

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING MINUTES**

January 9, 2020

7:00 p.m.

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

Chairman: Will Hurd

Commissioners Present: Pete Drake
Karl Kadar
Stacy McNatt
Alan Silverman
Bob Stozek
Tom Wampler

Commissioners Absent: None

Staff Present: Mary Ellen Gray, Planning and Development Director
Paul Bilodeau, City Solicitor

Mr. Will Hurd called the Planning Commission meeting to order at 7:00 p.m.

1. CHAIR’S REMARKS.

Mr. Hurd: Alright, welcome everybody. Alright, the Thursday, January 9, 2020 Planning Commission special meeting for the review and consideration of amendments to Comprehensive Development Plan V for 19 Amstel Avenue.

A couple of quick remarks. One, through an oversight, the agenda included general public comment. I was informed that for a called special meeting, we don’t have general public comment. We simply address the issue, the agenda item that we were called for. So, Item 3 is off the agenda. Two, we are, as far as I know, being livestreamed from the corner of the room there. Hi, internet. So, that’s that.

2. REVIEW AND CONSIDERATION TO AMEND THE COMPREHENSIVE DEVELOPMENT PLAN V TO CHANGE THE DESIGNATION OF 19 AMSTEL AVENUE FROM UNIVERSITY TO RESIDENTIAL, LOW-DENSITY.

Mr. Hurd: Paul, do you want to start?

Mr. Paul Bilodeau: Sure. Good evening. I’m Paul Bilodeau, the solicitor for the City of Newark and tonight, representing the Planning Department, Attorney Max Walton will be presenting the Planning Department’s application.

[Secretary’s Note: A link to the Planning and Development Department report regarding the proposed amendment to Comprehensive Development Plan V to change the designation of 19 Amstel Avenue from university to residential, low-density can be found at the end of this document.]

Mr. Hurd: Alright. Thank you.

Mr. Max Walton: Thank you, members . . . is this on? Can you hear me?

Mr. Hurd: Yes.

Mr. Walton: Because it does not sound like it's on.

[Secretary's Note: During the course of his presentation, Mr. Walton referred to a PowerPoint presentation being displayed on the screen for the benefit of the Commission and the public, as well as an exhibit packet that was distributed to the Commission. Links to copies of Mr. Walton's presentation and exhibits can be found at the end of this document.]

Mr. Walton: Thank you, members of the Board and I appreciate you taking the time to come out on a Thursday night. This relates to a proposal to change the Comprehensive Plan, and the Comprehensive Plan alone, in relation to the property at 19 Amstel Avenue in Newark. Just as a housekeeping matter, I put a packet in front of you and I've given a copy of my packet to Mr. Abbott, who is here, and basically there are some notice things in there. So ultimately, as housekeeping, the City was not required . . . should I wait while they're . . . ? Okay, as a housekeeping, we take the position that the City wasn't necessarily required to do all the notice things that we did pursuant to 32-79 of the Code, but we did it anyway. We had a sign posted, and that was posted in front of the property 15 days in advance. There was a notice sent to the adjoining property owners, and that's in your packets at 3 and 4. And there was a publication in the News Journal 15 days in advance, and there's proof of that publication in there, as well. So, we did do the notice that was required.

As the Planning Commission is well aware under the Comprehensive Plan V, lands owned by the University of Delaware have a university designation. And if you look at the Comprehensive Plan, it says parcels having an institutional but distinguished for use as the part of the University of Delaware or public university campus, and that's Comprehensive Plan and we gave you the page in the packet as 6.

So, the property we're talking about it is 19 Amstel Avenue. It's owned by the Kappa Alpha Foundation which is a private party and it's been used as a fraternity house, and there's litigation over this and that's probably why I'm here, ultimately. The University of Delaware, and I gave you an opinion that was rendered by the court, the court said the University of Delaware has suspended the fraternity for a period of four years. So, the property has, in the City's view, an RS zoning classification and that's the City's position. Back in 1978 there was an ordinance and I have provided it for you as Exhibit 8, which indicates that the property was zoned UN/RS and ultimately there's some dispute between the parties with respect to the meaning of 32-6 of the Code, which is also in your packet. It's the City position that it should have never had the UN zoning classification in the first place. Nonetheless, Kappa Alpha advocates, ultimately, that the property should be zoned UN or UN/RS. But here's the good part. I don't think it matters for tonight's hearing that dispute. I don't think we need to decide it because today we're looking at the appropriate Comprehensive Plan designation that the Planning Commission recommends for this property going forward. I would like to note that fraternity houses are not a permitted use either in the RS zoning district or in the UN zoning district, and I've given you a little background on the UN zoning district and what it has. Ultimately, you're allowed to have a state college or university, accessory uses customarily incidental to a college or university, and essentially cell towers. It's a very long ordinance with the UN designation, but that's it. So a fraternity house isn't a state college or university based upon the definition in the Code, and it doesn't qualify as an accessory use because an accessory use has to be located on the same lot as the principal use. And I give the definition of lot, ultimately, right out of the Code and that's Exhibit 14. So, it's the City's position that a privately-owned fraternity house is not a permitted use in the UN district. Now, there are fraternity houses in the City of Newark. They are either non-conforming uses or they are owned by the University of Delaware or on lands owned by the University of Delaware. And as you all know, there's an exemption for zoning for properties owned by the University of Delaware.

So, whether or not the property is deemed zoned UN or RS, ultimately the KA fraternity house at 19 Amstel Avenue was a legally existing non-conforming use. I'm trying to give you this

background, so you know why we're here. So ultimately, as I mentioned previously, the fraternity house use has been suspended by the University of Delaware and under the Code, and that's Section 32-51, once the University of Delaware suspends a fraternity house for more than one year, ultimately the non-conforming use is lost. So, it's ultimately our position, so no matter the zoning classification, ultimately the current Comprehensive Plan designates this particular property as University. And if you see the University block, and I will try to use my pointer, about in that range . . . and I have shaky hands anyway, but it gives you an idea of where the property is located. So, it's our position that the fraternity house use was lost, but there was a lawsuit that was brought in October. And it's a mandamus action and the action is to compel, ultimately, the City to zone the property, or to give the property, a UN zoning classification consistent with the Comprehensive Plan. But if you look at again, we discussed it earlier, if you look at the Plan language of the Comprehensive Plan and what the university district is supposed to do, the Planning Department believes that the property should not have had the university designation and that was a mistake. City Council passed Resolution HH, ultimately, which is Exhibit 17, and that's what brings this matter before you this evening. And I just wanted on the, with respect to the case, it is currently stated, I have to provide a status report to the court tomorrow. So, that's where we stand.

So, ultimately, it's the recommendation of the Planning Department that the Comprehensive Plan be changed from, to change this property from university to a low-density residential classification. The Planning Department, it's traditionally had an RS zoning classification and ultimately, if it keeps an RS zoning, excuse me, a low-density residential classification, it will keep the RS or the property owner is certainly permitted, is always free to ask for a rezoning consistent with any use permitted in a low-density residential dwelling area, and that's anything less than 11 or fewer units.

