

New Castle City Planning Commission Meeting
Minutes
February 27, 2023 – 6:30 p.m.
New Castle Senior Center, New Castle, DE

Members Present: Matthew Lovlie, Chair
Brie Rivera, Vice Chair
Cynthia Batty
Margo Reign
Timothy Gibbs
Keaira Faña-Ruiz
Tamara Stoner
Kristin Zumar

Absent: Vera Worthy

Also Present: Chris Rogers, City Planner
Max Walton, Esquire, City Solicitor
Shawn Tucker, Esquire

Mr. Lovlie called the meeting to order at 6:30 p.m. The assembly rose for the Pledge of Allegiance. Roll call followed and a quorum to conduct business was declared.

Mr. Lovlie stated that public comments would be moved to immediately after the presentations have concluded.

Minutes

A motion to approve the Minutes of the January 23, 2023, Planning Commission Regular Meeting as amended was made by Mr. Gibbs, seconded by Ms. Rivera and unanimously carried.

Potential Presentation(s), Discussion and Possible Recommendation Vote on Ordinance 536

Mr. Lovlie introduced Mr. Walton to the Commission members. Mr. Walton explained the Revised Ordinance that the Planning Commission received, noting that the applicant has decided to move forward with the rezoning question now and desires to seek site plan/subdivision approval at a later date. Mr. Walton stated that the role of the Planning Commission is to decide whether or not to recommend the rezoning and Comprehensive Plan amendment to City Council. He read a section from the Delaware Code regarding rezoning.

Mr. Walton explained the voting process, noting that each member's vote must include the reasons for their vote and that conditions could be added to a recommendation; noting, however, that the Commissioners are not required to vote at the present meeting unless they are confident that they have all the information necessary to vote.

Mr. Tucker, representing the applicant, introduced individuals who may testify and gave a history of the project. The parcel, the portion of the parcel that will remain undeveloped, and the Charter School were identified on a map of the City.

Mr. Tucker read a portion of the 2020 Comprehensive Plan (CP) that was adopted that includes the applicant's proposal of the project. He also noted that the CP states "The Planning Commission and City Council may entertain applications to change the suggested Land Use Map and Zoning Map on a case-by-case basis", which indicates that this mechanism was provided in the CP to consider proposed future uses and that Council wanted to provide the flexibility to consider future changes.

Mr. Tucker reviewed Ordinance 528 adopting the 2020 CP, as well as the State Strategies and Zoning Maps that show the proposed parcel. He also identified nearby County zoning that includes a mix of uses. Mr. Tucker also stated some of the industrial uses for the site that could be built by right and opined that a residential use would be preferable to an industrial use of the site. Mr. Tucker read a section from Chapter 4 – Land Use on page 37 of the 2020 CP into the record which demonstrates that the CP and the City want to keep mixed use as an option for possible future rezoning; suggesting that the proposed plan is a way to move away from industrial uses in the subject area and more toward residential or mixed use zoning as envisioned generally in the CP.

Mr. Tucker explained the proposal for the site that includes apartments, twins, and single family homes, as well as shops and restaurants; and displayed renderings of what the applicant is proposing to build on the site.

Mr. Tucker explained the applicant's proposal to address sea level rise, noting that the first floor of residential units will be built 12' above the worst case scenario as identified by DNREC. Regarding emergency exits from the site, Mr. Tucker identified emergency routes and stated that applicant has agreed to construct an automated gate at an exit through Buttonwood that is currently blocked off as a voluntary condition.

Mr. Tucker introduced Ms. Nicole Fine to explain the Traffic Impact Study (TIS). He added that Mr. Drew Boyce reviewed the study that Ms. Fine prepared. Ms. Fine stated the TIS was prepared in accordance with Chapter 2 of the DelDOT Development Coordination Manual and the scope of work memo dated February 14, 2023. The study included weekday morning and weekday afternoon peak periods at six off-site intersections and the proposed site accesses. She reported that all of the study intersections satisfy the level-of-service standards of Level D or above and no mitigation improvements were required. She noted that DelDOT does not have jurisdiction in the area and because access is not being taken to a State roadway they do not require a traffic study.

In response to a question from Ms. Zumar regarding the impact on the off put to Rt. 295 north and south, Ms. Fine explained that Rt. 295 is accessed at Rt. 9 and Cherry Street for certain movements, and the other movements are right turns. The TIS focused on critical movement intersections (single-light intersections with left turn movement), and because at the subject interchange most of the movements are right turns that has free flowing movements or little or no delays it was not part of the TIS.

