CITY OF NEWARK
DELAWARE

PLANNING COMMISSION
MEETING MINUTES

March 3, 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 Tom Fruehstorfer, Planner 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, the Planning Commission meeting for Tuesday, March 3, 2020 is now in session. A couple of quick reminders for everyone. We are livestreaming from the camera in that corner so if you have a good side, that's where to put it. We have one subdivision project for presentation. If people are here to speak on that, it's helpful to us if you sign in, just so we can get the spelling of your name correct, but it is not required to sign in to give comment on the projects.

2. **THE MINUTES OF THE FEBRUARY 4, 2020 PLANNING COMMISSION MEETING.**

Mr. Hurd: Alright, we'll move to Item 2, the minutes of the February 4, 2020 Planning Commission meeting. Do we have any further comments or corrections?

Ms. Michelle Vispi: None.

Mr. Hurd: Okay. Does anyone have anything that comes to mind here? No? Okay, the minutes are approved by lack of comments, by acclamation, I guess.

THE MINUTES OF THE FEBRUARY 4, 2020 PLANNING COMMISSION MEETING ARE APPROVED.

3. **REVIEW AND CONSIDERATION OF A MAJOR SUBDIVISION FOR 1 NORTH TWIN LAKES BOULEVARD (PR#19-06-02). THE PLAN PROPOSES TO SUBDIVIDE THE EXISTING PARCEL INTO TWO LOTS AND CONSTRUCT 24 RESIDENTIAL GARDEN APARTMENT UNITS WITH ASSOCIATED SITE IMPROVEMENTS.**

Mr. Hurd: Item 3, review and consideration of a major subdivision for 1 North Twin Lakes Boulevard. The plan proposes, oh, I don't really need to read that part. Madam Director, take it away.

Ms. Mary Ellen Gray: Thank you, Mr. Chair, I just have a few brief remarks to introduce the application and to talk about the salient points of the development.

[Secretary's Note: A link to the Planning and Development Department report regarding the major subdivision for 1 North Twin Lakes Boulevard can be found at the end of this document.]

Ms. Gray: This land-use application, PR#19-06-02, is a request for a major subdivision for 7.653 acres of property located at 1 North Lake Twins, North Twin Lakes Boulevard. The plan proposes dividing the single parcel into two parcels separating the existing condominium buildings from the vacant portion of the parcel. The proposal includes construction of 24 townhouse apartment units replacing the previously-approved but unbuilt subdivision plan of 12 units.

The Planning Commission was provided the staff report dated February 25, 2020. The agenda for this meeting was posted on the website on February 25, 2020. The staff report was distributed to the Planning Commission on February 26 with the following attachments: the staff report dated February 25; Exhibit A, subdivision plans and elevations; Exhibit B, the zoning requirements; Exhibit C, site plans, site maps; Exhibit D, the site photos; Exhibit E, the zoning map; Exhibit F, development density data comparison table; Exhibit G, excerpts from the Comprehensive Development Plan; Exhibit H, the Subdivision Advisory Committee comments; and, Exhibit I, the public notification signs. In addition, the Planning Commission was also provided a full set of plans.

The property currently includes two condominium buildings on a proposed 2.404 acres which is identified as Lot 1 and a proposed 5.249-acre parcel identified as Lot 2 is currently vacant with some roads, a pond, a stormwater management area, and an existing clubhouse on the south edge of the property. This proposal, as I mentioned, is for construction of 24 three-bedroom townhome-style garden apartments along North Twin Lakes Boulevard on the north side of the proposed Lot 2. The existing pond, stormwater management area, and clubhouse will remain unchanged. The existing zoning for this parcel is RM, multi-family dwellings garden apartments. The existing use of condominium units is an allowable use in the RM zoning district. The proposed townhouse apartments are an allowable use in the RM zoning district. The density of this project as proposed is 6.7, or 7 units per acre for the currently developed portion of Lot 1. The density of the proposed new construction on Lot 2 is 4.57, or 5 units per acre. This plan does conform to the Comprehensive Development Plan. This proposed development meets all the requirements detailed in the Municipal Code of the City of Newark, Chapter 27 Subdivisions.

It should be noted that in order to meet the requirements of Section 27, Appendix VI, parks, playgrounds, and recreation area requirements, Council will need to approve a $700 per unit fee in lieu of open space whereby this development does not include a 7% open area requirement and staff recommends that Council approve the fee in lieu provision as described in Code. Further, as indicated in Comment 1 under Parks and Recreation SAC comments, staff recommends that an additional fee in lieu be paid since the pool that was originally approved had subsequently been eliminated by a plan revision, and this proposed plan increases the number of units that were originally proposed, approved, from 16 to 24 units.

I'd like to note that a response to the February 25, 2020 SAC letter was received from the applicant on February 27 and that was after the packet went out, so a copy of this letter, as well as staff's comments dated March 3, has been provided to the Planning Commission and copies have been provided over on the dais there. In this letter, the applicant indicates that the pool requirement was removed, that the clubhouse was accessible to residents upon appointment, and that they will install a walking path and will work in good faith with the public water, with Public Works regarding the concerns articulated in the SAC letter regarding water and sewer.

[Secretary's Note: A link to the applicant's letter dated February 27, 2020 and the staff's memorandum dated March 3, 2020 can be found at the end of this document.]

The Planning Department staff recommends approval of the major subdivision for this project located at 1 North Twin Lakes Boulevard because the plan is compliant with the City of Newark Code with the Subdivision Advisory Committee recommended conditions, 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. I'll hand it back to the Chair.

Mr. Hurd: Alright, thank you so much.

Ms. Gray: You're welcome.

Mr. Hurd: We will hear from the applicant. Ideally, 15 minutes if you can.

Mr. Jeff Lang: Oh, we won't take long. It's a pleasure to be here this evening. We have a short PowerPoint presentation and obviously we are available to answer questions.

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

So, how do I get this thing going? Okay, so this gives you a quick, if any of you have not been at the site, this is the view from approximately where the clubhouse is, the picture on the left, and then that is the view of the open space in front of the two large condominium buildings, and the other picture is actually a picture of part of the vacant land that's still available out there.

This gives you an aerial and a similar kind of perspective as far as the view. You have the clubhouse there on the right side kind of between the two lakes. The townhouse portion of the project is on the right-hand side and then the two buildings that were constructed in 2005, 2006, and 2007 are on the left-hand side. As we get further into this project, or presentation, I'll be able to give you a better explanation of the entire intent.

We started with a piece of property that the Edwards family owned for years and years. They wanted to redevelop the property. A gentleman came and approached me who knew them very well, and we worked together with them to improve their property from industrial to residential, to add condominium units with the intent of building out the project over a short period of time. We got together with them in 2004, had our project approved in 2005 and we started the construction of two buildings. As many of you lived through, we had a downturn in the housing market in the late 2008/2009 area and we were successful in getting two of the buildings almost completely sold. Unfortunately, the price point and the ability to market them at that continued price point in the future didn't make it feasible for us to continue construction on that type of project. We did construct the clubhouse with the original thought that the clubhouse would add marketability and allow for a quicker sell of the project.

We were subsequently . . . okay so in 2010 we came back to City Council and discussed and were approved for a subdivision of the property to take the right side of the project, which is the back side by the railroad tracks, from the pond to the railroad tracks, and turn it into 60 for-sale townhouse lots. We partnered with Cornell Homes and they built the 60 townhouses out over a period of four or five years and sold all of those units. At the same time, we changed two of the condo buildings that were remaining, because there were eleven initially, and we changed those to twelve townhouse units on the left side of the project at the same approximate location we're discussing this evening. By 2015, as I said, the 60 lots had been sold and built and we had homeowners and other occupants in the property. In 2012, we came back and started thinking about what we should do with the townhouse units. The townhouses were very large townhouses. We were right next to two buildings we had built that were condominium units and we started thinking that that's the correct market there for the type of resident. We were appealing initially to an age-restricted resident but they're three-story townhouses and some of them had basements in the new section of the project. We thought large multiple-story buildings didn't make sense for an age-restricted older community, so we started thinking, okay, let's redesign it. We got approved in 2012 to turn the townhouses into six duplex units, we lifted the age-restriction piece, and the pool was eliminated from consideration because the residents did not want to contribute to the maintenance of an ongoing pool because there weren't as many residents in the project as originally planned.

This was the original approved concept. As you see on the left, the two buildings at the bottom left were built, the other two are under discussion this evening for redesign. The area on the right was the area that was sold to Cornell and the seven 8-unit buildings, which is 56 units, were turned into 60 townhouses. The clubhouse is right there in the middle, right at the end of the street. This is a more detailed subdivision plan. It's hard to read and there's no color but it really shows the 60 townhouse lots on the right and it does show the reapproved two groups of six townhouses on the left. This is just a quick understanding of what the townhouses will look like [inaudible].

So, the current approval really deals with the consideration tonight is that we have twelve units. They're really six groups of duplexes. These duplexes are larger units, but they were designed more for multiple story units, but they're still around 3,000 square feet each. So, we started thinking about it and it's still a very high-end market, an expensive market to build, especially at the price point that we need to build these for. What should we do with these 12 units and how do they mesh with the 16 units? Subsequently, in the two condominium buildings, we've had a lot of residents sell their units, so we actually have bought their units back because in good faith we didn't want them to put their units on the market and not have any potential buyers. So, we now own 14, actually 15, of the 16 units in the two buildings. So, we have two condominium buildings that are really for lease or for rental apartment units, and we have this proposal tonight to really take 12 large units and turn them into 24 smaller units, which are much more marketable in today's housing climate.

So, the proposed plan, as we discussed, 24 townhouse-style garden apartments. They'll all have three bedrooms, 2 ½ baths. They're about an 800 square foot footprint, 20x40, two stories, a garage out front, and a space in front for a car. And really, the market we've actually seen in the condominium buildings, the units are between 1,400 and 1,500 square feet, which had a tremendous amount of interest in that size unit. They're two- and three-bedroom units. Young professionals live there. We have families living there. It has become very popular. It's well-located, also, for the high school. We have some teachers and some families that live there whose kids actually go to the high school and are involved in Newark Charter primary and intermediate schools down the street.

So, there is the proposed plan. Really, it's somewhat similar to the other plan but the units are smaller, and we also put some units inside of the loop and expanded the loop a little bit. So, it's not drastically different than the previous approval except the units are much smaller and more marketable. The architectural features, our thoughts were that we wanted to mimic the design and feel of the other existing buildings there. We have the garage in the front. The beauty of this is that each unit has a back yard. In that condominium building, nobody really has a back yard because there are garages along the back. So, for a family, that's not as conducive because you don't have any yard for your kids to go out and play in. Or adults can go play in. There's parking for two cars. Obviously, the scale matches the adjoining building. Actually, it's a little bit shorter and smaller. The buildings that we had approved before were much taller. And now the materials obviously mimic the, they mirror the other building.

So really, all we're here tonight to really discuss is, is it logical for the Planning Commission and Council of the City to approve a subdivision to create two lots? The present structure of this entity is really a condominium structure, so for us to build additional units into the condominium, we'd have to restructure the condominium documents, submit them all, and ultimately, the condominiums have really turned into rental units. So, what we really want to do is build some rental townhouses and then ultimately turn the condominium back into a project, a rental project, because that's what it is right now. All of those units are rented. All 16 are rented to people. Not one resident lives in those two buildings.

The current zoning is RM, so it already meets the zoning criteria. So, really all we're discussing is really the ability to turn 12 units into 24 units. Twelve larger units into 24 smaller units. And it's well within the permitted density.

