

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

August 6, 2019

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Will Hurd
Karl Kadar
Stacy McNatt
Bob Stozek

Commissioners Absent: Tom Wampler

Staff Present: Stephanie Petersen, Code Enforcement Manager
Mike Fortner, Planner II
Tom Fruehstorfer, Planner II
Paul Bilodeau, City Solicitor

Staff Absent: Mary Ellen Gray, Planning and Development Director

Mr. Alan Silverman called the Planning Commission meeting to order at 7:00 p.m.

1. CHAIR'S REMARKS.

Mr. Silverman: The Chair would like to call to order the City of Newark, Delaware Planning Commission meeting for Tuesday, August 6, 2019. We have two items on our agenda this evening. One involves a major development plan and the other involves an administrative change to our Zoning Code.

I would like to inform those who are present how this meeting is going to be conducted tonight. This public hearing is being conducted for the purposes of giving the citizens of the City as well as interested parties the opportunity to present testimony to the City Planning Commission on applications, ordinances, and planning matters. Everyone will have a chance to speak. The adopted Planning Commission Rules of Procedure shall govern. There should be copies on the rail by the door. Those wishing to speak at the open of public comments are encouraged to sign in on the sheets provided. That way we have a record of who you are and how your name is spelled for the transcript and for the public record. Other individuals wishing to speak spontaneously, in other words, you do not have to sign up, may do so only when recognized by the Chair. Depending on the flow of information tonight, the Chair may call on interest groups to speak before individuals. In other words, a civic association will be asked to make a presentation before individuals. The Chair will also deal with repetition. For example, if an issue is the need for a public crosswalk, once it's into the record requested by one individual, the Chair sees no need for three or four individuals to say I also agree that we need a crosswalk.

This is a public hearing governed by statutes, not a general discussion, not a town meeting. It is convened specifically to hear testimony dealing with the subject topic. There is an expectation of civility and decorum. The Chair will not tolerate clapping, cheering, or that kind of activity. All statements are to be made from the podium here in the front of the room. For the record, please give your name and some way of identifying you as a Newark resident, whether it's your

councilmanic district or your address. All comments will be directed to the Commissioners. This is a hearing where the Commissioners are receiving information and testimony. The Chair will not tolerate sidebar discussions or discussions among yourselves while the hearing is going on. The Chair will control the discussion. You will be recognized by the Chair. There will be no dialog among the speakers, the public, or the applicant. At least not in this room. The Chair will discourage repetitive testimony. There is no practice of yielding time. Sidebar conversations and disruptions and applause can result in the removal of the offenders. Written copies of any statements or exhibits used during the hearing should be presented to the Chair for identification to be properly included in the record.

The Commissioners' deliberation shall only include information given in testimony or presented prior to the hearing as per the Planning Commission's Rules of Procedure. We do have emails and we do have other correspondence that the Commissioners have gotten in their packets. There are copies available on the rail of the information that we've gotten.

Now, in general, applications before the Planning Commission, the Director of Planning, and, in this case, the Code Enforcement Manager who is substituting for the Director tonight, will introduce the application. The applicant or the applicant's representative will be given 15 minutes to present the application. The Commissioners will then ask questions of the applicant and members of the public wishing to speak, including interest groups, will be given five minutes each to make their presentation. What I'm going to do tonight is ask the applicant not to respond individually to the Commissioners for those initial questions or respond with respect to the questions raised by members of the public. We'll hear the questions from the Commissioners, we'll hear the questions from the public, and then the applicant can respond in an omnibus manner to the topics brought up before them.

Prior to making a recommendation, the Commissioners can deliberate among themselves or ask additional questions of the applicant at that point. Any decision or recommendation on the application will be made by the Commission prior to the conclusion of the Commission meeting. In other words, we will take a vote tonight. However, under certain circumstances such as when the Commission requires additional information, the Commission may table or postpone its decision or recommendation until the next Planning Commission in the following month. This follows Code and the legal advice we've gotten in the past. When everyone has had a chance to give testimony and the Commissioners have rendered the decision, the hearing on the subject application will be closed by the sound of the gavel. So, that's the way we will conduct ourselves this evening on the topics that are coming before us.

Moving on to the agenda, you'll notice we have no minutes to approve, those of you who are regular attendees, because last week we had the July meeting and the minutes of that meeting have not been prepared yet.

2. REVIEW AND CONSIDERATION OF A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT AND MAJOR SUBDIVISION FOR THE 8.37+/- ACRE PROPERTY AT 321 HILLSIDE ROAD (PROJECT #18-06-04), LOCATION OF THE FORMER UNIVERSITY OF DELAWARE JOHN DICKINSON RESIDENCE HALL COMPLEX. THE PLAN PROPOSES THE DEMOLITION OF THE EXISTING DORMITORIES AT THE SITE, SUBDIVISION OF THE PARCEL INTO 2 LOTS, AND CONSTRUCTION OF 91 TWO-, THREE-, AND FOUR-BEDROOM APARTMENT UNITS. THE COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT IS REQUIRED TO CHANGE THE LAND-USE DESIGNATION FROM "UNIVERSITY" TO "RESIDENTIAL, LOW DENSITY" AND "RESIDENTIAL, HIGH DENSITY."

Mr. Silverman: So, we will move on w tonight's agenda. We'll move on to Item 2 and Madam Code Enforcement Manager, if you would please read the introduction.

[Secretary's Note: A link to the Planning and Development Department report on the Comprehensive Development Plan amendment and major subdivision of 321 Hillside Road can be found at the end of this document.]

Ms. Stephanie Petersen: Certainly, thank you. Project description. The land-use application PR18-06-04 is a request for review and consideration of a Comprehensive Development Plan amendment and major subdivision for the 8.37+/- acre property at 321 Hillside Road, the location of the former University of Delaware John Dickinson Residence Hall Complex. The plan proposes the demolition of the existing dormitories at the site, subdivision of the parcel into two lots, and construction of 91 two-, three-, and four-bedroom apartment units. The 91 units consist of 46 townhouse apartments, each three stories high. Three of the apartment buildings will have 12 units and one apartment building will have 9 units. The Comprehensive Development Plan amendment is required to change the land-use designation from “university” to “residential, low density” and “residential, high density.”

The plan replaced the previous plan submitted on December 6, 2018 for a major subdivision by site plan approval with a Comprehensive Development Plan amendment. The previous submission proposed to demolish the existing nine dormitory buildings and build ten new four-story apartment buildings with a total of 189 apartment units with 378 beds and a 189-space parking lot. This previous plan was withdrawn by the applicant.

Meeting materials. The Planning Commission was provided the staff report dated July 30, 2019 that was posted to the website on Tuesday, July 30, 2019 with the following attachments: Exhibit A, Subdivision Plans, Elevations, and Preliminary Floor Plans; Exhibit B, Zoning Requirements; Exhibit C, Site Maps; Exhibit D, Site Photos; Exhibit E, Rezoning Map; Exhibit F, Development Density Data Comparison Table; Exhibit G, Excerpts from Comprehensive Development Plan; Exhibit G-1, Amended Future Land Use Map; Exhibit H, Subdivision Advisory Committee Comments; Exhibit I, Public Comment; and Exhibit J, Photographs of Public Notification Sign. In addition, the Planning Commission was also provided with a full set of plans.

Zoning. The existing zoning for 321 Hillside Road is UN, university or college district, with an underlying zoning of RM, multi-family dwelling garden apartments, for the property located on the southeast side of Hillside Road, and RS, one-family detached, for the property located on the northwest side of Hillside Road. The transfer of ownership from the University of Delaware to a non-university owner will reinstitute the underlying zonings of RM and RS as indicated by our solicitor, Paul Bilodeau. The existing dormitories were an allowable use in the UN zoning district. The proposed apartments and townhome apartments on the southeast side of Hillside Road are an allowed use in the RM zoning district. The area on the northwest side of Hillside Road will remain open space and is an allowable use in the RS zoning district.

Existing land use. The property previously supported the Dickinson dormitory complex constructed over 50 years ago in 1966. The Dickinson dorms included approximately 703 beds situated in one-, three-, and four-story tall buildings. The three common buildings are one-story tall and six dormitory buildings are either three-stories tall, approximately 30 feet in height, or four stories, approximately 40 feet in height. There are currently approximately 94 parking spaces provided on the property. The University of Delaware closed the Dickinson dorms in May of 2015.

Proposed land use. This proposal is for the construction of four apartment buildings, each three stories high, and 46 townhome apartments, each three stories high. Three of the apartment buildings will have 12 units and one apartment building will have 9 units. Each unit will have one occupant per bedroom. The plan also includes a 268-space parking lot, 28 of which are located within a shared parking easement bordering the neighboring swim club. It should be noted that the required parking for the project is 240 parking spaces. The plan includes all those spaces outside of the area of the shared parking easement. The area of the shared parking easement will provide visitor parking during the time of the year that the swim club is not in operation.

Density. The zoning regulations for garden apartments in the RM zoning district, Section 32-11(a)(1)(a.-c.), indicate a maximum number of dwelling units per acre shall be 16. The density proposed for the plan is 15.4, rounded up, or 16 units per acre, and therefore meets Code.

Major subdivision. This proposed development meets all requirements detailed in the Municipal Code of the City of Newark, Delaware, Chapter 27 Subdivisions.

Comprehensive Plan. The proposed plan does not conform to the Comprehensive Development Plan V and will require a Comprehensive Development Plan amendment to change the designation of the parcels from university to the appropriate residential designation.

The RM section of 321 Hillside Road will need to be changed to residential, high density. The plan presented is three-story apartments and townhome apartments with a density of 15.4, or 16 units per acre. As such, it does not conform to the Comp Plan and will require a Comprehensive Development Plan amendment to change it to residential, high density, defined as multi-family residential dwelling units with densities over 11 and up to 36 units per acre.

The RS section will need to be changed to residential, low density. There is no construction proposed on the RS section of the development but Zoning Code restrictions limit development in the RS zoning district to low density, defined as residential dwelling units that include single-family detached and semi-detached row or town homes with densities of 11 or fewer dwelling units per acre.

Traffic. Hillside Road through this parcel is currently privately owned and is part of this parcel. The applicant intends to dedicate the road to the City of Newark as part of the subdivision. The proposed development, with 91 units consisting of 11 two-bedroom units, 22 three-bedroom units, and 58 four-bedroom units, with 268 parking spaces and three access driveways, does not meet the warrants for a Traffic Impact Study, which is triggered by 500 trips per day and 50 trips per peak hour. With the assumption that residents will be walking or taking the bus to class and the normal car use of students is not during peak traffic times, this development is not expected to have any significant effect on City traffic. A deed restriction prohibiting the residents from getting resident or guest parking permits from the City of Newark for parking in the local residential parking district will further limit the development's effect on traffic and local parking.

Planning and Development Department recommendation. The Planning and Development Department staff recommends approval of the major subdivision and Comprehensive Plan amendment for the land-use project 18-06-04 located at 321 Hillside Road, with the Subdivision Advisory Committee recommended conditions, because the plan is compliant with the City of Newark Code, it should not have a negative impact on adjacent and nearby properties, and because the proposed use does not conflict with the development pattern in the nearby area.

That concludes my remarks and I'll hand it back to Mr. Chair.

Mr. Silverman: Mr. Bilodeau, do you have any comments?

Mr. Paul Bilodeau: Just really briefly I just wanted to kind of explain to everybody from a historical perspective where this kind of reversionary zoning came from. It all goes back to the 1970s when the City was concerned with the University selling property to third parties. So, they did create, if you will, an underlay zone where they rezoned all the University properties in case they did get sold. And that was done in the 1970s. It's actually recognized in our Code in Section 32-6, it discusses this reversionary zoning. So, the two properties, the Dickinson dorm, the two parcels, for one the reversionary zone is RM. That's where the dorms are located. And across the street is RS. That was a valid rezoning and it's in our Code and so, in my view, any resulting amendment to the Comprehensive Plan to reflect this when the property sells to a third-party is really pro forma in nature.

As was mentioned in the report, this application is Code-compliant. For the particular zone that this development is scheduled to go into, it's allowed. And also, unlike many applications, there are no requests for any variances. So, I just wanted to point that out, that this is a Code-compliant application. Thank you.

Mr. Silverman: Thank you very much. Is the applicant ready to proceed?

Mr. Michael Hoffman: Yes, Mr. Chairman.

Mr. Silverman: You have 15 minutes.

Mr. Hoffman: Thank you.

[Secretary's Note: During his presentation, the applicant's representative referred to a presentation being displayed for the benefit of the Planning Commission and members of the public. A link to the presentation can be found at the end of this document.]

Mr. Hoffman: Good evening, Mr. Chairman and members of the Planning Commission. Michael Hoffman, Tarbicos Grosso. I'm an attorney here tonight on behalf of the applicant, College Town Communities. With me here tonight is Matt Genesio and Tim Sipe of College Town Communities. They are the applicant's representative. We also have several members from our project team here as well. So, we're positioned to answer any questions the Commission may have.

As Stephanie and Paul had pointed out, this is a proposed review of an infill redevelopment of the existing 321 Hillside Road property. It, for a long time, housed the Dickinson dormitory which consists of 703 beds. We're proposing to replace those 703 beds with 320 beds, so a significant reduction. We do anticipate the redevelopment to provide for student housing occupants and to be occupied by students.

In addition, as Paul had mentioned, this plan does require a Comp Plan amendment, but that Comp Plan amendment is to correct a technical impossibility, I guess, if you will, with the Code. Currently, the Future Land Use map references a university designation. Once the property is sold, it cannot be a university use. That's your technical impossibility. That's where the Comp Plan amendment is required.

To orient the Commission and members of the public community who are here with us this evening, the property does consist of approximately 8.37 acres. It is a single parcel and that does include Hillside Road. Hillside Road is currently owned by the University and that's about 1.36 acres of land. On the west side, I would say, of Hillside Road is the area that will revert to RS single-family zoning once the property is sold from the University. And on the east side of Hillside Road is the property that will revert to RM garden apartment zoning. That is what Paul had mentioned earlier this evening.

