CITY OF NEWARK
DELWARE
COUNCIL MEETING MINUTES
October 28, 2019

Those present at 6:15 p.m.:

Presiding: Mayor Jerry Clifton
Deputy Mayor Stu Markham, District 6
District 1, James Horning
District 2, Sharon Hughes
District 3, Jen Wallace
District 4, Chris Hamilton
District 5, Jason Lawhorn

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Acting Chief Human Resources Officer Mark Farrall
Assistant to the Manager Jeff Martindale
Chief Communications Officer Jayme Gravell
Finance Director David Del Grande
IT Infrastructure Manager James Reazor
NPD Captain Mike Van Campen
Parks and Recreation Director Joe Spadafino
Parks and Recreation Superintendent Tom Zaleski
Planning and Development Director Mary Ellen Gray
Planner II Thomas Fruehstorfer

1. Mr. Clifton called the meeting to order at 6:15 p.m.

2. EXECUTIVE SESSION
   A. Executive Session pursuant to 29 Del. C. §10004 (b) (2) for the purposes of preliminary
discussions on the sale or lease of real property.

   MOTION BY MR. HORNING, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER EXECUTIVE
SESSION PURSUANT TO 29 DEL. C. § 10004 (B) (2) FOR THE PURPOSE OF PRELIMINARY
DISCUSSIONS ON THE SALE OR LEASE OF REAL PROPERTY.

   MOTION PASSED. VOTE 7 TO 0.

   Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.
   Nay – 0.

3. RETURN TO PUBLIC SESSION
   Mr. Clifton reported no action was required from the Executive Session.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE
   Mr. Clifton asked for a moment of silence and the Pledge of Allegiance.

5. 1. ITEMS NOT ON PUBLISHED AGENDA
   A. Elected Officials who represent City of Newark residents or utility customers (2
minutes):

   Representative John Kowalko congratulated Mr. Clifton, Ms. Hughes, and Mr. Horning on their
elections. He apologized for his absence. Mr. Kowalko believed that not limiting the negative actions of
the species in destroying the climate and livability of the planet will doom future generations to extinction.
He was referring specifically to the annexation vote scheduled for the evening. He referred to the many
times he spoke on the failures and weakness in the City’s Comprehensive Development Code. He
witnessed and objected to what he considered ill-advised counseling from the City Solicitor and his
predecessors stating that Council has no authority to reject development projects should they meet
certain parameters. He advised and stated to Council that many development projects involve the
damaging and thoughtless deforestation of old growth trees and the practice would not be permitted
under County code ergo, the reason developers come to the City to get permission via annexation. Mr.
Kowalko advised Council that it has no obligation to annex property that would then be developed under
the City’s rules of compliance and to the detriment of our State, City, and planet. He stated that this was
the last line of defense and advised it to be accepted for what it was: a time and moment to serve the
future. Mr. Kowalko respectfully advised rejection of the annexation proposal.

6. 1-B. UNIVERSITY:
   (1) Administration (5 minutes per speaker) (3 minutes):

   5:54
   Caitlin Olsen reported a prospective student open house was scheduled for November 9, 2019,
   from 8 am to 3 pm, which is also a game day. She stated that during College Application Month, UD’s
   application fee is waived for all Delaware-resident seniors for the common application and she would
   forward the information to Council for dispersal. She requested Council ask constituents for feedback
   regarding UD’s system and information dissemination regarding College Application Month.

   Prior to the rental housing discussion, Ms. Olsen wanted to proactively speak and support the
   recommendations made for UD. She spoke with the Vice President of Student Life and looked forward to
   reporting on changes and growth if the agenda items were approved.

   Mr. Hamilton noted Newark Charter sent a newsletter regarding the fee waivers for the University
   of Delaware and he promised to spread the word.

   Ms. Hughes thanked Ms. Olsen for taking care of the issue between DART and the Bob Carpenter
   Center. She appreciated Ms. Olsen’s follow-up email and Ms. Olsen asked for any feedback.

   Mr. Hamilton also thanked Ms. Olsen for her help with the incident Saturday night. Ms. Olsen
   noted there would be some changes.

7. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes):

   None

8. 1-C. CITY MANAGER (2 minutes):

   8:39
   Tom Coleman reported that Homecoming Weekend was relatively quiet save for one incident that
   was being addressed.

9. 1-D. COUNCIL MEMBERS (5 minutes):

   9:01
   Ms. Wallace:
   • Mentioned she and Mr. Hamilton will be having a joint constituent meeting on November 2, 2019,
     from 9:30 am – 11:00 am in Chambers. All topics are open for discussion.

10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes):

    10:25
    Amy Roe, District 4, wanted to address the party at the Visitors Center on South College Avenue
    on Saturday afternoon and evening. She was frustrated at receiving contradictory information from
    Newark Police and University Police about whether the event had a special event permit or a noise permit
    from the City. She claimed that several different UD police said that students had permission from the
    City to have the party. Dr. Roe asked to see the noise permit and UD police were unable to fulfill her
    request. UD police assured Dr. Roe that Newark Police had said that the City granted permission. Dr. Roe
    was told by Newark Police that noise authorizations do not make it to dispatch. She noted that the
    dispatcher she called multiple times that evening was unaware of any granted permits.

    Dr. Roe recommended when special event and noise permits are given, the district councilman
    should be included. She noted that the disturbance concluded at 8:30 pm. She also suggested that
    authorizations should go to Police and dispatch so that when she calls, she can know whether she should
    leave the city. She also suggested that notices be posted to the City website so she could easily reference
    the goings-on in her neighborhood. Per her records, there was a problem last year and wondered if the
    City keeps track of recurring problem parties at the Visitors Center. She suggested Police begin tracking
    the information because she viewed it as burdensome. Dr. Roe was under the impression that Newark
    Police cannot enforce City laws on UD property. She further expressed her frustration that UD police are
    not accountable to the public. She felt that no one was willing to enforce the law on Saturday evening.
Mr. Coleman replied that the City did not issue a permit or a noise waiver for the event. He explained the permits and waivers would be issued by UD when events are on UD property. He remarked that when UD grants permits and waivers, UD police are not notified. Mr. Coleman said if the City issues a noise waiver for noise after 9 pm, Police will still respond if there are complaints and shut it down if necessary. He noted that this was the first he had heard of the complaint not making it to dispatch and surmised that if it had not, it was because the City wanted officers to respond and address the situation as necessary. Mr. Coleman said that the City will track the party next year.

Mr. Hamilton remarked that he had reached out to Mr. Coleman and Ms. Olsen and noted that the situation was resolved. He appreciated her patience and suggestions.

Megan Mullinex, UD Student Government representative, clarified that the referenced incident was the Center for Black Culture’s Annual Barbeque, not a party, and was a legal, University-sponsored event. Ms. Mullinex wanted to make the clear distinction between an out of control party and a tailgate for the Center for Black Culture.

Lorna Wilson, District 2, stated that she was concerned about the affordable housing in the City. She personally knew of three individuals who were in danger of becoming homeless and one person had been taken in by a church member for nine months until housing opened in the Main Towers. She noted that the individuals were all on fixed incomes and could not find reasonably priced housing. She felt the reason was that most of the housing in Newark is geared towards students which leaves residents in bad situations.

Mr. Clifton thanked Ms. Wilson for her points and said her message was not lost to Council. He stated that a press release would be issued on October 29 which would detail a meeting between the Mayor, the City Manager, the Planning Director, and the Philadelphia Regional Director of HUD. Mr. Clifton reported that the group had discussed affordable housing in Newark.

Jennifer Ransome, District 1, spoke of her personal experience with breaking from an abusive relationship to seek affordable, safe housing in Newark with her two children. She said that the Newark Housing Authority (NHA) is imperative for the Fair Housing Act of the City of Newark. She remarked that there were times when there was no money left after paying bills and the NHA has been a provisional support in dire times; she would not be able to live in the City without the help of the NHA. Ms. Ransome stated that her family have all been service members, did not feel that they should be further sacrificed, and more affordable housing is needed for families like hers.

Ms. Wallace asked for a count of attendees for the Paper Mill Road project. Upon seeing the results, Ms. Wallace made a motion to move the project up.

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING TO: MOVE ITEM 7B TO FOLLOW AGENDA ITEM 3A.

Mr. Clifton remarked that it was necessary that Council discuss item 6A. Ms. Wallace suggested moving that agenda item as well and withdrew her original motion.

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING TO: MOVE ITEMS 7A AND 8A DIRECTLY AFTER 3A AND MOVE 6A DIRECTLY AFTER 7A AND 8A.

MOTION PASSED. VOTE 7 TO 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.