With that being said, the department also understands that this particular property has a number of bedrooms – approximately 20 from the court's opinions – because it was used as a fraternity house. And while the recommendation is for low-density residential, you could also recommend a different Comprehensive classification. For example, you could do high-density residential. And if you did recommend a high-density residential classification or other classification, the property would be required to be rezoned within 18 months by the City Council. But it's ultimately to your recommendation Council would have to approve it, but it requires a rezoning. So, if you did decide that a high-density residential classification was in order, there could be a boarding house use, and I provide the definition there. Boarding house uses are permitted in both the RM districts and the RA districts, and that's Exhibits 19 and 20. And there's also another provision with in the RM district which allows a one-family dwelling to be converted, so that's another possibility. But again, ultimately, if a high-density residential classification is recommended and adopted by Council, the zoning of this property would ultimately need to be changed because an RS zoning classification does not allow for high-density uses. It should also be noted, though, that neither the RM districts or the RA districts do not allow fraternity house uses by their Plan language. So ultimately, that particular zoning, unless there's a legally existing non-conforming use, would not allow that type of use.

Ultimately, the Commission may recommend low-density or high-density, or it's your prerogative to recommend a different classification if you so desire. But depending on that classification that you give within the Comprehensive Plan, that will dictate what the future zoning is.

I want to address a couple of procedural issues that have come up in the litigation, whether or not PLUS, or Preliminary Land Use Service review is required. We do not believe that to be the case. First of all, in our packet, Exhibit 21, the Office of State Planning has waived the PLUS review for this. And, number two, the City has a Memorandum of Understanding with the Office of State Planning, which is also in your packet at Exhibit 22. And the City under that Memorandum of Understanding is not required to submit the application to PLUS.

The other question that may come up, and the Superior Court in the opinion that's in your packet held that zoning and Comprehensive Plan amendments are legislative acts and there is no vested

right to any zoning or Comprehensive Plan classifications. And numerous courts have held that if you lose your non-conforming use, or when a party forfeits its non-conforming use, that does not constitute a Fifth Amendment taking. I won't go through them, but there are four and then another case from Delaware, for the Delaware Supreme Court, which challenged the non-conformity provision at issue here and upheld it.

So, the bottom-line tonight is that the Planning Commission's job is to, by statute, by Delaware Code 702 is to encourage the most appropriate uses of land and ultimately to look at the Comprehensive Plan to promote the health, safety, and welfare. So, your job tonight is to recommend whether this property, and we submit it can't be a university use because of the language in the Comprehensive Plan, but it's your job to determine whether or not the appropriate Comprehensive Plan designation should be a low-density use, as recommended, or another use, such as a high-density residential use, and then ultimately that will determine the zoning that will be applied in the future if, ultimately, the Council agrees with your recommendation.

So with that said, that concludes my presentation. Are there any questions of members of the Commission?

Mr. Hurd: Thank you. I'll begin on my right with Commissioner Drake.

Mr. Pete Drake: No questions.

Mr. Bob Stozek: Yeah, I had a couple . . .

Mr. Hurd: Bob, microphone.

Mr. Stozek: I had a couple of peripheral questions, I guess. One is how long has this UN/RS designation been in effect?

Mr. Walton: There's a little bit of gray area here but ultimately, the UN/RS in the packet was 1978 and certainly in the 2016 Comprehensive Plan there was a university designation.

Mr. Stozek: Okay and just out of curiosity, so during all this time has this property been taxable or not?

Mr. Walton: Yes.

Mr. Stozek: It has, okay.

Mr. Walton: And if I get that wrong, I'm sure Mr. Abbott will correct me.

Mr. Stozek: That's all I have for now.

Mr. Hurd: Commissioner Silverman.

Mr. Alan Silverman: And the subject parcel is in other than University ownership?

Mr. Walton: That's correct and that's undisputed. It's owned by the Kappa Alpha Foundation.

Mr. Silverman: Okay, thank you.

Ms. Stacy McNatt: I'm sorry, excuse me, two questions. Is this property currently for sale?

Mr. Walton: No.

Ms. McNatt: No, okay.

Mr. Walton: At least not to my knowledge. I'm sorry.

Ms. McNatt: Okay. And are all the other parcels on either side of this parcel University-owned?

Mr. Walton: Yes.

Ms. McNatt: As the map shows, I guess, correctly?

Mr. Walton: Yes. Correct. And we gave the notice, and I think the easy way to demonstrate that is we gave the notice to everybody 300 feet away and they're all University addresses.

Ms. McNatt: Right, I noticed that. I just wanted to clarify. Currently, there are 20 bedrooms legally in this structure?

Mr. Walton: It's a legally existing non-conforming use. Yes, the bedrooms are there. Could they be occupied right now? It's certainly our position that no, because the non-conforming use has expired.

Ms. McNatt: Thank you.

Mr. Karl Kadar: And what is the square footage of this house?

Mr. Walton: I have no idea.

Ms. McNatt: The tax record probably could tell you.

Mr. Walton: Yes.

Mr. Kadar: What was that?

Mr. Walton: I'll help you out. I believe that question is best asked of the applicant because I just do not know. I know that the lot itself is about a little over half-an-acre.

Mr. Kadar: I'm trying to understand what a bedroom is.

Mr. Walton: I understand, and I don't know.

Mr. Kadar: Okay. That's it for now.

Mr. Tom Wampler: Did I understand you to say that the Kappa Alpha Fraternity is currently suing the City of Newark?

Mr. Walton: Yes. There's a mandamus action.

Mr. Wampler: I don't know what that means.

Mr. Walton: Okay, so a mandamus action is to compel the governmental entity in which they have a clear legal right to a non-discretionary duty and ultimately, it's an action to compel the City. The action seeks to . . . well, it started off, there was Count 1 which sought to compel the City to rezone the property to a UN classification. And then there was a claim added later on, which is still out there, which says, essentially, that the property is not zoned RS because of this historical issue relating to this property. So, there is a zoning question that's out there. But ultimately, I mean, the reason for the Comprehensive Plan issue that's before you tonight is because they are seeking to compel the City to rezone the property university under the Comprehensive Plan and seeking to compel a UN zoning classification.

Mr. Wampler: And if the City takes the position that they amend the Comprehensive Plan and it is designated as RS, what happens to the lawsuit?

Mr. Walton: We would have to take a look at that. I mean our position would be it's already zoned RS and you would not make that determination this evening. You would just say it's low-density residential in the Comprehensive Plan and then we would probably have a fight over whether or not RS is appropriate or whether or not something else needs to be done.

Mr. Hurd: Any further questions?

Mr. Silverman: No.

Mr. Hurd: Alright, we'll move to public comment and we'll start with Mr. Abbott and we'll give you 15 minutes, as well.

Mr. Richard Abbott: Thank you.

Mr. Walton: You'll have to bear with me, I don't know how to get this off the screen.

Mr. Abbott: If you could pardon me for one second, Mr. Chair.

Mr. Hurd: That's fine. I'm not starting the clock.

Mr. Abbott: I'm going to go over there, if you don't mind.

