

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY

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**CITY OF DELAWARE CITY
PLANNING COMMISSION
SPECIAL MEETING & PUBLIC HEARING
DECEMBER 16, 2014**

CALL TO ORDER

Commissioner Dilliplane called the meeting to order at 6:30 pm.

ROLL CALL

Present were Commissioners Dilliplane, Batanese, Chura, Renoll and Snow. Also in attendance were City Manager Cathcart, City Solicitor Walton and Assistant City Clerk Clifton.

CITY SOLICITOR OVERVIEW

City Solicitor Walton explained that the purpose of the Public Hearing was to review an ordinance to amend the City's Comprehensive Development Plan and an Omnibus Zoning Ordinance designed in part for the Fort DuPont complex. He said this was the opportunity for the public and the Planning Commission to comment on the ordinances and the comprehensive plan changes as well as the proposed HPR or Historic Preservation Redevelopment District.

City Solicitor Walton reviewed the role of the members of the Planning Commission. He gave them a copy of a statute from the State Code which explains what the Planning Commission does. He said, in this instance, the Planning Commission is not the final decision maker, but rather a recommending body. Their job is very important because they are the people who recommend and work on comprehensive plans. The Comprehensive Plan has a force of law and no development is permitted in the City of Delaware City unless it is

consistent with the City's Comprehensive Plan. The role of the Planning Commission, during this process, will be to make a recommendation to Council.

City Solicitor Walton explained that his role is to present and explain and make sure the appropriate process is followed in order to prevent procedural mistakes. He will make a record of what has occurred and will try to keep the hearing within the bounds of what is required under the law. He said the Planning Commissioners could ask questions and he will answer the questions "on the record" which means they can't go behind closed doors for any discussion. He said at the conclusion of the hearing, following the public comments, if the proposed ordinances look to be in order to the Planning Commission, he will ask the commission to recommend a PLUS review. PLUS stands for Preliminary Land Use Service. It consists of a group of state agencies that look at comprehensive plan changes, developments of over 50 units and larger commercial developments to make comments on them. If the Planning Commission decides to vote to refer to PLUS the City Solicitor would present the ordinances to the PLUS agencies on the 4th Wednesday of January, or 1/28/15. Then he would return for another hearing before the Planning Commission for a final vote.

City Solicitor Walton gave a brief overview of how the meeting would work this evening. He said he would present the content of the ordinances. The public would be permitted to speak. He said it would be up to the Planning Commission, but it is customary, to limit each speaker to five minutes. He said if there are questions, he would like for the public to write the questions down and he will try to address them afterwards or City Manager Cathcart could answer the questions. He said then the meeting should not turn into a debate. Once everyone has had a chance to speak, he would close the record. Then the Planning Commission could determine if they want to refer the ordinances to the PLUS agencies for review.

City Solicitor Walton explained what the record consists of. There is the recorded record and a paper record. For ease, he had marked as Exhibit 1, Ordinance 14-0915-01, the ordinance to amend the City's Comprehensive Development Plan. He marked as Exhibit 2, Ordinance 14-0915-02, which is the Omnibus Zoning Amendment, which changes many provisions of the zoning code and the Delaware City Code. The Code requires a certification from the Mayor for the zoning amendment which was executed by the mayor in advance. This is Exhibit 3. Exhibit 4 is the notice that was published in the News Journal in advance of this meeting, dated November 26th and Dec 3rd for the record by statute. That notice was published at least 15 days in advance of the hearing. Exhibit 5 is the agenda that was posted at Town Hall and five places across town, more than 7 days in advance of the meeting, on November 26th, so the appropriate notice under the Freedom of Information Act was met. There are 3 colored boards that show the current comprehensive future land use plan and the proposals for new maps, which are marked as Exhibits 6, 7 and 8.

City Solicitor Walton said he would like to talk about the ordinances in general. He explained the purposes of the two ordinances.

ORDINANCE 14-0915-01 AN ORDINANCE TO ADOPT AMENDED COMPREHENSIVE PLAN PENDING CERTIFICATION BY THE GOVERNOR

Ordinance 14-0915-01 was required because the City of Delaware City wants to annex Fort DuPont. Because of that, it is required that the area to be annexed must be detailed in the Delaware City Comprehensive Plan. He highlighted the changes to the future land use plan using the colored boards. He also explained the Historic Preservation and Redevelopment zone and what are and are not permitted uses in that zone. He explained that other changes are due to the new Flood Plain Ordinance that was adopted at the last Mayor and Council meeting. Additional changes are being made to the Comprehensive Plan because of changes made to the State Strategies Map. He said there would be no changes to the Comprehensive Plan within the City of Delaware City. This amendment applies only to the Fort DuPont Complex.