This is, the reason why we got to this point is we started looking at the comparables in the market. If you can get oriented here, that's Elkton Road, almost out to the state line. Newark Charter High School is on the left and Christina Mill is over on the right where the Acme is. So really, the market that we compete with at this present location is Christina Mill, which is the one- and two-bedroom units that are right by the Acme, and Stonegate, which is in Maryland, right over the line. So, the people that come to rent from us look at these other comparables. And those comparables are all similar size units. They're not 2,500 or 3,000 square foot units. They're affordable for the young professionals and families. If we build a bigger unit, we have to rent it for more money and then there's not the type of mix you want there. So, what we've decided to think about is let's create marketability, let's create housing options for young professionals, even older couples and younger families that we want to have move into our area. And obviously then, buy other homes in established communities.

Our community benefits, as we kind of discussed, is really another quality housing option for the community, additional tax revenue, utility revenue, and really, the revised units are better suited for the present market conditions, you know, that we see in the area. There is easy access, as you know, from that location to the STAR Campus which is a new employment hub, I-95 corridor, and obviously the new, almost open train station.

These are some more pictures of the streetscape. Obviously, you know, a nice streetscape, beautiful landscaping. I think it's a tremendous enhancement to the vacant lots that are there at present. And it's walkable. We have sidewalks all the way around the area. Obviously, we're going to have a walking path, which connects this area over to the clubhouse. And this is the back of the units. Obviously, there's a tremendous amount of green space, open space, and each unit has a dedicate back area so the resident can go out and enjoy the back yard and enjoy the pond, fish, and do all the different things they want to do. This is a picture from across the street of the back of the units.

So, there's our presentation. Obviously, we are here to answer any questions. Thank you for your time.

Mr. Hurd: Alright, thank you. I will begin on my right with Commissioner Drake.

Mr. Pete Drake: I don't have any questions at this time.

Mr. Hurd: Okay. Commissioner Stozek?

Mr. Bob Stozek: I just have a couple. Some of the things on the presentation here were very confusing but normally in a presentation we see a table presented of requested variances and I don't see that. The only thing I remember reading about was a 7% open space. Is it that the table doesn't exist because there are no requested variances?

Ms. Gray: Yes.

Mr. Stozek: Okay. I guess I'm kind of surprised that with what I see in the drawings that there isn't 7% open space available. Can you talk about that?

Mr. Lang: We actually are, too.

Mr. Stozek: And what is the amount of open space, if it's not 7%?

Mr. Lang: Our engineer plan shows that we have approximately 25% open space. So, I think there is a point of review and discussion with the Planning staff along this issue because, as you can tell from the site plan and the aerial, I mean this is not a congested development. I think the intent of that fee in lieu of open space is in congested urban developments where you can't supply open space, green space, playgrounds, walkways, and we have all those things. And we have two ponds. I mean, I can't understand how we . . .

Mr. Stozek: Yeah, that didn't make any sense to me. So, you're saying there definitely is more than 7%. That's just something that has to be cleared up in the documentation?

Mr. Hurd: Mary Ellen, can you address that?

Ms. Gray: Sure, this has to do with the clubhouse. In the original approval, and you went over this, Jeff, there was going to be a pool that was going to be built. And the fee in lieu is looking at the, replacing that amenity that is now not going to be built, that was approved not to be built, as well as the increase in number of units from the original approval.

Mr. Lang: And I understand your perspective. I think our perspective is that was already reapproved in 2012 and was approved by Council and the City that the pool, it was agreed upon, was not a component of the project.

Ms. Gray: Correct.

Mr. Lang: So, how can we be held accountable for a pool that the City and all the residents agreed that we weren't going to install eight years ago? It doesn't make sense. That's our side of it.

Ms. Gray: Right.

Mr. Lang: Obviously, maybe Paul can comment on his perspective on things. We feel that the type of project we have here is a suburban project and we have the open space that's required by Code on our engineering plan. So, it's, you know, we have a playground at the other side of the project that we built which is really an amenity for the entire community. We agreed to put in a walking trail that we haven't put in because there's no reason to have a walking trail through a vacant area. But obviously, we'll put that in when we complete this portion of the project. And the clubhouse is available to any resident. There's just a discussion at present with the homeowners association as to the upkeep of that and who is going to be responsible for portions of that and what we want that to look like. It was built originally as an amenity but as the project gets turned over to the owners, they have to maintain those things as part of their homeowners association. So, that's our side of it.

Ms. Gray: Certainly.

Mr. Lang: But obviously, we're here for continued discussion.

Ms. Gray: Certainly and this is to note the fee in lieu provision is a Council approval, so this would be something that I would recommend that we could work out between Planning Commission and Council. Because this we had just been put in the February 25 comments and you had responded to it, so . . .

Mr. Lang: We understand.

Ms. Gray: It's a detail that could be worked out.

Mr. Lang: Thank you.

Mr. Stozek: And the last thing I had was in the description here it talks about one of the amenities is that you are across the street from Iron Glen Park. Can you show anywhere on one of your maps where that is?

Mr. Hurd: It's next to the Dunkin Donuts. It's kind of behind it.

Mr. Stozek: Oh, okay.

Mr. Hurd: Across the street.

Mr. Stozek: So the across the street is Elkton Road?

Mr. Hurd: It's across Elkton Road.

Mr. Lang: It's a park that is in the process of being developed in further detail by the City, I think.

Mr. Hurd: Right. I don't know that it's currently accessible to the public.

Mr. Lang: Potential park.

Mr. Hurd: Potential park.

Mr. Lang: Now, you know, this is right next to a high school and the high school has a tremendous amount of outside space, you know, walking area. It's a very walkable, even though historically it was an industrial area, it's actually much more of a walkable street on McIntire Drive. You know, walk over and watch a game. It's not like there are open fields but I'm sure it's walkable area for the residents.

Mr. Hurd: Understood. Anything else?

Mr. Stozek: I would just caution that going across Elkton Road is not, doesn't sound like it's across the street from a park but that's my comment. That's all I had.

Mr. Hurd: Okay. Commissioner Silverman?

Mr. Alan Silverman: With respect to crossing Elkton Road, there has been a significant investment in pedestrian crossing there which was required as a result of the high school being located there, so there is a controlled pedestrian access with respect to getting from one side of Elkton Road to the other.

I'm in general agreement with the rationale behind the project and how the project fits within the community context. I like the site design, keeping the theme, the open space, the walkability, the interconnectability. I'm very satisfied with that. The issue I have is what I read in the SAC reports, particularly with respect to public works. I see there are a number of joint ownerships referenced with respect to homeowners associations and whatever corporations are going to exist now with respect to the ownership of this project and, it was mentioned, a future condominium association. To put it quite bluntly, I don't think you can own a piece of a sewage lift station. Somebody has to have total responsibility for it. When the pamper clogs the impeller, I can see multiple people being responsible, pointing to one another saying, well, it's your responsibility. I believe that particularly with the sewerage issue that was raised in the SAC report, that as this moves forward, and it's not a land-use issue here, it's a public works issue, that those particular arrangements need to be addressed. I notice in the letter from Lang Development Corporation dated February 7, on the second page, there is a commitment to work with the Department of Public Work with respect to economically-feasible corrections. I'm not so much interested in the hardware as I am in the responsibility arrangements and particularly the monitoring arrangements. In another life, I have had experience with private pumping stations and that particular organization came to an agreement with the City that I would like to see extended here in further discussions and maybe memorialized in the subdivision agreement by the City Secretary. And that will take your organization voluntarily committed to a private maintenance of their pump station, that continual journals and inspection logs be maintained and be available for inspection by the City, and there was a continuous trouble alarm monitoring at that time with the technology literally to the point that if there was any kind of failure alarm for whatever reason – the power went down, a pump went down, there was a clog – that a beeper would go off to a person responsible. Now I know the City with respect to it's remote and unmanned operations for pumping water and sewage has similar systems like that in place and I'd like to see that as part of the City's agreement on this site.

With respect to the homeowners association, the townhouse group, and I'm sorry I don't know the formal name of the community, at this point it doesn't come to mind, it appears to be a very loose confederation of homeowners and I'm not sure that they are aware of their responsibilities here. We saw in a recent application before this group with respect to a subdivision on Possum Park Road that the people who wrote the homeowners association agreement with that organization wrote a provision in their agreement that in the event that the homeowners association was unwilling or unable to perform their commitments to maintaining the private facilities in that subdivision, that the City had a right to come in, make corrections, make improvements, and directly assess each individual property owner who was a member of the homeowners association to offset the City costs. I would like to see that kind of arrangement be included in whatever agreements the applicant and the City come to with respect to sanitary facilities on this site.

Let's see, they're pretty much my comments and I see my interest here being a health and public safety issue, particularly with the sanitary sewerage arrangements. If a homeowners association fails to have an adequate snow plowing contract or lawn mowing contract, it's more of an inconvenience than nuisance. I see the sanitary issue here being a public health issue and I also see the need for the City to be able to recover its costs if it has to go in and make the corrections. Thank you.

Mr. Hurd: Commissioner McNatt?

Ms. Stacy McNatt: I have a couple concerns relating to what Mr. Silverman was saying in that the residents in the townhome side, I believe, are fee simple lots and then they drain into a City-owned sewer line that then dumps into the private sewer system through this North Twin Lakes Boulevard. So, I agree that there needs to be some further discussion on the arrangement of who is responsible based on the SAC responses that there was a current agreement, of course, in the past that may never have been updated or edited correctly to reflect what is currently here and/or reflect who the ultimate owners of the sewer system would be. So, the North Twin Lakes side is privately owned sewer and the South Twin Lakes side it's actually public City sewer, from my understanding. Because I'm pretty sure if they're owned or fee simple lots, they pay a sewer bill. And so if they pay a sewer bill, they may or may not be responsible then ultimately to pay for another private system once they go into a public system. So, I think that conversation needs to be worked out more in detail through this process and as well as maybe if there is some type of agreement that's discussed in the water sewer Public Works notes, that the City may need to be part of that agreement in more detail in some way. So I definitely agree there's some, there needs to be some more thought process put into the public/private sewer arrangement and who pays for what when there's an issue.

I also read in the SAC report regarding the clubhouse and the open space amenities, the pool is not there, so currently this is all one parcel and then, from my understanding, this gets divided into two parcels and then you'll have multiple HOAs or multiple ownerships. Does the fee in lieu of represent what should have been, what could have, in Lot 1 at all? Or is the fee in lieu only associated with Lot 2? Because wouldn't you say that Lot 1 now didn't provide certain amenities as well and they should also be partially paying a fee in lieu to represent Lot 1 because now they're creating a different environment than what was originally intended? I guess I didn't . . .

Mr. Hurd: I'm honestly not entirely sure.

Ms. Gray: I can answer the question.

Mr. Hurd: You can answer it? Okay.

Ms. McNatt: Okay.

Ms. Gray: I believe I stated that before, that that is our staff's perspective. That since a pool was required originally and then was approved not to be provided, that there should be a fee in lieu for that.

Ms. McNatt: For Lot 1? In addition to what was written in the SAC report? There's got to be some additional fee in lieu besides what's the open space fee in lieu of, because that's what is being written about.

Ms. Gray: That encompasses that. That comment encompasses . . .

Mr. Hurd: If I'm understanding this right, the fee in lieu of is something that was originally agreed to back, basically was waived back in the original approval and has, in the City's mind, has been carried forward with all subsequent subdivision plans and has yet to be met. The obligation has yet to be met in the City's opinion. Now, to the issue of open space, I was just thinking about this, since we are breaking this into separate parcels, have we calculated open space by a parcel basis and are we compliant by parcel basis?