Mr. Mike Fortner: There you go.

Mr. Abbott: May I proceed?

Mr. Hurd: Yes.

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

Mr. Abbott: Thank you, Mr. Chairman and members of the Planning Commission. My name is Richard Abbott. I represent Kappa Alpha Educational Foundation, Inc., which is the title owner of the property in question, 19 Amstel Avenue. And with us here tonight are a number of members of both the alumni board as well as alumni from the fraternity. I'm actually kind of fortunate that I get to take this opportunity because I was a student at the University of Delaware from 1982 to 1986 and I was in Sigma Phi Epsilon fraternity. But we were pretty close with the KA brothers and I'm very familiar with the KA house.

For those of you who are familiar with the University campus, and that's our first slide here tonight, you know that the KA house is a central fixture, and I'll get into that a little bit more. But it's kind of unfortunate that we're here tonight and I think what I'll be discussing is what we would submit to you are the facts, not the story line that's being sold to you by the City. And there's an unfortunate series of misrepresentations. From my perspective as a land-use lawyer, it's very serious because you're trying to destroy private property rights. You're trying to destroy vested rights. Not you, but the City is. And that's what they're effectively asking for your aid and comfort and assistance on through this process. It's really a pretty serious and disturbing proposal. So, if you look at it from the private property owner's perspective, and you'll hear more about the investments, the condition of the property and so forth, what I would just submit to you at the outset here is an analogy. Imagine if somebody didn't like you in the City and they all got together and ganged up on you and your neighbors and decided to rezone your neighborhood commercial. And then they advised you that you're no longer allowed to live in your home. You'd have to move out, you would obviously be upset, as would I, but that's exactly what they're asking you tonight to assist with. To rezone a property . . . it's called a back-door rezoning, a down-zoning, and they're asking for your assistance to be able to do that and to pull the wool over the eyes of the public and the wool over the eyes of others that are involved in this matter.

So, I wanted to, for the record, just submit a copy of a PowerPoint presentation that I'm giving you and also a copy of the summary that I'm going to include at the end of that. And I have a copy, a number of copies, and I'll give Mr. Walton a copy here. Mr. Hastings, who will speak later, is going to hand you part of this. But I just wanted you all to have a hardcopy and I submit, if I could just submit, I suppose, to the secretary hardcopies for the record.

Ms. Angela Conrad: Thank you, sir.

Mr. Abbott: Now, for purposes of this PowerPoint, you'll see here central campus. This is from, this is UD cam. This is the University of Delaware's official campus map. And as you are probably familiar, if you're familiar with the University or if you're an UDel alumni like I am, you know central campus. That's right here. There's Gore Hall, that's a relatively new house; the bridge that goes over, we used to call it the habitrail because it used to be different, a lot less attractive than it is today; Hullahen Hall, where the president's office and all the administrative offices are. Well, there's Hullahen Hall and right here is the Kappa Alpha house, smack dab in the middle of the University of Delaware campus. And what does it provide? It provides housing for students, which is, aka, a dormitory. It is a direct associated use of the University and of the University campus, one key distinction that won't be in some of my summary that I wanted to point out to you because I think you've been misled by the City's attorney. The City's attorney has led you to believe that you can only be zoned UN if the land is owned by the University. That is utterly and completely false. That is not what the Zoning Code says. It says university, and university does not mean University-owned. Had the City Council intended that to mean only owned by the University of Delaware, it's a very simple wordsmithing exercise. UN zoning shall only apply to lands owned by the University and used for University purposes. That's not what it says so that's clearly not what it means.

So, in the next slide you'll see . . . sorry . . . this zeros in on the KA house. Even on the University's own map, you can click and see some of the information. The house dates from around 1905 and it was extensively renovated in 2003. The note about the suspension in '06 is a misnomer because that was later overturned by the courts. So, I don't know why the University still says that, but this is the house itself, right here. It's on 0.56 acres, which in the City of Newark is huge. That is a huge parcel of land. There is a large old-growth tree on the property. The house is stone. It's beautiful, you'll see pictures of it later, and it's been used as a fraternity house for 72 years. And the City of Newark, at least the Mayor and Council, want to eliminate that. They want to destroy fraternities. They've always had an anti-fraternity bias and that's what's really driving this. Because we all know, and you'll see, there are no planning principles that support a down-zoning of the property and there's no logical argument for it given the community and the neighborhood. This over here is what used to be called Purnell Hall. I think it's now called Lerner Hall. This is Smith Hall. Right here, you can't see it, you can only see part of it, that's Kirkbride. I took classes there all the time when I was at University of Delaware. On a day when the University is in session, there's literally hundreds of students walking down this street and this central location for the KA house is smack dab in the middle of the University's campus, which makes it fit right in with the definition of university in the Comprehensive Plan V. It's the same in Comprehensive Plan IV, and I'll talk about that in a minute. It's always been university and despite a mistaken, or actually legally erroneous edit that was done administratively to the Zoning Map, the property is validly legally zoned UN as we speak here today. So, the Count 2 in the complaint that Mr. Walton was talking about says the property was not validly changed to RS-zoned. So, correct it back administratively to UN, which is indeed it's current legal valid zoning. And that's what they want to avoid because, yes, the City could say well we don't care if it's zoned UN. We're going to rezone it, we're going to down-zone it to RS. That's fine but the City has no sound land-use planning principle to support that down-zoning because this neighborhood, ladies and gentlemen, is a high-density, high-intensity neighborhood with lots of traffic.

The next slide is also going to reject the argument that was presented by Mr. Walton, in point of fact, because guess who is next door? Alpha Phi sorority at 158 South College Avenue. Here's KA and here's Alpha Phi. They back up to one another. Guess what the zoning on the Alpha Phi

house is? UN. Guess what it has been since the 1970s? UN. Guess who was there until 1990? The Delta Tau Delta fraternity. It was a fraternity house, it was privately owned, it was zoned UN for all that time. And it's still zoned UN and it's been used as a sorority house for about 25 years.

Next, Ordinance 78-30. The KA property has been UN for 40+ years. Here's the page. If you look at the left column, it says 70 right here, Kappa Alpha, Delta Tau Delta. Prior zoning was UN. See, prior to 1978, UN. New zoning, UN/RS. That UN/RS zoning has never changed. There's never been an ordinance adopted by the City of Newark. You know you have to come to this Planning Commission, you have to introduce an ordinance, you have to have a formal vote, you have to give the property owner notice. My clients never got notice of any proposed zoning change from the UN zoning category. So, it is legally impossible for it to be zoned anything but UN. And so, again, what the City is trying to do is a back door down zoning because they know they can't validly down zone it from UN to RS. So, they're attempting this subterfuge.

Next, Section 32-6. The only time the reversionary zoning category of RS kicks in is right here. It says when any lands zoned UN/ are sold or leased by the University . . . the University doesn't own it so they can't sell or lease it . . . for purposes other than accessory uses as customarily related to the operation of the University . . . accessory uses, student housing, customarily related to the operation of the University, student housing, buildings for student organizations. So, even if this property had been sold, it would be operated and customarily related to the University. It's part of the University campus. It's a central fixture.

