

Municipal Planning Commission

Hearing and meeting: Wednesday December 12, 2018, at 3:00 p.m. in the Conference Room of the City Service Center, 815 Quarrier Street.

Members Present

Aric Margolis, President
Reverend Braxton Broady
Teresa Moore
Rod Blackstone
Mary Jean Davis
Chad Robinson
Adam Krason
Lex Williamson
Dallas Staples
Lisa Fischer-Casto
Deanna McKinney
J. D. Stricklen

Staff Present

Dan Vriendt
John Butterworth

Members Absent

Margo Teeter
Jesse Forbes
Christi Smith
Shawn Taylor

Call to order – Aric Margolis

Unfinished Business:

Subdivision: Application by George Neilan requesting preliminary and final plat approval for Jamestown Phase 4A, an 11-lot subdivision located off of Jamestown Road, Charleston, West Virginia.

MR. MARGOLIS: At this time, I want to see if there's a motion to take the application off the table.

MR. BLACKSTONE: I would so move.

MS. DAVIS: Second.

MR. MARGOLIS: Is there any discussion on the matter first?

MR. KRASON: When we tabled this motion, weren't we were pretty specific about why we tabled it, pending a resolution with the Sanitary Board, and it's my understanding there's been no resolution with the Sanitary Board.

MR. MARGOLIS: That was my understanding as well.

MR. KRASON: Do you know if there is any specific record of that?

MR. BUTTERWORTH: I don't mean to be premature, but if you look at your staff notes, number 14, "At the June 6, 2018 MPC meeting, the Commission voted 11 to 0 to table the application until approval of the Charleston Sanitary Board is granted or agreement reached on the items that need to be bonded for approval."

MR. MARGOLIS: Neither of those conditions have been met, right?

MR. BUTTERWORTH: That's correct.

MR. STRICKLEN: Why is it on the agenda?

MR. BUTTERWORTH: Mr. Neilan submitted a written request for consideration from the MPC. Dan and I spoke to the City Attorney's Office and they said it was his due process. They encouraged us to place him on the agenda.

MR. MARGOLIS: He needs a decision one way or the other for the process to move forward?

MR. BUTTERWORTH: I think that that's up to the discretion of the MPC. The City Attorney's opinion was maybe more in that direction but not conclusive.

MR. MARGOLIS: So, if we submitted the action to table it pending resolution, therefore, we haven't reached a resolution, the legitimate option here is to leave it on the table until that resolution is reached.

MR. BLACKSTONE: That is one of the options before the Commission, yes.

MR. STRICKLEN: I think what I heard Mr. Butterworth say is that he and Dan conferred with the City Attorney and they encouraged them to take it off the table?

MR. BUTTERWORTH: Yes. Mr. Neilan's request was for an up or down vote. The Commission could say, okay, that's something we're going to consider. But I don't think you have any obligation to necessarily take it off the table.

MR. STRICKLEN: So, your interpretation of what you all were instructed by the City Attorney is, is there's got to be a decision whether to leave it on the table or take it off, he's encouraged to take it off. But, from there there's a number of options that can happen. It could come to a vote, it could go back onto the table, maybe another half a dozen.

MR. BUTTERWORTH: You're exactly right. The Commission could choose to not bring it off the table and the agenda gets pretty short after that, or it could come off the table, discussion could occur and essentially you have the same three options.

MR. KRASON: Is there additional information that we haven't heard from our last meeting that we need to hear today?

MR. BUTTERWORTH: Mr. Neilan provided a memo that I printed out and placed at your seats. As I prepared for the meeting, I don't know that there's necessarily an obligation to have a public hearing at this point. The Commission could consider the evidence that's before them. Mr. Neilan did share some information with you all. Does it specifically address the reasons that you all put it on the table, no.

MR. MARGOLIS: Do you want to make a comment?

MR. BLACKSTONE: Sure. The other thing that has happened since this was put on the table is that we worked to try to find some sort of resolution to see if there was any movement afoot between the two parties. I'm short term; I'm going to be very candid about this. Mr. Neilan, I was hoping we could find some sort of resolution to move this thing forward. That was my goal in trying to get people to the table. I will tell you that in all my dealings with Larry Roller, he's always been responsive to me. I do understand that there have been times whenever the Sanitary Board has not had that same reputation with other developers. One of the things that I was hoping to do was to try to find out is there some sort of way that we could move this off the table and get you to be able to finish the project. One of the things that I tried to do in that case – Lisa Fischer Casto joined me and I specifically asked J. D. to come to the meeting, that we convened asking the Sanitary Board to show up with Mr. Neilan, with Mr. Neilan's counsel and your counsel and we'll see where we are. One of the reasons why I wanted J.D. to be there is because he is a developer who has experience with the Sanitary Board and could at that point be able to shed some light and make sure that we were making a decision, as lay people, about what's appropriate and what is a reasonable expectation from moving forward.