12. 2. APPROVAL OF CONSENT AGENDA:(1 minute)
A. Approval of Council Meeting Minutes – October 7, 2019
B. Approval of Council Meeting Minutes – October 14, 2019
C. Receipt of Alderman’s Report – October 11, 2019
D. First Reading – Bill 19-27 – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Increasing Electric Deposits – Second Reading – November 11, 2019
E. First Reading – Bill 19-28 – An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, To Update the Provisions Regarding Liens for Unpaid Fines – Second Reading – November 25, 2019
F. **First Reading** – Bill 19-29 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 287 East Main Street – **Second Reading** – November 25, 2019

G. **First Reading** – Bill 19-30 – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BL (Business Limited) to BB (Central Business District) 1.135 Acres Located at 287 East Main Street – **Second Reading** – November 25, 2019

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.

Nay – 0.

Ms. Bensley reminded Council that per previous meeting directives, to keep first reading materials for 287 East Main Street as they will not be reproduced again.

13. 3. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:

A. Appointment of William Anderson to the Vacant At-Large Alternate Position on the Board of Building, Fire, Property Maintenance and Sidewalk Appeals for a Five-Year Term to Expire August 31, 2024 (5 minutes)

Mr. Clifton nominated William Anderson for the Board of Building, Fire, Property Maintenance and Sidewalk Appeals Committee. Mr. Anderson is a resident of Fountainview and has extensive experience in fire services. He holds a Bachelors’ degree in Fire Safety Administration with an Associate in Fire Sciences.

Mr. Clifton opened the discussion to questions from the table.

Mr. Hamilton thanked Mr. Anderson for attending the meeting and volunteering for a position.

Mr. Horning felt Mr. Anderson had an overwhelming amount of passion and thanked him for his dedication.

Ms. Hughes was impressed with Mr. Anderson’s resume and remarked that he would be bringing a wealth of experience and integrity to the position.

There was no public comment.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO APPROVE WILLIAM ANDERSON TO THE BOARD OF BUILDING, FIRE, PROPERTY MAINTENANCE AND SIDEWALK APPEALS COMMITTEE FOR A FIVE-YEAR TERM TO EXPIRE AUGUST 31, 2024.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.

Nay – 0.

14. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

15. 7. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 19-26 – An Ordinance Annexing and Zoning to RS (Single-family Detached Residential) 13.869 Acres in Order to Construct 18 Single-family Homes at the Property Located at 0 Paper Mill Road (See Item 8-A) (60 Minutes for Items 7A and 8-A)

Ms. Bensley read the proposed bill and public advertisements into the record.
MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 19-26.

Ms. Gray stated that the land use application is a request for review and consideration of annexation rezoning and major subdivision by site plan approval for 13.869-acre property located at 0 Paper Mill Road. The applicant is requesting a rezoning of the property from New Castle County zoning designation, which is SR-UDC (suburban reserve) to RS (single-family detached residential), and approval of plans to construct 18 single-family homes. She outlined the contents of the Council packet.

The proposal is for the construction of 18 single-family homes and associated stormwater control infrastructure on 7.7 acres of 13.9 acres fronting Paper Mill Road. The remaining 6.2 acres of the property is not being developed.

The property is currently zoned in New Castle County under suburban reserve and is a wooded lot. The zoning requirements from the NCC zoning district are included in the packet, exhibit B, and are further described in the staff report on pages 4 and 5. The proposed zoning for this parcel in Newark City Code is RS, single-family detached residential. Regarding the Comprehensive Plan, this property is included in the Growth Annexation, Chapter 11, of the Comprehensive Development Plan V as a potential property for annexation in Planning Area 5 with a recommended use of residential low-density. Ms. Gray stated the proposed project conforms with the recommendation.

The plan, as indicated in the description and as advertised, is utilized in the site plan approval provision of City code and the applicant is seeking two variances under the site plan approval provision. The first is under maximum lot coverage where code requires 20% and the applicant is seeking relief for a 13.7% difference in the maximum lot coverage. The second variance is seeking minimum lot width where the code requires 75 feet and the applicant is seeking a reduction of 26.4 feet in the minimum lot width.

Paper Mill Road is a DelDOT owned and maintained roadway and classified as a minor arterial road. The proposed development does not meet the warrant for a Traffic Impact Study or TIS, a DelDOT required study which is triggered by 500 trips per day or 50 trips per peak hour. Ms. Gray stated that the applicant is speaking with DelDOT about potential road improvements that will be expanded upon later in the presentation.

The development is proposed to be private in that the common areas, roads, and stormwater management facilities, as well as the sanitary system infrastructure, all are proposed to be private. A maintenance corporation will be established to maintain those facilities.

Ms. Gray noted several follow-ups since the Planning Commission hearing in September 2018 and wanted to address tree mitigation and the landscape ordinance per Chapter 32, Article XV, as well as potential of dedicating some land to White Clay Creek. The applicant revised their plan regarding issues which Ms. Gray would address. The landscape ordinance requires any trees that are 18 inches in diameter or bigger be designated as a “value tree”. The code allows for 25% of such trees to be removed without incurring any tree replacement requirements. Any value trees over the 25% mark shall be replaced at a minimum of 1½ to 2-inch caliper trees per 6 inch of caliper value tree. The tree mitigation for value trees removed is $175 per tree. The proposed plan was presented to the Planning Commission on September 4, 2018 and included a fee in lieu option of $450 per unit for a total of $8,100. Since the code does not expressly allow a fee in lieu option, the proposal was discussed, and the developer is no longer proposing a fee in lieu. Rather, they are proposing a tree mitigation plan in three phases:

- Phase 1 - minimum of 33% of the required plantings prior to site clearing grubbing and utility installations for the subject site
- Phase 2 – include Phase 1 required plantings, a minimum of 66% of the required plantings shall be installed prior to the issuance of the certificate of occupancy for the ninth dwelling unit or 50% of the approved dwelling units
- Phase 3 – all remaining plantings shall be installed prior to the issuance of the certificate of occupancy for the final dwelling units of 100% of the build out

No more than 66% of the required plantings shall be installed in the first year following the start of construction and all plantings will be required to be installed within three years of initial planting. Each phase of the planting shall be in designated off-set locations as specified by the Parks and Recreation Director. The City shall specify the species, size, and quantity of the plant material. The plantings will be installed as per a provided plan or field located as directed by the Parks and Recreation Department. For each of the phases, the developer shall post a two-year surety guarantee bond or other security instrument acceptable to and approved by the City Solicitor and shall be posted in the amount of 120% of
the cost of the required landscaping. During the two-year period for each phase, the developer shall be responsible for replacing all plantings that die or are diseased and all other requirements as per Chapter 32, Article XV, Section 32-89 Installation and Maintenance of Landscaping Screen.

Ms. Gray introduced Mr. Spadafino to answer additional questions and stated that Mr. Zaleski was en route due to the schedule change in the agenda.

As described in the plan in the Staff Report, the 18 single-family homes are proposed to be constructed on or about 7.7 acres of the 13.869 acres of the site along Paper Mill Road. As indicated in the letter from DNREC Division of Parks and Recreation dated July 29, 2019, and further described in the August 13, 2019, letter from Hillcrest Associates, DNREC has expressed interest in acquiring a portion of the parcel that will not be developed to be added to White Clay Creek Park. Further, the applicant has committed to include a forested buffer on the side of the driveway and to add a deed restriction prohibiting the planting of non-native, invasive plant species.

The Planning and Development Department Staff recommended approval of the annexation, rezoning, and major subdivision with site plan approval. This is based on findings that the proposed plan meets the City’s code utilizing the site plan approval provision of the code. It should not have any negative impact on adjacent and nearby properties and because the proposed use does not conflict with development pattern in the nearby area.

At the meeting on September 4, 2018, the Planning Commission recommended approval of 5 to 1 of the annexation and rezoning and recommended approval of 5 to 1 of the major subdivision with site plan approval.

Mr. Clifton moved the discussion to Council and the applicants’ representative, Alan Hill, and stated that questions will be withheld until after the presentation. He explained there are two issues, the annexation and subsequent approval of the project, and when public comments are taken at the dais, any question on either topic should be asked during the allotted time.

Alan Hill, of Hillcrest Associates, introduced Wende Stabler, from Saul Ewing, Arnstein & Lehr, who was representing the panel of Weinberg Trust, Tom Schreier, a registered landscape architect from Hillcrest, Nicole Klein, traffic engineer with McMahon and Associates, and Clay Greer, an environmental engineer with Ten Bears Environmental.

Mr. Hill explained he first began working on the property through the Trust in November 2016. He expressed his gratitude for the collaboration efforts between the Development Team and the City. During those three years, two meetings were held with residents in October 2017 and August 2018 as well as presenting for the White Clay Wild & Scenic River Program in December 2017. He also noted that a recommendation vote of 5 to 1 from the Planning Commission at the September 4, 2018 meeting led to a meeting with the Newark Conservation Advisory Commission in October 2018. The applicants were seeking approval for the property to be annexed into District 6, rezoned to RS, and major subdivision with site plan approval.