Next, the Comp Plan. The theory that this was a mistake, well either it was a mistake, or they lied in the Comp Plan, okay, because it says in preparing the land development portion of the plan, a detailed land-use survey of every, every parcel in the City was developed. Guess what? In the Comp Plan IV that was adopted in I think it was 2008 or 2009, the parcel was designated as University. So, there's no mistake. This has been the case for eons.

What is a university? A parcel having institutional use but distinguished for use as part of the University of Delaware or public university campus. Of course, this is distinguished as part of the campus, as I noted. And compatible zoning, once you're university, your compatible zoning is UN. STC is for the STAR Campus. So, we are not the STAR Campus, we would concede that.

Next, even some of the City's own records indicate that the parcel is actually zoned UN. Zone, UN. Rental unit registration, number of units permitted, number of maximum tenants, 21. So, KA has abided by the law, gotten their rental permits and, as you can City, some in the City at least, think that the property is zoned UN.

I'm just going to go through this briefly because I don't know how much time I have left but you've been told a false narrative. What is true is that there's a mistake on the Zoning Map. The Zoning Map should indicate UN. And then you would be asked here tonight, please change our Comp Plan designation so that we can down zone the property. That's what they would have to concede. Instead, they're hiding behind this veil of secrecy and not giving you the truth. No Comp Plan mistake because the University is consistent with the zoning that applies to the property legally. This is really serious, in my view, because there's been misrepresentations made to the state that have caused the state to waive the normally required PLUS review process that is required when you make Comp Plan amendments. Through this false narrative that the, oh, the property is really zoned RS. No, it's not, it's zoned UN. And there was no mistake other than the mistake in illegally amending, administratively, the Zoning Map even though the property is zoned UN. We've got a lawsuit. We've got the legal zoning category that I already described to you. I've already told you about the down zoning. I've already told you about the seven decades of fraternity use. And that's the other point. How can the, how can the City say, oh, you can't use UN for a fraternity or sorority house when that's been done for decades without interruption. Has the City gone over and told the Alpha Phi sorority that they need to immediately vacate? Because if their position is true, then Alpha Phi is done because they're illegally using the property in violation of UN zoning.

I already told you about the City ill-intent and, also, I noted, and maybe I'm not catching it, but I didn't see any protections for historic properties in the City of Newark. New Castle County has them. The City has none. This is a 1905 house. In all probability, it will be demolished, it will be destroyed, and it will be redeveloped to the minimum side yard, front yard, rear yard standards and you'll have a five-story building, in fact you may have a ten-story building if it gets sold to the University ultimately. So, that historic home which is gorgeous, is history, pun intended, if we don't allow the UN zoning to continue.

The inverse of this, as I said, no land-use planning principles. The zoning in the area is all UN. You saw the map. The uses in the area are all high-density and intensity. It's office, predominantly, office use. And then the, as I pointed out, the Alpha Phi house next door. So, it's a major matter for my client because it's a down zoning and we've already covered the other items, except that I wanted to point out there still is one component of state review required.

Mr. Hurd: Sir, your time is up so you need to wrap up.

Mr. Abbott: I'll finish on this point. Thank you, Mr. Chairman. There are two state review requirements. One is PLUS, one is state certification. There's been no state certification commenced. There's no waiver permitted for state certification. And I would submit to the Planning Commission that that state input is necessary and essential before you make any recommendation. And I thank you for your time.

Mr. Hurd: Thank you. Alright, next to sign up is Steve Hastings.

Mr. Stephen Hastings: No, no, just me.

Mr. Hurd: Can you just state your name and . . .

Mr. Hastings: My name is Stephen Hastings and I reside at 221 Cheltenham Road in Newark. I recently retired from the University of Delaware after 40 years on the faculty there. I served as faculty advisor to the KA chapter from 2004 until I retired. And I also serve as what KA calls a province commander. Think of it as a regional director for the Kappa Alpha Order. And, historically, I lived at this property when I was a student here in the early '70s.

I just wanted to give a little background as to why we're here tonight or how we got here, not from a legal and not from a land-use point of view, but from the fraternity's point of view. The chapter has been suspended, the chapter was suspended during the 2018-19 academic year for complaints regarding noise and trash at a hotel in Ocean City, Maryland. Nothing on campus, two hours away. In violation of that suspension, some of the members thought they would have a graduating party, so they returned to Ocean City, Maryland in May of 2019. The University, in their wisdom, thought that warranted a four-year suspension. I want to be clear, these were that they made too much noise, they left too much trash in the room, and the University decided they needed to go for four years. There's no hazing involved, there's no disturbances. To my knowledge, in the last 15 years, there have been no police calls of any kind to the fraternity house. We had a bathroom fan fire, so the fire company had to come. But in terms of parties and so on, nothing in 15 years. I want to point out, and maybe some of you know this if you have a child that attended the University, the University's judicial system favors the University. It's not really a judicial system at all. There's no due process so to speak. Students and student organizations are largely presumed guilty, often on hearsay and anonymous comments, and evidence to the contrary is often ignored. I've taken many students to the judicial system and been involved with the judicial system at the University and basically, it's pretty unfair. I want to reiterate that despite Mr. Walton's comment that they have been suspended by the national office that Kappa Alpha Order is 100% behind reestablishing this chapter in the future and I will present to the Chair a letter from the national office that supports that.

[Secretary's Note: A link to the letter from Kappa Alpha Order can be found at the end of this document.]

Mr. Hastings: They, too, felt that this sanction was grossly overrated. That perhaps a six-month suspension, perhaps a year suspension. But to suspend them for four years for having a party 150 miles away made no sense at all. I worked diligently for months, for weeks, with the University to try and come to some reasonable sanctions that punished the chapter for what they did but did not trigger this loss of the grandfathered status of the property. The University administration refused to do so. They refused to change. They were fully aware of what they were doing. It's pretty clear to me that this whole thing was driven by the University's desire to attain the property at some point. We went through this ten years ago when the University worked with the City to basically kick KA out of that house.

Let me just say, fraternities have gotten their share of bad press but it's a mistake to lump them all together. That's a bad idea, an idea whose time has passed. Fraternity members have higher GPAs than average student populations. They are required to give back to the local community. They raise money for charities. The expectation is that they will develop some training and leadership habits that will carry them into the future and make them a better citizen. Thank you.

Mr. Hurd: Thank you. Next up we have Mark Adcock. Mr. Adcock, I'll just let you know, I'll do this to let you know you have one minute left.

Mr. Adcock: Excuse me?

Mr. Hurd: I'll do this to let you know you have one minute remaining. It doesn't mean I have a question.

Mr. Adcock: Okay. How much time do I have?

Mr. Hurd: You have five minutes.

[Secretary's Note: While providing public comment, Mr. Adcock referred to a presentation being displayed for the benefit of the Commission and the public. A link to the Kappa Alpha Educational Foundation (KAEF) presentation can be found at the end of this document.]