Ms. McNatt: And that number that's represented in that SAC report represents both parcels.

Mr. Hurd: Right. So, I think the issue isn't so much that it's not compliant with open space at this moment in time, it's that the prior, the very first one didn't meet the conditions and so they made arrangements and the City intends to get that, I guess, have the obligations met in some way or another.

Ms. McNatt: But does that mean that the open space on Lot 1 will now also need to be mitigated in some way other than just the pool? Will that put them in an open space that's not compliant?

Mr. Hurd: Well I think that's where it gets complicated because if we have now three parcels and . . .

Mr. Locke: So, if you look at the engineer's plan for proposed Lot 1 . . .

Mr. Lang: We're actually Lot 2.

Mr. Locke: Right but she had asked a question about . . .

Mr. Lang: Lot 1.

Mr. Locke: Right, so the condo buildings, which is Lot 1, has open space of 52%, 1.276 acres of the 2.40 acres is open space. Lot 2, which is where we're proposing these townhouses, we have 3.927 acres of the total 5.24 acres being open space, which represents 75%. Overall, Lot 1 and Lot 2 combined has 68% open space. Just for clarification.

Mr. Hurd: Right, but I think the City's opinion is that the open space that exists now doesn't mitigate the fact that there were promises made that haven't been met.

Mr. Locke: Right, and we're more than willing to sit down with City staff to try to address this.

Mr. Hurd: Am I getting the gist of that?

Ms. Gray: Yes.

Mr. Hurd: Not to beat this too much.

Ms. McNatt: And my last concern is associated with the clubhouse. I believe the clubhouse, as you described, was an original amenity upon the age-restricted community that was to be built to help sell what was an age-restricted community. And then that never came to fruition. So, I believe under some maintenance doc or declarations and agreements that may have never been revised appropriately that now the fee-simple townhouse residents may be able to use that clubhouse for some purposes. But per the SAC report, it sounds like there's a lot of issues associated with that clubhouse and its use or access. Another topic that I think needs to be addressed as part of the subdivision agreement process revisions and the maintenance declaration revisions because I think it's important that that get, the ownership and security and all of that gets addressed as part of that process.

Mr. Locke: That is addressed in an easement agreement that Ms. McNatt knows about and that was signed in 2011. Sixty-six percent of the expenses and maintenance of the clubhouse is to be paid by the homeowners association. Thirty-three percent is to be paid by the condo association. And I have a copy of the easement that was recorded in 2011.

Mr. Hurd: So, would you be amending this with the addition of this new lot?

Mr. Locke: Yes, because we would have more units and that's where it would have to pay a higher proportionate share.

Mr. Hurd: Okay.

Ms. McNatt: I just think it needs to be in detail reviewed with, because I think the HOA would have to sign that new document.

Mr. Hurd: The new one, yes.

Mr. Locke: It would be in the HOA provisions.

Mr. Hurd: Yeah, okay.

Ms. McNatt: And then the last, oh, the last item I think you mentioned, which is interesting because I don't know that it's discussed here, that the playground is in the open space of the townhouse community and I don't know that it's in any agreement that it's actually common use between all of the residents. And because I don't know and it doesn't reference it here, do all these multiple HOAs and condo associations then pay back the townhouse community for use of their open space. I'm not sure, and that needs . . .

Mr. Locke: Again, the agreement that was dated in 2011, states that that would be considered common area and that would be shared between the two entities. And to answer your question about various ownerships, if this project is approved, then at that point we would extinguish the condo association and just have the two – the owners of the apartment complex area and the HOA.

Ms. McNatt: But wouldn't you also have to include the two owners that still rightfully own two of the 16 units?

Mr. Locke: Yes, they would have to be involved in that extinguishment.

Ms. McNatt: Right, so you'd have a lot of parties to work together and try to come together, as well as the City.

Mr. Locke: Well, it's really just one party. The one unit is owned by my mother.

Ms. McNatt: Okay. And then to clarify, the Lot 1 and Lot 2 combined number of units would be 30, right? Because you have 16 currently and then are proposing 24 on Lot 2.

Mr. Locke: That's 40.

Mr. Hurd: That's 40.

Ms. McNatt: Correct, 40. And then the fee-simple townhouse side is 60 units. Okay. And then my last . . . 60, I think it's 60 even.

Mr. Locke: It is 60.

Ms. McNatt: From what the plan says. Right now, those are all my issues. Thank you.

Mr. Hurd: Okay, thank you. Commissioner Kadar.

Mr. Karl Kadar: I'm just going to build upon what Alan said earlier. I also feel the project is consistent with the current zoning requirements. No zoning changes are required. It's consistent with our Comprehensive Plan. It fits in there. And it is totally consistent with the adjacent property uses, so I have no issues with the community. I share the same concerns that Alan had around sewer and who owns it and the community associations. And I would like to add also the trash removal to that. Because if the community association falls apart, who picks up the trash? How does it get done? And if the City has to step in, well there should be an agreement that says if the City has to step in to do this, then we're going to assess you for the cost of doing that.

Mr. Locke: Because of this being an apartment complex, the City is not responsible for removing trash.

Mr. Kadar: According to the notes we have, I understand it's private trash. And that's why I'm saying if the homeowners association which would be responsible for maintaining the trash collection, I would assume, or you bill directly to the homeowners, if it's billed directed to the homeowners, then it's not an issue.

Mr. Locke: It's two different entities. So, the side that we're speaking about is private. I believe, and there are some residents here, but I believe the townhouse, because it's fee-simple, they do get City trash services. Correct.

Mr. Kadar: Alright. Other than that, again, I'm a little concerned about all the issues that have, at least the two of them, the one around the pumping station and the lack of the walking trail around the property, which should have been built by now but wasn't, but you say will be. So, I think that's all that I can contribute at this point. Thank you.

Mr. Hurd: Okay, thank you. Commissioner Wampler?

Mr. Tom Wampler: Thank you. I think all my concerns have been addressed. I want to add my voice to say that I'm pleased that you are going to build the walking trail. I think, I don't see, even if there were access across the road to the park, I don't see a young family taking their kids across four lanes of Elkton Road to take a walk in the park. So, I think, particularly because it had been a commitment in the first place, I think that's important.

Mr. Locke: For the record, we never proposed that. That came out of staff. We never said anything about using that area. That was from staff.

Mr. Hurd: Okay.

Mr. Wampler: That's all I have.

Mr. Hurd: Alright, thank you. Yeah, I don't think I have anything further beyond generally agreeing with Alan and Karl on their assessment of the private/public ownership issues that need to be worked out. It's a little concerning, just sort of having those open. But I do, I have faith that those can get worked out to the satisfaction of everyone. And they're not land-use issues, as we've mentioned, as much as they are operational and health issues.

Alright, moving to public comment. The first person signed up is Nick Wasileski.

Mr. Nick Wasileski: Chairman Hurd and members of the Commission, my name is Nick Wasileski and I live in District 3. I am a regular attendee of Newark City Council, but this is the first Planning Commission meeting I've ever attended. First of all, the disclaimers, I do not endorse this project and I do not oppose this project, but I do have some comments which are germane to this project and germane to Newark.

Recently, there was a 2 ½ inch flood event which caused flooding on Julie Lane. People from Julie Lane attended the Newark City Council meeting and explained the problem that they had, and they've had it for years, and that led me to look at some flooding data for Newark. In January of this year, FEMA, the Federal Emergency Management Agency, published the most recent flood plains, the new flood plains, for Newark. And I studied that pretty carefully and my comments in reference to the flood plain in reference to this project is that this project falls between, the location of this project is between the West Branch of the Christina River and Persimmon Run, which runs into the West Branch, which then runs into the Christina River.

With that said, I studied the map of the flood plain that FEMA has just published, and I just want to give you some data which I think you'll find very interesting. From Lehigh Road, where I live, eight homes have been added to the flood plain. On the Elkton service road, two homes have been added to the flood plain. And these are near the Christina River, which runs under the bridge near Suburban Shopping Plaza. And these are homes in addition to the previous 100-year flood plain, which there are already homes added to it. And the number of homes that I'm giving to you are homes that the foundation intersects with the flood plain. There are other properties in which the flood plain enters their property but does not intersect with the house, and I want to make that clear. The bridge at Elkton Road, under the Christina, over the Christina River, with a 500-year flood plain event, which was the new FEMA flood map, is flooded. The side entrance to Suburban Plaza would be flooded. The entrance to Christina Mill would be flooded. Julie Lane, which is on the other side of the Casho Mill Road underpass, 13 homes would be in the new flood plain. On Barksdale Road, there's one church and a house; Rahway Drive, ten homes; Aster Avenue, two; Kenilworth, six; Rockmoss, four; Quail Lane, two; Timber Creek, five; New Casho Mill Road, ten; and the last road that I went in that direction, just kind of northwest, I guess, is Delrem, which is near the country club and West Main Street, three homes. Moving south on Lehigh Road, Nichols, three homes; Art Lane, three; Plymouth, four; Brook, two; and, 896 entrance to I-95 would be flooded. There's also a business down there and I believe it's a fast food restaurant and it is flooded.

Mr. Hurd: Sir, you have one minute remaining. Can you please address your remarks, if you have any remarks about this project itself?

Mr. Wasileski: Yes, okay, thank you. The information I've given to you, in reference to this project, has to do with runoff in a flood plain and, as you can see from the data I've provided to you, over the years as building has progressed in Newark which has, and I'm sure everything has met the Comprehensive Plan, we've increased runoff, which has added to the flood risk. And like traffic in Newark, we've reached a tipping point and I think we've reached a tipping point with flooding if, in fact, we do get another really bad storm like we did in '72. I would like to read a couple of things here. This is from an attorney from the Pennsylvania Department of Environmental Protection and he said, he writes, and this is 2001 . . .

Mr. Hurd: Sir, your five minutes are up. Can you finish your thought?

Mr. Wasileski: Yeah, I'll read this and I'll be finished. And one additional comment, if I may. Municipalities contribute to flooding when they permit new construction without requiring drainage facilities adequate to accommodate increased surface water runoff. Poor municipal planning encourages urban sprawl and vacant center cities, while the flooding caused by poor planning deprives existing homeowners of investment-backed expectations.

There are people now who will be getting letters in the mail who have mortgages that they will now need flood insurance when they didn't need flood insurance before. And this is something I think the City needs to deal with. So, thank you very much for your extra time.

Mr. Hurd: Alright, Leopoldo Escoto. Is that right?

Mr. Leopoldo Escoto: Escoto, long O.

Mr. Hurd: Long O, got it.

Mr. Escoto: Good evening, Council members. I am the current president of the HOA at the Greene at Twin Lakes Boulevard community. The association stands opposed to the City of Newark approving this proposal to build the additional units because we have been in a negotiation and/or disagreement with Lang over the HOA's bylaws. So, you may ask what's the relationship between bylaws and this development. It's the community house. The bylaws state that, as was explained by the applicant, that we're responsible for 66% of the cost associated with the community house. That we disagree with and have been negotiating with, I want to say Lang/the applicant because the bylaws were written with no input by the association. They were strictly written by the applicant. The applicant claims we owe 66% of any community-related cost but has not negotiated with, gotten any input from us, the current association. And I have letters with me that date back to 2014 where it's claimed the HOA hasn't really been upfront in terms of trying to negotiate with the applicant. No, we have been. And I have letters from 2014 to the present which show we have been asking the applicant to sit down with us and negotiate the quote unquote 66% because we don't think he has any legitimate legal ground because the bylaws were written solely by him and we had no input. So, how can you claim we have ownership or we're responsible for 66%? We have even hired an attorney. We hired an attorney by the name of Michael Hoffman from the law firm of, and I'm probably going to butcher the name, Tarabicos Grasso, who no longer represents the association but for a period of two years, Mr. Michael Hoffman, our attorney at the time, sent letters back and forth with the applicant to try and get them to sit down with us and come to an agreement, an equitable financial agreement, over the clubhouse. They claim we owe, you know, like $60,000 to $70,000 on the clubhouse because we own 66%, quote unquote, the bylaws state we own 66%, we're responsible. Again, we don't believe we owe that much money. We don't believe we should be responsible for 66%, mainly because the bylaws were written solely by the applicant. Thank you, that's all I have to say.

