



Deposition of:

7/20/2021

July 28, 2021

In the Matter of:

**DE Audio - NCC Department of Land
Use**

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NEW CASTLE COUNTY
PLANNING BOARD VIRTUAL MEETING
TUESDAY, JULY 20, 2021
9:00 A.M.

Transcribed by: Rebecca Murray

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P R O C E E D I N G S

MS. PETERSON: With that I will call the meeting of the planning board to order. Mr. Gibbons, would you please call the roll?

MR. GIBBONS: Ms. Cahill.

MS. CAHILL: (No verbal response given.)

MR. GIBBONS: Mr. Cochran.

MR. COCHRAN: Here.

MR. GIBBONS: Mr. Daigle.

MR. DAIGLE: Here.

MR. GIBBONS: Ms. Drake.

MS. DRAKE: Here.

MR. GIBBONS: Ms. Gray.

MS. GRAY: Here.

MR. GIBBONS: Mr. McGlinchey.

MR. MCGLINCHEY: Here.

MR. GIBBONS: Mr. Snowden.

MR. SNOWDEN: Here.

MR. GIBBONS: Ms. Visvardis.

MS. VISVARDIS: Here.

MR. GIBBONS: And Ms. Peterson.

MS. PETERSON: Here. And hopefully Ms. Cahill will be joining us shortly. Speaking of

1 attendance, I just want to take a minute to say
2 something to the board. I know there are boards and
3 committees that have a hard time sometimes getting a
4 quorum and we've never had that problem with the
5 planning board, and I just want to say thank you to
6 all the board members for their faithful attendance at
7 these meetings. I think at most meetings all nine
8 members are present.

9 And I see Ms. Cahill has just joined
10 us, so once again, all nine members are with us. So
11 thanks again for being so faithful to your duties and
12 it sure makes my job a lot easier.

13 Okay. Minutes from June 15th, are
14 there any corrections or amendments to those minutes?
15 Hearing none, do I hear a motion to approve the
16 minutes of June 15th?

17 MS. GRAY: Motion to approve the
18 minutes of June 15th.

19 MS. VISVARDIS: I make a motion that we
20 approve the minutes of June 15th, Ruth Visvardis.

21 MS. PETERSON: Second?

22 MS. GRAY: Second --

23 MS. PETERSON: That was actually Leah
24 Gray was -- made a motion and Ruth maybe you can

1 second it.

2 MS. VISVARDIS: Okay. I'll second it.

3 MS. PETERSON: Okay. Great. All in
4 favor say aye.

5 ALL: Aye.

6 MS. PETERSON: Opposed? Minutes
7 approved. Deferrals, we have three. Application
8 2020-0004T, application 2020-0475T, and application
9 2021-0063T. And maybe after the meeting if somebody
10 from the department could let me know how long we
11 expect some of those to remain in deferral status
12 because some of them have been sitting there a long
13 time and I don't know if we're actually planning to
14 move on them at some point? And if not, maybe the
15 sponsor would withdraw them.

16 So anyway, if somebody after the
17 meeting could get back to me and let me know what the
18 status of those are, that would be great. Okay. That
19 brings us to the business of the day. First on the
20 agenda is the application 2021-0164-T, ordinance 21-
21 024. Mr. Gibbons, who will be presenting?

22 MR. GIBBONS: That would be Chris
23 Jackson.

24 MS. PETERSON: I didn't hear you. I'm

1 sorry. Who is presenting?

2 MR. GIBBONS: That would be Chris
3 Jackson.

4 MS. PETERSON: Chris Jackson. Okay.

5 MR. JACKSON: Good morning, Madam Chair
6 and members of the board. My name is Chris Jackson
7 with the Department of Land Use and I'll hopefully be
8 giving a short presentation on ordinance 21-024, LED
9 lighting ordinance application number 2021-0164-T.

10 This ordinance is intended to modify
11 the unified development code to mandate the use of LED
12 lighting for the required lighting plans submitted
13 after September 1, 2021. These are for land
14 development plans. And next slide, please.

15 As part of this, the department always
16 encourages energy conservation as ways to accomplish
17 the goals of the Green NCC Initiative. Matter of
18 fact, County Executive Meyer recently announced that
19 all New Castle County buildings, government buildings
20 will be powered through the purchase of renewable
21 energy certificates which is a method of achieving
22 energy sustainability when all those types of energy
23 production are not necessarily available in the area.
24 So that's a great goal that he's trying to set up

1 there.

2 There are a couple of concerns with the
3 document. There's just things that I think can be
4 easily taken care of. So we just want to make sure
5 that there is an allowance for the future development
6 of maybe more efficient fixtures and the current
7 language states LED or equally efficient. So we just
8 want to make sure that there is room to grow for
9 future technology that may be slightly more efficient
10 and wouldn't limit it to those that are just as
11 efficient as LED actually is right now.

12 The term bulbs, and this is an issue
13 when the ICCU is looking to adopt some of this
14 language as well regarding LEDs, but the term bulbs
15 may be problematic in that the LEDs are often circuit
16 board mounted devices, so we just want to make sure
17 that it wouldn't necessarily exclude those type of
18 fixtures from being used and that the bulbs doesn't
19 limit what's able to be used by the county.

20 And also the last concern would be
21 street lights. Generally they're, you know, placed
22 outside of the county's jurisdiction as within the
23 right of way, which is the state's jurisdiction, so we
24 would not have the ability to require mandate what

1 happens there. So just, we want to make sure that
2 that street light term is used carefully.

3 So the standards for the text
4 amendment, implementation of a new portion of the
5 comprehensive development plan. Hopefully this is
6 applicable. Implementation and achievement of the
7 comprehensive development plan's goals and objectives.
8 The provisions of this ordinance would facilitate the
9 implementation and achievement of creating a
10 sustainable future for its residents, businesses, and
11 visitors through the promotion of green building
12 practices and energy efficiency.