Mr. Adcock: I'm Mark Adcock. I'm the president of KAEF, the non-profit organization that owns this property and has owned it since its inception in 1946. It was formed to purchase the property to be used as a chapter house for Kappa Alpha Order. KA was the first fraternity on campus, dating back to 1904. Some notable alumni of this chapter include J. Caleb Boggs, former governor of Delaware and U.S. senator, and Thurman Adams, Jr., former president pro tem of the Delaware state senate.

So, we have been at this location for 72 years. A little history, from what I can tell, that property was built in 1919. It was the former residence of a neighborhood dentist, Dr. Steel, who had his offices there. We purchased it, a new addition was added in '65, taken off as part of the '03 renovations. It was remodeled in '03 to include 16 bedrooms which are a mix of doubles and singles, eight full bathrooms and one half-bath. It's got common areas and to answer the earlier question, it's 5,850 square feet of finished living space. As part of the '03 renovation, we spent around \$700,000 to do that. We still carry a significant mortgage on the property related to that. And then since then, we have invested quite a bit of money keeping it up. It's an old structure and it needs a lot of tender loving care, and that doesn't come cheaply. You have to find skilled craftsmen to do that.

We've got a good track record in the community. We have perfect fire marshal inspections for the past five years. They happen twice a year. No complaints from law enforcement. No complaints from neighbors or students. And we take a lot of pride in maintaining the grounds. It's a great location for us. Our closest residential neighbors are way down on Winslow, which are blocks away from us, and there is another sorority house very close by. You've already seen this map. We're surrounded by parking lots and University buildings. This is a view off the porch. It used to look nicer when the sycamore trees were there. You've seen this before, too. We were

under the impression we were zoned UN. The impact of a down zoning would be ruinous for us. We're going from 21 residents to three. The impact on lost rent is \$140,000 a year and the property value would plummet. I don't think there are any buyers in the market for a 16-bedroom, 8.1-bath single-family home in the middle of University of Delaware campus.

It's a grand old structure, as I said. You'll see this tower theme being recreated all over town with the new structures that are going up and it's worth preserving. Hopefully, you'll support the appropriate zoning to allow us to continue using it as we have all these years. Thank you.

Mr. Hurd: You're welcome.

Mr. Adcock: Questions?

Mr. Hurd: No, we don't do questions. This is just comment. Alright, the last to sign up is Bruce Hudson.

Mr. Bruce Hudson: Good evening, ladies and gentlemen, my name is Bruce Hudson. I am a Kappa Alpha alumnus. I pledged the fraternity and lived in the house in 1965, back in the dark ages. After I graduated in 1968, I stayed on for grad school and in 1970, my first job out of college was a planner in the Delaware State Planning Office. So, there's a special place in my heart for people like you who take the time out of your personal lives to dedicate it to try to enforce and create comprehensive communities with your planning, and I thank you for your service in that regard.

Since I graduated, there have been hundreds of other Kappa Alpha students who have gone on into community service. There were hundreds before me. I'd like to point out that I'm representing Kappa Alpha Education Foundation. I'm a past president. I'm on the board. Most of these people here have served in that capacity and most of them have served as president. It's a very strong alumni association. There are 120-some chapters of Kappa Alpha nationally, and the executive director of the national office has often pointed out to us at annual meetings that this is the most strong alumni association of the whole order. We take it serious, we're in love with the house. Oftentimes, many of these people, myself included, will be down there on the weekend cleaning up, doing something that needs to be done. It is an immaculate house. It's been preserved. Structurally, we're just the caretakers. That house was here long before us and will be here, hopefully, long after us. We're very proud of it. It's a part of the City's fabric, backbone, not just of the University, but of the community. And we hope that it will continue to be, and we are very concerned about its future if the City's requested change in zoning takes place.

A lot of what I was going to say has already been said and you've been very patient and attentive, and I appreciate that. In closing, I'll just perhaps use an analogy . . . I'm a trial lawyer and at the close of all the evidence and testimony and my closing arguments, I look at the jury, especially if it's been a long trial and they're worn out and they want to get back and deliberate, and oftentimes it can be confusing or complicated because there are expert witnesses and science and so forth and it can be very complicated. But I remind them that we're not expecting them, and we're not expecting you, to be experts in this special technical knowledge. We are asking you, though, to not leave your common sense outside and that's the most important thing. And I suggest to you that given what's at stake, you've heard legalese from both sides and when all the dust settles, I just ask you to consider what is at stake, what has been here since the early 1900s as part of this community and what we're hoping to preserve. And we hope you'll make the right decision. Thank you.

Mr. Hurd: Thank you. Is there anyone else who wishes to speak to this topic who has not signed up?

Ms. Jean White: Jean White, resident, District 1. I have no connection with Kappa Alpha and therefore I am not, basically, I think it's fair to say I don't understand the legal arguments either of Max Walton for the City or for Rich Abbot for the fraternity, but I do have a couple of questions.

I seem to remember, I have attended City Council meetings rather regularly through the years and I seem to remember at one point in the past that the City was concerned about the behavior of fraternities and sororities and said that they all had to be on-campus. And I think I'm right on that. You can go back and look into things. And so if a fraternity was off-campus, for example, and then lost, for whatever reason, its standing then, I think there was once for example on Academy that lost its standing and then had to be sold. But therefore, everyone, a fraternity or sorority had to be on-campus and therefore zoned UN. And also, I thought that everything that was UN-zoned did not have to pay taxes of whatever sort – City taxes, county taxes, school taxes. And again, I don't know whether that was true with the fraternities and sororities on-campus, but I thought if one was zoned UN, one didn't have to pay taxes. I did happen to go and get the printout the other day on the fraternity, I had other questions at that time, and I see that Kappa Alpha has paid county taxes, school taxes and, I guess, City taxes for the last ten years, I believe. So, I did wonder if UN-zoned fraternities and sororities, or just a UN in general, did not have to pay taxes, so did that not refer to fraternities and sororities, is a question that I have. I did note, I did walk by the other day to see the property and I noted that it dated back to 1904, as has been said, and that it was the first fraternity on what I guess then was Delaware College and is now University of Delaware, but the first one that existed. I don't think that adds to the arguments here, but I did notice the beautiful building and I would think that nobody is going to tear this down. This is a tremendous, beautiful building and whether it continues as a fraternity or whether the University buys it and then allows it to be a fraternity or whether they want it for their own purposes, which I think they could also want to do, I'm interested in what happens to this beautiful building. Thank you.

Mr. Hurd: Thank you. Anyone else? Alright, public comment is closed and we're bringing it back to the dais. So, discussion, I guess. I'll start to my left this time. Commissioner Wampler?

Mr. Wampler: I have several questions. Thank you. First of all, I think as a Commission, we're put in an odd position here because we've been told tonight by one lawyer that the UN designation means that it must be owned by the University, and we've been told by another lawyer that that is not the case at all. I don't know how we can make a decision on this if we're being told by two people, one saying one thing and someone else saying exactly the opposite. One of those things must be true, and I don't feel that I know which of those things is true. And I don't know how we find out how that's true. But if, in fact, we're been informed correctly that UN designation means that that property is owned by the University of Delaware, then I think any property in the City which is privately-owned and designed UN should be designated residential. I don't know if that's the plan or not, but Mr. Abbott certainly thinks that what we're being told is incorrect. And how are we supposed to make a decision on that? Perhaps the City Solicitor would expand on that.