Mr. Hill described the site as located to the west of Paper Mill Road, south of Gore and Bank of America, north of Cleveland Avenue and east of White Clay Creek and the White Clay Creek State Park. The 13.9-acre site is adjacent to the White Clay Creek and across the street are the neighborhoods of Pine Meadow and Wyncliff. He presented a topographic map which showed the ground sloping from the road to the creek and a driveway leading to two homes located in the back of the property. He stated the driveway was built around 1956 when a family purchased the ground and built the two existing homes. He next showed a slide taken from the 2016 Comprehensive Plan V for Growth and Annexation for the City which shows the property identified within Planning Area 5 with a recommended use as low-density residential and providing a gateway to the City which is consistent with the current proposal.

Mr. Hill demonstrated another slide from Comprehensive Plan V which showed the adjacent low-density residential bordering the property. He illustrated the existing zoning districts and explained the Mimosa Drive parcel is part of NCC. The original proposal for the site requested RH zoning which would match the communities of Pine Meadow and Wyncliff. After going through the SAC process, the Planning Department suggested revising to RS zoning which would require a lot less relief as part of the site plan approval process. Mr. Hill next showed the proposed 18 lot subdivision with the proposed improvements between Paper Mill Road and the existing driveway along the south side of the property. He stated that the driveway is owned and maintained by the two existing homes and they had been working closely with the homeowners to a mutually acceptable plan. If the proposal is successful, both homes will connect to public water and sewer as currently one is on a cesspool and another has an experimental septic system.
Through the discussion with the neighbors, it became very clear that they wanted to ensure the driveway remained for their private use as they had rebuffed requests from neighbors to use the private drive to access their homes. The proposed roadway and internal services will be privately owned by the Homeowners Association that will be developed for the subdivision and the refuse removal will also be private to minimize the burden on City resources.

The applicants are requesting two deviations from the RS zoning district. The first deviation is for building coverage with a 900 square foot minimum lot size, the proposed building footprint is 40 feet wide by 80 feet deep which is 3,200 square feet. Mr. Hill claimed not all the proposed homes will be so large but will allow for homes that are consistent with those in Pine Meadows and Wyncliff across the street. The only lot that does not require the relief is Lot 13 which is the largest lot on the site because of the shape created by the development. The second requested deviation is from the minimum lot width. With the homes only being 40 feet wide and complying with the minimum setbacks of the RS district, the applicants are seeking a 65-foot-wide lot. Mr. Hill pointed out those were the only deviations the applicants were requesting from the RS zoning and stated that they were complying with all the building setbacks, the front setbacks, the side setbacks, the aggregate side setbacks, and the rear setbacks.

Mr. Hill explained when they were developing properties, they wanted to ensure they were consistent with the surrounding neighborhoods. He showed that the existing neighborhoods had a density of about one unit per acre and the proposed development was less than 1.3 units per acre and so is well below the low-density residential requirements of 11 units per acre.

Mr. Hill researched the surrounding developments from the Hunt at Louviers to Paper Mill Falls and noted the wide variety but felt that the proposed development was consistent with Pine Meadows and Wyncliff and were significantly less than the other neighborhoods in the area. He stated that the closest is Paper Mill Falls which was annexed into the City with RS zoning at 2.5 units per acre and backs onto the creek.

Mr. Hill displayed a map showing the Class C Wellhead Water Resource Protection Area, WRPA. The map required Mr. Greer to prepare a climatic water budget and hydrological evaluation which was reviewed by the Public Works Department. Mr. Hill stated Mr. Greer would answer any technical questions at the end of the presentation but summarized the conclusion of the report himself. The water budget found that there would be no adverse impact on the drinking water supply and the hydrologic findings state that the ground water quality is unlikely to be impacted from the development and recommended a post-construction monitoring plan. Even with the report, the Public Works Department requested that the applicants include an impervious barrier from the stormwater design in order to not infiltrate the surface runoff. He remarked that there had been a concern about road salt getting into the water supply, so the applicants redesigned the stormwater to accommodate and noted it will still look like a barrier retention area but will function as storage and not infiltration. Mr. Hill stated that the proposal met all State and City regulations for stormwater quality and quantity.

Mr. Schreier is a registered landscape architect in Delaware, Maryland, and Pennsylvania and performed several site visits with City and DNREC representatives to evaluate the composition, size, age, condition, and overall quality of the existing trees on the property. Based upon the site visits, the conclusion is two parts. The downhill side, described as the western portion of the property below the existing driveway, was composed of an older, more diverse group of trees than the uphill side which is slated for development. The uphill side had characteristics of an area that had naturally revegetated itself based upon the presence of relatively young, even-age stands of tulip poplars, with an under-story layer of varying degrees of invasive, non-native species. Mr. Schreier described the habitat on the uphill side as one with decaying and dying trees where insects, raccoons, and possums could thrive and noted the lack of fruit-bearing trees. He referred to an aerial photo from 1961 which confirmed the downhill area was and has been a closed-canopy forest and the uphill was not forested and allowed to naturally revegetate in the years since.

Mr. Schreier stated a unique aspect of the project is its proximity to the White Clay Creek State Park. The applicants propose to donate 5.139 acres of land on the downhill side of the existing driveway as well as provide a forested buffer on the uphill side of the driveway which will help reduce direct light impacts, heat, and wind on the older existing forest. The applicants will also be adding restrictions to the deed prohibiting the planting of non-native invasive species in the landscaping and will assist the State with management of any existing invasive species on the donated portion of land which could include planting of native under-story shrubs and canopy trees.

Mr. Schreier explained the proposed zoning could require a 40% minimum open area and a 40% minimum open space if the project were to utilize the density bonus of 8 units per acre. The project does
not require the density bonus however, in terms of open space, the applicants are providing 59.6% open space and 83.3% open area. He defined open space as the area outside of the lots and right of way and that is not composed of any land or people’s property. He described open area as everything that does not include an impervious surface such as a roadway, a driveway, or sidewalk.

As the project is a major subdivision, the applicants were required to perform a value tree survey which was completed by Mr. Schreier and City representatives walking the entire site to examine all trees within the limits of disturbance for their size, overall quality, and characteristic to determine how many value trees existed. The group located 215 trees that were greater than 18 inches in diameter and considered a value tree. Removal of the value trees is permitted to a maximum of 25% with an excess of 25% requiring replacement trees.

Replacement plantings are calculated based upon every six inches of diameter being removed above and beyond the 25% allowable disturbance. For every six inches of value tree being removed, it is required to plant two 1 ½ - 2-inch caliper trees in its place. As an alternative, the code does allow a substitution of five shrubs per every six inches of tree above and beyond the 25% disturbed. Based upon the value trees on the proposed site, the applicants are required to plant 626 trees. The current landscape plan incorporates 99 trees and 178 shrubs. Of those plantings, 8 canopy trees, 20 evergreens and 178 shrubs go towards the replacement plantings required by the ordinance for mitigation of removing more than 25% of the value trees. The remainder of the required replacement plantings, 563 plants, are to be planted per the subdivision agreement which states the developer shall install the required plantings in separate phases and, upon the completion of each phase, the developer shall post a two-year surety guarantee that shall cover all plantings with each respective phase for a minimum of two years.

Mr. Hill stated that a concern which stemmed from the public meetings was traffic. He referred to Ms. Gray’s prior comments that the project does not meet the 500 trips per day, or 50 peak hours required parameters for a TIS and noted the proposal would generate less than half of that. Mr. Hill revealed that although the traffic would generate half the numbers, the applicants took neighbor requests into consideration and engaged the services of Nicole Klein at McMahon Traffic Engineering to perform a traffic analysis for the area. The results of the analysis were that the location of the entrance would not conflict with the roadways of Cook Way and Wyncliff Lane and the proposed development would not have any traffic impact for the existing intersections which currently operate at an acceptable level. He stated that Ms. Klein would be available for further technical details.

Mr. Hill mentioned that the applicants met with DelDOT several times and created a plan which meets with DelDOT’s current policy which is to have a right turn lane for the southbound traffic on Paper Mill Road. He referred to previous public meetings where there was confusion as to the turn lane proposal and stated DelDOT only requires a right turn lane. Should the applicants gain approval, they have committed as part of the subdivision agreement to return to DelDOT and work towards getting a center turn lane that will benefit Cook Way and Wyncliff Lane as well as the proposed subdivision. He compared the scenario to the Cleveland Avenue center turn lane which has been installed and generally received positive feedback.

Mr. Hill added that architecture is part of the site plan approval process and displayed slides depicting the styles of the homes proposed. Due to the lot width, all the homes will have front entry garages and be a mix of one and two-story homes. Although the interiors of the homes have not yet been developed, first floor bedrooms are anticipated to be a significant offering with the market demographic and footprint. He stated that the community will not be age-restricted which will open the market to varied buyers who desire smaller lots with little maintenance and prefer to be close to the amenities of the City, UD, and the STAR campus.