13 See consistency with the provisions of
14 this chapter and standards for similar uses, not
15 applicable, a necessity to respond to state and/or
16 federal legislation not applicable. Flexibility in
17 meeting the objectives of this chapter, not
18 applicable. Changes to conditions, interpretations,
19 and/or clarifications to existing language for new
20 uses, not applicable. And consideration of specific
21 problems found in this chapter are also not
22 applicable.

23 And so the department has considered
24 the standards for text amendment and offer or

1 recommends conditional approval of ordinance number
2 21-024 with the following conditions. One, to modify
3 the equally efficient language to allow fixtures of
4 equal or greater efficiency.

5 Number two, remove the reference to
6 bulbs as it could prohibit or would prohibit LED
7 fixtures that are commonly connected directly to a
8 circuit board.

9 Number three, remove any reference to
10 street lights as they are outside the county's
11 jurisdiction.

12 Number four, and this comes from the
13 plus comments, consider Den Rec's concerns regarding
14 the potential negative ecological impact of LEDs. And
15 with that, we'll take any questions, please.

16 MS. PETERSON: Thank you, Mr. Jackson,
17 good presentation.

18 MR. JACKSON: Thank you.

19 MS. PETERSON: Nice and concise. Are
20 there any questions for Mr. Jackson? Mr. McGlinchey.

21 MR. MCGLINCHEY: I just have one. So
22 in the approval, what is considered Den Rec's comments
23 mean exactly? Like, what is that -- how does that
24 become actionable?

1 MR. JACKSON: Sure, sure. So what
2 they're concerned about is the I guess potentially
3 stark white lighting and just that the sponsor would
4 maybe -- and I think changing to the equally or more
5 efficient items allows a little bit of wiggle room for
6 fixtures. There is still some concern. I think it's
7 a little bit more of a past concern regarding LEDs,
8 how stark white their light can be.

9 As far as how the department is going
10 to handle if this ordinance is implemented, we would
11 be reviewing the fixtures, semi-cutoff, cut all
12 fixtures and the type of lighting. I think it would
13 be probably difficult to mandate a particular type of
14 LED or anything like that. Perhaps a temperature or
15 color if that was something they wanted to take a look
16 at.

17 MR. MCGLINCHEY: Okay. So would it be
18 maybe just suggesting alternatives to the type of
19 fixture or the type, the lighting like a -- would it
20 be kind of a --

21 MR. JACKSON: I think the --

22 MR. MCGLINCHEY: Okay.

23 MR. JACKSON: I think that would be a
24 good way to look at it, yes, sir.

1 MR. MCGLINCHEY: Okay. Great. Thank
2 you.

3 MR. JACKSON: Uh-huh.

4 MS. PETERSON: Any other questions for
5 Mr. Jackson? Hearing none, do I hear a motion on the
6 conditional approval of ordinance 21-024?

7 UNKNOWN MALE: I move the vote to
8 recommend ordinance 0164-T subject to the four
9 conditions of the department's recommendation.

10 MS. PETERSON: Is there a second?

11 MS. CAHILL: I'll second that, Leone
12 Krout.

13 MS. PETERSON: All right. Mr. Gibbons,
14 will you please call the roll on the motion to -- for
15 the conditional approval of ordinance 21-024?

16 MR. GIBBONS: Ms. Cahill.

17 MS. CAHILL: Yes.

18 MR. GIBBONS: Mr. Cochran.

19 MR. COCHRAN: Yes.

20 MR. GIBBONS: Mr. Daigle.

21 MR. DAIGLE: Yes.

22 MR. GIBBONS: Ms. Drake.

23 MS. DRAKE: Yes.

24 MR. GIBBONS: Ms. Gray.

1 MS. GRAY: Yes.

2 MR. GIBBONS: Mr. McGlinchey.

3 MR. MCGLINCHEY: Yes.

4 MR. GIBBONS: Mr. Snowden.

5 MR. SNOWDEN: Yes.

6 MR. GIBBONS: Ms. Visvardis.

7 MS. VISVARDIS: Yes.

8 MR. GIBBONS: And Ms. Peterson.

9 MS. PETERSON: Yes. Okay. The vote
10 reveals nine yes, so unanimous recommendation. Okay.
11 Next item on the agenda is application 2021-0270-T,
12 ordinance 21065. Mr. Gibbons, who do we have for this
13 one?

14 MR. GIBBONS: Antoni Sekowski.

15 MS. PETERSON: Again. I didn't hear
16 you.

17 MR. GIBBONS: Antoni Sekowski.

18 MS. PETERSON: Mr. Sekowski.

19 MR. SEKOWSKI: Good morning, Madam
20 Chair, Planning Board members. As Conor indicated,
21 Antoni Sekowski with the Department of Land Use. I'm
22 just going to provide a brief recap of the July 6th
23 presentation regarding Ordinance 21-065 application
24 2021-270-T. The ordinance concerns the CR and EX

1 zoning districts in addition to reference to electric
2 vehicles.

3 Specifically, the commercial regional
4 and zoning district, CL zoning district (Inaudible)
5 warehouse and storage type facilities up to 50,000
6 square foot cap as ordinance would remove that cap and
7 provide that they would obtain a special use permit
8 from the Board of Adjustment and obtain or demonstrate
9 compliance with the additional standards that are
10 outlined in this code.

