1. Mr. Clifton called the meeting to order at 6:00 p.m.

2. **EXECUTIVE SESSION**
   
   A. Executive Session pursuant to 29 Del. C. §10004 (b) (4) for the purposes of a strategy session, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body.
   
   B. Executive Session pursuant to 29 Del. C. §10004 (b) (4) for the purposes of a strategy session, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body.

   **MOTION BY MR. HORNING, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER EXECUTIVE SESSIONS A & B, PURSUANT TO 29 DEL. C. § 10004 (B)(4) FOR THE PURPOSE OF A STRATEGY SESSION INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY.**

   **MOTION PASSED. VOTE 6 TO 0.**

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

3. **RETURN TO PUBLIC SESSION**
   
   Mr. Clifton reported no action was taken from both Executive Sessions.

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

5. Mr. Clifton asked if there were any members of the public present that would be speaking on Item 7A. The applicant was not present at the time. Mr. Clifton asked Council to consider moving agenda Item 7A and to after 8A.

   **MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO MOVE ITEM 7A TO AFTER 8A.**
MOTION PASSED. VOTE:  7 to 0.

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

6. 1. ITEMS NOT ON PUBLISHED AGENDA
   A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None

7. 1-B. UNIVERSITY:
   (1) Administration (5 minutes per speaker) (3 minutes):

   3:43
   Caitlin Olsen reported the current ELI (English Language Institute) enrollment numbers were 497 and the previous year there were 584 students. These enrollment numbers were not included in the original count. She noted Ms. Wallace had asked which students were in the dorms. Ms. Olsen reported 97 of those students are in the residence halls and the remainder are off campus in the community. Ms. Olsen said in response to Mr. Horning’s inquiry about reaccreditation that UD is about a year and a half year out. She spoke with the Chair, Mark Rieger, who was also the Dean of Agriculture, about the Town and Gown implications. He noted that was folded into the student experience but took it a step further and came to the Community Engagement meeting and asked them to submit both challenges and opportunities in the Newark community and communities throughout the state. He hoped to include both of these as well and that will be included in the 100-page document.

   Per Ms. Hughes’ previous concern about the DART transportation system dropping off riders on South College Avenue versus by the fieldhouse, Ms. Olsen noted DART’s operating team will meet with the Athletics Operating Team to discuss a better system for customers upon their arrival and departure at UD facilities for events.

   Ms. Olsen wanted to address the President’s remarks at the Board of Trustees Retreat. It was mentioned that UD was looking to acquire new land for campus. She noted after a conversation with John Long and Brian Dembeck, who does real estate for UD that the University was not looking to acquire new land in Newark. She will keep Council updated on any future proposals for STAR Campus.

   Parents and Family weekend will be held October 18-20. The football game will be at 1:00 p.m. on October 19. Ms. Olsen added Homecoming weekend was October 26. She mentioned Halloween events typically happen the weekend before the actual holiday and that alternative events were scheduled for October 26 as well. She added Halloween Spooktacular will be held in Trabant. She noted that on October 1 the educational push was started about health and safety and included wellness.

   Mr. Horning asked what mechanism was in place to provide feedback to the reaccreditation process. Ms. Olsen said she would reach out to the dean and provide further details to Mr. Horning.

   Mr. Markham asked if there was a fall break. Ms. Olsen said October 11 was a recoup day. Classes were not held but the University remained opened. She noted there many trainings on campus that day, including Suicide Prevention and Awareness, Employee and Staff Health. She added there were also events for students as well.

   Mr. Hamilton asked about the difference in enrollment from the previous year for ELI students. She noted there may be some national influence that affected the number.

   Ms. Hughes thanked Ms. Olsen for facilitating the upcoming meeting with DART and UD Athletics and asked for an approximate date of the meeting. Ms. Olsen said the meeting may have already occurred. She will follow up. The meeting would include the contracted personnel as well but was not aware of the specifics. Ms. Olsen said she understood the importance of having something in place now.

8. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes): None

9. 1-C. CITY MANAGER (2 minutes): None

10. 1-D. COUNCIL MEMBERS (5 minutes):
    10:49
    Mr. Lawhorn:
    • Acknowledged the first responders at the Fairfield Apartment Complex fire. He noted at the same time as the fire there was a major accident on I-95 which took resources from Aetna and other area
paramedics. He noted Newark PD was first on the scene of the fire and entered the building. Mr. Lawhorn reported when he arrived shortly thereafter, he saw high flames exiting out of the top of the building and water shooting out the roof which meant there were firefighters standing on the second floor of a burning building fighting the fire. He recalled how moving and impressive it was and he wanted to share what a good example it was of what emergency personnel do every day by putting their lives in danger. He noted there were emergency personnel fighting the fire for over four hours. He recalled the training exercise Council participated in where they were able to wear firefighting equipment and get a small sense of what the personnel goes through. He was glad to hear there were no injuries of residents nor of responders.

Mr. Hornung:

- Received significant feedback on the budget discussions and the proposal to implement the trash fee and potentially increase the use of renewable energy at an increased cost. He reported the budget discussions will continue to occur until November 4. He believed all Council members are relaying the information to their residents. He appreciated all the insightful questions and found them to be helpful.

Mr. Markham:

- Noted the budget numbers are still in flux.
- Believed the Red Cross had difficulties placing residents due to the Fairfield Apartment fire. He suggested instituting a volunteer list for housing people in distress due to fires.

Mr. Hamilton:

- Reported Sustainable Newark will have a meeting Thursday, October 17 from 4:00-6:00 p.m. in Council Chambers. He noted the event was a drop-in event and the group was a City volunteer board that helps to make Newark more sustainable. He noted information was available on the City’s website.
- Announced the Newark Futures meeting will be Tuesday, October 22 at STAR Campus at 6:30 p.m.
- Noted the Halloween Parade will be Sunday, October 27. He noted bands will be playing and said it was a fun event.

Mr. Clifton

- Agreed with Mr. Lawhorn about the fire and to Mr. Markham’s point, he noted there were very few hotel rooms in Newark due to the students that were being housed in the area hotels due to the delay in the completion of the South Main Street apartments.
- Noted the City was most concerned with being code compliant in reference to the South Main Street Apartments especially as it pertained to life safety issues. He thanked Mr. Coleman and Code Enforcement staff including the City Fire Marshal for excellent work during the after-hours inspections. He noted the students were out of the hotels and the project was utilizing temporary C.O.’s as being code compliant. He added it should be very heartening to Newark residents as it was to him the values by which City employees operate to keep everyone safe.

11. PUBLIC COMMENT (5 minutes per speaker) (10 minutes):

John Morgan, District 1, was shocked to hear about the $25.00 per month fee for he believed all homeowners for trash collection. He said his City taxes are slightly over $500 per year and believed the extra $300 was considerable. He believed this to be a “regressive stealth tax” and noted every homeowner would be paying the same amount. It was his opinion if the City needed substantially more money, the most equitable way was to have a substantial property tax increase. He also believed there are other alternatives; in particular he believed the rate to park in downtown Newark at peak times should be reviewed. He noted the last time the rate to park in the City’s off-street lots was raised, he believed it was back in 2008. He believed there was a problem between 9:00 a.m. and 5:00 p.m. with Lot 1 filling up because it was less expensive to park there at $1 per hour compared with the University’s parking garages, which almost always have hundreds of vacant spaces, especially in the afternoon. He urged the City give careful consideration to raising the rate to park during peak hours when UD is in session to $2 an hour or $1 per half hour. He urged the meters on Amstel Avenue be increased as well. He hoped in the near future that Council would give direction to staff to bring back a proposal to raise the rate to park in City lots.

Mr. Clifton asked if the new meters can have a variable rate. Mr. Coleman confirmed this.

