefore, he announced the creation of this development was a benefit to the City as it satisfied a request. The two houses on the property that were built in the 1950's would go through annexations to the City if the plan was approved.

Mr. Hill noted the annexation would be part of the agreement and both would be provided with City water and sewer; furthermore, it would eliminate the two points of pollution from the pre-existing houses. One home used a septic system while the other utilized a cesspool from the 1950's. Mr. Hill emphasized the benefit that would occur from the reduction of pollution by annexation of the two properties. Additionally, Hillcrest's donation of the 5 acres of land to White Clay with an endowment for maintenance was an added benefit from the development at O Paper Mill Road. Furthermore, the City's tax base would be increased due to the additional residents. Mr. Hill reiterated the development's privately-owned and maintained streets would not be a burden to the City. The neighborhood's cluster-development allowed for additional open space. Mr. Hill informed the CAC the objectives of Comprehensive Plan 5 were met with the infill development. He expressed the difference in housing stock since the lot size was smaller. Mr. Hill said the homes at O Paper Mill Road were high-end; furthermore, they were unique since most high-end homes in the area were on big lots. He acknowledged the fact that some people did not want a large lot and expressed the development would meet the need. The City did not have comparable housing to the proposed development at this time.

Ms. Smith asked for clarification as to how the infill development requirement was met. Mr. Hill said Ms. Stabler would address the infill development. Ms. Stabler stated she was an attorney with Saul Ewing Arnstein & Lehr and was Counsel to the family who owned the property at 0 Paper Mill Road. Ms. Stabler informed the CAC the (Weinberg-Handloff) families owned the property for approximately 70 years. She stated the Weinberg-Handloff families had a long connection with the City and had been sitting on the property for quite some time. Additionally, the families wanted to put the property to constructive use. In response to Ms. Smith's question regarding infill, Ms. Stabler articulated there were many developments directly adjacent to and around the area with similar or higher density. She announced the area was a developed area and that the term infill referred to the fact it was not in the middle of nowhere. Although the proposed development was directly adjacent to White Clay Creek State Park, she reiterated the fact there were many residential developments around them. Most of the developments were created pursuant to development ordinances and restrictions that were not even close to current restrictions. Ms. Stabler articulated the stringent requirements of the Stormwater Management per the State of Delaware.

She advised the CAC that a comprehensive hydrologic study was conducted to demonstrate there would not be an adverse impact to the City's water system. Ms. Stabler was highly confident in the development's environmental responsibility and reiterated the benefits of the smaller lot size. She believed the smaller lot size would be well received by the market and expressed that there was a tremendous amount of open space being preserved. Ms. Stabler said the developer would preserve the habitat through the donation to the White Clay Creek State Park. She believed the canopy and habitat in the area would be preserved. Ms. Stabler stated it was important to advocate the positives for the project; additionally, she believed it was necessary to articulate the Planning Commission's recommendation and statement that it was consistent with the City's growth plan for responsible development. Ms. Stabler thanked the CAC for the opportunity to speak regarding the development.

Mr. Irvine opened the discussion for public comment.

Margaret Saenger, neighbor of District 6, acknowledged the Planning Commission's approval of the development with only one no vote; however, she believed there was not much understanding of the value tree ordinance by the members of the Planning Commission. Mr. Irvine said he did not attend the Planning Commission Meeting, so he could not judge the merits of the commissioner's comprehension of the value tree ordinance. Ms. Smith announced that she attended the Planning Commission meeting and believed the Planning Commissioners did not understand the value tree ordinance. She thought the Planning Commissioners did not understand the tree replacement process or how it worked.

Bahareh van Boekhold, District 1, asked Mr. Hill to show the 100-year and 500-year flood line on the property; additionally, she asked for the location of the wetland line. She understood 50% of the property would be donated to White Clay Creek State Park. Ms. van Boekhold announced she reviewed the development plans when she previously worked with DNREC. She believed the development should be enabled by those who supported the environment, as it was important for environmentally conscious people to promote sustainable development. Ms. van Boekhold thought the proposed development was of the cookie cutter variety and encouraged the developer to make the development more LEED conscious. She believed the developer could preserve more and described it as a challenging opportunity to make something the community would be proud of. Mr. Hill announced the City required the development to be LEED certified. Ms. van Boekhold interjected and stated the development was only 20 credits on the construction, not the site.

