

CITY OF NEWARK  
DELAWARE

PLANNING COMMISSION  
MEETING MINUTES

MICROSOFT TEAMS  
MEETING CONDUCTED IN PERSON

DECEMBER 5, 2023  
7:00 P.M.

Present at the 7:00 P.M. meeting:

**Commissioners Present:**

Chairman: Willard Hurd, AIA  
Vice Chair: Alan Silverman  
Secretary: Karl Kadar  
Scott Bradley  
Kazy Tauginas  
Chris Williamson  
Alexine Cloonan

**Staff Present:**

Renee Bensley, Director of Planning and Development  
Jessica Ramos-Velazquez, Deputy Director of Planning and Development  
Michael Fortner, Senior Planner  
Joshua Solge, Planner II (Virtual)  
Danielle Mapp-Purcell, Code Enforcement Administrative Professional

**Chair Hurd called the meeting to order at 7:02 P.M.**

Chair Hurd: There we go, alright. Welcome everyone, good evening. Welcome to the December 5<sup>th</sup>, 2023, City of Newark Planning Commission meeting, this is Will Hurd, Chair of the Planning Commission. Am I correct that there is nobody currently online?

Ms. Mapp-Purcell: There is one person online.

Chair Hurd: Ok, then I'm going to skip my general opening statement on hybrid meetings, except to say that the city strives to make our public meetings accessible. While the city is committed to this access, pursuant to 29 Delaware Code 100006A, technological failure does not affect the validity of these meetings nor the validity of any action taken in these meetings.

**1. Chair's Remarks**

Chair Hurd: Ok, that takes us to item 1, Chair's remarks. I don't really have anything, but I decided that I'm going to try to start mixing it up with the alphabetical listing of Commissioners for commenting so the first item is going to start with Commissioner Cloonan instead of Commissioner Bradley as we often have, and I think each month I'm going to start with a different person so it's not always the same person starting. That's all for that item.

**2. Minutes**

Chair Hurd: Item 2, the minutes. Are there any corrections or edits to the minutes from November 7<sup>th</sup>? Alright, seeing none the minutes are approved by acclimation.

**3. Review and consideration of the Planning Commission 2024 Work Plan**

Chair Hurd: And that takes us to item 3, review and consideration of the Planning Commission 2024 work plan and all its goodness and thank you to the Commissioners who did send in comments and ideas and topics and all that. I believe we've gotten everything in. Ok, Director Bensley, will you be starting?

Director Bensley: Sure. Other than deleting the stray number 8 at item 29 that I just noticed we believe that we've captured everything that came both from the discussion at the November 7<sup>th</sup> Planning

55 Commission meeting as well as the separate comments that were sent in via email since that meeting.  
56 So, if anyone has any further additions or changes, please let us know. Otherwise, I will present this to  
57 you for approval. Thank you.

58 Chair Hurd: There we go, thank you. Commissioner Cloonan, any comments?

59 Commissioner Cloonan: None.

60 Chair Hurd: Ok, Commissioner Kadar?

61 Commissioner Kadar: I have no comments.

62 Chair Hurd: Alright. Commissioner Silverman?

63 Commissioner Silverman: I have no comments.

64 Chair Hurd: Thank you, Commissioner Tauginas?

65 Commissioner Tauginas: No comments.

66 Chair Hurd: Ok, Commissioner Williamson?

67 Commissioner Williamson: The only comment is to acknowledge staff and thank them for attentiveness  
68 and so forth so thank you.

69 Chair Hurd: Ok, Commissioner Bradley?

70 Commissioner Bradley: I have no comments.

71 Chair Hurd: Ok, my only comment sort of on line 37 where it talked about considering amendments to  
72 the zoning and subdivision regulations as they pertain to development plan submittal requirements, I  
73 think if we've still got this around, this is the item that I've sort of been pushing, it's about requirements  
74 for early reviews because we don't really have that language in here. And that's the thing I would like to  
75 try and get enacted, a kind of early review process. Commissioner Silverman did point out, do we need a  
76 start date for this or is it just the 2024 Work Plan for the calendar year?

77 Director Bensley: It is just the 2024 Work Plan for the calendar year.

78 Chair Hurd: Ok, then I think we're good. Once we approve this, do we have an approval date to it or is it  
79 just...

80 Commissioner Silverman: This is the second or third edition of this so this would carry today's date,  
81 correct?

82 Director Bensley: How we did it last year, we added a line under the title that it was approved by the  
83 Planning Commission on X date, so we would add that as well.

84 Chair Hurd: Ok, thank you.

85 Director Bensley: I'd also suggest that when this is presented to Council, it should have a cover memo  
86 attached to it kind of explaining to Council members who might not have seen it before, the background,  
87 the code statutes, what it is, so on and so forth.

88 Chair Hurd: Ok, alright thank you. Well, if there are no further comments we can move to the vote for  
89 approval. And since we are all present...sorry I'm off track here. Secretary Kadar, may I have the motion  
90 please?

91 Commissioner Kadar: **I move that the Planning Commission recommend that the City Council accept**  
92 **the Planning Commission 2024 work plan as presented at this meeting.**

93 Chair Hurd: Alright thank you, do I have a second?

94 Commissioner Bradley: Second.

95 Chair Hurd: Alright, any discussion on the motion? Alright seeing none, all those in favor say aye.

96 All Commissioners: Aye.

97 Chair Hurd: Opposed say nay? Alright motion carries.

98

99           **4. Review and consideration of amending Chapter 27, Subdivisions, to make definitions of**  
100           **“downtown” consistent throughout the chapter.**

101 Chair Hurd: That takes us to item 4, review and consideration of amending Chapter 27, Subdivisions, to  
102 make definitions of downtown consistent throughout the chapter. Who’s taking this?

103 Director Bensley: Planner Solge will be presenting this item remotely, so Danielle if you could activate his  
104 microphone and camera? Not sure if he’s going to use his camera, but he’ll definitely be using his  
105 microphone.

106 Chair Hurd: And then Danielle?

107 Ms. Mapp-Purcell: Yes?

108 Chair Hurd: While you’re doing that would you just switch the camera to us?

109 Director Bensley: That’s what we’re having some technical issues with right now and we’re waiting for IT.

110 Chair Hurd: Oh ok. I just thought someone was getting ahead of where I wanted the camera to be  
111 pointed.

112 Director Bensley: No.

113 Ms. Mapp-Purcell: I do not have Josh as...

114 Director Bensley: He’s on as Josh Solge.

115 Ms. Mapp-Purcell: I don’t have him as an option to mute or unmute.

116 Chair Hurd: You can unmute him, but you can enable him to be unmuted. We’re going to take five.

117 (Inaudible chatter)

118 Planner Solge: Good Evening everyone, can you hear me?

119 Commissioner Bradley: Yes.

120 Planner Solge: Thank you, Joshua Solge, Planner for the City of Newark. Am I ok to begin?

121 Chair Hurd: Yes, you are.

122

123           **\*\*\*Due to Technical Issues the audio cut out from 7:10 to 07:12 PM\*\*\***

124           **Appended Meeting Notes (Provided by Planner Solge)**

125 Planner Solge: Good evening everyone, I am presenting another housekeeping amendment for your  
126 consideration tonight. The Planning Department has identified an inconsistency in the language defining  
127 downtown found in Chapter 27, Subdivisions and proposes to correct it. Currently Section 27-20(a)(1)c.21  
128 and Section 27-21(b)(1)a.3.(xxi) both state that business zoned properties fronting on Main Street,  
129 between Elkton/New London Road and Capitol Trail/Library Avenue are subject to Appendix XIII. However,  
130 Chapter 27, Appendix XIII(b) provides an expanded definition of downtown that incorporates a section of  
131 East Delaware Avenue and a number of side streets between East Delaware Avenue and East Cleveland  
132 Avenue in addition to South Main Street and East Main Street. The full definition can be found between  
133 lines 35 to 55 in the Planning Report. This expanded definition was part of the BB/RA code changes  
134 approved in 2022.

135 Planning proposes to amend Sections 27-20 and 27-21 by removing language that defines applicable  
136 properties and instead replacing it with language directing to the definition of “downtown properties” and  
137 enhanced review requirements provided in Appendix XIII. Planning also proposes to amend Appendix  
138 XIII(b) to clarify all references to East Main Street where East Main Street is currently referred to as simply  
139 Main Street. The precise language proposed for both can be found in the Planning and Development  
140 Report. Thank you.

141           **\*\*\*Audio was Restored at 7:12PM\*\*\***

142

143 Chair Hurd: Alright, thank you we will begin with Commissioner Kadar for any questions or comments.

144 Commissioner Kadar: No, all of the changes are fairly straightforward, I have no additional comments.

145 Chair Hurd: Alright, thank you. Commissioner Silverman?

146 Commissioner Silverman: Will the definitions that are in the CL district currently carry over into these  
147 chapters?

148 Director Bensley: You mean the BL district?

149 Commissioner Silverman: Yes, in the BL district.

150 Director Bensley: So, the intent of this, there we go, you think I'd be good with this microphone thing by  
151 now, not so much. So, the intent of this is to provide consistency in Chapter 27 because that's where the  
152 appendix is where we changed the definitions when we did the whole BB and RA rezoning changes. So,  
153 we didn't change anything with BL during that effort, so we did not bring that change forward as part of  
154 this, we were just trying to make this change consistent within the subdivision chapter. So, we can go  
155 back and look at BL if we need to, but that was not contemplated as part of this change.

156 Commissioner Silverman: Ok, would clinics be permitted in this new district?

157 Director Bensley: I'm sorry, would what be permitted?

158 Commissioner Silverman: Medical clinics.

159 Chair Hurd: So, this is related to the design standards.

160 Commissioner Silverman: Ok.

161 Chair Hurd: Just making sure that we're referring properties within the downtown district to the design  
162 standards.

163 Commissioner Silverman: Ok.

164 Director Bensley: Yep.

165 Commissioner Silverman: Then I have no further questions.

166 Chair Hurd: Ok. Commissioner Tauginas?

167 Commissioner Tauginas: Is this on?

168 Chair Hurd: It's on.

169 Commissioner Tauginas: Ok, yeah, I was just going to say no questions or comments, pretty  
170 straightforward.

171 Chair Hurd: Ok, thank you. Commissioner Williamson?

172 Commissioner Williamson: Question, so this takes care of those internal parts of the zoning code, just  
173 don't have to have an answer just wondering what's in the comprehensive plan and other planning  
174 documents and a question for the barrister way down there, is there a way to have a blanket action by  
175 Council and just change these technical things in all the related documents instead of coming one by one  
176 or something? Just an idea.

177 Chair Hurd: Yeah, really what is this?

178 Solicitor Bilodeau: I know when you're making changes to the zoning ordinance you need to do it by  
179 ordinance with first and second readings, it's a pretty, you know, I don't want to say convoluted, but I  
180 think unfortunately you've got to go through those procedures, at least the way things are set up now.

181 Commissioner Williamson: Thank you. Could the Council pass a resolution that just gives staff the  
182 authority to make these changes to other documents as needed that are not ordinances?

183 Solicitor Bilodeau: I wouldn't be able to answer that now, I mean a lot of our zoning powers are either by  
184 virtue of the charter or in the Delaware code. So, I would need to take a long look at those documents  
185 before any type of alternative zoning plan.

186 Commissioner Williamson: It's just an idea is all.

187 Chair Hurd: Yeah, my concern always with that is if you say staff has the ability to enact minor changes,  
 188 how do you define minor? Where's the line? I think by just saying any changes to the zoning code come  
 189 to us, any changes to ordinance goes to Council, even if it's minor, it just keeps from someone having to  
 190 make a judgement call.

191 Commissioner Williamson: In this case I was just, related to the names of East Main Street, that type of  
 192 very specific, anyway just an idea.

193 Chair Hurd: I do hear you I just think, it fills things up, but it keeps us from going well that's not a big  
 194 thing and then next thing you know the ball and string is going down the wax. Alright, do you have  
 195 anything else or? Ok, Commissioner Bradley.

196 Commissioner Bradley: I have no comments, it seems pretty straightforward cleaning up stuff, thank you.

197 Chair Hurd: Thank you, and I also have no comments, it's a straightforward well-done report explaining  
 198 what we need to do.

199 Director Bensley: Did you get Commissioner Cloonan?

200 Chair Hurd: I did not get Commissioner Cloonan. I'm so sorry! We're just like 0 for 7 here.

201 Commissioner Cloonan: I didn't have any comments on this specifically, but I wanted to point out that I  
 202 thought this paragraph regarding submittal requirements and screening of equipment in service facilities  
 203 was something that might be relevant to other land uses, and I think Mike Fortner thought that this  
 204 might be part of all site plan approval processes already so it might not be an issue. And I'm new so I  
 205 haven't reviewed all of the...

206 Commissioner Silverman: What line?

207 Commissioner Cloonan: What lines, well the first one is on page 1 item c, submittal requirements,  
 208 applicable subdivision plan shall include the color elevations, scale elevations, proposed signs, lighting,  
 209 exterior features, and other information which all sounds useful for any development plan. And the  
 210 second one is on page 3 of 4 and it talks about screening of equipment and service facilities like  
 211 mechanical, electrical, communication, and service equipment, service loading areas, refuse storage  
 212 again things like, it would be nice to have some sort of review and approval process for. Other than just  
 213 downtown Main Street so as I said I think this is great, but I'm just wondering if we could perhaps extend  
 214 some of these provisions beyond the downtown properties.