The property is currently improved with the Dickinson dormitory property. There are nine structures currently on the site, six of which house the 703 beds and three of those structures were your common amenity and gathering space. To bring us to a more modern birds' eye view, you can see the existing condition. This is the Oaklands residential community at the top of the screen. This is the CSX Railroad. And then you have South Main Street here. This is the Oaklands Swim Club, I'll say to our north, and then the parking area between Oaklands Swim Club and the Dickinson dormitories. As was mentioned, there are approximately 94 parking spaces currently on the site. The current Dickinson dorm does include four-story and three-story structures. The four-story structures are approximately 40 feet tall, meaning those existing structures are about five feet taller than what is being proposed.

As was mentioned, we are not seeking a rezoning. We are not seeking any Code relief, meaning that the project before you here tonight meets setback and height requirements, stormwater

management requirements, and is a Code-compliant plan. So, in that way, we will actually be reducing some of these buildings that are currently 40-feet tall to meet 35-foot height maximums. This is an example of one of the three-story buildings that is currently on the site.

Paul mentioned the zoning, this is just another look. This portion here, where the cursor is over, will be rezoned to RM and this portion will be RS. You can see the zoning patterns. The zoning pattern of RM does represent the tiered approach, where you have the commercial and higher density uses along South Main Street that tier down to your single-family residential uses in the Oaklands neighborhood.

I do like the aerial views, so for the benefit of everybody, this is the property back in 1937. Not much there. Fast forward to 1968. The property was constructed in 1966 so in 1968 you can see it's essentially under construction for some buildings. Fast forward to 1997 and you see it is there. South Main Street looks very different than it does today, back in 1997. And then fast forward to modern times and you'll see the developed South Main Street.

Shifting gears a little bit, to kind of reorient everyone, this is Hillside Road where the cursor is. Apple Road is to the right of the screen, the CSX Railroad is toward the top of the screen, and this is the existing Dickinson dormitory buildings. The proposal is to demolish those structures and redevelop the site with what you see on the screen here. This does consist of 91 total units. Forty-six of those units are the townhome units, which you can see along the CSX Railroad. And then 45 units are closer to the Apple Road side of the development. Those 45 apartment units consist of two-bedroom, three-bedroom, and four-bedroom apartments.

The project does meet Code. There are 268 parking spaces total on the property and that includes 28 spaces in the shared area with Oaklands, and there are 30 spaces in the Oaklands Swim Club. Pursuant to the existing easement agreement, during the off-season, the University parcel, the Dickinson dormitory parcel, has the right to use 30 spaces on the swim club. So, when the swim club is not in use, the total parking spaces are 298 spaces. Again, Code requires 240, and those 240 spaces are provided exclusive of the shared easement with Oaklands.

Architecture is proposed to be modern architecture with varying elements that you can see on the screen. This is another view from the Oaklands Swim Club. You can see the townhomes in the background and the tops of the apartment buildings on the screen over here.

Before I get into what you see on here, I did want to touch upon security. College Town Communities, this is not their first residential project. They do intend to have a live-in kind of like an RA for a private development manager. They also have 24/7 access for maintenance questions and concerns in addition to the other infrastructure for security elements that will be in place as well.

Landscaping. We tried to pick up the renderings as best we can to show the proposed landscaping. They don't always translate but I think this is important to point out. We are proposing a true tree-lined boulevard on either side of Hillside Road. This is the actual landscape plan so we will be planting the trees along to kind of create that tree-line boulevard look. In this open space area here, again, it's not shown on the renderings, but we do intend to plant significantly there as mitigation efforts relative to the landscaping. So, and then that is not to mention the various landscaping elements on our side to kind of create that buffer between Hillside Road and the proposed development.

Another thing I will point out is access. We do have, there are currently four curb cuts into Hillside Road with the current development. Those will be reduced to two curb cuts on our site and these are shown in the red circles here. And then there's an interior circulation pattern here, where emergency vehicles can access the site.

In our conversations, and I should note we did have a community meeting in the fall and we've had many conversations with the Oaklands Swim Club, and in one of those conversations we

did offer to close this ingress/egress on the swim parcel so that we didn't have an entrance and exit that close to the intersection. They declined. We offered to provide easement across our property to use this. Again, that's their prerogative. They declined. So, that's why we do have those two access points there.

You'll also notice this portion over to the right of the screen. This adds an attractive kind of gateway element along Apple Road, but it also serves as emergency access. So, firetrucks will be able to utilize that ingress/egress in the event of emergency. It will be blocked off otherwise and will be a pedestrian walkway.

You'll notice on this screen, this is the plan where we did add a walkway that runs parallel to the tracks and connects to this walking point here. It's not shown on this rendering, but it is there, and you can see it on this screen in front of you.

Hillside Road, I mentioned that it is currently a part of the single property. We are proposing to dedicate Hillside Road to the City. My understanding is that even though it has been owned by the University, the City has maintained it as part of regular course, so as far as any kind of increased demand on City services, nothing will change in that regard. The City will just obtain title, essentially, to that road.

The other thing I should mention is density. It's about 15.4 units per acre but that is based just on the 5.89 portion of the site. If you were to factor in the 1.12 acres which are shown as undeveloped here, that density goes down to about 12.4, I believe. And if you were to factor in the road that's being dedicated, it goes down to 10.8

Mr. Silverman: Five minutes, Mr. Hoffman.

Mr. Hoffman: Thank you, Mr. Chairman. And then this is the walkway that I had mentioned before. I do want to mention kind of there has been an evolution of the plan. This was the original project that was presented, the original project we took to the community. There were a lot of comments relative to this. It didn't require a lot of relief, but it did require some relief. One of the big concerns from the swim club was that these buildings were too close to the swim club. They'd rather see them moved over. There was also a question in terms of the number of parking spaces and whether we could reduce the parking spaces.

So, we came in with the alternative concept. This alternative concept did require a significant reduction in parking but there have been a lot of conversations at the Commission-level and at the Council-level as to whether there is an appetite in the City to impose parking maximums, and did we really need the Code-required spaces. My client was happy with this plan in terms of demand or need for parking. We did shift these buildings over, again, trying to take into account the feedback we had received. Ultimately, there still remained a lot of concern relative to the amount of relief and the reality is, whether it's this plan or the plan proposed, my client was happy with either. They're each going to have their positives.

So, we decided to go forward with the Code-compliant plan that didn't require any relief, save the debate over parking and required parking spaces for another day. But what I will mention is that even though we made this shift to go to a by-right plan, we did still incorporate a lot of the feedback that we had received through the process. A couple of key points in the few minutes I have remaining, the amenities space, the swim club was worried about its location and proximity over here. I had said it was afforded over along Apple Road along with potentially some height relief. We moved it over to Apple Road and did not seek the height relief, again, being cognizant of that.

There was also some concern about long drive aisles continuing into the swim club. You'll notice this terminates right to this point so vehicles here will make the decision to certainly slow down but then to exit here, addressing, kind of, any concern of traffic attempts to go

through the property. We maintain the height requirements, and this does provide Code-required parking.

The last couple of slides, this is the current view from the Oaklands Swim Club, and this is the projected view for the development. This is the area where the 28 spaces currently are shown with the shared parking easement. And Mr. Chairman, that is all I have.

Mr. Silverman: Thank you very much. Do the Commissioners have any questions? And we were just reminded that we should speak as close to the microphone as possible.

Mr. Bob Stozek: Mr. Chairman, I'll start off. I guess I have a couple questions and several concerns that I might as well voice now. One is I had seen somewhere in the documents that Hillside Road is busy during the day and the inference was primarily at rush hour. I will attest that that road has traffic on it constantly, all day long. You don't just have back-ups from the Main Street light at rush hour. You have them all day long. I'm guessing that there may be 300 homes in the Oaklands area that primarily use Hillside as an egress. This, to me, this would probably almost double the amount of potential traffic on Hillside. So, the density is one of the things that concerns me.

I did have a question as far as the strip of land along Hillside on the west side. The owner is going to maintain that, and you are going to fill that lot up with trees? That's the current plan?

Mr. Silverman: I believe you're referring to Parcel 2.

Mr. Stozek: Parcel 2, okay. The other big concern I have is there is, the entire parcel, Parcel 1, is basically, when looking at the aerial, rooftops and parking lots. There is no or very little green space. There is certainly no recreational space or gathering space for the people living there. So, my question is where are they going to go? When the dorms were there, the kids used to use that lot, Parcel 1, for sunbathing, frisbee playing and whatever. Now there are going to be trees, so that's taken away from them.

And the residents of the City are investing considerable millions of dollars in developing the Rodney stormwater pond and park. And I see this as the residents of this development are basically going to be using the park for their recreation. Is the owner planning to reimburse the City in any way or help pay for the maintenance of the Rodney park? Is there any agreement with the City relative to, or any discussions about that?

Mr. Hoffman: And I'm happy to address any concerns as they come up from the Commissioners. Mr. Stozek, there were a lot there. I think the first point that I would make is no, to answer your specific question, there is no proposal or plan to reimburse relative to the park. What I will say on our site in the building that you see to the right of the screen, over here, we will have amenity space within the complex that will be available to use [inaudible], having a walkable community to the University is available to use. The final plan of where those mitigation trees, whether they completely fill the area or whether there is an open space, again, will be determined during the construction improvement process. But that is the area for that planting. So, there will be an area and there will be an opportunity for recreation and recreation space.

Mr. Stozek: It was also stated that the assumption is the students will not be using their cars that much. They'll be walking to campus or taking buses. Who is going to maintain the walkway from this development to the Rodney tunnel?

Mr. Hoffman: And so, the existing obligation, the existing . . . I don't know why that keeps happening, but we'll ignore it as best we can . . . my clients, the Dickinson property owner, has the obligation to maintain the walk that goes across the Oaklands Swim Club property. There have not been any subsequent conversations relative to the continuing on, the City, and maintenance obligations.

Mr. Stozek: I have some other questions, but I'll defer until later.

Mr. Silverman: Mr. Hurd?

Mr. Will Hurd: Thank you. I guess I'll keep it to just voice my general concerns at this point that I hope to see maybe get answered or get addressed. This is one of those times that I wish Council or such had gotten themselves together and done a master plan for this area when it first came up for sale. Because it was, you know, it's a large parcel in a critical kind of area that, you know, if we had come to some sort of community agreement about what that space should be, we would be having an easier time here tonight, I think. So, I do hope that they do think about master planning up at the corner of Main and Hillside where the English Language Institute is because that's another large parcel that is going to go to market at some point.

I think I'm having trouble with the high-density usage here. I understand that in the 1970s putting an RM zoning there might have made sense. I think given the work that's been going on and the amount of low density that surrounds this parcel, it doesn't feel like this one wants to be an outlier. So, I'm concerned about that and I'm not sure if I'm going to be able to support that.

Traffic-wise, and I'm just going to go by my end, I know that Hillside is a challenging road. I live near another sort of apartment complex filled with students. The amount of in and out traffic I see is not huge. It's off Chapel. So, it doesn't seem to slow down Chapel on its own. I think Chapel is bad on its own. But I'm hopeful that the TID that we're going to be working on will give us some answers as to what actually goes on in a student-occupied apartment complex in terms of timing of traffic so that we can have better data when we're reviewing projects like this. So, we know like how much is off-peak and how much is peak. Thank you.

Mr. Silverman: Commissioner McNatt?

Ms. Stacy McNatt: Thank you. So, I want to follow-up on some of the previous comments. I do travel this road at least twice to four times a day and it is slightly painful at all times of the day. I do wish, as Mr. Hurd said, that there was a master plan that actually did identify the community needs, access, and improvements that may be needed for the area which includes, for example, and I know this doesn't reach a Traffic Impact Study analysis, but I do wish the City would impose some type of requirements for assessing certain intersections which, again, may be part of the TID, but I don't see why since the master plan wasn't done that there couldn't have been an assessment done to identify what increase in traffic may or may not be occurring, which kind of falls in line with the rationale for the recommendation that, you know, what's the quality of life adjacent to the residential areas and residents of the City. So, I don't understand why we can't try to find some way to assess traffic because it never hits a traffic analysis, which is maybe part of the TID only, but maybe we can find other ways to do it before the TID comes along.

I also think it's interesting that the reforestation is placed on all the RS zoning, which is convenient. I think there needs to be some type of usable space for whomever is going to rent these units, as well as I think that's a perfect location and I think the reforestation should be applied to the area in which the development is occurring, which is on the RM zoning parcel. So, I think that would be part of my recommendation for approval is to implement a majority of that reforestation requirement onto the developed parcel and leaving some semblance of usable space, not only for these new residents, but I do often see a lot of local residents when they do their walking, biking, running . . . I know my kids have actually played on that parcel . . . so I just think it's important to keep that usable space.

There are some specific items I do have a question on, or one I have a specific question on. So, the enforcement of the parking easement agreement, if it were ever to come in conflict or come under concern or wasn't being followed, who has that enforcement mechanism of that easement agreement? That isn't a specific question.

Mr. Hoffman: Sure, so the, it's an easement agreement between two private parties so if they are not able to resolve the disagreement between the two private parties, that would be a situation for the courts.

Ms. McNatt: And currently that agreement is not being modified? Or that agreement currently is being modified?

Mr. Hoffman: So, we have had multiple conversations with the pool and we had engaged in some dialog of whether there was mutual interest in making some modifications, bringing our relationship up-to-date. We weren't able to come to an agreement and so there is no modification proposed at present. However, just to be clear, this is not a situation where my client intends to purchase the property and then say, we're done. They intend to own the property, they intend to be here, and they have a record of being good neighbors in the jurisdictions where they have properties. We have told the swim club that we are open to continuing a dialog to see if there's an opportunity for any mutually beneficial modifications.

Ms. McNatt: Okay. And lastly, specifically to the items that were part of the conditions of approval which are items that were under the Public Works and Water Resources Department, Item 6A and 8, I think . . .