11 The department believes that the
12 special use permit would allow for an opportunity for
13 the public to voice any concerns and/or support for
14 the project and (Inaudible) as a redevelopment plan
15 which is one of the conditions or the standards for
16 this allowing -- to exceed 50,000 square foot
17 redevelopment plans for sites that have been
18 previously developed to some extent and would likely
19 each have unique circumstances that would need to be
20 taken into consideration and we believe the public
21 format would be the best opportunity to do that and it
22 would give the Board of Adjustment through the special
23 use standards and new additional standards the
24 opportunity to specifically discuss each individual

1 site and discuss and determine that the intensity is
2 development -- of the development is ultimately
3 appropriate for this site. If you go to the next
4 slide.

5 As (Inaudible) I won't read through
6 these each individually but just an outline of the
7 standards as far as special use permits which are
8 currently in the code. And then as indicated, the
9 last standard in small print there, but last standard
10 outlines that the intensity of the use should not
11 exceed what's permitted article five which is the site
12 capacity (Inaudible), but it also outlines the level
13 of intensity may be mandated based upon the record.
14 If you can go to the next slide, please.

15 These are the additional standards as
16 part of the ordinance that the department's asking the
17 board to consider and the one being that there must be
18 a redevelopment plan meaning had been previously
19 developed at some point which is consistent with the
20 idea that these larger CRs and parcels are
21 underutilized to the point where we're looking for the
22 opportunity create additional uses for the property.
23 And if you can go to the next slide, please.

24 The second part of the ordinance as far

1 as the EX zoning district and you may recall in 2014
2 the EX zoning district was modified to allow
3 industrial uses in that district. At that time the
4 ordinance did not change the (Inaudible) standards
5 which discuss setbacks, building height, buffer yards
6 and such and they remained as a -- what was currently
7 in the EX zoning district which is currently only one
8 parcel in the county EX zoning district.

9 So this change would modify those box
10 standards to be consistent with the -- for the most
11 part with the BP business park zoning district and
12 which allows for these light industrial uses allowing
13 for consistent standards for the same use in similar
14 zoning districts. Go to the next slide, Connor.

15 The last change proposed by the
16 ordinance concerns parking spaces, and this is just to
17 accommodate the ability for properties, commercial,
18 office, existing facilities to switch over parking
19 spaces to provide maybe charging stations and not
20 required to go back to a land development plan with
21 the county if it's already on file. Obviously if
22 someone is proposing a new land development plan, they
23 would show those spaces on the plan to give them the
24 opportunity to designate (Inaudible) if someone were

1 just to retrofit their facility to add these charging
2 stations they could do that without a plan. Next
3 slide.

4 These standards for text amendment
5 outlined in 310420UDC A, implication of a new portion
6 of the comprehensive development plan is not
7 applicable. B, implementation and achievement of the
8 comprehensive development plan's goals and objectives.
9 In 2012, New Castle County comprehensive development
10 plan encouraged the department in the county to
11 continue to reevaluate the UDC list of permitted uses
12 within varied zoning districts and to propose and
13 promote appropriate and additional uses compatible
14 with the specific district. These provisions -- the
15 provisions of this ordinance would continue to promote
16 a strong, sustainable economy as well as promote
17 redevelopment of existing or underutilized properties.

18 Other aspects of the proposed amendment
19 would facilitate the implementation achievement of
20 creating sustainable future of those county residents,
21 businesses, and (Inaudible) green building practices
22 and energy efficiency. C, consistency with the
23 provisions of this chapter and standards for similar
24 uses. Standards currently exist in the UDC for the

1 establishment of warehouse uses and commercial
2 regional zoning districts. The ability to locate
3 warehouse use of warehouse use of the redevelopment is
4 an opportunity to provide use of underutilized site
5 and to create an additional available area in the
6 (Inaudible) warehouse tenants could locate more
7 quickly.

8 D, necessity to respond to state and/or
9 federal legislation where applicable. E, flexibility
10 in meeting the objectives of this chapter. The
11 ordinance language incurs the redevelopment of the
12 existing or underutilized properties while protecting
13 neighborhood properties while requiring a special use
14 permit. F, changes to conditions, interpretations,
15 and/or clarifications to existing language for new
16 uses not applicable. And the last standard, G,
17 consideration of specific problems found in this
18 chapter.

19 Chapter 40 of the New Castle County
20 code regulates the use of land throughout the
21 incorporated areas of the county. The department
22 frequently answers questions regarding current
23 regulations with the potential to expand certain uses.
24 In recent years it's become clear that New Castle

1 County must be attentive in ways to accommodate
2 appropriate employment opportunities in order to
3 remain competitive of other jurisdictions.

4 This (Inaudible) will provide
5 additional opportunities for redevelopment of large,
6 underutilized commercial sites. And department
7 recommendation, Department of Land Use, based on
8 analysis recommends conditional approval of ordinance
9 21-065 and the condition is specific to electronic
10 vehicles.

11 The condition that a substitute
12 ordinance be provided in order to revise section
13 48.03.521 to include a new subsection F requiring that
14 all residential development provide EV ready parking
15 spaces as provided in chapter six which is the
16 building code.

17 So this is enabling language in the UDC
18 that has changes to the building code which is a
19 recognition and/or cross reference to folks that need
20 to acknowledge the ability to provide those spaces as
21 the building code is updated. And that's it. Go to
22 the last slide. Any questions?

23 MS. PETERSON: Mr. Sekowski, I have a
24 question. I know the recommendation from the

1 department is for conditional approval with that one
2 change. Now, we received a copy of the substitute,
3 substitute number one to ordinance 21-065 which
4 includes that change. So are we voting on the
5 original ordinance with the conditional approval or
6 has the substitute already been introduced and we
7 would be voting on the substitute?