Mr. Hill felt that the façades of the homes were upscale with a mix of siding, some stone detailing, and natural colors and presented a consistent theme. He noted one style that was different due to the lots being below and backing up to Paper Mill Road. He described the garage beneath, a mid-level entry, and a main living area walkout at grade. He admitted that it was an unusual offering that mixes up the styles within the neighborhood while generally maintaining two-story living. He illustrated that the style could also be configured to a single story above a garage. Mr. Hill then presented various style options.

Mr. Hill next presented the positive impacts of the proposal. He remarked two properties would be removed from septic systems and explained that if the applicants remained with the County, five lots could be proposed but all would have septic systems. Mr. Hill listed the positive impacts as:

- Elimination of two existing septic systems and five potential systems as per a County subdivision
Donation to the White Clay Park with an endowment for stewardship
Increase in the tax base for the City in sewer and water fees
Privately maintained streets to lessen the financial burden to the City
Clustered development to allow for greater amounts of open space
Willingness to deed restrict to ensure no high-density plans even with RS zoning
Meets the objectives of the Comprehensive Development Plan 5
Offers diversity in housing
New development meeting high standards for the site
Architectural design accommodating active lifestyles and environmentally sustainable
Replaces low-quality with high-quality trees through the mitigation plan
Enhances existing high-quality canopy by removing invasive plantings and under-story to improve habitat
Makes additional trees available for planting and beautifying the City over a three-year period
Works with DelDOT to obtain center turn lane on Paper Mill Road

Mr. Hill concluded by stating the City of Newark has a long history of responsible growth through annexation and he felt that the plan continues that tradition.

Mr. Markham noted that the law has changed so it is possible to connect to the City’s sewer system. He questioned Ms. Gray over the fiscal impact. He remarked that the presentation showed $25,000 per year over five years and $8,500 per year after and asked if the first five years included the building fees. Ms. Gray responded it was the Real Estate Transfer Tax (RTT). Mr. Markham asked if it was a net number and Ms. Gray replied that it was assuming a phased build-out period. Mr. Markham ask if it was also assuming a private sewer, water, road, and electric. Ms. Gray responded that electric would be City. Mr. Markham stated his reason in asking was because the Planning Area 5 slide stated that the proposal may not be cost-effective to serve with City electric, water and sewer, he asked for clarification regarding the privatization. Ms. Gray clarified that the infrastructure for water and sewer would be private, but the sewer bills would be paid to the City. Mr. Markham rephrased his question: if it was not private, would it be cost effective for the City to run the infrastructure to connect it. Mr. Coleman answered that the reason the services internal to the project are proposed as privately-owned and maintained is because it would have cost the City money if they were public. Mr. Markham stated that he was familiar with annexations for failed septic systems and asked if the City had ever done restrictions around undeveloped land. Ms. Gray explained she had a limited history with the City and looked to staff for annexation histories because the annexations in her experience with the City had been for family septic systems. Mr. Coleman asked Mr. Markham to clarify his question. Mr. Markham wanted to know if it was an unusual circumstance to have private services for undeveloped land. Mr. Coleman replied it was and said that it is not because the project is unique but because it is the first project where the City asked if it made sense.

Mr. Markham referred to page 9 of the Development Report and asked if the $8,100 cash in lieu of land per Chapter 27 was for open space because he thought the only variance was for lot size. Ms. Gray believed it was a remnant of the fee in lieu that had been deleted in favor of tree mitigation. Mr. Spadafino responded that it was cash in lieu of land for open space because the slope and wetlands were counted into the number so the cash in lieu of land at $450 per unit is required. Mr. Markham asked if there was not enough open space. Mr. Spadafino replied that there was open space, but staff did not feel like it would meet the requirements for recreational opportunity.

Mr. Markham asked who decides trees versus shrubs. Mr. Spadafino replied Parks and Recreation would decide if the planting was throughout the parks system and staff would work with the developers within the development to determine a good balance to maximize the tree and shrub mitigation plans. Mr. Markham asked if there were enough locations to plant and enough maintenance staff. Mr. Spadafino replied that there were enough areas to plant throughout the parks systems and it was spread over a three-year period to help with tree monitoring. The developer would be responsible for the care of the trees over a two-year period for each phase which would also require assurance for care of the trees. Mr. Markham asked if staff had confidence the trees could be maintained, and Mr. Spadafino affirmed. Mr. Markham asked if he was correct in noting 215 trees greater than 18-inch diameter and Mr. Spadafino confirmed that was the correct number of value trees.

Ms. Wallace stated she would reserve questions for after public comment.

Mr. Horning asked that any public comments regarding climate change be accompanied with data and correlation to the specific site.
Mr. Lawhorn referred to a project where a tree-covered area had a plan in place but after approval, the owners changed their minds and Mr. Lawhorn explained that there was nothing to protect the land from elimination of those trees. He asked how the land donation to White Clay Creek would be guaranteed if the plan fell apart. Ms. Bensley replied item 24 on page six of the Subdivision Agreement states that “the developer agrees to donate a portion of parcel that will not be developed to the State of Delaware to be added to White Clay Creek State Park and to provide a permanent endowment for maintenance and monitoring. The developer further agrees to mitigate the potential impact of the proposed development on ecology of the drainage portion of the parcel which includes providing a forested buffer on the uphill side of the driveway and the developer further agrees to assist with management of any existing invasive species on the donated portion of the parcel which could include planting of native understory shrub and canopy species. This onsite planting in collaboration with DNREC will be credited as part of the required tree mitigation.” Mr. Lawhorn asked if the City was confident that the Subdivision Agreement offered enough protection for the area. Mr. Bilodeau confirmed.

Mr. Lawhorn desired clarification regarding the drinking water language and wanted to be sure that there would be no concerns given it is on the City’s wellfield. Mr. Greer explained that a WRPA study and a water balance were conducted for the project to view pre- and post-development conditions. Mr. Greer pointed out that the project is in a wellhead water resource protection area. He referred to the presented slide and stated that the pale blue area was the wellhead water resource protection area and described the dark blue circles as separate wellhead protection areas that are more restrictive because of their proximity to individual well locations. He further explained that there were wells in the center of each of the dark blue circles with the larger light blue area as the theoretical capture zone for the wells. He described White Clay Creek as the dark blue line coming in from the top of the page, passing by the west side of the site, and through the north part of the City which feeds the reservoir. Mr. Greer explained there are two separate sources of drinking water in the area that were examined for the application; the first was ground water replenishment, which the WRPA is intended to protect, and the second was the runoff to the drinking water supply. Mr. Greer explained the WRPA limits the amount of impervious surface that can be built in an area that is captured by wells in order to maintain flow and quality of water to the wells. The water balance evaluation compared pre-development conditions and post-development conditions to examine the impact of removing vegetation, replacing it with pavement, and collecting the runoff from the pavement. Considerations were given to the runoff whether it was put into the ground or run off the surface which would then go to the drinking water intake. After a presentation to the City and some back-and-forth discussions, the determination was water runoff will flow from the site to stormwater ponds with a biofiltration media. After the granular organic material of the biofiltration media absorbs pollutants, the filtered water is discharged to White Clay Creek and then captured into the reservoir with excess going downstream.

The project was evaluated in terms of recharging the aquifer for the drinking water wells. The original design of the project would have increased the volume of recharge and would have maintained quality. The applicants were asked to install liners in the ponds which would have caused more to flow offsite but be available for capture by the reservoir system.

Mr. Lawhorn summarized that the main point was the City was confident in the quality of the drinking water having no negative impact as a result of the project. Mr. Greer confirmed. Mr. Lawhorn remarked that it was a learning experience for how expensive infrastructure was when new neighborhoods were developed, and he wanted to make sure that any changes were financially beneficial to the City.

Ms. Hughes asked for a description of the proposed land donation. Mr. Hill replied the area below the driveway is relatively steep and flattens out into the area of White Clay Creek. He described the area as a portion of flood plain with wetlands with untouched habitat and old growth trees. He remarked that the State was excited to have the donation. Ms. Hughes asked if the site had to be annexed to the City because it was not allowed under County code. Ms. Stabler stated that the primary reason for the annexation was for access to the sewer and noted the legislation that Mr. Markham referred to was passed after the initiation of the application for subdivision annexation and rezoning into the City. Ms. Stabler noted that it was not clear that the legislation would accommodate new development because she felt that it was intended to address existing septic systems. If the site was not brought into the City, it would be under the County's existing SR zoning which does not contemplate access to public sewer but does allow development of roughly five lots. Ms. Stabler noted that the density would not be the same but would allow substantial clearing without mitigation of 30% removal of trees even assuming all the trees were mature. She stated that the idea that the project was somehow getting away with something was not true and pointed that the City has substantially more control over tree replacement than would be the case if the project remained under the County. She remarked the City has substantial mitigation requirements for value trees and when the developers cannot plant more on the property, she pointed
to the donated land as a completion for the mitigation. She agreed that the applicants are getting the benefit of greater density and access to public sewer which is critically important and enables for cluster development for the market. Ms. Hughes stated she would have questions after public comment.

