

Planning Commission Meeting for New Castle City took place on March 28, 2011 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
Susan Marinelli*
Dr. Jack Norsworthy
Florence Smith**

Member Absent: Vera Worthy

Also Present: City Planner Marian Hull, URS, City Solicitor Dan Losco, Building Inspector Jeff Bergstrom, Mayor John F. Klingmeyer

*Ms. Marinelli joined the meeting at 6:36 p.m.

**Ms. Smith joined meeting at 6:45 p.m.

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

Approval of Minutes – A motion was made and seconded to approve the minutes of the January 2011 meeting. The minutes were adopted.

Discussion of the City Comprehensive Plan, the Section: Goal No. 4 of the Housing Plan, with a Proposed Code Amendment from Mr. Shawn Tucker – (Ms. Hull distributed draft text and text of Goal 4 to Commission members.) Ms. Hull and Solicitor Losco have prepared some informal comments to present to the Planning Commission for feedback. Some of the issues discussed in January (2011) was the list of properties and currently there is no official list with the City for a set of properties like this. We discussed creating such a list or getting more control by creating a set of criteria for applicants to be added to the list. That criteria would include a property being vacant for an extended period of time, potential hazards on the site, getting the property back into active use. (Criteria cited included tax delinquency, presence of a fire/safety hazard, physical conditions creating a nuisance, dilapidation, unfit for human habitation, situations causing utilities to be disconnected, etc.) The ultimate decision is in the hands of the municipality. Also discussed was the suggestion that design standards be included in an ordinance of this nature. Solicitor Losco is not in favor of the City creating a list of potential properties and feels each property owner should address whether they are a candidate for redevelopment, file an application, present it to the Planning Commission and then Council and the Board of Adjustment gets involved. Mr. Tucker's ordinance puts it in Council's hands and he is fine with that. It is better for an applicant to come forward when they meet the guidelines. He added that the draft ordinance was lacking on architectural guidelines and how it meshes with the community. Having a set of standards detailing these elements provides guidance to handle constitutional problems. It is a good concept that is provided for in the comprehensive plan and improves properties that have remained dormant, vacant and dilapidated for a period of time. Ms. Fiske inquired about derelict properties whose owner's do not want to take any action. According to Solicitor Losco there is not much that can be done in those matters as long as the property is code compliant. *(Discussion about mechanisms the City has in place for inspections of properties followed.)*

Mr. Tucker presented on behalf of clients Mike and Paul Cirillo, 200 W. 9th Street. He provided an overview to date. The City put a code in its comprehensive plan calling for a redevelopment ordinance. He has drafted an ordinance that has been developed to meet the minimum criteria of the comprehensive plan that was certified by the state. His clients would like to develop a piece of property based on the subject amendment.

With regards to people applying to be on the list, his clients would not object to this. The process tonight is critical to the first draft to be provided to City Council for action. At the January meeting it was suggested the City Solicitor work on a proposed draft incorporating comments this evening for consideration at the next meeting and a possible recommendation.

Ms. Hull asked the Solicitor about issues of non-conformance and the subdivision process. Solicitor Losco stated that existing non-conformities with respect to redevelopment properties, if approved, would be legitimized in perpetuity. The redevelopment ordinance would resurrect these non-conformities but, if approved, they would also become part of the fabric of the community permanently. He would like to see flexibility from City Council to pick and choose whether a non-conformity needs to be completely abated or not. Solicitor Losco would like to see clarity of discretion of Council and the ability to impose conditions added to the ordinance. Mr. Tucker has no objection with this.

Mr. Simpson asked what specific barriers this ordinance takes away that can't be addressed in current ordinances. Solicitor Losco cited non-conformities such as dilapidated structures that are mostly old and not in compliance with current code. Once the non-conformity has lapsed it can't be resurrected without going to the Board of Adjustment for a dimensional variance that involves specific legal standards that must be met. Mr. Simpson wanted to know if the non-conformity has to be approved by Council or another body, does it remove a barrier. Solicitor Losco confirmed it does remove a barrier. The standards the Board of Adjustment must comply with isn't required of Council. *(Further discussion.)* Solicitor Losco reminded we are talking about a particular class of property that already has non-conformity problems and have always had the opportunity to go before the Board of Adjustment, but for whatever reason they never did. This ordinance provides another opportunity to redevelop the tract in an economic way that is good for the city.