Megan Mullenix, UD Student Government, said there was student interest in getting a pedestrian crosswalk at the intersection of Winslow Road and South College Avenue. She noted there was an outlet from the Green by the Library and then a residential type street. She asked who can offer information on the feasibility of this. She noted the area was frequently jaywalked as the crosswalks are far apart. Mr. Coleman asked Ms. Mullenix to send him an email and he would direct it through the proper channels.
Larry Laber, District 6, was upset about the proposed tax increase. He asked when the proposed bridge was paid for, would he see a return of money. Mr. Clifton said it was a direct expense. He said Mr. Laber was asking him to stand in judgment of what a future Council would do and he would not do so. Mr. Laber asked Council if they were trying to catch the City up with everyone else. Mr. Clifton said he would support anything that covered the cost of operating in the City. Mr. Hamilton reminded everyone public comment was not designed to be a debate. Mr. Laber said he cannot afford to have higher taxes.

12. 2. APPROVAL OF CONSENT AGENDA:(1 minute)
   A. Approval of Council Meeting Minutes – September 16, 2019
   B. Approval of Council Meeting Minutes – September 23, 2019
   D. Receipt of Green Building Code Work Group Minutes – August 27, 2019
   E. Receipt of Planning Commission Minutes – September 4, 2019
   F. Recommendation to Waive Bid and Award Contract – West Park Place Mill and Hot Mix Overlay

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.

13. 3. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:
   A. Appointment of Peter Drake to the Vacant At-Large Position on the Planning Commission for a Three-Year Term to Expire September 15, 2022 (5 minutes)

Mr. Clifton said it was his pleasure to nominate Peter Drake to the Planning Commission. He has known Mr. Drake to be very level-headed during his previous occupations. He felt Mr. Drake would be a great addition to the Planning Commission and may bring a different perspective to the Commission.

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

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

There was no public comment.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO APPROVE PETER DRAKE TO THE PLANNING COMMISSION OF THE CITY OF NEWARK.

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. 5. SPECIAL DEPARTMENT REPORTS: None

16. 6. RECOMMENDATIONS ON CONTRACTS & BIDS OVER $75,000: None

17. 7. ORDINANCES FOR SECOND READING & PUBLIC HEARING:
   B. Bill 19-25 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 321 Hillside Road (130 Minutes For 7-B And 8-A)

(Secretary’s Note: The public hearings for items 7-B and 8-A were held simultaneously at this time.)

Ms. Bensley read the proposed bill and resolution into the record by title.
MOTION BY MS. HUGHES SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING
AND PUBLIC HEARING FOR BILL 19-25.

Mr. Clifton asked Mr. Bilodeau to provide an overview of the evening’s hearing. Mr. Bilodeau
stated that the Council would be voting on two items: the first to amend the Comprehensive Plan and the
second to vote on the Major Subdivision Plan. The property was previously owned by the University and
is designated UN in the Comprehensive Plan. He explained that the Comprehensive Plan does not provide
guidance as to designation of property once sold by the University but that in 1979, the City rezoned the
property with reversionary zoning. Under Section 32-6(b) of City Code, the property was designated RM.
His opinion is that the reversionary zoning of RM should govern the application as it is City Code.

Mr. Bilodeau stated the second vote is on a major subdivision plan. He remarked that the code is
fully code compliant with all the requirements of an RM zone. The property requires no variances and all
requested features are allowed in RM zone. He referenced terms such as “fully code compliant” and “by
right application” and stated that the Delaware Supreme Court has ruled on what level of discretion the
Council has when considering a by right, fully code compliant application. The discretion the Council has
been granted is to impose reasonable conditions on a fully code compliant application as ruled in Ashburn
v. Kent County. Mr. Bilodeau reiterated that the application is completely RM zone code compliant.

Ms. Gray addressed the project as outlined in the staff report. The land use application is a request
for review and consideration of a Comprehensive Development Plan amendment and major subdivision
for an 8.37-acre property at 321 Hillside Road, location of the former University of Delaware John
Dickinson Hall Complex. The plan proposes demolition of the existing dormitories on site, subdivision of
the parcel into two lots, and the construction of 91 two-, three-, and four-bedroom apartment units. The
91 units consist of 46 townhome apartments, each three stories high, three apartment buildings with 12
units, and one apartment building with nine units. The Comprehensive Development Plan amendment is
required to change the land use designation from University to residential low-density and residential
high-density. This plan replaces the previous plan submitted on December 6, 2018, for major subdivision
by site-plan approval with a Comprehensive Development Plan amendment. The previous subdivision
proposed to demolish the existing dormitory buildings and build ten new four-story apartment buildings
with a total of 189 apartment units with 378 beds and a 189-space parking lot. This previous plan was
withdrawn by the applicant.

Ms. Gray listed the documents provided in the Council packet item, including the contents
submitted as part of the staff report. She also noted that Council was provided a copy of the August 6,
2019 Planning Commission meeting minutes in the September 9, 2019 Council Packet and said that the
minutes were available online as well.

Ms. Gray explained that the existing zoning for 321 Hillside is UN (University or College) with an
underlying zoning of RM (multi-family dwellings, garden apartments) for the property located on the
southeast side of Hillside Road and RS (single-family residential) which is the parcel on the north side of
Hillside Road. As indicated by Mr. Bilodeau, the transfer of ownership is from the University to a non-
university owner. The use will reinstitute the underlying zoning of RM and RS and the existing dormitories
were an allowable use in the UN zoning district. The proposed apartments and townhome apartments on
the southeast side of Hillside Road are an allowable use in the RM zoning district. The area on the
northwest side of Hillside Road will remain open space and is an allowable use in the RS zoning district.

Ms. Gray stated that the property previously supported the Dickinson Dormitory Complex and
was constructed in 1966 with approximately 703 beds, situated in one-, three-, and four-story tall
buildings. The three common buildings are one-story tall and the six dormitory buildings are either three-
stories, approximately 30 feet in height, or four-stories, approximately 40 feet in height. There are 94
parking spaces. UD closed Dickinson in May 2015.

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

Regarding density, the zoning regulations for garden apartments in RM zoning district indicate the
maximum number of dwelling units per acre as 16. The density proposed for the plan of the RM portion
of the property is 15.4 which is rounded up to 16 units and therefore meets code. During the staff review
of the application, staff determined that the project did not meet the open space requirements as identified in the Subdivision Code Chapter 27, Appendix VI, Parks, Playgrounds and Recreation Area Requirements, Subsection (a)(2), which requires 12% open space for developments with a density of 8-14 dwelling units per gross acre. In response, the alternative procedure allowed on the code is money in lieu of land as described in the same code section. As per code, the Director of Parks and Recreation may recommend to Council that the developer be required to pay a fee in lieu of land but is at the discretion of Council. For this development, the prospective fee in lieu of land was proposed to be $63,700 and was added as a condition of approval under the Parks and Recreation Department comments as #1 in the July 30, 2019 Staff Report presented to the Planning Commission.

Due to the Planning Commission’s failed recommendation on the major subdivision vote of 2 to 4 and the strong public opposition to the project, both referencing the lack of open space, the applicant chose to revise the landscape plan to provide the required open space rather than pay a fee in lieu of land. The revised submission includes 0.6 acres of open space along the pedestrian bike path at the rear of the property, along the railroad tracks, and 0.6 acres of open space on Lot #2 which is north of Hillside Road. The result is a total of 17.5% open space when 12% is required and therefore meets code for open space.

This plan does require a Comprehensive Plan amendment to change the designation of the two parcels, one south of Hillside and one north of Hillside, from University to the appropriate residential designation. The RM section of 321 Hillside, on the south side, will need to be changed from University to Residential High-Density. The plan presented is three-story apartments and townhomes with a density of 15.4 or 16 units per acre. As such, it does not conform to the University designation and will require a Residential High-Density designation which, as defined in the Comprehensive Plan, is multi-family residential dwelling units with densities over 11 up to 36 units per acre. The RS section, north of Hillside Road, will need to be changed from University to Residential Low-Density, defined as dwelling units that include single-family detached, semi-detached row or townhomes with density of 11 or fewer dwelling units per acre.

