

**Planning Commission Meeting for New Castle City took place on August 24, 2009 at 6:30 p.m. in the City of New Castle's Town Hall.**

Members Present: David Bird, Chair  
Dr. Jack Norsworthy  
Joe DiAngelo  
Dorsey Fiske  
Dan Knox  
Vera Worthy

Members Absent: Bill Simpson, Co-Chair  
Florence Smith

Staff Present: Marian Hull, URS, City Planner

City Personnel: John F. Klingmeyer, Mayor  
Jeff Bergstrom, City Building Inspector  
Ted Megginson, City Council Liaison

Mr. Bird called the meeting to order at 6:35 p.m. Roll call was taken.

Approval of Minutes – Ms. Fiske questioned language on page 4 concerning a vote. **A motion was made and seconded to approve the 7/27/09 minutes of the Planning Commission Meeting with the amendment noted. The motion was approved by unanimous vote.**

**Note: A review of the recording indicates the minutes of 7/27/09 as prepared are accurate and do not bear amending.**

Further Post-Public Hearing Review of Request for Rezoning of 0 & 901 Delaware Street – Ms. Hull updated Commission members on what has transpired since the last Planning Commission meeting. The existing planned development provisions in the zoning ordinance and impacts of an environmental overlay were reviewed by Ms. Hull and Mr. Chris Rogers (URS) who attended last month's meeting, and Mr. Jeff Williams of Kercher Engineering. The environmental overlay doesn't exist yet but is recommended in the Comprehensive Plan. In general the environmental overlay may place further restrictions on development in the flood plain on what could or could not be done on the wetlands of the site. If it is more restrictive than current zoning there could be some kind of transfer of density rights from a wetland area or another portion of the site not affected by environmental impact. Research of what is permitted under the City's planned development revealed (specific to this site) that there is a provision that addresses a site that may be in more than one zoning district. It states, "where a planned development area includes land within an open space and recreation district (OS&R) the minimum average land area per family shall be considered the same as per the abutting land in the planned development with the residential classification." The City Solicitor will be asked to review this language and obtain a written opinion. If this site were developed as one property (either owned by one person or an agreement between existing owners), the permitted density under planned development would be the same as if it were R1. The Commission would be thinking about this as a planned development for a site that is owned under R1. Mr. Bird reminded Commission members that part of this site is zoned OS&R and that part of the property that lies within that zone would have the same density as the adjacent zone if they were developed together. *(Discussion followed.)*

Mr. Williams presented to the Board. Mr. Williams represents the Ferrante's and DiMondi's who are proposing the rezoning. The parcels involved are the Deemer parcel [2 acre] and the DiMondi parcel [4.7 acre]. The Ferrante's are the equitable owners of the Deemer parcel. At last month's Planning Commission meeting the applicants proposed 36 possible lots and requested an R2 zoning. At the end of the meeting it was understood this body wanted the applicants to speak again to the City Planner

concerning the possible environmental overlay option. In looking at the planned development option the applicants would need to subtract the area of the right-of-way from the 6.7 acres leaving 4.67 buildable acres. This would give them 27.2 lots using criteria for R1 (single-family, detached dwelling, 7,500 sq. ft.). They are proposing semi-detached dwellings further reducing the number of lots to 26. Their new plan would remove 10 lots in the flood plain that could further assist with natural open space and protect environmental issues.

The applicants are now proposing to remain in R1 and planned development. If they continue with R2 and 26 lots and the owners didn't develop and sold the property, the new owner could still develop it. Conditions have been considered if that were to occur. The density for R1 planned development allows for 5.7 dwellings per acre on 26 buildable lots. Clarification concerning planned development is ongoing with the City Solicitor. The new Comprehensive Plan shows the subject parcels as residential and the applicants would like to propose going forward with rezoning to R1 of those parcels and the applicants would deal with OS&R as the planned development goes forward. R1 would be most restrictive. They have reduced density (from 7.7 units per acre to 5.6 units per acre) and they would be protecting much of the flood plain and maintaining the wooden area.

*(Discussion followed concerning a recreation area associated with this project, right-of-way, buffer area, and traffic.)*

Mr. Bird questioned the necessity of rezoning to R1 (portions that are currently OS&R). *(Further discussion followed.)* Development of the site is being driven by the current market so no units are planned in the near future. Ms. Fiske expressed concern with the wetlands that will remain and how a future owner might handle its protection and would like to hold off on rezoning at this time. Dr. Norsworthy disagreed. He feels the plan to rezone the entire plan to R1 is smart and fits the Comprehensive Plan.