Mr. Bilodeau: I was waiting to see if that was directed to me.

Mr. Wampler: Over to you.

Mr. Bilodeau: The definition of university that was quoted by, that's in our Comprehensive Plan, it says a parcel having institutional use but distinguished for use as part of the University of Delaware or public university campus, including classroom, dormitories, laboratories, university offices, and university recreational and commercial facilities, but excluding off-campus University-owned single-family homes. So, you read that definition and there's a little bit, the definition in the Zoning Code is a little different than that for university properties, but my interpretation of that is that that means it's got to be University-owned. And then Mr. Abbott brought up the sorority that has the UN designation. I was concerned about that. Is that at 158 South College? Is that the sorority?

Mr. Abbott: Yes, the former Delta Tau Delta house, which has been occupied by the Alpha Phi sorority for about two-and-half decades.

Mr. Bilodeau: Because I got on Parcel Search and that is owned by the University, so . . .

Mr. Abbott: My point was that . . .

Mr. Hurd: Sir . . .

Ms. McNatt: Could you use the microphone?

Mr. Bilodeau: But anyways, so there's some conflicting arguments being made but I think what you need to do, Mr. Wampler, is look at the definition of university that's in the Comprehensive Plan, it's on page 125 and I think it's in the materials submitted by Mr. Walton, and make your own determination as to what you think that means.

Mr. Wampler: Okay, thank you. My next question is, we're being asked to recommend that it be designated as residential low-density and we're not advocating a specific zoning like RS, RA, RD, correct?

Mr. Hurd: Correct. The scope of what we're addressing here is simply the Comp Plan amendment itself.

Mr. Wampler: But RM is also a low-density . . .

Mr. Hurd: It can be, right. It's not the intention here to actually impose the zoning upon the property, if it goes to that. The request of us is to, depending on how the Commission goes, the request is to amend the Comprehensive Plan and then, subsequent to that, as Mr. Walton pointed out, if we should choose a high density, then basically Council could rezone the property underneath it, the property to match the Comp Plan zoning, the Comp Plan designation. I think we have to make sure that we keep that distinction clear. There's a Comp Plan designation and there's a zoning. The Comp Plan doesn't necessarily do the zoning. The Comp Plan designates the uses of the property, the land.

Mr. Wampler: But the presentation is making the assumption that if we recommend that it be designated as residential low-density, that means RS. And my point is it could also mean RM which, I believe, is garden apartments, which would be a completely different occupancy rate than . . . I understand the point is that you've got this big house and if it's RS, only three people can live there. I understand that point. But my point is that the organization could apply to have any number of different zonings which are compatible with residential low-density, some of which might be more favorable to what they want to use the property for.

Mr. Hurd: Keep in mind that the low-density designation, I think, tops out at 10 units per acre, correct?

Ms. Gray: Eleven.

Mr. Hurd: Eleven. Eleven units per acre.

Mr. Wampler: Eleven units per . . .

Mr. Hurd: Acre.

Mr. Wampler: Acre. And a unit being how many bedrooms?

Ms. Gray: Yes, this is considered, for zoning purposes, one unit.

Mr. Wampler: What's that?

Mr. Hurd: For zoning purposes, this is considered one unit as a single building. It's not bedrooms per acre. It's units.

Mr. Wampler: Beyond that, I have a question sort of tangential, but somebody may know this. It's my understanding that at one time all of the fraternities were on-campus and that now, none of the fraternities are on-campus. That the University has eliminated all fraternities from campus. Is that right? I know there are sororities on-campus but are there, in fact, fraternities that are on-campus? I don't think there are.

Mr. Hurd: I do not know that.

Mr. Wampler: I bring that up because the point was made that the City of Newark is against fraternities but, in fact, it was the University that suspended their fraternity for four years, not the City of Newark. And I kind of resent the suggestion that this problem was created by the City of Newark going after the fraternity, which I think we did not. That's my last point. Thank you.

Mr. Hurd: Thank you. Commission Kadar?

Mr. Kadar: As I look at this, there are two issues. One, I think there's a big inconsistency based on what I hear. I mean either all of the properties that are used for universities are zoned, are used for fraternities are zoned UN, or they're not. And if they're privately-owned or whether they're University-owned, I'm not convinced that, for example, the University ownership designation is clearly spelled out in that legal requirement. It also specifically does not say fraternity houses are not associated with the University. So, based on that, are all fraternity houses that are on UN-approved parcels then legal? It's not specifically spelled out. Neither is the ownership. So, let's be ambiguous and say, okay, if you're owned by the University and you happen to be on a University parcel and you're a frat house or a sorority house, then you're illegal. Because it's not specifically mentioned that you are legal. I'm having trouble with this. There are questions about who owns the sorority house. Is it UN or is it privately-owned or University-owned? One party says yes, the other party says no. I mean this, it's not clear to me.

Mr. Bilodeau: Well, if the University owns property here in the City of Newark, we can't control what they're zoned. As Mr. Walton said, that's beyond the City. The question is privately-owned properties. Those are the ones that we can control their zoning.

Mr. Kadar: And my question is are we consistent in how we administer those privately-owned properties that are in areas now designated UN? I don't think we know the answer to that.

Mr. Bilodeau: I haven't seen a list of privately-owned properties that are designated as UN. I don't know how many there are or . . .

Mr. Kadar: Are there tax records on the sorority house? Because if they're privately-owned, there should be taxes paid.

Mr. Bilodeau: The sorority house that was just brought up?

Mr. Kadar: Yeah, the one that's located next to the fraternity.

Mr. Bilodeau: I just got on Parcel Search and the New Castle County website and it says it's owned by the University.

Mr. Kadar: Okay, so no taxes have been paid on that because it's University property. So, it does not belong privately to the sorority.

Mr. Bilodeau: According to the county tax parcel records.

Mr. Kadar: Okay. I just think there are too many open questions here that haven't been answered and I'm a little confused at this point, just as Tom is. I'm done. Thank you.

Mr. Hurd: Commissioner McNatt?

Ms. McNatt: As an engineer, I dabble a little bit in this planning world and it's a little frustrating from my background that as the City . . . how I function, if I know something is wrong or something is a mistake, my first instinct is like let me find out how many other mistakes are like this out there. I don't just try to say, okay, there's one mistake. There could be one and only one mistake, which is fine, but I don't think that anybody has presented the fact that there could be more mistakes than just this. And I think there should have been some due diligence, or some information presented that says, okay, this parcel is a mistake but it's not the only parcel. We have ten other parcels that are just like this. They all had the same mistake, as well. So, I don't, I think it would be important to understand is this the only one or are there more, and are they coming down the line? Which I think Mr. Abbott pointed out in a way but I'm not sure that's the case because they may be University-owned, which is a whole other level.