Mr. Silverman: Page reference?

Ms. McNatt: Okay, page 11.

Mr. Silverman: Thank you.

Ms. McNatt: I would recommend that comment 6A and number 8 get specifically attached or noted on the recorded plan, the subdivision agreements, and all necessary documents that are enforceable because I think the Hillside Road being, actually had restoration done in the past and I think it's important that they are specific about any damages. And I just think it's an important concept that it gets enforceable so that City residents don't get stuck with a street that may or may not be up to its best condition when the development is over. I know we have, I'm not saying these developers are that way, but I know we have several instances where residential communities are being built and then the developer takes a long time to get items addressed that may or may not be enforceable because those documents may or may not be, those notes may or may not be put on the appropriate plans. So, I think it is something that needs to go on the recorded documents that gets enforceable.

Mr. Silverman: For my notes, it's page . . .

Ms. McNatt: Eleven. And it's the conditions of approval under the Public Works and Water Resources Department. It's note 6A, or comment 6A and comment 8. And the comment 8 restricts the actual demolition of structures during the months of June, July, and August, so I think that's also an important concept to make sure that gets implemented and put on the documents, the recorded documents as well as subdivision agreement, to make sure they're enforceable.

I do have the same sense of Mr. Hurd that this whole high residential zoning student apartments in the City concept that the transition from Main Street to single-family residential, I just keep having agita about this whole concept. And this situation, I understand it's a by-right plan, I just wish we had a better means and methods to address this whole idea of student rentals. So, other than that, I think those were my comments and concerns. Thank you.

Mr. Silverman: Thank you. Commissioner Kadar/

Mr. Karl Kadar: Yeah, just a question. I know prior to 2015, this was essentially a dormitory for the University of Delaware. At that time, I assume that the occupancy during summer was

almost zero. What is the assumption on occupancy here during the summer because of the fact that the pool is then operating at that period of time?

Mr. Hoffman: Certainly. I don't have exact figures and I can look to Matt and Tim on registering a guess. Certainly, it would not be next to zero. We do expect that the number of individuals living here is probably less than during the school year, but there will be people, we expect people to be living here during the summer.

Mr. Kadar: Okay, that's relative to the parking situation and the shared facilities. The other thing, and I know it's been said already but I'd like to mention it again. That's an awful lot of hardscape. Lots of roof, lots of parking lot, and very little green. I don't know how you could mitigate that any further than you already have but I have a concern that during heavy downpours, and we do get those occasionally in Newark, I remember a few just a few weeks ago, but in that event I think I'm a little concerned about where the stormwater is going to go. And I know you guys have done your work. You've estimated water rainfalls and taking care of retention ponds and so forth, but I just worry about the water. That's a lot of water with nowhere to go.

Mr. Hoffman: And one thing, and I certainly appreciate the comment, what I will emphasize, and I did not do in my presentation and is worth noting, City Code requires us to reduce runoff 15%. So, if you take existing conditions, how much runoff goes from the property, post-development conditions, we are required to reduce that by 15%, and we are doing that. We have underground retention basins proposed to accomplish that, and so it meets Code in that way. So, even though with the roofs and the paving that's proposed, we will be reducing runoff from the site 15%.

Mr. Kadar: And the other point that was already made was about recreation. You've got a bunch of students, albeit not as many as there used to be there, but off-hours and during the weekend, where do you throw the frisbee and all the other wonderful things that students tend to do? I'm afraid the parking lots are going to turn into a circus, and I don't know how you prevent that but there's no place for them to go. People are going to go and take that lot over on the northeast corner and turn that into a park, essentially, with no place to go.

Mr. Hoffman: The response that I would offer to the Commissioners and certainly one of the benefits of Newark being a walkable community and the proximity to the University, because you do have the opportunity to access these recreation spaces. I would note that this is not the first, it may be when you're replacing a dormitory with a private development, that may be something that sticks out, but I would note that this is not the first development where you don't have set aside an active outdoor recreation area in the City of Newark. Again, the benefit being we do have a walkable community where you can access those amenities.

Mr. Kadar: I have no further questions. Thank you.

Mr. Silverman: Commissioner Cronin?

Mr. Bob Cronin: Well, I've enjoyed the comments from the Commission, but I somewhat agree with the concern about keeping the space across from Hillside Road more open for recreation purposes as opposed to heavily treed. At least start out that way, as open, and then see what the demand might be, whether using it for sunbathing or frisbee-tossing or volleyball nets or whatever. It does give people a chance to have some green space to utilize and there's already a reasonable buffer of greenery between the property and neighboring homes. But it is Code-compliant and an awful lot of impervious surface and not a lot of space to kick back and relax. And I think that's the one thing I see it somewhat lacking. I'm interested in hearing public comment when that comes.

Mr. Silverman: Okay. I'd like to make my comments with respect to this site from strictly a planning point of view. I see this project as a transition from the heavy urbanization that's

expressed on South Main Street and the railroad into a residential area. It is a residential use, be it a higher-density residential use. Going back to your earlier aerial photographs that the applicant produced, we noticed that the existing single-family detached residential community is totally oriented away from this site. Originally, whether by design or by accident, there is a heavy tree line. Trees are 30-40 feet in the air and very dense along the northerly side of Hillside Road, providing both a visual and noise barrier from this proposed project. This project is not out of character with projects in the area and I site Sutton Place, which is on the other side of Apple Road bridge, very similar in design. As Commissioner Cronin pointed out, this does meet Code. So, if there's a question with respect to the amount of coverage, the lack of recreation space, the lack of apparent landscaping, it's the Code that's deficient, not necessarily the proposal that the applicant is putting forward.

With respect to Hillside Road itself, I applaud that the street is being dedicated, not sold, to the City of Newark. We have the misfortune in Newark of having very few ways of getting from point A to point B. Hillside Road is a collector road. In the Highway Department way of looking at things, it might even qualify as a minor arterial. It's designed to handle heavy traffic. It's designed to have back-ups. The intersection at Apple Road is definitely designed to arterial standards. I bet Highways would say there's something like 12 turning movements permitted at that one little intersection. My experience in driving through there, and I drive this road a number of times a day to avoid South Main Street and to avoid Main Street and to avoid Delaware Avenue, I find that the congestion is not caused by the number of cars. This intersection here at the Apple Road bridge works fairly smoothly. I find the congestion is caused by the traffic light timing at Main Street. I'll leave here tonight, this evening, and I will sit at a red signal on Main Street, at the Main Street intersection on Hillside, and there is no traffic on Main Street. So, perhaps the issue of reducing some of the back-up that we've heard about in our little bit of discussion is to try to prevail with DelDOT and the City Traffic Committee to try to retime that particular light.

I don't know who initiated the treeing of Lot 2, which is currently an open, mowed lawn. I don't know whether that was the City's request or the applicant volunteered that but that's an issue that may be revisited. Again, as I said previously, there is a heavy tree line along that Lot 2 separating the residential units, the back of the residential units, from the activity. With respect to general open space, the stormwater management facility is going to be more than just a holding basin. We all know it's being developed as both active and passive recreation. I see no reason why the property owner here and the residents that would be living in this new unit can't have the same privilege as the rest of us in the City to use that particular facility as our open space. So, I view that as open space being provided to the property.

I am glad to see the kind of density that is occurring on this parcel from the point of view of it continues a noise barrier between South Main Street and the CSX tracks and the residential community, the single-family residential community. Had this been open space, the urban activity of the train and Main Street would echo back up through the community.

I like the idea of providing a tree-lined roadway. That's an amenity we don't see offered many times for development in Newark. And I like the idea of the perimeter sidewalk and access being extended over onto the right-of-way by the Apple Road bridge, giving an additional off-road, away from traffic way of pedestrians moving from this site in another direction, particularly over the Apple Road bridge and onto the activities on South Main Street. So, that's generally my comments as a Planning Commissioner with respect to this site.

I would like to now open the floor up to the public. We have . . . before I do that, I want to get on record that the Planning Department has received three additional emails with comments. The Commissioners have those. They're part of our packet. One is from Paul Biddle, one is from Bruce Reinhold, and one is from the Oaklands Pool entity, sent to the Planning Commission by Jeff Lang. The comments with respect to Reinhold and Biddle generally reflect some of the comments we've heard from the Planning Commissioners. The comments from

Lang specifically deal with safety issues with respect to the shared parking and the Oaklands Pool entity.

[Secretary's Note: Copies of written public comment received after the Planning and Development Department report was published and distributed to the Commissioners can be found via a link at the end of this document.]

We have three people signed up to speak initially . . .

Mr. Stozek: Mr. Chair?

Mr. Silverman: Yes?

Mr. Stozek: Before we go to the public, I did have two other follow-up questions.

Mr. Silverman: Okay, go ahead Commissioner Stozek.

Mr. Stozek: And they're for clarification. I'm looking through the document and I'm getting a little confused. When we get to the recommendation, what is the two-letter designation that is being proposed for this area [inaudible]? Is it RM?

Mr. Hurd: There's two.

Mr. Stozek: Well, yeah, Lot 2 is RS . . .

Mr. Bilodeau: Lot 1 would be RM and across the street is RS. Lot 1 is RM.

Mr. Silverman: Which is the higher density. And Lot 2 is RS, which is the lower density.

Mr. Stozek: Okay.

Mr. Silverman: And the Comp Plan change is not from residential, I'm sorry, from the use to residential. It's with respect to the density.

Mr. Stozek: It's just that it used phraseology. It didn't use the designation RM in the description.

Mr. Silverman: Thank you.

Mr. Stozek: And then the other question was on page 8 under Parks and Rec. It says the developer agrees to pay \$700 per unit for a total of \$63,700 for cash in lieu of land as per Chapter 27 Appendix VI of the Code of the City of Newark. Do we have some explanations for what that payment is in lieu of?

Mr. Hoffman: I'm happy to answer or defer to staff. It's your preference.

Mr. Silverman: Mr. Bilodeau, do you want to respond to that, or Mr. Hoffman?

Mr. Stozek: Under Parks and Rec.

Mr. Silverman: Page reference again, please. Page 8 of the report.

Mr. Bilodeau: Mr. Stozek, what's the question?

Mr. Stozek: The \$64,000 cash in lieu of land per Chapter 27, what is that \$64,000 for? What's the exchange? They're paying it in lieu of what?

Mr. Bilodeau: It's in the Code and Tom is walking up here. I'll let Tom explain it.

Mr. Tom Fruehstorfer: Tom Fruehstorfer, Planning Department. It's in lieu of open space, the part of the Code where if you don't have a certain amount of open space, you can have payment in lieu of open space.

Mr. Stozek: That's what I thought but I just wanted to check.

Mr. Silverman: Thank you. Any other questions, Mr. Stozek?

Mr. Stozek: No.

Mr. Silverman: Okay, opening up comments to the floor. We have three speakers signed up. I'm going to guess with the handwriting, Ed Burke?

Mr. Ed Burke: Yes.

Mr. Silverman: If you'd like to come forward, Mr. Burke, and state your name and who you represent.

Mr. Burke: My name is Ed Burke and I'm a member of District 3, and I'm also here as a member of the Oaklands Pool Board, as their designated representative. I would like to voice the following concerns raised by Oaklands Pool with regards to the redevelopment plan that you're considering here tonight.

We initially had concerns over the scale of the buildings and associated lack of parking and how this would negatively impact our use of the pool due to parking conflicts with the project's residents. Overall, we are appreciative that the developers have revised the plans to relocate the large apartment buildings, height of the buildings, and provide the amount of parking that is required by Code. However, as of now, we still have some serious concerns over the lack of safety for our many children based on the present plan design. It is basically unchanged from the present design, but the use of the buildings will be greatly different than when the University owned them.

We would like the developers to add some safety measures to the plan to prevent the unknowing resident from driving through our parking lot. We did, at our own expense, design such a plan and gave it to the developers and were hopeful that the developers would incorporate this into their plan. But after meetings with the developers, the plan that the Commission is now considering tonight does not include such a design. You have this design in your packet and if you need copies, I have copies, but you should have it, for your review and consideration. In our opinion, it is a very minor change to the parking lot that the developers should add, and your approval tonight, if forthcoming, should require this to be incorporated.

The other main concern for the pool revolves around the easement area at the back of the pool's property. We would like this added to the developer's plan along with proposed landscaping and fencing enhancements to ensure that the pool will obtain such items during the project improvement process. The original easement with the University requires the owners of the Dickinson property to maintain this area and we would appreciate it being part of the approved plan for the pool.

And lastly, we did have some concerns understanding the project's proposed schedule, but that was brought up by Commissioner McNatt about enforcing no construction during the months of June, July, and August. But we do have, obviously, concerns with that because that is our operating time, and impact for any construction debris, etc.

The City has developed a plan for Rodney that has been very considerate of the impact on our use and we are hoping that the developers of Dickinson would offer some official plan that we can rely on so that our members are not detrimentally affected during our peak time of usage. It is our hope that all of the above items will become part of the official City approval, which will

require the developers to complete each item either before or during the improvement process. Thank you for your time and consideration this evening.

Mr. Silverman: Okay and I followed along. This, apparently, is the same text that was sent to us with your signature in the email that I referred to earlier.

Mr. Burke: Yes. And the Board did ask that it be read into the record tonight . . .

Mr. Silverman: Okay, thank you.

Mr. Burke: Because it was sent so late.

Mr. Silverman: We'll use that as an exhibit and attachment.

Mr. Burke: Thank you very much.

Mr. Cronin: Can we ask a question of Mr. Burke?

Mr. Silverman: Go ahead.

Mr. Cronin: The diagram that you have on the parking . . .

Mr. Burke: Yes?

Mr. Cronin: I see gates in two locations.

Mr. Burke: That is correct.

Mr. Cronin: Can you describe when they would be used? What is your concept of the gates?

