

**Planning Commission Meeting for New Castle City took place on September 27, 2010 at 6:30 p.m. in the City of New Castle's Town Hall.**

Members Present: David Bird, Chair  
Bill Simpson, Co-Chair  
Joe DiAngelo  
Dorsey Fiske  
Florence Smith  
Susan Marinelli  
Dr. Jack Norsworthy

Member Absent: Vera Worthy

City Planner: Marian Hull, URS

City Personnel: John F. Klingmeyer, Mayor  
Jeff Bergstrom, Building Inspector

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

Approval of Minutes – Mr. Bird informed that the recording for the July meeting confirms the text that was questioned at the last meeting is accurate. (*Verbatim text of Mr. Balick's comments was provided to the Planning Commission.*) It was decided to leave the minutes as stated. Ms. Fiske noted a correction on the first page. **Mr. Simpson made a motion to approve the minutes of the July meeting as amended. Ms. Fiske seconded the motion. The minutes were adopted as amended.**

**Mr. Simpson made a motion to approve the August minutes. Ms. Marinelli seconded the motion.** Mr. Simpson noted a change on page 2. Ms. Fiske expressed concern about clarification of language on page 2 concerning second point of access through Trustees' land. (*Discussion followed.*) **The minutes were adopted as amended.**

Mr. Bird announced that no information has been received concerning item 4 (preliminary presentation of a proposal for a school use to be located on West 7<sup>th</sup> Street) on the agenda and no one was present representing the school. According to Mr. Bergstrom the application has not been withdrawn.

Continuation of Request from Mr. Capano, Developer of the Riverbend Subdivision – Ms. Melanie Anderson of Balick and Balick was present on behalf of Riverbend. She reiterated the applicant's desire to have the restriction lifted. Mr. Greg Lingo of Cornell Homes stated at the last meeting that 55 and over communities are not selling in this economy. If the restriction is not lifted they are concerned the community will fail which will have a significant impact on the city and the city's revenues. They respect the Commission's desire to make an informed decision and want to provide all the information they can; however, they believe they have done all that they can. She offered a map showing the pedestrian route, recreational areas, and hypothetical bus stops. Mr. Bird informed that the memorandum dated 9/15/10 did not reach Commission members until this evening. He asked Ms. Anderson to go over the information in the memo.

Traffic analysis – There was not time to obtain a new traffic study. They referred to a full traffic impact study done for Deemer's Landing that was done around 2008 but they did not have a copy of the study. She added that Deemer's Landing is in the same area as Riverbend. She commented on peak traffic and quoted numbers she obtained before the meeting and data from DelDOT.

School bus access – The school district was contacted but they have not responded to date. They have been encouraged to work with the applicant to develop appropriate bus circulation and number of bus stops.

Sidewalks and pedestrian access – Using the map she indicated where the 4 ft. sidewalk around the neighborhood (along the road) is located as well as a hiking trail that is behind the homes. This plan is the same plan that was provided to the Planning Commission in July.

Recreational facilities – Using the map Commission members were shown where play areas, golf course (9 hole), and tennis courts are to be located. There is also room for ball fields, volleyball courts, and a play area for smaller children, all dependent on the demographics of the community.

Mini PLUS Review – After reviewing the 2005 PLUS Review and speaking with personnel at the State Planning Office it was determined the applicant would not be able to do this citing financial issues and noted that the 2005 PLUS Review does not mention anything about a deed restriction of 55 and over. Because of this the State would not have any comment on the 55 and over restriction being lifted. *(This fact was confirmed with the State Planning Office.)* DelDOT did comment they were against a 55 and over community. Citing the above the applicant respectfully chose not to participate in a mini PLUS review.

The second point of access matter was raised and briefly discussed.

Ms. Hull reviewed her memo dated 8/25/10 to Balick and Balick. The applicant has provided no new information concerning a traffic study. Concerning the traffic impact study done for Deemer's Landing, she has not been able to locate that study. Ms. Anderson has not been able to locate the study in public records and has been in contact with the City Administrator to obtain the study. The City Administrator has also been unable to obtain the study.