Mr. Hurd: Thank you. Hannah Oglesby?

Ms. Hanunah Oglesby: Hanunah.

Mr. Hurd: Hanunah. Oh, there is a U in that. Thank you.

Ms. Oglesby: Hi, my name is Hanunah Oglesby. I've been living at 605 South Twin Lakes from the very beginning in 2011. When I purchased the property, I was told that we were going to have walkway trails and we were going to have a beautiful playground and I sat there and watched none of this happen. And it took a long time for us to get a lot of things done. It took years. It took years for us to even get our pavements to be paved properly so the City could come and even shovel our snow. We had problems at the playground. They weren't properly mulched. We went back and forth, over and over and over, to Lang to try to, you know, do what they were supposed to do. As you know, we've never gotten the walkways and it's unfair. I have grandchildren and they deserve to have been walking through those walkways from 2011, and we haven't even had access to them. We still are unresolved about the sump pump. I pay sewer taxes and the sump pump resolution is nowhere near being resolved. And also, we have a problem with the clubhouse. We were using the clubhouse, I used to have parties there for my family, for my children, my grandchildren, and somewhere around 2014, the locks were changed, and we really haven't been using it since then. And we've been in negotiation and I know they talked about one lawyer that we had but we had two lawyers. We've been trying to communicate. We would go to meetings month after month after month and try to negotiate and we'd get the response that Lang did not respond. So, I'm really, really concerned about them building again somewhere else and they never resolved what we have been doing in our own community. I mean maybe another developer might do better, but Lang has not done right by us and they have not done right throughout this whole process. Like I said, I've been here since 2011. He had, whoever built our development, when I first moved in, I didn't have gas lines, I didn't have cable lines. They had to dig up my cement and put down these lines after the fact. So, it was a debacle ever since I started this process and I'm really, really discouraged. And I'm very discouraged about them building any more because they have not fulfilled their promises that they were supposed to fulfill from the very beginning. Thank you very much.

Mr. Hurd: Thank you. Matt Lemo?

Mr. Matt Lemo: Good evening everybody. So, I just want to state that when the community first opened up, I was the vice president of the homeowners association along with Ms. McNatt. She was the president and I'd like to point that out for the community, so everybody knows that. Everybody up here keeps talking about good faith and they have good faith. They have never shown any good faith, either of them, in anything that they've done in this neighborhood. She was 100% correct in everything that she said. Nothing has been completed. My house is Lot 5, it overlooks the lake. There is no path. They've been promising the path since day one. There are showerheads that actually stick out of the back of the building and two entrances to bathrooms where the pool is supposed to be. So, my house actually overlooks this crappy building that they built where there are showerheads to take an outdoor shower to rinse yourself off from the pool. We have, Ms. McNatt and I have tried numerous times to get them to mow their property. The lawn can get 10 feet high at some points. There is no good faith at all with this company, at all. No walking path at all, which I said.

Now, parking is an issue. So, we have 20 spots, overflow spots. There are eight in front of the clubhouse, there's two like fake cars right there, and on the other side where the playground is that they said it's a community playground, there's another 12 spots. The streets are zoned as fire zone, as fire lanes. There's no street parking at all. So, we're going to add another 40 homes with probably two or three to apartments they could share and extra cars. Where is all this parking going to be? You can't park in the private school, even though it's a public school, there is no trespassing. You can't go over to the school, you can go over there, to the school, to have fun, as they said, over in the neighborhood, to have a nice walk in the neighborhood to walk over to the school, because the school is a private, it's a public school but private property. You can't go there in the daytime when the school is open. You can't go over there at night. You can get arrested if you go over there. So, the things that they're putting forward, you can't use the other public property because it's a school and it's shut down at night and in the daytime. So, there has not been any good faith and that's a problem. And I'm opposed to this. I'm opposed to the apartment style. I'm actually opposed to anything. From day one, that's what it was supposed to look like, and it hasn't. So, that's all I have to say right now.

Mr. Hurd: Alright, thank you. The last person signed is Patricia Escoto.

Ms. Patricia Escoto: Escoto.

Mr. Hurd: Sorry, Escoto.

Ms. Escoto: Thank you very much for calling this meeting. I second everything that my fellow homeowners have said but I want to talk about a couple of things that haven't been brought up and I appreciate Mr. Silverman bringing one of them up, which is the issue with the sump pump. So, I live in the 700, the newest part of the townhomes that were built in 2012. Prior to that, the sump pump was put in and the sump pump worked for the over-60 community and the other houses that were there. The sump pump was never upgraded to accommodate the row of new homes that were built in the 700 and therefore it kept, you see that red light coming on and the sump pump kept backing up.

Mr. Silverman: Point of clarification, you're referring to the sewage wet well pump. The sump pump is . . .

Ms. Escoto: Yes, I'm sorry. I'm sorry, the sewerage pump.

Mr. Silverman: The sump pump is for the basement usage.

Ms. Escoto: I'm sorry. Thank you very much.

Mr. Hurd: Okay, thank you.

Ms. Escoto: So, and I heard you mention the possibility of writing in something where the homeowners share some responsibility in terms of the sump pump. I personally don't feel that we should pay for the upgrade of a sump pump when the builders have not built out the sump pump to its capacity. It's their responsibility to understand the capacity of the usage of that sump pump and why would you pass that upgrade on to the homeowners? That's not our responsibility. So, that's number one.

There have been, they talked about a lot of benefits in terms of to Newark, in terms of the tax base. I would think that if you built homes that paid property tax, you'd have more of a tax incentive or a greater tax base than building 24 units of rental properties. And I'm glad that that slide is up because if you notice on this, there is one road in and one road out. There are 60 homes on that side, there will be 24 multiple dwellings on that side, and across the street is the Newark Charter High School. There is one road in and one road out. That is definitely going to impact the community. What is also going to impact the community is our property value. What is going to happen to our property value when these rentals are built? I have a great concern about what's going to happen to my property value.

Secondly, these rentals are not going to attract these picture-perfect families. They're going to attract what has always been attracted in these rentals and that's college students that are going to continually turn over in the community. You have homes that are built with one-car garages. You're not going to have one person dwelling in those houses. What you're going to have is three or four people with two or three cars in there, in addition to the 60 homes that are on the other side. This is a nice, to me, pie in the sky, but it is not properly built out to handle the traffic that is going to occur once these units are built. So, thank you and that's pretty much all I have to say.

Mr. Hurd: Alright, thank you. Anyone else wish to comment on this agenda item? Ms. White?

Ms. Jean White: Hi, this is Jean White. I live in District 1 and I do not live in, obviously, the Village of Twin Lakes. When this was first brought up, I guess it was, according to what was shown, about 2005, I came and spoke adamantly against having a 55-and-older age restriction. From what has been presented here tonight, apparently that's been lifted and it no longer existed. But at that time it was put in and I spoke against it and I did think the clubhouse was good. I wasn't sure that the pool would be but that wasn't up to me.

So, 24 additional townhouses. I think that is too many and I think it should be no more than 12, or at most 16. If I lived in one of the two complexes that used to be 55-and-older but are now, that are large . . . I don't know what you call them, there are six of each, they were originally six condominiums in each of the two . . . I would not want to be looking at, let me just see what those are, 19, 20, 21, 22, 23, and 24 because you'd be looking at the back of those houses. You'd be looking at the so-called back yard. And if I were up in the two that were built originally, which are actually very nice . . . as I said, I went just this morning, I thought I'd take a drive into Village of Twin Lakes and so I drove by the two that are there, and they're really very nice looking. And I am wondering why you can't build two just like it that was part of the original plan, as you show, but not over where the other townhouses are, but there, but be rentals rather than condominiums, which was the original plan. If you can't do that, then I would have no more than 16 or maybe even 12 around the one side, but not with the backs of the houses where these nice six pack, six clusters, are looking at the back of the house. I think that's a very bad plan.

Furthermore, there will be children, or there may already be children in families moving in there. And this half of the development has no playground. I wouldn't be proposing a playground like the one on the other half with all the townhouses, which has slides and swings and everything, but it does seem to me that there should be an area with maybe a pavilion or park benches and trees where there could be a gathering place even with parents with young children in this part. There is nothing there as far as in the plans that I see already in it. So, I am asking why you couldn't build two more eight-plexes there and, if not, to get rid of basically at least six, if not more, of the townhouses.

I mentioned the park, and the acreage of Lot 2 is 5.249 acres but that, to me, is deceiving unless I don't understand it. It seems to me that's including the ponds, the stormwater pond and the other pond. To me, that's not buildable space. I can be corrected if I misunderstand that, but it seems to me that the water should not be included in the calculations you do.

The clubhouse, originally when I heard this in maybe 2005, I thought it was a nice idea. It sounds like it needs to be renovated and reinvigorated and usable now for both the north side of the development and the south side of the development so it's a usable space, only for those who live there, not for people just walking through from someplace else. It does seem to me that a lot of things that are important are going to be dealt with at the construction improvement plan phase, which is appropriate in most cases, but it seems like some of the issues haven't been worked out in terms of drainage and so on and other kinds of things.

Let me just see here. It's sort of been raised, but not exactly, that a private maintenance corporation takes care of trash, recycling removal, snow removal, and apparently keeping up the road because the developer doesn't do that anymore. And so what I'm wondering is, where all the townhouses are on the other side, I think some people from the audience have spoken to it, but do they also have to contract for their trash removal, or the City does that for them?

Mr. Hurd: They're saying the City does that, yes.

Ms. White: But this, according to what I read . . .

Mr. Hurd: So, just to interject, typically an apartment or multi-unit developments don't receive City trash services, they are provided by the owner.

Ms. White: Okay.

Mr. Hurd: That's been a standard, I think, for many years.

Mr. Lemo: Point of interest . . .

Mr. Hurd: Sir, sir, hang on. So . . .

Ms. White: Okay, I didn't think that for apartment houses, but I thought for townhouses that . . .

Mr. Hurd: Townhouses count as multi-unit rental kind of . . .

Ms. White: Okay, so that was my question about it, and I don't have anything else, so I'll stop now.

Mr. Hurd: Okay. Sir, no, you need to come to the microphone.

Mr. Lemo: For probably the first three or four years, we had to pay for our own plowing and everything because Lang and Locke would not pave the neighborhood and we kept fighting for that. Then finally it was paved, and we didn't have to pay for plowing anymore.

Mr. Hurd: Okay.

Mr. Lemo: So, that took a bunch of years for that to actually correct. I lived in my house for almost four years . . .

Mr. Hurd: Okay, thank you.

Mr. Lemo: You guys can keep laughing at everything but . . .

Mr. Hurd: Sir, sir . . .

Mr. Lemo: You should be ashamed . . .

Mr. Lang: You should be ashamed [inaudible].

Ms. McNatt: Will?