Mr. Burke: Yes, the gate proposal is, as it stands right now, the piece that is all the way to the right on that little diagram, that is, in a sense, the area for us. Our spots for parking. The middle section is the spots of the easement that exists today. The gates during that time would, in a sense, allow to be shut down at the bottom to kind of close off that to provide us with the required spaces for there and kind of block off and prevent any unintended individuals from coming in there from the other side. It kind of clearly identifies, you know, Oaklands parking and not the college, I'm sorry, the apartments' parking for that. And then once we are closed, the gates are open for full usage of that area at that time. And then obviously with the one gate that is there, to also provide further closure on that. But the design of those gates, we had talked a little bit in regard to that with the developers. We don't know if it's chain or swing arm, whatever. We don't know.

Mr. Bilodeau: So, the time you're open would be Memorial Day to Labor Day?

Mr. Burke: As it stands now, yes. There has been talks from Board members and interested parties of the pool about extending, potentially, a week or two because we've had some very hot Septembers here and part of it, you know, we don't have the guard staff, but I know with Christina School District that there is potential to change to an after-Labor Day start, which obviously free up guards. If we knew we had the ability to do that, it would allow us. Starting before Memorial Day? I don't think I've ever seen us start or had anybody have the desire, its too cold, schools are still in session. There are some warm days in May, but I think it's more, you know, the end of the season. Especially when it's 90 degrees.

Mr. Silverman: Okay, thank you, Mr. Burke.

Mr. Burke: Thank you very much.

Mr. Silverman; Bill Slade?

Mr. Bill Slade: Thank you, Commissioner Silverman. My name is Bill Slade. I'm here representing myself and my wife. We live on Sypherd Drive. We've been there for 33 years. Our home is actually one of the homes that backs up directly onto proposed Lot 2. So, obviously for me and for my wife, this is as personal as it gets in terms of affecting our life. I have two comments and probably a third one, as well, so I'll keep it brief. That open space area is extremely important to us and my first comment is I believe the developers are honest and we can go by their word, and that will remain open as long as they own it. My concern is what happens if they sell it? Does that revert to a space that is no longer open and can be developed? I know it's an RS-zoned area, but we know what happens with open space in Newark. It's like a vacuum; it tends to get filled and built on. So, I have no confidence that unless there are guarantees put in place that that space will stay open if they decide to sell it.

My second comment with regard to that space is that although you may see from that aerial view that it looks tree-lined, if you look from my window, I can see right to the dorms without any trees. There's a big gaping hole. The University has done nothing over the years to maintain that property. And that's my one comment for both Planning Commission and the developers. I don't really care if it's open or not, but I'd like to see that buffer maintained, as well as a tree-lined area along Hillside. Whether it's open space or not, I can understand certainly providing open space for residents in the apartments would be important. But for us, as people who look right out on there, that space is critical for us.

My final comment, and I haven't seen anything in this report regarding lighting, is my strong preference not to have to buy black-out curtains for my bedroom window. So, if you can make sure that whatever lighting is put in there is appropriate. I understand there's safety and security that has to be met with lighting but, for us personally, lighting pollution is a big deal because it directly affects us. And those are my comments and thank you for your time.

Mr. Silverman: Thank you very much. I'm multi-tasking here. The next speaker is Sheila Anderson.

Ms. Sheila Anderson: Sheila Anderson, also on Sypherd Drive for 45 years. I travel Hillside four times a day, I'd say, when I was working full-time. We're also members of the Oaklands Pool for many years. Mr. Silverman, you mentioned the tree-lined way here down Hillside Road. Is that correct? Did I hear you say it will be tree-lined?

Mr. Silverman: Yes.

Ms. Anderson: So, I'm assuming that the lovely oaks that are there will stay and that's wonderful. I'm counting about 14 trees there and that's what we have, about 14 trees. So, that's a just a joy to my heart to see that those are going to be spared. I'd also say, as much as I love trees, that I agree with my fellow residents here that this green space is very important to our development. Not only is it pleasant for the college kids but it's also wonderful for the residents who live nearby. So, it is interesting in the days of ecology and people being so environmentally oriented to think that these trees are going to be saved, that's just wonderful. And I also want to say that it's rather ironic that when trees are such a benefit to our environment that there is so much impervious surface in this development. It's just incredible. It seems so contradictory that trees that are good for us are somehow not showing up more inside where these parking areas are. Where you would think that cars and asphalt are absolutely opposite of what we're trying to protect in terms of the trees. I also agree with Mr. Slade. That is not, I don't know where this picture of the resident side comes from, but that is not the way it looks today. It is much thinner, just a few thin, I believe they're [inaudible] evergreens, but you can easily see the fences of the homes that border that. It's about one-third of what you see here. So, I just want to commend them for that wonderful move to save the trees. Am I understanding this correctly? I mean it's too good to be true for me.

Mr. Silverman: Mr. Hoffman, do you want to respond directly, or do you want to hold all your comments?

Mr. Hoffman: I will respond to this one if it's the will of the Commission because it is easy. We are not proposing any demolition, or removal of trees, from this side of the road. That is accurate.

Ms. Anderson: And what do you mean by this side?

Mr. Hoffman: I'm sorry, your back is to the screen. On the RS side, that is the west side of Hillside Road, there are no trees proposed . . .

Ms. Anderson: Oh, but I'm referring to the other side where the 14 oak trees are now, and I see 14 trees in your drawing.

Mr. Hoffman: So, on this side . . .

Ms. Anderson: This side being what?

Mr. Hoffman: I apologize. You're facing me so on the back, on Lot 1, the RM-zoned, yes, we will have to remove trees for construction.

Ms. Anderson: You will choose to remove the trees.

Mr. Hoffman: When we were going through the construction plan and logistics, our preference is to save trees, but there are a lot of factors that go into the development plan, so in order to construct this plan, we will have to remove trees.

Ms. Anderson: And what is your setback from the sidewalk to the first building.

Mr. Hoffman: The setback on the Lot 1 side? It's 30 feet.

Ms. Anderson: So, you can't kind of nudge it a bit back to save those trees? Okay, so I'd like to make a deal tonight because I knew that was too good to be true.

Mr. Silverman: You have one minute and ten seconds to secure your deal.

Ms. Anderson: Alright, my deal is, looking over on your drawing, let's look at it the same sir, sir, okay? We're looking at the pool. See the blue where the pool is? Yes?

Mr. Hoffman: Yes.

Ms. Anderson: Okay, now see where that parking lot is? Yes, that one. Now put your pointer right between the parking lot and the Hillside Road. That little bit right there. It's 91 feet, measure it. It has two big trees which you have in your drawing. They're already there and there are shrubs right in that whole 91 feet that are grown, that have been there about 40 years, we would like those to at least stay. Can you get your developers, your contractors, whoever builds the thing, to just spare us that much? It hides the parking lot, it's already there, it's not going to cost you a penny, and it matches your design. Please promise me that much. Thank you.

Mr. Silverman: I would like to remind the public that all these exhibits are online and if you have questions with respect to the landscaping, there are landscape drawings that will show the trees that remain, trees that will be replaced, additional landscaping, and it's my understanding that this was a heavily negotiated item with the City's tree people. They do take their trees seriously.

Ms. Anderson: [inaudible]

Mr. Silverman: Ma'am, please. Is there anyone else who would like to speak? Sir, please come to the mike and identify who you are.

Mr. Adam Giansiracusa: My name is Adam Giansiracusa and . . .

Mr. Silverman: Sir, for the record, would you spell your name, please.

Mr. Giansiracusa: Sure, you'll need that. A-D-A-M is my first name. My last name is G-I-A-N-S-I-R-A-C-U-S-A.

Mr. Silverman: Thank you very much.

Mr. Giansiracusa: And I live just on the other side of Hillside. At Apple and Hillside.

Mr. Silverman: Please speak directly into the microphone. All of this is being recorded and need to pick it up.

Mr. Giansiracusa: I'd like to submit a letter to the Commission from us. Can I give that to you?

Mr. Silverman: Please.

[Secretary's Note: The speaker approached the dais and submitted 8 copies of a letter to the Planning Commission Chairman. A link to a copy of the letter can be found at the end of this document.]

Mr. Silverman: Do you need to read from it?

Mr. Giansiracusa: No, I don't. And I have two simple questions for the developer. The green space, Parcel 2 you're calling it, I think, why do you want to plant trees on that? Why not leave it grass?

Mr. Silverman: Go ahead and response, Mr. Hoffman.

Mr. Hoffman: Certainly, at the direction from the Chair. So, the Code does require mitigation trees and, again, those were the location of the mitigation trees. The short answer is . . .

Mr. Giansiracusa: So, you're using that to not have to plan trees in the residential section? The other side?

Mr. Hoffman: Not correct. When you have mitigation trees, again, we have an architect and when we were identifying locations for the planting, again, wanted it spread out to balance the complete [inaudible]. What I would mention is, you know, certainly there's been a lot of feedback here tonight. We are taking notes and to the extent that there can be some shifting and whatnot, we are taking notes and [inaudible].

Mr. Giansiracusa: My second question is, how do you know that only students will rent these units in the long run?

Mr. Hoffman: As the Commission knows and as the City knows, we cannot restrict against students, we cannot restrict for students. We do anticipate based on market demand that's nothing new to the City and the location and amenities, we do expect these to be student rentals.

Mr. Giansiracusa: So, it's possible that five years from now there aren't any students there and its somehow just resident that rent apartments there and could become low income. It's possible.

Mr. Hoffman: And what I would submit to the Commission, as the Commission knows as well, that zoning codes and zoning uses are based on the residential, on the use, the [inaudible] standards as they're called, without regard to the occupant. And so, in terms of the, this is a residential use. It's proposed for residential use. It meets the Code for residential use.

Mr. Giansiracusa: So, it's a possibility it could become low-income housing.

Mr. Hoffman: With all due respect, the low-income housing question is a very loaded question as anybody can expect . . .

Mr. Giansiracusa: As you know . . .

Mr. Hoffman: Would you like me to answer the question? Mr. Chairman, again, I remind, you know, the back and forth, and I apologize for engaging in this myself, but to the extent there's a question on the plan, I'm happy to respond. What I would note is there are different, when people think low-income, they think Section 8. They think of different things and different qualifications which are not on the table, they are not proposed. Again, my client has purchased this property for residential use and expects the market to be a student use and that's as best as we can say, as far as that expectation. But as far as the Code requirements and the zoning, again, it's a residential use.

Mr. Giansiracusa: So, the answer is yes, it could become low-income housing?

Mr. Silverman: Mr. Hoffman, there is no need to respond to that.

Mr. Hoffman: Thank you.

Mr. Silverman: That's off-topic. Is there anyone else who would like to speak? Ma'am?

Ms. Kathy Johnston: My name is Kathy Johnston. I live on Rahway Drive, Cherry Hill, Barksdale, Casho Mill. I have a few points I'd like to make. I'm not real sure about the railroad, what we're doing with the train tracks and the fact that you're going to have students and a railroad. I'm not sure about that but I'm assuming that you have taken care of that. Number two, I travel this road, as Sheila does, four or five times a day. The stop light at, I'm with Stacy here on the traffic issue. Why are we not looking at that more deeply? The stop light at the pool, when the traffic is backed up, which it is, the shortcut is to turn up through Oaklands, go through Oaklands, go through Sypherd, go through there and come out on Main Street, turn left, right, go down to the stop light and you'll get there faster. You'll get across to Cleveland Avenue faster. Is that going to remain the same escape route or has anything been look at traffic-wise. Because that is the shortcut . . .

Mr. Silverman: Ma'am, I'm going to stop you here. That has nothing to do with this particular site. You're talking about offsite issues back in the community. The applicant has no control over that.

Ms. Johnston: They have control of egress out of their parking lot.

Mr. Silverman: Once someone leaves their facility, it's an individual driver's decision.

Ms. Johnston: Okay, so we won't talk about the closing of Casho Mill Bridge . . .

Mr. Silverman: That is definitely off-topic.

Ms. Johnston: Okay. Let me see, I forgot my third point. The traffic, to me, is a big concern and if that has nothing to do with this project . . .

Mr. Silverman: Traffic . . .

Ms. Johnston: I'm with Stacy. Where . . .

Mr. Silverman: Traffic, in general, is a concern. The specifics of how someone migrates through a community is not part of this application.

Ms. Johnston: That's too bad. That's a shame. And I'm sorry to hear that. I realize that's a fact of life, but I really think it should be a consideration. Before your approval all of this, traffic should be a consideration.

Mr. Silverman: It's noted on the record.

Ms. Johnston: Okay, thank you. And the railroad, I'm assuming you have a fence? Yes? Is that a safety concern for this project at all?

Mr. Silverman: So, you're saying you're raising a safety issue with respect to pedestrian access?

Ms. Johnston: Access to the railroad from the property is my question.

Mr. Silverman: Okay.

Ms. Johnston: Is there a walkway back there? Are there trees back there? Is there a fence back there? That's my issue.

Mr. Kadar: Alan?

Mr. Silverman: Yes, sir?

Mr. Kadar: I drove by there on the way over here today and I had the same question you did about the walkway behind the buildings and the railroad. And I believe that there is a concrete fence that separates the property and the CSX Railroad tracks. I was concerned because we've had a lot of incidents, right?

Ms. Johnston: We have.

Mr. Kadar: And students do stupid things, and they'll continue to do stupid things, and it's a convenient shortcut to Main Street. But it is blocked off. They would have to climb over a concrete fence to get to the tracks. So, I think that's been addressed.

Mr. Silverman: Okay, thank you very much.

Unidentified Speaker: I was just going to comment . . .

Mr. Silverman: Sir, if . . .

Ms. Johnston: If I have just another minute, my third point is to reinforce what Sheila Anderson was saying about the trees and . . . I was horrified to get to the corner of 896 a block down. Go across Hillside and get to just past Main Street, the next stop light . . .

Mr. Silverman: Does it have to do with this particular property, ma'am?

Ms. Johnston: Why are there no trees? We have a parking lot behind there with no trees? Please, if you can preserve trees, please do. That's my request.

Mr. Silverman: Thank you.