Ms. Fine described Lukens Drive and stated that as a secondary street it meets the criteria of the Code. The TIS recommended and the applicant has agreed to provide the following improvements to Lukens Drive and along Lukens Drive:

- Provide pedestrian facilities along the Lukens Drive site frontage and internally throughout the site;
- Provide a new transit stop along DTC Bus route 28 by constructing two bus stop pads (north and south) along Lukens Drive with a pedestrian crossing;
- Stripe Lukens Drive to provide 11-foot travel lanes and 5-foot shoulders to delineate the paved cartway for defined usage and to further control speeds, as recommended by DelDOT road design and traffic calming standards; and
- Install additional posted speed limit signage within the northern section of Lukens Drive where it is currently not provided.

Mr. Tucker stated for the record that if DelDOT had taken jurisdiction over the project the applicant would have been required to conduct a TIS.

Mr. Tucker explained that Mr. Boyce, of Century Engineering and a former planning director at DelDOT, conducted a secondary review of Ms. Fine's findings and that DelDOT was invited to be on the scoping call and stated they would be happy to help.

Mr. Boyce stated that his review confirmed the numbers in Ms. Fine's study and they came up with the same general conclusions: All the intersections studied were D or better, and there are no deficiencies identified either geometrically or from a traffic perspective on the intersections that were studied.

In response to a question from Ms. Reign, Mr. Boyce confirmed that DelDOT would not become involved in the study because they are private roads and further explained the criteria for going through the DelDOT process. Mr. Boyce noted that the actual location of the project determines which jurisdiction the project falls within. Mr. Rogers added that DelDOT stated at PLUS that they could not require impact studies because the site does not access their roadway; however, they did say they would assist if the City required an impact study. During the scoping meeting DelDOT made it clear that they were not participating in any material way because they were not formally asked to participate in a TIS. Mr. Rogers stated that he agreed the TIS was done in accordance with DelDOT standards; however, AECOM has not had an opportunity to review the TIS. Mr. Lovlie asked if the City could consult with DelDOT if the project moves forward. Mr. Rogers stated he would speak to that when he presents his recommendations.

Mr. Tucker stated that if the Planning Commission wants help from DelDOT the applicant has no objection, but would ask that DelDOT's participation would happen during the site plan process.

Mr. Tucker presented a letter of approval of the proposed project from the Charter School of New Castle. Mr. Tucker provided letters stating that he met with the Fire Chiefs of Good Will and Holloway Terrace Fire Companies and they advised that they did not anticipate any adverse

impact to emergency service to the project. Mr. Tucker also reached out to New Castle City Police Chief McCabe, who recommended site security measures that the applicant agreed to.

Police Chief Richard McCabe stated that the Department is budgeted for 19 officers and is currently staffed at 17 officers. In addition to site security measures, he recommended that the Department increase staff to 21 officers and two additional vehicles. He estimated the cost for the two additional officers, two additional vehicles, plus uniforms and equipment would be approximately \$200,000. In response to a question from Mr. Lovlie, Chief McCabe stated he was not aware of any special requirements that would be needed to serve the project.

Mr. Tucker reviewed estimated taxes and impact fees, and noted that the annual income to the City would cover the cost of the additional Police Department staff and vehicles.

Mr. Tucker reviewed the benefits of a mixed-use development vs a big box logistic use.

Ms. Zumar stated that she was disappointed that the access to Rt. 295 was not reviewed, noting that from her experience Rts. 896 and 273 are right turn accesses and they consistently back up; adding that she had expressed this concern earlier in the process. Mr. Tucker stated that the professionals were asked to perform the TIS in accordance with the DelDOT manual; and represented that if that intersection is a concern they would supplement the TIS during site plan review.

Ms. Zumar asked if snow removal was ever discussed. Mr. Tucker explained that for rentals, trash and snow removal would be included in the monthly rent payment; and for fee simple properties a traditional maintenance corporation document would be drawn up that would require the owners to maintain and plow their streets. This would ensure that snow removal would not become a burden of the City. Ms. Zumar also confirmed that trash removal would be the same type of agreement.

Mr. Walton asked how the wetlands would be preserved. Mr. Tucker felt that there would be a note on the plan indicating that the area is a conservation eased area in perpetuity.

Mr. Rogers asked if all the streets would be private or just anything that is not fee-simple subdivided. Mr. Tucker stated that the applicant would do whatever the City preferred. In response to a question from Mr. Rogers, Mr. Tucker addressed the mechanism if the roads were private.

Mr. Rogers stated that AECOM continues to recommend disapproval of Ordinance 536 in accordance with their recommendation made at the November 28, 2022 Planning Commission Meeting. He further stated that if the Planning Commission is inclined to make a favorable recommendation to City Council AECOM recommends the following:

- The Traffic Impact Study (TIS) submitted on 2/22/23 be reviewed and approved by AECOM and any necessary improvements identified in the approved TIS be a condition of the rezoning or subsequent site plan approval.