215 Chair Hurd: So, now I understand, so Section 27-20 is the requirements for the documents submitted for  
 216 a minor subdivision in any zoning district, these are not the design guidelines. The design guidelines are  
 217 just referenced in item 21 is where it says if you're within this area, and that's where we're sending  
 218 people to the appendix where the design guidelines are located for those properties but the  
 219 requirements for screening and such are part of the minor subdivision process so they're not unique to  
 220 the downtown.

221 Commissioner Cloonan: So, they're already in the code.

222 Chair Hurd: Yes.

223 Commissioner Cloonan: Ok.

224 Director Bensley: And we reference Appendix XIII in here because that's where the definition of  
 225 downtown is located but there is Appendix XIV which is the design review for major subdivisions that are  
 226 not located downtown.

227 Chair Hurd: Ok. Any public comment? Anything submitted? Ok, I guess Secretary Kadar is ready to move  
 228 to the motion.

229 Commissioner Kadar: **I move that the Planning Commission recommend that the City Council approve**  
 230 **the revision set forth in the Planning and Development report dated November 28<sup>th</sup>, 2023, entitled**  
 231 **"Subdivision amendment, Amending subdivision regulations to conform with Chapter 27, Appendix**  
 232 **XIII, Design standards and guidelines for downtown properties".**

233 Chair Hurd: Thank you, do I have a second?

234 Commissioner Bradley: Second.

Chair Hurd: Thank you, any discussion to the motion? Alright, seeing none we'll move to the vote. All those in favor signify by saying aye.

All Commissioners: Aye.

Chair Hurd: Those opposed say nay. Motion carries.

**5. Review and consideration of amending Chapter 32, Zoning, to consolidate the definitions within the category of restaurants.**

Chair Hurd: Ok, that brings us to item 5, review and consideration of amending Chapter 32, Zoning, to consolidate the definitions within the category of restaurants. Ah, Planner Fortner.

**\*\*\*Due to Technical Issues the audio cut out from 7:21 to 07:24 PM\*\*\***

**Appended Meeting Notes (Provided by Planner Fortner)**

**Amendment 1:** Make the following changes to **Article II - Definitions:** Section 32-4.(106), (106.1), (106.2), (106.03) and (106.4): (Deletions are in strikethrough and additions are underlined.)

*“(106) Restaurant: An establishment whose function is the preparation and serving of food and non-alcoholic drinks to patrons primarily to consume on or off the premises, with carry-out facilities as a subordinate function, except that taverns, night clubs, or other businesses licensed by the Delaware Alcoholic Beverage Control Commission as a taproom shall not be permitted.*

*~~(106.1) Restaurants, cafeteria style: Any restaurant with more than 25 but less than 100 seats serving primarily fresh food cooked or prepared to order (including, but not limited to sandwiches, pizza, salads, and soups) to patrons for pick up at a counter for consumption on or off the premises, except that taverns, night clubs, or other businesses licensed by the Delaware Alcoholic Beverage Control Commission as a taproom shall not be permitted.~~*

*(106.21) Restaurant, drive-in through: A fast-food restaurant where patrons have the option to order and ~~are~~ be served their food and non-alcoholic drinks, via a drive-up window, in their automobiles.*

*~~(106.3) Restaurant, fast-food: Any restaurant with more than 25 seats serving primarily pre-prepared or rapidly prepared cooked foods that may be initially frozen that are prepackaged or packaged in disposable containers or similar wrapping in ready-to-consume individual servings for consumption on or off the premises.”~~*

*(106.42) Restaurants with alcoholic beverages: Any restaurant with more than 25 seats selling alcoholic beverages for public consumption on the premises. All restaurants selling alcoholic beverages for public consumption on the premises ~~shall be included within this category regardless of type of food service and~~ shall be subject to the special use permit requirements in Article XX, Section 32-78, of this chapter.*

**Amendment 2:**

Delete Section 32-18(b)(3).

*“(3) Reserved. ~~Fast food restaurants, subject to the following special requirements:~~*

*a. ~~Minimum lot size shall be one acre.~~*

*b. ~~Minimum lot width shall be 200 feet.~~*

*c. ~~Minimum depth of lot on one site shall be 218 feet.~~*

*d. ~~Minimum setback from all street lines shall be 75 feet.~~*

*e. ~~Minimum distance from all property lines other than street lines shall be 50 feet.~~*

*f. ~~Parking requirements shall be subject to the requirements listed in Article XIV.~~*

*g. ~~Exterior lighting shall be shielded so that it is deflected away from adjacent properties and from passing motorists.~~*

*h. ~~A solid fence or wall and/or a landscape screen a minimum of six feet in height shall be erected along all property lines separating the site from residential lot zones or any lot~~*

280                    ~~developed or approved for development for residential use in accordance with Article~~  
281                    ~~XXV of this chapter.~~“

282

283    (12)    ~~Reserved. Restaurant, cafeteria style.~~

284

285    **Amendment 3:**

286    In the **BC Zoning District**, Delete Section 32-19(b)(6) and make the following change to Section 32-  
287    19(b)(7). (Deletions are in strikethrough and additions are underlined.)

288

289    “(6)    ~~Reserved. Fast food restaurants, subject to the following special requirements:~~

290            a.        ~~Minimum lot size shall be one acre.~~

291            b.        ~~Minimum lot width shall be 200 feet.~~

292            c.        ~~Minimum depth of lot on one site shall be 218 feet.~~

293            d.        ~~Minimum setback from all street lines shall be 75 feet.~~

294            e.        ~~Minimum distance from all property lines other than street lines shall be 50 feet.~~

295            f.        ~~Parking requirements shall be subject to the requirements listed in Article XIV.~~

296            g.        ~~Exterior lighting shall be shielded so that it is deflected away from adjacent properties~~  
297                    ~~and from passing motorists.~~

298            h.        ~~A solid fence or wall and/or a landscape screen a minimum of six feet in height shall be~~  
299                    ~~erected along all property lines separating the site from residential lot zones or any lot~~  
300                    ~~developed or approved for development for residential use in accordance with Article~~  
301                    ~~XXV of this chapter.~~“

302    (7)    ~~Drive-in Restaurants with drive-in through~~ subject to the following special requirements; as  
303                    stated in (b)(6) of this section.

304            a.        Minimum lot size shall be one acre.

305            b.        Minimum lot width shall be 200 feet.

306            c.        Minimum depth of lot on one site shall be 218 feet.

307            d.        Minimum setback from all street lines shall be 75 feet.

308            e.        Minimum distance from all property lines other than street lines shall be 50 feet.

309            f.        Parking requirements shall be subject to the requirements listed in Article XIV.

310            g.        Exterior lighting shall be shielded so that it is deflected away from adjacent properties  
311                    and from passing motorists.

312            h.        A solid fence or wall and/or a landscape screen of a minimum of six feet in height shall  
313                    be erected along all property lines separating the site from lots zoned residential or any  
314                    lot developed or approved for development for residential use, in accordance with  
315                    Article XXV of this chapter.

316

317                    \*\*\*Audio was restored 7:24PM\*\*\*

318    Planner Fortner: We didn’t want to change that, and it did seem to be a different type of distinction of  
319    restaurant and, so, with the restaurant, we do some minor modifications to that, I think just some  
320    clarifications just to make it a little more broad and then we eliminate cafeteria style restaurant and we  
321    eliminate fast food style restaurant because these are things that are tricky to define. And we keep a  
322    restaurant with alcohol, and what we do is we include a restaurant with a drive in and that would  
323    capture any type of restaurant with fast food like a McDonald’s that has a drive in, and we regulate that  
324    because they have certain externalities that we want to regulate further.

325 So, a restaurant under our code which would include I think cafeteria style or fast food that doesn't have  
326 a drivethrough and if it's downtown, a lot of times these restaurants are located in areas that are not  
327 traditional ways you think of fast food. They would just be regulated as restaurants as they oftentimes  
328 are now. And then a restaurant with alcohol would still be regulated with a special use permit and those  
329 are easy to catch because they're applying for an alcohol permit and so they need a special use permit.  
330 And also, a restaurant with a drive through would still require a special use permit, so this has a specific  
331 land use implication as well, a restaurant with a drive through, different type of traffic patterns and so  
332 that's what we're proposing for the four definitions. We eliminate two, the other ones to make it more  
333 in line with the current restaurant industry and the recommendation is on page 7, it shows the added  
334 language and also the language that we're deleting to create those kind of four basic restaurants which is  
335 again a restaurant which is any type of eating establishment that doesn't serve alcohol, a restaurant with  
336 alcohol, and then a restaurant with a drive in, which we regulate with a special use permit. And it also  
337 shows the zoning districts and how we're regulating on page 2 and 3 we show how we regulate that. And  
338 that concludes my basic presentation, I can answer your questions.

339 Chair Hurd: Alright thank you, we'll begin with Commissioner Silverman.

340 Planner Fortner: You got it.

341 Commissioner Silverman: In your line 205, one acre lot minimum.

342 Planner Fortner: 205. Yeah, what we've done is, there used to be fast food and then they had these  
343 regulations but then we had a drive through that didn't have any regulations, the drive through had  
344 regulations, so we put that, restaurant with drive-in now we kind of merged those together. The existing  
345 things are existing in code right now we haven't changed those. Josh and I have talked, and we think  
346 there are better ways to regulate driving in restaurants with all these setback requirements and different  
347 types of things. So, we're just proposing to keep that now and maybe review those types of specific  
348 requirements at a later date.

349 Commissioner Silverman: I'm trying to picture how this would be applied to The Grove as it's developed  
350 now.

351 Planner Fortner: The Grove. So, The Grove had a special use permit allowed to one of the  
352 establishments there, for a drive through and that was part of the whole package. Was that correct  
353 Renee?

354 Director Bensley: So, in the initial approval it had one drive through fast food establishment which is  
355 where the Raising Cane's is now and later they came back for an amendment to their plan for building I  
356 which is where First Watch and the new Starbucks are going to be located to add a drive through to that  
357 location as well. So, those were approved as part of the site plan for The Grove. When we're looking at  
358 the lot sizes, we typically in the past and we've done this for various special use permits have focused on  
359 the size of where the area that is being utilized for those large-scale type sites. So, for example in a  
360 shopping center where a restaurant is applying for a special use permit is applying for alcohol, we don't  
361 count the size of the entire shopping center towards the threshold of whether it comes to Planning  
362 Commission or Council or things like that. We count the area that's actually being utilized for that use.  
363 So, in a larger scale site like The Grove where it's not an individual lot per business, we would focus on  
364 the size of what's being utilized not on the size of the site as a whole.

365 Planner Fortner: Another thing Alan, part of the clarification we added language for non-alcoholic drinks,  
366 because the definitions are focused on food so we don't really have a category for a coffee shop, so  
367 under the revised definition they would be a restaurant because they sell beverages. So, a drive  
368 through, a standalone Starbucks that wanted a drive through would be a drive through restaurant.

369 Commissioner Silverman: Ok, I just didn't know if there were any lease lines or fee simple lots within a  
370 shopping center. Would I have to purchase or have an area described as minimum one acre for my drive  
371 through?

372 Director Bensley: So, I think there's, I think the answers to that question in part depends on where it's  
373 being introduced in the process. So, for The Grove, it was an overall plan for the entire site and then we  
374 had an amendment to that plan for the second drive through. I would say if you're talking about, for this  
375 type if you're opening on a stand-alone lot, and that's the only business, this is what we're looking at.

376 Commissioner Silverman: Ok, I'm just trying to picture how this would be interpreted. For 1119 South  
377 College Avenue, there's a pad site, are you saying that if I came in with a drive through, that a larger area



378 would be used to calculate that or just the pad site that I'm leasing? So, would that pad site have to be a  
379 minimum one acre?

380 Director Bensley: So, I don't think necessarily we would qualify just the pad site, but we would qualify  
381 also the area where parking is being utilized, , I would say we're not just qualifying the portion where the  
382 building is where we would be qualifying what is encompassing the site's use, if that makes sense.

383 Commissioner Silverman: Ok, thank you.

384 Director Bensley: Ok.

385 Commissioner Silverman: That's all the questions I had.

386 Chair Hurd: Ok, thank you. Commissioner Tauginas?

387 Commissioner Tauginas: I have no issue with simplifying the definition of restaurants. I think, I mean,  
388 when you're saying restaurant with a drive through, right, that would define what we typically consider a  
389 fast-food establishment, so I think it makes sense in my mind.

390 Planner Fortner: So, McDonald's is now a restaurant with a drive through, but say Five Guys, that doesn't  
391 have a drive through so it's just a restaurant.

392 Commissioner Tauginas: Right, it makes sense to me.

393 Chair Hurd: Ok.

394 Commissioner Cloonan: No comment.

395 Chair Hurd: Commissioner Williamson?

396 Commissioner Williamson: I've got a couple comments and a couple questions. Could you describe how  
397 these categories mesh, assuming that they do with healthy people and for the health permit, that's  
398 county I believe right? And then also the ABC beverage, and how they license.

399 Planner Fortner: Ok. Not completely sure I know how, but first the ABC, I mean they're the ones who  
400 regulate alcohol and we have our own system to regulate it as well. That's required for them to get  
401 approval for a restaurant with alcohol, so we automatically coordinate with ABC on restaurants with  
402 alcohol. In terms of the health department, I'm not sure how they categorize it all but this is something  
403 for land use and we may have different needs of how to classify things then they do perhaps so this is  
404 how we would classify from a land use point of view, and it might be different from their point of view.

405 Commissioner Williamson: Sure.

406 Director Bensley: Related to the Department of Health, those would be certifications that we would  
407 require during the tenant fit out process before they're given a Certificate of Occupancy to operate.

