

**MINUTES
BUSINESS MEETING
NEW CASTLE COUNTY PLANNING BOARD
DEPARTMENT OF LAND USE - NEW CASTLE ROOM
87 READS WAY, NEW CASTLE, DELAWARE
April 16, 2019
9:00 A.M.**

The Business Meeting of the Planning Board of New Castle County was held on Tuesday, April 16, 2019 in the New Castle Room of the Government Center Building, 87 Reads Way, Corporate Commons in New Castle, DE.

The meeting was called to order by Chairperson Karen Peterson at 9:03 a.m.

The following Board members were present:

Leone Cahill
Joseph Daigle
William McGlinchey
Karen Peterson
Linda Porras-Papili
Robert Snowden
Ruth Visvardis
Kiana Williams

The following Board members were absent:

Darryl Parson

Planning Board Attorney, Office of Law

Adam Singer

The following Department of Land Use employees were present at the meeting:

Richard Hall	Andrea Trabelsi
Antoni Sekowski	Matthew Rogers
George Haggerty	Marisa Lau

The following members of the public were in attendance:

Shawn Tucker

MINUTES

March 19, 2019

DEFERRALS

App. 2018-0530-S/Z was deferred until the May 21, 2019 business meeting.

BUSINESS

App. 2019-0091-S - North side of Governor Printz Boulevard, 940 feet west of E. Lea Boulevard. Exploratory Minor Land Development Plan for **SUEZ Edgemoor** proposes to construct a 110-foot diameter, 64-foot height maximum, ground supported water storage tank and associated site improvements. I and CR Zoning. CD 4. Brandywine Hundred (T.P. 06-148.00-003)

At a business meeting held on April 16, 2019, the Planning Board considered the Department of Land Use recommendation. On a motion by Ms. Cahill, seconded by Ms. Visvardis, the Planning Board voted to grant **CONDITIONAL APPROVAL** of Application 2019-0091-S with the conditions as stated by the Department. The motion passed by a VOTE of 8-0-0-1 (YES: Cahill, Daigle, McGlinchey, Papili, Snowden, Visvardis, Williams, Peterson; NO: None; ABSTAIN: None; ABSENT: Parson).

In discussion preceding the vote the Board members offered the following comments:

Ms. Peterson noted that the exhibit showing an elevation profile does not include a sight line from houses on the opposite side of East 35th Street, which would be facing the water tower. She asked for clarification as to how the plan was able to be scheduled for a Board of Adjustment hearing, prior to receiving a Planning Board recommendation. She then shared the Department timeline for notifying nearby owners about the Planning Board hearing on April 2. Letters were mailed on March 21 or 22 (Thursday or Friday) and would have been received on Monday, March 25. Exhibits with the alternate tank location were posted on the Department website that same Monday. She noted that a resident from East 35th Street had attended the public hearing and indicated she would talk to her neighbors; as of today, no additional public comments were received. Based on this timeline, residents on East 35th Street have been given the opportunity to see the current plan and to comment on the Planning Board application; they also have another chance to comment at the Board of Adjustment hearing next week, which separate notifications were mailed for.

George Haggerty, Assistant General Manager, responded to the Chair's question. Applicants can choose which hearing is scheduled first, if both are needed. He stressed that the Planning Board and Board of Adjustment are independent operations, and both boards can weigh in on, place additional conditions on, or not recommend the application.

Other board members had comments pertaining to the renderings/street view images provided by the applicant and Department of Land Use, which showed that the water tank would be visible from the sidewalks and houses on East 35th Street. Ms. Papili and Mr. Daigle also had questions about the remediation of the reservoir, and whether any details about that project have been made public yet, or public outreach started. On a related note, Ms. Peterson pointed out that the proposed site lacked additional space to increase the landscape buffer width.

Mr. Haggerty responded that the Department had asked whether the roughly 25-foot setback could be increased. The applicant's engineering team had responded that the proposed tank location helped avoid any damage to the dike/dam area around the reservoir. Their preference was to keep the proposed alternate location for the storage tank, which would allow the structure to be established before remediation of the reservoir is begun.

Several board members discussed whether a six-story building could be developed by right on the industrial parcel next to the proposed location of the tank, noting that nearby residents

would probably like to know what is permitted under the zoning code. Matt Rogers, Planner with the Department of Land Use, stated that under current zoning, a 140-foot building could be built on that property owned by Pepsi Co.