8 MR. SEKOWSKI: Yeah. You would be
9 voting on the original ordinance 21-065 without the
10 change incorporated.

11 MS. PETERSON: Okay.

12 MR. SEKOWSKI: This is just a
13 recommendation for incorporating that change.

14 MS. PETERSON: Thank you. Any other
15 questions for Mr. Sekowski? Hearing none, do I hear a
16 motion on a conditional approval of ordinance 21-065?

17 UNKNOWN FEMALE: I'll make a motion for
18 conditional approval of ordinance 21-065.

19 MS. PETERSON: Okay. Second?

20 MR. DAIGLE: Second. Joseph Daigle.

21 MS. PETERSON: Okay. Mr. Gibbons,
22 would you please call the role on the motion of
23 conditional approval of ordinance 21-065?

24 MR. GIBBONS: Ms. Cahill.

1 MS. CAHILL: Yes.

2 MR. GIBBONS: Mr. Cochran.

3 MR. COCHRAN: Yes.

4 MR. GIBBONS: Mr. Daigle.

5 MR. DAIGLE: Yes.

6 MR. GIBBONS: Ms. Drake.

7 MS. DRAKE: Yes.

8 MR. GIBBONS: Ms. Gray.

9 MS. GRAY: Yes.

10 MR. GIBBONS: Mr. McGlinchey.

11 MR. MCGLINCHEY: Yes.

12 MR. GIBBONS: Mr. Snowden.

13 MR. SNOWDEN: Yes.

14 MR. GIBBONS: And Ms. Visvardis.

15 MS. VISVARDIS: Yes.

16 MR. GIBBONS: And Ms. Peterson.

17 MS. PETERSON: Yes. Roll call reveals

18 nine yes, unanimous approval. That brings us to the

19 last item on the agenda, application 2021-0269-T,

20 ordinance 21-050. Who will be presenting?

21 MR. GIBBONS: I will be presenting. I

22 believe Mr. Hall would like to (Inaudible) first.

23 MS. PETERSON: Okay. Mr. Hall.

24 MR. HALL: Good morning, everyone. Can

1 you hear me okay?

2 MS. PETERSON: Yes.

3 MR. HALL: Okay. We're getting used to
4 sort of this hybrid approach with the public meeting.
5 So for the record, I'm Richard Hall, general manager,
6 Department of Land Use. I thought we had a good
7 conversation at the public hearing about 21-050. This
8 ordinance makes changes to transfer of development
9 rights, provisions and the UDC, (Inaudible) for
10 development rights also known as TDRs. These
11 provisions have been in the code since it was created
12 in 1997.

13 As was discussed before at the public
14 hearing in other circles otherwise, the TDRs in
15 accounting are not used that often. They have been
16 used some. This draft ordinance before you today
17 would put forth some mapping requirements and also
18 some studies. Within the main part of the ordinance
19 would require a conditional public process to use the
20 TDRs and really in a nutshell, what it does in my
21 simplistic explanation (Inaudible) rezoning process.
22 So it would seem to me if the concern is that high
23 about the use of TDRs, it may make sense just to do
24 away with them because, again, the effect that this

1 ordinance before you this morning would essentially
2 turn it into a rezoning process in many ways.

3 So therefore we oppose the ordinance
4 and Conor will get into more detail. What we would
5 propose, I believe he mentioned this at the public
6 hearing a few weeks ago is we were in the middle of
7 the accounting comprehensive plan process.

8 We put lots of good ideas and there are
9 probably even more out there about how to improve the
10 current TDR provisions in the county code. We've
11 gotten ideas from a land preservation taskforce that
12 the county executives assembled about a year and a
13 half ago. We're getting ideas in the comprehensive
14 planning process, and we've heard ideas from other
15 stakeholders as well.

16 So I guess what I would say, let's mend
17 it and not end it as far as the use of TDRs, but
18 again, we oppose the ordinance and I'm going to turn
19 it back over to Conor. Thank you.

20 MS. PETERSON: Mr. Gibbons.

21 MR. GIBBONS: So ordinance 21-050
22 requires that a map be established to identify parcels
23 within the county that are sending parcels and
24 receiving parcels. It also requires that prior to the

1 adoption of the map, it shall be reviewed at a public
2 planning board, a public hearing, and approved by
3 county Counsel. What are TDRs? Transfer of
4 Development Regs, TDR is a legislative right that
5 allows development rights to be transferred from one
6 parcel to another. (Inaudible) title nine of the
7 Delaware code outlines TDRs and their implementation
8 requires to be within the same planning district.

9 TDRs were included the adoption of the
10 UDC, the Unified Development Code which was adopted on
11 December 31, 1997. TDRs have been used on a limited
12 basis, however processed as a major land development
13 plan which does require a public review, i.e., a
14 planning board, public hearing, and also county
15 council.

16 So the standard for text amendment
17 section 40.31.420 of the New Castle County code,
18 implementation of a new portion of the comprehensive
19 development plan, this section does not apply.

20 Implementation and achievement of the comprehensive
21 plans, goals, and objectives, enhancement to the TDR
22 program is consistent with a 2012 comprehensive plan
23 and should b continued. It should be a continued
24 conversation during the current, ongoing process to

1 update the 2012 comprehensive plan.

2 Seek consistency with the provisions of
3 this chapter and standards for similar uses. This
4 section does not apply. A necessity to respond to
5 state and/or federal legislation, this section does
6 not apply. Flexibility in meeting the objectives of
7 this chapter, this section does not apply. Changes to
8 the conditions, interpretations, and/or clarifications
9 toe existing language for permitted uses, this section
10 does not apply.

11 Consideration of specific problems
12 found in this chapter. Ordinance 21-050 proposes to
13 create a map and a company market analysis intended to
14 illustrate TDR sending and receiving maps. This will
15 result in sending and receiving area identified on the
16 map without the necessary site capacity calculations
17 required to determine an accurate development
18 analysis.