408 Commissioner Williamson: I guess I'm just, you know we call it restaurant drive through and they call it  
409 something similar, I'm not sure, maybe that's not even necessary, just wondering about the other two  
410 agencies. I hope and this is a personal opinion, I hope we don't get a Chick-fil-A drive through, because  
411 of the traffic impacts. When you see the drive-in lines, they're clear out on the public road, they're  
412 hazards as well as a pollution hotspot with all of those cars. Just an opinion.

413 Planner Fortner: That's why they're a special use permit, so they have an extra layer of review.

414 Commissioner Williamson: Ok, good. And then I had one other. Oh, so the enormous pickup industry,  
415 the GrubHubs and the deliveries. So, the deliveries could occur to any of these basically and I wonder if  
416 that's risen to an issue, where the cars are stopping, sometimes they don't stop in the right place, they  
417 run in, they run out to get their deliveries which is probably going to affect all of these. Is there any  
418 consideration of that in the code? Probably not.

419 Planner Fortner: I don't know that this, this makes it more of a general definition of the different types of  
420 land use, so that is industry wide, Grubhubs. And they are what we call a disrupter in a restaurant, so it  
421 has changed, there's talk about Grubhub special parking spaces, even downtown instead of doing that  
422 but that's nothing that we're considering right now.

423 Commissioner Williamson: Well maybe consider that. Like you said a dedicated space for pickup for  
424 delivery, either someone's being paid to deliver or the customer's picking up but they're not going

425 through a drive through, but it's kind of similar right, they're not parking permanently they're running in  
426 and out. Well anyway.

427 Planner Fortner: Right, we're cleaning up the definitions right now, so if you go to Applebee's right now  
428 you can dial up and they'll come right to your car. We're not distinguishing that in the zoning code.  
429 People do takeout, its takeout, it's just bringing it out to the car with you. Grubhub and things that's a  
430 little different logistical thing and so this really doesn't cover that at this point.

431 Chair Hurd: And I'll just add some of these issues did come up during the parking conversations that we  
432 had, and especially when the city switched from kiosks from the parking meters because you've got 15  
433 minutes free before you had to put money in the meter. So, you could pull up, stop, run in, run out, and  
434 go away, never have to put a quarter in. I much regret and I am one of them, that the current kiosk  
435 online system doesn't have that ability. To give you the first 12 minutes or so free and then start paying  
436 and I don't know, that's all I'm saying, is that it's something that's come up because it's something  
437 certainly residents came to rely on. But it is the kind of thing that would support and help a little bit,  
438 that pickup and delivery process if you could sort of park briefly and go away.

439 Commissioner Williamson: The idea of simplifying of course is great, so no other comment just some  
440 questions.

441 Chair Hurd: Ok, thank you. Commissioner Bradley?

442 Commissioner Bradley: I'm going to bounce around here probably. The definition of restaurant, drive-in.  
443 Should that be restaurant with drive through? To me a restaurant drive in is more of the old-fashioned,  
444 what you see on Happy Days that kind of thing, like a Sonic or something.

445 Chair Hurd: So, one of the main changes is that drive-in is gone, drive through is the term that will be  
446 remaining and be in code.

447 Commissioner Bradley: Understood, but shouldn't it be restaurant with drive through? Granted the  
448 Wawa at Welsh Tract and 896 was pulled, that was just going to be a drive through you could not go into  
449 that restaurant. Well, you couldn't go in, yeah, it's a restaurant, they make food. So, should a  
450 McDonald's or a Wendy's is a restaurant with a drive through, it's not just a restaurant drive through.

451 Chair Hurd: Are you looking at the definitions page?

452 Commissioner Bradley: Yes, number 299.

453 Chair Hurd: Because I'm just noticing that line 150 does not align with how it's, how the term is used in  
454 the zoning code examples.

455 Planner Fortner: You know what, if you look under in the, with the methodology, I think that's how we  
456 with the restaurant drive through when you go to the recommendation, it says restaurant drive in that  
457 should be restaurant drive through.

458 Commissioner Bradley: But should it be with...

459 Planner Fortner: You could do with I have that in the methodology, it could be restaurant with drive  
460 through.

461 Chair Hurd: Yeah. So, I think if you, what the Commissioner's getting at, if we updated the definition on, I  
462 guess the recommendation, the definition on line 299 to say "restaurant with drive through" because  
463 that's the language that's used in the BC district where we're referring to it.

464 Planner Fortner: Good catch.

465 Commissioner Bradley: Ok, how does, where does a Wawa fall under these, is Wawa considered a  
466 restaurant?

467 Planner Fortner: Wawa would be considered a gas station with a convenience store, if anything it's a  
468 delicatessen and so they don't have a parking, or seating requirement, there's no seating there so they  
469 just grab their sandwich and leave.

470 Director Bensley: We classify them as a retail food store.

471 Commissioner Bradley: And retail food would mean that they make retail food on premises.

472 Director Bensley: Yes.

473 Commissioner Bradley: Ok, so they have to go through all the health criteria and all that kind of stuff.

474 Planner Fortner: Yes.

475 Commissioner Bradley: The Starbucks, it's a coffee shop but they also sell food, is that the same kind of  
476 classification?

477 Planner Fortner: It's a restaurant.

478 Chair Hurd: Yep.

479 Commissioner Bradley: And if they have a drive through, they don't have to adhere to the "one acre"

480 Planner Fortner: No, they're a drive through, they're a drive through restaurant, they have a drive  
481 through. The Starbucks that's on The Grove went through its own process.

482 Commissioner Bradley: I understand, because it's a bigger process.

483 Planner Fortner: There's a standalone site, a Starbucks that wanted a drive through would be processed  
484 the same way as a restaurant with a drive through that means they would need a special use permit.

485 Commissioner Bradley: So, going back to the example with the Wawa, where Boston Market was. Would  
486 that fall under the classification, would that have to be an acre?

487 Planner Fortner: They were doing something that required a drive through, so I guess they would be a  
488 restaurant with a drive through that was weird. People always come up with weird things, and  
489 fortunately they're not doing that model.

490 Commissioner Bradley: But it was classified as a restaurant with a drive through, so they would fall under  
491 the one-acre rule?

492 Planner Fortner: It could, but they're not here, we were processing that application, and it was, again it  
493 was a different beast.

494 Commissioner Bradley: Right, but if a Starbucks went there with a drive through.

495 Planner Fortner: Yes, it would fall under the requirements of a restaurant with a drive through.

496 Commissioner Bradley: Ok, let's see, on line 159, restaurants with alcoholic beverages.

497 Planner Fortner: You said 159?

498 Commissioner Bradley: 159, yes. Any restaurant with more than 25 seats sells alcoholic beverages,  
499 what's the 25-seat cutoff?

500 Planner Fortner: That's our minimum, it's like 55 seats or something like that but that might be the state,  
501 the state reduced it to something like 12 I think, but it's a minimum of 25 seats and you're not supposed  
502 to have alcohol.

503 Commissioner Bradley: If you had 20 seats you couldn't have alcohol.

504 Planner Fortner: That's right for smaller restaurants and that law has since changed and our laws it's 55  
505 under our zoning, but as a definition it's a restaurant that has over 25 seats.

506 Commissioner Bradley: So, I'm just a little confused here, does these 25 seats jive up with what the City  
507 of Newark's rules and regulations are?

508 Planner Fortner: No, we have our own code for restaurants with alcohol so there's a whole provision of  
509 code and one of it is it has to have a minimum of about 50 seats. So, I would just take that out  
510 altogether maybe, it's a restaurant and maybe delete with more than 25 seats it's a restaurant selling  
511 alcohol.

512 Chair Hurd: Yeah.

513 Commissioner Bradley: So, that would be line 307? A restaurant selling alcohol?

514 Planner Fortner: 159, so yeah when you get to recommendation, I will take that thing out.

515 Commissioner Bradley: Ok, so it would just be any restaurant selling alcoholic beverages.

516 Planner Fortner: Yes.

517 Chair Hurd: Ok, thank you.

518 Commissioner Bradley: Ok, excuse me, how do the University of Delaware's cafeterias fall under this, or  
519 don't they?

520 Planner Fortner: They really don't. They don't.

521 Commissioner Bradley: So, they're their own entity, they can kind of make their own....

522 Planner Fortner: Yes, this is for restaurants, we don't have cafeteria style, we don't regulate them.

523 Chair Hurd: I mean they're not retail by the strictest definition either, you can't walk in and buy dinner. I  
524 don't believe it.

525 Planner Fortner: Maybe you can, but they're at the UN and it's for the students.

526 Commissioner Bradley: I have in the past. Ok.

527 Chair Hurd: Ok, we learned something new.

528 Commissioner Bradley: Let's see, we've got (inaudible) I think that, yeah, I think that, and Commissioner  
529 Silverman touched on the one-acre thing which was, and I think that's it thanks you.

530 Chair Hurd: Thank you, Commissioner Cloonan you indicated you were, ok? Ok, everyone's pretty much  
531 grabbed all of my comments, I just had one question. I know this is existing code, but we always like to  
532 examine existing code. In the BC district for the restaurant with drive through, I'm sorry, line 207 in the  
533 initial report.

534 Planner Fortner: 207.

535 Chair Hurd: Why is the minimum depth of a lot 218 feet? It's almost as if it was written to exclude 220-  
536 foot-deep parcel.

537 Planner Fortner: Yeah, so we think there's a better way to regulate drive throughs and just make out a  
538 site plan that works.

539 Director Bensley: It would exclude 215 it wouldn't exclude 220 it's a minimum.

540 Chair Hurd: Thank you, I didn't even think to do the math on that. Because I was just, ok. No, I think  
541 we've gotten everything that I had. Thank you. Any public comment submitted that we know of? No.  
542 Alright.

543 Commissioner Kadar: Well, you didn't ask me for comments.

544 Chair Hurd: I'm so sorry.

545 Commissioner Kadar: Fortunately, my comments centered around the 25-seat question and before I have  
546 a motion, I'd like to clarify two things, that 25 seats are taken out, correct?

547 Chair Hurd: Correct.

548 Commissioner Kadar: And we also agree that line 291.

549 Chair Hurd: 299.

550 Commissioner Kadar: 299 will be modified to restaurants with drive through, strike drive in.

551 Chair Hurd: Yes, and add in the width, thank you.

552 Commissioner Kadar: Alright, ready whenever you are.

553 Chair Hurd: And thank you everyone for keeping me honest. Alright, seeing nothing else we can move to  
554 the motion, Secretary Kadar.

555 Commissioner Kadar: **I move that the Planning Commission recommend that the City Council approve**  
556 **the revisions set forth in the Planning and Development department report dated November 28<sup>th</sup>,**  
557 **2023, entitled "Zoning amendment changing the classifications and definitions of restaurants" with**  
558 **the following revisions: line 299 delete "drive in" and replace it with "with drive through" and lines**  
559 **159 and 307, delete the 25-seat reference.**

560 Chair Hurd: Ok, do I have a second?

561 Commissioner Bradley: Second.

562 Chair Hurd: Thank you, any discussion to the motion? Alright seeing none, we'll move to the vote. All  
563 those in favor signify it by saying aye.

564 All Commissioners: Aye.

565 Chair Hurd: Those opposed say nay. Motion carries. Thank you.

566

567 **6. Review and discussion of potential zoning regulations related to the legalization of**  
568 **recreational use of marijuana.**

569 Chair Hurd: Alright, that takes to item 6 review and discussion of potential zoning regulations related to  
570 the legalization of recreational use of marijuana. Alright, again?

571 Planner Fortner: Yes. Good evening, Mr. Chairman and Planning Commissioners, Danielle's just getting  
572 the presentation up. We may have to switch to paper but (inaudible).

573 Director Bensley: Mike, we have it going out live online, so if you want to get started since everyone has  
574 paper copies in here, I think we'll be good.

575 Planner Fortner: Alright. So, I'm going to refer to this and we're going to go ahead to the first slide.  
576 Which, as you know the State of Delaware in early 2023, in March they passed House Bill 1 and 2 to one  
577 legalize marijuana as a recreational substance and the second one was to create a legal framework for  
578 Delaware to regulate marijuana like they would be similar to alcohol and also to create a system of  
579 taxation. The purpose was to, the stated purpose of legislation was to create jobs with community  
580 benefit and so there's lots of stuff in there. You have to be a Delaware resident for example or have  
581 partial ownership in a Delaware residence to open a different type of facility. They wanted to eliminate  
582 cannabis as an illegal market, to allow law enforcement to focus on violent crime. No more echo, ok. So,  
583 to focus on violent crime and property crimes.

584 They wanted to create a legal framework to regulate marijuana, make sure it's safe, and also tax it in a  
585 manner similar to alcohol and they wanted to promote individual freedom, they figured a lot of  
586 Delawareans already used marijuana recreationally and they wanted those people to be allowed, and  
587 then finally they wanted to address criminal social justice concerns or social inequities that are in the  
588 system. They're recognizing that African Americans were four times more likely to be arrested for  
589 marijuana use than a white person for example. And there are some programs in there to address social  
590 inequity to make sure that diversity is included in the different types of licenses that they give out. The  
591 legal recreation of marijuana use is of course HB1 it makes it legal for an adult 21 years of age to possess  
592 what they call a "personal use quantity" of marijuana or accessories, so personal use quantity was one  
593 ounce or an equivalent of that and some other types of products that they sell. It allows you to gift a  
594 personal use amount to someone. So, you know with the holidays coming up you can get that and as  
595 you know City Employees are not allowed to take gifts from constituents so (laughter).