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

The Planning and Development Department staff suggests approval of the major subdivision and Comprehensive Plan amendment for the project because the plan is code compliant, it should not have negative impact on adjacent nearby properties and because the proposed use does not conflict with the development pattern of the nearby area. The Planning Commission voted 5 to 1 at the meeting on August 6, 2019, to recommend that Council revise the Comprehensive Plan designation. The motion to recommend approval of the major subdivision failed 2 to 4. Ms. Gray asked Mr. Bilodeau to confirm the information and Mr. Bilodeau confirmed.

Mr. Clifton opened comments to the Council.

Mr. Horning asked if Council should first hear the presentation from the developer before opening comments. Mr. Clifton offered the floor to the developer for presentation.

Michael Hoffman, Tarabicos Grosso, LLP, on behalf of the applicant, stated that the entire project team was in attendance and was ready and able to answer any questions. He introduced the applicants, Matthew Genesio and Timothy Sipe of College Town Communities (CTC); Project Architects Justin Gebhard and Sam Siegel of Bernardon; Project Engineers Colm DeAscanis and Eileen Thorp from CDA Engineering; and Ellen Tracey of Ellen Tracey’s Designs, Etc., the Landscape Architect.

Mr. Hoffman stated the applicant is seeking major subdivision approval and a Comprehensive Development Plan amendment for the proposed redevelopment of the Dickinson Dormitory Property. The applicant is not seeking a rezoning, site-plan approval or code relief as part of the project. Mr. Hoffman reiterated Mr. Bilodeau’s statement that the project meets all code requirements as submitted and presented. Mr. Hoffman had previously submitted a supplement which includes reference letters
praising his clients’ reputations and history in other projects and jurisdictions. Mr. Hoffman noted that College Town Communities has projects in the Penn State area and Alabama and that the reference letters praise the applicants for their accessibility and responsiveness as landowners and for their efforts in constructing quality buildings, attention to detail, maintenance of properties, and following through on commitments. Mr. Hoffman noted that the letters were not directly relevant to the application but wished to let Council and the public understand the context.

Mr. Hoffman described the property and its location. He reiterated that the property is one parcel totaling 8.37 acres which includes a portion of Hillside Road within the single lot currently under contract between UD and CTC. Mr. Hoffman described the area as being in the immediate vicinity as the Oaklands community, the CSX railroad tracks, and the commercialized area on South Main Street.

Mr. Hoffman repeated the data given by Ms. Gray. Mr. Hoffman reviewed the historical development of the property by presenting an aerial of the property from 1937 which showed the surrounding land as open land and farmland. By 1968, the area had been developed and property records indicate that the Oaklands homes directly adjacent to the Dickinson dormitory were constructed by 1965. The Swim Club was constructed prior to 1967. Mr. Hoffman stated that Barksdale Plaza and the homes directly adjacent to Barksdale Plaza were constructed in the early 1970s. Mr. Hoffman noted that the current development pattern remains true with much of the changes being along South Main Street.

Mr. Hoffman pointed out the character of the City’s use pattern from the Dickinson dorms, single-family homes to the higher density office use, and the more commercialized South Main Street which then is carried forward into the zoning pattern for the City. Mr. Hoffman repeated the description of the property and its location within the City.

Mr. Hoffman echoed Mr. Bilodeau’s statement that the property has an underlying reversionary zoning designation and presented the zoning history of the property. In 1976, the original proposal was to add a reversionary zoning designation to all UN zoned property to revert to the most restrictive zoning designation adjacent to that use. Council determined that it was not appropriate and preferred the Planning Director to assess each individual property specifically. In September 1978, Council voted to rezone the 8.37 acres to have an underlying zoning designation of RM. In January 8, 1979, Council revisited the determination and declared that the open space on the open side of Hillside Road be zoned RS while the Dickinson Dormitory Property adjacent to the railroad tracks be zoned RM. The zoning designation went into effect January 1979 and remains the law of the land to present. At the time of the zoning designation, the existing character conditions were very much in place: Oaklands community and pool, Barksdale Plaza, and the homes adjacent to Barksdale Plaza had been constructed by the early 1970s.

Council concluded that vacant land was a better buffer than high rise buildings and anticipated a higher density, more apartment-like RM zoning when the zoning designation was put into place.

Mr. Hoffman said that his clients were seeking a Comprehensive Development Plan amendment for the property because of a “legal fiction”. He explained the future land use map designated the property for future land use of the University. If the property were sold and no longer owned by the University, the legal fiction is that it cannot be a University use. Mr. Hoffman looked to the underlying zoning designation to identify the future land use. As previously stated by Mr. Bilodeau, the RM zoning designation allows a density of 16 units to the acre hence the high-density residential zoning designation for the 5.89-acre piece but the low-density residential designation for the 1.12-acre piece. Mr. Hoffman mentioned that 91 units at 8.37 acres is a density of 10.8 when factoring in the portion of property closest to Oaklands will remain vacant, thereby reducing the density in place. The 15.4 units per acre is based on 91 units looking only at the 5.89-acre portion without factoring the 1.12-acre portion that is remaining undeveloped. Mr. Hoffman stated that with these figures, the 15.4 goes down to 12.98 and is among the lowest on the density range of relative projects.

Mr. Hoffman stated that density is viewed as bedrooms per acre. At 54.3, this project is on the low end of the comparative projects in the area but if the 1.12-acre is factored in for relative comparison, the beds per acre goes to 45.6 which is on the lower end, particularly when compared to the highest at 93.8 per acres. Mr. Hoffman repeated that this project is on the lower end of the density spectrum and complies with code density requirements.

Mr. Hoffman stated that the Comprehensive Plan spoke to the need for student housing as the City has also purchased the Rodney site and has taken the development option offline. He said that the project meets the objectives of the Comp Plan and is consistent with the City’s zoning designation.

Mr. Hoffman described the history and the evolution of the project. He noted that there had been a lot of public dialogue and interest throughout the process. The first proposal that had been put forth to
the community proposed 383 beds in two different unit types. There were 65 five-bedroom townhomes and 29 two-bedroom apartments. This proposal did require some site-plan approval in terms of height but provided the code-required amount of parking. When presented in the community meeting, the consensus from the community and staff was a preference to reduce the number of cars and parking, impervious surface, pavement and height relief. The Oakland Swim Club did not like the design of the drive aisle as it would have a straight shot into their parking area and did not like squeezing the entrance as proposed.

Mr. Hoffman and his clients considered an alternative view. The alternative plan proposed 378 beds in 189 two-bedroom apartments. In doing so, the plan reduced the number of units with more than 2 bedrooms, reduced the number of vehicles and reduced the pavement. Instead of having a singular loop for parking, the area was bifurcated and the apartments encroaching into the Oaklands parking lot were moved to preserve the existing parking lot. In addition, an entrance was added to not squeeze the ingress/egress. The applicants also offered to close the Oaklands entrance to help with safety. The applicants anticipated parking maximums from the Planning Commission, concerns over pervious and impervious surfaces, and plans which requested significant relief. While this version of the plan did require a significant parking waiver and relief in terms of height, the applicants felt that the balance was present. It became clear that this version was also meeting resistance from the community.

The applicants then used the code’s parameters as a guide to determine the final version. The current project plan proposes 320 beds through a variety of different unit mixes with two-, three-, and four-bedroom apartments and 46 four-bedroom townhomes. This plan does not require any code relief as it complies with the height restrictions, the setback restrictions, and provides the code amount for parking. In presenting the plan, the applicants wished to address the feedback received over a year of communication. In doing so, the amenity space was relocated to closer to Apple Road, height was limited to code, and parking aisles were aligned with a stop control bar that dead-ended into a parking aisle. The diversity of unit types was also addressed and maintained code required parking.