Ms. Cahill applauded SUEZ in seeking out a better alternate location for the tank, as well as making the extra effort to apply for a variance at a Board of Adjustment hearing. The original proposal for the storage tank would not have required a variance.

Mr. Snowden stated his concerns about the treeline on the Pepsi Co property, which would substantially help screen the storage tank from neighbors' views. He noted that if the trees were knocked down or taken down, that screening would be lost.

Following the vote, Mr. McGlinchey started a discussion on the perceived effectiveness of the required sign postings, or boards, in keeping the public informed about active land development applications. His comments were not specific to this application, but about the public notice process in general. He was mainly concerned that including an image of the proposed plan on a permanent board, but not requiring it to be updated if the proposed plan changes, has caused a lot of confusion. Understandably, people who are unfamiliar with the County's land development process might expect that the image shown is what is currently being proposed for the site, rather than a snapshot in time of the project. He posed the question whether more people might check the Department website to research a project application if no image was included on the board.

Other board members mentioned that the boards were an improvement when they were implemented since there was no on-site signage required at that time, and that the boards function well as "red flags" indicating there was development activity.

Richard Hall, General Land Use Manager, added that the Department is interested in better utilizing technology to push out information to the public. The website is the best place to find information on land development applications, but people wouldn't necessarily know that. He asked if the Board would be interested in a presentation on what the Department has been doing to better integrate web-based tools into the County's land development process. The Department has considered adding digital information in the form of QR codes and the like to sign postings, which could be accessed with smartphones. However, giving people multiple ways to access information works best.

App. 2019-0050-T – Text amendment to amend New Castle County Code Chapter 40 Article 5 ("Site Capacity and Concurrency Calculations"), Article 11 ("Transportation Impact"), Article 31 ("Procedures and Administration"), Article 33 ("Definitions") addressing transportation. Ord. 19-005 is a text amendment to amend several articles of the Unified Development Code relating to traffic and transportation for applications submitted to the Department of Land Use.

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **CONDITIONAL APPROVAL** of Ordinance No. 19-005 with the condition that it be amended to include the following:

1. Provide for an expansion of the two-mile radius for evaluating committed development in circumstances that would substantially affect traffic conditions in the area of influence.

2. Provide DeIDOT with ninety (90) days to review a traffic impact study
3. Restrict a TID from being exclusively zoned for residential uses or exclusively zoned for commercial uses
4. Provide clarification the intent of a TID is to encourage Economic Development consistent with Article 1.015.C Economic development.
5. The number of TIDs approved by County Council to no more than two (2) in a calendar year
6. At a public meeting held on April 16, 2019, the Planning Board considered the Department of Land Use recommendation. The Planning Board voted on a motion by Mr. McGlinchey and seconded by Ms. Visvardis, to recommend **CONDITIONAL APPROVAL** of Ordinance No. 19-005 subject to the conditions made by the Department of Land Use. This motion **FAILED** by a **VOTE of 3-5-0-1** (YES: Cahill, McGlinchey, Visvardis; NO: Daigle, Papili, Peterson, Snowden, Williams; ABSTAIN: none; ABSENT: Parsons)

In discussion preceding the vote the Board members offered the following comments:

Ms. Cahill, stated that there are 31 recoupment agreements that have been reached, and inquired if any of them were recorded at the Recorder of Deeds, and recommended that any future agreement be recorded. George Haggerty stated that he was uncertain as to whether existing agreements were separately recorded aside from the required notes on the accompanying development plan. Ms. Peterson stated that the requirement is proposed to be eliminated by the current ordinance. Mr. Haggerty stated that the provision being removed is for general transportation notes, which are to be included as notes on Record Plan (the Department has verified that these agreements are recorded with the Recorder of Deeds).

Ms. Peterson stated that she has two areas of significant concern; (1) she feels that LOS standards are an important safety net and while she understands the rationale for relaxing those standards in a TID, is nonetheless concerned and (2) that the funding mechanism isn't clearly explained. Ms. Peterson also stated that while it is "better to look at transportation issues from 10,000 feet than at ground level, where you can only see 3 intersections," she is struggling to make sense in real life what happens, specifically with the Churchmans Crossing area. She also stated that the ordinance lacked criteria other than economic development on where a TID should be established. Mr. Hall reminded her that one of the conditions was to eliminate certain zoning districts from solely being used to establish a TID. Ms. Peterson stated that regardless of the condition, there are a lot of areas that a TID could be established in.