Mr. Hurd: Jeff, Jeff . . .

Mr. Locke: It is our [inaudible]. The comments that are being made are slanderous.

Ms. McNatt: I just want to say one thing. Just to clarify, that is correct, I was the past president of the HOA for approximately six years when the HOA was established and then I moved out. I no longer live in that community, so I just want to clarify for the record.

Mr. Hurd: Clarify, yes. No, we've had that conversation. Okay, Jeff, a couple of minutes, if you can.

Mr. Lang: Yeah, I think that to set the record straight, the way this project worked is I was a minority partner brought in in 2005. Lang Development never had any involvement in this project. It's Iron Hill Properties. I just happen to be an investor in it. Because I was one of the only residents, actually the only resident from Newark, I continued to contribute to this project. Lang Development has had no involvement other than us giving our time, Chris Locke and my time, to the entity. We don't benefit at all from this project, Lang Development doesn't. I happen to still be one of two partners left. With the economic downturn, Wilmington Trust was ready to foreclose on the project. I stepped up, got rid of the other partners, found Cornell, brought Cornell in to buy the lots, otherwise the project wouldn't even exist today. What happened with Cornell, Cornell formed the homeowners association. I didn't form it. Cornell had to because they were selling lots. This argument they're talking about, Cornell developed that. When they buy their property, they sign, they read the homeowners association agreement that says what the agreement is. The homeowners association is supposed to pay X percent of everything and the condo association . . . we're not involved in any of this. Lang Development does not own anything up there. You know, when we say we have 15 of 16 units, that's an entity that was formed to buy those units back from the property owners.

Mr. Hurd: Right.

Mr. Lang: So, we shouldn't be talking about Lang Development, Chris, and Jeff. It's ridiculous. We're being disparaged in this discussion. Also, this whole sewer issue, I mean we are supposed to, we, meaning there's an entity, Iron Hill Properties, that collects the money from the condo association and the homeowner association. The homeowners association has not paid a dollar in at least three or four years to this entity. Anything that has to get done out there gets done by the condo association itself. There's 16 condo units and [inaudible] townhouses, and that group has not paid a penny in three years. So, any time something breaks out there, who pays for it? We do. We, meaning the entity Iron Hill Properties condo association. The homeowners association doesn't do anything. If we didn't pump out that pump station, they would not have the ability to have sewer. We do it because we feel responsible because we're giving back to the rest of this, trying to get this thing finished.

Mr. Hurd: Okay.

Mr. Lang: And the reason why that road did get paved is that the City wouldn't let us pave it because the City, in 2012 this was when Cornell did that project and the property was supposed to be turned over to the City upon completion. Cornell was building it. We could not get the City to agree to take over the road and we can't top the road until the City agreed to take it over. It took three years for the City to agree to take it over. So, the City does, took over that area as recently as a year ago after all that work was completed. All the work associated with all these lots, all the trees, all that stuff was supposed to be done by Cornell. We weren't supposed to have anything to do with that side of the project. We stepped in and did it because somebody had to complete it. Cornell didn't exist anymore. Cornell sold out to Ryan. Cornell doesn't even exist. So, we're stuck holding the bag and we're like the bad guys, which amazes me. That's what I can't figure out.

Mr. Hurd: Okay.

Mr. Locke: If I can address the pump station because it's very important. The pump station was built and approved by the City with the specifications. It was built for 88 units. There are currently 76 units using that pump station and there has been good communication between us and the City. Whenever there is a problem with the pump station, we go out immediately and we take care of it. There is an alarm on the pump station. There is a light on the pump station. We have an employee that lives out there and they alert us whenever there is a problem. So, we have addressed it every single time. Never has a condo owner, renter of a condo unit, or any owners of the fee-simple townhouses ever been affected by the malfunctioning of any pump station. We respond usually within 6, 12, or 24 hours. I was out there on a Thanksgiving for the entire day when it clogged up. Part of the issue is the amount of debris that is being flushed down there is what's clogging the pump station. And we met many times with the homeowners association. We met with Ms. McNatt as well as the gentleman who spoke earlier whose name escapes me, as well as Mike Hoffman, to try to address this. We actually commissioned a report on how to get the pump station to City specifications. In was done in 2018 and took about six months to do the report. So, we have worked in good faith to get this matter resolved. And as we've said in our comments, in the SAC comments, that we will address it at the appropriate time.

Mr. Hurd: Okay.

Ms. Escoto: Is that time after you . . .

Mr. Hurd: Sir, sir, no.

Ms. Escoto: I'm sorry.

Mr. Hurd: So, clearly there's a lot of perception and legal shifting of things and stuff. And you guys can appreciate that as now the public sort of face of things, a lot of ire is coming to you, even if it's not attributed to your actions and such. So, I just want to sort of clarify that.

I think we've heard what we need to hear about this. This is all stuff for construction improvement plan sort of negotiations. I'd like to bring it back to the table if there are no further additional public comments on issues we haven't already heard on. Okay. Bringing it back. Commissioner Silverman, you had indicated you had a further comment.

Mr. Silverman: Yes. With respect to controlling runoff on the site, and this may be more appropriate for your engineer, the illustration on the screen clearly shows two ponds, or retention ponds, on the facilities. So, previous development and this development have already taken into account detention and retention of any waters that will be flowing downstream?

Mr. Locke: Correct.

Mr. Silverman: So, the potential additional flooding load from this site would be de minimis. It's been handled with existing engineering.

Mr. Locke: That's correct.

Mr. Silverman: Okay and by my observation, the issue that the homeowners association has is a civil contractual matter. It's not a land-use matter that is properly vetted before this particular commission.

Mr. Locke: And normally, Mr. Silverman, I would not have responded but I felt it was important to have it out there.

Mr. Silverman: No, I understand that. Thank you.

Mr. Hurd: Okay. I'll just say I think one of my concerns here is evidenced kind of by the, sort of over the history, is ensuring compliance with the subdivision agreements and things that we have decided on, making sure that those things happen. I think the path is a particular sticking point for many people. The sewer and such are new ones in the future, so I just I don't know if there's an appropriate mechanism that makes sure that those issues are properly addressed and will be handled prior to, you know, COs and things like that.

Mr. Locke: I think it's the subdivision agreement, which we have . . .

Mr. Hurd: Right. But as indicated though, elements in that original subdivision agreement that don't exist and weren't constructed.

Mr. Locke: That subdivision agreement was amended by City Council.

Mr. Hurd: Right, but the original one. Do you see what I'm saying? It's like it was in the original agreement but it never happened, it got kind of mooched around, but I think that there are, my understanding is that there are items in that original subdivision agreement that are still carrying forward that have not been . . .

Mr. Locke: The only item is the walking path and Mr. Lang explained the reason we didn't construct it was because of the vacancy of the land there. That's the only item that we have not . . .

Mr. Hurd: Okay. Alright, any further comments or concerns or discussion points? No? Okay. Alright, Commissioner Wampler, I think we are ready for the Secretary's duty for the motion.

Mr. Wampler: I move that the Planning Commission recommend that City Council approve 1 North Twin Lakes Boulevard major subdivision as shown on the Karins and Associates major subdivision plan for The Village of Twin Lakes dated May 8, 2019 and revised February 12, 2020, with the Subdivision Advisory Committee conditions.

Mr. Hurd: Do I have a second?

Mr. Silverman: Second.

Mr. Hurd: Alright. I'd like to propose an amendment to that because I'm not sure if it falls into the Subdivision Advisory Committee conditions which would include, and I'm paraphrasing, but satisfactory resolution to the shared ownership issues, as appropriate. No?

Mr. Locke: There is a recorded legal instrument in 2011 that clearly explains that there's no resolution. As Mr. Silverman said, that's something for the court to decide if there is an issue or not. But there is a legally binding recorded document that clearly states what the common area shared expenses are.

Mr. Hurd: Okay.

Mr. Locke: So, I don't think it's . . .

Mr. Hurd: Paul, are you in agreement on that?

Mr. Paul Bilodeau: I don't have that document in front of me but . . .

Mr. Hurd: Is he correct that . . .

Mr. Bilodeau: I don't want to read it right now.

Mr. Hurd: Okay.

Mr. Bilodeau: But I would say that that amendment, that there's clearly some common ownership problems that need to get worked out with the utilities that Mr. Silverman brought up before.

Mr. Hurd: Okay and so it's your opinion that that is included in the . . .

Mr. Locke: It's a three-page easement . . .

Mr. Hurd: Well, the reason I bring it up is because we're creating a third lot, so additional, you know, there's additional part ownership and revisions.

Ms. McNatt: But won't those need to be amended when you add a new third-party based upon, legally, I would think, right?

Mr. Hurd: So, if I'm right, you're saying that all these agreements will get renegotiated as part of this process.

Mr. Locke: We're not renegotiating. The only difference is in there it says if there's increased number of units, the proportion shares change accordingly due to the increased number of units. That's already in the agreement.

Mr. Hurd: Okay, then I withdraw my amendment. But I will maintain my concern.

Mr. Silverman: The content of the agreement stands. The number of participants is variable.

Mr. Hurd: Alright.

Mr. Stozek: I guess I have similar concerns. When I came in here this evening, I thought this was going to be pretty straightforward. Obviously, it's not. I don't know whose fault is what. All I know is we've got a lot of existing owners or renters down there who are not happy. If we approve this, they're not going to be any happier and I'm not sure, I know it's not a land-use issue, but I'm concerned about people living in the area and neighborhoods and residents' rights, and I don't know what the legal issues are.

Mr. Hurd: Right.

Mr. Stozek: But to me, the ideal thing is to get these things resolved before this is approved. Because approving this project is not going to make things better.

Mr. Hurd: Right, so our recommendation I think at this moment does carry those concerns and such. Council is the approving body and has more leeway and more ability to address the citizen concerns and those things. Alright, is that it for discussion?

Ms. McNatt: Just to talk about your recommendation, can we make a recommendation to Council that the issues that were presented here be evaluated in a way that can be identified more clearly regarding the subdivision agreement, regarding maybe what documents were recorded at the time in 2011 versus what's being ultimately built out versus what was the intent in 2011 or before? Are there ways to do that?

Mr. Hurd: I do not know. Paul, any thoughts?

Mr. Bilodeau: What happened previously needs to be looked at. I have not seen the minutes from what happened in 2012. Like, for instance, with the conversation about the pool no longer, you know, I'm not privy to any of that. So, that, you know, the history will need to be looked at.

Mr. Locke: As the City Solicitor will know, whenever we have a subdivision agreement prepared by the City Secretary's Office, it is given to the City Solicitor who reviews it, as well as myself as chief counsel for Lang Development and we negotiate whatever the issues may be at that point in time.

Mr. Bilodeau: That is correct.

Mr. Hurd: Does that seem to address your concerns?

Ms. McNatt: Yeah, I just think to amend your motion, we need to put some type of language that alerts the Council of these things that need to be evaluated before it gets approved, so those recommendations are carried forward in some way. The concerns are carried forward in the recommendation. We can make it general based upon what's been said tonight or . . .

Mr. Hurd: Yeah, I don't know how to . . .

Ms. McNatt: We've done it before, I think.

Mr. Hurd: Yeah, I can't remember how we phrased it.

Mr. Stozek: These are obviously long-standing issues.

Mr. Hurd: Right, long-standing issues and concerns and such.

Mr. Wampler: Do members of City Council receive the minutes from this meeting?

Mr. Hurd: They do.

Mr. Bilodeau: They will. They will have the minutes.