I'm also a little confused about, yes, the Comp Plan, the Zoning Code definitely has a different definition and, in my opinion, a little more openness to what could be related to operation of a University, as compared to what the Comprehensive Plan says. The Comprehensive Plan is definitely more clear, but my understanding of a Comprehensive Plan isn't to necessarily be as defined but to be more vague. Which is interesting because a Comp Plan is kind of an idea or philosophy on how certain areas are to be and developed and created, and the zoning is, in my opinion, to be more specific. So, it's unique that it's backwards in this case, to me.

I'm also a little, I went back real quickly to understand maybe a little bit of the history of the University of Delaware, and yes, I went to the University of Delaware so I was trying to maybe put up some dates of when the University of Delaware finally became the University. And it's interesting that the University of Delaware became the University of Delaware in the 1921, which is what Wikipedia says, and that this fraternity actually was created in the 1920s potentially. Or started or built this house in the 1920s. So, my point to that is I think it is important that besides calling it a mistake, which it may or may not be, I'm not 100% sold that it's a mistake, that the state should be involved in understanding the historical aspects of the intent of the 1978 or previous information, as well as the designation of the Comp Plan through historical information, as well as UN/RS. And I think it is important that the state gets involved and renders more of an opinion or information, because I wonder, I'm not comfortable that there's not a state position on this, in my opinion. These are just my thoughts. This is how I'm thinking. So, I think it is important I need more information or I need more documentation or more supporting information to say it was truly a mistake, or was it really called UN/RS because it's associated, since 1920s or beyond when it was a male-only community for the University or what was back then not the University, but there was a reason it was there. There was a reason it was part of this area of the University. So, I'm not 100%, I'm not there, if that makes sense.

Mr. Hurd: It does. Thank you. Commissioner Silverman?

Mr. Silverman: I look at this as a black-and-white issue. I'm not interested in other parcels. The parcel before us tonight is 19 Amstel Avenue. I believe an error was made whenever the parcel was designated, in whatever Comp Plan, as university. I associate the university zoning exclusively with University-owned property, not private property. The issue that has been tip-toed around here is the reason why the applicant is here. There is a, from what Mr. Walton described, a status of non-conforming use. It appears that that non-conforming use either extinguished or is about to extinguish. With respect to the value of the property, that's a marketplace issue, that's not a planning issue. With respect to the value of the organization, that's judged by contemporary community standards, not by land-use standards.

I concur with the comments and recommendations in the Planning Department report. Since the Comp Plan, by virtue of state law, requires that a zoning district be associated with a Comprehensive Plan designation, I have no problem in supporting the recommendation of the department in its January 2 report to the Commission and I feel that that's buttressed by the arguments made by Mr. Walton in his presentation referencing the proposed Comprehensive Plan amendment of 19 Amstel Avenue exhibits dated January 9, 2020.

I believe that the City's position is valid. With respect to some of my experience, the New Castle County Comprehensive Plan was updated in the 1990s when I was associated with that department. The governmental unit literally rezoned and changed the Comprehensive Plan designation on tens of thousands of parcels. So, the City exercising its prerogative is not unusual or unique. Those are my comments.

Mr. Hurd: Thank you. Commissioner Stozek?

Mr. Stozek: Based on discussion with the City counsel, I need to recuse myself.

Mr. Hurd: Okay. Commissioner Drake?

Mr. Drake: I think that the information provided in the Planning Department report dated January 2 is logical and although I know there is a very strong sentimental feeling about allowing this property to continue with a UN designation, since it's no longer being used as a fraternity house at this time, I think it has to be rezoned either low-density or high-density.

Mr. Hurd: Okay, thank you. I'm never comfortable when the City sends things to us to be decided. The last time they did this was with the proposed rezoning on the golf course, which just didn't feel comfortable. And I'm struggling with that today. I feel that there's more going on, there's more information that's possibly needed, that there's more interpretation and more at work than I think we are, at least I am, prepared to fully address. I mean I understand, some of it, to me, boils down to the non-conforming use and how that's written in and understanding that, of course, you know, there was the suspension for a year. But there's, you know, one reading of that is there's a way to extend that non-conforming use through the Board of Adjustment and I don't know if that's a reasonable process here. Because I think I do feel that as a fraternity use, that does seem to be, you know, an accessory and associated to the University. And it's in, you know, location-wise, it's in the right spot for that. It's right in the middle. But I am having trouble, I think, that there is, you know, we don't know how many privately-owned UN-zoned properties are out there. I have been informed that that's a matter that's being looked into to find out if there is more than just this one property, but we don't have that information. So, I am not settled yet.

So, I guess we can call the question . . . we can call the motion. We do have the option, we've done this before, to table until the next meeting if there's information that we feel that is missing that's required to make a decision.

Mr. Wampler: Mr. Chairman?

Mr. Hurd: Yes?

Mr. Wampler: I'm willing to propose that this be tabled if . . . I would feel more comfortable and maybe some of the other people would if I had something in writing that guaranteed that this . . . I think this whole thing resolves around whether or not this UN university designation can apply to private property or not. And it seems to me that it does not, but I think it's vague enough that I would like to have an official opinion. And therefore, I move that this be tabled until our next meeting with the understanding that we would get more information in writing to help us make a better decision.

Mr. Hurd: Okay, do I have a second?

Mr. Kadar: Can I make another comment before we go there?

Mr. Hurd: We need to have a second if we're going to comment on, discuss . . .

Mr. Silverman: I'll second.

Mr. Hurd: Okay, yes, discussion of the motion.

Mr. Kadar: Let's forget about the UN designation, the RM designation and all of that stuff. Let's take a look at the fact that the City made a mistake because it's a private piece of land that has been designated UN when it should not have been. Alright? Now, if that's the case, I'll ask the solicitor this question. Let's assume that happens to somebody who owns a florist and for whatever reason, we go in and we zone the property and the records indicate that that florist is not commercial. It's not commercial land. It's zoned residential but he's in there commercial. What do we do? Do we go in there and immediately say get out because you're not allowed to be there? Or do we wait, as we normally do, until the property transfers? At that point in time, the future owner of the property is no longer allowed to use it as a commercial facility but must use it as a residential one. The property has not changed hands as far as I can tell. It's still the same owner. We've lived with this for any number of years, so I just ask that we think about that before, while we're off tabling it for some future . . .

Mr. Hurd: Commissioner Silverman?

Mr. Silverman: Mr. Chairman, it's not the owner, it's the use. Fraternity uses are not permitted, as I understand Mr. Walton, within the university-designated district or in zoning districts within the City. This is a use that, I believe, has extinguished by virtue of losing its non-conforming status.

Mr. Kadar: So, fraternity usage is not allowed in a university district?

Mr. Silverman: Mr. Bilodeau?

Mr. Bilodeau: The university district, it's not allowed but if the property that you're talking about where the fraternity house is located upon is owned by the University of Delaware, our Zoning Code doesn't apply to that property. So, it's really a question of the application of our Zoning Code just to privately owned properties, not to the University.

Mr. Hurd: Right, so this . . .

Mr. Silverman: Okay, now I'm confused. Mr. Walton . . .