19 The department recognizes that the
20 proposed ordinance intends to provide visual
21 representation of the TDR sending and receiving areas.
22 However, as written, may cause confusion for the
23 public unless it is clearly stated what the map
24 represents which is potential growth preservation

1 areas, not a detailed analysis of the number of lots
2 that can be transferred.

3 The department believes that this
4 ordinance is a step in the right direction. However,
5 the option to opt in and out of the county council
6 approved TDR map may further deter the utilization of
7 TDRs.

8 And the department recommendation, the
9 Department of Land Use has considered the standard
10 text amendment in section 40.31.420 of the New Castle
11 County Code and comments received from other agencies
12 and the public. Based on this analysis, the
13 department recommends denial of ordinance number 21-
14 050.

15 MS. PETERSON: Okay. Thank you, Mr.
16 Gibbons. Are there any comments or questions from
17 board members? Mr. McGlinchey.

18 MR. MCGLINCHEY: Yes, Mr. Gibbons, can
19 you describe and maybe I should understand this. Can
20 you describe the public process as it exists today
21 and as it would exist under this ordinance with
22 respect to the planning process with the board with
23 respect to the board and county council and such? I
24 just want to understand the difference.

1 MR. GIBBONS: So the difference is that
2 with any major land development plan, as you've seen
3 before, we've had subdivision plans come before us and
4 basically it's our chance to review the plan.
5 Sometimes we can understand if there was an incentive.
6 Normally you'll understand this better if there was
7 some sort of H overlay. I believe we had one a couple
8 of months back where -- which is a rezoning process,
9 but just slightly different. But the H overlay does
10 allow for some sort of incentive and increasement in
11 your density.

12 Therefore you get an additional lot or
13 two. So it's the same type of process without the H
14 overlay, which is a rezoning process, but it allows us
15 to review the plan, understand what option was used
16 for development and if there was any incentive
17 utilized during that time. That plan then goes from
18 the planning board to County Council for approval and
19 County Council can then choose to -- and make that
20 final determination whether it meets their standards
21 for development or not.

22 MR. HALL: Madam Chair, can I add just
23 a little to that?

24 MS. PETERSON: Who is speaking, Mr.

1 Hall?

2 MR. HALL: This is Rich Hall. Sorry.
3 Just a little bit that I -- so Rich Hall, General
4 Manager. I guess I would characterize the main
5 difference between how TDRs work today versus what
6 this ordinance before you this morning would do is
7 currently these are TDRs to my right. And again, this
8 has been the (Inaudible) that was created back in '97.

9 So site capacity is done on the sending
10 parcel, so we're looking at what could be built on a
11 parcel and then there has to be a plan proposed and
12 then those units within the density cast can be
13 transferred to a receiving parcel and still having to
14 meet the density requirement. So you have to work
15 with them, the current bounds of the zone that you're
16 in per the UDC and both the sending and receiving
17 parcels are looked at to see what they can legally
18 send and receiving one is looked at what's legally
19 seen.

20 What changes, some key changes in the
21 draft ordinance before you, one is some mapping
22 efforts which we can do that for informational
23 purposes if that's something that people want. We're
24 not really concerned about doing the mapping as long

1 as it's clear what the mapping is for. And then, but
2 the other part that we have some concern about is that
3 areas that can send and receive TDRs have to go
4 through a county council process. And so essentially
5 what that turns it into is almost a rezoning process,
6 so that's our (Inaudible).

7 MR. MCGLINCHEY: Mr. Hall, so it's the
8 fact that you're speaking of an entire -- all of the
9 areas having to go through a process separate from the
10 plan is what you're saying? There's an entirely
11 separate process separate from the, like, individual
12 plans. You're saying the actual areas are going
13 through the process and today's version we just see
14 them as they come through attached to a plan. Is that
15 accurate?

16 MR. HALL: I think that's a good way to
17 summarize it, yes.

18 MR. MCGLINCHEY: I'm just trying to
19 delineate in my head, like, basically the difference
20 in transparency. So if I look at TDRs today, if they
21 -- if a plan comes before us with TDRs associated with
22 it, you know, we would have knowledge of that,
23 correct?

24 MR. HALL: Yes.

1 MR. MCGLINCHEY: Yeah. Okay. Okay.
2 Got it. Thank you.

3 MS. PETERSON: Any other questions for
4 Mr. Gibbons? Okay. Hearing none, do I hear a motion
5 on ordinance 21-050?

6 UNKNOWN MALE: I move that we vote to
7 recommend denial of ordinance 21-050. So a yes vote
8 would be for a denial.

9 MS. PETERSON: Is there a second?

10 MS. GRAY: I second that.

11 MS. PETERSON: Okay. Thank you, Ms.
12 Gray. I have spent quite a bit of time thinking about
13 this ordinance because I -- when we voted on the sewer
14 bill, I realized and several board members said this
15 at the time, I realized that we left a lot of people,
16 particularly some farmers, out in the cold unable to
17 develop their properties and because there was no
18 sewer capacity there. So I view this proposal as an
19 information initiative and that is to let people know
20 that they have other options in terms of what they can
21 do with their properties.

22 However, I don't think that it needs to
23 be codified. You know, putting together information
24 and disseminating it to affected parties is kind of a

1 one and done. There's nothing in this ordinance that
2 says this should be done periodically, you know, every
3 two years or anything like that. It just says, you
4 know, draw these maps showing the senders and the
5 receivers and do an analysis which I think, you know,
6 in a way is overkill it seems to me.

7 And Mr. Hall just mentioned this, that
8 New Castle County can prepare informational maps. In
9 fact, I would even suggest that they just be
10 informational in terms of receiving properties. You
11 know, if a county came up with a map that showed here
12 are potential receiving properties with the parcel
13 numbers, anybody can go on parcel view and find out
14 who owns the property and pick up the phone and call
15 them and say, hey, are you interested in buying my
16 development rights?