Mr. Wampler: So, I would suggest that we vote on the motion that's made but maybe have a separate motion encouraging them to take a close look at the verbatim minutes and the concerns that were presented by the members of the public.

Mr. Hurd: Or I could, is that, the concerns and such of the public, is that something you would put, perhaps, in your report to Council? Or could put into your report to Council for this project? Would that be an appropriate place to put this?

Ms. Gray: I could.

Mr. Hurd: Okay, because that's something I know that they're going to read.

Mr. Bilodeau: They'll read the minutes, too.

Mr. Hurd: Okay.

Mr. Locke: I would be more than happy to submit the easement agreement that I've been referring to.

Ms. Gray: That would be helpful. I could attach that as an addendum.

Mr. Escoto: [inaudible]

Mr. Hurd: Okay. Sir, we've closed public comment. We do one per person on the issues.

Mr. Escoto: [inaudible] rebuttal.

Mr. Hurd: It's not a legal thing. We're not doing rebuttals and arguments. We're just trying to get through a land-use agreement approval here. Alright, Commissioner Kadar?

Mr. Kadar: One more comment.

Mr. Hurd: Yes?

Mr. Kadar: Would it be possible to include a statement in your future paragraph here in a minute that indicates that we'd like the Public Works group to take another look at the lift station in light of the fact that it was originally designed for 100, what was it 80 . . .

Mr. Locke: 88.

Mr. Kadar: 88 and it's running at 76 and there's continuous and constant issues, and we're now looking at adding another 24 units on top of that. Just asking them to take a look at those numbers and re-evaluate.

Mr. Locke: Just for the record, it is not a continuous and constant issue. Once every two years, once every 18 months, we have to go out and fix it. It's a mechanical system and we have to fix a pump.

Mr. Kadar: I'm not aware of how many times it breaks.

Mr. Locke: I know, I just wanted to clear this up.

Mr. Kadar: I'm just commenting on what I hear here and that it is an issue.

Mr. Locke: And we have agreed in the Public Works comments to re-look at the pump station and make whatever changes are necessary to address them.

Mr. Hurd: I think that Public Works and Sewer do have comments about ensuring that the operation is in compliance, so I think we're covered there. Alright, any further discussion? Alright, we'll move to the vote. All those in favor of the motion, signify by saying . . .

Ms. McNatt: Hold on . . .

Mr. Hurd: What?

Ms. McNatt: Sorry, didn't we amend the motion but now we're not amending the motion?

Mr. Hurd: I withdrew my amendment.

Ms. McNatt: Oh, I'm sorry, I didn't hear that part. You withdrew your amendment altogether.

Mr. Hurd: Yes.

Ms. McNatt: And so when you asked Mary Ellen if she was going to add those things to her report, is that . . .

Mr. Hurd: That's not part of the motion. That's just a recommendation to the Planning Director to make sure that these issues were highlighted in the report that goes to Council.

Ms. McNatt: Okay, it doesn't have to be part of the motion?

Mr. Hurd: No.

Ms. McNatt: Okay, thank you for clarifying.

Mr. Hurd: Okay.

Mr. Escoto: Can we still ask questions?

Mr. Hurd: No, sir, we can't. Alright, moving to the vote, all those in favor, signify by saying Aye. Opposed, say Nay. Okay, motion carries.

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

THAT CITY COUNCIL APPROVE THE 1 NORTH TWIN LAKES BOULEVARD MAJOR SUBDIVISION AS SHOWN ON THE KARINS AND ASSOCIATES MAJOR SUBDIVISION PLAN FOR THE VILLAGE OF TWIN LAKES DATED MAY 8, 2019 AND REVISED FEBRUARY 12, 2020, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS.

VOTE: 6-1

AYE: DRAKE, HURD, KADAR, MCNATT, SILVERMAN, WAMPLER
NAY: STOZEK

MOTION PASSED

Mr. Hurd: Alright . . .

Mr. Bilodeau: Is there going to be another motion for . . . ?

Mr. Hurd: That was the only motion.

Mr. Bilodeau: Okay, well the minutes, I thought that's what . . .

Mr. Hurd: I didn't feel that needed to be a motioned thing. I might be wrong, I don't know.

Mr. Bilodeau: Alright, I just wanted to make sure.

4. **REVIEW AND CONSIDERATION OF AN INCREASE IN THE SCHEDULE OF FEES IN THE MUNICIPAL CODE OF THE CITY OF NEWARK, CHAPTER 27 SUBDIVISIONS, SECTION 27-10 SCHEDULE OF FEES AND CHAPTER 32 ZONING, SECTION 32-3.1 SCHEDULE OF FEES.**

Mr. Hurd: Item 4, review and consideration of an increase in the Schedule of Fees in the Municipal Code of the City of Newark, Chapter 27 Subdivisions, etcetera, etcetera. We'll take a minute here to shuffle some papers around. Alright, Mary Ellen, who is, are you presenting on this?

Ms. Gray: Yes, sir.

Mr. Hurd: Okay.

[Secretary's Note: A link to the Planning and Development Department memorandum regarding an increase in the Schedule of Fees in the Municipal Code of the City of Newark can be found at the end of this document.]

Ms. Gray: So, this is for the proposed changes to the plan review and Public Works fees that are found in Chapters 27 and 32. The Chapters 27 and 32, in the fee sections, indicate that the fees be reviewed every two years and we're a little late. I mean it's not that we haven't reviewed them, it's just that we haven't acted upon a rate, any increase since they've been reviewed in 2016, which was the last time that fees were reviewed.

The City Council, as part of the 2020 budget discussions, directed staff to review the fees based on a rationale that reflects increased costs. Upon review, staff proposes that the increase be based on the Consumer Price Index as well as the Employment Cost Index since the fees had last been updated in 2016. According to the Bureau of Labor Statistics utilizing the CPI calculator, the overall inflation rate from January 2016 to January 2020 was 9% and the ECI rate from 2016 to 2019 was 10.1%, so staff has rounded this up to 10% to account for increased labor costs. And there are a couple of fees in there, I didn't do any planner math, that we rounded up or down to come to a round number.

Mr. Hurd: Got it.

Ms. Gray: So, the fees are described in the strikeout, the ones we're proposing to strike out. And underlined are the added, the additional fees. I'd be happy to take any questions.

Mr. Hurd: I'm just going to start with a couple of editing notes just for this. Line 26, the $700 fee was not struck in this text. I'm sorry, the Chapter 32 page.

Ms. Gray: Hold on. Chapter 32, let me look at it.

Mr. Hurd: Application petition fee under site plan approval.

Ms. Gray: You said Line 26.

Mr. Hurd: The $700 doesn't have the strike-out. It's underlined as if it were a new . . .

Ms. Gray: It's supposed to be stricken out.

Mr. Hurd: Yes, okay.

Ms. Gray: The increased fee is to the right of it.

Mr. Hurd: Yes. No, I get what, it just didn't format.

Ms. Gray: Got it.

Mr. Hurd: I had originally wondered why we had the fees for project removal from agendas in both sections, but then I noticed that each section is dealing with different fees and things, so that's why we needed it twice.

Ms. Gray: Yes.

Mr. Hurd: For Chapter 27, Line 52, you need a per acre at the end of that fee. And then on Line 93 . . .

Ms. Gray: 27?

Mr. Hurd: Line 52, you're missing the per acre language. And Line 93, again is missing the strike-out. So, that's my editable things. I think this is a great idea. I think two years is probably a good span and I'm sorry I jumped in first, so I will go to my left. Commissioner Wampler? I figured I'd get the nit-picky edits out of the way and then we can talk about substance. So, I'm turning to you if you have any questions or comments.

Mr. Wampler: Oh, I do not. Thank you.

Mr. Hurd: Okay. Commissioner Kadar?

Mr. Kadar: Do we need to wait four years to do the next one?

Ms. Gray: No. This has been a resource issue. My ultimate plan, and this is reflected in the Council meeting minutes for discussion with Council when we talk about the budget, my original plan was to ask for consultant money to review the fees in Chapters 27 and 32, as well as any other fees that are charged, that we charge for plan review. Like there are some other fees that the Electric Department for other services that the Electric Department does in relationship to, related to development that we don't charge, and to do a right-sizing and an analysis based on labor rates as well as what else, other entities do. When this review was done in 2016, that's what we did. We had more time then. We don't now. So, Council did not approve that amount for consultant fees to do an overall analysis. Instead, they directed staff to do this percentage increase. It is my fervent hope that we can do that type of analysis in the future, to do a comprehensive review in two years of all the fees.

Mr. Kadar: Okay.

Mr. Hurd: Thank you. Commissioner McNatt?

Ms. McNatt: Housekeeping, a couple of items. On Page 2, Chapter 27, Line 60, the proposed amount is a dollar and I think that there is a missing zero there.

Mr. Hurd: Good eye.

Ms. McNatt: I think it's supposed to be . . .

Ms. Gray: Let's see, Chapter 27, Line 60. Hold on a second.

Mr. Hurd: That's a bargain.

Ms. Gray: Is that a dollar? Wait, Line 60.

Mr. Hurd: Well, there's like two periods.

Ms. McNatt: There's a comma and a period and it's only . . .

Mr. Hurd: So, it's one, comma, zero, zero, point, zero. So, you're missing a zero.

Ms. Gray: Actually, it looks more like $100 with a comma, but yes, it certainly is supposed to be $1,000.

Mr. Hurd: Either way, it's . . .

Ms. McNatt: Right. And then I have some questions about Item 11, which is stormwater management facility maintenance fee for City-maintained facilities. Since there's a stormwater utility, do all now, not all stormwater facilities are going to be maintained by the City, correct? The stormwater utility does not take ownership of the stormwater facilities within the City limits. They still could be maintained privately in some cases.

Ms. Gray: It's my understanding that there are some stormwater management ponds that the City currently inspects, so this is for . . .

Ms. McNatt: I just think, I guess the reason I'm asking these questions, and I have another one for 12, is that I think that this fee may need to be evaluated or reviewed in detail to make sure, because I believe Chapter 27 is paid fees prior to, as part of reviews or applications, not post-construction. So, I think it's important that those numbers are reviewed and identified appropriately to cover maybe the correct costs versus I'm having a feeling, or I want confirmation, that these numbers support what is needed to cover those items so that the stormwater utility fees don't have to go up and that they can be justified as part of this process. Because I think this is also equally important as well as the stormwater utility fee. So, if we're not collecting enough money as part of the maintenance or annual inspections, then we need to make sure those are getting done and these numbers reflect that correctly. And I don't know how these numbers were officially computed because the stormwater maintenance and inspection aren't just based upon people hours, it's based upon work and effort put in to do that work. So, I just think these numbers need to be evaluated more closely at this time.

Ms. Gray: As I mentioned, these fees were put together due to an analysis back in 2016 and this is just an across-the-board increase based on Council direction to do a percentage increase. And it is my desire and intention that that in-depth analysis that you speak of, which is a great idea, be done when we have additional resources.

Mr. Hurd: I think that is a good point. When this was first done, we didn't have a stormwater management fee or any of that stuff.

Ms. McNatt: Utility.

Mr. Hurd: Utility. So, in that light, yeah, we would . . .

Ms. McNatt: Do we have a timeline of when that could be done in-depth, did you say?

Ms. Gray: That would be based on funding from Council. So, if we get funding from Council to get a consultant, we do not have the current capacity right now to do this type of analysis in-house, to do that type of in-depth analysis in-house. We just don't have the manpower.

Ms. McNatt: Is there current funding listed in the current budget?

Mr. Hurd: No.

Ms. Gray: As I mentioned, I asked for funding and it was denied.