Mr. Hill said the City required the developer to submit actual LEED worksheets for new residential developments on the project. He did not know where the 500-year flood plain was located in relation to the creek; however, he pointed to an image on the PowerPoint where he believed the 100-year flood plain was located. Ms. van Boekhold reiterated the need to develop and conserve habitat. She encouraged Mr. Hill to consider a cluster development and asked what the Comprehensive Plan's proposed land use was for the proposed annexation. She asked if NCC's requirements would be for the land; specifically, if the requirements were more stringent than the City of Newark. Mr. Hill informed Ms. van Boekhold the developer considered building in NCC which would require the properties to utilize septic systems. In

order for the development to utilize sewers, annexation to the City was required since the area did not have NCC sewer service. Four lots on the property could have gone to NCC; additionally, the properties would have utilized septic systems with the two systems for the pre-existing properties. Ultimately, the primary driving force for the annexation to the City could be attributed to the sewer system. Furthermore, Mr. Hill informed Ms. van Boekhold NCC's process was slower than the City's. Ms. Stabler said the development was low-density residential and consistent with the City's Comprehensive Plan. The Comprehensive Plan allowed 11 units per acre and the development was under that requirement. Ms. Stabler articulated NCC's tree ordinance permitted 30% mature tree removal; furthermore, there was no mitigation requirement as mentioned in the City Code. Ms. Stabler thought the City's tree ordinance was more difficult than NCC. In addition, the City had the potential to receive money in lieu to fund tree planting. Ms. van Boekhold thanked Ms. Stabler and Mr. Hill and reiterated her belief the development provided an opportunity for sustainability.

Peter Saenger, neighbor of District 6, displayed photographs that depicted the site of 0 Paper Mill Road. There were trees in the area that were approximately half the size of the telephone poles. He pointed out the street view and tree canopy and the connectiveness to White Clay Creek. Mr. Saenger presented a view of the trees at 0 Paper Mill Road from the reservoir walk. He believed the development would harm the aesthetic nature for one of the City's most beloved nature walks. Mr. Saenger thought the trees at 0 Paper Mill Road bracketed the entire experience and aesthetic nature; specifically, the changes of season in the spring and fall. He believed it would be irresponsible to remove the trees at 0 Paper Mill Road and expressed the information was not made available to the Planning Commission. Mr. Saenger believed the aesthetic conditions of the surrounding area should be considered in decision to annex the property to the City and cut the trees down.

Mary Claire Matsumoto, District 6, was concerned with fact that a homeowner's association would manage the development. She shared that one of the reasons she liked living in Newark was due to the excellent City services (i.e. snow removal, road maintenance). While there would be some tax benefit with the new development, Ms. Matsumoto said the benefits would not reach the level that she received across the street. Furthermore, Ms. Matsumoto stated her development had 14 houses in it and had the same president for the Homeowner's Association for the past several years. Even with the Homeowner's Association, Ms. Matsumoto expressed the City still was required to plow the roads. She was concerned that the maintenance for the development at 0 Paper Mill Road would be more than the Homeowner's Association could handle. Ms. Matsumoto reiterated the development was not a walkable community and was concerned that the development did not connect to any specific place. Ms. Matsumoto believed the traffic in the area of Paper Mill Road was heavy and would not allow residents to walk or travel safely on foot. She informed the CAC that she felt unsafe when she crossed the street to look at the developer's sign due to the high speed that cars travelled in the area. Ms. Matsumoto agreed with Ms. van Boekhold's statements that expressed the City needed to look at the bigger picture in terms of sustainability. She questioned why the developer did not choose solar power and suggested its use if the development went forward.