596 And Employers are still allowed to restrict it at work so, just like alcohol it's not legal too, you're not  
597 allowed to go to work drunk, so you're not allowed to go to work stoned or engage in it at work. And just  
598 an interesting tidbit, landlords cannot prohibit the possession or consumption of non-smoke means so  
599 they can say you can't smoke in your house, but if you take an edible or something they can't prohibit  
600 that. But student housing is exempt and federal housing, like the housing authority can be exempt from  
601 that too. And that's sort of the nutshell of legalizing it. If we could go to the next slide, we get into  
602 House Bill 2 which kind of creates this regulatory marketplace and so the regulation and taxation of  
603 marijuana for recreational uses, much the same as alcohol, and it creates the same sort of governing  
604 structure.

605 So, there's an Office of Marijuana Commissioners and Appeals Commission and they're under the  
606 supervision of Alcohol and Tobacco Enforcement, so there's this big regulatory body and they create four  
607 types of licenses.

608 So, they have cultivation which is the growing of marijuana for use in manufacturing, so they're going to  
609 allow for 60 licenses to be distributed throughout Delaware for that. Cultivation sounds like farming, but  
610 oftentimes on videos it's done inside of warehouses or industrial buildings.

611 Production manufacturing, they're going to allow 30 of those, that extracts the leaves into concentrates  
612 so production facilities.

613 And then testing facilities, these are labs they test to make sure it's safe, that's their primary goal. And  
614 then finally we have the retail facility they're going to allow up to 30 of those, these are sales to adults,  
615 they distribute educational information on health risks, consumption information and packaging, there's  
616 even regulations on advertising, I'm going to go over that a little bit later on. And finally, municipalities  
617 have the option to prohibit the operation of any recreational marijuana license type either through  
618 ordinance or referred ballot measure and municipalities may pass ordinances which govern the hours of  
619 operation, permissible locations, so what zoning districts you allow it in, the manner in which they  
620 operate, and also the number of licenses, we can put a cap on them and regulate how close they are  
621 together. So, we're allowed to say no, we don't want it in Newark, not in Newark, the County's not  
622 allowed to do that, they have to allow them in the County with regulations. But municipalities are  
623 allowed to say we don't want them in our town and some towns are choosing to do that. And finally, it  
624 creates a state process for local residents. So, this goes through a hearing process through this Board of  
625 Marijuana Commissioners and Appeal. So, there's an appeals process, everything's sort of like our  
626 special use permit process, there's a hearing, people can sign a petition, if they get enough on a petition,  
627 they have to consider this as part of their decision-making process on where to put them.

628 And so, we'll go to the next slide. I'm anticipating probably the most controversial thing in terms of  
629 zoning for us might be retail marijuana stores, how those are going to look, how they're going to be  
630 rather than some of the industrial type uses. So, just put some information in an existing law about  
631 retail marijuana stores. So, they have to have a valid license and they last two years and they cost  
632 \$10,000 biannually. So, every two years they're up. I'll cover more in a little bit, but they must purchase  
633 from licensed cultivation facility, the retail stores may sell retail marijuana and retail marijuana products  
634 that are prepackaged and labeled as required by Delaware law. They can sell things with marijuana  
635 symbols like t-shirts, mugs, whatever. So, they can sell that along with marijuana related products like  
636 childproof packaging containers or something to keep marijuana out of kid's hands. And then retail  
637 stores may not sell consumable products including cigarettes and alcohol so marijuana retail cannot sell  
638 alcohol or anything else like that. The edibles have to have marijuana you can't sell non edibles so they  
639 can't even sell soda, they can't sell baked goods or candies, like Snickers bars, they're not permitted for  
640 sale there. No sales over the internet, and no Uber or Lyft type of sales either, Uber Eats, it has to be in  
641 the store. And they must verify the purchaser with a valid government ID before sale and then there's  
642 also regulations if they give a fake ID, if they suspect someone's fake and what they should do a process  
643 is written in law.

644 They may not sell more than one ounce or the equivalent during any single transaction so when you go  
645 there the most, they can sell you is an ounce and that's all they can sell you right now. You can't say "oh I  
646 want to get some gifts" because then you'd be out of compliance so one ounce is the most you could  
647 sell. And then there's regulations on sale hours, so not on Thanksgiving, Christmas, or Easter, not before,  
648 they can't sell between the hours of 1:00AM through 9:00AM Monday through Saturday and not before  
649 noon and so on. So, there's pretty strict regulation on the governing hours as well.

650 So, there's something about the procedural requirements, this is the decision-making body and how they  
651 decide on how to grant a license. They can look at the local market and they can refuse based on I think,  
652 let me look at B1. "There's sufficient licensed premises in locality or granting of a license in a locality and  
653 the application is not otherwise in demand or by the public interest" And they can look at, and I'll get  
654 into the concern that marijuana like downtown could be like every other store could be a marijuana  
655 facility. They're allowed to look at regulations and say, "well actually I think we have enough downtown,  
656 we have three downtowns, that's more than enough, they seem to be supplying the market because  
657 they're not running out or having lines out the door" and we can include that in our ordinance too if we  
658 choose to make it a Special Use Permit.

659 And there's some other things in there too, but let me get to the policy, if you'll go to the next slide,  
660 which is policy one which is kind of a do nothing. What if we didn't do anything in our zoning code and  
661 just let our current definitions speak for themselves and so a marijuana retail store in a commercial  
662 district fits our definition of a retail store. Which is a store in which nonfood goods, wares and  
663 merchandise are sold directly to the ultimate consumer including such items such as apparel,  
664 accessories, shoes, drugs, and hardware. So, it could directly fit into our retail store, our retail stores are  
665 allowed in BC and BB zoning districts. They're not allowed in BL zoning districts, and BLR those are for  
666 specialty retail stores which the definition provided they kind of, it's more a specific thing so it's not

667 necessarily included in that so we don't believe that they would be permitted in a specialty retail store  
668 but only in a retail store. But in BN we have retail stores, but they narrow it down to those listed below.  
669 Drug stores are included in there so it might be something, they could go into a BN, that's theoretically  
670 possible without any changes to our code.

671 When you go to the next slide we're looking at the other things, cultivation, production manufacturing  
672 and testing facilities if we don't do any changes to our current zoning code we think they would be  
673 permitted in MOR, MI, and STC because the main thing is any process involving cleaning distribution,  
674 manufacturing, storage, processing, maintenance, fabrications, supplying, warehousing, and testing  
675 except for they give a bunch of stuff that are exceptions but we think marijuana would in most cases be  
676 allowed in those facilities based on. Cultivation was kind of a thing we discussed in house, but  
677 cultivation they do this in a warehouse in like an industrial district it's, if you look at pictures, they're  
678 wearing lab coats like they work for DuPont, and it looks like DuPont with plants.

679 It also would be theoretically, in the report where I give a little chart, it would also be theoretically  
680 allowed in AC, AC under kind of a site plan approval you can do mixed use in there so they do allow retail  
681 in an AC district if it's part of a development plan I don't know of any AC currently in the city that has  
682 that but theoretically they could do a retail store. So, that's just something to consider.

683 Next, I'll go to option two, Mr. Chairman, do you want me to pause on each one with questions or do you  
684 want me to just get through the presentation and go?

685 Chair Hurd: Let's go through and then we'll come around.

686 Planner Fortner: Ok, so I've come up with four options, these are not exclusive options these are just  
687 four different kinds of pathways. The second pathway is where we want to prohibit the use outright all  
688 together. Under that, so we look at our commercial in BC we'd want to look at changing how we define  
689 retail business so what we do is we would create a new definition called a "marijuana establishment"  
690 and as it's shown in this slide for option two it would be an "entity licensed by the state of Delaware as a  
691 marijuana cultivation facility, a marijuana testing facility, a marijuana production and manufacturing  
692 facility, or a retail marijuana store" so that would fall under the definition of marijuana establishment.  
693 And then in the definition of retail store we would keep it the same except we would put under the  
694 accept, at one point we were very concerned about adult bookstores opening up in town or adult  
695 entertainment centers, so we say you're not allowed to have an adult bookstore or entertainment center  
696 and a marijuana establishment. And some with specialty retail stores we would just put it in there as  
697 well. If you go to the next slide, we want to prohibit it from our industrial uses, so MOR, MI, and STC and  
698 I should also say that retail stores would be allowed in STC as well because they allow retail stores there.  
699 So, we would again with that process and all the exemptions, we'd add marijuana establishments as an  
700 exception because it says all these things except for this, and we'd have marijuana establishment and  
701 that would take it out of our industrial district and that would prohibit the use. And if we did something  
702 like that, marijuana stores or facilities, but mainly I think we're talking about retail would likely open up  
703 on the outskirts of town in commercial areas, get as close as they can to Newark without actually being  
704 in. We do that with tattoo parlors for example, liquor stores when we had state line liquors. That's what  
705 you would have, so our residents would have to travel outside the city to get those types of products.  
706 And those types of, in terms of job creation, manufacturing and those types of opportunities would  
707 come to Newark as well.

708 And with that there's supposed to be job creation, there's supposed to be equity things with that as well  
709 I mean like a lot of these new business owners will be minority for example, most of them will be  
710 Delaware residents or partially owned by Delaware residents, so Newark wouldn't be able to take  
711 advantage of those types of benefits as well if outright prohibited all uses in Newark.

712 Policy option there is to add as a conditional use. With that you do the same that you did in option two  
713 you take it out of retail store and specialty retail and also under manufacturing. so same as option two  
714 we would implement those. And then we would add retail marijuana establishments too, well to the  
715 zoning districts BC and BB under this scenario, we'd add it to those. We'd add it to section B for special  
716 use permits. That means when an application comes to us, they'd be referred to Council for  
717 consideration. So that would be up to them to get that and then go to complete their application with  
718 the marijuana commission. Another thing about that commission, their licenses are two years and  
719 under any kind of zoning change for example, every two years they have to reapply. And it says in the  
720 legislation they have to have the designated zoning, so the zoning district has to say that they're  
721 permitted. They also have to have a business license which we would grant them. So if a store opened

722 and we decided we wanted to change the zoning at a later point in time, when they went up for the  
723 renewal in two years we could say it's no longer zoned for marijuana establishment and also we're not  
724 going to renew their business license, and we can, and then they would not be able to reopen in that  
725 location if we wanted to change. So, it wouldn't be grandfathered forever if a marijuana store opened in  
726 Newark and we didn't want it to stay there after a while because it wasn't operating right, we could  
727 simply wait for their two-year time period to operate and kick them out that way if we wanted to change  
728 our zoning laws. And that's the simple conditional use, same with MOR, MI, and STC.

729 Director Bensley: Sorry, we're having some trouble with broadcasting, we're trying to get that up and  
730 running.

731 Planner Fortner: Ok, I just didn't want to get the echo going. Echo? Echo? Ok. Alright, the final option is  
732 option four, this is permitted with added regulations. And so, these are just some boiler plate stuffs that  
733 we kind of took out a lot of these, they're already in state law but sometimes we put things in state law  
734 in case because it ensures that we have it included but a lot of previous Planning Commissions didn't like  
735 to duplicate state law, just say as state law. So, what we're allowed to do is go stricter than the state law,  
736 so if we look at what the state law allows for ours if we wanted to restrict ours to lesser hours. They  
737 can't stay open until 1:00, for example they have to be closed at 10:00, we can do that. We can restrict  
738 how far they are apart so some of that's in state law already, but we can make it longer.

739 Some of these things like we saw in our drive through regulations, we create regulations with certain  
740 distances apart and things like that and sometimes we're not sure why they're that distance and at least  
741 from my point of view, I'm not sure that we want to go that route because we don't always...sometimes  
742 they don't make sense. There are some things in there like where we could do a condition for example  
743 under a special use permit there's a special use permit criteria that we could add onto that, that they  
744 have to demonstrate that there's a market for it, that the current facilities in that area do not meet the  
745 current need they would have to demonstrate that. So, we would use the language under state law, we  
746 would duplicate that language and so Council could look at, say there's two establishments downtown  
747 they could look at it and say look they're meeting demand because they're not out of product and  
748 there's not lines out the door so why have a third one.

749 Just another kind of condition in terms of concern for these retail establishments another, certainly we  
750 think there's going to be a demand for this because of our college student population but also alcohol,  
751 those are in demand but if you look at Downtown there are only three liquor stores downtown, two on  
752 Main Street, one on Main Street which is more of a petite liquor store and then you have one in Newark  
753 Shopping Center and then one off of Delaware Avenue so that, I don't know if three in our downtown  
754 right in the middle of a student campus I don't know that's saturation, so I don't know if we need to  
755 worry about them being on every other retail store. They're also limited to 30 or is it 60? 30, so they  
756 have to distribute that throughout the entire state so there's only so many of these licenses so just to  
757 provide comfort so not every place is going to be a marijuana store. And that concludes my presentation  
758 those are four options just to start discussion about what you guys, how you think we should regulate  
759 this in terms of a zoning regulation.

760 Chair Hurd: Thank you. I don't know if you could answer Planner Fortner or Director Bensley. My  
761 understanding is that Council has had some conversations around this already. Is it possible to  
762 summarize how Council is sort of standing on this?

763 Director Bensley: This is kind of the first step in this process. The council has asked us to start the process  
764 around the discussion, and we brought it to you all first because any regulations will go to you all first.  
765 So, our game plan is once this is completed to have the discussion, a similar discussion with Council and  
766 then come back with a proposal.