Mr. Hamilton asked Mr. Greer why he used the term “theoretical” in relation to the light blue area on the slide. Mr. Greer explained that the Delaware Geological Survey at UD modeled the travel drainage area underground to the wells and that the term “theoretical” was used because the information is based models as no one can be entirely sure what happens under the ground.

Mr. Hamilton asked who would take care of the failing infrastructure in the far future. Mr. Hill replied that the Homeowners Association would be responsible for anything within the agreement which is everything on site leading to the connection to the sewer that the applicants are proposing. Mr. Hamilton asked how to be sure the HOA is properly funded. Mr. Hill replied the HOA will be a legal document with all the homeowners’ support which will force payment of dues, allow for liens against homes, and is a much more powerful tool than the traditional civic association. Ms. Stabler explained that HOAs typically have reserves that are required for funds for capital expenses. She noted the lien capability was recorded in all the deeds and titles to the properties.

Mr. Hamilton asked if the City had control over the HOAs to check if they are properly funded and if the City had any legal pull. Mr. Bilodeau answered that the HOA is dependent upon itself for proper funding and referred to Ms. Stabler’s example of condominiums having capital reserves for shared or common property. Mr. Bilodeau noted that whether the capital contributions were made by the owners in thirty years would be up to future owners and the HOA’s enforcement. Mr. Hamilton asked if the City would have any control. Mr. Bilodeau said the City would not have control save from the ability to cite them for various violations. Mr. Coleman drew attention to item 15 in the Subdivision Agreement where the Public Works Department states the developer agrees that the sewer system is privately maintained by the maintenance corporation and includes that any repair completed by the City will be charged to the maintenance corporation the proportional share of the cost as well as a 50% administrative fee.

Mr. Hamilton asked if the HOA did not have the funds, would it return to the homeowners as liens. Mr. Coleman replied that it did seem it would go against the maintenance corporation as opposed to the individual property owners and he would want to see an amendment to the agreement in that case. Mr. Hamilton remarked that HOAs can dissolve. Ms. Wallace interjected that item 17 states the HOA will be responsible for the maintenance of the stormwater facilities but that the City shall be responsible for major repairs needed if the maintenance corporation has performed all the required routine maintenance. Ms. Wallace interpreted that the City is responsible for stormwater facilities when they deteriorated. Mr. Coleman commented that it was modeled after the County’s procedures and thought that Kent County had the same procedures in place. He noted one important difference with sanitary sewer that as far as the Environmental Protection Agency was concerned, the system was the responsibility of the City regardless if it was privately maintained. He remarked that if an issue occurs and is not repaired, the EPA will come to the City. He referred to a similar situation with Lea Earra Farms where the County was forced to take over. Mr. Hamilton stated that the City was ultimately responsible.

Mr. Hill responded that it was possible to write into the HOA documents that there is facility for the City to audit HOA accounts to make sure payments are maintained. Ms. Stabler suggested that a requirement be written which grants the HOA the ability to lien the lots and that if the association fails, the City could intercede. Mr. Hamilton appreciated the efforts but noted that all it took was for a few homeowners to fall on hard times and the City would be unable to recover the funds. He wanted to understand if there was stronger enforcement available.

Mr. Hamilton asked how many trips per day were expected. Mr. Hill estimated 215 trips per day in and out all day. Mr. Hamilton reserved additional questioning for later.

Mr. Clifton stated that he had a few concerns and mentioned that twelve years ago, he could travel from his home to a destination and hit four traffic lights and take fifteen minutes. The same trip today would take him through a dozen lights and take roughly thirty minutes. Mr. Clifton asked if there would be accelerate and decelerate lanes to the development and found it interesting that the applicants were using a format that the City has only used in commercial areas. Ms. Klein referred to the cross-section graphic of Paper Mill Road. She explained that it was the standard of DelDOT as Paper Mill is a DelDOT roadway, but the applicants were proposing to meet with DelDOT to deviate from the standard cross-section should the proposal be approved. She described Register Drive to the south on the corridor as having one through-lane in each direction and a center turn lane. She noted some intersections had dedicated right turn lanes dependent upon the intersection. Ms. Klein was proposing an alternate for consideration by DelDOT, in cooperation with the City, to adjust the cross-section to extend the existing
center turn lane through to provide a consistent cross-section to allow for traffic turning into the various intersections including the new access from a dedicated lane. She further explained that a through vehicle coming from behind would not be stopped while waiting for other vehicles to turn. The left turning vehicle has a safe wait until there is a gap in opposing traffic. She noted that it would likely result in DelDOT conceding on the outside dimensions in order to maintain as much shoulder as possible. She stated the center left-turn lane would provide greater safety benefit than outside elements. Ms. Klein noted it was a potential solution which would function similarly to what existed on the corridor to the south.

Mr. Clifton stated that it would widen the road through the area, and he asked where the bike lane would go. Ms. Klein knew that DelDOT would want to keep the bike lane and explained it was a discussion of balance. She felt that the width was enough but noted it would take coordination and discussions with DelDOT.

Mr. Clifton asked if the two properties with septic systems were to the north. Mr. Hill replied they were northwest. Mr. Clifton asked if the 30% reduction in lot width would bring it down to less than 49 feet. Mr. Hill confirmed. Mr. Clifton asked if the 30% reduction in lot width would bring it down to less than 49 feet. Mr. Hill confirmed. Mr. Clifton remarked that the core of the town where higher density was preferred would have a mandatory minimum lot width of 50 feet. Ms. Gray confirmed. Mr. Clifton remarked that the core of the town where higher density was preferred would have a mandatory minimum lot width of 50 feet and the proposal recommended less than 49 feet. Mr. Hill replied the minimum lot width where the building would be is 65 feet and the minimum lot width of 49 feet is around the cul-de-sacs. Mr. Hill was requesting the width on most of the lots that are internal, but it may be that 49 feet would be one or two locations while the lot width of the building will always be a minimum of 65 feet.

Mr. Clifton asked if the maintenance corporation would fall under the Delaware Uniform Common Interest Ownership Act (DUCIOA) laws as applied to condo owners. Ms. Stabler did not believe that the maintenance association would fall under DUCIOA because it is not a unit property situation. Mr. Clifton noted that it would fall out from the oversight of the Attorney General’s Office. Ms. Stabler was willing to stipulate to the jurisdiction of the AG as it related to the formation and to make sure that the rules and regulations would be followed if it would provide Council with additional comfort. Mr. Clifton was unsure if the AG was restricted to the certain types of developments and expressed his displeasure at the City having to audit as an additional cost and burden. Mr. Clifton stated that under DUCIOA, the applicants were required to collect a percentage of fees for each element and he did not want the City to have to monitor an HOA that falls outside of the customary boundaries of the AG’s office. Ms. Stabler stated the applicants were willing to stipulate to fees should the AG agree to accept jurisdictional oversight or comply with the requirements of DUCIOA associations and that the association would contract with a private management company to handle the oversight. Mr. Clifton referred to communities that have private roads and are seeking help from the City to buy them out. He explained that he was looking for a methodology for a sustainable plan. Ms. Stabler felt it was important for homeowners to understand their responsibilities because the City does so much more for its residents versus the County. She was willing to add whatever notices, protections, and oversights that are appropriate to ensure that it does not fall back onto the City. Mr. Clifton explained the level of detail in his personal experience with condominium voting and assessments.

Mr. Clifton referred to Chapter 11, Growth and Annexation, in the Planning Department Report and asked Ms. Gray what level the project was. Ms. Gray clarified that Mr. Clifton was asking about the State level Investment Strategy Level and she said it was level two. Mr. Clifton asked for the definition of “user-friendly transportation”. Ms. Gray replied it was more multi-modal transportation options as opposed to an automobile.

Mr. Clifton asked if the flood plain extended above the road. Ms. Stabler replied that DNREC saw the value in adding the piece to the park and it had never been considered for development as it was more suited to habitat.

Mr. Clifton opened the floor to public comments.

Don Sharpe, District 6, was representing himself and United Auto Workers Community Action Program (CAP). He stated that CAP and the Coalition for Natural Stream Valleys had been fighting for White Clay Creek State Park for fifty years and stopped a major reservoir, beltways, and have helped to preserve nearly 4,000 acres. He asked if the donated portion of land was tax deductible according to DNREC. Ms. Stabler assumed it was possible but noted that it was not a major impetus. Mr. Sharpe explained his personal history with the Handloff family and expressed appreciation for the park and the desire for it to become a bird sanctuary. Mr. Sharpe referred to a petition that was circulated for the Natural Plan for White Clay Creek State Park and where he personally spoke to 1,300 of the 2,028
signatories throughout Newark. He felt the consensus was a desire for more open space and was shocked at the idea of cutting down over 200 trees for what could be more college housing. Mr. Sharpe asked the Trust to sell the eight acres to the State so it could remain open space. He noted that in his fifty years of activism, no one had protested about the inception of White Clay Creek State Park. He felt that students today would prefer to preserve the land for their own children rather than see more development. Mr. Sharpe strongly opposed the annexation.