Ms. McNatt: Oh, okay, I didn't hear the word denied. Thank you.

Mr. Hurd: So, it's the next budget cycle.

Ms. McNatt: Yep, okay. Thank you.

Mr. Stozek: How much did you ask for? I'm just curious.

Ms. Gray: $25,000.

Mr. Hurd: Is that all? Okay, Commissioner Silverman?

Mr. Silverman: No comment.

Mr. Hurd: Okay. Are we, are you looking for approval or are we just reviewing?

Mr. Stozek: Will?

Mr. Hurd: Oh, how did I miss that half? I'm so sorry. Commissioner Stozek?

Mr. Stozek: Yeah, I remember when this, I was probably the only person on the Commission . . .

Mr. Hurd: No, I've been here longer than you.

Mr. Stozek: Really? We'll have to compare notes.

Mr. Hurd: Yeah, but Alan dates me by a year.

Mr. Stozek: Anyhow, I remember one of the big issues that drove this was the fact that it was stated that, I mean these are, by-and-large, fees for services that the City performs. And the statement was made back when that nowhere were we coming near to cover the costs that we were putting out . . .

Ms. Gray: Right.

Mr. Stozek: And that was the point of doing the study and increasing the fees over time. I realize you haven't had the in-depth study but, I mean can you give me some sense of how close we are to covering our costs by doing this? I mean, again, the applicants should be paying for these things. The taxpayers shouldn't be subsidizing these and that's why I think it's important to make the case to Council to give you the money to do this study.

Ms. Gray: I haven't looked in-depth at the 2016 analysis. Mr. Fruehstorfer, Planner Fruehstorfer, did that analysis. The intent of these fees is not to cover the reviews 100%. It is to offset the costs. So, what that percentage is, I cannot tell you off the top of my head. But we did do an analysis. But to do that really deep dive, no, we haven't.

Mr. Stozek: I guess I'm wondering is are the fees to cover the cost of actually doing these services and I would guess it's not to cover the cost of the personnel in your department.

Ms. Gray: Correct.

Mr. Stozek: So, it's just to cover these services.

Ms. Gray: Yes, sir. So, what you're looking for is the delta between . . .

Mr. Stozek: Right.

Mr. Hurd: Okay. Commissioner Drake?

Mr. Drake: No comment.

Mr. Hurd: Okay. Coming back, I didn't see here that you're looking for a motion. Are you looking for approval?

Ms. Gray: I forgot to include a motion. Yes.

Mr. Hurd: So, you'd like a motion?

Ms. Gray: A recommended . . .

Mr. Hurd: A recommendation of approval.

Ms. Gray: Yes, with the changes that you articulated.

Mr. Hurd: Are you ready for that, Mr. Wampler?

Mr. Wampler: Sure

Mr. Bilodeau: Do we want any public comment?

Mr. Hurd: Oh, where is my head today?

Mr. Wampler: Then, no.

Mr. Hurd: Any public comment on this agenda item? No? Okay, pulling that back. That last one took a lot out of me. Alright, Mr. Secretary, may we have a motion?

Mr. Wampler: I move that we recommend to City Council that they accept the proposed changes to the land-use application, plan review, and Public Works and Water Resources fees found in Chapters 27 and 32.

Mr. Hurd: As amended here tonight. As amended by us tonight.

Mr. Wampler: As amended.

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

Mr. Kadar: Second.

Ms. McNatt: Second.

Mr. Hurd: Okay. Any discussion on the motion? Alright, moving to the vote, all those in favor, signify by saying Aye. Opposed, say Nay. The motion carries.

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

THAT CITY COUNCIL APPROVE THE PROPOSED CHANGES TO THE LAND-USE APPLICATION, PLAN REVIEW, AND PUBLIC WORKS AND WATER RESOURCES FEES FOUND IN CHAPTER 27 AND CHAPTER 32, AS AMENDED BELOW BY THE PLANNING COMMISSION AT THEIR MARCH 3, 2020 MEETING:

A. CHAPTER 27, SECTION 27-10
    1. (a)(8)(b) – <u>$825.00 PLUS $275.00</u> SHOULD READ AS <u>$825.00 PLUS $275.00/ACRE</u>
    2. (a)(11)(b) – <u>$1,00.00</u> SHOULD READ AS <u>$1,000.00</u>
    3. (a)(24)(b) – <u>200.00 PLUS COST</u> SHOULD READ AS ~~200.00 PLUS COST~~
B. CHAPTER 32, SECTION 32-3.1
    1. (a)(4)a. – <u>700.00</u> SHOULD READ AS ~~700.00~~

VOTE: 7-0

AYE: DRAKE, HURD, KADAR, MCNATT, SILVERMAN, STOZEK, WAMPLER

NAY: NONE

MOTION PASSED

5. **DISCUSSION OF AMENDMENTS TO THE 2018 INTERNATIONAL ENERGY CONSERVATION CODE PROPOSED BY THE GREEN BUILDING CODE WORK GROUP.**

Mr. Hurd: Alright, I'll be handing over the reins to Commissioner Silverman because I'm going to go present.

[Secretary's Note: Mr. Silverman temporarily assumed the role of Planning Commission Chair at 8:43 p.m.]

[Secretary's Note: During his presentation, Mr. Hurd referred to a PowerPoint presentation being displayed on the screen for the benefit of the Commission and the public. A link to Mr. Hurd's presentation and the Planning and Development Department memorandum regarding proposed amendments to the 2018 International Energy Conservation Code can be found at the end of this document.]

Mr. Silverman: Mr. Chairman, do you wish to do your own introduction in the interest of time, since we're at 8:45 p.m.?

Mr. Hurd: Oh, yes. Let me see if I can get this closer. Alright, can you hear me okay? Good evening, I'm Planning Commissioner Will Hurd and tonight I'll be discussing the process involved in the development of the proposed amendments to the 2018 edition of the International Energy Conservation Code, known for the rest of tonight as the IECC.

So, how did all this start? Over the course of several discussions at Planning Commission, we've recognized that the current LEED-like credits in the Code, which are based on LEED 2009, have been overtaken by the current energy codes, as you can see in this chart here. Significantly, the change from 2009 to 2012 IECC, which is the currently adopted state code that most municipalities are working against, is an 18% increase in efficiency. So, we are essentially awarding points to people just for complying with the current energy code without additional effort on their part.

In August 2018, the Planning Commission authorized the creation of a work group to revise the amendments to the upcoming adoption of the 2018 IECC. But why adopt amendments to the IECC, some of may ask? Generally, the code is made more stringent each cycle, so we would be improving the general performance of the buildings of Newark every time we adopt the most recent edition. But is that enough?

There are several reasons for vetting the code to require performance beyond the required minimums. The first and most important reason, I think for us, is that we have demonstrated as a City, starting back in 2008 when the original amendments were adopted, that we are committed to reducing the impact of construction. One impact of building construction operations is carbon emissions. As of 2018, buildings produce almost 40% of global CO_2. Of that, almost one-quarter of that, over one-quarter of that CO_2 is embodied carbon, with the rest contributed by building operations. Embodied carbon is the carbon involved in, emitted during the manufacture or the transport of the construction building materials as well as end-of-life emissions. So, to fully address CO_2 reduction, we have to address both aspects of the construction process – both materials and the operation of the building.

In addition, the recently adopted Newark Sustainability Plan reflects the City's goals around energy conservation and also incorporates our work to support their goals related to sustainable design and reduction of energy use. The Sustainability Plan also goes into greater detail about the need for and a plan for reducing greenhouse gases.

And, finally, there is a state mandate that all new residential construction be zero net energy capable by the start of 2026, and all new commercial construction by the start of 2031.

So, we formed a work group using similar principles to the Parking Subcommittee, selecting members of groups that are engaged in the process of construction and development in the City. We wanted to be sure that all the critical viewpoints were at the table. We had members from the Planning Commission, the Conservation Advisory Commission, the Design Review Committee, Code Enforcement, the development community, and the construction community.

The first meeting was in November 2018 with a plan I had optimistically put out for six months of meetings, and our last meeting was February 2020. I'm not good at that kind of planning sometimes. In addition to the regular monthly public meetings of the work group, we wanted to be sure that the groups directly affected by the proposed changes were explicitly included. So, in February, we held a public workshop to which we invited anyone who had submitted a major subdivision plan in the last three years and general construction firms that have built projects in the City. We took the one comment from that meeting back to the work group where, after some final discussion, we adopted the amendments you have here. Tonight, and also at City Council in two weeks, this is a presentation and discussion to familiarize you with the material produced and to provide context information around the development of the amendments. Next month, we will be asking the Planning Commission to formally consider the amendments for recommendation to Council. So, I just wanted to be clear also that this is not a recommendation process. This is simply discussion tonight.

So, our process. We knew that the amended code had to be enforceable, clearly written, not require large incremental costs, and ideally, encourage an integrated design approach. We concluded quickly that the focus of the revisions would be on reducing energy use, encouraging installation of renewable energy, reducing the use of water and other natural resources, reducing construction waste, and improving indoor environmental quality. We also started a discussion that lasted almost the whole time we were meeting about what projects this revised code should apply to. The current code is only applied to commercial projects over 25,000 square feet and major residential subdivisions of five units or more. And finally, we wanted to ensure that the applicants addressed all three of the main categories that we had identified in their designs.

Our next steps were to evaluate current green building codes and standards and other actions undertaken by other communities to see if they aligned with our goals and priorities. We quickly determined that there wasn't any one standard that matched our goals and we were reluctant to require a third-party proprietary code and certification because of the added expense. But we did strongly agree with the current trend of stretch codes. A stretch code is a locally-mandated code or alternative compliance path that is more aggressive than base code, resulting in buildings that achieve higher energy savings. Massachusetts in 2009 and New York State in 2015 adopted stretch codes state-wide, and a number of other municipalities, especially in California as well, to support the overall push for net zero energy buildings. The main advantage of stretch codes is that as the base code improves, the performance does as well.

So, we set about developing our own set of credits using 20% beyond code minimums as a goal. We started with the model stretch code provisions from the New Buildings Institute and then referenced several additional sources – the International Green Construction Code, LEED v4, ASHRAE 189.1, the Standard for Design of High-Performance Buildings, ASHRAE 700, the National Green Building Standard for Residential Buildings, and Passive House to identify concepts we should include. We lowered the threshold for projects that are required to comply from 25,000 square feet to 5,000 square feet for commercial and from five units to three units for residential subdivisions based on data from issued permits over the previous years. As we developed these credits, we had long discussions around the points, both total and for each credit, and how to best use them to accomplish our intentions. We doubled the required points from 25 to 50 so that we could require a reasonable number of points from each category and still have optional points left over, or available, I should say. And though we doubled the required points, we also expanded the available points from 44 to 156 in the commercial section and from 43 to 168 for residential to provide many more choices for building designer. We gave more points for credits that were either difficult or expensive to provide or were actions that we really wanted to encourage. Easy or less effective options got fewer points. And we rewarded integrated design in modeling and third-party rating systems by providing opt-out paths. And then by linking the site plan approval process to these new credits, removing the current credit of LEED certified, we could also include site-related credits that addressed issues we were seeing in redevelopment projects and ones that we felt were valuable to the City.