ORDINANCE 14-0915-02 RELATING TO UPDATING NUMEROUS SECTIONS OF THE DELAWARE CITY CODE

Ordinance 14-0915-02 is an Omnibus Ordinance which has been proposed because the City of Delaware City is taking on the building code, subdivision code, mechanical code and other codes that are currently being handled by New Castle County. This ordinance would make all changes to the Code to remove New Castle County and make the City responsible for these tasks, reflecting the actual changes that will occur when Delaware City assumes these responsibilities. He pointed out the various sections that would be changed as a result of the adoption of this Omnibus Ordinance.

DISCUSSION

City Solicitor Walton opened it up to questions from the Planning Commission, after giving the Exhibits to Assistant City Clerk Clifton.

Commissioner Dilliplane asked if it was to the City's advantage to go through the PLUS review. City Solicitor Walton said the City almost has to go through the PLUS review due to the way the Comprehensive Plan statutes are written. The state can withhold money from the City if the PLUS review were bypassed. It is to the City's advantage to have the additional review. The City Solicitor said the Comprehensive Plan must be updated every five year. The PLUS review would serve as the City's five year update, so the Comprehensive Plan would not need to be reviewed for five years. He reminded everyone that nothing is being changed in the Comprehensive Plan that pertains to the City of Delaware City. The only changes that are being made pertain to the Fort DuPont complex.

Commissioner Dilliplane asked if the PLUS review is required only for Ordinance 14-0915-01. City Solicitor Walton said he is taking both and will let the PLUS agencies make comments.

City Manager Cathcart said it is really in the City's best interest to have this review done as the people doing the review are land use experts and various state agencies who understand the impact of this type of development on roads and infrastructure.

Commissioner Dilliplane asked if they will be voting tonight whether the ordinances should be sent for a PLUS review. City Solicitor Walton said they are having the public hearing first, and then if they choose to send the ordinances for a PLUS review they would make a motion to seek PLUS review. He would return to the Planning Commission with the PLUS comments so they can have the results of the complete process when they make a recommendation to the Council.

Commissioner Chura asked for confirmation that this would be going before DeIDOT, DNREC, and other agencies who serve in an advisory capacity. She also asked if other municipalities go through this process. City Solicitor Walton said he has served as a land use lawyer for about 15 years and he has only seen one municipality buck the process and it didn't go well for them. There were no additional questions from the Planning Commission.

OPEN PUBLIC HEARING

Commissioner Dilliplane opened the floor to the public.

Charlie Weymouth had written comments which he presented to City Solicitor Walton who said he would mark Mr. Weymouth's letter as Exhibit 9. Mr. Weymouth said he worked on a physical master plan of Delaware City 16 years ago. During that two year dialog, they looked at things such as a bridge across the canal, adequate access and parking, improvements necessary and mandatory for Route 9 access into the Fort DuPont site. The Master Plan was confined to the City of Delaware City. He reviewed the improvements that have been completed during the last 16 years and the suggest improvements that have not occurred. He asked who is to govern the Fort DuPont complex, what the cost of the improvements is, and who is to pay for mandatory infrastructure improvements such as improved eased access for Route 9 and the proposed needed site raising. He said there is liability for building in known harm's way. He gave examples. He cautioned against building in flood prone areas. He asked them to entertain the major ocean shipping trade opportunities for Delaware City.

Natalie Green, 202 Seventh Street, asked if the residents will get to vote for or against the annex. City Manager Cathcart said yes residents will have that

opportunity. Ms. Green asked if the vote would be held on Election Day. City Manager Cathcart said he didn't think it could be done on Election Day. Ms. Green asked if the residents voted to stop the annex of Fort DuPont, would it be stopped. City Manager Cathcart said the project would not be stopped because it is a State of Delaware project that will proceed even if Delaware City does not annex the complex. Ms. Green asked if Delaware City does not annex the property will it still be a State owned property. City Solicitor Walton explained that this is a State of Delaware project which must be within some municipal jurisdiction, whether it is New Castle County or Delaware City. The state owns the land that is going to be developed. The question is whether the project will go forward under the laws of New Castle County or Delaware City. He said the Fort DuPont Redevelopment Corporation will go forward with the project regardless of which jurisdiction the project remains in.

City Solicitor Walton explained the process as follows: DNREC, who owns the property, will make a request to come before Delaware City for an annexation vote. There is a procedure that has been approved that would give the residents of Delaware City the opportunity to cast their votes on said annexation. This will not occur for some time and definitely not by election date as there is still a lot to do before that can occur.

Commissioner Dilliplane asked if the residents choose not to annex the complex, would it become its own town. City Solicitor Walton said it would be part of New Castle County. It would have to have its own charter. Under the current law they could not force it on Delaware City. The project, as to the legislation, contemplates Delaware City and the complex as one city. The idea is it would be a walkable type community.

City Solicitor Walton addressed Mr. Weymouth's comments regarding possible uses for the property, saying that as far as power plants, especially gas fired megawatt power plants, are not a permitted use and it is expressly spelled out in the ordinance. As far as the flooding, it is ultimately a State issue. The City of Delaware City, with the passage of a FEMA approved ordinance, instituted new flood plain standards as well as storm water management standards which are, to the best of the City's knowledge, the maximum of what we should do to strike the balance between preservation and development. The policy call is being made by the General Assembly. The question is whether or not this goes forward in Delaware City or not.

Natalie Green, 202 Seventh Street, asked if, assuming that the City voted to annex Fort DuPont, and assuming something fell off the side of the canal, would the City be responsible. City Solicitor Walton said there are one hundred thousand scenarios, but using the scenario Ms. Green gave, there is immunity for governmental entities which would apply to New Castle County or Delaware City. He gave an example. He said the property owner would be responsible for fixing anything that needed fixing, not the municipality. City Solicitor Walton said one of

the ordinances that is coming before the Council is a property maintenance code which sets the standards for the upkeep of those properties.

Commissioner Snow asked if Delaware City voted against the annexation and the State of Delaware determines how the property will be developed, will their land use parameters be the same as Delaware City's land use parameters. Could they use it for anything they wanted to use it for? City Solicitor Walton said it would be governed by the New Castle County Land Use Act, so the County could put anything they were allowed to by law. It has been a very cooperative effort, to date, to bring suitable uses.

City Solicitor Walton said he wanted to be clear that the annexation is not part of the PLUS review. He said the PLUS review will be done, if the Planning Commission votes for this action, to determine if Delaware City wants to amend the comprehensive plan to allow the annexation process to begin to move forward.

Kelly McVey, 308 Jefferson Street, questioned who would own the land. City Solicitor Walton confirmed that the Fort DuPont Redevelopment Corporation, which is a State entity, would own the land.

Commissioner Dilliplane asked if there are any obvious pitfalls to taking over the land. City Solicitor Walton said that is ultimately a policy decision; there really were no pitfalls from a liability perspective.

Commissioner Renoll, said everyone sitting in this hearing is making history because this has never been done before in Delaware. But the State has done a lot of investigations and learned many lessons from the base closings. There were no additional comments from the public.

CLOSE PUBLIC HEARING

City Solicitor Walton recommended that a motion be made to close the public hearing, with the understanding that it could be reopened to consider PLUS comments.

Commissioner Snow made a motion to close the public hearing with the opportunity to reopen it to consider PLUS comments. Commissioner Batanese seconded the motion. It was asked if written comments would be accepted and City Solicitor Walton replied that they would. There was no additional discussion. A vote was taken, all ayes, motion carried.

VOTE ON RECOMMENDATION AND/OR REFERRAL OF ORDINANCE 14-0915-01 AND ORDINANCE 14-0915-02

City Solicitor Walton said now that the Planning Commission had heard the public testimony and presentation, he asked for a motion to refer the two proposed ordinances to the PLUS process. *Commissioner Snow made the motion to refer the two proposed ordinances to the PLUS process. Commissioner Chura seconded the motion. A vote was taken, all ayes, motion carried.*

City Manager Cathcart said he would stay to answer any public questions following the meeting.

ADJOURNMENT

A motion was made to adjourn the meeting. Commissioner Chura seconded the motion. A vote was taken, all ayes. The meeting adjourned at 7:20 pm.

Respectfully submitted,

Dawn K. Gwynn

City Secretary