Ms. Peterson expanded on her concerns regarding funding by describing a scenario where a TID was in place, and that an intersection required \$9.5 million to bring the intersection to compliance with the current provisions of the UDC and a developer brings a project that only requires that it contribute \$1 million. Under this scenario, there is no additional interest in the area, resulting in the intersection being in failure for as long as 20 years. Mr. Hall responded that without the TID, there would be no investment in the area. Mr. Hall and Mr. Haggerty further explained that the TID would not only focus on the individual intersection, but the network as a whole. Mr. Haggerty explained that the improvements, where & when they would occur as well as the required investment for each development would be heard by the Planning Board and decided on by County Council before a TID is established. Mr. Haggerty also further explained that some of the confusion regarding the funding mechanism rests in the fact that the DeIDOT Development Coordination Manual directs the local municipality to collect funds and in practice DeIDOT has collected funds based on mutual convenience. Ms. Peterson further emphasized that her primary concern is that development occurs, and the required improvements would follow using an example of the Chick-fil-A and Wawa at the Christiana Hospital site having to make improvements to meet LOS standards. Mr. Haggerty stated that he wasn't certain that the development made the intersection worse than LOS "D" but would accept that characterization based on Ms. Peterson's active involvement in when the plan was being processed.

Mr. McGlinchey stated that the choice between a TID and the current UDC standards is whether improvements are front loaded or spaced out over time. Mr. Haggerty referred to Mr. Daigle's question about how other jurisdictions implemented TIDs. Mr. Haggerty acknowledged that the process is not a perfect science, but a better way of evaluating the network as compared to the traffic evaluation standards in the UDC. He further stated that state and local municipalities need to decide if they intend to grow and develop or remain stagnant. Mr. Haggerty further explained that LOS "D" could be a 55 second delay, and asked if development should stop due to a 57 second delay in order to just bring the intersection back to the 55 second delay? He said that the proposed ordinance would put us in a better place to be able to discuss intelligently and intellectually if an area could and should be developed with regards to traffic improvements.

Ms. Williams inquired as to who would pay for the traffic studies associated with the establishment of TIDs. Mr. Haggerty said that for the two areas discussed during the workshops, there is significant study information already existing from WILMAPCO studies. He stated that funding for Southern New Castle County Regional Transportation Study, which was used for establishing the Southern New Castle County TID, was in part recovered through recoupment fees.

Ms. Papili questioned the need for a TID if a development with good paying jobs could just get a LOS waiver. Ms. Peterson asked why the Department couldn't develop a streamlined process for initiating a LOS waiver. Mr. Hall explained that LOS waivers are a project by project reactive approach to land use and transportation planning. He stated that the TID process is more proactive and equitable approach to improving the transportation network and encouraging development. Ms. Peterson reiterated her concern that the money contributed by developers may never catch up to the impact of development, specifically referring to the limited development potential in the Churchmans Crossing Area. Mr. McGlinchey stated that he sees the proposed ordinance as a "fundamental shift" in that the County would be creating an environment for economic development as opposed reacting to it as each project. He further compared the two approaches identifying that a TID provides certainty to the developer where a LOS waiver does not. Mr. Hall further clarified that a TID would establish clear and detailed standards for the required improvements and development within plan area. He further explained that that TIDs would be geographically and numerically limited and that they'd be the product of a rigorous public process. During this process if it is determined that a TID doesn't make economic sense it doesn't get established.

Mr. McGlinchey drew a contrast between the existing TIDs in the County (Middletown and the Southern New Castle County TID) since they were essentially greenfield development and future TIDs would likely not be starting with a "clean slate." He stated that he understands that economic developments will occur where it is advantageous and desirable but is concerned with ambiguity in the ordinance. He further stated that where he believes that "the Department, as it is constituted today, would use this in good faith, there isn't a safeguard against someone not using it that way in the future." Mr. Hall explained that the approval of each TID would require review by the Planning Board and approval by County Council.

Mr. Snowden stated that one of the problems with considering the ordinance is that TIDs are a "big conceptual thing and there's so many permutations and unanswered questions funding and so forth it's almost like we have to see one to understand one." He recommended that provisions be added to the ordinance requiring reevaluation at some future point. Mr. McGlinchey stated that while the TID will be reviewed to evaluate improvements, there will still be concern regarding funding.