- As described on page 2 of 4 the TIS Scope of Work dated 2/14/23 prepared by the applicant's representative, Century Engineering, the TIS should include and evaluation of the intersections listed in the TIS to determine *the extent to which they meet the relevant DelDOT, AASHTO and MUTCD standards for geometry and traffic control devices*. Said evaluation for the intersection of Cherry Lane and Lukens Drive should be reviewed and approved by AECOM in consultation, as may be needed, with DelDOT. Any improvements as may be identified in the approved evaluation should be a condition of the rezoning or subsequent site plan approval.
- The applicant submit evidence as required by the City that the portion of Lukens Drive within the City has been built to the appropriate DelDOT and/or City standards prior to acceptance by the City. Said evidence should be submitted as a condition of site plan approval.
- The portion of Lukens Drive located outside of City limits (between Cherry Land and the RR tracks) be dedicated to, and accepted by, DelDOT prior to or concurrently with the acceptance of the City portion of Lukens Drive by the City.
- In accordance with PLUS comments dated June 21, 2022, the Comprehensive Plan component of Ordinance 536 be reviewed by PLUS prior to City Council taking action of Ordinance 536.
- An agreement being reached to the satisfaction of the City Attorney and City Council regarding the provision of private trash pick-up as part of site plan approval.
- The emergency gate at Buttonwood being upgraded to the satisfaction of emergency service providers as a condition of the site plan approval.

Mr. Rogers stated that relative to private roads vs public roads and maintenance corporations, he may reserve the right to seek City counsel when it is presented to them. Relative to the TIS, Mr. Rogers stated he is concerned about the geometry of the intersection of Cherry Lane and Lukens Drive and AECOM has not had a chance to review that in the TIS. During discussion, Mr. Walton suggested that matter be reserved to the site plan process, and explained his reasons for this suggestion.

Mr. Lovlie opened the floor to public comment.

Public Comments

Richard Smith – Delaware NAACP State Conference Leadership President

Mr. Smith stated that air quality and the wetlands and flooding are very important issues. He noted that the access gate in Buttonwood is also a concern and questioned the impact of emergency vehicles on that neighborhood.

Mr. Smith stated that he approves the project and encouraged the Commission to approve the project.

Phil Gross – 1301 13th Street

Mr. Gross stated that he echoed Ms. Zumar and Mr. Rogers in that the traffic at the intersections at Lukens Drive and Cherry Lane and the end of Cherry Lane need to be addressed.

Mr. Gross stated that although he was originally opposed to the project, with the involvement and support of area residents and the NAACP and the cooperation of the developer, he now supports the project. He suggested that the State should install air quality monitoring in the area.

Kimberly Lake – Riverview Drive

Ms. Lake stated her approval of the project and is in favor of more housing as opposed to more industry on the site.

Ron Handy – NAACP 1st Vice President

Mr. Handy stated his support of the project, noting that since the NAACP has been involved with the project the developers have been very open and transparent. He stated that this is an opportunity for the community and the developers to come together and work on some important issues. He stated that relative to safety and health, if this community is taken care of then the surrounding communities will also be taken care of.

Andrew Zeltt – 33 East 6th Street

Mr. Zeltt suggested that the developer consider adding a park and EV charging stations to the proposed development, noting that both would be an asset to the residents.

Mr. Zeltt suggested that the developer consider not using a maintenance corporation, opining that because the property owners will be paying taxes to the City those services should be supplied by the City.

Mr. Zeltt suggested the annual tax benefit to the City should take into consideration that those funds will cover all needs of the community.

Dora Williams – Rt. 9 Corridor

Ms. Williams stated that she is part of New Castle Prevention Coalition and Delaware Concerned Residents for Environmental Justice and the legacy pollution that was mentioned by Mr. Richard Smith is very much a part of their lives. She stated that if any kind of heavy industry project is built on the subject site, it will add to pollution and health issues. She stated that if the developers and the NAACP and Delaware Concern involved in the project will see it through the prospective residents will not have the same health outcome that others are combatting.

Jeanette Swain – Collins Park

Ms. Swain stated her agreement with statements from Ms. Williams that residential would be an improvement over warehouses. She opined that the Rt. 9 Corridor should be revitalized with some new life.

Richard Smith

Mr. Smith noted that they will be meeting with DelDOT and the developer to discuss the issues that affect people's lives.

Karen Igou

Ms. Igou stated that she is in support of Delaware Concerned Residents for Environmental Justice and has worked with them in the past. She stated her agreement with the City Planner that the project should not be approved, noting that it is a wetlands and a flood plain and that we need all the green space we can get. She asked that an independent body decide what is wetlands and what is flood plain and that an independent body watch over the development. She recommended the development be all electric and not have any gas. She stated that New Castle will flood and it may be before the 2100 projection. She stated that she wants to know the actual grade level of service of the TIS.

Rebuttal

Mr. Tucker noted that the TIS is being reviewed by two licensed traffic engineers and he has no objection to DelDOT reviewing the TIS as well. He requested that the applicant not be subject to AECOM's approval of the TIS.