Ms. Johnston: That's it.

Mr. Silverman: Sir, you'd like to comment.

Mr. Burke: I was just going to comment regarding the fence back there. As a member of Oaklands Pool, we stare at that fence every day. It is a chain link fence that is back there in parts. I believe it also has razor wire no top of it to prevent climbing over. On the other side of the path, so behind our property, the pool, there is the walkway that is there. There is a fence

for our property, for the pool, there is the walkway, and then there is another fence blocking access to the railroad tracks.

Mr. Silverman: Okay, thank you. And a question for Mr. Hoffman. That fence, the status of that fence with respect to your project, will it remain or is it going to be removed?

Mr. Hoffman: Yes, Mr. Chairman, Michael Hoffman. Again, I apologize, as far as process, my hesitancy in responding to questions raised is that typically we take comments and I respond to everything and that's my only hesitation on that. I do have an answer to the fence question. There is the fence there. Keep in mind, this operated as the Dickinson dormitory and the Rodney dormitory for 50 years. There were students over there. There were precautionary measures, including fences to protect the safety of students.

Mr. Silverman: Thank you. Is there anyone from the public who would like to speak? Ms. White?

Ms. Jean White: Jean White, District 1. I have a number of general overall questions and a couple of general comments, which I'll pose to the Commission and hopefully the applicant can respond to them. One of my questions I think has been answered. Will there be an onsite property manager at all times, especially overnight and on weekends? I believe that you said yes. Will the apartments and townhouses be rented only or targeted only to University of Delaware undergraduates or also to graduate students? And will the apartments and townhouses be allowed to be rented to non-University of Delaware students as well, including those with children? Shall I go through all my questions first? Maybe I will do that.

Mr. Silverman: Please.

Ms. White: Okay. At the community meeting for the proposed development last October 15, which I attended when the plan was different, the developer said that basic furniture – bed, dresser, desk, and chair – would be provided in each of the rooms, and I want to know if that is still true. Okay, this development needs a name. 321 Hillside is not sufficient. All development projects that I'm aware of that came through the City were required to have a name before approval. So, what is the overall name for this? You can't just say this particular address on Hillside or that particular address. If you look at the plan you see many different individual addresses. Okay, the townhouses next to the CSX train track, 36 townhouses backing up to the CSX train tracks, I hope if in fact these are built, that the walls of the townhouses' back side, front side and the side of each set of five or six, will be extra soundproofed, more than usual, for the construction because those of us who live further away know how loud the train is. If you're right next to it, it can be very loud. Okay, what is the relationship, if at all, with the private development of this project of the apartments and townhouses to house probably principally University students, with the University of Delaware itself? Of course, it's the University of Delaware that's decided to sell this site to your company but, after that, is there any connection whatsoever? One could think of other things that could go on and I just want to know if it's a clean break. Let me see where. A comparison with the Dickinson dorm on this proposed development project in which the Dickinson dorm was 703 beds and this project is 320, which has been said is a 54% reduction in beds. And on the other hand, it goes from 94 parking places up to 240 parking places. I feel this is a misleading connection about the reduction of beds because Dickinson dorm, which served freshmen, and I know because my daughter, in fact two of my daughters lived in Dickinson back a ways, and they shared a room. Most of them were double rooms with two students per room, and a few singles. So, yes, there were more students, they were all freshmen, but they were crammed in that way. But there were only 94 parking places because as freshmen, generally speaking, they were not allowed to have a car. So, now they're putting presumably upper-classmen that will have cars, two or three depending on the size of the apartment. So, I know I was very, you know, I had the plan to see it proposed that way, I was struck with the amount of impervious surface and I might want to see the plan that you withdrew and what that looked like, but maybe we can't go back to that now. But anyway, this is a shock, I will say.

Mr. Silverman: Ms. White, you're down to 30 seconds.

Ms. White: Thirty seconds, okay. In terms of the runoff, is the runoff going to go down eventually to the Rodney dorm park or is it going to go a different place? And I know that I had walked around where on the old plan the existing plan has a rain garden, which is now blocked with the Building A there, and I thought that actually might be wetlands but I did see that there was a pipe that brought water and another one out, so I was wondering if that was going to be under Building A? Thank you.

Mr. Silverman: Thank you, Ms. White. Mr. Hoffman?

Mr. Hoffman: Good evening Mr. Chairman and members of the Commission. Michael Hoffman again. We were taking notes and I will do my best to address the comment and the themes that were raised as we proceeded with the comments. Certainly, we appreciate your comments and I will do my best to answer them. I think the first point I want to make is, again, coming back to at the end of the day when it comes to zoning, when it comes to all standards, there's a code we review based on the presentations and projects in front of us, and on the codes and the uses. We don't know what the future brings. I can't tell you what the future of Oaklands Pool is. I can't tell you what the future holds for many parcels and properties in Newark and to draw assumptions based on a future that we can't predict is unfair and irrelevant, which is the point that I was making in response to that.

The other thing I would point out, coming back to Oaklands Swim Club, we have had many conversations with the pool and, as I had mentioned, my client intends to be a good neighbor. They intend to own the property, to operate the property, and continue to engage the pool. I would say context matters when we are making recommendations and drawing conclusions. We had discussed, as was mentioned, this alternative design within the easement area. And that was put on the table any my client, at the time during one of those conversations, agreed with that. Keep in mind that any changes to the area within the easement area where those 28 spaces are requires the mutual agreement of both parties. The pool's response to that was not just, you know, let's make this change and we're happy. The pool's response was for us to not only make the change, but then also pay them for the parking spaces during the non-pool year. So, currently under the existing easement, the Dickinson property has the right and ability to use those spaces. And the pool's response was to make the change you saw in front of you but also to pay for those spaces. So, when I had mentioned during my presentation that is just simply we didn't come to an agreement to make the change, that doesn't mean that the developer ignored it. It doesn't mean the developer has turned off any future conversations. It just means that the terms at that time were not agreeable to both parties, and I think that context is important.

The other thing that I would point relates to parking. The Code does require 240 spaces and 240 spaces are provided on this plan exclusive and separate from the shared parking easement and obligations that are on there. So, the Code compliance is completely separate from any use or obligation under the shared parking easement.

We mentioned there is a fence that separates between the railroad track and our property. In addition, as far as landscaping, again, we're here, we've been taking notes, and following this hearing we will continue to take notes. What I will say is that our landscape plan is, again, Code-compliant but if there's an opportunity to take a look at it in terms of where we have plantings, given the feedback, we're happy to have that conversation as a team and evaluate that.

As far as runoff, this project is not proposing any runoff into the proposed Rodney stormwater facility. So, again, we are obligated to reduce runoff by 15%. We will be meeting that, and we are not sending it into any of the Rodney facility.

The one other note, very briefly, in our rapid-fire questions from Ms. White, yes, we are proposing an on-site manager, so they will have 24/7 access. In the event of a maintenance question, there's a number you can call but there's also a live-in manager who is hired, again, think of it as kind of like a private RA. And that is proposed.

There is the expectation and the business model of this business is to have basic furniture in the units and that continues to be the intent.

You know, I would submit that this is, the dormitories were next to the railroad tracks for years. Townhomes next to railroad tracks, there are other projects, I was involved in a project in the City of Wilmington where it was proposed next to railroad tracks. So, this is not a new phenomenon relative to location.

As far as a continuing relationship with the University of Delaware, I am not personally aware. I know that there is a contractual relationship to sell this and my client is the contracted purchaser.

I am happy to answer any other questions from the Commission.

Mr. Silverman: Do the Commissioners have any other questions?

Ms. McNatt: This is just a clarification. Is there a sanitary sewer line that goes through proposed Lot 2 currently?

Mr. Hoffman: I'm looking at my engineers.

Ms. McNatt: I know, and the reason I'm asking is because there is a sanitary sewer line that comes out of a manhole and then kind of dies or dead-ends right before proposed Lot 2 and it looks like it may extend through but it . . .

Mr. Hoffman: So, there is an existing, it kind of spills out. The existing condition kind of spills out into that Lot 2, so we will be piping . . . and Jen and Eileen, correct me if I'm wrong . . . we will be piping, and that runoff, by the way, comes from the Oaklands . . .

Ms. McNatt: No, it's a sanitary sewer. I'm sorry. There's the manhole kind of right in front of the Oaklands Pool parking lot in the center of the street and then there's a sanitary sewer line that leaves. And the reason I'm asking is because if that line extends into the proposed Lot 2, if it continues, then I don't think you can, it's, it would be prohibitive to put trees over a sanitary sewer easement if there is one. It just seems like it's weird that it dead-ends, so maybe there would be limitations on the number of trees that get planted there on Lot 2 if there are those utilities under the ground anyway. But I just noticed it. It just looked strange to me. So, thank you. I don't know if there's an answer to that or not, but I'm not sure just where it dead-ends.

Mr. Hoffman: That's a fair question and I am aware and can speak to the stormwater . . .

Mr. Silverman: Page number?

Ms. McNatt: Page reference, 3 of 4, sorry . . .

Mr. Hoffman: Page 3 . . .

Ms. McNatt: Of the minor subdivision plan.

Mr. Hoffman: We will take a look at that. It may impact planting if that's the case and we'll take a look and make sure.

Mr. Silverman: Any other questions from any of the Commissioners?

Mr. Cronin: Is there a name for the complex?

Mr. Hoffman: Yes, I apologize. We don't have a name set-up yet. There's no legal requirement that we have one. We don't have one right now which is why it's identified by the property address. Thank you.

Mr. Silverman: Okay, are the Commissioners ready to vote?

Unidentified Speaker: [inaudible]

Mr. Silverman: If there is no objection from the Commissioners, we will continue public comments.

Mr. James Thomas: James Thomas, resident of the Oaklands. I'm not immediately adjacent to the area but I've had comments from some of my neighbors concerning two things regarding safety in the area. First of all, the line between Area 2 and the Oaklands area there, there is significant tree stuff there. There's also a lot of undergrowth and that provides a lot of cover for people to get in and do nefarious things. And so, I would like to see that there's an effort to, as someone has already mentioned, to keep that area clear so that you can see what's going on there and to preclude other stuff from going into the neighborhood. And then the other thing is, when you start talking about putting trees along curvy roads and you've got, if this is indeed going to turn out to be a student, primarily student resident area, and they're going back and forth across the road, trees along the windy road is not helping. It's a danger. And so, I'm hesitant about the idea of tree-lined roads, mainly because of the traffic that goes through there and the kids going back and forth. So, you want to be able to see what's going on there.

Mr. Silverman: Thank you.

Ms. McNatt: Did somebody mention lighting? I'm sorry, Mike, I just want to bring it up to see what the response to the lighting issue was.

Mr. Hoffman: Yes, I apologize. I've been taking notes to try to get as many in as I could. I do apologize. Yes, so we meet the lighting code, which requires that you can't have a candle spill-off. As far as additional steps, again, it's a comment we've noted and we're happy to talk amongst ourselves. We don't have any specific offerings on that.

Mr. Silverman: Clarification on techno-speak, candle spill-off? In other words, you will make all reasonable efforts that there will not be light shined from the project into the surrounding areas.

Mr. Hoffman: Yes, we will have those conversations to explore reasonable efforts. Again, I can't put anything on the table right now, but the comment is noted.

Mr. Silverman: Thank you. Shall we move on to an action? Okay, the recommendation from the Planning Department is that because the major subdivision plan and Comprehensive Plan amendment, with the Subdivision Advisory Committee recommended conditions, is compliant with the City of Newark Code, it should have no negative impact on adjacent and surrounding properties, and because the proposed use does not conflict with the development pattern in the nearby area, the Planning and Development Department recommends that the Planning Commission take the following actions. Now, we have two actions we need to take tonight, as required by Code. One is to vote on the Comprehensive Plan change and also move on the recommendation to City Council. So, the Chair, referring to page 13 of the Planning Department's report, will entertain a motion with respect to the Comprehensive Development Plan amendment. Will?

Mr. Hurd: Oh, sure. I recommend that City Council revise the Comprehensive Development Plan V Land Use Guidelines for 321 Hillside Road from “university” to “high density, residential” and “low density, residential” as shown on the attached Exhibit G-1 dated July 23, 2019.

Mr. Silverman: Is there a second?

Mr. Kadar: Second.

Mr. Silverman: Okay, it’s been moved and seconded . . .

Mr. Cronin: Mr. Chair? Can we do an amendment to that perhaps along the lines of the open space that exists currently becomes dedicated open space in perpetuity even when the property is sold. We’ve had developers in Newark come along and even before the project is occupied it’s sold, and it becomes something that wasn’t even spoken about before . . .

Mr. Silverman: Mr. Cronin, that’s also in my notes but I believe it may be more appropriate with respect to the major subdivision plan. We’re dealing with a Comprehensive Plan amendment and if Mr. Bilodeau would remind us, this is a more perfunctory motion.

Ms. McNatt: So . . .

Mr. Hurd: I was just going to say if the Comp Plan designates areas as being open space, then that could be our motion to designate that as open space as opposed to residential, low density.

Mr. Silverman: The Comp Plan can be amended relatively easily, however if it was deed restricted with respect to the land development plan, that would be much more difficult. Do you want to continue to pursue the idea of a Comp Plan amendment?

Mr. Hurd: The open space wasn’t the area that I was going to try to amend the motion, but we’ll stay with that for the moment.

Ms. McNatt: If it is true that we could designate that area as open space, usable open space, which was one of my concerns on this amendment as the recommendation, I then have other recommendations for the second vote but that would be one that I would support. If it’s doable.

Mr. Silverman: Okay, I’m going to throw another wrinkle in here and I’m right at the edge of my competency and I don’t expect Ms. Petersen to have an answer. The City of Newark has a zoning district for recreational open space. I don’t remember the details on that.

Ms. Petersen: Tom may be able to . . .

Mr. Silverman: Tom?