Ms. Peterson questioned if a TID would be created in instances where a project hasn't already been proposed. She also reiterated her concern regarding inadequate funding for improvements. Mr. Haggerty reminded her that the Planning Board would have an opportunity to not only review traffic improvements but also funding and explained that should they not be comfortable with either, they

could recommend denial for a proposed TID. Ms. Peterson stated that she's seen damage over the years where development preceded improvements

Mr. McGlinchey stated that "one thing we don't know is we don't know the opportunities are lost by the current model today." He also stated that the having a mandatory review of the provisions as recommended by Mr. Snowden or other changes may provide the board a better level of comfort.

OTHER BUSINESS

New Castle County Capital Budget – At the April 16, 2019 Planning Board Business Meeting, David Gregor, Chief Financial Officer of New Castle County, presented the New Castle County Capital budget 2020-2025.

The Department reviewed the New Castle County Capital Budget and believes that the proposed Capital Program and Budget is based on sound land use planning principles and is in accordance with the 2012 Comprehensive Development Plan and recommends that New Castle County Council approve the New Castle County Capital Program & Budget for Fiscal Years 2020-2025.

At the business meeting held on April 16, 2019, the Planning Board considered the recommendation and analysis offered by the Department of Land Use. On a motion made by Ms. Papili and seconded by Ms. Visvardis, the Planning Board voted to recommend to County Council that the proposed Capital Budget & Program be approved, and the motion was adopted by a vote of 8-0-1 (*Yes: Peterson, Cahill-Krout, Daigle, McGlinchey, Porras-Papili, Snowden, Visvardis, Williams; No: none; Absent: Parson*)

In discussion preceding the vote, the following comments were offered:

Mr. Gregor directed the Board to follow up with Tracy Surles, General Manager of the Dept. of Public Works, regarding any questions he couldn't answer.

Ms. Peterson asked about the total expenses for the southern Appoquinimink library under development. Mr. Gregor replied that project expenses were roughly \$24-25 million, half of which is to be covered by the state and half of which is to be paid for by the County. The land has been acquired and an architect is attached to the project. Rich Hall, General Manager of the Dept. of Land Use, added that a public workshop was recently held in Middletown to obtain community feedback. Mr. Hall also indicated that he was not aware of any plans to reduce service at the Odessa Library, once the new library is open.

Ms. Peterson had several questions related to the fleet equipment and Public Works Department. She asked if the budget line she referenced included the total number of vehicles allocated to police officers, and what percentage of the County fleet consisted of take-home cars. Mr. Gregor offered to consult a recently completed fleet study and get back to the Board.

Ms. Peterson asked questions related to the new southern regional park under development. Mr. Gregor responded that various locations in the south central and southwest areas below the canal were being considered. Open space and infrastructure availability are the main factors in selecting this site. Mr. Hall added that prospective locations above and below Middletown were being evaluated. These sites were in proximity to underserved population centers with

sufficient infrastructure for a regional park. He confirmed that early in the process the administration had convened a task force. A shortlist of various locations being finalized has been based in part on feedback that the task force received from the public. In response to Ms. Peterson's question about the project drivers, he noted that many people would say that there was no regional park south of the canal, while widely accepted standards for park planning based on population have showed that one was justified. The administration has broadly recognized that a regional park somewhere south of the canal is due.

Mr. Gregor could not give additional info about DelDOT coordination project listed on page 96.

Mr. Snowden stressed the importance of the Christina River Force Main system project, calling the precarious situation a top funding priority for Public Works. Mr. Gregor replied that a state loan had been obtained with better interest rates, almost like a line of credit, that allowed for flexibility depending on the extent of work required.

REPORT OF COMMITTEES

None.

REPORT OF GENERAL MANAGER

The Department's annual report was distributed, as well as a new report with demographic and transit information called "NCC@2050". Richard Hall, AICP, General Manager for the Department of Land Use discussed the County's comprehensive plan update due in 2022. As work on the plan ramps up (four sub-area plans are currently underway) the Department is starting its efforts to talk to the public about the plan and get community engaged in the issues. One topic discussed was the importance of moving towards a comprehensive approach to development, by relying on the Comprehensive Development Plan to direct development and potentially using tools such as TIDs.

REPORT OF CHAIRPERSON

None.

OTHER BOARD MEMBER COMMENTS

None.

COMMENTS FROM THE PUBLIC

None.

ADJOURNMENT

The Board voted to adjourn the meeting at 11:18 a.m.

ATTEST:

Richard E. Hall, AICP Date
General Manager
Department of Land Use

Karen Peterson Date
Chair
Planning Board