Dr. Norsworthy asked for the rationale why City Council would be the decision maker rather than the Planning Commission. Solicitor Losco suggested the Board of Adjustment that deals with special exception applications. There should be a public body with some discretion to approve or disapprove and impose conditions. *(Enforcement was then discussed.)*

Solicitor Losco informed that currently the draft ordinance calls for the Planning Commission to have first input to review the application and make recommendations. Mr. Tucker noted that adding the Board of Adjustment into the process would require redevelopment applicants to go to the Board of Adjustment, Planning Commission and City Council which might discourage redevelopment (adds another layer and increases costs).

Mr. Bird asked Ms. Hull the process other communities utilize. She said in most communities elected bodies want the final say.

(Discussion about grant monies or low-interest loans available to applicants followed.)

Mr. Simpson maintains the current ordinance would not create a barrier for getting a grant to redevelop property. Solicitor Losco stated the way this ordinance has been drafted there are incentives for property owners to inject monies into properties considered to be blighted. Mr. Simpson believes the current ordinance provides incentives. Ms. Hull added if the code is not allowing something that you want to get done, it could indicate misuse of variances.

(Further discussion followed.) Mr. Tucker noted the reason his clients waited for the comprehensive plan to be enacted was because they can't demonstrate a hardship required by legal standards before the Board of Adjustment.

Mr. Bird asked what would prevent someone from letting their property deteriorate in order to qualify for this ordinance. Mr. Simpson is not totally opposed to this ordinance but noted he can't see the need for the ordinance. While he understands Mr. Simpson's position, Dr. Norsworthy thinks our elected officials and the Planning Commission are qualified to make decisions. At this time they are restricted from making these decisions. *(Discussion.)* Solicitor Losco commented that many municipalities have redevelopment ordinances and there isn't a practice of people intentionally neglecting their properties in an effort to take advantage of a redevelopment ordinance. There will be some properties that will fall out of compliance with code and will take a large amount of money to make it viable again. Those are the properties this redevelopment ordinance is directed at.

Mr. Bird inquired if it is feasible to add to this ordinance language directed at people with a non-conformity who maintain their property and want to take advantage of its benefits. Solicitor Losco said there are situations of good neighbors who maintain their property with non-conformities who are punished for maintaining their property.

Mr. Tucker will work with the Planning Commission, Ms. Hull and Solicitor Losco to look at the changes recommended and present at its April meeting.

Mr. Simpson is concerned with some property owners benefitting from the ordinance while others are not permitted because they maintain their property. Discussion about variances followed. Ms. Hull said the core issue that this recommendation was developed for was for blighted properties in residential neighborhoods.

Ms. Fiske asked Ms. Hull if this type of ordinance is used in other historic towns. Ms. Hull does not have any experience with historic communities. She has seen it used in communities with older buildings in older suburban communities and it works well. Ms. Fiske would like Ms. Hull to look at historic communities to see if they have been able to utilize this type of ordinance.

Mr. DiAngelo asked who would perform site inspections of properties to determine whether they are eligible. Mr. Bird responded it would be the applicant's responsibility to prove they meet the criteria set forth. *(Discussion followed.)*

There is a \$600 application fee for the Board of Adjustment which could discourage some applicants. Mr. DiAngelo suggested waiving the application fee for redevelopment applicants. Mr. Bird asked what happens if a property is located in the historic district. Does it fall under the jurisdiction of the Historic Area Commission to make a recommendation versus the Planning Commission? Solicitor Losco said HAC has jurisdiction over architectural features and commented it is a good point to include.

No further discussion took place and this matter will be addressed in April.

Comprehensive Plan Zoning Amendments Update – At the January 2011 meeting this body discussed the inclusion of a couple of potential amendments to the zoning amendments procedure: addition of a review period for the Planning Commission from the time an

application and a complete application is received, enhancing notice requirements to surrounding property owners, and ensuring making a statement in the amendment procedure that any proposed amendment must be consistent with the comprehensive plan. At City Council's 3/8/11 meeting a public hearing was conducted to address the zoning amendment procedure section, they then had a first and second reading. It will be on Council's April agenda for a third reading and possible adoption.

