

The New Castle City's Planning Commission Meeting took place on January 29, 2007 at 6:30 p.m. in the City of New Castle's Town Hall.

Members Present: Dr. Jack Norsworthy, Chairman
Jim Steele, Co-Chairman
Thomas Wilson
George Freebery
Joe DiAngelo

Members Absent: Jane Miller
Elliott Tatum
Melissa Pavone

Staff Present: Douglas Lloyd, City Planner
James F. Harker, City Solicitor

Dr. Norsworthy called the meeting to order at 6:45 p.m. Roll call was taken.

Approval of Minutes – Mr. Wilson made a motion to approve the minutes of the December 18, 2006 meeting. The motion was seconded and approved by unanimous vote.

Major Sub-Division – Preliminary Approval for Riverbend – Mr. Harker made a brief presentation to address one of the two issues he was asked to research at our last meeting. The issue regarding the engineering of streets and sidewalks will be addressed by Mr. Isken. He addressed the effect of the approval by City Council of the rezoning on compliance with the proposed preliminary plan with the existing standards contained in the zoning code. There is a generally accepted concept of rezoning, that is, a rezoning of the property which is conditioned on the substantial number of restrictions and approved by the appropriate authority regarding that subdivision. *(He provided his presentation in a memo to Mr. Lloyd.)* It is his conclusion that City Council, by approving the ordinance rezoning the Riverbend property, subject to the conditions set forth in the declaration of restrictions, constitutes a “defacto” amendment to the zoning code for the sole purpose of this property only. The zoning code is enacted by ordinance; enacted by City Council who has the authority to amend that zoning ordinance. Instead of amending the zoning ordinance it chose to issue another ordinance which approved a “defacto” change to the zoning as it relates to this project. Those items contained in the development plan, which were attached to restrictions, City Council has already approved which may or may not be inconsistent with the zoning ordinance. Dr. Norsworthy asked if the areas that normally would violate the R3 zoning because City Council approved that with deed restrictions is legal and will not affect the residents in the future from selling their properties because they don't meet code. Mr. Harker confirmed that is correct. Dr. Norsworthy followed by asking if residents want to makes changes in the future would they have to appear before the Board of Adjustment. Mr. Harker said in his opinion they would need to go to the Board of Adjustment. *(Brief discussion followed.)*

Mr. Wilson raised the issue of creating a new zone for independent communities. Mr. Harker indicated City Council can approve a rezoning which becomes a "defacto" change to the zoning code. They can also pass an amendment to the existing zoning ordinance which would allow for these types of uses if certain conditions are met.

Mr. Isken (representing Parkway Gravel) reported he had provided correspondence addressing Mr. Lloyd's concerns as stated in his letter of 11/22/06. It is their view that this project represents state-of-the art design for residential communities. He suggested that per Mr. Harker's opinion the legal authority is present for Planning Commission approval and for City Council to then act on that recommendation and approve the plan (this is not the final plan).

(Mr. Isken addressed street width, walking trails, storm water drainage, zero lot lines, and grass swales issues.) Mr. Lloyd confirmed he has received Mr. Isken's letter and that he has provided thorough answers.

Mr. Wilson asked how funding will be provided for private roadways in this community. Mr. Isken responded that if streets require maintenance work it would be done at the cost of the residents only. A reserve fund would be created that each homeowner would make a monthly payment and a small part of the payment would be assigned to streets and items like snow plowing and garbage. This fund would be professionally managed. Mayor Klingmeyer asked if the homeowner's association will be incorporated as a legal entity. Mr. Isken said 'yes' it will be a non-profit, non-stock incorporation. They will use the same homeowner documentation that is used in New Castle County because it is successful. They have spoken to Messrs. Bergstrom and Harker about this subject and they will be provided the homeowner documentation.

Mr. DiAngelo wanted to confirm that the city will not be responsible for any funding for this project. Mr. Isken said that he will recommend that it be placed in the document that the homeowner's sign at the time they sign a sales contract.

Mr. DiAngelo requested seeing a copy of the wording and cited Boothurst, a community that agreed upon purchase they would be responsible for several things, like maintenance, but some residents then questioned because they pay taxes and felt deserving of those services.

Mr. Isken informed the group that the developer will not construct the homes themselves. There are discussions ongoing with Ryan Homes and Toll Brothers, both are major national homebuilders. He is confident that these firms will explain these items to people from the beginning.

Mr. Isken said that legally these streets are private and he is not aware of any obligation by the city or any other municipality to plow these streets.

Mayor Klingmeyer suggested the Planning Commission do more study on this project before making a recommendation. Mr. Isken reminded that there have been at least 15 public meetings (Planning Commission, City Council, technical review committee, Delaware PLUS Program) and this project has been debated, discussed and considered. We still have to appear before City Council and asked that this project not be tabled this evening.

Mr. Wilson asked who will police this community. Mr. Isken said it falls under the jurisdiction of the city of New Castle and the State but they will be providing private security.