17 I mean, I think this has been made a
18 lot more complicated than it needs to be and I really
19 don't believe it belongs in the code. I don't see
20 this as a law, I see it as an information initiative.
21 And those kinds of maps can be disseminated to
22 constituents from the council members who represent
23 the folks who don't have access to sewers.

24 I mean, I just really think that it's

1 overkill and for that reason I'll be voting to
2 recommend denial. Are there any other comments or
3 questions from board members before we call the roll?
4 Mr. Daigle?

5 MR. DAIGLE: I would like to share that
6 I really appreciate and, you know, largely second the
7 comments of our Chairperson Peterson. I have also
8 been agonizing over this topic and, you know, reading
9 through everything and I -- while I really appreciate
10 the goal of creating more information and content and
11 access of having a more developed process perhaps for
12 using TDRs and encouraging the use of this -- I know
13 it's been referred to in many of our hearings and
14 topics as, you know, a tool in the toolbox and not
15 wanting to get rid of it and wanting it to be used,
16 but how is it really being used.

17 And I see the room for improvement, but
18 this does seem like an onerous approach to some degree
19 and so I, you know, shadowing what our chairperson
20 just said, I really support the idea of, you know,
21 information being put together by the county and being
22 disseminated maybe less of a solution such as this one
23 codified in the code. I just want to put that on the
24 record.

1 MS. PETERSON: Okay. Thank you, Mr.
2 Daigle. Mr. McGlinchey.

3 MR. MCGLINCHEY: Yes, Madam Chair, from
4 the testimony as I recall it, the intent of the
5 ordinance is not really to encourage use of TDRs. I
6 think largely it came from educating current resident
7 owners that could have potential TDRs near them. So I
8 mean, it's kind of counter to the encouraging the use
9 of TDRs and this is where I'm stuck in a quandary.
10 Like, are we trying to promote TDRs as a tool or are
11 we, like, as the general manager said, just trying to,
12 you know, kill them?

13 I guess maybe that's a little bit
14 strong, but I mean I support the idea of an analysis.
15 I don't know about how detailed we could get with
16 mapping like to the point that, like, can this
17 absolutely be a receiving parcel or maybe it would
18 just be a potential parcel. I receive, you know, I
19 support the idea of analysis to see are they really
20 going to be an effective tool in the county as they
21 are today.

22 But I am, you know, I'm hesitant to
23 something that, you know, that really maybe
24 discourages the use of them. I guess the maps would

1 help from an education standpoint if I happened to
2 live near where I guess a potential receiving parcel
3 is, but I mean it seems like we have to make a
4 decision do we like TDRs or we don't. And if we like
5 them, we need to figure out ways to encourage their
6 use. Right? I mean, that's where I kind of sit.

7 I -- it's -- and if we, you know, my
8 concern has been that we have referenced them as a
9 tool, but their use has been limited. If we want to
10 focus on that, I'm all in at that point, but I -- just
11 kind of as a, you know, I understand the concern, but
12 you know, my concern has been more so on the, you
13 know, the TDRs and their limited use and whether
14 they're viable or not and I support anything that
15 helps make that determination, certainly.

16 MS. PETERSON: Ms. Visvardis.

17 MS. VISVARDIS: Yes. I just wanted to
18 comment that I was for denial to start with, but your
19 comments, Chairman Peterson, and Mr. McGlinchey's
20 comments I think are more important than what was said
21 in the actual document. And I just want to say that I
22 appreciate your comments. Thank you.

23 MS. PETERSON: Anyone else? Ms. Gray.

24 MS. GRAY: Yes. Thank you, Madam

1 Chair. I appreciate the input from the planning board
2 members as well and I just don't feel like this
3 supports the original idea that it was introduced
4 around, so thank you for your input from everyone,
5 from all the board members. Thank you. Appreciate
6 that.

7 MS. PETERSON: Anyone else? Hearing no
8 one, Mr. Gibbons, would you please call the roll on
9 the motion to recommend denial of ordinance 21-050?
10 So a yes is to recommend denial. Mr. Gibbons.

11 MR. GIBBONS: Ms. Cahill.

12 MS. CAHILL: Yes, I recommend denial.

13 MR. GIBBONS: Mr. Cochran.

14 MR. COCHRAN: Yes.

15 MR. GIBBONS: Mr. Daigle.

16 MR. DAIGLE: Yay.

17 MR. GIBBONS: Ms. Drake.

18 MS. DRAKE: Yay.

19 MR. GIBBONS: Ms. Gray.

20 MS. GRAY: Yay.

21 MR. GIBBONS: Mr. McGlinchey.

22 MR. MCGLINCHEY: Yes.

23 MR. GIBBONS: Mr. Snowden.

24 MR. SNOWDEN: Yes.

1 MR. GIBBONS: Ms. Visvardis.

2 MS. VISVARDIS: Yes.

3 MR. GIBBONS: And Ms. Peterson.

4 MS. PETERSON: Yes. Roll call reveals
5 nine yes to recommend denial of ordinance 21-050. And
6 that concludes the business portion of the meeting.
7 We have no other business on the agenda. We have no
8 committees to report and that brings us to report of
9 the general manager. Mr. Hall.