Jean White, District 1, announced she was very interested in trees, White Clay Creek State Park, and the City. Ms. White thanked Mr. Zaleski for the example of the 18" diameter tree and asked what variety of tree it represented. Mr. Zaleski informed Ms. White that an Oak tree was the example provided. Ms. White asked how old the Oak tree was and inquired if the rings were counted. Mr. Zaleski said he and Mr. Spadafino counted the rings that afternoon and that it was determined to be between 50-60 years old. Ms. White announced that she had reviewed the developer's plans as presented to the Planning Commission and stated it included the location of the 215 trees and their required diameter. She counted the trees in regard to the blueprint and said there were 85 trees for 24" to 30" diameter at breast-height diameter. For 30" to 40" there were 14 trees; moreover, Ms. White listed the following diameters: 48", 48", 42", 48", 48", 48". She asked the CAC to consider the age of the trees she listed as they were old as indicated through their diameters. Ms. White shared the following quote from a Planning Commissioner at the last meeting "this property [0 Paper Mill] was open pastureland until almost 1970 and that the trees in the area were second growth trees."

Ms. White said it was implied the trees were about 40 years old; however, she mentioned the trees in the

area were 48" in diameter and were much older. While some trees had the potential to be invasive, Ms. White believed the invasive problems in White Clay Creek State Park's trees tended to be related to issues such as honeysuckle and ash. Ms. White believed 25% of trees in the area could be cut down with no remediation to the City. She stated the trees sequestered carbon dioxide which was particularly important. Ms. White thought it was unfortunate all the land in the O Paper Mill Road project could not be saved. While she appreciated the developer's donation to White Clay Creek State Park, Ms. White said it would be nice if the entire area could be saved. Finally, she asked Mr. Hill what he classified as open space in the plan (i.e. lawns of the individual houses or the area for donation to the State). Mr. Hill informed Ms. White the 55% open space referred to the area that would be donated to the State plus the areas that were not on the lots and the right-of-way in the subdivision. Ms. White stated the open space did not include the individual property lines. Mr. Hill said the open space did not count the individual property lines; however, counting the area within the lots would bring the percentage of open space closer to 80%. Ms. White reiterated her concern over the loss of carbon dioxide sequestration and believed the whole area should be saved.

Donald Sharpe, Local 1183 U.A.W., believed the community was fortunate to have White Clay Creek State Park close to the City of Newark. He stated it took 50 years to put the park together and expressed the challenging nature of the work. Mr. Sharpe stated the Handloff family was highly respected throughout the community. He suggested the City investigate the possibility of working out a deal between the trust and the State to purchase the whole property. Mr. Sharpe believed the State was in the process to appraise the portion of property that would be donated. He suggested both parties should get together and work out a deal for the City to purchase the whole property. Mr. Sharpe believed the general public supported open space and quoted the Secretary of Natural Resources, "White Clay Creek State Park is one of the most popular parks in the State." Mr. Sharpe was not opposed to the project; however, he believed both parties could work together for the City to amicably purchase the property.

Mr. Irvine opened discussion to the CAC to make a recommendation on item 4 (Landscape Screening and Treatment Ordinance Change). Mr. Irvine informed Ms. Stabler the CAC gave advice to Council; moreover, Council could choose to act on the advice or decline. He asked the CAC to provide feedback regarding potential paths forward. Ms. Smith asked Mr. Hill what would happen in the event the City decided that the project would not go through; specifically, she wanted to know if the owner had plans and if Mr. Sharpe's suggestion would be considered. Mr. Hill believed it would be possible for the development to occur under NCC or as an agreement between the State and owners. Ms. Stabler informed Ms. Smith that neither she or Mr. Hill were authorized to respond to that question. As a matter of public record, she stated there were multiple trusts that have gone down through the Handloff Family regarding the property. She emphasized there were multiple people involved and it took great effort to make the decision to move forward and underwrite. Ms. Stabler expressed the family wanted to ensure the process was completed responsibly and believed the steps taken were appropriate.

Ms. Stabler stated the conversation regarding the donation came up in the context and belief the annexation would move forward. Therefore, she noted the conversation and commitment to make the donation was predicated upon the approval of the annexation. Ms. Stabler said it was contingent and understood in conversations with DNREC that the donation was contingent upon the annexation and the plan approved. Ms. Smith asked if the donation would be pulled if the annexation would not go through. Ms. Stabler reiterated the donation was contingent as part of getting the plan approved; however, she said the donation would not be completely off the table, but it was understood a portion of the property needed to be dedicated to open space. Mr. Irvine asked the commission for their consensus and stated they had a choice to make a recommendation to Council. Conversely, he informed commissioners the option to decline to make a recommendation was available. Ms. Smith asked if the recommendation could include the CAC's comments in general as they pertained to the topics covered. Mr. Irvine agreed with Ms. Smith and stated the sense of the commission would be provided as part of the recommendation. Ms. Smith reiterated it was important to include the CAC's main points as part of their advice or reasoning behind the recommendation. Ms. Sheedy believed the ordinance was discussed in detail; however, she felt that commissioners did not discuss the O Paper Mill Road Project to the same effect.