Mr. Tucker stated that he and Messrs. Rogers and Walton can discuss the Comprehensive Plan amendment, and opined that should not delay any vote by the Planning Commission.

Mr. Tucker noted that that the site is an area that is earmarked for growth and the applicant feels strongly that a residential development would be better than an industrial project.

Discussion

Mr. Walton stated that the only thing the Planning Commission is voting on is the Zoning and the Comprehensive Plan amendment. He added that conditions could be placed on a recommendation. He further added that everything the applicant has agreed to will be submitted to City Council in writing.

Ms. Zumar noted that she did not recall air quality monitoring by the State being previously discussed. Mr. Rogers noted that the idea is that since there will be more residents here it will encourage DNREC to be more diligent in its position of air quality enforcement.

Ms. Zumar noted that the applicant has agreed to be responsible for trash removal in perpetuity and possibly snow removal as well, and asked if the Commission could require a fiscal impact study on that matter. She noted her understanding that if a resident pays taxes for certain services and also is required to pay for those services through and HOA it could be challenged.

Mr. Walton explained that as long as it is in the recorded documents, those representations can be made. He added that having a fiscal impact study on the service could be part of the site plan.

Ms. Batty noted several matters that the public brought up that are outside the purview of the Planning Commission and suggested that:

- The Planning Commission raise to City Council the possibility of putting an emergency notification system in place.
- The Planning Commission asks for a minimization of the use of gas in houses.
- EV charging stations be installed in the development.

Mr. Lovlie noted that Ms. Batty's suggestions are not conditions and Mr. Walton stated that he would memorialize her suggestions.

Ms. Batty noted items she felt were site plan level that also need to be memorialized:

- Evidence that all of Lukens Drive is built to DeIDOT standards.
- That Comp Plan is reviewed by PLUS before it is finally approved.
- The automated emergency gate.
- The conservation easement.
- That the recommendation of Chief McCabe be accepted for additional police support for all developments in the City.
- That DeIDOT be involved in the Rt. 295 access review and that AECOM is not a decider.

Mr. Walton stated that a promise was made and has been memorialized regarding the automated gate, the conservation easement and the update to the TIS to include Rt. 295, and those items do not need to be conditions for an approval. Mr. Walton stated his understanding that the Comp Plan is a condition of the Office of State Planning.

After discussion, Mr. Walton proposed a motion:

A motion to approve a recommendation to City Council for the rezoning as proposed conditioned upon the Office of State Planning giving its approval for the rezoning and site plan and subject to review by AECOM of the Traffic Impact Study. Prior to site plan the Planning Commission requests:

1. A study of the cost of the refuse service either private or public.
2. A representation or attempt by the developer to reduce a gas input into the project.
3. A resolution of Lukens Drive being built to DeIDOT standards.

The motion was made and was seconded by Ms. Rivera. A roll call vote was taken.

Cynthia Batty – Yes, for the following reasons:

- The community supports it.
- Something will be built there anyway, let it be something green and beautiful.
- Occupancy of other developments are successful and housing is needed.
- New Castle can accommodate the growth.
- The proposed development is next to the school.

- It brings people and prosperity to the City.
- It preserves a view of the bridge.
- I have not heard any overwhelming reason not to do it.
- It promotes the health, safety and general welfare of the City of New Castle.
- It conserves the value of buildings and encourages the most appropriate use of land in that area.

Margo Reign – Yes, for the reasons stated by Ms. Batty.

Tamara Stoner – Yes, because it conserves the value of buildings and encourages the most appropriate use of land in that area.

Kristin Zumar – Yes, for the reasons stated by the other Commissioners.

Matthew Lovlie – Yes, for the reasons stated by the other Commissioners and because the community supports it.

Brie Rivera – Yes, for the reasons stated by the other Commissioners.

Keaira Faña-Ruiz – Yes, for the reasons stated by the other Commissioners and because the community supports it.

Tim Gibbs – Yes, for the reasons stated by the other Commissioners.

The motion on the floor passed unanimously.

Mr. Walton reviewed next steps.

Mr. Lovlie proposed that Item 6 on the Agenda be postponed to the March meeting.

Comments from Commissioners

Ms. Batty commended the Commissioners on the status of the Commission and the way in which all Commissioners have worked together. Mr. Lovlie echoed Ms. Batty's comments and stated his appreciation for the energy and enthusiasm of the Commissioners.

Mr. Lovlie stated that he will follow through on several items noted in the January Minutes.

There being no further business to discuss Mr. Lovlie called for a Motion to adjourn.

A Motion to adjourn was made by Ms. Rivera, seconded by Ms. Zumar, and unanimously carried and the meeting adjourned at 9:07 p.m.

Respectfully submitted,

Kathleen R. Weirich
City Stenographer