The applicants then took the revised plans to the Planning Commission and Mr. Hoffman admitted to being surprised at the Commission’s concern over the code-required open space. Mr. Hoffman stated that Newark historically views a lack of open space where students can congregate as a positive factor, but the applicants decided to modify the landscape plan in order to incorporate the area across from Dickinson, known as “The Beach”. The plan also calls for passive recreation in the form of walkways, benches, and areas along the walkway where residents can enjoy the outdoor space. Additionally, a suggestion was made for the applicants to submit to a community meeting to discuss demolition. Mr. Hoffman noted that this is not a requirement per code, but the applicants have included it in the Developer’s Agreement.

The plan provides for 268 parking spaces when 240 are required by code. Mr. Hoffman explained the additional 28 spaces are in a shared easement. He stated that code was met without relying on the shared easement. Though the parcel is a single parcel with a split zone, Mr. Hoffman said the applicants would be subdividing the single lot into two lots. The vacant area closest to the Oaklands community will be 1.12 acres and designated deed-restricted open space per the Developer’s Agreement. Hillside Road will be dedicated to public use and 5.89 acres are proposed for the development. The plan calls for two means of ingress/egress on site for access points. Mr. Hoffman explained a stop bar scenario where an exiting vehicle will run into a row of spaces where the driver will have to make a conscious decision to stop and turn as opposed to free flow over to the Oaklands Swim Club portion of the site.

Mr. Hoffman noted that the walkway between Dickinson to Rodney will be paved, provide access to Apple Road, and will serve as fire and emergency service access. The walkway will also allow for biking and walking. One suggestion for the project was to promote bike-ability and walkability for the residents and Mr. Hoffman stated that the plans provide for that option. Mr. Hoffmann said that the applicants are providing double the code-required number of bike racks and are providing bicycle amenities per the Developer’s Agreement.

Mr. Hoffman wished to address the easement of the existing parking lot between the Oaklands Swim Club and the Dickinson dorm property and stated that the goal was to preserve the lot. There are 28 spaces in the parking lot which are open to the exclusive use of the swim club during swim season. During non-swim season, the Dickinson dorm property has use of the spaces as well as use of the swim club’s spaces. Historically, there has been a chain signaling a physical demarcation and the applicants intend to continue with the action. Mr. Hoffman wished to make it clear that the applicants are still in talks with Oaklands Swim Club for alternative designs and that the parties have not concluded what the alternative designs will be. He noted that this has no bearing on Council’s decision and does not impact the project’s compliance with code.
Mr. Hoffman acknowledged the Swim Club’s concern for safety regarding vehicles traversing through the exit. Mr. Hoffman stated that the plans call for a stop bar and the physical chain provides another avenue for safety and said the true safety concern is with the existing ingress/egress point so close to the intersection. The applicants had offered to close the entrance and grant the Swim Club an easement so that all vehicles would use the same entrance, but the Swim Club was not amenable to the design, so the present entrance remains in the configuration.

The applicants are required by code to improve drainage on the site and Mr. Hoffman detailed the plans for storm water management. When Oaklands Swim Club was designed, drainage spilled into the area of Hillside via an outfall pipe. The applicants will be collecting and piping it to the proper drainage channels so drainage conditions will be improved. Lighting is proposed to be downlit and steps will be taken to prevent light spillage though Mr. Hoffman did not feel it to be a large issue due to the location of the property. The applicants will provide security cameras and a leasing office will be staffed during normal office hours. In addition, assistance will be available through a live-in employee as well as 24-7 on-call maintenance. Mr. Hoffman remarked that the applicants take their responsibilities as landlords seriously and have an established history in that regards.

Regarding a code compliant plan, Mr. Hoffman reiterated that there were two community meetings, multiple meetings with Oaklands Swim Club, and large amounts of public feedback and his clients listened to and considered all sides. He stated that a code not only serves as the enforcement arm but also serves to provide predictability and reliability to property owners and remarked that it is impossible to satisfy all aspects of public opinion. He felt that the code compliant plan set forth was a good plan that his clients stand behind and look forward to presenting to the community.

Mr. Horning asked Mr. Hoffman if the housing was adaptable for use other than student housing in the future event that UD enrollment decreases. Mr. Hoffman answered the that diversity of the housing types increases the availability of demand for alternative uses if it were not student housing. Mr. Horning asked Ms. Gray about the negative financial impact to the City in the first year. Ms. Gray stated that the original fiscal analysis in the first version included the fee in lieu amount of $63,400 and when everything was taken off-line, taxes could not be collected. Mr. Horning wanted to be sure the City was charging the correct amount for a development project in permit fees and licensing. Ms. Gray said that the review fees were not considered in the fiscal analysis which considers refuse costs, building and engineering costs, street maintenance, police cost, capital improvement and debt services, and parks and recreation costs, with the revenue side considering electric revenues, water and sewer revenues, parks and recreation fees, fee in lieu, property taxes, real estate transfer tax and any other revenues. Mr. Horning asked if the review time would be considered in the fees charged and Ms. Gray confirmed.

Mr. Horning asked Mr. Hoffman if the amenity space was a walkway and benches as well as the open space. Mr. Hoffman answered that the benches have not been finalized and the location for the benches has not been determined but he anticipated more details to emerge through the CIP process. He noted the property’s active recreation space on the Oaklands side of Hillside Road as well as the interior amenity spaces in the buildings. Mr. Horning asked what would be included in the amenity spaces. Mr. Genesio stated that the amenities proposed are a lounge area, computer and print lab, and a fitness center as well as the leasing and management centers.

Mr. Horning asked if the same quiet hours would apply to this project as the other properties owned by College Town Communities. Mr. Genesio affirmed they would. Mr. Horning referenced the Planning Commission from August and asked whose responsibility would it be to maintain the path behind the Oaklands Swim Club. Mr. Hoffman said there was an existing easement in place and area available for parking is the same amount of area that covers the walkway so the expectation from a historical record is that, in exchange for providing the walkway access, Oaklands is granted the ability to park in the same acreage on site. Mr. Hoffman acknowledged the intricacies in terms of the preliminary obligations of constructing and on-going maintenance with paving and felt that it was best left to the documents.

Ms. Wallace thanked the applicants for agreeing to add more bicycle parking and more bike amenities. She asked for more detail regarding the bike amenities. Mr. Hoffman replied that indoor bicycle storage will be provided as well as interior bicycle storage. He said that in the Developer’s Agreement, at least one bicycle repair station with an air filling station and repair kits would be provided, but that his clients had an openness and willingness to have more depending on the final details.

Ms. Wallace asked if students who were residents would have to abide by the University’s Code of Conduct. Mr. Hoffman summarized an email exchange from Caitlin Olsen which confirmed that even students who live off-campus are still subject to the judicial system of the University. Ms. Wallace asked if security was 24-7 and Mr. Hoffman confirmed and stated that there would be security cameras, security
personnel, and a live-in manager as well. Ms. Wallace asked if police could access the applicants’ security cameras or install their own. Mr. Hoffman stated that police would be granted access to security camera footage in the case of an incident and reiterated that the applicants would have their own cameras on the property and were not sure of the City’s intentions to install cameras on City property.

Mr. Markham asked who is maintaining the private road [Hillside Road] today. Ms. Gray answered that the City is currently maintaining the road. Mr. Markham said that he would like to see funding from the applicant for a year or so in the future to put towards maintaining the road. Mr. Markham asked if it was DelDOT maintained and Mr. Coleman confirmed that it is maintained by the City. Mr. Markham asked for the history of the road maintenance and Mr. Coleman stated the City maintains everything from Apple Road to 273. Mr. Markham asked if the City had maintenance funds in the budget and Mr. Coleman confirmed and said the road had been repaved three years ago. Ms. Gray said that it is in the Subdivision Agreement that the applicant is responsible for any construction related damage.