School bus access – She has received the letter from the applicant to the school district but no response has been received from the school district to date. *(Brief discussion.)*

Pedestrian access and recreation facilities – These topics have already been reviewed by the applicant.

Mini PLUS Review -- Ms. Hull has spoken to Herb Inden of the Office of State Planning who said they (State) would not do a mini PLUS Review because the change appears substantial. They would require a full PLUS Review. This information was provided to the applicant who contacted Mr. Inden. Mr. Inden looked at the PLUS Review and informed that the 55 and over community was not an issue in the PLUS Review. It was reviewed only as a residential development.

Emergency Access Road – Ms. Hull said this issue was not in the final approved plan. Mr. Simpson added that Mr. Bergstrom provided him with a signed copy of the record plan that shows City Council voted only the record plan and the secondary access road was not a footnote on the record plan. He expressed his displeasure with this.

Mr. Bird asked Ms. Anderson if Mr. Lingo would be the developer building out the community. Ms. Anderson said there are negotiations for Cornell Homes to take over approximately 80 lots of the 220 homes to be built. The remainder of the homes would be built by Riverbend. Some homes have already been built there.

Asked if at some point in time the development would be turned over to a homeowner's association, Ms. Anderson confirmed that is her understanding. Mr. Simpson added that that is on the record plan and will happen.

Asked how many lots or homes have been built, Ms. Anderson could not provide an answer. Units that have been sold to date were sold as a 55 and over community. Ms. Anderson could not confirm whether the current residents had been informed of the possibility of the community being a non-55 and over community.

Mr. Bird then noted a letter sent to the Riverbend Community LLC, Joseph L. Capano, from the DNREC regarding notice of an administrative penalty access and cease and desist. It pertained to certain violations that DNREC had found. He asked Ms. Anderson if she could provide a status of those violations. Her response was that Mr. Balick is working closely with DNREC and that Riverbend has obtained counsel that deals with environmental issues to address the issues DNREC has noted. Personally she could not provide any further information. *(Discussion followed.)*

Mr. Bird inquired whether any thought had been given to having part of the community being restricted and part being unrestricted. Ms. Anderson is unaware of any such discussions but offered they would consider it if it is their only option.

Dr. Norsworthy asked if issues (sewer, water, etc.) concerning the Municipal Services Commission (MSC) have been addressed. Ms. Hull said MSC has written a letter to Riverbend citing their concerns with the development. MSC does not feel Riverbend is doing what it is supposed to be doing. Mr. Bird noted that it may be a possibility that conditions for approval to lift the restriction be put in place addressing MSC's concerns and perhaps posting of a performance bond. *(Discussion followed.)*

Dr. Norsworthy feels 'put off' by the letter Commission members received. He would like to see a nice development established and believes the property owner should be able to develop its land; however, safety issues are overwhelming. With children present safety is a giant issue. He cited drainage ditches as a hazard and providing a walkway only is disappointing. Although a second access road is not required it should be explored. Lack of sidewalks and the lack of a second access road are major issues to him.

Ms. Anderson was sympathetic to sidewalk concerns but said the problem with putting in sidewalks is it creates run off that impact the wetlands in the area. Dr. Norsworthy understands the drainage issues and inquired if those issues create that much of an issue, would they prevent the community from meeting environmental standards. Her response was that it is the reason why the community was designed this way. Ms. Hull stated that changing the design structure now would equal going back to the drawing board. Dr. Norsworthy asked for examples of other communities in NCC that do not have sidewalks but have the same density that is satisfactory with the county. He noted City standards versus county standards.

Mr. Bergstrom informed that the storm water plan will be completely redone because the original plan has been thrown out. There are communities in northern NCC that don't have sidewalks that do not have the same density involved with this project. Ms. Fiske questioned whether the builder could include sidewalks when they rework the storm water plan. *(Discussion.)*

Mayor Klingmeyer believes the community would be more attractive to young families with sidewalks in the development. When this project was first introduced it was stated that sidewalks weren't being planned was because of the environmental impact and because it is cheaper for the developer. Dr. Norsworthy added there were also setback issues to deal with. Ms. Marinelli expressed concern with placement of sidewalks over water lines and such but agrees with installation of sidewalks. Mr. Simpson feels that allowing a new development to be built without sidewalks is contrary to the City's plan for other areas in the city that need sidewalks put in.

Ms. Anderson defined the community roadways as being wide enough to allow a 4 ft. wide painted pathway for pedestrian traffic sharing the roadway. Parking on the street will be prohibited. *(Additional discussion about children walking on the side of the roadway versus on sidewalks.)*

Dr. Norsworthy stated the applicant should make an effort to put in sidewalks in this community along with putting in a secondary access road. These are two big safety issues that should be addressed. Mr. Bird recognizes the large economic investment and would like to find a way to make the project work. It is an area of town that City Council has indicated should be residential rather than industrial but environmental and safety issues must be satisfied. He is hopeful the developer will work with the Planning Commission and the City to see how it can work.

Ms. Anderson said that selling the homes is important to the applicant but having Mr. Lingo purchase a portion of the lots (to build homes) would provide some financial stability. If he walks away then their situation is extremely dire.

Mr. Simpson suggested the cease and desist from DNREC would allow additional time for the applicant to address the Commission's concerns. The City needs to improve on their pedestrian pathways and get people off the streets. He puts the safety of the people first. He does not feel that paint on the roadway will be any help in keeping pedestrians safe.

Ms. Anderson stressed that Riverbend does not want to create an unsafe community but has several things (DNREC, storm water) to balance.

Mr. Bird asked what the Planning Commission wants to see from the developer so they can discuss feasibility. Sidewalks and secondary access were noted. Ms. Smith asked about Mr. Patterson's (MSC) concerns about the Trustees' land, electric, water and such. Mr. Bird believes MSC was going to discuss the matter but could not confirm the status of those discussions. Mr. Simpson added this matter is more a matter for the MSC and doesn't affect this body. Several Commission members disagreed. *(Additional discussion followed on this subject including looping and water quality.)*

Mr. Bird is not going to override any safety or traffic issues. He suggested involving Mr. Lingo to help resolve matters of concern like sidewalks, a secondary point of access, is there a way to integrate the 55 and over and the non-restricted, and traffic are key issues.

Ms. Hull said this project has been discussed over several months. The applicant has said tonight, 'this is what they have'. She asked Ms. Anderson if the Planning Commission has more questions is the applicant willing to go back and get answers or do they want the Planning Commission to vote tonight.

Ms. Anderson said the applicant would like a vote tonight. They have no other information to provide. The DNREC cease and desist has not provided them more time with Mr. Lingo.

The applicant has answered all the questions they feel they have the capacity to answer. Mr. Bird stated that the issue of the secondary access road is difficult because it was originally not required by City Council. We cannot use that as a reason to vote against the project. *(Discussion about the secondary access road followed.)* Mr. DiAngelo said Mr. Akin (City Solicitor) issued a communication stating a secondary access road could be requested but not required. *(Additional discussion.)*

**Dr. Norsworthy made a motion to recommend to City Council not to change to a non-age restricted community unless the two (2) safety issues, specifically adding sidewalks or an alternate sidewalk plan and adding an emergency access road, are addressed. Ms. Dorsey seconded the motion.**

Mr. Simpson said both safety issues noted are very important and should not be swayed from.

A roll call vote was called.

Mr. DiAngelo – Voted against the motion. He does not know how we can make someone do something that isn't required. He thinks the emergency road is a good idea but not mandatory. If it remains as it is it may or may not sell houses. There are still a number of issues that need to be addressed on this project. *(Mr. Bird noted those issues will still need to be addressed if the project goes forward.)* He was in favor of permitting an unrestricted community to sell more homes and see all the other improvements if possible.

Ms. Smith – Voted in favor of the motion because all of our concerns have not been addressed and they are very important. They gave us an alternative; this is it and this is all they can do. If that is all they can do then we need to do what is safe for the community.