767 Chair Hurd: Ok.

768 Director Bensley: The original intent was to wait until the state regulations were released to be able to  
769 see if we thought those were sufficient or if there were specific tweaks that we wanted to make around  
770 that. But we've recently learned that the state regulations are not going to be released until the  
771 application process is already open so with the amount of financial investment to apply for a license if  
772 there were going to be, if this was going to be a nonstarter in Newark, we wanted to be able to let  
773 people know that before they shell out a lot of money to apply for a license.

774 Chair Hurd: Ok, so individual Council person's options are just opinions, so this is really the first time that  
775 we're looking at the code implications of the different options. Ok, thank you. Alright what I'm going to



776 ask, for at least our first round of comments is if you can indicate either which option you're more in  
777 favor of or which options you're more in favor against so we can maybe start to see if we're coming to  
778 any consensus or bracketing the options which will also make it easier for staff not that they're going to  
779 do a lot between now and when Council gets it but it may also help Council to say Planning Commission  
780 is kind of here so that's sort of my request. But obviously have it.

781 Planner Fortner: Chairman, the different facilities, for example manufacturing or a lab, might have  
782 different feelings then instead a retail store.

783 Chair Hurd: Right, it's a three-dimensional matrix now, great. Ok, alright we will begin with  
784 Commissioner Tauginas.

785 Commissioner Tauginas: Great presentation by the way it lays it out and I think in very simple terms I  
786 think that it's absolutely insane that the state is, that doesn't make any sense to me, apply and we'll  
787 figure it out that's....and I'm on record with that. I think that it's really, you know there is a stigma  
788 associated with retail of course, I think just, some people are going to be all about it and it's pretty  
789 divisive. I guess, to me, I'm kind of thinking that it would be something where we would look at option  
790 three or four you know to not close the door, completely, we have liquor stores when it comes to the  
791 retail but, do, we also have what, Iron Hill has their own brewery, right. Are there any other breweries  
792 within the city limits?

793 Chair Hurd: We nearly had a microbrewery in one of the industrial parks because we had adjusted the  
794 zoning. I think they didn't go through with it.

795 Planner Fortner: Yeah, there was someone we spoke with recently about in a commercial area and it's  
796 been our goal to get a microbrewery. A little point clarification too, is restaurants with alcohol are a  
797 special use permit but a liquor store those are not special use permit those are by right those are just  
798 retail stores under our code just like option for marijuana would be. And they go through the ABC and  
799 the ABC regulates them.

800 Commissioner Tauginas: Got it, got it. Yeah, I mean it's definitely something to continue pondering again  
801 I, I kind of look at it like, like where liquor stores fall it could be within, but again this is new. Right, this is  
802 new, so just jumping in and just being like "oh it's all good" or just closing the door I think especially since  
803 it is all new, like to the point where we don't even have a reference point, I think it, to me it makes sense  
804 to proceed but to proceed with caution and common sense so that's all I have to say about that. Let's  
805 see if I can actually turn this off.

806 Chair Hurd: Ok, Commissioner Williamson?

807 Commissioner Williamson: Thank you, I've had some direct experience with this in California, I hate to  
808 say. So, I have a couple questions which don't need answer right now, these are more like including in  
809 future things. How would this relate to medical delivery? Which I think is permitted in some way and  
810 whether or not there's an overlap or it's separate, so just clarify that. Under the state laws what tax  
811 benefits come to the city? If any, and related to that, what taxes could the city impose on these various  
812 places to enhance the revenue of the city? Third is outside consumption in public areas or quasi-public  
813 areas so the students aren't allowed to take it into their housing, so they stand outside and smoke or  
814 whatever. Probably on city streets, so that's a question. My experience, in these cities in California that  
815 went through this about three years ago and have now set up systems along the same format that  
816 you've outlined some of the big issues were the Police Department and security. I believe their largely  
817 cash because they can't use federal banks yet so there's a big issue with cash being handled at all places.  
818 Stored, transferred, etcetera. That's another one. There were background checks on all the employees  
819 maybe the state requires that anyway. I personally got sick to my stomach being downwind from a field  
820 of, oh that was outside growing as all the seeds were popping up, it was so intense of a smell that the  
821 Board of Supervisors of the county had to shut it down and set up buffers around certain homes,  
822 residential areas and require groves to be inside of grow houses with odor controllers because it was so  
823 intense, it could be. And we are near some fields and depending on the wind and what's growing, in the  
824 County right next to the City those are some of the issues that might come up. Not sure if our code can  
825 do anything about that but it has come up. And finally, I recommend that everybody kick this to the  
826 Council with a CUP, everything. Don't approve anything, make the Council approve it. And the reason is  
827 they get more public participation, and you want to really be able to pull in the public and get everyone's  
828 concerns. So those are my comments, so I don't know if you have any...

829 Planner Fortner: So, I can answer some of those. The medical one that's a different animal, medical  
830 marijuana was approved a few years ago and under our code we just consider retail. So, a store opened  
831 up on the outskirts of town and it was just like a pharmacy, they sold medicine the way we looked at it  
832 and we didn't change our code as a result of that. In terms of tax code, I don't know what percentage  
833 goes to or benefits the city, or how that's distributed. What we can charge, is of course a special use  
834 permit fee and I would think a business license fee, but I don't know off the top of my head. Renee?

835 Director Bensley: So, related to revenue what we would benefit from at this time would be as Mike said  
836 any special use permit fees, business licenses. For the more cultivation and growth area, we would  
837 generate likely significant utility charges with that. So, that is probably the area where we would see the  
838 most growth but at this time the tax that is on it at the state level has no carve out for municipalities so  
839 there's nothing at this time. I know there's been some discussion about trying to change that in the  
840 state legislature but what a lot of other jurisdictions have seen is if you prohibit it then you don't get a  
841 cut of it. So that would, so if something like that were to come in the future and Newark were to have  
842 said you know across the board, don't want to participate in this we're providing it in city limits we likely  
843 then would not get a percentage of whatever revenue is designated for municipalities in the future if  
844 any.

845 Solicitor Bilodeau: And I'll just add with the taxing, you know, per the charter we have to be explicitly  
846 granted power to tax certain things so we couldn't just impose our own tax unless we got our charter  
847 amended. Chris as to the other comment about my understanding with the legislation is that you can't  
848 walk down the street smoking marijuana, you can smoke it in your house on private property, in your  
849 backyard but you can't be walking around the streets of Newark, you can't do that. So, if that helps.

850 Planner Fortner: The banking you brought that up, it's a big issue because it's a federal law but it's really  
851 not ours, that's their problem not ours. And I forget what, Council is going to make the final decision all  
852 we do is give a recommendation.

853 Commissioner Williamson: Just to, the police, the local police though with the cash, that was a big  
854 concern. Because it was a real opportunity for grab robberies, and they had all kinds of special  
855 conditions on the handling of the cash. Ok, thank you.

856 Chair Hurd: Ok, so Commissioner Williamson did you have sort of some preferences of the four options?  
857 For or against?

858 Commissioner Williamson: Yes, all four should be CUPs for various reasons. Even a grown house has  
859 odor issues. Testing facilities, everything should be a CUP.

860 Chair Hurd: Sorry I meant of the four options proposed the do nothing, ban it, conditional use, or  
861 regulations, which one are you leaning towards more?

862 Commissioner Williamson: Number three the CUP for all licenses. Or all types and need to clarify I think  
863 the medical. Because if you have the medical care you can go to, well that still exists.

864 Planner Fortner: They're separate, so this and medical are regulated separately.

865 Commissioner Williamson: Hope that doesn't become a problem, thank you.

866 Chair Hurd: Ok, thank you. Commissioner Bradley?

867 Commissioner Bradley: Again, I'm going to be all over the place here. First, I'm going to say that I'm all  
868 for legalization, that said let's get into some details here. I think you said fresh dispensary is not within  
869 the city boundaries.

870 Chair Hurd: It is.

871 Planner Fortner: There's a medical dispensary that's in the city. So, we clarified it as a retail store at that  
872 time.

873 Commissioner Bradley: Have there been any issues that the city or the police have had to respond to  
874 from that facility?

875 Director Bensley: No.

876 Commissioner Bradley: Do they have a manufacturing process there? Like taking the flower and turning  
877 it into concentrate?

878 Director Bensley: I'm not aware of that as a process, I do know they have some growing operations there  
879 since it was a previously a nonconforming use when it was Alexander's with the greenhouses in the back,  
880 they continued that use for growing. But I'm not aware of any type of changes like what you're  
881 describing.

882 Commissioner Bradley: As far as taxes are concerned, before the meeting started, we were kind of  
883 talking about revenue from cigarettes, does the city of Newark get any tax revenue from the sale of  
884 cigarettes?

885 Director Bensley: No.

886 Commissioner Bradley: Ok, the police haven't had a chance to comment on any of this yet, correct?

887 Director Bensley: So right now, we're just looking for general feedback, and as we develop a proposal,  
888 we'll have it reviewed through the various departments with the police being one of those.

889 Commissioner Bradley: Ok, on your first slide, it says "eliminate the illegal market to allow law  
890 enforcement to focus on violent crimes and property crimes" legalization of cannabis does not take away  
891 the illegal markets if anything it makes them more prominent. Because as, and I'm not an expert, but as  
892 the, from the medical side, the medical side will set a price and the illegal side will set that price  
893 underneath. No matter what that price is they're always going to come underneath. You're not going to  
894 get rid of the illegal side by legalizing the sale and manufacturing of marijuana. I don't agree with  
895 allowing gift personal use, in the first slide, "allow to gift personal use amount similar to gifting a bottle  
896 of wine" I don't think that should be included in any regulations we have. Because who are you going to  
897 give it to? You could give it to anybody. Who's?

898 Planner Fortner: They're supposed to be over 21, but this is state law it wouldn't be in our ordinance at  
899 all.

900 Commissioner Bradley: Ok, the cash I agree that's a major concern, I mean all of these places are  
901 operating in a cash business right now, it opens up big time crime. Outdoor gardening, that's another  
902 issue. We're not in a climate where you can do it year-round unless you have greenhouses, greenhouses  
903 have fans, fans push fumes everywhere. I don't know if there's, if we have codes that tell us where  
904 you're allowed to have greenhouses and where we're not allowed to have greenhouses but that should  
905 be a consideration because I know most of the places are indoors now, but you know there might be  
906 some folks who want to try and open up a greenhouse to manufacture.

907 Planner Fortner: So, in the state law, there's a section on how they're supposed to do their facility and  
908 what there's going to be requirements on each cultivation so they would have requirements on what's  
909 needed. They might have staff that's better qualified for making those determinations than our staff,  
910 that's one issue, we don't have experienced staff, but the state could hire someone, and the facilities  
911 would be inspected by the state.

912 Commissioner Bradley: Ok. The production manufacturing where they're taking the leaf and extracting  
913 concentrates out of it, that's a very volatile process, if the city were to go down the road to allow that  
914 type of production my feeling would be is that it should be in a more industrial area not in a retail area  
915 or residential area, wherever it could be under the current options here. Under the four types of  
916 licenses, could the city adopt having one or two of those licenses but not all four? Or is it you got to have  
917 them all? So, we could have a retail but no cultivation, manufacturing, or testing. Or we could have a  
918 testing or nothing else?

919 Planner Fortner: Yes.

920 Commissioner Bradley: Have any municipalities I'm thinking about Middletown right now, prohibited it  
921 altogether?

922 Planner Fortner: Middletown and Rehoboth I understand are going to prohibit it altogether.

923 Director Bensley: Several of the beach towns have I believe.

924 Commissioner Bradley: Let's see, the license, the biannual 10,000 dollars that's not to the city, correct?

925 Planner Fortner: No, that's to the state.

926 Commissioner Bradley: To the state, ok. So, the city's really not getting anything financially from this  
927 other than utility consumption, right? Right or they go solar, and we don't get anything, or partial.

928 Delivery, I think some of the medical places have that option now; they also have the option where you  
929 can pick it up curbside.

930 Planner Fortner: I didn't study the medical side of it because that's been law for a few years now and  
931 they have their own rules and separate regulations. This is just for recreational use and so they're going  
932 to be totally different establishments as I understand. So, you wouldn't have a medical marijuana place  
933 that will also sell you recreational, they're going to be completely separate.

934 Bradley: So, another question would be, and I don't think anyone can answer this, is what happens to  
935 the medical facilities then?

936 Planner Fortner: Oh, they stay operating, they sell to people that need medicine, need to use it as  
937 medicine.

938 Commissioner Bradley: But if there's no difference in between what one, what medical facility would be  
939 selling versus a retail facility?

940 Planner Fortner: There would be differences, for example a retail recreation can only sell you an ounce  
941 whereas medical may be able to sell you more towards what your medical needs are, towards your  
942 prescription. And they would only sell to you if you had a prescription.

943 Commissioner Bradley: Right, you have to have a card. So, the comment about only being able to sell an  
944 ounce, is that an ounce per visit?

945 Planner Fortner: Yes, but I don't know all the details, this is.

946 Commissioner Bradley: But these are questions that we need to start thinking about. Because I could  
947 come into the store ten times a day and get ten ounces.

948 Planner Fortner: Yeah, I don't know if they have a cap on that but when they sell it there's a cap on one  
949 transaction is an ounce. You're not allowed to do a transaction, ok give me another one because you  
950 would have more. And I don't know how they would handle that at all, you've already been here three  
951 times a day I can't sell you another one.

952 Commissioner Bradley: On the medical side they track it.

953 Planner Fortner: They're supposed to track all of this, how they sell it so they would have that ability,  
954 they would say wait we just sold you some today.

955 Director Bensley: I think the other thing that's important to note is that as part of these bills the counties  
956 are not allowed to prohibit sales so the other concern at this point is if we were to go for say a straight  
957 prohibition then you just have shops setting up around the periphery of Newark that we then have no  
958 hand in regulating. So, that's something else we would ask to be considered as part of the discussion as  
959 well because I mean.

960 Commissioner Bradley: We wouldn't have any regulation there, but we also aren't getting any revenue if  
961 they're within the city.

962 Planner Fortner: We wouldn't get any revenue true, but you could argue there's benefits, job creation  
963 these are all, not having to travel outside the city to get your marijuana.

964 Director Bensley: I'd also push back a little on the revenue in that especially not as much from the retail  
965 side but from the cultivation side the amount of electricity and water used by these facilities is  
966 significant in the equivalent of the triple digits of houses significant. So, there is, there are opportunities  
967 for revenue even if it's not a specific cut of the tax that is being collected.

968 Planner Fortner: I mean you could say that about most businesses, when a restaurant opens for  
969 example, it's not benefiting us because we're not getting anything, but it's a business opportunity for  
970 Newark.

971 Commissioner Bradley: But with a maybe with a restaurant, you're not getting the police calls, you're  
972 not getting the thefts, you're not getting all these other periphery things that you get in regular retail  
973 establishments, compared to a marijuana establishment.

974 Planner Fortner: Might decide it's too much crime risk, I don't know how the factories necessarily affects  
975 them if you wanted the cultivation or the labs but maybe if we don't want retail for example or, that  
976 could be a decision point, I guess.

977 Commissioner Bradley: Would the City of Newark need to establish their own commission?

978 Planner Fortner: No, that's all

979 Commissioner Bradley: So, the commission is New Castle County's commission?

980 Planner Fortner: No, it's the State of Delaware's.

981 Commissioner Bradley: The State of Delaware's Commission ok...can't read my own writing...ok that  
 982 doesn't apply. Ok, here we go, going back to Wawa, could Wawa eventually sell marijuana.

983 Planner Fortner: No.

984 Commissioner Bradley: How about Happy Harry's? I mean Walgreen's.

985 Planner Fortner: No.

986 Commissioner Bradley: Ok, got to ask.

987 Director Bensley: Commissioner Bradley, I'd also say as far as you know perhaps some of the issues that  
 988 are a concern about being attracted by this certain type of establishment, currently for restaurant with  
 989 alcohol the police have a points system for their special use permit and based on if criminal things are  
 990 happening at establishments they accrue points and once they hit a certain level of points they will be  
 991 given a hearing before Council with a potential suspension of their special use permit for restaurants  
 992 with alcohol. There could be consideration for a similar type of system for this type of special use permit  
 993 if there's a desire to do so.

994 Planner Fortner: Excellent point, so we would have that type of regulatory authority over local  
 995 establishments so if they were behaving badly, we could pull their special use permit. Also, we don't  
 996 have to renew their business license we could petition them and say they're bad. State's doing that  
 997 same type of regulatory authority too, but we would be participating in that. So, a bad operator could  
 998 be gotten rid of in a lot of ways.

999 Commissioner Bradley: So, excuse me, with a business license they not only have to have a license from  
 1000 the state they would also need one from the city is that correct?

1001 Planner Fortner: Yes, and we would be able to bill them for that.

1002 Commissioner Bradley: And are all of our license one dollar amount or do they vary based on the type of  
 1003 business?

1004 Director Bensley: They vary based on the type of business so we could.

1005 Commissioner Bradley: So, we could regulate that.

1006 Director Bensley: Yes. So, for example a restaurant that serves alcohol has a higher business license fee  
 1007 than say a corner store.

1008 Planner Fortner: And we can set that appropriately is that correct Renee? We could set it fairly higher if  
 1009 we thought there was cause for it.

1010 Director Bensley: Fees have to be justified by the cost of the service, but it would, we would have the  
 1011 ability to scale that fee based on that.

1012 Commissioner Bradley: And it would be a yearly permit as opposed to a biannual permit?

1013 Director Bensley: Correct. So, our business licenses are all issued annually.

1014 Commissioner Bradley: Let's see...that was, I don't know where I saw it but there was something that  
 1015 said within 300 feet of a straight line or something like that?

1016 Planner Fortner: Maybe in the fourth option? There's also something in the state code about 1000 to  
 1017 100 feet along this road from each other. It thinks that would be 1,700 and that's, they may disapprove  
 1018 of it says they may.

1019 Commissioner Bradley: But we can set our own guidelines, right? Kind of like what the gas stations used  
 1020 to be, where you couldn't have one across the street, or one right next to each other.

1021 Planner Fortner: That's right. We can either say it specifically or we can or try to push this through just  
 1022 to market demand showing one across the street doesn't make sense because there's one already across

1023 the street meeting the demand of this area so another one across the street isn't justified by the terms  
1024 of our market and we could regulate it that way we could keep the saturation point low and the facilities  
1025 dispersed better.

1026 Commissioner Bradley: So, if somebody wanted to open up any type of these facilities within the city of  
1027 Newark they'd have to go to the state and the city.

1028 Planner Fortner: That's correct.

1029 Commissioner Bradley: But they should probably go to the city to see if the city's going to allow it before  
1030 they spend any waste of time going to the state, is that correct?

1031 Planner Fortner: That's correct, and they have to show that their permits are all, they got a zoning  
1032 verification, and they got whatever permits that they need and the business license.

1033 Commissioner Bradley: So, they'd be coming to the city before they're going to go before the state.

1034 Planner Fortner: They can go through it simultaneously but to complete their application with the state  
1035 they'd have to complete their application with the city.

1036 Commissioner Bradley: Ok.

1037 Director Bensley: I think also it's important to note that there's only 30 retail facilities that are going to  
1038 be approved statewide, there's only up to 60 cultivation licenses, 30 production manufacturing, 5 testing  
1039 facilities and up to 30 retail licenses. So, while Newark may have a market for this product there's only  
1040 going to be so many licenses to go around. So, I think there's, I don't think we're going to have as many  
1041 marijuana retail facilities as we do liquor stores in Newark.

1042 Commissioner Bradley: Oh, I would agree with that, but could the city dictate how many of each type of  
1043 facility would be allowed in the?

1044 Planner Fortner: So yes, we're allowed to put caps on how many and we can say no more we can close  
1045 the door.

1046 Commissioner Bradley: So, we could do one each as an example and then that's it.

1047 Planner Fortner: Yes, at some point you could say we're pretty saturated here we're not going to approve  
1048 any more.

1049 Commissioner Bradley: Because 30 or whatever the number isn't a lot for the entire state.

1050 Planner Fortner: Yeah, and they're supposed to distribute it equally around the state so.

1051 Director Bensley: I think, and I have no knowledge of an application going in or anything like that. I  
1052 would think that the existing facility in Newark would likely be a good candidate for an application for a  
1053 license if they decide to expand beyond medical marijuana so thinking from, if you think of that location  
1054 as kind of the starting point of where you're looking at and you're looking at distances from there and  
1055 things like that. You know, depending on how large of a radius you want to put on, you know distances  
1056 between stores, you could be looking at a significant part of downtown being cut out or how all of these  
1057 different potential locations intersect. So that's the other, I think we have potentially someone that's  
1058 going to jump in early to this and you know it kind of builds out from there.

1059 Commissioner Bradley: Do you all communicate with Elkton at all with stuff? Because they're legalized  
1060 and they have stores on Route 40.

1061 Director Bensley: They do.

1062 Commissioner Bradley: And I don't know if you have any counterparts that you could speak with down  
1063 there, it might be a good idea to kind of trade ideas to see how it's going down there.

1064 Commissioner Silverman: Is it possible a Planner from down there could come and speak with us?

1065 Director Bensley: I can ask.

1066 Planner Fortner: We do know planners down there in Elkton and the county.

1067 Commissioner Bradley: That would be a great idea to have their planner come up.

1068 Director Bensley: You're still not on Commissioner Silverman. There you go.

1069 Commissioner Silverman: It'd be interesting to have someone with a planning background from a  
1070 jurisdiction that has already been through this. What the state provided, what they thought was going  
1071 to be implementation, what really came out of the meat sausage grinder, and what the market would  
1072 tolerate or question, and what, finally the conclusions they came to when there was an up and going  
1073 concern. The legislation looks mom and pop kind of operations, opportunities, 10,000-dollar license, a  
1074 two-year life that's deep pockets with people who really want to gamble. They're not going to; they  
1075 don't want any soft parts they want to know what they're going to make. It's not going to be two guys  
1076 get out of college and say we're going to open up, they have no backing. So, I'd like to see how all of that  
1077 came together in Cecil.

1078 Commissioner Bradley: My neighbor did the security install over at Fresh and quite substantial, so like  
1079 you said it's not a drop in the bucket to start one of these things.

1080 Commissioner Silverman: Right, it's not two guys in a panel truck.

1081 Commissioner Bradley: Right, I would love to see something like that happen before we get to into this  
1082 and see what would change. What would they do differently than what they ended up with? Ok I think  
1083 with that I'm going to stop my rambling and since this is just a kickoff meeting with all of this stuff, I'm  
1084 sure there'll be plenty more conversations. As far as where I would end up, I think right now would be a  
1085 special use permit for everything, any of the four options there, which just to clarify that would mean it  
1086 would come before planning and everybody.

1087 Planner Fortner: Not necessarily planning, it would go to Council, if the facilities over an acre which  
1088 probably wouldn't be the case, it would go before Council.

1089 Commissioner Bradley: Is there a way, could it come before planning?

1090 Commissioner Silverman: Yes, but just the mere application, whether you're in a 16-foot-wide store front  
1091 or if you're on less than an acre but going to cultivate maybe we should see it at least initially.

1092 Planner Fortner: So that's something to consider.

1093 Commissioner Bradley: Director, do you have any comments on that?

1094 Director Bensley: I think that we would need to go back and change kind of the root special use permit  
1095 code parameters, not saying it couldn't be done but it would be, my question is would there necessarily  
1096 be justification to carve out this one item versus some other uses that we have in the code currently?

1097 Commissioner Bradley: My answer would be yes because it's brand new and none of us know how this is  
1098 going to go down.

1099 Commissioner Silverman: Maybe even a time limit on it for the first year, first two years whatever.

1100 Chair Hurd: So, it seems like once we're talking about a retail store in an existing building, it's less of a  
1101 land use it really is all the other things around it, that special use permits tend to deal with. The impact  
1102 on the community and such. So, it does feel like, unless someone was rezoning a parcel so that they  
1103 could put a dispensary there or something it sort of removes it from the land use picture and moves it  
1104 into the city licensing and uses.

1105 Planner Fortner: In terms of time limit there is a two-year time limit because it goes up for renewal with  
1106 the state and we can protest, we can put in an appeal to the state if we don't like it or we pull their  
1107 special use permit if they're bad actors.

1108 Commissioner Silverman: You bring up an interesting point does the city have any standing before that  
1109 state commission?

1110 Planner Fortner: Absolutely and our residents have standing in front of that Commission too, so I'm sure  
1111 if Council made a resolution or the city manager turned in his letter, those could be very damaging.

1112 Commissioner Silverman: Pertaining to the renewal.

1113 Planner Fortner: The renewal and startup, yeah startup too but renewal most definitely. I mean we  
1114 would pull our special use permit if we had special use permit.

1115 Commissioner Williamson: I think what you were referring to or whoever was that the requirement that  
1116 it be a conditional use permit be for a set period of time in the city code so it's not forever and the  
1117 justification is it's and all new use. Until we figure it out, we would want that.

1118 Planner Fortner: They would get renewed every other year.

1119 Commissioner Williamson: Well, their license would but our code revision would have a time out or a  
1120 sunset.

1121 Commissioner Bradley: So what you're saying is as it stands right now if they were given a special use  
1122 permit for a marijuana store or factory, whatever it is, in two years someone else could take over that  
1123 facility if they didn't meet the requirements that we need, but they would still have that special use that  
1124 would go along with that, is that what you're saying? We could put a time limit on that.

1125 Director Bensley: So, you can put conditions on a special use permit to limit it to the applicant. So, it  
1126 does not, while it carries with the property if you don't put any conditions on it and it remains in  
1127 continuous use without a year gap you can put, we have had special use permits particularly in the  
1128 restaurants with alcohol arena where it's been conditioned that it's only the applicant, it's only for the  
1129 applicant for that special use permit. And it would sunset if that applicant is no longer the person, the  
1130 group using it at that property.

1131 Commissioner Bradley: If the applicant sold their business to someone else would that new business  
1132 have to reapply for a special use permit?

1133 Chair Hurd: If that was a condition yes. I'm just going to say what I thought I heard was the time limit  
1134 would be on having the Planning Commission consider these special use permits because it is outside  
1135 the realm of normal, but it would be sort of like, for the first two years of running this, lets have Planning  
1136 Commission look at it as well as Council.

1137 Commissioner Bradley: That makes sense I like that idea.

1138 Chair Hurd: And then have that sunset so it's not forever in the code.

1139 Commissioner Williamson: And if they turn out to be problematic you extend that, but if it turns out to  
1140 not be a problem you could sunset it.

1141 Commissioner Bradley: So whatever time limit, even if it's two years any new application would come  
1142 before Planning Commission for those first two years, if all goes well it all disappears after that.

1143 Chair Hurd: Exactly.

1144 Commissioner Bradley: Love it.

1145 Chair Hurd: So, if we did, it might want to be three so we can get to a renewal cycle.

1146 Director Bensley: So, I just want to make sure I'm understanding what's being envisioned here, because  
1147 I'm not sure everyone's on the same page as what's being envisioned here. So, what I'm hearing is that  
1148 the thought is that the original special use permit would come, regardless of the property size, would  
1149 come to Planning Commission for a recommendation prior to going to Council. We are not suggesting  
1150 altering that to require at you know renewal of the state license that they have to continually come back  
1151 for a renewal of their special use permit, correct?

1152 Chair Hurd: Right.

1153 Director Bensley: So, I guess my question is, you know if we talk about whether or not special use  
1154 permits that are granted if the grantees have any problematic issues, how would that affect this sunset?  
1155 Because if we're not bringing it back at renewal...

1156 Chair Hurd: So, the way I see it is, say we approve the first one, that sort of starts the clock or whatever.  
1157 In two years when they come up for renewal it would be good to know how they did, how they were  
1158 renewed, where there any issues before we sunset our ability to review special use permits because if  
1159 we said alright the first one's come through for it's renewal and boy there were issues we hadn't  
1160 foreseen, or the ones that we did foresee did in fact happen, it gives us the opportunity to continue our  
1161 review if want to. If the first one or two get through the renewal cycle cleanly then we can say ok  
1162 everything's working and its sunsets, but it gives us an overlap of the enactment of that code section for  
1163 allowing us review to overlap a license at its renewal.

1164 Commissioner Bradley: So, I think that one of the commissioners said a period of three years which  
1165 would cover our butts then right, because they have two years original.

1166 Chair Hurd: It might start when we enact the code change, we're still (inaudible) here.



1167 Director Bensley: I guess what I don't, and maybe it's just not clicking with me, is each applicant is going  
 1168 to be considered with their own plan on their own merits. So, I'm not sure where that ties into having to  
 1169 go through a renewal cycle.

1170 Chair Hurd: It's not, it's just, I wouldn't want our, if we felt that it was important for the Planning  
 1171 Commission to review that special use application prior to Council I wouldn't want that ability to sunset  
 1172 before we see how the first applicant gets through its renewal cycle and comes out the other side.

1173 Solicitor Bilodeau: I would recommend if you're going down that road, where you want Planning  
 1174 Commission, just don't put a sunset on there, we can just change that law later, two years, three years  
 1175 from now whenever that you're comfortable letting just Council consider the special use permit.

1176 Commissioner Bradley: That might mean somebody might wait three years until our thing sunsets and  
 1177 they come in.

1178 Chair Hurd: Maybe.

1179 Solicitor Bilodeau: So, you know I, whenever the feeling is yeah, we're comfortable with just letting the  
 1180 Council have oversight over this then change the law then and don't telegraph when you're going to do  
 1181 it.

1182 Chair Hurd: Yeah, I think the sunsetting may have been to help staff or others feel more comfortable with  
 1183 making this sort of exception to the special use review process. So rather than making it a permanent  
 1184 ongoing thing that then, someone might come along and say well there's these other uses that also have  
 1185 impact that we want to look at even though they're not on properties greater than an acre. So, it just  
 1186 starts to open the door to maybe say yeah, we're opening the door but we're closing it in a fixed time.  
 1187 That's how I heard it, but of course that can be a piece of how we look at this when it comes back  
 1188 around.

1189 Commissioner Williamson: Chair Hurd, I think it's correct, any CUP issue for any of these uses would have  
 1190 its own conditions that could lead to its own unique renewal process and so forth or termination of their  
 1191 permit because of a violation of a condition. So that will always be there for each individual license and  
 1192 permit.

1193 Commissioner Bradley: That doesn't mean the Planning Commission gets to review stuff.

1194 Commissioner Williamson: Unless you write it in, you could write it into the condition. You could write a  
 1195 condition that says under these circumstances this permit goes back to the Planning Commission for  
 1196 reconsideration or something, conceivably.

1197 Director Bensley: I think we would have to stay consistent with how special use permits are reviewed  
 1198 and potentially suspended with how others are treated. And that is a Council function that is not a  
 1199 Planning Commission function. They serve as, for lack of a better term, judicial review of those  
 1200 violations and they decide what the penalty is.

1201 Commissioner Cloonan: I haven't had a chance to speak.

1202 Chair Hurd: I know, I know we'll get to you I want to make sure Commissioner Bradley is settled. We kind  
 1203 of got tangential there for a moment.

1204 Commissioner Bradley: I guess I'll wrap up my comments with I would like the Planning Commission to  
 1205 have more of a say in the first few years of this, if it is a transition to these types of businesses coming  
 1206 within the city I think that it would be nice to have some sort of revenue projections and maybe use the  
 1207 Fresh dispensary as an example of what they're contributing as far as revenue from utilities to see if it's  
 1208 worth having those types of facilities within the city's bounds. And with that I'm done.

1209 Chair Hurd: Thank you. Commissioner Cloonan?

1210 Commissioner Cloonan: I thought you'd never ask. I am in favor of providing retail services for you know  
 1211 marijuana within the city limits and I would lean towards option three, the conditional use, I don't feel  
 1212 strongly that the Planning Commission needs to review these, and I may be naive, but I think any retailer  
 1213 that comes with this use is going to be extra careful to make it work and to not raise issues so again that  
 1214 could be my naivety speaking but I also think there are a lot of checks and balances involved here and I  
 1215 like the idea of the points with the police and treating this like an alcoholic distribution center. I think we  
 1216 have other means of controlling any problems that might arise. And I don't really see the Planning

1217 Commission necessarily, I'm not going to fight it, but I'm just saying I don't really see us having a big role  
1218 in that.

1219 Chair Hurd: Ok, thank you. Commissioner Kadar?

1220 Commissioner Kadar: A couple of points as I went through this report, I have a question line 31 and 32  
1221 and I know these are state regulations. 31 and 32 talks about the quantity for sale limited to one ounce,  
1222 pretty clear, but then it says "and the equivalent amounts of marijuana product in other forms" based on  
1223 what?

1224 Planner Fortner: Ok, so the more complete language and it's kind of convoluted, but there's different  
1225 types of products and concentrates.

1226 Commissioner Kadar: Is it THC based, is it volume based, or is it weight based?

1227 Planner Fortner: So, the language is, I don't know.

1228 Chair Hurd: Right, you have edibles, you have...

1229 Commissioner Kadar: I know there's all that stuff.

1230 Chair Hurd: And someone's done the math to say one ounce of leaf is...

1231 Commissioner Kadar: Is the math specified in the regulations?

1232 Planner Fortner: Yes.

1233 Commissioner Kadar: That's all you have to say, because I don't have the full regulations so...

1234 Commissioner Bradley: If all that stuff is specified and with each card, they allow you a certain amount  
1235 per month.

1236 Commissioner Kadar: That's great. Ok. Line 200, and then also subsequently line 295, but 200 identifies  
1237 a retail store, that's a store in which nonfood goods, wares, blah blah blah are gummies and edibles  
1238 nonfood goods?

1239 Chair Hurd: Well, they fall under sort of drugs so.

1240 Planner Fortner: Yeah, drugstores drugs are in there, yeah, I don't know but I would say it's a nonfood  
1241 yeah.

1242 Commissioner Kadar: So, it's not food, even though you eat it?

1243 Planner Fortner: Well, you put it in your mouth and swallow it. I don't know Karl.

1244 Commissioner Kadar: Ok, and this is just an interesting comment, that brings me back to discussions we  
1245 had, it's been well over a year ago where we talked about microbreweries and micro distilleries you  
1246 remember that?

1247 Chair Hurd: Yeah

1248 Planner Fortner: Yes.

1249 Commissioner Kadar: Well lines 220 and 221 and also 308 and 312 talk about industrial zoning districts,  
1250 right. MOR, MI, STC where production of alcohol is prohibited. Yet we prohibited the production of  
1251 alcohol in a microbrewery to some extent but a micro distillery a much higher percent in I believe it was  
1252 the BC district if I remember correctly. That was out at Wagon Wheels at the shops at Louviers I think  
1253 that's a BC district.

1254 Director Bensley: BB

1255 Commissioner Kadar: BB, that's even worse. So, we have a little bit of a disparity there, we can't do it in  
1256 an industrial setting, yet we can kind of do it in a more.

1257 Planner Fortner: Well, we have microbreweries and micro distilleries are allowed in there, th7+at alcohol  
1258 I notice that it was in this section A, but I think it was referring to something else, it's weird. We allow  
1259 micro distilleries in the industrial district, but we also allow them in a commercial district now.

1260 Commissioner Kadar: So, we talked about this.

1261 Planner Fortner: Yeah, I know it was a big point of discussion.

1262 Commissioner Kadar: It's just me being nitty.

1263 Planner Fortner: You are being you, yeah.

1264 Commissioner Kadar: Ok, I'm kind of curious, why the extra fee if we decide we want to stay open on  
1265 Sundays?

1266 Planner Fortner: Oh, the other thing, I don't know this was a template thing that we came up with, that's  
1267 in the state law where if they want to extend their hours, they can pay an additional fee.

1268 Commissioner Kadar: No, I understand that but what we're talking about is you can stay open on  
1269 Sundays per state law, but if you do it in Newark, we're thinking of putting on a fee.

1270 Planner Fortner: Yeah, I'm not sure we could do that, its just some template language, I don't know.

1271 Director Bensley: So, the state is charging that fee.

1272 Planner Fortner: Yeah.

1273 Commissioner Kadar: That's a state regulation?

1274 Planner Fortner: Yeah, it's state.

1275 Director Bensley: So, I think, I'm enjoying this evening's discussion, but I do feel like we're getting way  
1276 into the weeds and getting into things related to state law that we're not going to have any control over  
1277 necessarily. So, the, I think the land use elements of this are what we're specifically looking for some  
1278 feedback and direction on so we can bring you guys back a good proposal.

1279 Commissioner Kadar: Well, that was not clear from the report because no where in the report did it  
1280 mention that at all. And then we got to line 427 it said that this is sample language that could be  
1281 included in a new ordinance and that's where the dollar figure comes in, I hadn't seen that anywhere  
1282 before. So, if it is in the state regulation that's fine, I don't have an issue with that, I'm sure we'll hear  
1283 about it.

1284 Commissioner Bradley: Is Fresh open on Sundays?

1285 Planner Fortner: What?

1286 Commissioner Bradley: is the dispensary open on Sundays?

1287 Planner Fortner: Oh, I don't know I haven't needed it yet.

1288 Commissioner Bradley: After tonight you will.

1289 Commissioner Kadar: Line 453, this is interesting, in line 453 assuming that we go with that option...

1290 Planner Fortner: I'm sorry what line was that again?

1291 Commissioner Kadar: Line 453. And 453 says that the marijuana facility and entity etcetera, cannot  
1292 engage and makes any health or therapeutic claims about marijuana or marijuana infused products. But  
1293 we have medicinal marijuana. So, we sell essentially the same product, retail store and medicinal store.  
1294 But we can't advertise that you can use it for medicinal purposes like they do at the medicinal store.

1295 Planner Fortner: Well, we are getting into the weeds as Renee said, but this is state law, they're not  
1296 allowed to promote it in ways that are unethical or unsubstantiated, so I don't know.

1297 Commissioner Kadar: Woah, woah, woah, woah. So medicinal marijuana is a substantiated medical use.

1298 Chair Hurd: Commissioner Kadar that may have been put in there so that there wasn't a perceived  
1299 competition between the medicinal and the recreational. But you're right, the language that the state  
1300 has chosen does make one wonder.

1301 Commissioner Kadar: Well general comments, I agree with the comments around cash. I don't believe  
1302 that banks are allowed to take these (inaudible)

1303 Chair Hurd: That's correct, most banks to not.

1304 Commissioner Kadar: Between state and federal regulations. So that could be an issue and it would be  
1305 an even bigger issue if we only wind up with one or two retail establishments, the fewer you have the  
1306 bigger the cash, so that could be a problem. Smelling is always a concern, I've been to New York, it

1307 smells like a weed factory. The other item that, and I don't know if we've been thinking about this, is  
 1308 disposal of butts.

1309 Planner Fortner: What?

1310 Commissioner Kadar: The little butts, right I mean... there are some people who use a roach clip and go  
 1311 crazy over it but if you discard some of the marijuana on the sidewalk, in a parking lot, in an enclosed  
 1312 area around buildings, dogs can get really, really sick. They'll eat it and it will be almost toxic to dogs and  
 1313 somehow, you're going to have to control that because I know you say we can't smoke it on the street,  
 1314 but good luck with that.

1315 Commissioner Bradley: People vape all the time on the street, you don't smell it but that's what they're  
 1316 doing.

1317 Commissioner Kadar: Well vaping doesn't have any residue that you can drop on the sidewalk unless  
 1318 you, you know you reload it. So, if I had to pick an option, I kind of like option 4, go along with the  
 1319 Planning and Development department. It introduces, I think, some commonsense regulations, and  
 1320 essentially follows all of the dictates that are in option 2. And once again I don't know where we're  
 1321 going to go in one or two years from now, we'll have to revisit this on a regular basis I'm sure but those  
 1322 are my comments at this point.

1323 Chair Hurd: Alright, thank you. I'm going to execute the chair's prerogative to extend the meeting to  
 1324 9:30. And then Commissioner Silverman?