Mr. Markham felt that not all the 240 spaces were necessary. Mr. Markham stated that he did not want the extra spaces rented to non-residents and either wanted to put in a requirement that non-residents cannot rent spaces or to decrease the amount of parking spaces. He suggested putting in a waiver of $0 for the parking spaces on the caveat that it becomes green tree open space.

Mr. Hamilton asked if the City was losing money on the project. Ms. Gray stated that the fiscal analysis reduced the projection due to the loss of the fee lieu, but the net revenue for the completed project is $112,000 per year. Mr. Hamilton suggested the applicants donate the open space to the City so that it would permanently be preserved as a park. Mr. Hamilton expressed his displeasure at the parking plans and said that he would prefer to see fewer spaces and more green space. He addressed neighbors’ concerns that residents would begin parking in the neighborhoods and suggested that citizens should petition Council to restrict parking to residents. Mr. Hamilton hoped that the underpass would remain open and maintained properly as it had been by UD.

Mr. Hamilton appreciated the stop bar in the parking lot, but Mr. Hoffman clarified that it was a stop sign and the stop bar referred to the painted white line on the pavement and was not a physical barrier. Mr. Hamilton asked if there would be a curb or physical barrier. Mr. Hoffman replied that there was not a physical barrier. Mr. Hamilton presented driving statistics for the proposed age range of the residents and suggested that a parking space be dedicated for a curb with greenery and bushes to prevent residents from running the stop sign. His concern was specific to the children at the swim club. Mr. Hoffman wanted to clarify that the parking lot design incorporated extra spaces as a buffer before the swim club as well as continuing the chain method practice. His client was willing to install potted plants as a physical barrier to deter from running the stop sign.

Mr. Hamilton repeated the Solicitor’s comments that the Comprehensive Plan has the force of law and acknowledged the residents in the public. He advised the public to become more involved in local
politics to ensure that their opinions are heard and alerted them to other UN zoned properties. He encouraged the public to participate early in the process to change zoning in order to make the City more residential-friendly.

Ms. Hughes asked if the project would use City refuse collection and Mr. Hoffman replied that it is a private refuse collection. She asked if electric was City and Mr. Hoffman said that electric, water and sewer, and stormwater were City. Ms. Hughes asked for clarification on the 24-7 staff. Mr. Hoffman explained that a live-in manager is staff who lives on the premises and takes over when the leasing office is closed. Ms. Hughes suggested that applicants be made aware that they must pay their electric bill. Mr. Genesio explained that the electric bills are kept in CTC’s name and are paid as such so that bills do not default. The residents are billed in-turn from CTC.

Mr. Lawhorn thanked Mr. Hoffman for his extensive outreach in including the public throughout the process. His expressed his concern with the trail lighting and asked how the applicants intended to address the issue. Mr. Genesio acknowledged there are currently lights on the utility poles but that the plan included sconces at the backdoors of the townhomes. He said that CTC preferred uniformity in lighting and did not give residents access to the power switches. Mr. Genesio saw the potential to install downlit LED wall packs to address safety concerns. Mr. Lawhorn said that he would prefer to reduce parking spaces in favor of more green space.

Mr. Horning wanted to assist the public in focusing comments. He was interested in hearing the public’s concern with code requirements and suggested that the public consider reasonable conditions to address concerns with the proposal so that Council could make amendments to the Subdivision Agreement. Mr. Horning explained that some residents felt that it was disrespectful to the Planning Commission if the Council allowed the proposal. He wanted to explain the development process to the public to clear up confusion and noted that many concerns had been addressed since the August meeting. He stated that one plan called to plant trees in the open space across the street and had been shelved. He explained that there had been misunderstandings regarding the various concepts with what to do with the space and some residents were under the impression that when the proposal was denied, the plans started over from scratch. He explained that the key to the planning issue was the RM zoning for mixed residential and that any master planning was subjected to the zoning code. He felt the City’s purchase of the Rodney Dorm site would create a nice park for residents.

Mr. Horning addressed the traffic concerns and stated that DelDOT’s requirements to trigger a traffic study were unrealistic regarding Newark’s needs. He noted that the Planning Department had been working with the Planning Commissioners to implement traffic improvement districts. He gave the example of Middletown where the developer pays into a fund and the fund is used for road improvements in any new project within the district. Mr. Horning said that Council had plans to change the code and acknowledged that it would not impact this project. He was excited to revise the zoning code to impact future projects so residents would be happier with the results.

Mr. Horning was glad the Planning Commissioner raised the issue of fee in lieu because he felt it was more important to get green space instead of a payment to the City. He said that DelDOT completed a study and stated that the timing of the green light on Hillside Road going across West Main Street would be changed to assist with backups on Hillside Road. Although the traffic impact study was not triggered by volume, the City and DelDOT are actively looking at the area to help congestion.

Mr. Horning said that the developers were attempting to schedule contractors to work around the open pool season and more details would be determined in the pre-demolition meeting. Mr. Horning asked Mr. Hoffman about maintaining the walkway across the Oakland Swim Club property and Mr. Hoffman said the intention was to maintain the walkway but wanted to keep the easement language separate from these proceedings.

Mr. Clifton felt that the State code was weak in triggering a study and gave the example of the SpringHill Suites Hotel. He asked if the applicants were going to pick a student to be the live-in manager in trade for rent. Mr. Genesio explained that the leasing office is staffed 9 am – 5 pm, Monday through Friday with limited hours on Saturday. He said that security would be on location from 8 pm until 4 am every day. Mr. Clifton asked what security entailed. Mr. Genesio explained that it was an unarmed guard from a third-party security company. Mr. Genesio did not feel that the size of the property warranted a security vehicle but noted that the guard would be walking the whole time. He said that the gap hours from 5pm to 8 pm saw many fire calls due to cooking mishaps. Mr. Genesio said Student Representatives do not get a free apartment and instead work in the office as a paid, part-time employees. They are trained by the firm as to the management and maintenance of the facility. The Student Representatives serve as the first line of defense to any issues and are equipped with a company cellphone to escalate emergency
protocol. There are multiple Student Representatives who are on-call and stay on premises during the evenings and on weekends to assist residents.

Mr. Clifton expressed concern that the potted planters at the stop sign would be damaged over time need to be removed which would be counter-intuitive to Council’s concern. He asked for a more permanent solution. Mr. Hoffman was willing to investigate the issue but expressed hesitancy for larger turning vehicles and wanted to be sure that those vehicles would not be hindered. He then stated that Mr. Genesio agreed to the suggestion. Mr. Clifton felt that any permanent solution would be code compliant and Mr. Hoffman said that only reason for the caveat was that he was not an engineer and did not want to commit to a decision.

Mr. Clifton remarked that there was public concern about construction trucks running through the neighborhoods and asked how the property would be accessed during construction. He gave the example of the Woods of Yorkshire II and how Council mandated construction to enter through a specific access point. Mr. Genesio said that the site contractor had not been selected but that he was cognizant to construction vehicle traffic and would place appropriate signs to assist with traffic. He stated Apple Road would make the most sense to avoid downtown traffic. Mr. Clifton agreed and asked for a more specific mandate. Mr. Bilodeau asked Mr. Clifton if he would like a provision to say that construction vehicles would use Apple Road to access Hillside Road. Mr. Clifton confirmed and Mr. Bilodeau stated that he did not feel that it was an unreasonable condition.

Ms. Wallace asked Mr. Hoffman for clarifications made by Public Works and Water Resources and the Subdivision Advisory Letter regarding asbestos and hazardous material abatement recommendations. Mr. Hoffman quoted the portion of the agreement acknowledging proper abatement procedures would be followed. Mr. Clifton stated that the City would be performing real-time testing as well and Mr. Coleman corrected that the City would do real-time testing at Rodney. Mr. Clifton asked Mr. Hoffman if the applicants would consider making their testing public knowledge. Mr. Hoffman reiterated that the applicants were under no legal obligations to hold demolition meetings but that they were amenable to making the testing public information.