Ms. Fiske – Voted in favor of the motion citing the same reasons. The safety issues are very important.

Mr. Simpson – Voted in favor of the motion. The safety of the community is important. We are making a recommendation to City Council and they can either listen to us or not. Many of the other issues are issues that do not concern the City and Planning Commission necessarily but are business issues between vendors and clients. But the issue of safety is not business. The two recommendations to City Council are necessary.

Ms. Marinelli – Voted in favor of the motion. She does not find Riverbend as proposed a place where she would want to raise a young family because of the safety issues. Those issues are less as a 55 and over community. Changing the restriction will adversely affect the rest of New Castle.

Dr. Norsworthy – Voted in favor of the motion. He did not anticipate making the motion he made this evening but he also did not anticipate the answer received from the applicant this evening. Safety is the utmost issue. He would like to see this property be developed and thinks it can be developed. He agrees with Mr. DiAngelo's comments about problems associated with this project from the beginning. He understands the fiscal issues.

Mr. Bird – Voted in favor of the motion. He believes the recommendation to City Council to lift the age restriction on this community gives the developer an opportunity to go forward to market the property as an unrestricted development. I also believes the two (2) requirements placed on the motion are reasonable from a safety standpoint. Children walking on real sidewalks are much safer than children walking on the edge of the road. He can't think of a new community that is being approved without sidewalks in this day and age in this type of suburban/urban development. With the density of the lots on the land there is even more necessity of separation between traffic and pedestrians. As for the emergency road, he thinks the increased density and the prospect of having more people in the households requires an outlet to protect the community. This is a change from what the situation was before with a more senior population. Traffic could be blocked for any number of reasons at the main entrance and having another exit is a safety valve. Even though City Council didn't make this (second point of access) a part of their requirement they may have been reading from the record that they thought in good faith that the developer and perhaps the other entities would work together on this.

The motion was adopted by a vote of 6 in favor and 1 voting against.

Discussion of Planning Studies for 2010-2011 – Ms. Hull reported that the main discussion at the recent public hearing surrounded non-conforming use standards. Non-conforming uses are permitted to stay as long as they remain in operation; expansions are limited. Three specific uses, if they are a non-conforming use, are targeted to be phased out over a three year period. They are junkyards, billboards, and uses not contained within a structure (ex.- car dealership, boat storage). Property owners are content with being non-conforming as long as they aren't phased out, but if the market is good they would rather sell their property. Other comments included not changing uses in the general commercial district, keeping residential uses and mixed uses. Ms. Hull suggested that mixed uses may warrant discussion. City Council wants to look at some of the provisions in the zoning changes but also wants to take a closer look at the non-conforming use changes. There are no development applications before us any longer affecting this area.

She explained that as long as a property is owned and operated as an industrial use it can remain as long as it does not cease to operate for 12 months or more. If it is vacant it is subject to the new rezoning requirements, if adopted. *(Lengthy discussion followed.)*

Capital Improvements Program – Mr. Bird informed that City Council did not provide funding for the riverfront study but if we could obtain funding from other source(s) we could conduct the study. Ms. Hull said an initial proposal has been made and could be discussed at the next meeting.

Ms. Hull said a key issue that came up at the hearing about the Gateway District Zoning was what happens with non-conforming uses should we consider permitting auto serving uses (ex.-auto sales, gasoline stations). Currently those types of services are prohibited. There were no decisions made at this public hearing but she suggested possibly considering allowing language permitting these uses in our design standards. *(Lengthy discussion followed.)*

Budget Review – Chairman Bird reported he has not received any budget information.

Commission Member Comments – No comments from Commission members were raised.

Comments from the Public – Mayor Klingmeyer said a citizen commented at the public hearing about ambient lighting reflecting onto residents' properties. He suggested screening with trees. Ms. Hull noted that with the Gateway District lighting can't be taller than the building and must be attached to the building.

Next Meeting – The next meeting is scheduled for 10/25/10 at 6:30 p.m.

Adjournment – **A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 8:30 p.m.**

Respectfully submitted,

*Debbie Turner*

Debbie Turner  
Stenographer