Now, the Sanitary Board showed up with three attorneys, which I thought was a bit overkill when all they really needed was Tim Haapala. The other thing the Sanitary Board did that I give them credit for in trying to find some sort of common ground and move forward, the Sanitary Board at least said, listen, we're going to leave behind this other thing that we litigated and the question of the depth of the line. We're going to put that on the back burner so we can see if this can move forward. To me, that's a step toward resolution. I received a report that will be filed from this Committed to try to summarize the meeting. It is by no means definitive, but it's a summary of our perspectives from the meeting and to see if there's a way to move Mr. Neilan forward, and I think what we ended up with was a clear understanding that if you do this, this, this and this that were outstanding issues, we can move closer to a resolution. My understanding is none of that has happened. This is my last meeting, I think. I'm willing to be able to take this off the table and get Mr. Neilan, if he wants an up or down vote, I'm happy to give him an up or down vote. I really wanted this to be resolved. I really wanted to vote for you on this. I know we've had a history.

MR. NEILAN: I hope the presentation I make now will assist you.

MR. BLACKSTONE: I'd be happy to hear that. That's what we've been trying to do. J.D.'s wisdom in that meeting was very, very valuable. Lisa's input was incredibly valuable. I think one of the things we tried to convey was J.D., especially with the experience of being a developer, and I think Lisa and I from the perspective of what's going to move this Commission to take action, and I think we were very clear on that in trying to say let's find a way to move this forward if possible. I make a motion to take it off the table so you can have a fully informed decision.

MS. DAVIS: If I may say this. Yesterday I called to see whether we were going to remove it from the table since the issue had not been met that we looked at the last meeting and my understanding was that the City Attorneys wanted it to be brought off the table and voted up and down so that there was a final decision.

MR. KRASON: Clarification. Can you take this off the table, say you vote it down, what's the process then?

MR. BUTTERWORTH: The applicant would have the option to appeal to circuit court. It's my understanding that the Court would be considering the process by which the Planning Commission made their decision, not necessarily the merits of the case.

MR. STRICKLEN: Do we have a motion and a second on the floor, Mr. Chairman?

MR. MARGOLIS: Yes.

MR. NEILAN: May I make a correction to the minutes from the June meeting?

MR. MARGOLIS: Not at this time, no.

MR. KRASON: I'm going to vote to leave the case on the table to give them more time to come to an agreement or some sort of agreement instead of taking this process to the circuit court costing the tax payers more money in the long run. That's what is going to happen. We all know that. So, vote this down today, delay the process and not give the two parties an avenue to discuss this more. If Mr. Neilan doesn't want to, so be it. We can't force him to agree or work with the City on this. For those reasons, I want to vote to oppose the motion.

MR. MARGOLIS: Any other comments before we vote on the motion?

MR. BLACKSTONE: The motion to take it off the table.

MR. ROBINSON: Just to add to what we just heard, I think as we discussed last time there were certain requirements that have to be met before we can approve it. One of those requirements hasn't been met. We really don't have the decision if this comes off the table because we don't have the approval of the Sanitary Board, right? I don't see any advantage in taking it off the table. I say leave it there until they meet the requirements and table it and let's move on.

MS. MOORE: Did Rod say they want a decision?

MS. DAVIS: I think it was Mr. Neilan's request that we vote up or down.

MS. MOORE: For a decision.

MS. DAVIS: And then I asked the question if we did take it from the table. I didn't want to take it from the table yesterday either, but the City Attorney said that he wanted, he being Mr. Neilan, wanted an up or down answer, so they would like us to remove it from the table and vote on it.

MS. MOORE: That's what I wanted to know.

MS. DAVIS: It's a chicken or the egg.

MR. ROBINSON: The attorney wants an up or down vote or Mr. Neilan wants an up or down vote?

MS. MOORE: That's what I was asking.

MS. DAVIS: Mr. Neilan wanted it and the City Attorney, when I asked the question, we tabled it. Nothing has been done since we tabled it so my question was why are we even looking at it today when those issues have not been met.

MR. BUTTERWORTH: I think, if I can offer any clarification, the City Attorney's position was that it ought to be placed on the agenda and considered. The Commission still does have all the discretion here and it may be worth noting that the City Attorney is not the Planning Commission's attorney. It certainly is sound advice but it's not necessarily your legal advice. So, placing it on the agenda and putting it -- as staff we didn't have the authority to say, no, Mr. Neilan, we are not going to place it on the agenda. The discretion on what to do with this case, this motion, any subsequent motion is still your all's discretion.

MS. MCKINNEY: Are they trying to meet the requirements that are supposed to be met?

MR. BUTTERWORTH: In conferring with the Sanitary Board it doesn't appear as if they are making any substantive progress towards meeting the issues that were raised in prior hearings, the June 18 meeting that Rod referred to, and it's my understanding that no progress on an agreement has been made.

MS. MCKINNEY: I know that part. What I'm saying is that is that individual trying to make the progress?

MR. BLACKSTONE: They can't come together from my perspective and I'll defer to my other two committee folk on this. From my perspective, I think we came out of that meeting not with a resolution but at least with a clear direction this is what you need to do, you need to provide some of the lines that go from the main lines that you have into the properties that are in question. I don't know that they've had any conversations about that since then. I do know that Mr. Haapala said that he would be willing to meet at the scene anytime. I don't know that that has happened since then. Let me defer to the other two that were there because I have a specific perspective on this but you provided great wisdom and leadership on it too and might have too moving forward.