1325 Commissioner Silverman: I'm going to discard option 2 to prohibit use, I'm going to discard option 1, do  
 1326 nothing. A piece of me in looking at option 4 says permitted regulations, enforcement, all that kind of  
 1327 thing, very selfishly since the state will not share revenue with us, why would we want to generate a  
 1328 system where we have to go out and enforce anything? That's going to be enough of a burden with the  
 1329 additional burden on the police. I'm leaning towards the conditional use and of the four options for the  
 1330 types of licensing I think we should, until we really know what's involved, we should prohibit the  
 1331 production manufacturing license because if you remember not too long ago, we permitted non-  
 1332 manufacturing uses in some of our manufacturing districts. And you really don't want a daycare center,  
 1333 fitness center, or private school next to a facility that truly uses hazardous extrication processes. So, I  
 1334 would suggest that we not look at the extraction facilities and permit that. Cultivation, if I really wanted  
 1335 to get strict, I would only permit it in agricultural districts.

1336 Chair Hurd: We have a zoning, but we don't have a district yet.

1337 Commissioner Silverman: Oh, I'm sorry agricultural zone.

1338 Director Bensley: We don't have an agricultural zone.

1339 Commissioner Silverman: Ok, then I would only permit it within approved structures, whatever magic  
 1340 the state has come up with saying this is the facility that it's grown in.

1341 Planner Fortner: Well, they will have that and then our special use permit could address these types of  
 1342 things, same thing with the schools, if we decided we didn't like it was near the schools or if it was going  
 1343 to cause some sort of externality that would have a direct impact on the surrounding area, they can turn  
 1344 those down for those reasons.

1345 Commissioner Silverman: And something I'm not clear on in my mind and I don't have the code in front  
 1346 of me, in one of our review programs, I don't know if it's a special use permit, there's language about  
 1347 effecting the citizens of Newark and a one-mile radius outside in the state of Delaware. Is all that  
 1348 included?

1349 Planner Fortner: Yes, that's all part of the special use permit, so all those things you mentioned even  
 1350 with the production facilities, if they thought that was a negative externality they would have to present  
 1351 to Council and if they felt like they didn't present it in a way that addressed the negative externalities  
 1352 then they could say no, this is going to impact the nearby bicycle or residential area or other workers  
 1353 there.

1354 Director Bensley: Also in the state regulations, it says that the commissioner may refuse to grant a  
 1355 license to sell marijuana, marijuana products or accessories to any new establishment to be located in  
 1356 the vicinity of a church, school, college, or substance abuse treatment facility. The commissioner may  
 1357 issue a license to any establishment located in the vicinity of a church, school, or college when such

1358 establishment has been located in a place prior to a place or time that any church, school or college may  
 1359 thereafter be located in the vicinity of such an establishment.

1360 Commissioner Silverman: I'm putting on my facetious hat. Does that include space leased by the  
 1361 University on Main Street? Is that considered a college activity or are they talking about a college  
 1362 campus, college real estate, college building, clearly the University of Delaware controlled real estate.

1363 Director Bensley: It says as defined under section 2203 of Title 16; I don't immediately have that at my  
 1364 fingertips.

1365 Commissioner Silverman: Because that type of language could make this whole discussion.

1366 Chair Hurd: Yeah, you can't go 300 feet.

1367 Commissioner Silverman: Anyway, but conditional uses are where I'm leaning.

1368 Chair Hurd: Ok, thank you. Thank you all for the discussion. The social justice warrior in me says option  
 1369 1 but the land use person says 3 because I think we do, like we do with restaurant selling alcohol, and  
 1370 such we want to put a little more oversight and review on the process. I'll also commend Director Bensley  
 1371 for her choice of words "going into the weeds" here.

1372 Director Bensley: And just for clarification I did pull up that section of code and that is actually just for  
 1373 the definition of a substance abuse treatment facility it does not define any of those other terms.

1374 Chair Hurd: Ok, that's going to be interesting. But yeah, I think the concerns being raised are valid and I  
 1375 would especially think that staff if they haven't yet will be reaching out to municipalities that are further  
 1376 down this road. It's always a good way to go. While no one has these same unique set of conditions  
 1377 that is us I think many of the issues are ones that others have dealt with so I think certainly we want to  
 1378 look at local municipalities that are further down the road and can provide some feedback on what they  
 1379 wish they had done, what they found wasn't even an issue at all, you know we could be focusing on  
 1380 something that they could say yeah that never happened. But this thing happens all the time. Alright,  
 1381 does staff feel they have enough information? Well, I guess you'll go to Council next right? So, Council  
 1382 same thing and then you'll start to craft stuff.

1383 Commissioner Bradley: Chair Hurd, just one last thing. Is it correct in saying that the state will finalize  
 1384 their criteria before the city finalizes? Is there a chance the city will finalize before the state?

1385 Director Bensley: Yes.

1386 Chair Hurd: Yes.

1387 Commissioner Bradley: And does that set us up for a conundrum?

1388 Director Bensley: Ultimately the state regulations if they are contradictory to ours, would likely control.  
 1389 We do have the ability to be more stringent but not less stringent. So, if we came up with regulations  
 1390 that were less stringent, and the state decided to put something in place that was more stringent the  
 1391 state would control.

1392 Commissioner Bradley: If it was reverse of that, would we have to go back to the drawing board and redo  
 1393 our stuff too?

1394 Director Bensley: Unless it's something in the bill that directly says we can't do it then I would likely say  
 1395 no. Paul would you agree?

1396 Solicitor Bilodeau: I would say that number one the state has already said municipalities can regulate  
 1397 how one is going to be handled in their jurisdiction through their zoning laws so I think we could enact  
 1398 our own zoning laws whichever way we want, prohibit, allow certain conditions, I don't see a prohibition  
 1399 or problem with us moving forward with getting our regulations in place.

1400 Commissioner Bradley: So that means we could be more stringent but not less stringent than state law.

1401 Solicitor Bilodeau: Yes.

1402 Chair Hurd: And I'll just add I think this I think would have mostly come into play if we decided that  
 1403 option 4 basically writing our own standalone code that mirrored but was not exactly like the state code  
 1404 there is when I think we would see the potential for more conflict.

1405 Planner Fortner: Whereas option three, (inaudible) it's a difference it has merits.

1406 Chair Hurd: If it's a state approved facility that's fine but this is where we say you can go here but you  
1407 can't go here.

1408 Commissioner Silverman: In some respects, the conditional use is very plastic, you can shift it to  
1409 whatever.

1410 Commissioner Bradley: Would there be a reason to wait for the state?

1411 Director Bensley: I think the problem is, and we wanted to wait for the state, we weren't ready to have  
1412 this conversation yet but the first meeting of the marijuana control board, I forget their exact name now  
1413 they pretty plainly stated that they were not going to have full regulations before they started accepting  
1414 applications and you know with the significant cost of filing an application we wanted to be able to give  
1415 folks some certainty as to whether or not it was something they'd be able to do here if they were  
1416 applying for a location here. So that's why we're having this conversation now.

1417 Commissioner Bradley: Ok thank you.

1418 Chair Hurd: Thank you all, any last comments? Ok, closing item 6, I'm assuming there's no public  
1419 comment? Ok.

1420 **7. Informational Items**

1421 Chair Hurd: That takes us to item 7 informational items, and we begin with the director's report.

1422 Director Bensley: Alright, I don't know why I turned off my microphone. Ok, so since our last meeting  
1423 projects that went to and are going to Council, November 13<sup>th</sup> Council did approve the street vacation  
1424 resolution for Independence circle which is part of the Newark Housing Authority's redevelopment plan  
1425 for George Reed Village so that was approved conditioned on the approval of their final subdivision plan.  
1426 So, if that goes through the street vacation will be effective and that property will be turned over to the  
1427 Housing Authority. 163 West Main Street did have their nuisance abatement plan approved also at that  
1428 meeting, they had 5 points removed from their record, the one point they had acquired since their  
1429 application remains on their record. November 27<sup>th</sup>, we had first read for several items related to the  
1430 budget and fee increases that are paying for various items in our budget particularly building permit  
1431 increases, rental license fee increases and the implementation of a new technology fee to pay for our  
1432 new permitting software. The other two items we had on that agenda for 1115 South College minor  
1433 subdivision, special use permit as well as the second reading for the implementation of the formal  
1434 addressing process were both postponed from that meeting they will be heard on January 22<sup>nd</sup>  
1435 unfortunately there was an advertising issue with the ordinance and there was some confusion as to  
1436 whether there was going to be a quorum of Council available that night so by the time we figured that  
1437 out the applicant asked to hold on because we didn't know which way the meeting was going to go or  
1438 not. So that will be heard, both of those will be heard on January 22<sup>nd</sup>. Our next Council meeting on  
1439 December 11<sup>th</sup> next week will have second reading for the three-budget related ordinances I mentioned  
1440 as well as the recommendations from the Community Development Revenue Sharing Advisory  
1441 committee on the allocations for the next grant year that are recommended. Other happenings in the  
1442 department, property maintenance code updates, as part of that rental license fee increase ordinance,  
1443 we also have several changes related to rental licenses that were previously presented to Council for  
1444 direction in July that are wrapped into that ordinance so that's all on the December 11<sup>th</sup> Council agenda.  
1445 We (being me) are in the process of reviewing the final draft of the recommended amendments to the  
1446 2021 International Property Maintenance code for adoption by Council. We will be meeting with the  
1447 Newark Landlord's Association after the holidays on that and anticipate final passage in early 2024 just in  
1448 time for us to start looking at the 2024 IPMC.

1449 EPL or Energov which is our new permitting and licensing software that we are implementing. We are  
1450 currently in our 7<sup>th</sup> implementation week as I've mentioned it's a 12-to-15-month implementation period  
1451 that's expected. We are in implementation this week and next week with a two-week break for the last  
1452 two weeks of December, but we will be in implementation four or five weeks in January as staff. And  
1453 staff on the steering committee are expected to commit 6 to 10 working days per month on this project  
1454 so I mention it because it's taking up significant staff bandwidth. Our next Planning Commission is  
1455 January 2<sup>nd</sup> of 2024 so hopefully we'll start the new year a little fresher and a little more on point than  
1456 we were this evening. I say that for all of us including myself. So, the Newark Housing Authority's  
1457 project is going to be on that agenda. We are also looking at some potential code amendments  
1458 specifically reviewing uses in various districts and determining whether they could be moved from a  
1459 conditional use to the right use. I had mentioned that last month as being on this month, marijuana kind

1460 of bumped that so we could get that conversation moving so we're looking to bring that in January. Also,  
1461 we have, we are looking at the consistency of the sections related to the special use permits for cell  
1462 towers and because right now it takes up approximately 6 pages of every zoning district so we're looking  
1463 to streamline that more and have it referenced only one place in the code. And that is all I have for this  
1464 evening so if we don't see you guys again, happy holidays.

1465 Chair Hurd: Thank you, and then the Deputy Director's report.

1466 Deputy Director Ramos-Velazquez: So, currently we have no new projects that have landed in our  
1467 department this month. We also sent out SAC letters on November 22<sup>nd</sup> for 401 Phillips Avenue which is  
1468 an administrative subdivision and also on the same day for 1110 South College, and we are currently  
1469 working through the queue for the Housing Authority project. That's all I have.

1470 Chair Hurd: Thank you, that closes item 7.

1471 **8. New Business**

1472 Chair Hurd: That takes us to item 8 new business, items of new discussion by staff or Planning  
1473 Commissioners that might be added to a future agenda. Commissioner Williamson?

1474 Commissioner Williamson: Chair Hurd I'll be quick. I'll try to be quick. We brought up the question some  
1475 time ago about the city's ability to apply for and receive grants, the Biden school has, I contacted the  
1476 Biden school's Public Policy Institute people, Sean Harris, he wrote and then I got a follow up email with  
1477 a lot of facts. And they're willing to come and give a presentation to the city, Matthew Harris is the  
1478 gentleman's name, and I'll forward this to Renee. "Good afternoon, Chris I wanted to follow up on  
1479 scheduling a presentation to the Planning Commission of the GAP (Grant Assistance Program) can we  
1480 coordinate?" And so, I wrote back that I would forward it to the director for possible future.

1481 Chair Hurd: Thank you. Commissioner Bradley?

1482 Commissioner Bradley: Just two quick things, I read about in the Post the Kells Building and what the  
1483 plans are there with regional sports training and such. Are there any parking issues or anything like that  
1484 popped up or is that kind of out of the realm right now?

1485 Director Bensley: For that particular project was something that was eligible to go straight to a building  
1486 permit/tenant fit out so that was reviewed as part of the permit review process but it's not something  
1487 that went to Planning Commission or Council.

1488 Commissioner Bradley: Ok so as far as you guys are concerned there's no issues with parking there for  
1489 what they're proposing.

1490 Director Bensley: No, not with what was presented to us.

1491 Commissioner Bradley: And lastly you had talked about in a prior meeting, you'd started having monthly  
1492 meetings with the University of Delaware I'm just wondering how fruitful they've been.

1493 Director Bensley: I mean our meetings are primarily discussing permits, projects and where things are in  
1494 our pipeline and things of that nature, we haven't had larger scale discussions about you know master  
1495 planning or what's coming in the long term down the pipeline.

1496 Chair Hurd: Ok, anyone on this side. Thank you that closes item 8.

1497 **9. General Public Comment**

1498 Chair Hurd: That takes us to item 9 general public comment for any items not on the agenda but related  
1499 to the work of the Planning Commission. Anyone online? Has anything been submitted that we know  
1500 of? No, ok, closing item 9 and having reached the end of the agenda the meeting is adjourned. Thank  
1501 you everyone and have a lovely holiday.

1502

1503 **The meeting was adjourned at 9:27PM**

1504

1505