Mr. Irvine agreed with Ms. Sheedy and stated that the CAC would need to provide their recommendation

and individual comments regarding 0 Paper Mill Road from a policy perspective. Additionally, he believed two separate recommendations should be made (one for 0 Paper Mill Road and the other for the Ordinance Change). Mr. McDowell expressed that he was torn regarding the development at 0 Paper Mill Road. Mr. Wessells said he hated to see anything torn down; however, he thought the fact the developer was donating to White Clay Creek State Park was a plus. Mr. Wessells asked if the current number of available 3,000 square foot homes in the 5-mile radius of the development was known. Mr. Irvine told Mr. Wessells his question would be a good area for market study; however, he believed the CAC could not wait on a study before a recommendation was made. Ms. Smith suggested the question was appropriate for the Planning Commission as she believed they should know what the community's housing needs are; specifically, if the development met the needs of the community. Mr. Wessells mentioned the market crash in 2008 where many people were left with big houses and did not have the ability to pay for them. He said he would hate for history to repeat itself so quickly.

Ms. Sheedy spoke to her former experience on the Planning Commission and said (traditionally) it was assumed that the market was the developer's problem. If a developer thought something could be financially successful, Ms. Sheedy said it presumably incentivized the creation of a development. Ultimately, Ms. Sheedy stated it was out of the Planning Commission's purview to determine the marketability or stresses. Ms. Sheedy agreed with Mr. McDowell and stated she was torn as to the development. She admitted the developer took a fairly responsible approach to developing the property and it was a bonus that a donation would be made to the park. Mr. Prasad believed that placing money in an account was not a sustainable way to proceed and was concerned with the new language in the proposed ordinance. With respect to the development project, Mr. Prasad echoed Ms. van Boekhold's suggestion for the project to include more LEED elements (i.e. Solar etc.) and stated he would be more likely to decide in favor of the development if they were included. Mr. Irvine recommended the commission make a recommendation for the Landscape Screening and Treatment Ordinance Change. He asked the committee if their views changed since the discussion of 0 Paper Mill Road; specifically, if their views changed for item number 4 after item number 5 was discussed. Mr. Irvine asked the committee if they were in favor of recommending the CAC was not in favor of modifying the value tree ordinance.

Ms. Smith was not in favor of modifying the value tree ordinance as she believed it was a last-minute decision that would make it possible for the change [development] to take place. Ms. Smith favored Ms. Sheedy's suggestion that the Code needed to be re-written in a comprehensive way that considers the real value of trees and their ecological services. Mr. McDowell agreed with Ms. Smith and stated he did not support the modification of the value tree ordinance. Ms. Smith believed it was a bad time to discuss chopping down so many trees. She reiterated she was in favor of re-writing the Code in a timely, comprehensive way that considers the real value of trees. Mr. Wessells added it was important to consider the habitat represented by the real value of trees. Ms. Smith expressed that clean air, water, habitat, and carbon sequestration needed to be considered. Ms. Sheedy thought the recommendation for the re-write needed to include the recognition of the complex ecological systems and their inter-related natures. Discussion regarding the language for the CAC's recommendation for the Landscape Screening and Treatment Ordinance Change occurred at the table.

**MOTION BY MR. PRASAD, SECONDED BY MS. SHEEDY: THE CAC RECOMMENDS THAT CITY COUNCIL DOES NOT APPROVE THE PROPOSED REVISION OF CHAPTER 32, ARTICLE XXV, SECTION 32-87 5(D) – LANDSCAPE SCREENING AND TREATMENT ORDINANCE– ON THE FOLLOWING GROUNDS:**

- (1) PLACING MONEY IN AN ACCOUNT DOES NOT GUARANTEE THAT TREES WILL BE REPLACED IN A COMPARABLE MANNER PURSUANT TO THE EXISTING CODE OF THE CITY OF NEWARK;**
- (2) THE REVISION DOES NOT RECOGNIZE THE REAL VALUE OF TREES; FOR EXAMPLE, THE HABITAT THEY REPRESENT, CARBON SEQUESTRATION, WATER QUALITY AND QUANTITY, AND THEIR AESTHETIC VALUE AND THE OVERALL QUALITY OF LIFE.**

**THE CAC RECOMMENDS A COMPREHENSIVE REVISION OF CHAPTER 32, ARTICLE XXV, 32-87 5(D) THAT TAKES IN TO ACCOUNT THE CURRENT RESEARCH AND THE COMPLEX NATURE OF ECOLOGICAL SYSTEMS. FOR EXAMPLE, THE BENEFITS OF MEASURING CONTIGUOUS FOREST**

## **COVERAGE VERSUS THE CURRENT PRACTICE OF PEICEMEAL ACCOUNTING OF TREES.**

**MOTION PASSED. VOTE: 6:0.**

**AYE– IRVINE, MCDOWELL, PRASAD, SHEEDY, SMITH, WESSELLS.**

**NAY–0.**

**ABSENT–3.**

Mr. Irvine announced the CAC would discuss the recommendation regarding O Paper Mill Road. He sensed the CAC would make a recommendation to Council regarding the pros and cons of the development rather than saying “yes” or “no”. Ms. Smith and Sheedy agreed with Mr. Irvine’s statements regarding the list of pros and cons. Mr. McDowell asked Mr. Hill what the developer would do in the event the annexation did not go through; specifically, he wanted to know if the area would end up in the County. Mr. Hill stated the area was currently in the County and there would be an option to develop it under NCC’s Code. Mr. Irvine thought there were positives and negatives to the project; however, he understood the desire to develop was strong. Ms. Stabler informed the CAC septic systems would be used if the project was developed in NCC; moreover, there would be tremendous ability to remove trees without mitigation. Furthermore, Ms. Stabler said the large lots would be on septic systems and believed the project would not be as environmentally sensitive if it was developed in NCC. Ms. Sheedy asked if it was possible to make the recommendation for O Paper Mill Road in the same manner as the Landscape Screening and Treatment Ordinance Change; moreover, she inquired if it could be stated the CAC did not find significant with the development as proposed. However, Ms. Sheedy believed it raised an issue with such properties within Newark and its environment that necessitated the need to look within the environment. She suggested the recommendation could be made for Council that the Planning Department or Parks and Recreation be directed to look at Newark and its environment to look at vulnerable pieces of property and strategies for preservation.

The commissioners unanimously agreed with Ms. Sheedy’s statements regarding the recommendation and the suggestion to include a comprehensive evaluation of the environment and identification of vulnerable properties. Ms. Sheedy expressed that the development was not terrible at face value. Mr. McDowell expressed that the developer’s design showed the environmental requirements from DNREC and the State were satisfied. Mr. Hill said he appreciated Mr. McDowell’s statement and informed the commissioners the plans and project took a year’s worth of work to design. He reiterated the care and detail that went into the project and emphasized that it was not thrown together. Ms. Smith believed the project’s approval would set a precedent for future projects and developments; furthermore, she asked if the developer if there were revisions that could be made to the development. Mr. Hill said there were always revisions that could be made; however, it would be difficult to make major changes to the project at this point. He stated boards (i.e. Planning Commission) would make recommendations that would be completed before they made it to Council. Ms. Smith believed the plan indicated there was room for the developer to plant more trees.

Mr. Hill informed Ms. Smith that the plans often appeared as if there would be more room than feasibly possible. He said the location of utilities did not allow additional trees to be added to the plan. Mr. Hill reiterated there were 100 trees being planted in the development that would be provided with sufficient room to grow and mature. He stated the trees were not necessarily shown on the plan. Mr. Hill said the plantings in the Stormwater Management Basins were not included as part of the 100 trees; furthermore, the plantings were required as part of the Stormwater Ordinance. Mr. Irvine stated the CAC’s charge according to the City of Newark Charter was to make recommendations regarding conservation in the City of Newark. He reiterated the belief there were pros and cons to the development; however, he stated the recommendation would be limited to conservation. Mr. Irvine believed that annexation did not make sense. However, he realized annexation was not necessarily related to conservation. Mr. Irvine expressed that annexation was a fiscal question and was outside of the City’s purview. He reiterated the focus for the recommendation would be limited to the development plan as opposed to the annexation.

While Mr. Irvine believed the developer’s plan was good, he thought it could incorporate creative ideas as mentioned earlier from the Ms. van Boekhold and other members of the public (i.e. LEED, solar, carbon sequestration). He thought the following ideas should be considered by the developer:

1. Going beyond LEED.
2. Tighter cluster development.
3. Weaknesses in the HOA management (potential for the HOA to be unable to maintain the area)
4. Solar.
5. Purchase power agreement (PPA).

Mr. Irvine stated PPA agreements were possible in residential developments such as the one proposed and offered to provide Mr. Hill with further information. Mr. Prasad echoed Mr. Irvine's statement regarding PPA's and emphasized the ability to be utilized in new construction. Ms. Stabler said she was familiar with the concept of a PPA and expressed that she did not know if it was feasible in an 18-unit development. Mr. Irvine stated the utilization of a PPA would offset developer's costs and would allow the homes to be constructed that utilized solar power; additionally, the ecological footprint would decrease as a result. Mr. Irvine asked if the land trust could be utilized and questioned if the City Council would take into consideration the effort that was required to build White Clay Creek State Park. As previously stated by Mr. Sharpe, Mr. Irvine thought the possibility of a land-swap could be utilized where the development goals (financial) of the family were met as well as adding land to an economic development asset. He believed third-party trusts could potentially purchase land on behalf of the City and put it into an easement. Mr. Irvine noted the lost value could be made up through tax rebates for the owner.

Mr. Irvine asked the commission if they desired to make a recommendation to Council on the O Paper Mill Road project. Ms. Bensley announced that the plan would not be presented to Council until the Landscape Screening and Treatment Ordinance had been settled; furthermore, a timeline indicated it would not occur until early 2019. She informed the commissioners there would be multiple meetings before that time where the recommendation could be made with sufficient notice for Council. Mr. Irvine acknowledged the complexity of the project and recommendation from Ms. Bensley to make the recommendation at another meeting. Mr. Hill said the developer did not require the ordinance to be passed in order to proceed with the subdivision. Additionally, he stated the developer would ask the City to indicate where they wanted the trees to be planted (regardless of the ordinance's passage). From a fiscal standpoint, Mr. Hill said it was cheaper to plant the trees as opposed to paying the fee in lieu. Mr. Hill believed the developer would go before City Council in February as indicated from the timing of the ordinance. Ms. Smith asked Mr. Hill if the developer would be responsible for maintenance and believed that one of the issues was the work required for planting trees and keeping them alive. Mr. Hill stated the developer would be responsible to maintain the trees for two years.

Mr. Spadafino announced there would be a two-year warrantee plus the maintenance of those trees. Furthermore, he informed the commissioners that a plan would be created for the location and area where the trees would be planted. Mr. Spadafino stated the potential existed to lose trees due to environmental concerns (i.e. hard winter) and reiterated the plan only covered two-years. Ultimately, it was necessary to create a good environmental plan for the trees and reiterated the requirements of the ordinance would be addressed. Mr. Spadafino said Council would provide feedback regarding the ordinance and O Paper Mill Road project; moreover, he emphasized the complexity of the tree mitigation process and the fact that it entailed more than simply planting trees in the area. Mr. Hill stated the developer supported the proposed ordinance since it gave the City more flexibility in terms of the variety of trees and location that they would be planted. He stated the proposed ordinance made it harder for the developer from a financial standpoint. However, Mr. Hill believed Parks and Recreation would benefit from the funding and would be able to utilize it to develop and expand the City's parks. While the developer would plant 100 trees on the property, the City would be able to use the remaining amount in a manner that was beneficial to the community. Ultimately, Mr. Hill expressed the developer did not want to wait for a year for Parks and Recreation to overhaul the tree ordinance. Mr. Irvine appreciated Mr. Hill's perspective and thanked him for his comments. He stated the CAC would table discussion and recommendation regarding the proposed development at O Paper Mill Road until the next Conservation Advisory Commission meeting.