Mr. Clifton opened the floor to public comment and gave an overview of the parameters for such.

Ed Burke, District 3, Oaklands Swim Club Board Member and Swim Team Coordinator, explained the Club’s choice to keep the current entrance was self-preservation if the easement agreement came into question in the future. He also stated that keeping the existing entrance provided a second course for entry and exit in case of emergencies. Mr. Burke noted that the easement negotiations had not yet occurred but requested Council to address the physical barrier in the parking lot. He gave personal examples of citizens running stop signs and expressed his concern that it would be ignored. Mr. Burke wondered whether the chain in place would be sufficient in the event a driver ran the stop sign. He requested a concrete barrier to bifurcate the area and provide greater protection to the children utilizing the pool. He asked that Council consider the barrier in case easement discussions stalled. Mr. Clifton asked Mr. Burke to state the swim season for the record. Mr. Burke replied the that swim season generally runs from Memorial Day to Labor Day with a few clean up days prior to the season and a few run-over days into September.

John Morgan, District 1, said that he has walked past the location many times and wanted to focus on the reasonable conditions that Council may apply. He agreed with Messrs. Clifton and Burke about having a physical barrier to prevent accidents and suggested a three-feet high wall. He felt that the property should have deed restrictions in perpetuity, unless modified by Council, that should include quiet hours of 11 pm to 7 am. He noted that attention be given to late night deliveries. Dr. Morgan suggested that a grocery store within walking distance would cut down on traffic. He hoped that the developer would adopt its own restrictions to parallel UD’s code of conduct and enter it as a deed restriction. He felt that the number of live-in managers should increase to three or four to provide 168 hours a week coverage. Dr. Morgan advised against decreasing the number of parking spaces because he felt that guest parking had not been addressed. Dr. Morgan said that UD should be doing more to provide a good bus service and that routes should be redesigned to allow students to reach central campus within five minutes.

Sheila Anderson, District 1, of Sypherd Drive for 45 years, felt a general state of over-reaction. Ms. Anderson attended the meeting for the original Plan 1 site in 2018. She noted that a second meeting was scheduled for May 7, 2019 but was pulled from the Planning Commission agenda four days prior to the meeting. Ms. Anderson could find no record of the second plan being brought to the public but noted that there had clearly been a meeting with Oaklands Swim Club.
Ms. Anderson stated that Dickinson dorm had about 700 students and roughly 100 parking spaces. Assuming there were four students per the 91 units and two of the students had a car, 182 parking spaces would be needed. Ms. Anderson referred to Plan 2 which called for 178 parking spaces however, in order to reduce the impervious surface, a fourth floor was added to the main buildings in order to have a uniform number of beds. She then said that Plan 3 was introduced to the public on September 22 when Mr. Horning called a meeting between residents and the developers. The plan called for the same density but also for 268 parking spaces which Ms. Anderson acknowledged half of the Council was against. She noted the overwhelming amount of impervious surface which also includes the road. She assumed that with four students in each of the 91 units, three out of every four students would own a car. Ms. Anderson asked that Council postpone the vote for two weeks during which further consideration could be given to allow College Town Communities to be given a waiver for a fourth floor on the main buildings and a waiver for 178 parking spaces. She felt that if in 2015, 700 students could get to class by walking through the Rodney tunnel, riding their bikes or taking the UD bus, the same could be expected of the students coming out of the new apartments with nearly twice the number spaces in 2020.

Emily Navarrete, District 3, a political science major at University of Delaware, agreed with Ms. Anderson’s assessment that there were too many parking spaces and that students could utilize other forms of transportation.

Bob Stozek, District 1, disclosed that he is a member of the Planning Commission but was speaking as a resident of Oaklands. Mr. Stozek agreed with most of Ms. Anderson’s statements. He noted that though the second plan had more beds than the original plan, it only called for 180 parking spaces. Mr. Stozek recalled that the applicants stated only 45% of the residents of their properties bring cars. For the 320 beds proposed, the property would only require 144 spaces. Mr. Stozek agreed with Ms. Anderson in that 160-170 parking spaces should be enough. He stated that the City has already agreed in the concept of reducing in-town parking and promoting bicycling, walking, and bus travel. He felt that allowing more spaces than the applicant needs makes no sense.

When the original plan came before the Commission, Mr. Stozek said the principal concerns were density; impervious surface, including rooftops and parking lots; the land being downstream from the stormwater basin being constructed at a cost of millions of dollars; and the number of cars, including parking and additional traffic on Hillside Road. Mr. Stozek felt the issues would only get worse with 260 parking spaces and did not agree that 80 guest parking spaces were necessary. He noted that the applicants admitted they did not require as many spaces as the plan declared and he felt that there was a route to reducing the amount of cars on the development.

Jean White, District 1, was upset at the amount of impervious surface on the 5.98-acre lot. She suggested ways to create more green space would be to reduce the total number of units; create more apartment units and decrease the number of townhomes; create parking under the units to reduce surface parking; and/or provide less than the 240 parking spaces (not counting the 28 Swim Club spaces). Ms. White felt that the townhomes with four students and four bedrooms could get along with two instead of three cars. She asked Mr. Hoffman if the path from Hillside Road and along the left side of Building A is also going to be a fire lane and if there would be a cut-through to Building A and the townhomes.

Ms. White wanted to know what the relationship would be between the University and the developer once the project is approved and sale of the property goes through. She referred to minutes from a meeting in 2015 between UD administrators and the faculty senate regarding the future of the Dickinson Dorms. She noted several interesting statements from a UD administrator, including:

- “We want to make very sure that we don’t continue to encroach into the neighborhoods."
- “We can go one step further by actually getting rid of the west Newark area.”
- “We’d like to preserve and protect the neighborhoods.”
- “We want to get out of it and support stronger neighborhoods.”

Ms. White noted the impact of the Dickinson dorms, who had been primarily freshmen with very few cars, differed greatly from the potential impact of the applicants’ proposal. Ms. White views the proposal as a private dormitory, inhabited by upper classmen with many more cars who are not under the control of the University. She said that the University betrayed the 2015 meeting sentiments because she felt that they allowed a private dormitory to be created.

Adam John Saracosa, District 1, asked that the subdivision agreement include a hard fence along the west of Hillside Road along the tree line.
Mr. Clifton moved the conversation back to the table. He thanked Ms. White for her comments regarding the relationship between the developer and the University. He stated that when University Courtyard was approved in 1999, there is a written agreement with UD that the property would remain on the tax rolls, regardless if ownership reverted to the University. The agreement was in place because Council discovered that UD sought financing through an organization which allowed the University to take the property over in 30 years. Mr. Clifton stated the property was on the tax roll for 20 years instead of 30 because UD took control 10 years earlier and explained that $75,000 per year or $750,000 total was lost in tax revenue. Mr. Hamilton added that electricity revenues were also lost.

Mr. Clifton asked Mr. Hoffman if there was anything Council needed to know that would put UD in control of the property at any point in time. Mr. Genesio replied there was absolutely nothing on the table or had ever been discussed with UD. He stated that his firm was a private, for-profit entity and planned on owning the property for a very long time. Mr. Clifton remembered that Mr. Genesio said he still owned every property he ever purchased. Mr. Genesio said that CTC had no plans to sell the property to any entity and reiterated that there will be no involvement with UD after purchase.

Mr. Clifton referred to an issue with another property where private refuse haulers ignored City noise ordinances and were fined at 5:15 am for picking up trash. Mr. Clifton asked Mr. Genesio to make the vendors and contractors aware of City ordinances and then asked Mr. Hoffman to address any necessary questions. Mr. Hoffman acknowledged the various plans for the property, stated the current plan was well-jetted and requested to move forward. He noted that Mr. Genesio had answered regarding the UD relationship. He said that the cut-through was intended to be fire and emergency access and not a vehicular cut-through and that utility repair vehicles would be able to utilize the area as needed. He said that guests are required to sign-in to receive a parking pass and there is a specific guest policy.