10 MR. HALL: Thank you, Madam Chair.
11 I'll be brief. A couple things I want to bring up.
12 We had last Thursday night a well-attended workshop,
13 we called it perform number two, it's part of a whole
14 series of outreach we've been doing as part of the
15 comprehensive plan. We had I believe over 100
16 attendees. We talked about a whole host of issues.
17 It was a pretty (Inaudible) focused on one specific
18 development issue specific subdivision. However, we
19 did also have broader discussions as well. We will
20 assemble that information and be working on all of the
21 other input we're getting and there is a survey that
22 was used as part of that forum last week and
23 encouraged people to fill it out at their leisure in
24 the coming, I believe about a month or so they have to

1 complete that survey. So it's one of a number of
2 tools we've used to get input on the plan.

3 We're looking to have a draft; a staff
4 draft out in the fall and we're hoping to have a staff
5 draft complete and preparing for formal adoption at
6 the end of the calendar year. So that's our current
7 schedule, and this due to the state in the year in the
8 calendar year of 2022, so we've been at it for about a
9 year now and there's still a lot of work to do. So
10 you know, we are all ears of how to best engage you,
11 the planning board, whether it's some kind of work
12 session or something that enables you all to roll up
13 your sleeves and get into what we're looking at,
14 background material, draft recommendations, that kind
15 of thing.

16 While I'm speaking about plans, the
17 other thing I want to mention is that there is an
18 ordinance going -- should be before you coming up,
19 just as a heads up at your September meeting for sub
20 area plans for the Claymont under pike in New Castle
21 County and Route 9 Corridor. So those subarea plans
22 are complete, staff drafts have been complete for some
23 time and we're seeking to get those references out to
24 the comprehensive plans so we can get the subarea

1 plans done before we finish up the countywide
2 comprehensive.

3 The other thing I want to mention, I
4 want to echo the Chairwoman's appreciation for getting
5 quorum with the planning board and you all's great
6 attendance. That's very important which you all
7 clearly understand. I'm glad there's such a good,
8 active planning board because if we don't get quorum
9 that can certainly throw a wrinkle into the tight
10 schedules we often get into and all the required
11 advertising requirements for items going to your
12 agendas.

13 And then the Chairwoman asked about
14 tabled ordinances, so just very briefly, one of the
15 things that certainly does occur with legislation in
16 the county is that ordinances from time to time,
17 whether they're land use ordinances or otherwise, they
18 get tabled and then they can kind of go into a little
19 bit of a legislative purgatory I guess, legislative no
20 man's land, and depending on exactly how they were
21 tabled, they could be brought back and I agree that
22 having some clarity on what's going on with them is
23 probably helpful to have.

24 So the -- now my screen went blank, and

1 I lost the numbers, but the first one, 20 -- what was
2 the --

3 MS. PETERSON: (Inaudible)

4 MR. HALL -- that has been paused for
5 quite some time and I don't envision that coming back.
6 That had to do with buy right versus special uses in
7 the HI zone. There's a lot of discussion about that.
8 We paused it. I'm hopeful that some of those kind of
9 issues will be addressed in the comprehensive plan,
10 but that's one that at least I can tell you that the
11 department does not intent to reactivate if you will
12 any time without significant additional discussion.

13 MS. PETERSON: Mr. Hall, that's the
14 industrial uses ordinance.

15 MR. HALL: That's right.

16 MS. PETERSON: Okay. Is there any
17 chance of going back to the sponsor and asking them to
18 maybe withdraw it so we could, I mean, you described
19 this as being a purgatory. I think of it more as of
20 being in limbo which non longer exists. So it's like
21 nowhere. Maybe just to, you know, to clear them off
22 of our pending list, how that would be done just to
23 ask the sponsor to pull the bill?

24 MR. HALL: I'm happy to ask, Madam

1 Chair.

2 MS. PETERSON: Okay. And the next one
3 is the byway overlay.

4 MR. HALL: Yes. That is one, as you
5 remember, we had a pretty complex public hearing about
6 that I'm going to say in the early spring of this
7 year, so several months ago.

8 MS. PETERSON: Yes.

9 MR. HALL: It's a complex ordinance. I
10 think we were trying to do a lot with that ordinance,
11 I'll put it that way. It has to do with the scenic
12 byways in the county, result of a lot of work over a
13 lot of time, a lot of stakeholders, a lot of studies
14 behind it. And to be honest, the best way I can put
15 it is, we are trying to rethink ways to maybe make it
16 a little simpler. We will be speaking with the
17 sponsor soon about that. So that one we do not, the
18 administration as well as the sponsor I think it's
19 fair to say do not intend for that to go away. We
20 want to move forward with some version of it. So I
21 guess that's a work in progress.

22 MS. PETERSON: Okay.

23 MR. HALL: That's what I would say to
24 you there, Madam Chair.

1 MS. PETERSON: All right.

2 MR. HALL: And then the last one, 2109
3 -- 21-009, that's the forest conservation ordinance
4 that was in the hands, the current provisions in the
5 UDC as it relates to protecting forest land in the
6 development process and I believe we're looking to
7 bring that to you to (Inaudible) here, right, in
8 September?

9 MS. PETERSON: Okay. All right.

10 MR. HALL: Or in August, in the August
11 -- the August meeting, so that would be before you at
12 the next meeting.

13 MS. PETERSON: Okay. So two still have
14 life and one hopefully the sponsor will withdraw, and
15 you'll approach the sponsor about that?

16 MR. HALL: Yeah, we'll ask her, yes.

17 MS. PETERSON: Great. Okay. All
18 right. Anything else, Mr. Hall?

19 MR. HALL: That's what I have for you
20 this morning. The last thing if I may, Madam Chair, I
21 don't know if we need to -- I know we have Wil Davis
22 here, the county attorney as well. I just would take
23 this opportunity to ask if everyone is clear, as clear
24 as you can be at this stage, with the nature of how

1 we're meeting. Right? So we're in this hybrid mode.
2 We have, obviously we're here in a physical space and
3 members of the planning board or the public could have
4 come in to participate and then going forward we will
5 probably continue with some semblance of a hybrid
6 mode.