Mr. Irvine said item 7 on the agenda, Reforestation Day, was scheduled for Saturday, November 3<sup>rd</sup>. He

announced next year's Reforestation Day could potentially include replanting excess trees from the 0 Paper Mill Road project. Mr. McDowell mentioned the trees would be quite large next year. Mr. Hill stated the trees would be 1.5" to 2.0" caliper trees. Mr. Irvine suggested the possibility for the developer to spread the reforestation and replanting effort over several fiscal years. He believed it would benefit the developer and the City. Mr. Hill said it could be accomplished with money in lieu of trees; however, the City would be required to plant the trees when the time came. Mr. Hill stated the developer would be required to plant the trees before the Certificate of Occupancy. Mr. Irvine reiterated the CAC made a motion to table discussion and recommendation regarding the proposed development at 0 Paper Mill Road until further review from City Council at the Conservation Advisory Commission's meeting on November 13, 2018.

**MOTION BY MR. IRVINE, SECONDED BY MS. SMITH: MOTION TO TABLE DISCUSSION & RECOMMENDATION REGARDING THE PROPOSED DEVELOPMENT AT 0 PAPER MILL ROAD UNTIL FURTHER REVIEW FROM CITY COUNCIL AND AT THE CONSERVATION ADVISORY COMMISSION'S MEETING ON NOVEMBER 13, 2018.**

**MOTION PASSED. VOTE: 6:0.**

**AYE- IRVINE, MCDOWELL, PRASAD, SHEEDY, SMITH, WESSELLS.**

**NAY-0.**

**ABSENT-3.**

Mr. Irvine said five items were covered on the agenda and suggested postponing the discussion of item 6, 8 and 9 till the next meeting. The commissioners agreed to move items 6, 8 and 9 to the next meeting.

**MOTION BY MR. IRVINE, SECONDED BY MR. PRASAD: MOTION TO MOVE ITEMS 6, 8, AND 9 FOR DISCUSSION AT THE NEXT CONSERVATION ADVISORY COMMISSION MEETING ON NOVEMBER 13, 2018.**

**MOTION PASSED. VOTE: 6:0.**

**AYE- IRVINE, MCDOWELL, PRASAD, SHEEDY, SMITH, WESSELLS.**

**NAY-0.**

**ABSENT-3.**

Mr. McDowell asked Mr. Hill if he could send the CAC the PowerPoint presented that evening. Mr. Hill informed Mr. McDowell that Ms. Bensley had a copy of the presentation on her computer. Ms. Bensley said she would distribute same. Mr. Hill thanked the CAC for the opportunity to present the 0 Paper Mill Road project.

Ms. Potts and Mr. Irvine discussed the items for the agenda on November 13, 2018. Mr. Spadafino said Reforestation Day was scheduled from 8:30 a.m. to 3:30 p.m. on November 3<sup>rd</sup>. He said the Community Clean Up event was scheduled for Saturday, October 13<sup>th</sup> and 9:00 a.m. Ms. Smith asked Mr. Spadafino if he had a list of trees that would be planted on Reforestation Day. Mr. Spadafino said he would speak to Mr. Zalesky and would forward the information when he received it. He believed Red Park was an area that would benefit from reforestation efforts and stated the understory in the park was thick. Ms. Smith reiterated the fact the Community Clean Up event was scheduled for Saturday, October 13<sup>th</sup> and thought it would be a good opportunity for the CAC to participate and clean up. Mr. Spadafino said he spoke with the Delaware Division of Forestry regarding building enclosures around the plantings to protect them from the deer.

**NEXT MEETING- NOVEMBER 13, 2018**

## **6. ADJOURNMENT**

**MOTION BY MR. MCDOWELL, SECONDED BY MR. SMITH: MOTION TO ADJOURN.**

**MOTION PASSED. VOTE: 6:0.**

**AYE– IRVINE, MCDOWELL, PRASAD, SHEEDY, SMITH, WESSELLS.**

**NAY–0.**

**ABSENT–3.**

The meeting was adjourned at 10:14 p.m.

Whitney Coleman Potts, Paralegal  
Administrative Professional

/wcp