Mr. Hamilton corrected Mr. Stozek in that the property was upstream. He told Ms. White that the University administrator she quoted was Scott Douglass and believed that Alan Brangman was involved in the conversation as well. Mr. Hamilton asked Mr. Saracosa if he wanted the fence to be along the back of the property along the houses or on the road. Mr. Saracosa stated that some of the properties along the tree line have fences, but others do not. Mr. Hamilton drew attention to the Unruly Gathering Ordinance and asked that tenants be made aware of its existence.

Mr. Markham wanted to confirm that the applicant agreed with the amendments for the camera, blue light, and not renting parking space to non-residents. Mr. Hoffman confirmed all three and clarified that the blue light is a call box. Mr. Markham said that though the process cannot be changed regarding the parking waiver to make open space adaptations, he stated that the Board of Adjustments (BOA) has the power to grant waivers for parking spaces to generate more open space. Mr. Bildeau interjected that Council could ask the applicants to consider but that it could not be made a condition. Mr. Markham noted that his suggestion was a request. He noted that there is a new District 1 member on the board who he hoped would view the request in a positive light.

Mr. Markham noted he would make three amendments, not including the BOA, and noted the deed restriction is already included in the subdivision agreement under item 2 in the second paragraph.

Ms. Wallace appreciated Mr. Markham’s request on how to make changes to the parking situation. She is in support of fewer parking spaces and saw it as a benefit to the community and the developer. She noted that her view is not conditional to any votes but admitted disappointment at the plan. She felt there were better plans which included less parking and more green space. Ms. Wallace referred to concerns about traffic with the amount of allowed parking and asked that the applicant consider the BOA. Ms. Wallace asked how parking would be enforced for residents. Mr. Hoffman replied that all residents are given parking stickers that change throughout the year to deter piracy.

Mr. Lawhorn suggested planting trees in the parking area to add an extra layer of protection to the Swim Club parking area. He agreed that some of the earlier revisions were more appealing but understood the progression of the plans. Mr. Lawhorn compared the project to Fairfield in District 5 where there are large residential areas, retail areas, and three different apartment complexes in the neighborhood. He estimated that the three apartment complexes had a total of 210 parking spaces and said that the design worked well for the area but noted that it does not have Apple Road traffic.

Mr. Clifton asked for final thoughts on the striped area in the parking lot. Mr. Hoffman replied that the applicants would agree to curbing for physical demarcation. Mr. Hamilton asked if it was permanent and Mr. Hoffman confirmed. Mr. Clifton asked if Mr. Hoffman would agree for construction vehicles to strictly use Apple Road to access Hillside Road. Mr. Hoffman agreed.
Mr. Clifton explained because it is a revision of the Comprehensive Land Use Plan that every member of the Council must state the reason why they are voting for or against the plan.

Mr. Horning addressed Ms. Gray, with regards to stormwater on page 12 of the Planning and Development Report, that no record existed for the Notice of Intent submission to DNREC and asked if it was required at a later stage. Ms. Gray said it is a later requirement. Mr. Horning said that the plans currently propose to use the existing 21-inch corrugated metal outfall pipe to the swale on the CSX property and the Department recommended the pipe be replaced because of its short life span. Mr. Horning asked if the issue had been resolved. Ms. Bensley answered that Item 17-b of the Subdivision Agreement calls to replace the pipe with either reinforced concrete or high-density polyethylene pipe, both of which are acceptable to the applicant and the Public Works Department.

Mr. Horning drew attention to the Subdivision Agreement, paragraph 23, which states that the developer agrees to provide a reasonable opportunity, at the start of the UD academic year, for the local councilperson to welcome the residents of the site to Newark. He noted that good neighbor considerations would be reviewed at the time and acknowledged Mr. Hamilton and Dr. Amy Roe’s work in outreach between the Old Newark Civic Association and the University.

Mr. Horning acknowledged that the plan is code compliant but that the parking lot was not favorable and further discussions need to address the Oaklands Swim Club issues. Mr. Horning reiterated Mr. Markham’s amendments of the callbox and $2,000 from the developer to the City for a camera and asked for clarification on the third. Mr. Markham repeated that the parking spaces will not be rented to non-residents. Mr. Bilodeau commented that there was a fourth amendment with the construction entrance way on Apple Road. Mr. Hamilton added the physical parking barrier at the stop sign.

Mr. Horning asked Mr. Hoffman if the Student Handbook was in the Subdivision Agreement or if it was a matter of business practice to distribute it to residents. Mr. Hoffman confirmed and said it was a business practice to have resident handbooks for all communities which includes the rules and regulations. Mr. Hoffman noted that it was not in the Developer’s Agreement because the handbook required flexibility for edits. Mr. Horning asked if a fence was going to be added to the tree-lined area. Mr. Hoffman said that the fence affects multiple property owners and his client was open to dialogue but would not commit to anything at this time.

Mr. Horning asked if the developer was willing to allow police to patrol the parking lot as part of the Subdivision Agreement. Mr. Hoffman did not object. Mr. Horning asked if it was possible to amend the tenant handbook to incorporate the Unruly Gathering Ordinance and Mr. Hoffman agreed. Mr. Bilodeau asked Mr. Horning about an amendment regarding the chain and reflectors and Mr. Horning asked Mr. Burke to return to the podium. Mr. Horning felt that the curb added assurance of the safety issue and Mr. Burke expressed his desire to proceed with the chain as extra segregation.

Mr. Horning felt it was important to enforce existing codes and that City laws be predictable. He noted the Delaware Supreme Court was very concerned about adding ad hoc requirements or denying code compliant plan for reasons that were not included in the code.

MOTION BY MR. HORNING, SECONDED MS. WALLACE: THAT COUNCIL ADOPT BILL 19-25 AS PRESENTED.

Mr. Horning stated his reason was the statements from the City Solicitor and the zoning changes that were put into effect in 1978 by Council.

Mr. Lawhorn was in favor in accordance with the reasons described in the Planning Director’s Report.

Ms. Wallace was in favor for reasons outlined in the Planning and Development Department Report.

Mr. Markham was in favor as outlined in the Planning Department’s Report.

Mr. Hamilton was in favor as outlined in the Planning Department’s Report.

Ms. Hughes was in favor based on the report in the Planning Division and also because it meets all code requirements.

Mr. Clifton was in favor for the reasons stated in the Planning Department’s Report.
MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 19-25)