Mr. Fruehstorfer: I might be able to answer some of the questions. The RS could not be sold off. It’s currently part of the plan. It’s part of the tree mitigation plan so it wouldn’t be able to be sold off as-is. And as far as the Comp Plan, I think Mike agrees there is parkland designation but not open space. It’s not a possible designation.

Ms. McNatt: Can’t it be considered as part of this plan that if the recommendation from the Commission to get a positive approval is to limit that parcel as an area of un-treed, I’m going to use the word an un-treed area, that does not have trees . . .

Mr. Fruehstorfer: Code is requiring those trees.

Ms. McNatt: Right, but they’re choosing to put it on RS, not on RM. Correct?

Mr. Silverman: Mr. Fortner, would you like to come forward, please.

Mr. Fruehstorfer: I think that's beyond what I can comment on.

Ms. McNatt: Well, that does not help me . . .

Mr. Fortner: I was going to say that I think it's appropriate to put those kinds of amendments in the subdivision part of it instead of in the Comp Plan part of it, unless you really want to designate this as a parkland. I mean we have a PL zoning and that's what we use as the Comp Plan designation for parkland zoning. So, I don't think it's the most appropriate place. I think it would be more in the subdivision plan to designate how that open space is used. Does that help?

Mr. Silverman: Okay, we are back to the original . . . thank you . . . we are back to the original motion. There are no amendments, just some discussion . . .

Mr. Hurd: I do actually have one that I'm going to put out there. My concern still is about the density. I think this would be a vastly different property if it were constrained by the Comp Plan's low-density requirement of 11 units. There would be much less parking even though the building coverage would be the same. So, my amendment is to say that Lot 2 be designated in the Comp Plan as residential low-density.

Mr. Silverman: Okay.

Ms. McNatt: And that means . . .

Mr. Hurd: Which is compliant with the RM zoning. RM zoning supports both low- and high-density in the Comp Plan.

Ms. McNatt: So, therefore if you add the RS in the low-density, they have to add it in and it makes it less units?

Mr. Hurd: It would mean that the plan doesn't comply with the Comp Plan.

Ms. McNatt: Correct.

Mr. Hurd: But that's what I'm putting on the table. Which I would be glad to take a vote on that specific piece of the amendment.

Mr. Bilodeau: Now I'm confused. I'm sorry, the original motion was to have the Lot 2 low-density . . .

Mr. Hurd: I'm sorry, the RM portion . . .

Mr. Bilodeau: Yeah?

Mr. Hurd: Be designated residential low-density in the Comp Plan, not high-density.

Mr. Bilodeau: Well, that's Lot 1.

Mr. Hurd: Right. I'm talking about the RM-zoned portion of Lot 2.

Mr. Bilodeau: That's Lot 1.

Mr. Hurd: Yes. Be designated as residential low-density in the Comp Plan.

Ms. McNatt: But Lot 2 is RS.

Mr. Hurd: No.

Ms. McNatt: It's not?

Mr. Bilodeau: It is. Lot 2, across the street, is RS low density.

Mr. Hurd: Right. That stays what it is. The RM-zoned portion, which is Lot 1, instead of the recommendation here of calling that residential high-density in the Comp Plan, my amendment to that is to call that low-density residential.

Ms. McNatt: On the RM parcel of #1?

Mr. Hurd: Yes.

Mr. Hoffman: And Mr. Chairman, at this point I do have to raise an objection on legal grounds. The basis for the Comp Plan amendment is because of this impossibility. It's because right now, the only inconsistency is the fact that the Future Land Use map shows a University designation. If the property sold, it can't be a University designation, so it has to be something. And so, under the law, what you do is you look at so what does it revert to? If it can't be a UN, what does it revert to? And what it reverts to in this case, the zoning question has the RS zoning and the RM zoning. If you were to place an RS or a residential low-density on the RM, you would be placing a restriction on the zoning that currently doesn't exist, which we submit is an improper restriction.

Ms. McNatt: Why are we asked to vote on this at all, then?

Mr. Hurd: I'll defer to the Solicitor on the interpretation of that. Because we do have properties that are designed low-density residential RM-zoned in the Comp Plan.

Mr. Hoffman: But this property is not, and that's the key point, this property is not presently designated as residential low-density. And under the law, when you go through and you have a Comp Plan, if the Future Land Use map had designated and went through the Comp Plan process to designate it in that manner, then that's one story. But here, that did not occur. And so, to do so, again, this is in many ways, we submit, as the Solicitor mentioned at the top of the hearing, we submit that this is a pro forma, you know, correcting the technical impossibility. But as far as taking it a step further, we need to take this even further. So, it would be akin to the Planning Commission here tonight choosing to rezone the property to a lower zoning district. And certainly, we're not here requesting that and that's [inaudible].

Mr. Fortner: Mr. Chairman, I'd just like to add that the properties that we have that are zoned RM that are in the designation of low-density residential are all less than an acre. This is more than an acre, so it falls under the by-right of a garden apartments type of zoning. So, I mean, we have RM zoning and low-density, that's less than an acre. And an acre is a minimum to have garden apartments.

Mr. Hurd: Okay, then I retract my amendment.

Ms. McNatt: Then, can I have clarification of why we're even voting on what you just read then, at all? What's the purpose of even having a . . .?

Mr. Silverman: Because the UN district, the University district is only associated with University property. This is no longer University property. Therefore, it reverts back to the original underlying zoning.

Ms. McNatt: Of RM?

Mr. Hurd: Right, the Comp Plan has to come into agreement before we can approve the plan.

Ms. McNatt: But I just want to clarify. So, from University to high-density residential and low-density residential because RM can be high and low. Is that what it's trying to explain here?

Mr. Hurd: Low density is the RS piece. High density is the RM piece.

Ms. McNatt: That's why it's an and, not an or.

Mr. Silverman: Yes, it's an and.

Mr. Hurd: For two lots.

Ms. McNatt: Okay. Thank you.

Mr. Silverman: Because the lot adjacent to the single-family . . .

Ms. McNatt: Is low density.

Mr. Silverman: Will continue onto the former University designation.

Ms. McNatt: Okay. Thank you.

Mr. Silverman: So, we are back to the original motion. Any further discussion?

Mr. Bilodeau: Was there a second of the original motion?

Mr. Silverman: Yes, there was.

Mr. Bilodeau: Okay.

Mr. Silverman: All those in favor of the Comp Plan, I'm sorry, the Comprehensive Development Plan V land use change, signify by saying Aye. All those opposed, Nay. The motion carries.

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

THAT CITY COUNCIL REVISE THE COMPREHENSIVE DEVELOPMENT PLAN V LAND USE GUIDELINES FOR 321 HILLSIDE ROAD FROM UNIVERSITY TO HIGH-DENSITY RESIDENTIAL AND LOW-DENSITY RESIDENTIAL AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT G-1 DATED JULY 23, 2019.

VOTE: 5-1

AYE: CRONIN, KADAR, MCNATT, SILVERMAN, STOZEK

NAY: HURD

ABSENT: WAMPLER

MOTION PASSED

Mr. Silverman: Okay, moving on to the second portion of our action, the major subdivision plan, paragraph B. The Chair entertains a motion. Will, will you do the honor?

Mr. Hurd: Sure. I recommend that City Council approve the 321 Hillside Road major subdivision plan as shown on the major subdivision plan and Comprehensive Development Plan Amendment plans dated December 5, 2018 and revised July 18, 2019, with the Subdivision Advisory Committee conditions.

Mr. Silverman: Is there a second?

Mr. Kadar: Second.

Mr. Silverman: Thank you. It's been moved and second. Now, with respect to discussion, I took some notes and if my fellow Commissioners would please help me, we may want to condition this approval with respect to light and glare and light pollution off the site. That was an issue that was discussed. We may want to ask for deed restrictions with respect to Lot 2 so that Lot 2 will be perpetually in an undeveloped state. Now whether it evolves into a treed site, an active or passive recreation site, or simply a lawn-type site, remains to be worked out. With respect to Commissioner McNatt's concerns dealing with page 11 of the Planning Department's report and with respect to conditions of approval, would you reference us back to the paragraphs 6A and 8?

Ms. McNatt: Correct. And those would be implemented on the recorded documents for appropriate enforcement.

Mr. Silverman: Okay, and then finally, the concerns of the Oaklands Swimming Pool group that the safety and maintenance concerns expressed by the Oaklands Pools interest be addressed in the CIP and the subdivision agreement document between the City and the owner.

Mr. Hurd: I may have missed this. Did we include the extension of the easement as one of the points to be part of this?

Mr. Silverman: You're correct. And the, let's see if I can rephrase this, the safety and maintenance concerns, as well as the extension of the easement with respect to, Will, your description.

Mr. Hurd: Well, it was from the letter. To maintain the original easement that the University had, I guess . . .

Mr. Silverman: This is from Mr. Burke's letter?

Mr. Hurd: Yes.

Mr. Silverman: As expressed in Mr. Burke's letter and testimony. Madam Secretary, do we have that in a form that you can follow? And, Mr. Hoffman, have you followed what we were saying?

Mr. Hoffman: I did, Mr. Chairman, and I apologize, I have to do this for the record, as legal counsel for the applicant, and formally object to the conditions that are placed on the table. This, again, is a plan that meets the Code requirements. This is akin to the Planning Commission adding additional conditions and requirements for this particular applicant. What I will say is while we, you know, I raised the formal objections, as I mentioned, we were taking notes here tonight. We intend to convene as a group. We intend to discuss these items. For example, what I would note on the items 6A and 8, we did submit responses to those which are in the Planning Commission's packet. When it comes to the Oaklands Swim Club, again, we do intend to engage in a neighborly fashion, but I cannot commit to anything on changing those spaces because it requires mutual agreement and one of the parties is not at this table. So, again, the conditions that the Commission is placing on this applicant go above and beyond what the Code requires. I would argue that in many ways, at least in the case of the Oaklands Swim Club, it can't be addressed, and, in that way, they are unreasonable. Again, I have to say that. As legal counsel, I have to put that obligation on the record, but I would follow that up just again to say that we do intend to follow tonight's hearing, based on what we heard.

Mr. Silverman: Okay, with respect to some wordsmithing here, and I'm addressing the Commissioners, rather than use the word conditions, that we ask Council to take into account the following.

Mr. Hurd: Take into consideration?

Mr. Silverman: Consideration. Mr. Hoffman, will that satisfy some of your concerns with respect to laying conditions on . . .

Mr. Hoffman: In many ways, and this is where I get frustrated because I understand the point of the comments. I understand the point of the Commission. But as far as whether it is telling Council to consider or telling Council to take this, the conditioning of a recommendation, again, those are added formal steps that are, I would submit, are not in line with Code on a plan that otherwise meets the Code. So, again, I have to formally object in that manner, but I don't want the Commission to lose sight as to what I'm saying. For the sake of me doing my job, I have to formally put that on the record, but we understand the comments.

Mr. Silverman: Mr. Bilodeau?

Mr. Bilodeau: I understand what Mr. Hoffman is saying, but in this case, I think if there are conditions that are appropriate and one of them is the safety concerns of the pool, I think it would be remiss for the Commission not to make some sort of recommendations along those lines. Just that if you're going to approve this, just make approval subject that you will also recommend that these considerations be considered.

Ms. McNatt: If we do a two-step recommendation for the safety and then a list of considerations for Council, is that what you're thinking? That that's how this would go?

Mr. Silverman: Actually, all recommendations.

Ms. McNatt: They're all going to be listed?

Mr. Silverman: Items to be considered by Council.

Ms. McNatt: Oh, they're all going to be listed. Okay, the potential they'll all be listed. Whatever list we come up with will all be listed as consideration for Council to do as they please with this list? Is that correct? Is that what you're saying?

Mr. Silverman: Yes.

Mr. Hoffman: Mr. Chairman, if I may make a suggestion which I think we would be agreeable to, is that if there are items, so for example with the lighting plan, if the recommendation is that the applicant come prepared to address the lighting plan to Council, you know, that makes sense. And if, you know, the applicant comes prepared to address the landscape plan with Council, again, these are recommendations for the applicant to present to Council and, again, that would give us an opportunity to take into account what we heard tonight. What, again, I would have to formally object to is any recommendation of a deed restriction or any change or agreement to an easement area where Oaklands Swim Club is not at the table.

Mr. Silverman: Commissioners, the wording that the applicant is prepared to address the following issues before Council?

Ms. McNatt: Are you going to list them or are you just . . .

Mr. Silverman: No, we're going to list them, at least by topic.

Ms. McNatt: Okay.

Mr. Silverman: Does that get at our concern and reflect our concerns and the public's concern? Okay, Will, if you will restate the recommendation as written and then we will add the

statement that the applicant comes prepared to address the following issues before Council, and then we will list those out.

Mr. Hurd: Okay. Alright, I recommend that City Council approve the 321 Hillside Road major subdivision plan as shown on the Major Subdivision Plan and Comprehensive Development Plan Amendment plans dated December 5, 2018 and revised July 18, 2019, with the Subdivision Advisory Committee conditions, and the following . . . and come prepared . . . what did we say?

Ms. McNatt: To address the consideration . . .

Mr. Hurd: Come prepared to address the concerns expressed at the meeting which are listed. Am I getting that right?

Mr. Silverman: Madam Secretary, are you wish us?

Ms. Michelle Vispi: I am. Are you going to list out the . . .?

Mr. Silverman: We will. And this motion, what Will is making, is a substitute motion for the motion that has been moved and seconded, just to keep parliamentary procedure-ish in order. And our list are the safety and maintenance concerns expressed by the Oaklands Pool interest, including the sidewalk access to the pedestrian walk-under, the conditions as cited on page 11, paragraph 6A and 8, the status of the open space as expressed in the proposal for Lot 2 . . .

Ms. McNatt: That it remains usable for people.

Mr. Silverman: That it . . .

Mr. Hurd: That's more of a condition.

Ms. McNatt: It's more what?

Mr. Hurd: That seems more of a condition.

Mr. Silverman: Yes.

Ms. McNatt: Oh, okay. Evaluate the landscaping to put it on RM zoning.