Mr. Clifton explained that any public comments must be made to the dais and Council would have the opportunity to address them later. He stated that the discussion tonight would be the plan on the table and should not be used for coercion. The comments should be for or against the plan.

Ivy Sharpe, Newark resident, was against the annexation and development.

Sheila Smith, District 4, stated that the City was on the verge of adopting a Sustainability Plan and explained that the vision statement was to strive to be a responsible steward of its natural human and economic resources to ensure an equitable and prosperous community by balancing the needs of people and the planet and relying on robust civic engagement to enhance the quality of life for current and future generations. Ms. Smith explained that sustainable development emphasizes mixed-use, compact, stresses walkable, bikeable and multi-modal transportation. She noted several points made during presentations from the Planning Department: that retirees are moving to walkable cities with good public transportation, annexation and subdivision in the long-term create large, costly maintenance issues, and infill or redevelopment is more efficient. Ms. Smith was shocked at the Planning Department’s approval of the plan and stated that it was dressed up to appear green despite the loss of 215 value trees. She then presented visuals of value trees circumferences. Ms. Smith stated annexation is a choice for the City with the benefit of taxes but the cost for the residents is the loss of irreplaceable ecosystem, loss of environmental services provided by 215 value trees, fragmentation of forest canopy in an environmentally important place, loss of habitat and biodiversity, more impervious surface, more cars and traffic on Paper Mill Road, and more automobile emissions.

Karen Barker, District 4, UD graduate and resident since the 80’s, raised five children in the City, and has been a science and biology teacher for over 40 years. She opposed annexing the 0 Paper Mill Road site. She stated that the forest was necessary for a healthy population and the vitality of the City and the land should be reserved for future generations. She explained that biological and forestry research showed that forests are interconnected ecosystems that maintain water and air quality and do not exist in isolation. She revealed replacing mature trees with many young ones throughout the City is in no way an equal value replacement. Ms. Barker described the developers as the winners and the City and residents as the losers. She explained that private citizens gave tours of certified habitat gardens in the area and raised $2,000 for the City to plant native plants. She felt that the City struggled to maintain current plantings and wondered at the addition of more. Ms. Barker asked Council to vote no.

Kay Elizabeth, District 1 and Newark resident of 40 years, encouraged Council to think carefully of the consequences of losing value trees before approving the annexation. She demonstrated the length of time for new trees to mature to the current value tree size.

Julia van der Veur, District 3, appreciated the work done by the developer for invasive species mitigation, ensuring the planting of native species and felt it would be better suited for open farmland. She explained her attachment to the area and asked if a sidewalk was included in the site plan. Ms. van der Veur opposed the plan.

Jim Tunis, non-resident owner of a property to the north of the plan, was also representing Barbara and Daniel Helmsdader. Mr. Tunis stated that Mr. Hill and Ms. Stabler were helpful, and he would not block their attempt to develop the land. He would also miss the trees but felt that the developers had done the right thing by donating the land.

Nancy Bailey, District 2, opposed the annexation. She asked why the developers chose forested land. She referred to struggle with the development of Laura’s Glen. She recalled the area was wooded and the developer wanted to build sixteen homes but was only allowed to build eight homes due to the opposition of neighbors. Ms. Bailey expressed her distaste at disturbing a wild place and hoped the Handloff legacy would include the wooded area and not a development. She opposed the annexation.

Larry Kwart, District 1, wanted to address Wild and Scenic Rivers (WSR) and stated it was not an arbitrary designation. The National Forest Service states the Forest Service works with the public to ensure that the free-flowing condition, water quality and outstandingly remarkable values of the rivers are protected from overuse, industry and development and other impacts that do not enhance the values.
Mr. Kwart explained two separate agencies in the Executive branch have weighed in on WSR. The WSR Act states designated river possess outstandingly remarkable natural, cultural and other values and they are to be preserved in free-flowing condition and they and their immediate environments are to be protected. Mr. Kwart noted the WSR Act was mentioned in the Sustainability Plan and referred to http://www.rivers.gov where a map by UD’s Water Resources Agency shows White Clay Creek is intended to have a 250-foot buffer from the mean high waterline. He further summarized the website and detailed the threats and results of suburban sprawl when residents migrated to open space. He stated that environmentally insensitive site designs result in dramatic loss of area values with the greatest imminent threats being non-point source pollution, flooding, erosion, and loss of fish and wildlife habitat. He illustrated the various forms and degrees of water pollution erosion. Based on the artist’s conceptions of the proposed development, Mr. Kwart assumed certain herbicides would be used. He was not confident in residents maintaining septic systems and was concerned about the adverse effects into the water supply.

Peggy Ellis, resident on Paper Mill Road since 1971, was concerned with the impact the proposal would have given her proximity to the area. She asked if her well would go dry if wells for the development were constructed. She was concerned with exiting north from the neighborhood as it went uphill. She cautioned the City to considered possible incurred costs to City taxpayers. Mr. Markham explained that the applicants were speaking of City wells. Ms. Ellis asked where the water would come from and Mr. Markham replied that it would be City water which came from the reservoir and White Clay Creek. Ms. Ellis noted her water was poor quality with an excess of iron which required extra filtration.

Peter Saenger, resident of Mimosa Drive, thought the existing tree code mandates trees must be planted before a certificate of occupancy is issued and the proposal was non-compliant for 1/3 of the trees being discussed. Mr. Saenger asked if the City would partner in the destruction of 7.7 acres of young mixed hardwood piedmont forest that is contiguous with the White Clay Creek Valley canopy. He explained the permanence of the proposed deforestation and noted the Parks and Recreation Director had not offered a written-detailed plan regarding tree-mitigation. He felt that the proposal was a bad deal and called it an ecologically destructive annexation. He claimed Council is not legally obligated to adopt the proposal and that doing so would do irreparable harm to the natural lands near Newark. Mr. Saenger explained Delaware’s piedmont forest exists in one part of the entire state and expressed his desire to preserve them in the Handloff and Weinberger names.

Mary Clare Matsumoto, District 6, opposed the annexation. She contacted Janet Kilpatrick, New Castle County Representative, and was told that the zoning was suburban reserve which required 5-acre lots. Ms. Matsumoto noted that only two houses could be built on the property without considering water, flood plain, and wetland constraints. She agreed with previous commenters about the loss of forest. She was unsure of the benefits to the City and asked why the land would be annexed only to be made private. She acknowledged that potential buyers would be furnished with responsible land-use packets but asked how responsibility would be enforced. Ms. Matsumoto was concerned about the potential use of taxpayer funds in case the HOA failed. She described the difficulty in leaving the development and remarked that cars use the bike lane to bypass turning cars. She noted the inefficiency of liens if HOA fees are not collected and referred to a development in Hockessin with a failing HOA. She remarked the proposed sidewalk did not mean the property was walkable to Newark and described the danger of crossing Paper Mill Road. Ms. Matsumoto claimed the developers were the only winner with the annexation and the losers would be the current and future residents of Newark.

James Creque, District 4, explained his negative personal experiences with HOAs and condominium associations. He noted the potential for assessments to go down while fees went up to create an unfavorable market for the owners.

Diane Nichols, District 3, opposed the annexation and development approval based on the loss of value trees and the increase in traffic. She referred to a recent accident with four cars at the site of the proposed project entrance.

Jan Owens, non-resident, was concerned with the quasi-annexation of the property that left room for question regarding tree maintenance and explained that just because trees were deemed as value trees did not mean that other vegetation was valueless. Ms. Owens hoped White Clay Creek would exercise eminent domain to claim the property and explained the park’s acquisition of parcels over fifty years. She reported that the usage of the park was higher than all others in the State.

Gil Nichols, District 5, agreed with all the environmental points made and gave his personal experience with HOAs in California. He wanted to know who would be accountable if the HOA collapsed. He asked Council to outline responsibilities for the City prior to allowing the annexation.
Nick Wasilewski, District 3, wondered when the City and County were at the tipping point for collapse. He gave a historical account of Easter Island’s deforestation and opposed the plan.

Margaret-Ann O’Rourke, District 3, spoke frequently with UD alumni and residents who wondered why the area would be developed. She explained that HOAs could be positive or negative and understood the difference between want and need. She stated the College Square renovation was a need that would benefit many. She felt the wants of a few far exceeded the needs of many where the proposal was concerned and opposed the project.

Amani Thurman, non-resident, felt it was necessary to address questions regarding the longevity of investments and the equitability of decisions. He acknowledged how seriously Council considered environmental responsibilities and suggested setting a precedent for the future.

Jean White, District 1, stated residents were strongly opposed to the proposed development of the Dickinson dorm site but Council approved the plan because it was fully code compliant. She explained that 0 Paper Mill Road was an annexation and Council had no obligation to approve it. She opposed the project because the proposed development is in a water resource protection area and she was against the deforestation. She repeated the value tree dimensions and was concerned that the mitigation was not equivalent to the loss. She claimed the developers would remove the largest trees under the allowable 25% without required reforestation.