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

A. Request 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)

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: TO ADD TO THE SUBDIVISION AGREEMENT THAT A CALLBOX TO THE CITY POLICE BE INSTALLED ON THE TRAIL BEHIND THE TOWNHOMES ON THE PLAN; THAT THE DEVELOPER WILL CONTRIBUTE UP TO $2,000 FOR THE CITY TO INSTALL CITY-OWNED SURVEILLANCE CAMERAS; THAT THE DEVELOPER WILL NOT RENT VEHICLE PARKING SPACES TO NON-RESIDENTS; THAT CURBING WILL BE INSTALLED IN FRONT OF THE STOP BAR LOCATION IN THE DESIGN TO PREVENT THROUGH TRAFFIC TOWARD THE OAKLANDS POOL EASEMENT AREA; THAT THE ROUTE FOR CONSTRUCTION VEHICLES WILL BE RESTRICTED TO APPLE ROAD TO HILLSIDE ROAD; THAT THE AIR SAMPLING STUDIES ON-SITE PER THE SUBDIVISION AGREEMENT WILL BE PUBLISHED TO THE PUBLIC; THAT THE DEVELOPER WILL ALLOW THE NEWARK POLICE TO PATROL THE PARKING LOT; THAT THE DEVELOPER AGREES TO USE THE EXISTING POLE AND CHAIN SYSTEM ON THE SITE BUT WITH HEAVIER CHAIN AND BOLLARDS THAN EXIST TODAY AND FURTHER AGREES TO ATTACH REFLECTORS TO SAID CHAIN EVERY 10 FEET AS A PHYSICAL BARRIER SEPARATING THE SITE’S MAIN PARKING LOT FROM THE EXISTING EASEMENT AREA DURING THE TIME PERIOD FOR OAKLANDS POOL ASSOCIATION PARKING ESTABLISHED UNDER THE EASEMENT AGREEMENT AS MAY BE AMENDED BY THE PARTIES UNLESS THE DEVELOPER AND OAKLANDS POOL ASSOCIATION, THEIR SUCCESSORS OR ASSIGNS MUTUALLY AGREE UPON AN ALTERNATIVE DESIGN. NOTHING HEREIN IS INTENDED TO IMPACT OR OTHERWISE ALTER THE EXISTING EASEMENT AGREEMENT WITH THE OAKLANDS POOL ASSOCIATION NOR IS THIS PARAGRAPH INTENDED TO MAKE THE CITY A PARTY TO THE EASEMENT AGREEMENT.

Mr. Hamilton asked if there was a weight restriction on the Apple Road bridge and Mr. Coleman did not believe there was.

MOTION PASSED. VOTE: 7 to 0.

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

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE 321 HILLSIDE ROAD MAJOR SUBDIVISION PLAN AS SHOWN ON THE MAJOR SUBDIVISION PLAN AND COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT PLANS DATED DECEMBER 5, 2018 AND SUBSEQUENTLY REVISED AS AMENDED THIS EVENING.

MOTION PASSED. VOTE: 7 to 0.

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

(RESOLUTION NO. 19-FF)

19. MOTION BY MR. HAMILTON, SECONDED BY MS. WALLACE: TO CONTINUE THE MEETING.

MOTION PASSED. VOTE: 5 to 2.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn.
Ms. Bensley read the bill by title into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 19-24.

Ms. Gray provided a brief report and recommendation on an Ordinance to delete the ML (Limited Manufacturing) zoning district and update the permitted use in the MI (General Industrial) zoning district. She referred to the Planning and Development Department memorandum dated September 17, 2019 as well as supporting documentation that was presented to the Planning Commission at the August 6, 2019 Planning Commission meeting. She noted Planning staff had discussed the proposed revisions to the Industrial Zoning District at the October 22, 2018 Council meeting. As indicated in the October 15, 2018 memorandum and as discussed with Council at that meeting as industry and manufacturing in the City of Newark and the country at large has evolved, the uses in these industrial zoning districts specifically need to evolve as well. She noted that while industrial parks still include manufacturing uses, they also are more readily seen and utilized as spaces for including, but not limited to, warehousing, offices for professional services such as contractor establishments, breweries and indoor recreation. Acknowledging this trend warrants a review and update to the zoning code for industrial uses to include these additional uses.

Ms. Gray added the general approach was to include the uses allowed in the MOR (manufacturing office research) into the two industrial zoning districts ML (limited manufacturing) and MI (general industrial). Council agreed with the approach and suggested the Planning staff take another look as to whether the City needed to keep the ML zoning district since it was thought that there were no properties that had this zoning designation. She noted that staff applied this approach and conducted a comparative analysis of industrial zones and business operations within industrial zones nearby in similar and nearby municipalities including West Chester, PA, Salisbury, MD and College Park, MD. Business trends seen in Newark were also discussed as well. These municipalities all followed the trend of downsizing an industry and transitioning from an industrial development stage to a more mixed-use development. Staff believed the proposed changes are in line with trends and if implemented these revisions will position Newark to be more competitive in this market and attract new users as properties in these industrial areas turn over.

Ms. Gray noted the map displayed (entered into the record) shows the properties that are currently zoned industrial. She noted there are no ML properties in Newark. There were approximately 530 acres of General Industrial zoned properties and about 265 acres of MOR properties in Newark. She said the main proposed changes in this proposal included deleting the ML zoning districts, since there are no properties designated as such; to add the definition of towing service, automobile wrecking and indoor commercial recreation; and in MI district to add the uses permitted in the MOR district into the MI as special use permitting. Towing service with temporary storage and automobile motor vehicle repair uses and increase the area of allowable retail space and businesses from 15% to 50%.

She noted the following changes from the Planning Commission that staff recommended. They are mostly editorial and include changing from 30 days to 90 days for storage for towed vehicles. Planning staff recommended the Planning Commission recommend approval of the proposed changes as presented to the Planning Commission on August 2, 2019 and concurred with the proposed recommended changes since the Planning Commission. She noted at the meeting on August 2, 2019 the Planning Commission voted 6-0 to recommend approval of the proposed changes as presented with the following conditions: strike the reference to adult entertainment under Section 32-4(a)(103.5) which was the definition of commercial indoor recreation and to strike Section 32-21(b)(7) referring to retail, specialty retail and retail food stores. These recommended changes have been incorporated into the proposed Ordinance.

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

Ms. Wallace said she wanted to point out on page 2, amendment 4, in section i, table 2 is referenced and she did not believe there was a table 2. Ms. Gray said it was a typo. Mr. Bilodeau noted on page 1 (of 17) it referenced table 2. Ms. Bensley offered that originally when that section was in ML section it was table 2, and the reference did not get changed. It will be corrected.

Ms. Wallace asked about commercial kitchens and where would that fit in. She believed that commercial kitchens were not necessarily going to want to be in retail locations due to higher rental costs.
She believed that commercial kitchens were a trend for people that make products they sell online or otherwise. Ms. Gray said commercial kitchens could fit in MOR or could fit in MI in the proposed revision for any process involving cleaning, distribution, manufacturing, storing. Ms. Wallace said this came to her attention when she was looking at the exemptions under Amendment 6 when a special use permit was needed for food service facilities. Ms. Wallace asked where the coin operated arcade was mentioned. Mr. Markham noted it was noted under (103.5) at the end. Ms. Wallace asked if there was a specific reason why arcades were excluded. Mr. Gray followed up with Ms. Wallace’s original question and noted commercial kitchens are not permitted in MOR but may be captured in MI. Ms. Wallace said she would prefer commercial kitchens be included somewhere. Ms. Gray said she would put it under a special use, so that would come before Council. Ms. Wallace believed it sounded like this was not a decision that could be decided at this meeting. Ms. Gray said she would look into and return back to Council. She noted she will research other jurisdictions and see how they handle commercial kitchens as she concurred with Ms. Wallace that was a trend. Ms. Gray said she would like to consider using industrial space as more as flex space. Ms. Wallace asked if there was a particular reason why arcades are being excluded as recreation was included including movies, roller rinks, bowling alleys, pool halls and tennis courts, gyms and similar businesses. She mentioned she knows of some movie theaters that have arcade type games out front. Ms. Gray said she would include arcades as she was not sure how this got excluded.

Mr. Horning said he was glad to see the code was being updated for changing business needs and jobs are part of sustainable Newark and tax revenue. He asked where the input on “trends” was acquired. Ms. Gray said staff looked at other jurisdictions in the area are doing and also looked at similar sized towns including staff input on what they receive in the way of requests from the public.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED MR. LAWHORN: THAT THE FOLLOWING IS STRICKEN UNDER AMENDMENT 1 UNDER RECREATION, COMMERCIAL INDOOR; “BUT EXCLUDING ARCADES (COIN OPERATED) AMUSEMENT DEVICE ESTABLISHMENTS” AND ADD A PERIOD.

MOTION PASSED. VOTE: 7 to 0.

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

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING: THAT CITY COUNCIL ADOPT BILL 19-24 AS AMENDED.

MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 19-26)

21. Meeting adjourned at 10:38 p.m.

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

/tas