Mr. Hurd: Well, there's questions about the landscape plan specifically about the tree line, maintenance of the tree line, open space remaining, and such. So, I think . . .

Mr. Silverman: So, let's fudge this, as expressed on the record.

Mr. Hurd: Yeah.

Mr. Silverman: And with respect to lighting glare.

Mr. Hurd: Yeah.

Mr. Silverman: A lighting plan.

Mr. Hurd: Lighting plan would be easier.

Mr. Silverman: Is there anything else on that list that we missed?

Mr. Cronin: Mr. Chair?

Mr. Silverman: Yes.

Mr. Cronin: Does the wording we're talking about for the open space, I guess, be continuing to be open space forever or in perpetuity, or something?

Mr. Silverman: That's going to have to be worked out at Council level because, right now, as I understand the testimony . . .

Mr. Cronin: I understand that, but as long as they know that's the Planning Commission's desire or goal.

Mr. Silverman: That's in the record.

Mr. Cronin: So, they can give consideration to that goal.

Mr. Silverman: And I believe by calling this out, we've called their attention to the discussion that's in the record with respect to the future of Parcel 2.

Mr. Cronin: Should it be sold.

Mr. Silverman: I would be hesitant to do that. We've heard from the City that nothing can happen to that lot because it's locked in as part of the landscape tree mitigation agreement.

Mr. Cronin: What if they decide to put a few more trees on the other side of the road?

Mr. Silverman: That's up to Council to decide how that's going to go, I believe. Mr. Hoffman?

Mr. Hoffman: I have no objection to coming prepared to address with Council the status of Lot 2.

Mr. Silverman: Okay.

Mr. Cronin: With regard to a potential sale, a future sale. A possible future sale.

Mr. Hoffman: Right. So, just so we're clear. I understand it's mincing words, but the recommendation is the applicant come prepared to address the status with respect to potential sale, not that it be restricted.

Mr. Cronin: Exactly. Just so it's on the table to be addressed.

Mr. Hoffman: Right.

Mr. Silverman: Okay, and I have to ask this by our rules, is there any objection to the Chair extending our meeting until 9:30?

Mr. Hurd: No.

Mr. Silverman: Okay, so we'll move on. So, we now have a substitute to the original amendment that was moved and seconded that includes a list of conditions. And Madam Secretary, do you think you've captured those?

Ms. Vispi: I think so.

Mr. Silverman: Okay. And I'll ask that the Planning Department review that discussion to make sure that the essence of what we've talked about are reflected in that proposal. All those in favor, signify by saying . . .

Mr. Stozek: Are we just going to vote yay or nay, or are we going to explain our vote?

Mr. Silverman: Please explain your vote. The Delaware courts do like to know how and why the Commissioners voted the way they did.

Mr. Stozek: So, we'll poll?

Mr. Silverman: Okay, there's been a request to poll. If there is no objection, we'll do that. Commissioner Stozek, your vote?

Mr. Stozek: I am going to vote against this proposal primarily for several factors, all related to density. I think that if you look at the allowable 16 units per acre, we're right up against, we're butting right up against the allowable portion. The density is far too high. I don't believe this plan is environmentally sound from the standpoint of Lot 1. By the testimony today, in lieu of having required open space, they're making a payment to the City. I think all those things go to affect the potential quality of life to the people living here. And I also think that with the density that is proposed, this puts additional burden on the local residents in the area and on the, as I mentioned before, the upcoming Rodney park. I think that's going to become the primary recreation space for this development. So, those all roll under the issue of density.

Mr. Silverman: Okay, so Mr. Stozek is a no?

Mr. Stozek: Yes. No.

Mr. Silverman: Commissioner Hurd?

Mr. Hurd: I am also voting against for many of the same reasons stated by Commissioner Stozek.

Mr. Silverman: Commissioner Hurd? Hurd is a no, it's getting late. Commissioner McNatt?

Ms. McNatt: At this point, I would be a vote no on this plan and the fact that it did not address some of the things the other Council, I mean Commissioners, suggested, as well as because of the failure of not following a recommendation to come up with a master plan and addressing the community needs, as well as identifying the quality of life adjacent to the residential areas, I think that has also not been appropriately addressed.

Mr. Silverman: I am voting in favor of this plan. I concur with the recommendation as displayed on page 13 of the Planning Department's report. Commissioner Kadar?

Mr. Kadar: I vote in favor of the plan. It meets all zoning requirements and is consistent with the Comprehensive Plan and, in my opinion, is a major improvement over what we have there today.

Mr. Silverman: Commissioner Cronin?

Mr. Cronin: I think . . . I'll vote no given the impervious surface and the density and just the lack of space that this has. If it ever became non-student housing, which is possible, of course, in a decade or in the future, there's just no space around it, even a playground or a swing-set or anything like that for future residents, potential future residents. And I agree with what Commissioners Stozek expressed, and Hurd, and McNatt, and so forth. I just liked to see the density much less than it is and I think it could still be a sound business proposition to go forward with, with lower density and be better for the community.

Mr. Silverman: Okay, by my count, the motion fails 4-2.

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

THAT CITY COUNCIL APPROVE THE 321 HILLSIDE ROAD MAJOR SUBDIVISION PLAN AS SHOWN ON THE MAJOR SUBDIVISION PLAN AND COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT PLANS DATED DECEMBER 5, 2019 AND REVISED JULY 18, 2019 WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS, AND WITH THE ADDED RECOMMENDATION THAT THE APPLICANT COME PREPARED TO ADDRESS WITH CITY COUNCIL THE CONCERNS EXPRESSED AT THE AUGUST 6, 2019 PLANNING COMMISSION MEETING THAT ARE LISTED BELOW:

- A. SAFETY AND MAINTENANCE CONCERNS RELATED TO THE EASEMENT, AS EXPRESSED BY THE OAKLANDS SWIM CLUB, AND EXTENSION OF THE EASEMENT AGREEMENT;
- B. SUBDIVISION ADVISORY COMMITTEE CONDITIONS 6A AND 8 CITED ON PAGE 11 OF THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT RELATED TO DEMOLITION RESTRICTIONS AND DAMAGE TO ROADWAY OR CURBS;
- C. STATUS OF THE OPEN SPACE PROPOSED FOR LOT 2, INCLUDING WITH RESPECT TO POTENTIAL SALE;
- D. STATUS OF LANDSCAPE PLAN SPECIFIC TO THE TREE LINE AND OPEN SPACE REMAINING; AND
- E. STATUS OF LIGHTING PLAN RELATED TO GLARE AND LIGHT POLLUTION.

VOTE: 2-4

AYE: KADAR, SILVERMAN

NAY: CRONIN, HURD, MCNATT, STOZEK

ABSENT: WAMPLER

MOTION FAILED

Mr. Silverman: If we would like to take a few minutes stand-in-place break or necessary facilities break, we will move on to the next item on our agenda.

[Secretary's Note: Chairman Silverman called the meeting to recess at 9:12 p.m. and reconvened the meeting at 9:19 p.m.]

3. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE RELATING TO INDUSTRIAL USES.

Mr. Silverman: Let's reconvene and move on to agenda item 3, review and consideration of amendments to the Zoning Code relating to industrial uses. I'll ask Ms. Petersen to read some very brief comments and, hold on for a second, is there a staff person who is going to comment or is it just going to stand on the report from the Director?

Mr. Fruehstorfer: I think it's just the report.

Mr. Silverman: Okay, thank you.

Ms. Petersen: Presentation for proposed amendments to Section 32-4 definitions, Section 32-20 uses permitted in the ML districts, limited manufacturing, and to Section 32-21 uses permitted in MI districts, general industrial.

Project description. This agenda item is for the review and consideration of amendments to the Zoning Code relating to industrial uses. There are three proposed amendments which include Section 32-4 definitions, Section 32-20 uses permitted in the ML districts, and Section 32-21 uses permitted in the MI districts.

Background. By way of background, Planning staff had discussed proposed revisions to the Industrial zoning districts at the October 22, 2018 City Council meeting. As indicated in this memo and as discussed with City Council at this meeting, as industry and manufacturing in the City of Newark and the country at large has continued to evolve, the uses in these zoning

districts need to evolve as well. While industrial parks still include manufacturing uses, they also are more readily seen and utilized as spaces for including but not limited to warehousing, offices for professional services such as contractor establishments, breweries, and indoor recreation. Acknowledging this trend warrants a review and update to our Zoning Code for industrial uses to include these additional uses.

The general approach as described in the October 15, 2019 memo was to include the uses allowed in the MOR manufacturing office research district into the two industrial zoning districts ML limited manufacturing and MI general industrial. Council concurred with this approach and suggested that Planning staff take another look as to whether we needed to keep the ML zoning district since it was through that we didn't have any properties that had this zoning designation.

Methodology. In addition to the approached described above, Planning and Code Enforcement staff, along with the assistance of our summer interns, conducted a comprehensive analysis of industrial zones and business operations within industrial zones in nearby and like municipalities, including West Chester, Pennsylvania, Salisbury, Maryland, and College Park, Maryland, as well as discussed business trends we are seeing in Newark. While each of these municipalities specialize in different kinds of industry, they are all following the trend of downsizing in industry and transitioning from an industrial development stage to a more mixed-use development one.

Proposed changes. Per the described methodology, the following revisions are proposed to the Zoning Code with the following discussion. Number one, delete the ML limited manufacturing zoning district. Staff recommends deleting the ML zoning district since there are no properties that currently have this zoning designation. Number two, add the definitions towing service with temporary storage, automobile wrecking, and indoor commercial recreation. These definitions help clarify the allowed uses. Number three, MI general industrial district. Item A, add uses allowed in the MOR manufacturing office research district to the MI general industrial as special use. Designating these additional uses as special use permits allows for Newark to be inclusive and allow for new businesses who wish to operate in industrial zones, while ensuring the protection of public health, safety, and welfare. Item B, adding towing service with temporary storage and automobile/motor vehicle repair uses. The addition of towing service allows for this use in the industrial zone. Item C, increase the area of allowable retail space in business from 15% to 50%. The change in permitting from 15% to 50% of space in businesses to be available for retail space derives from an acknowledgement that showrooms are now the norm in some manufacturing industries that wish to exhibit their products to customers.

Recommendation. Planning staff suggests that the Planning Commission recommend approval of the proposed changes to the industrial zoning districts as described in the August 2, 2019 Draft 1 document titled 32-4 Definitions, Section 32-30 Uses Permitted in the ML Districts, limited manufacturing, and to Section 32-21 Uses Permitted in MI Districts, general industrial.

[Secretary's Note: A link to the Planning and Development Department memorandum on the amendments to the Zoning Code relating to industrial uses can be found at the end of this document.]

Mr. Silverman: Are there any questions or comments by the Commissioners? Microphone, please

Mr. Stozek? You said there are no current businesses that have it, but I guess when was the last time we had something in an ML designated zone and what business was that?

Mr. Silverman: There is no acreage zoned that.

Mr. Hurd: The report said there was no property currently zoned ML. You're wondering when the last one was?

Mr. Stozek: Yes. I'm just wondering if, things change all the time, could somebody come back and want to have that designation?

Mr. Silverman: It's an indication that the zoning district is obsolete.

Mr. Hurd: I did confirm that ML is MI minus it looked like petroleum storage and some train operations. So, it was cut and dry.

I had a question, I guess this is sort of for staff, what was the, how do I phrase this right, I understand that if we move the MOR items under the special use permit section, my understanding is sort of that the special use approval process is for uses that might cause a conflict with existing uses or having some impact beyond the property, and so I'm trying to understand the logic of why some things like professional services offices for, I don't know, that's one that sort of caught my eye, but some of the other ones seemed to have no real strong impact outside the property, why they got moved into special use.

Mr. Fruehstorfer: I think the concern is something like a yoga studio is going to be put into something that is dangerous, industrial . . .

Mr. Hurd: Oh, so it's more the other . . .

Mr. Fruehstorfer: Yes, its to provide safety. So, you're not bringing a lot of the public next to a dangerous spot.

Mr. Hurd: Okay, so you see these as uses that are not, they sort of would be inserted into a typical industrial sort of manufacturing zone and might need to be considerate about where they're going and what's going on around them.

Mr. Fruehstorfer: Right.

Mr. Hurd: Okay.

Mr. Fruehstorfer: So, there is something, a slightly dirty industry of some sort that is potentially dangerous, you're not going to be bringing a bunch of kids in a recreation center . . .

Mr. Hurd: Okay, so it's more about impacts on that property as opposed to the other way around.

Mr. Fruehstorfer: Kind of so you don't run into the situation where people buy houses next to farms and then complain about a stinky farm.

Ms. McNatt: Tom, I have a question. Do we have a specific definition of what commercial indoor recreation is in the Code?

Mr. Fruehstorfer: I think so. I don't have it with me right now.

Mr. Hurd: It's right here, recreation, commercial indoor.

Ms. McNatt: Is there a definition?

Mr. Hurd: It's right here.

Ms. McNatt: Oh, it's written backwards, that's why. So, should we reference it as commercial, should it say . . .

Mr. Hurd: The definitions always come first.

Ms. McNatt: Yeah, but it says recreation commercial indoor. So, it says commercial indoor recreation. I guess if that means the same thing, right?

Mr. Hurd: Yes.

Ms. McNatt: Alright. We will have now a new definition by this amendment. By this change.

Mr. Silverman: Are there any other questions from the Commissioners?

Ms. McNatt: Wait a minute, I'm not done yet.

Mr. Silverman: You hesitated.

Ms. McNatt: I know, don't hesitate, goodness. So, in this, indoor commercial recreation, for example, you list specific types of recreation. If it's not listed here, are they excluded? If you don't have one of these types of indoor recreation and similar business, I guess that's where you can have other things. Thanks. I had to talk myself through the whole process. Alright, I'm done. Thank you.

Mr. Silverman: Mr. Kadar, do you have any comments?