7 So it's a lot of -- a little bit of a
8 transition for a lot of people involved in public
9 meetings, but I just wanted to bring that up in case
10 there are any questions at this stage for how we're
11 doing it.

12 MS. PETERSON: Yeah, I have a question.
13 Thanks, Mr. Davis, for pinch hitting at today's
14 meeting for us. So are you saying that there's a
15 chance that we'll just continue on with these Zoom
16 meetings or will we be coming back in person in the
17 fall?

18 MR. DAVIS: Madam Chair?

19 MS. PETERSON: Yes?

20 MR. DAVIS: This is Wil Davis speaking.
21 So the General Assembly recently enacted an amended
22 (Inaudible) that permits virtual meetings subject to a
23 number of conditions, the first being that the county
24 must establish if it is going to hold a virtual

1 meeting, the county must establish an (Inaudible)
2 location. At that (Inaudible) location be physical
3 members of the public and board members who desire to
4 attend -- can attend in person.

5 The conditions are that it must be --
6 any of the documents that the public body such as the
7 planning board is doing must be available to the
8 public for viewing. Witnesses must be identifiable,
9 testimony must be under the same conditions as it were
10 -- was in the previous physical location, i.e., under
11 oath, et cetera.

12 So there are a number of conditions.
13 My office will be issuing a memorandum shortly
14 covering the generalities of it but in short, the
15 major condition is that a physical anchor location
16 must be established by the county.

17 MS. PETERSON: So, Mr. Davis, are you
18 saying that -- first of all, who would make that
19 decision? Would it be the board as to whether to meet
20 in person or --

21 MR. DAVIS: Actually, yes. Sorry to
22 interrupt you, Madam Chair. The amendment allows the
23 chairperson to determine whether the body will
24 continue to meet in public or virtually.

1 MS. PETERSON: So from what I heard you
2 say, people would have the option of if you wanted to
3 be there you can but if you don't want to be there you
4 can just tune in by Zoom; is that --

5 MR. DAVIS: That's correct. So there
6 are kind of two ways one could do it. If Madam Chair,
7 you said no, we really want to hold physical meetings,
8 virtual meetings will not be permitted, that's within
9 your discretion under the law now. If you said we
10 want to hold virtual meetings or allow that as an
11 option then we would have the ability to either -- a
12 member of the public could attend the physical anchor
13 location or view remotely via Zoom or whatever
14 application it is.

15 MS. PETERSON: Yeah, I'm just trying to
16 -- and we don't need to make a decision now, but I'm
17 just trying to think how that would work, chairing a
18 meeting while there are people there in person and at
19 the same time trying to run a Zoom meeting. I'm not
20 sure if I can multitask that much, but anyway, we can
21 think about it. So we'll wait to get your directive
22 on that; is that where we are?

23 MR. DAVIS: Yes. I anticipate that to
24 be forthcoming next couple of days.

1 MS. PETERSON: And in the meantime, if
2 board members want to think about that and send me an
3 email or something and let me know how you feel.
4 Okay. And --

5 MR. HALL: Madam Chair, while both you
6 and Wil are both talking about this, this is Rich. It
7 would seem to me, and this is kind of a question to
8 both of you all, but I know you've worked hard to
9 update the bylaws and rules of procedure and combine
10 them and all that effort that the board went through
11 with your leadership. I'm guessing, I'm wondering if
12 we might need to revisit that a bit in light of the
13 state legislation and Wil's memo and such down the
14 road, revisit that perhaps.

15 MS. PETERSON: Yeah, we might need to
16 put some language in there that talks about if for
17 some reason we wanted to meet virtually and whether,
18 you know, permanently or on occasion. Okay. We'll
19 deal with that then when we get the instructions from
20 Mr. Davis.

21 I also wanted to add that I asked Mr.
22 Davis and he's working on answers, to get more
23 clarification on ex parte communications. You know,
24 that comes up once in a while as to what constitutes,

1 you know, one party communication with board members
2 and so he is working on answering a couple questions
3 that I raised and again, we might need to go back and
4 revisit the bylaws depending on what his answers are.

5 I just don't ever want us to be in a
6 position of having a decision or recommendation
7 challenged because somebody approached a board member,
8 and it wasn't clear whether or not they could have a
9 conversation with that person. So when we get those
10 answers I will share them with the board members.

11 And other than that, I just want to
12 thank Leone Cahill who has graciously agreed to
13 represent the planning board on the youth planning
14 board selection committee. I really appreciate the
15 time that you're willing to give to that this year on
16 behalf of the board. And if anybody else is
17 interested for in the future if you're interested in
18 serving on that board, we get to, you know, have one
19 person serve on it. I did it last year and asked
20 Leone to do it this year and she very kindly said yes.
21 So if you're interested let me know that, too, just
22 for future reference.

23 All right. And Mr. Gibbons, do we have
24 any comments from the public, anyone from the public

1 expressed an interested in addressing the board this
2 morning?

3 MR. GIBBONS: Not at this time.

4 MS. PETERSON: Okay. Then with that,
5 do I hear a motion to adjourn?

6 UNKNOWN FEMALE: I make a motion to
7 adjourn.

8 MS. PETERSON: Okay. Second?

9 UNKNOWN FEMALE: Second.

10 MS. PETERSON: All in favor say aye.

11 ALL: Aye.

12 MS. PETERSON: The meeting is
13 adjourned.

14

15 (Whereupon, this hearing concluded.)

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C E R T I F I C A T I O N

I, Rebecca Murray, certify that the foregoing is
a true and accurate transcript from the official
electronic sound recording.



Rebecca Murray
Approved Transcriber

Dated: August 12, 2021

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