Mr. Williams stated that when this plan was first presented the applicants requested an R3. In September 2008 this body asked him to look at R2 and R1 and he subsequently offered an R2 plan. At the last meeting there was talk of even lesser density. We have lessened density under this plan and added more protection of the natural resources; the applicants feel that requesting R1 zoning is feasible.

Mr. Bird reiterated his concern with why rezoning is necessary if the City can operate under the current planned development option. Mr. Williams responded that the Ferrante's need the assurance of rezoning in order to develop the property. Dr. Norsworthy questioned how not rezoning to R1 would hurt the City. Mr. Bird replied that if zoning is left OS&R and the applicants are permitted to proceed under planned unit development, the Commission needs to know what the City is giving up by rezoning R1. He wants to take a closer look at the planned unit development provisions. Ms. Hull reiterated that several opinions are needed from the City Solicitor at this time to help Commission members better understand their options. She reminded Commission members that even though the applicants aren't ready to start building, this application has been on the table for more than a year and action needs to take place soon. The applicants has a different proposal on the floor today that is very consistent with our Comprehensive Plan recommendations given the tools currently in place without having done our Comprehensive Plan implementation. She advised a round of due diligence with the City Solicitor and offered that it is time to make a recommendation and go forward.

Mr. Bird is hopeful that Mr. Akin can provide his responses within the next 30 days to ensure they are the best informed they can be before making a recommendation. Ms. Fiske questioned if all letters and studies had been received per Mr. Dave Athey's

(URS) letter presented at last month's meeting. Mr. Bird would like this matter to go forward to the City Council acknowledging our thorough review but we need the City Solicitor's input beforehand.

A representative for the DiMondi's said many concessions have been made including environmental protection and density over the last 14 months. The City and the owners of record recognize the opportunity to develop two (2) distinct parcels of land and with the increased passage of time with extensions he is concerned with losing the opportunity if delays continue. The applicants have exhibited their good faith. He urged the Planning Commission to consider the applicants' concessions and to recommend proceeding on an R1 basis tonight.

Mr. Bergstrom commented that the Comprehensive Plan proposed this property be rezoned to low density residential in a manner that recognizes environmental limitations, a recommendation has already been made to City Council. The Comprehensive Plan is a mandate for City Council to perfect their rezoning. Ms. Fiske disagreed with Mr. Bergstrom's comment.

**Dr. Norsworthy made a motion to recommend to City Council that this property be completely rezoned to R1 pending comments from Mr. Roger Akin, City Solicitor. Mr. DiAngelo seconded the motion.**

Mr. DiAngelo is in favor of recommending rezoning to R1. They started with 50 units and have reduced to 26 units and he feels it is the best use for the property.

Mr. Knox said this is the first time we have seen the new plan in this fashion. He likes the least restrictive zoning and would not like to see the equitable owners pull out and go back to R2 or R3 if the property was sold to another party.

Mr. Williams reminded that the plan being presented tonight is the same plan that was presented last month minus 10 lots. The applicants' took into consideration the Planning Commission's concerns expressed last month and determined that the R1 planned unit development and environmental protection was the best route to take. As the plan is right now the applicants do not need a rezoning and can do a site plan and design the site. They are here tonight because this body has expressed concerns regarding the environmental and lower density. They would like one continuous R1 parcel. There are two (2) separate applications for rezoning on the table and if the applicants go to planned unit development they can do R1 and both applicants' would be in agreement. *(Discussion followed about wetlands and conditions to protect wetlands if sold to another party.)*

Lengthy discussion about R1 followed. Ms. Hull said the development plan presented tonight requires planned unit development whether the site is rezoned or not. It cannot be developed under R1 unless there is a planned unit development and cannot be developed under the current zoning without a planned unit development. However, the applicants can go forward under planned unit development without the change in zoning, but only if they have a written agreement to do so. *(Additional discussion followed.)*

The Mayor questioned whether Commission members can change their vote to recommend to City Council if the City Solicitor provides additional information that causes them to rethink their vote. *(Discussion followed.)* Dr. Norsworthy said that if any

negative comments were received from Mr. Akin's information then the Commission would want to talk about those comments. Ms. Fiske would like to know everything before making a recommendation. *(Further discussion about the language of the motion on the floor took place.)*

Ms. Worthy wanted clarification that if this body votes tonight without having all of the information before us, what happens if the City Solicitor comes up with a concern(s)? Is our vote 'set in stone?' Mr. Bird said that if it hasn't been put on City Council's agenda then we can reconsider our recommendation, or if the City Solicitor does reveal information that effects what our recommendation could be, City Council could send it back to the Planning Commission for review or listen to what the City Solicitor had to say.