Every credit was discussed several times before it was included and evaluated against three criteria. Effective – will it actually achieve the results we desire and can it be evaluated by the Code Enforcement team at the time of permit submission or during construction? Prudent – is the cost of the credit compared to the effectiveness and will it significantly inhibit development? And finally, fair – is the credit independent of any one standard or does it benefit one group of people over another? And this is just a short breakdown because I'm not going to read the whole thing to you. I've done that enough times in the minutes, as Michelle knows. But the three main categories are energy conservation, which addresses the building envelope, mechanical equipment, domestic hot water, lighting and electrical power, and renewable energy generation; resource conservation, which addresses, obviously, conservation and efficient use of materials, site location and treatment and facilities; and finally, indoor environmental quality, which addresses the quality of the interior environment such as ventilation, low-emitting materials, daylighting and views.

And that is the end of my prepared remarks. I am now prepared for any questions, comments, discussion. I'll let the acting Chairman recognize members.

Mr. Stozek: I have a couple just for clarity. At one point you talked about opt-out criteria. What is that?

Mr. Hurd: Alright, I'm putting the microphone back. Okay, if you turn to your hefty packet of the code, we'll start here with the one for commercial projects. The alternative compliance path which is that if you use an established rating system at a sufficient level, so we identified LEED Gold or higher, Passive House Certified, International Green Building Code Compliant, or designed to be a net zero energy building, you get all 50 points and you're done. You demonstrate compliance, you get that rating, and you're done. We felt that that was a sufficient trade-off for the effort and expense involved in going through one of those processes. If you're not looking to do that but you want to do, you're willing to do a little more work, we have two stretch performance options where if you can basically demonstrate through engineered modeling, which is an additional expense, that the building is going to be 20% better than code or 40% better than code, you get 30 or 40 points, done. You still have to get the remaining 20 or 10 points but you can get them from any, you can get them from the categories and we also reduced the minimums. And if you're not going to go that way, then you have to get 24 points in energy, 8 in resource conservation, and 8 in indoor environmental quality. That was, again, it was a long conversation, but that was our way to say if someone is going to take that path and do the effort and provide, basically, documentation ensuring that we have a reasonable hope of meeting that goal, we're going to give them the points plus a little, because again it's a more expensive option, but still require . . .

Mr. Stozek: Okay, and just to be clear we're all on the same definition of terms. You're saying by 2025 be carbon-free by 2030. What do you mean by carbon free?

Mr. Hurd: Are you talking about the state requirements?

Mr. Stozek: Well, it's the goal of the City of Newark. It's Goal 3.3.

Mr. Hurd: Oh, that's the Sustainability Plan. We didn't get into so much the carbon aspect of things in our code. We were working more on the energy side and I'm not sure that we were as fully aware of that being a goal from the Sustainability Plan. Certainly, much of what we're doing is going to move towards a more carbon-neutral space. And as we raise the bar, it becomes easier to raise it a little more or shift things a little bit. So, we start by saying, okay, we're doing 20% better on energy . . .

Mr. Stozek: But by carbon-neutral, you're saying not relying on fossil fuels? Is that your definition?

Mr. Hurd: Yes, but carbon-neutral also applies to materials.

Mr. Stozek: Okay.

Mr. Hurd: So, you're having to think about the carbon cost, basically, of every piece of material that goes into the building if you're going to be truly carbon-neutral.

Mr. Stozek: Okay. And then to meet state requirement 7602, I'm just curious by the wording. As of December 31, 2025 all new residential building construction in the State of Delaware shall be zero net energy capable.

Mr. Hurd: Right.

Mr. Stozek: What does energy capable mean?

Mr. Hurd: It means that the energy required to run the building could be generated onsite by whatever technology is there. So, it basically means that if I put up photovoltaic panels on my available roof area, I could run my building. So, it means that you could be balanced by carbon generation, onsite generation. What it effectively means is that we're trying to get buildings to go on an energy diet and to get as efficient as possible so that they could be locally produced or such.

Mr. Stozek: I guess I don't understand the distinction between being zero net energy consumption versus capable. It seems like you're saying you could do it, but you don't have to do it.

Mr. Hurd: So, one requires you to actually install energy generation equipment and one doesn't. So, I think the state backed off from requiring people to provide photovoltaic panels or wind turbines or whatever to say let's make it so you could, but that limitation of you could or it could be balanced, does enforce, you know, if I have a small lot and I've got a 2,500 square foot house and I've only got so much roof, there's only so much energy I can produce onsite. That limits my ability. So, it's a way to enforce an energy restriction without an additional cost.

Mr. Stozek: Okay, I won't argue now but . . . that's fine.

Mr. Hurd: That's my understanding.

Mr. Stozek: Yeah, I realize it's bureaucratic legalese and whatever.

Mr. Hurd: Yeah.

Mr. Stozek: Okay, that's all I have right now.

Mr. Silverman: Any other questions from the Commissioners?

Mr. Wampler: Not a question, it's a comment. Looking through this, I thought this was so comprehensive and so clearly laid out that I just want to commend everybody who worked on it. I think obviously a great deal of work went into this and I really commend everybody who was in the work group for putting it together because I think it's a really impressive piece of work.

Mr. Hurd: It was a lot of work. I'm glad we spent the extra time to work on it because I think we polished it up and we found little things and we rewrote stuff and it really, you know, we passed it from hand-to-hand. I wrote some of it and I passed it to Tim. Tim did the same and handed it back. Yeah, we're proud of it.

Mr. Silverman: Okay, we have been in session for two hours. The Chair will exercise the prerogative to extend our time per our operating procedures, if there are no objections. Okay, hearing none, we will continue.

Mr. Hurd: Any public comment on this?

Mr. Silverman: Are there public comments? Okay, there are no public comments. Thank you, Will.

Mr. Hurd: Alright, you're welcome.

Ms. Gray: Mr. Chair, as point of order we will be presenting, taking this back to the Planning Commission in ordinance form for review and discussion on the recommendation of an actual ordinance in April. And I believe, Will, you mentioned going to Conservation Advisory Commission before Council.

Mr. Hurd: Yeah, so I will be presenting probably an abbreviated form of this to the Conservation Advisory Committee next week to get their blessing. And then, yes, to Council the following week. The same format. Hopefully with a similar lack of questions.

Mr. Silverman: Okay, and Commissioner Hurd is back in the Chair role.

[Secretary's Note: Mr. Hurd assumed the role of Planning Commission Chair at 9:02 p.m.]

6. **INFORMATIONAL ITEMS.**
    a. **PLANNING AND DEVELOPMENT DEPARTMENT CURRENT PROJECTS**
    b. **PLANNING AND DEVELOPMENT DEPARTMENT LAND USE PROJECT TRACKING MATRIX**
    c. **PLANNING DIRECTOR'S REPORT**

Mr. Hurd: Alright, I guess we are moving to Item 6, informational items, which includes our Planning Director's report.

Ms. Gray: Okay, it's short. Okay, I'm trying to streamline this report to keep you all informed as to what is going on from a Planning Commission standpoint regarding projects in the City. So, approved projects and projects going to Council, on February 10, Council approve the proposed patio ordinance which provides design guidelines for patios in the downtown area and allows for patios for restaurants that don't serve alcohol. It allows patios larger than 1,000 feet if an amenity such as public art or recreation is included in at least 10% of patio space. On February 10, as well, Council approved a special use permit for an establishment called Oh-So Cycle that is to be located on the South Main Plaza project. On February 24, Council amended the Comprehensive Plan for 19 Amstel Avenue to high-density residential and directed staff to start proceedings to rezone the property to RM, which is multi-family garden style apartments and to develop an ordinance that would allow fraternities and sororities by special use permit in RM zones. This is planned to be on the Planning Commission agenda next month, so you'll be seeing that shortly. Upcoming on Council on March 9 is a special use permit for Margherita's Pizza located across the street to serve beer and wine. On March 6, that's not right, I'm sorry on March 6, is that right? No, wait 16th, I missed a 1, at 6:00 p.m. we will be giving a demonstration out in the parking lot here to Council on, this is regarding Unicity. We are, let me take a step back. I have been working with Tom Fruehstorfer as well as staff at UD to try to make the Unicity more efficient as well as to be more of a bus system. So, we are recommending some improvements to the system and before we're bringing a budget amendment to Council regarding those improvements, we're going to do a demonstration to talk about the improvements that we're seeking to get approved. So, this will just be a discussion and demonstration. We're looking at the kneeling bus that UD currently uses. We're talking about a GPS system that will allow, will have tracking on the buses and then will have an app on your phone, the same app that UD has, so you can see the bus route as well as where that bus actually is on your phone. And a security camera system. As well, we're looking at some improvements and some changes to the bus routes themselves. On March 23 at Council there will be a second reading of the Milford Run subdivision and annexation and Planning Area 7.

Some activities and meetings of note, we had a Parking Workshop here at Council Chambers on February 25. We had a morning session and an afternoon/evening session to talk about the current efforts of the consultant. This is part of the implementation of the work plan, the outcome of the Parking Subcommittee and also to get comments and input from the public. We also had a technology station where we talked about the new technology for parking. Upcoming meetings, oh, we also had our TID Committee, our Transportation Improvement District Committee on February 19. Upcoming meetings, just meetings of note, we have many more, but these are just some public meetings that are coming up this month. On March 11, our TID Committee is meeting again from 1:30 to 3:30 p.m. On March 12, the Rental Workgroup will meet from 4:00 to 6:00 p.m. in this room and they'll be talking about a debrief of the Council meeting on February 3, and to talk about next steps in finalizing the recommendations as well as prioritizing recommendations to be presented to Council in early May. And on March 31, the TID are planning a public workshop on the Transportation Improvement District, the current levels of effort, as well as levels of service, and it will be a drop-in workshop from 4:00 to 7:00 p.m. So, we're still working on the final plans for that, but I just want to get that on folks' calendar. Also included, if you are so inclined, in our weekly activity report, we are including activities of our Property Maintenance Inspectors as well as the Building Code Enforcement Officials. So, we're trying to get, have a little bit more detail on what those activities are and what they include, as well as we have been traditionally including our Parking and Land Use division activities. That concludes my comments.

Mr. Hurd: Alright, thank you so much. There's a lot going on.

Ms. Gray: You're welcome.

7. **NEW BUSINESS**

Mr. Hurd: Item 7, new business. Any new business by the Commissioners for us to think about? No? Alright.

8. **GENERAL PUBLIC COMMENT**

Mr. Hurd: Last up, general public comment. Alright.

Ms. McNatt: I have a public comment.

Mr. Hurd: Public comment?

Ms. McNatt: Yeah, public comment, sure. It's not new business, it's not an agenda item.

Mr. Hurd: Yeah, public comment, we don't say it can't be Commissioners.

Ms. McNatt: It's my understanding that all municipalities including unincorporated areas of New Castle County are updating their hazard mitigation plan that is being presented to be adopted in about a month or so, which goes to FEMA and other organizations, so I just wanted to put that out there. So, if anybody is interested, I think there's a website somewhere, but it's the, it incorporates all municipalities and everything in New Castle County.

Mr. Hurd: Alright. Do I have a motion to adjourn?

Mr. Drake: So moved.

Mr. Stozek: So moved.

Mr. Hurd: Do I have a second?

Ms. McNatt: Second.

Mr. Hurd: All in favor, Aye. Thank you.

There being no further business, the March 3, 2020 Planning Commission meeting adjourned at 9:09 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 (1 North Twin Lakes Boulevard)
Exhibit B: Planning and Development Department handout (1 North Twin Lakes Boulevard)
Exhibit C: Applicant presentation (1 North Twin Lakes Boulevard)
Exhibit D: Planning and Development Department memorandum (Increase in Schedule of Fees)
Exhibit E: Planning and Development Department memorandum (Amendments to 2018 IECC)
Exhibit F: Green Building Code Work Group presentation (Amendments to 2018 IECC)