Elizabeth Chartrand, District 2, opposed the annexation.

Claire Lime, District 6, opposed the annexation as she was worried about traffic and the loss of trees. She felt that center turn lanes were extremely dangerous and not a viable option.

Demetrios Agriantonis, resident of Pine Meadow, opposed the proposal.

Shane Morgan, manager of the Wild and Scenic Program, explained that White Clay is a unique WSR that relies on local land ordinances to protect the river and the program is not federally owned or managed. Ms. Morgan noted there are only thirteen WSR which are mainly in developed watersheds. She stated that Wild and Scenic does not endorse the plan but did invite the applicants to meet with National Park Representatives to determine potential permit liabilities. She claimed there were none as most of the permit liabilities with WSR lie within the bed and banks of the river. She explained the 250-foot mark is the high-water mark and is considered a buffer but must be a water resource project. Ms. Morgan acknowledged the proposal stayed within local codes and viewed the annexation as a way to get around stricter County codes. She declared the proposal would be an environmental loss and expressed concern over the stormwater management pond as it would be lined with one concentrated outflow. She worried about sending the water through one outlet to the rest of the woods whereas before it was sheet flowing.

Steve Dressel, District 6, Wyncliff resident, explained that the property is privately-owned and will eventually be developed, the only question was if it would be under City or County control. Mr. Dressel stated the Trust has a fiduciary responsibility to the beneficiaries of the Trust. He was concerned with the infrastructure and marketability of the project and wondered if it made financial and managerial sense for the City.

Alina Caulfield, Hockessin resident and UD student, explained the project was a misuse of public goods and repeated the previous concerns of public commenters. Ms. Caulfield wondered how partners of the applicants could claim to exercise professional judgement based on sound scientific principles and protect clients’ economic interests when the issues were inherently conflicting. She stated the sustainable option is to oppose the plan until the developers create a more comprehensive, thorough mitigation plan.

Mr. Hill explained the misconception regarding the tree size. Mr. Clifton asked if the measurement was circumference or diameter and Mr. Hill replied circumference. He explained that the trees were much smaller than the opposition assumed. He reiterated the applicants could remove 30% of the trees per the County and explained the City would have all the control through annexation. He acknowledged the meeting with the White Clay Creek WSR group and determined the proposal was out of their jurisdiction because it did not call for disturbance within 250 feet of the banks of the stream. Mr. Hill noted the project was between 400 and 450 feet from the stream.

Ms. Stabler explained the Trust had been responsible, inactive, passive landowners which allowed for a farm field to reforest. She noted that the land was privately-owned and explained the City had an opportunity to tailor the site. She corrected Ms. Kilpatrick because the zone is SR and there were many open space options including ones that allow parcels as small as one acre. There is also the ability to
remove 30% of the forest with no mitigation. She explained there is no mitigation if there is no specimen tree and, by County definition, a specimen tree is not a tree that is in a forest. The trees would not be mitigated under a County plan. She was apprehensive to send a message to the marketplace to clear land before seeking project approval and did not want to penalize landowners who had not developed their land. She described the project under the County code as having on-site septic systems, tree removal, no benefit of open space donation, no canopy enhancement, and no addition of a center lane on Paper Mill Road. Ms. Stabler felt that there were benefits to the community under City annexation and explained that the trees would be replaced responsibly, and a diverse housing development could contribute to the tax-base and take advantage of all the City offerings.

Mr. Markham appreciated the applicants’ effort and credited them with the donation of the land, attempting to handle the traffic issue, and meeting with the residents. He thanked the Handloff family for allowing the property to reforest. He noted the weaknesses of the plan as the open space, the loss of value trees, the variances, and the loss of potential accolades for tree preservation. He remarked that the Jenney’s Run HOA in District 6 was struggling and felt it would not be considered by the City if it was not a private HOA. Mr. Markham explained the property would most likely end up in his district if annexed and anticipated constituent complaints, traffic, and felt the City would be forced to take over the HOA or the future residents of the property would argue about unfair taxing. He questioned if the tax base would balance out the private HOA.

Ms. Wallace admitted the positive aspects of the project are single-family homes, the park donation, and replacing failing septic systems from two homes. She was concerned with the stormwater issues, the question of the HOA, and the issue of residents paying City taxes without City benefits. She did not feel that the project made fiscal sense for the City. She noted that if the site were developed by the County, there would be less houses allowed on the property, and pointed out the land deemed as a donation to the park is unsuited for development. She appreciated the work done to make the project more palatable to the public and hoped the developers would hold to their commitments if County approval was sought.

Mr. Hill asked the value of the homes and the sizes of the neighborhoods in the failing HOAs. Mr. Clifton did not feel that was a relevant question.

Mr. Horning understood the streets would have lights only if they were City-owned. Mr. Hill replied they would be privately-owned. Mr. Horning asked about the costs of infrastructure in terms of the HOA and Mr. Coleman replied that it was not insignificant and estimated $1.2 million per mile for a water main and the proposed sewer was a low-pressure pipe and thus considerably less expensive to maintain than a traditional gravity sewer system. Mr. Coleman explained that each house would be responsible for its individual grinder pump that pumped into shared force main and the HOA would care for the main which was not a substantial amount. He estimated the repaving at $100,000 every twenty years and explained the maintenance of stormwater fell to the HOA but major repairs fell to the City. He explained the real stormwater cost would be to maintain the pipes in the ground where the cost to replace the pipes would far outweigh the cost to complete any major repairs to the stormwater facility. Mr. Horning wondered if it was realistic for an HOA to carry such a cost.

Mr. Horning read a letter dated December 14, 2017, from the City to Mr. Hill which stated the site is located within the Class C WRPA and per the City code section 3054a1, the site usage shall be restricted to one family detached dwelling with a maximum number of dwellings per gross area not to exceed one dwelling per two acres with a minimum total gross lot area of two acres. He wondered if anything had changed since the analysis and Ms. Gray replied it had. She explained it was the first comment regarding the regulation for the WRPA and referred to a letter dated August 28, 2018 which triggered the analysis by Ten Bears. The report was interpreted and analyzed by Public Works and then, per the ordinance a determination was made prior to release of the letter on August 28, 2018. It indicated the documentation was reviewed and the proposed density of the development was approved subject to the conditions noted. These conditions indicated the stormwater management ponds needed to be lined and the properties to the northwest needed to be connected to the sanitary sewer within one year of the construction improvement plans. Mr. Horning asked Ms. Gray if the density was acceptable and she confirmed.

Mr. Horning referred to a letter from the State of Delaware from July from the Planning, Preservation and Development Department where the State was anxious to receive the donation of land and get rid of the cesspool and septic to improve the overall ecology and environment on the property. He mentioned the analysis of the good versus bad trees and the lower area buffer from the Environmental Stewardship Program Manager. He felt the letter carried weight and acknowledged the improvement but
noted the necessity to tie the systems into the City even without the annexation and to make the necessary environmental impact.

Mr. Hornung asked if there would be any impact on the water pressure and Mr. Coleman replied there would not. Mr. Hornung asked if it would be City electric and Mr. Coleman confirmed. Mr. Hornung asked if the tree mitigation had to be completed before the Certificate of Occupancy and Mr. Spadafino replied that if the mitigation was completed by the time of the last certificate of occupancy, it would still meet code. Mr. Hornung asked if the three-phase program would finish before the last certificate of occupancy was issued and Mr. Spadafino confirmed. Mr. Hornung understood that no certificate could be issued for any unit in the development before the program was done and Mr. Hill explained that the homes could not be constructed if the mitigation had to be completed first. Mr. Hornung asked if the City of Newark Police would have jurisdiction over the property and it was confirmed.

Mr. Lawhorn reiterated the HOA concerns and wondered if the small benefits outweigh the risks. He was concerned future applicants would clear their lots prior to the development cycle but did not know how many similar properties existed in the City. Mr. Lawhorn asked if the City could provide sewer to the two existing homes and the property if the annexation failed and Mr. Coleman confirmed they could in concurrence with the County.

Ms. Hughes did not feel that future applicants would clear their land before development. She noted that regardless if the annexation did not pass, the property would still be in the County.

Mr. Hamilton felt that single-family homes were obsolete in the City in favor of apartments. He explained that the land was private property and the owners had rights and suggested a buy out from residents. He acknowledged the City also has rights and could decide whether to annex and noted infrastructure replacement was financially difficult. He illustrated the excitement of a new development and the disadvantage of the City when infrastructure fails. He stated that when things are annexed into the City, they must be cost effective to serve with City electricity, water and sewer. He cited the Plan Goals and Action Items Growth and Annexation, page 43, to restrict growth to orderly annexations that protect the environment and minimize the financial burdens on City residents and businesses. Mr. Hamilton explained Council was responsible to the City and residents.