Mr. Kadar: I have a question. I recognize that there are no ML facilities currently in the City. I'm looking for an example of an ML facility. Say, a facility that assembles something or small building, right, with no emissions, none of that stuff. Are the requirements for an ML facility lower in terms of everything – emissions, environmental impact – as opposed to an MI facility.

Mr. Fruehstorfer: I think Will had it right. Anything that would have been allowed in ML is allowed in MI. There are just some things allowed in MI that aren't allowed in ML.

Mr. Kadar: And since there are no businesses today, what happens if a business comes in and fully meets the requirements for an ML business and now ML is gone.

Mr. Fruehstorfer: It's okay in MI.

Mr. Kadar: Yeah, but are the requirements to do business in an MI greater than they would have been if they had been in an ML?

Mr. Fruehstorfer: No.

Mr. Kadar: Identical?

Mr. Fruehstorfer: ML only took away a couple of allowable uses. ML, I think it was exactly what Will said. ML is MI minus a couple of uses.

Mr. Kadar: Okay, so I'm looking forward now. This is not going to restrict people from coming in to do business in the City?

Mr. Fruehstorfer: Not at all.

Mr. Kadar: Okay, so there's no impact. That's what you're saying.

Mr. Fruehstorfer: Correct.

Mr. Kadar: Okay, thank you.

Mr. Bilodeau: I did just look up the definition of commercial indoor recreation.

Ms. McNatt: Thank you.

Mr. Bilodeau: It's movies, roller rinks, bowling alleys, pool halls.

Mr. Hurd: That's it?

Ms. McNatt: That's current definition?

Mr. Bilodeau: That's 13-55.

Ms. McNatt: Because I think they're proposing a new definition.

Mr. Fruehstorfer: Currently I think some of the uses in town that would be commercial indoor would be trampoline park, some of the gym-type places, I believe. At least one has a special use permit . . .

Mr. Silverman: Hatchet throwing.

Ms. McNatt: That's what I was thinking, hatchet throwing.

Mr. Hurd: But they're not in the City.

Ms. McNatt: They're not but they may want to be. But could there be similar business, I guess they would be able to do it. Time out, sorry, I don't want to take my turn.

Mr. Fruehstorfer: Gymnastics is also another commercial indoor recreation, I think, that's been approved. The Mid-Atlantic Ballet or something.

Ms. McNatt: Does that limit, I'm sorry, does the special use, for example, if let's say a hatchet throwing or an indoor gold thing, if they want to offer alcohol, is that a whole other level of item associated with this use.

Mr. Fruehstorfer: The only way they could have alcohol is if they were also a full restaurant of if they produced it themselves.

Ms. McNatt: Okay, thank you.

Mr. Silverman: Mr. Cronin, any comments?

Mr. Cronin: No.

Ms. McNatt: Breweries are an MI. A brewery is an MI.

Mr. Fruehstorfer: You couldn't do a restaurant, but you could do a brewery.

Ms. McNatt: So, for example, could you have a hatchet-throwing brewery?

Mr. Fruehstorfer: Yes.

Ms. McNatt: Or an indoor golf, putt-putt brewery?

Mr. Fruehstorfer: Yes

Mr. Silverman: Now that we're into the silly hour, yes, they can . . .

Ms. McNatt: I'm not joking. As a resident, I go outside of the City for entertainment and value that I wish could come to the City. And I find this is a benefit and it's not silly. I am very interested in making sure we have the opportunity to have indoor recreation for all people.

Mr. Silverman: Thank you.

Mr. Hurd: I can say from experience that Midnight Oil Brewery which is currently in I want to say Pencader, is adjacent to an axe-throwing place and they've posted the axe throwers in extra space in their brewery when they were first opening up. So, they have extra space that's not filled with brewery that they use for other events.

Mr. Silverman: My EMS side does not even want to think about that combination.

Mr. Hurd: They're not drinking to excess in a microbrewery. Not at those prices.

Ms. McNatt: Not when you're throwing axes.

Mr. Silverman: Okay, are there any comments or questions from the public? Ms. White.

Ms. White: Jean White, District 1. I didn't really have a chance to study this, so I don't have really good questions. I was thinking of the Interchange Industrial Park at Elkton Road there. It seems to me that one of the things there was one of these bounce entertainment things . . .

Mr. Silverman: Trampoline center.

Ms. White: Excuse me?

Mr. Silverman: Trampoline center.

Ms. White: Oh, trampoline center. So, that's an example of something that's already in an industrial zoned area. And also, there are plumbing stores that have things on display. Okay, I can see that, having a showroom is good, especially if you're looking for plumbing things. But other recreation, I see the list in here and there's something that's listed as adult entertainment center gyms. What does that mean? What is an adult entertainment center gym? Is that the same as a gym or is it something different? If you just said adult entertainment, you might have something different.

Mr. Hurd: Yes, it is.

Ms. White: I mean you all may know what that means but I just wondered what it does mean.

Mr. Silverman: I'm going to take a guess that this may be an establishment that also has a liquor license and bar license or a lounge.

Ms. White: Okay.

Mr. Fruehstorfer: I don't know.

Ms. White: I think this has to be very well-defined and many people know that I scrutinize things with alcohol. I think restaurants are fine, you know, restaurants on Main Street where they have alcohol, but I'm just wondering, you know, how this will be carefully monitored if you're putting it in a different area. So, I think that has to be better defined. Not necessarily banned or anything, but better defined. For example, restaurants need to get a special use permit if they have alcohol. Would that be true also if you have this, presumably it would also be true with one of these indoor things as well. Yes, it would be? Okay. But I think it needs to be very carefully stated. And let me just see here. Okay, the retail, this may be defined someplace else in here, I can see the retail where it's a showroom, but are we just going to have sort of, what constitutes retail? That would be another question I have. And one of the things is the increase between, from 15% to 50%. Is that the retail part?

Mr. Silverman: Yes. I believe it refers to showrooms for the products that are manufactured on premises or brought in and assembled on premises.

Ms. White: Okay, maybe that's in some definition in here. And let me just see here. And I actually, maybe not, I would oppose I think, but maybe I won't, putting restaurants, full-service restaurants in MI and MOR. I think the restaurants should be in the other parts of town unless it's something that I don't understand.

Mr. Fruehstorfer: Restaurants are not being added here. The restaurant just came up because someone asked a question about the alcohol. A place like Home Depot would not be allowed. It's limited to 50% of the area for retail so we're just talking about the typical places that are already in industrial places that are putting showrooms for cabinets and things.

Mr. Silverman: I could perhaps give an example. The durable medical appliance supplier that I use is in an industrial park and they have an area devoted to scooters and assist devices in a showroom that they receive and assemble and maintain in another part of their square footage.

Mr. Fruehstorfer: We're also thinking that there may be a comma between the adult entertainment and the gym. And the adult entertainment possibly came from West Chester or one of the other places and it may have been listed. I'm not sure exactly what adult entertainment would be.

Ms. McNatt: Karaoke bar?

Mr. Fruehstorfer: Only if they [inaudible] themselves.

Ms. McNatt: But it could be in MI. A karaoke bar, a karaoke event place, space could be in . . .

Mr. Fruehstorfer: And call it adult entertainment? That could be indoor recreation. Karaoke.

Mr. Fortner: It might be adult entertainment.

Mr. Fruehstorfer: You think that's the adult entertainment? A comedy club? We can't have comedy clubs.

Mr. Fortner: No, no comedy clubs. We don't know what adult entertainment is, but you might want to take it out. When they say indoor recreation, it's some sort of physical activity like axe throwing or a trampoline park. So, maybe adult entertainment is that kind of activity, but it's usually something where you're doing some sort of physical activity. So, karaoke, you know, it's not an arcade or karaoke bar.

Mr. Silverman: Okay, the hour is getting late. Are we ready to move to the motion and . . .?

Mr. Hurd: I just wanted to clarify one thing that's sort of been talked about. There is listed, item 7 on page 12, it says retail, specialty retail, and retail food stores subject to the following requirements, such uses are permitted only in existing facilities or structures existing on or before October 13, 1991. So that's a separate use from a retail portion of a manufacturing usage. So, it seems to me I'm looking at it that a Home Depot or a hardware store could come in there, into an existing building as a retail usage. Not that I'm against it, it's just there is a line in there for retail.

Mr. Fruehstorfer: I don't think anyone here had any part in the final writing of this, unfortunately. We were part of meetings talking about it and in those meetings talking about it, we were not planning on having retail.

Mr. Fortner: That's correct. Generally, in these areas, you don't want high traffic. You wouldn't want something like a Home Depot that would generate a lot of traffic. So, you wouldn't want a Home Depot or a grocery store or a Walmart for that matter. So, we wouldn't want the regulations written so that it would be clear that it wouldn't permit a Walmart or a

Home Depot. It's mainly for areas that have showrooms like something Chairman Silverman referenced.

Mr. Hurd: So, can you help me find, oh there it is. Line 175, subsidiary retail sales. Alright. So, is this the part where we start making comment on it or do we make a motion and then make comments?

Mr. Silverman: Let's entertain a motion. Okay, let me flip that around. We have a couple of, so we don't have to amend motions and all that, let's get our comments, for example, no adult entertainment.

Mr. Hurd: Yes.

Mr. Silverman: We want to strike that.

Mr. Hurd: Yes, strike adult entertainment center and leave gym. So, it sounds to me that the department is supporting this, but I think I'm also agreeing, to strike Line 426, item 7, retail, specialty retail, and retail food stores.

Mr. Fruehstorfer: What line number was that?

Mr. Hurd: 426.

Mr. Fruehstorfer: It looks to me like this was something that was in MOR. Is this something that's going in the special use permit section it looks like? So, it was probably something in MOR and it was probably grandfathered or something. So, this is something you should probably take out because it's saying such uses are permitted only in existing facilities or structures on or before October 13, 1991. So, that probably ought to go away.

Mr. Silverman: So, you concur to remove Line 426, 427, 428, and 429.

Mr. Hurd: Because it did show up in MOR.

Mr. Fruehstorfer: It was in MOR and what we did, we took everything that was in MOR and moved it over there and that one we should have taken out.

Mr. Hurd: That's why we're sitting here.

Mr. Silverman: Okay, so adult entertainment, removing in its entirety Line 426 through 430. Is there anything else. Okay, let's form our motion?

Ms. McNatt: Do you want me to do it or are you going to do it?

Mr. Silverman: Please.

Ms. McNatt: Alright, I make a motion to recommend approval of the proposed changes to the Industrial zoning districts as described in the August 2, 2019 Draft 1 document titled Section 32-4 Definitions, Section 32-20 Uses permitted in the ML districts (limited manufacturing), and Section 32-21 Uses permitted in the MI districts (general industrial), with the proposed items that we discussed.

Mr. Silverman: Removing references to . . .

Ms. McNatt: Removing references to the adult entertainment center and removing the section regarding retail of Lines 426 through 430.

Mr. Silverman: Okay.

Mr. Hurd: Second.

Mr. Silverman: Okay, it's been moved and seconded. Is there any further discussion? Hearing none, we'll move directly to the vote. Those in favor, signify by saying Aye. Opposed, Nay. Motion carries, with the recommendations.

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

THAT CITY COUNCIL AMEND CHAPTER 32 AS DESCRIBED IN THE AUGUST 2, 2019 DRAFT 1 DOCUMENT TITLED REVISIONS TO SECTION 32-4 DEFINITIONS, SECTION 32-20 USES PERMITTED IN THE ML DISTRICTS (LIMITED MANUFACTURING), AND SECTION 32-21 USES PERMITTED IN THE MI DISTRICTS (GENERAL INDUSTRIAL), WITH THE FOLLOWING CONDITIONS:

- A. STRIKE THE REFERENCE TO ADULT ENTERTAINMENT IN SECTION 32-4(a)(103.5) RECREATION, COMMERCIAL INDOOR; AND
- B. STRIKE SECTION 32-21(b)(7) REFERRING TO RETAIL, SPECIALTY RETAIL, AND RETAIL FOOD STORES.

VOTE: 6-0

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

NAY: NONE

ABSENT: WAMPLER

MOTION PASSED

4. NEW BUSINESS.

Mr. Silverman: Okay, moving on to the agenda. Is there any new business coming before the body? Hearing none, we'll move on to Informational Items.

5. INFORMATIONAL ITEMS.

- a. **PLANNING AND DEVELOPMENT DEPARTMENT CURRENT PROJECTS**
- b. **PLANNING AND DEVELOPMENT DEPARTMENT LAND USE PROJECT TRACKING MATRIX**
- c. **DO MILLENNIALS LOVE SPRAWL NOW? (STREETSBLOG.ORG)**

Mr. Silverman: You have informational items in your packet. There's no particular need to have separate discussion on those unless you want to bring them back as a topic at the next meeting.

6. GENERAL PUBLIC COMMENT.

Mr. Silverman: Are there any general public comments, item 6 on the menu? Agenda. On the menu. I told you it was getting late. Since there is no further business before this body, the Chair entertains a motion to adjourn.

Mr. Hurd: I so move.

Mr. Silverman: Is there a second?

Mr. Stozek: Second.

Ms. McNatt: Second.

Mr. Silverman: Okay, it's been moved and seconded. Without objection, we stand adjourned.

MOTION BY HURD, SECONDED BY STOZEK THAT THE AUGUST 6, 2019 PLANNING COMMISSION MEETING BE ADJOURNED.

There being no further business, the August 6, 2019 Planning Commission meeting adjourned at 9:48 p.m.

Respectfully submitted,
Tom Wampler
Planning Commission Secretary

As transcribed by Michelle Vispi
Planning and Development Department Secretary

Attachments

Exhibit A: [Planning and Development Department report \(321 Hillside Road\)](#)

Exhibit B: [Applicant presentation \(321 Hillside Road\)](#)

Exhibit C: [Written public comment received after Planning Department report published \(321 Hillside Road\)](#)

Exhibit D: [Written public comment received at the Planning Commission meeting \(321 Hillside Road\)](#)

Exhibit E: [Planning and Development Department memorandum \(Industrial Uses\)](#)