Concerning the 7th & South Street and Gateway districts, zoning has not been approved to date. There are non-conforming uses in the 7th & South Street area that Ms. Hull speculated Council may wish to address before moving to the Gateway district. Mr. DiAngelo read from Section 230-11 concerning non-conformities and suggested striking certain language. Ms. Hull informed that the language does not appear in the Gateway district language; it is in the existing zoning ordinance. She is concerned there are a number of uses in the Gateway district that would become non-conforming that fall under the provisions in our existing ordinance for phasing them out in three (3) years. This differs from other non-conforming uses that are allowed to continue as long as they remain active. Outdoor uses (billboards and junkyards) are to be phased out in three (3) years if they become non-conforming. This is applicable anywhere in the City. Ms. Hull has not received direction from City Council on a path forward (continue to phase out, phase them out over a longer period of time, do we not want to phase them out, require screening). Ms. Hull suggested the Planning Commission may want to ask City Council for direction on this. There are several uses in the Gateway district that involve outdoor uses that become non-conforming. (*Discussion followed.*) Mr. DiAngelo disagrees with the three (3) year phase out provision.

Ms. Hull recommends the Planning Commission approach City Council on its thoughts first. Council has not asked this body to date and it may be wise to ask for their thoughts and/or guidance to make some recommendations. Mayor Klingmeyer asked if there are any incentives available to encourage people to make this change. Solicitor Losco suggested extending the time period to 10-12 years from three (3) years.

Ms. Marinelli sees more development and population density in New Castle. Residents must leave the City for employment. She does not see any benefit to the City from the redevelopment ordinance. She would like to see zoning in the City that would bring more jobs.

Mr. Simpson made a motion to send a letter to City Council recommending that in the newly rezoned Gateway districts, should they be rezoned this way based on the third reading, that they also consider amending ordinance 230-11 (gradual elimination of certain uses) to extend the three (3) year non-conformance only in the Gateway district, rezoning from three (3) years to twelve (12) years. Mr. Bird seconded the motion.

(Lengthy discussion about the number of years, the definition of outside use, the development of a defunct industrial area, and promoting commerce took place.)

Mr. Simpson amended his main motion that in lieu of moving businesses in the Gateway district within twelve (12) years, to provide adequate screening to conform to the nature of the Gateway district within that time frame. Ms. Marinelli seconded the amendment.

(Lengthy discussion followed.) Mr. DiAngelo disagrees with putting a timeframe on phasing out. *(More discussion took place that included businesses in the Gateway districts and definition of screening.)*

The amendment was passed by unanimous vote.

Mr. Simpson made a motion to recommend that with respect to the Gateway district, amend ordinance 230-11 to change three (3) years to twelve (12) years as the time period to remove a non-conformance in the Gateway district.

A roll call vote followed.

Mr. DiAngelo is in favor of the motion citing that property owners will have some leeway and it is good for everyone.

Ms. Smith is in favor citing the same reasons.

Ms. Fiske is in favor stating it cures an inadvertent hardship.

Mr. Simpson is in favor for the same reason noted by Ms. Fiske.

Dr. Norsworthy is in favor citing shortcomings in the present ordinance.

Ms. Marinelli is in favor.

Mr. Bird has some concerns with the timeframe of twelve (12) years but noted since it is a recommendation to City Council that further discussion will take place and the provision of some type of screening. He is in favor of the motion.

Discussion of Planning Studies for 2010-2011 – There has not been any feedback from our application to WILMAPCO. Ms. Thomas indicated she will inform when she does hear from them.

Budget Review – Mr. Simpson distributed budget information to Commissioners which was then reviewed. Dr. Norsworthy noted we are not to be credited monies for budget uses; they go to the general fund. More effort should be made to receive copies of all bills to justify our expenses. We need to be in better control of where our monies are going, what is being asked for and what we need. This body does not do frivolous things and we do not waste monies.

Revenues we generate from Ms. Hull's billing on general expenses needs to be reflected. It needs to appear as an 'offset' so we don't appear to have overspent this year. Commissioners would like to see what is coming back from developers, application fees and the like that is not being credited to the Planning Commission.

A motion was made by Mr. Simpson to request from City Administration a detailed accounting of monthly billing and monthly receivables for all business that has been contracted by the Planning Commission. Ms. Fiske seconded the motion which was approved by unanimous vote.

Commission Member Comments – Mr. Bird reported he had not been notified as of today about budget hearings. Dr. Norsworthy stated we need \$15,000 to exist as a Commission and the capital improvements plan needs to have at least \$12,000. Mr. Bird will present a budget request of at least \$30,000 for the coming fiscal year. He added we did not get the WILMAPCO grant last year or anything from the state.

Comments from the Public – None.

Next Meeting – The next scheduled meeting is 4/25/11 at 6:30 p.m.

Adjournment – **A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 8:45 p.m.**

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer