

**MINUTES
BUSINESS MEETING
NEW CASTLE COUNTY PLANNING BOARD
DEPARTMENT OF LAND USE - NEW CASTLE ROOM
87 READS WAY, NEW CASTLE, DELAWARE
May 19, 2020
9:00 A.M.**

The Business Meeting of the Planning Board of New Castle County was held on Tuesday, May 19, 2020 by ZOOM Video Conference.

The meeting was called to order by Chairperson Karen Peterson at 9:00 a.m.

The following Board members were present:

Leone Cahill
Jonathan Cochran
Joseph Daigle
Leah Gray
William McGlinchey
Karen Peterson
Robert Snowden
Ruth Visvardis
Kiana Williams

Planning Board Attorney, Office of Law

Randolph Vesprey

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

Antoni Sekowski	Rich Hall
Matthew Rogers	Marisa Lau

The following members of the public were in attendance:

None.

MINUTES

April 21, 2020

DEFERRALS

App. 2020-0004-T. Text amendment to amend Chapter 40, Article 3 (“Use Regulations”) and Article 33 (“Definitions”) regarding Industrial Uses. **Ord. 20-008 is a text amendment to amend Article 3 and Article 33 of the Unified Development Code regarding Industrial Uses.**

BUSINESS

App. 2019-0793-T. Text amendment to amend Chapter 40, Article 31 (“Procedures and Administration”) regarding the text amendment process. **Ord. 19-120 is a text amendment to amend Article 31 of the Unified Development Code regarding text amendment process.**

The Department has considered the *Standards for Text Amendment* in Section 40.31.420, A through G, and comments received from agencies and the public. Based on this analysis the Department recommends **DENIAL** of Ordinance 19-120.

At a business meeting held on May 19, 2020, the Planning Board considered the recommendation presented by the Department of Land Use. The Planning Board voted on a motion by Ms. Peterson, seconded by Mr. McGlinchey, to recommend **APPROVAL** of Ordinance 19-120. The motion was adopted by a vote of **8-1-0-0** (Yes: Cahill, Cochran, Daigle, Gray, McGlinchey, Peterson, Snowden, Williams; No: Visvardis; Abstain: None; Absent: None).

In discussion preceding the vote the following comments were offered by the Board:

Mr. McGlinchey, Ms. Visvardis and Ms. Gray asked for information on the context for this piece of legislation, and whether there were any specific events that precipitated or directly led to the introduction of the Ordinance. Ms. Peterson, Board Chair, replied that the Sponsor’s testimony and written statement submitted following the hearing did not mention any events. She concluded that the proposed amendment was a matter of principle related to the Separation of Powers doctrine. In his reply, Rich Hall, General Manager of Land Use, summarized the key points made during the public hearing and provided an overview of the text amendment process. The requirement for the Department of Land Use and Office of Law to perform a review of land use legislation prior to introduction draws on their considerable professional expertise in implementing the UDC and allows the departments to advise County Council on the impact of legislation. This comprehensive review provides important factors for the Sponsor to consider prior to introducing legislation.

Mr. Snowden asked whether the Sponsor had indicated that legislation was being delayed by the current 14-day working day period. Ms. Peterson replied that the Sponsor’s testimony and statement indicated that the main concern was the Separation of Powers doctrine. Mr. McGlinchey asked the Department to comment on what the impact would be if the fourteen (14) working day period was reduced to ten (10) working days as proposed. Mr. Hall replied that a difference of four working days would not significantly impact the review process, the critical issue is whether new land use legislation must be submitted to Department and Law for comment prior to its introduction.

Ms. Peterson made a motion to approve Ordinance 19-120 making the following statement: “I agree in principle with the proposed Ordinance. During my twenty-two (22) years as a legislator—eight (8) as President of County Council and fourteen (14) as a State Senator—never once was I or any other legislator required by law to submit legislative proposals to the executive branch of government prior to their introduction. To me, that does violate the separate of powers doctrine. A legislator should be able to introduce whatever legislation they like, good, bad or indifferent, and let the review process, which is done in public, separate the good from the bad. The Department draft recommendation concludes in the *Standards for Text Amendments* section that “the proposed changes...would hinder the ability of the Department of Land Use and Office of Law to convey essential information on impacts that proposed amendment may have

on County Code, government operations, services, and finances.” First, conveying essential information about a proposed ordinance can occur just as well after introduction as before. The main difference is that conveying this information after introduction requires that all discussions take place in public. Secondly, all ordinances that propose amendments will have some impact on the County Code and government. However, none of those ordinances must be submitted to the respective executive branch agency prior to introduction. That is why the current law makes no sense to me. I do have an issue with the proposed Ordinance in that it only fixes one of the Separation of Power problems. The other is found in Section 14.01.007 of the County Code. That section says that the County CFO shall attach a fiscal note to each proposed ordinance and resolution prior to its introduction—so the same requirement. The CFO has 10 business days to attach a fiscal note or the council member may proceed without one; that might be where the proposed change from 14 to 10 days comes from in this Ordinance. It is interesting to note that the one exception to that fiscal note requirement is for the annual budget, which is the biggest expenditure of all. Why the budget review has to follow introduction, rather than precede it, makes no sense to me. There’s no reason why the same procedure cannot be followed for all ordinances and resolutions. While I support this Ordinance in principle, I’m concerned that it leaves a provision intact that seems to violate the same doctrine that this Ordinance attempts to fix. This Ordinance can’t be amended or substituted to fix this problem because it would require a title change, meaning that [addressing that problem] would require a whole new ordinance and the process would have to start over again. If Ordinance 19-120 were to pass, I hope that the Sponsor would go back and make the fiscal note section of the code consistent with this [UDC text amendment] section.”

Mr. McGlinchey noted that the Ordinance, by making the pre-application review discretionary rather than mandatory, would not solve the transparency issue that the Sponsor had raised. He also stated that he would consider it to be a best practice for legislators to get input from the Department in order to introduce effective and comprehensive legislation, and that such communication with the Department would add value to the text amendment process. However, it may not be necessary to evaluate these philosophical differences. County Council imposed the pre-application review requirement itself. Therefore, Council clearly has the right to remove the requirement to submit legislation to the Department and Law prior to its introduction and to wait fourteen working days before the legislation can be introduced.

Mr. Snowden stated that he found the Department’s rationale for the current text amendment process, quoted earlier by the Chair, persuasive. However, it comes down to a matter a timing for when the Department can provide input during the legislative process for UDC text amendments. Clearly, there are five other steps in the process where the Department can make its views known.

REPORT OF COMMITTEES

None.

REPORT OF GENERAL MANAGER

Rich Hall, General Manager of the Department, reported that the Department’s online services for permitting, plan review and inspections are being well utilized during the COVID-19 crisis, and staff continues to try to enhance them. There have been a few glitches, but the Department has received