Ms. Stabler asked if reworking the proposal was a viable option. Mr. Clifton explained councilmembers were welcome to make a motion to postpone the vote as is their prerogative. He described his condo association as having 192 units and 25 carriage houses and noted that they were playing catch-up because the economy took a downturn and one of the developers stole $600,000 from the condo association. He noted his condo had a maintenance corporation that cut grass and removed snow but acknowledged it was not foolproof. He stated that Brookside was once a town with its own city hall and police department and was not sustainable. Mr. Clifton explained that the cost of infrastructure was huge and expressed his concern over the State’s classification of the property which stated it should have transportation options. He noted the only true option was personal transportation and that was not desirable for the City. He was concerned with the widening of the roads and how the egresses would play out into dangerous traffic situations. He felt that widening the roads would lead to more problems including speeding. He wondered if they did not take on the cost of infrastructure, how much cost would the City incur. He and Mr. Coleman had conversations about how single-family homes are not cost effective to the City.

Mr. Clifton asked if Council wanted to make a motion to table the proposal and Ms. Bensley explained that the appropriate motion to postpone would be to postpone indefinitely and not table the discussion as it would not be brought back that evening.

MOTION BY MR. HORNING, SECONDED BY MS. HUGHES: TO POSTPONE THE DEVELOPMENT APPLICATION INDEFINITELY.

MOTION FAILED. VOTE: 3 to 4.

Aye – Hornung, Hughes, Lawhorn.
Nay – Clifton, Hamilton, Markham, Wallace.

Mr. Markham explained all motions must be in the affirmative. Mr. Clifton stated it would be a vote by individuals on the rezoning. Mr. Bilodeau clarified the first vote would be on the annexation and the rezoning.
MOTION BY MR. MARKHAM, SECONDED BY HAMILTON: TO APPROVE BILL 19-26, AN ORDINANCE ANNEXING AND ZONING TO RS (SINGLE-FAMILY DETACHED RESIDENTIAL) 13.869 ACRES LOCATED AT 0 PAPER MILL ROAD

Mr. Markham did not support the annexation and rezoning for the following reasons:

- does not lessen congestion of streets
- adds more cars
- adds competition on Paper Mill Road
- is not walkable
- does not promote health, safety and general welfare
- animal habitat
- potential water quality issues and drainage to White Clay Creek
- out of character for houses on west side of Paper Mill Road
- environmental issues
- not fiscally responsible for City

Ms. Wallace did not support the annexation and rezoning for the reasons stated by Mr. Markham.

Mr. Horning did not support the annexation and rezoning for the reasons stated by Mr. Markham.

Mr. Lawhorn did not support the annexation and rezoning for the reasons stated by Mr. Markham.

Ms. Hughes did not support the annexation and rezoning for the reasons stated by Mr. Markham.

Mr. Hamilton did not support the annexation and rezoning for the reasons stated by Mr. Markham.

Mr. Clifton did not support the annexation and rezoning for the reasons stated by Mr. Markham.

MOTION FAILED. VOTE: 0 TO 7.

Aye – 0.
Nay – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.

16. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:

A. Request of the Handloff/Weinberg Trust for the Major Subdivision of 13.869 Acres in Of College Town Communities for the Major Subdivision of 8.37 Acres in Order to Demolish the Existing Nine Dormitory Buildings and Construct Four Three-Story Apartment Buildings with 45 Apartment Units and 46 Townhouse Apartments for a Total of 91 Apartment Units with 320 Bedrooms with Associated Parking and Amenities at the Property Located at 321 Hillside Road (Agreement and Resolution Attached) (See Item 7-B)

(Secretary's Note: The public hearing for this item was held under item #15. As Bill No. 19-26 was not approved, there was no vote held for this item.)

17. SPECIAL DEPARTMENT REPORTS:

A. Rental Workgroup Presentation, Discussion and Path Forward – Planning and Development (60 Minutes)

4:04:50

Mr. Clifton explained the Rental Housing Assessment was an issue which would require extra time and conversation and should be put on the next available agenda. (Secretary's Note: This item has been rescheduled for the February 3, 2020 Council agenda.)

18. MOTION BY MR. HAMILTON, SECONDED BY MR. HORNING: TO EXTEND THE MEETING.

MOTION PASSED. VOTE 7 TO 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.
19. 6. RECOMMENDATIONS ON CONTRACTS & BIDS OVER $75,000:

A. Recommendation to Award RFP No. 19-05 – In – Car Mobile Video Recorder (MVR), Body-Worn Cameras, (BWC), and Interview Room Recording Systems (30 minutes)

4:06:49

Captain Van Campen recommended Council award RFP No. 19-05 – In-Car Mobile Video Recorder (MVR), Body-Worn Cameras, (BWC), and Interview Room Recording Systems and Related Data Retention to Axon Enterprise of Scottsdale, Arizona, for a five-year term in the amount of $628,867.77 with $476,227.77 being funded through current resources and $152,640 being funded through State and Federal Grants. Reference was made to the 2018 Approved Capital Improvement Plan and the posted memorandum in anticipation of the agenda item. While preparing for the 2019 Budget, staff created Capital Improvement Projects C1902 and C1904. Cpt. Van Campen explained the Police Department began equipping patrol vehicles with MVRs in 2019 and selected L3 Mobile-Visions as the fleet solution. The corroboration captured from the MVRs has proven to be integral for evidence-based prosecutions. Moreover, with the ubiquitous presence of digital evidence becoming more available, from smartphones to vast surveillance platforms, police departments are expected to be capable of capturing and managing digital evidence. The expectations are held by the general public and extend to the prosecutor’s office. Newark Police Department’s MVR purchased from L3 has surpassed its life-expectancy and is no longer supported by warranty for hardware or server issues therefore, RFP No. 19-05 was crafted, posted, and published with the close date of August 20, 2019. The City received six proposals and the Review Committee members used a scoring rubric to rank the proposals. Of the six offers, the Committee ranked Axon RFP’s the highest. Funding for the RFP is in partial by the completed Capital Improvement Projects, C1902 and C1904. Additionally, the State and Federal monies will be used to cover the cost. Axon’s proposal is a five-year term which includes technology and hardware upgrades and refreshers throughout the term at a cost $628,867.77. The cost is competitive with the Delaware State contract for body cameras and related data storage recently awarded to Axon and COBAN Technologies.

Mr. Hamilton asked how the price was competitive compared to the State. Cpt. Van Campen stated the State contract is public. He explained the City was requesting unlimited data plans, but the cameras were the same. He noted the State contract had not been awarded when the City opened the RFP. Mr. Hamilton asked if it was possible to get a volume discount in the future with a joint order. Cpt. Van Campen thought it would be possible with Council’s approval.

Mr. Markham asked if State police used the same cameras. Cpt. Van Campen said New Castle County Police are not equipped with body worn cameras. Mr. Markham asked if the State was equipped. Cpt. Van Campen said the DSP do not wear body cameras and corrected himself by saying that NCC Police use Axon and reiterated the DSP do not use body cameras. He explained the DSP have in-car cameras through COBAN. Mr. Markham asked if the cameras were wireless. Cpt. Van Campen answered it was the integrated solution where the officer will have the body-worn camera with simultaneous audio and two cameras in the vehicle; one forward-facing and one rear-facing. He added the interview room would be included on the same platform. Mr. Markham asked if the camera was a static recording device and Cpt. Van Campen explained that the officers would have to dock the cameras which would be uploaded. Mr. Markham did not want wireless signals to interfere between departments and said it was not an issue if they were static cameras.

Ms. Wallace asked if additional installation costs were included in the current CIP funding or if there would be an increase. Cpt. Van Campen explained last year was significantly higher with $628,000 additional and the estimate for each car would be three hours or roughly $13,300 for the fleet installation process. Cpt. Van Campen said $15,000 was estimated and $13,300 was needed. Ms. Wallace asked if the funds were available and Cpt. Van Campen confirmed.

Mr. Horning appreciated the explanations and congratulated Cpt. Van Campen on securing the grants. Mr. Horning noted that only twelve departments of the City’s size received similar grants.

Mr. Clifton appreciated the documentation for the presentation.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: FOR COUNCIL TO AWARD 19-05 – IN-CAR MOBILE VIDEO RECORDER (MVR), BODY-WORN CAMERAS, (BWC), AND INTERVIEW ROOM RECORDING SYSTEMS AND RELATED DATA RETENTION TO AXON ENTERPRISES, INC., OF SCOTTSDALE, ARIZONA, FOR A FIVE-YEAR TERM AND TOTAL AMOUNT OF $628,867.77 WITH $476,227.77 BEING FUNDED THROUGH CURRENT RESOURCES AND THE REMAINING BEING FUNDED THROUGH STATE AND FEDERAL GRANTS.
MOTION PASSED. VOTE 7 TO 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.

Mr. Clifton asked Ms. Bensley to put the Rental Housing Workshop on the next available agenda.

20. Meeting adjourned at 11:22 p.m.

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

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