Mr. Steele asked for a timeline for development. Mr. Isken said that the whole project could be built in 4-5 years, selling approximately 40-50 homes per year. Mr. Steele asked for a status on recreational facilities. He was informed that the clubhouse design is completed and they anticipate meeting with Mr. Bergstrom for review and permits. The clubhouse design will be submitted within two weeks. *(Discussion about an archeological study of the property followed.)* There are regulations concerning archeological finds that the developer would need to follow. The Phase 1 study showed some artifacts were found that prompted a Phase 2 study. The Phase 2 study found there were not enough artifacts to warrant additional studies. By law if a burial site is found the law requires construction be stopped.

(The Mayor reiterated tabling this project. Additional discussion followed.)

Mr. Wilson asked that if he found anything negative about this community would that change anything that Council has done. The answer is 'no' because Council has already approved this agreement and it's in the declaration of restrictions. If the drawings presented meet the criteria then we would vote on that and further discussions would go to Council. Regardless of our objections there is a declaration of restrictions signed by the City and if we approve any plans we send a strong letter to Council stating that this particular project has created many problems. He also suggested recommending to Council that they create a new zoning code (R3 defacto) for self-contained, private communities and use this as the standard.

Dr. Norsworthy asked Mr. Lloyd if there are any remaining issues he is concerned with. He said that at this time he is inclined to think not. The letter indicated that plans have been revised and he has not seen those plans. Mr. Isken suggested the recommendation could be subject to or conditioned upon them producing plans as presented in the letter. The plans will be finished in two days. They will be delivered to Mr. Lloyd and the city.

The city, the Planning Commission and Mr. Lloyd will all receive copies of the plan with the revisions addressed in the letter sent to Mr. Lloyd. Dr. Norsworthy expressed concern with this commission having time to review it before sending it to Council. *(Discussion followed.)*

Mr. Wilson made a motion to send to Council the recommendation to approve the drawings provided the changes are made that were addressed in the 1/25/07 letter to Mr. Douglas Lloyd, Riverbend Preliminary Plan Review. Mr. DiAngelo seconded the motion. The motion was passed by unanimous vote.

General Discussion

Mr. Wilson is concerned with the process concerning items that have been approved by City Council prior to our meetings. The Planning Commission should draft a letter to City Council citing our displeasure with that procedure. He cited some examples and referred to materials received by the Planning Commission. Councilman DiMondi provided a detailed response to his concerns.

Action Plan Progress and Review

Dr. Norsworthy commented that he has not received a response to his letter sent to City Council asking for guidance and direction concerning the Action Plan.

Mr. Steele informed that we have eleven months to complete our Comprehensive Plan. He expressed concern that a lot of work went into the last plan to no avail. The action plan represents the thoughts of the people of the city of New Castle. He would like to see the city code book updated before beginning the Comprehensive Plan. Councilman DiMondi informed that a \$10,000 grant has been approved for the project. He stated that all action plans need to be presented at budget hearings; projects exceeding \$5,000 need to be part of the budget. Proposals should come from any member of the Planning Commission or by contacting a Council member. He further suggested that the Planning Commission put together a short list of what they would like included in the budget and place it before Council. Providing an estimated cost for projects would also be very helpful.

Dr. Norsworthy asked that all Planning Commission members review the Comprehensive Plan and be prepared to talk about it at our next meeting.

Planning Checklist

Dr. Norsworthy reported that he has seen no progress on this subject. It needs to be a joint effort with Mr. (Jeff) Bergstrom, Mr. Doug Lloyd, City Council, HAC and us. Mr. Wilson suggested a sub-committee be formed to work on the Plan on a monthly basis. Dr. Norsworthy will follow up.

Attendance at meetings – Mr. DiAngelo expressed concern with Planning Commission member attendance. He feels that members should be able to attend at least two-thirds of our meetings in order to keep abreast of issues. Dr. Norsworthy received an email from Ms. Pavone informing that due to her job she will likely not be able to continue to serve on this commission. She hasn't officially resigned and is looking at her schedule to see if she can attend meetings.

(Brief discussion took place concerning the rescheduling of this meeting.)

Referral from City Council in Reference to Request from Trustees for Rezoning Several Properties

Mr. Wilson said the Trustees have several businesses at Hare's Corner and they are all different. They want to bring them all into one zoning. We need to be careful of what they are asking the zoning to be. *(Extensive discussion followed on various properties and their respective zonings [general commercial, retail*

commercial, service commercial] and the pros and cons of different zonings by property.) Mr. Lloyd reported there is another parcel as part of this request. It is a large parcel at ferry cut-off (18.7 acres) that is currently zoned RC and contains two medical office buildings. It was felt that someone from the Trustees needs to be present to answer questions about these requests. It was felt that this issue should be tabled.

(Item #6—Discussion on proposed Ordinance #444 was addressed at the December 2006 meeting.)

Adjournment – **Mr. Wilson made a motion to adjourn the meeting; Mr. DiAngelo seconded the motion. The motion was passed unanimously.** The next meeting is scheduled for February 26, 2007.

Respectfully submitted,

Debbie Turner
Stenographer