Roll call vote was taken.

Mr. DiAngelo – voted to submit a recommendation for R1 commenting that this application came before the Planning Commission a year ago and we recommended a change in zoning, it went to City Council and was returned for further information and this body has gathered much of that information. It is also in compliance with the Comprehensive Plan that indicates what is recommended.

Ms. Fiske – voted against the motion citing the need for all information needed to make a recommendation. She understands the applicants' eagerness to move forward and they can do so if they choose together. She is concerned with the responsibilities of this Commission and taking action when we don't know all the facts.

Dr. Norsworthy – voted in favor of the motion stating the recommendation of the Comprehensive Plan is clear regarding this property and feels the Commission got exactly what we have worked to get the entire time and feels the developers have worked hard to get this project completed. It is more than a good project. Initially he had an issue with this project thinking it was too dense, but their current proposal is good and this Commission would be holding the applicants up unfairly if we didn't decide for it to be R1.

Ms. Worthy – voted against the motion. She understands everything that has been said and the plan looks to be good, but wants to get all the facts first.

Mr. Knox – voted against the motion. He doesn't think the parcel that hasn't changed hands will change hands on such an indecisive vote, but hopes to get this matter resolved at the next meeting.

Mr. Bird – voted against the motion citing the need for more information before going back to City Council. He also hopes that within the next 30 days all pertinent information will be provided by the City Solicitor so the matter can be resolved. He appreciates the patience of the property owners and feels the matter is close to being resolved. He is aware that whatever is done on parcels such as these that others are watching and he wants to ensure the Planning Commission makes the proper decision for all parties involved.

**The motion failed by a vote of 4 against, 2 supporting.**

Note: In preparation for the September Planning Commission meeting, Mr. Bird requested that Commission members look at the planned unit development portion of the zoning ordinance as well as R1 zoning information. He will speak with Ms. Thomas about getting copies emailed/distributed to Commission members. He also requested they re-read the Comprehensive Plan to be ready to focus on discussion about redevelopment areas and perhaps discuss a plan as to how we will be looking at the zoning ordinance. Information that Mr. Bergstrom can provide will be helpful as well. *(Brief discussion about parking areas followed.)*

Proposed Re-Development, Re-Zoning & Discussion of the Abex Site on 700 West 7<sup>th</sup> Street – Withdrawn from tonight’s meeting.

Discussion on Comprehensive Plan Implementation – Discussion will center on where the next priorities are for the Planning Commission with the Comprehensive Plan. Ms. Hull reported that the two top priorities involve the Ferry Cut-Off area and the redevelopment vision plans for the Seventh & South Street areas. Zoning for the redevelopment areas will need to be amended along with development of an environmental zoning district. Mr. Bird would like to add a third priority that addresses what the costs will be for these items. This would be helpful in developing a capital improvement program. Mr. Bergstrom has already started this process.

General Discussion

American Planning Association Dues – last year the City paid for membership for all members of the Planning Commission. Mr. Bird will move forward with requesting same this year.

Ms. Fiske reviewed the General Commercial Zoning language for the Seventh & South Street redevelopment area and expressed concern with applying restrictions as part of rezoning part of it General Commercial. There are so many things that are undesirable and inquired how the Planning Commission would handle this issue. Ms. Hull said it is currently zoned ‘industrial’ and this is why this area is a top priority. There isn’t anything in existence today that addresses zoning for redevelopment areas. People are interested in making an investment in this area and it is very important to get the zoning reworked. There are development applications coming in that will be impacted by this zoning.

Capital Transportation Hearings – Ms. Hull reported that the New Castle County meeting is Wednesday, 9/9/09, between 4-7 p.m. at WILMAPCO’s offices in Newark. There were changes recently made to TIP, adding funds from the federal stimulus package. The only change she saw for the City of New Castle was taking away from the City and she is unsure why. It concerns pedestrian improvements along Washington Street and contains money in the TIP; no constructions funds, just design monies. Mr. Bird will be attending this meeting.

Next Meeting -- Our next meeting is scheduled for 9/28/09 at 6:30 p.m.

Adjournment – **It was moved and seconded that the meeting be adjourned.** The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Debbie Turner  
Stenographer