Mr. Hurd: I think this is where it gets down to it. University-owned property isn't, I guess it's zoned UN, but the City has no enforcement of that zoning because it's University-owned. Privately-owned land can be zoned and, in that sense, if the fraternity is an existing non-conforming use in the district and so it can maintain for as long as . . . and I think that's part of the issue here is, has, do we feel the non-conforming use has extinguished, which means therefore it can no longer be maintained in this zoning?

Ms. McNatt: Is that our decision to make, if it's been extinguished or not?

Mr. Silverman: It either has or it hasn't.

Ms. McNatt: By whom?

Mr. Silverman: By virtue of the use being discontinued for whatever the period of time in the City Code that controls . . .

Ms. McNatt: But it's not under City, it's not under City zoning because it's UN.

Mr. Hurd: No, it's privately-owned so it's under the City control.

Ms. McNatt: Correct.

Mr. Hurd: It is also, for as far as we can tell, zoned UN or UN/RS, so it's a non-conforming use within the UN zoning but it is privately-owned land. If this were University-owned land, we wouldn't even be talking . . .

Ms. McNatt: Right.

Mr. Hurd: Because the sorority next door is University-owned. So, that's where it's getting . . . and that's where I feel that we're not, I don't feel that I have enough information or analysis here to make a full decision. So . . .

Mr. Silverman: Mr. Abbott seems to be relying on the argument that the fraternity use is associated with University uses, therefore it has some kind of standing.

Mr. Hurd: Ahh, okay.

Ms. McNatt: As what I pointed out by the definition in the Zoning Code seems to be more related to that versus what's defined in the Comp Plan is definitely more structured . . .

Mr. Silverman: Correct.

Ms. McNatt: About what university is. So, they're different which is where I need, I think, more additional information from the state to help either determine which way this really is best suited. I'm not comfortable without some additional information.

Mr. Hurd: Okay . . .

Mr. Bilodeau: Excuse me. Mr. Abbott, you mentioned that there was some other state procedure that needed to be done besides the PLUS. There was another . . . what was that other state . . . ?

Mr. Abbott: State certification. PLUS is pre- and certification is supposed to be contemporaneous. Title 29 Chapter 91 certification. Chapter 29, I'm sorry, Title 29, Chapter 92 is . . .

Mr. Tom Fruehstorfer: Microphone.

Mr. Hurd: I'm hoping that got caught on the recording, but in the future, we'll need to use the microphone.

Mr. Abbott: Sorry.

Mr. Fruehstorfer: Or it won't be in the minutes.

Mr. Abbott: Alright, I'll repeat it.

Mr. Hurd: Thank you.

Mr. Abbott: Title 29, Chapter 92 is PLUS. Title 29, Chapter 91 is state certification. In either event, there are state commenters and state reviewers and it ultimately has to be approved under certification and commented up under PLUS. There's a waiver process that I discussed. That's permitted for PLUS. There's no waiver for state certification.

Mr. Bilodeau: Thank you.

Mr. Hurd: Alright, so we have before us a motion to table this item for receipt of further data and information as noted basically by our remarks. It's been motioned and seconded. All those in favor, signify by saying Aye. That's three. Hands? Opposed, say Nay. That's three. Tied, the motion fails.

MOTION BY WAMPLER, SECONDED BY SILVERMAN THAT THE PLANNING COMMISSION TABLE CONSIDERATION OF THE PROPOSED AMENDMENT TO COMPREHENSIVE DEVELOPMENT PLAN V TO CHANGE THE DESIGNATION OF 19 AMSTEL AVENUE FROM UNIVERSITY TO RESIDENTIAL, LOW-DENSITY TO ALLOW FOR RECEIPT OF ADDITIONAL INFORMATION.

VOTE: 3-3

AYE: HURD, MCNATT, WAMPLER

NAY: DRAKE, KADAR, SILVERMAN

ABSENT: NONE

ABSTAIN: STOZEK

MOTION FAILED

Mr. Hurd: Okay, so we now move to the motion itself. Mr. Secretary, can I ask you to read the motion into the record, please?

Mr. Wampler: I move that the Planning Commission recommend that City Council change the future land-use designation in Comprehensive Development Plan V for the property at 19 Amstel Avenue, as shown in Exhibit A of the Planning and Development Department report dated January 2, 2020, from University to Residential, Low Density.

Mr. Hurd: Thank you. Do I have a second?

Mr. Silverman: Second.

Mr. Hurd: Thank you. Any discussion on the motion, which could include . . .

Ms. McNatt: My previous comments.

Mr. Hurd: Right, just to let some people know it could include amending that to a Residential, High Density designation, a University designation . . . it could be any of those or we can leave it.

Mr. Wampler: Mr. Chairman, you raise a good point. I'm curious as to why, given the location, why in the Comprehensive Plan residential low density was chosen rather than residential high density. Because I think . . .

Mr. Hurd: My understanding is because the underlying zoning . . . I'm going to try to sum this up . . . the City has stated per the 1978 ordinance that it's a UN/RS. That it's University with RS underneath. When it ceases to be a UN use for zoning, it reverts to the RS underneath it. We saw this, I think, with Hillside with the dorms. There was an underlying zoning that came into effect when the University use was removed. RS zoning is a low-density residential zoning so the Comp Plan can't be high density when the zoning doesn't support it. Did I get that right? Okay, but that's not to say that the Comp Plan, as we've seen, could be a different designation that would then require the property to be rezoned to be in compliance with the designation within 18 months. Am I correct in that? Okay. So, we have the motion. Any amendments or discussion further? Okay, I will call the question. All those in favor of the motion, signify by saying Aye. That's two. All those opposed, signify by saying Nay. That's four. Okay, the motion fails.

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

THAT CITY COUNCIL REVISE THE COMPREHENSIVE DEVELOPMENT PLAN V FUTURE LAND USE DESIGNATION OF THE PROPERTY AT 19 AMSTEL AVENUE, AS SHOWN IN EXHIBIT A OF THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT DATED JANUARY 2, 2020, FROM UNIVERSITY TO RESIDENTIAL, LOW DENSITY.

VOTE: 2-4

AYE: DRAKE, SILVERMAN

NAY: HURD, KADAR, MCNATT, WAMPLER

ABSENT: NONE

ABSTAIN: STOZEK

MOTION FAILED

3. GENERAL PUBLIC COMMENT.

[Secretary's Note: General public comment was withdrawn from the agenda at the start of the meeting.]

Mr. Hurd: That concludes our business.

There being no further business, the December 3, 2019 Planning Commission meeting adjourned at 8:23 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 \(19 Amstel Avenue\)](#)

Exhibit B: [Special Counsel Max Walton presentation \(19 Amstel Avenue\)](#)

Exhibit C: [Special Counsel Max Walton exhibits \(19 Amstel Avenue\)](#)

Exhibit D: [Attorney Richard Abbott presentation \(19 Amstel Avenue\)](#)

Exhibit E: [Kappa Alpha Order letter \(19 Amstel Avenue\)](#)

Exhibit F: [Kappa Alpha Educational Foundation presentation \(19 Amstel Avenue\)](#)