MR. STRICKLEN: Let me say this. One thing that I actually learned in that meeting was that I was always under the impression because under other subdivision regulations jurisdictions that I've worked in that as long as you have access to a water main you can get a water tap. As long as you had access to a sewer main you could get a sewer tap. But our subdivision regulations say specifically that the developer has to provide the tap, not that there be a line that's on the property as pointed out, it's in black and white. I don't know if it's unique to this set of regulations but in county and other cities that's not necessarily the case, but it is in Charleston. The sewer connection is not the responsibility of the Sanitary Board; it's clearly the responsibility of the developer. I've never got into that because we had always either provided the tap or if we went into infill lots we paid the Sanitary Board to make the taps at the time that we did it; we didn't pass that burden onto the homeowner which I think would be the other option but that's against the regulations. My advice to Mr. Neilan, which I'm obviously the biggest pro development member of this Committee, is to say I've looked at the thing. As you mentioned or someone mentioned they threw him a big olive branch to forget the section on up the road where the line's too deep. This 4A has maybe 11 lots in it. Say, hey, if you just do this little cleanup list, we can move forward. But he's apparently not willing to do that. My advice to him is say, listen, I've done this a few times, I've paid a few legal bills, I think you're better off to invest the money to get this thing on the road instead of paying lawyers to fight it. I don't think he took my advice, which he's not under any obligation to. He's his own developer. I think that's where we're at is just kind of a – I'll be honest with you, I was pretty busy today and I've been coming to Planning Commission meetings along with my dad since I was five or six years old and that's a long time ago. One of the reasons I came today is because I've never seen anything like this before in my life. From 2005 on this. At one meeting I counted all the different times we've met on this. I'm torn whether we should bring it off the table or not because we've got everybody here, but then by the other hand I've not seen any movement. That's what I took from the meeting. Lisa, who has a very innovative mind, was super in the meeting. She'd like to speak.

MS. FISCHER-CASTO: There's seven items on the Sanitary Board list that basically was sent to Mr. Neilan in March of 2018. The Sanitary Board very generously said items one and two are still considered to be completed. So, that leaves five items. Tim spoke very well at our June meeting and basically said this is all it takes. He wanted the maps and did all the things and he agreed to meet Mr. Neilan or Terradon or anybody that Mr. Neilan thought appropriate at the site so he could show them what still needed to be done and that the main line extension agreement was certainly part of that. If none of those things have been done, I don't see why we should change our position at all. I don't see why it comes off the table. We don't have the information to make the up or down call. If he doesn't comply with what the rules are, then you're wasting our time and I don't really like that.

MS. MOORE: I appreciate what J.D. had to say because I've never seen anything like that, never dealt with anything like that. So, I appreciate what he's saying.

MR. MARGOLIS: There's a motion on the floor to remove from the table by Rod and a second by Mary Jean, correct?

MS. DAVIS: Yes.

MR. MARGOLIS: The motion is to remove from the table. All those in favor to remove from the table raise your hands. All those opposed removing from the table.

Motion and Vote: On motion of Rod Blackstone, seconded by Mary Jean Davis, to take the application off the table, the Commission voted 10-1 to leave the application on the table.

MR. MARGOLIS: The motion did not carry, therefore, the item on the agenda is still on the table and, therefore, that case is closed.

MR. NEILAN: I would like an up or down vote.

MR. MARGOLIS: It is not put off the table; therefore, we're not having a vote today. Mr. Neilan, the minutes reflect that until an agreement has been made with the Sanitary Board, that's why we put it on the table. Nothing has been achieved in that manner, so therefore, we can't take it off the table. Until you and the Sanitary Board come to an agreement, it's going to stay on the table until then unless a different Commission votes differently.

MR. NEILAN: I suggest that you're in essence deferring your duty to the Sanitary Board and that's improper.

MS. FISCHER-CASTO: With all due respect, sir, we are not asking the Sanitary Board to make a decision. We are asking you and the Sanitary Board to get together and resolve the items that the Sanitary Board by law needs. If you aren't willing to do that, then we are going to keep your case on the table until you either do that or you withdraw, period.

MR. MARGOLIS: This case is closed. Let's move on to the next business. Thank you for your time. Is there any other new business? Is there a motion to approve the minutes?

Approval of the Minutes of the November 7, 2018 MPC meeting: On motion of Adam Krason, seconded by Chad Robinson, the Commission voted 11-0 to approve the Minutes.

MS. DAVIS: I just want to thank this Commission; it's been wonderful working with you all. This is my last meeting. I just want to thank each and every one of you Commissioners for the time and the energy you put into this. It is sometimes a very long meeting and sometimes a very confusing meeting, but we do our jobs well. I thank you all and I'm going to miss you all. Thank you.

MR. MARGOLIS: Rod's been on here for quite some time as well.

MR. BLACKSTONE: Not as long as Mary Jean.

Adjournment.