

Municipal Planning Commission
Wednesday, December 9, 2020

In response to the COVID-19 pandemic, the meeting of the Municipal Planning Commission was conducted electronically. The meeting was made available to the public as a live stream via Zoom (per the agenda).

Members Present

Aric Margolis
Lisa Fisher Casto
Terry Pickett
Todd Dorcas
Alice Hypes
Deanna McKinney
Adam Krason
Shawn Taylor
Quintie Smith
Margo Teeter

Staff Present

Dan Vriendt
John Butterworth

Others Present

Mark Sadd

Call to Order: Aric Margolis

Ongoing Business:

Rezoning: Bill No. 7880 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from the R-6: Medium Density Residential to the R-4: Single Family Residential zoning district three district areas within and adjacent to the Woodbridge Subdivision, as shown on the attached maps included as Exhibits A, B, & C, Charleston, West Virginia.

MR. VRIENDT: I'll be happy to speak to this, Aric. We received documentation from Mr. Sadd today, who is Dr. Harmon's attorney. There is a new Supreme Court ruling that just came out in September 2020. It was the *City of Morgantown vs. Calvary Baptist Church*. It sounds like it may have some impact on how we're going to review rezonings in the future. In light of being given this additional information this morning, we are going to request that this be tabled so that the City can review this and see if it's applicable to this rezoning.

I've talked to Shannon Snodgrass in regard to her response to the bill and she also supports tabling the bill at this time.

MR. MARGOLIS: Okay. I'm going to defer to Margo, because she and I are probably the longest serving members of this commission. I can't recall any time that we've downzoned a piece of property that was against the owner's wishes. I would think, before we even go that route, do we want to set that precedence that we haven't down before. Margo do you recall any time that we've gone against owners' wishes for something like that.

MS. TEETER: I was shocked when I read again that was not even brought up by the owner of the property. I think it sets a very dangerous precedent. Myself, I'd definitely not feel comfortable voting on this without legal opinion from the City Attorney or some further discussion about whether we can even vote on it. I cannot remember voting on a downzoning where the owner himself did not bring it up.

MR. VRIENDT: Just because we've never done it, doesn't mean we can't do it. The City Attorney has reviewed it and felt like we can do this, although we were not aware of this new Supreme Court case, which may be a game changer. At this juncture, we are asking for table. We will have a full legal review when we bring this back.

MR. MARGOLIS: In order to bring it back, you all would have to have legal review and feel that we can proceed, I would hope. I don't want to be stuck in a lawsuit.

MR. VRIENDT: Just as a reminder too, a rezoning goes to City Council for final action. Your review is a recommendation.

MR. MARGOLIS: So, I wouldn't be a named party that's good.

MR. SADD: If I might, Mr. Chairman, can I weigh in.

MR. MARGOLIS: Are you going to name me Mark?

MR. SADD: No, I just want you to be aware. First of all, I appreciate the opportunity to respond and thank you for the thoughtful approach the City's taken so far. I will reiterate that the owner is still adamantly against the downzoning. I will refer to a case that it was party to in 2002, which Lower Donnally Association, where the Supreme Court did establish that any litigation, basically an appeal of the decision, even a recommendation can be taken directly to the Circuit Court after a recommendation. We would like a complete withdrawal of the bill, but if this should come forward for any reason, we would the Planning Commission, for policy and legal reasons, vote to deny or recommend against it.

I did want to remark to you, Mr. Chairman, if that is the decision of the owner, they could take it directly to the Circuit Court. Thank you.

I also want to thank Dan Vriendt for his thoughtfulness. He's always mindful of these issues.

MR. MARGOLIS: I've been travelling for the past couple of days so I'm still behind on my emails, but I know a letter went out from Mr. Sadd. Did that go to all the Commission members?

MR. VRIENDT: Mr. Sadd had the wrong email address for me on that. So, I did not get that email until today. We did email it out to the Commission members as soon as we received it. Most of you here have probably not had a chance to review it at this time.

MR. MARGOLIS: I see something from Rolston and a letter from Mark. So, everybody has that?

MR. SADD: If I might Mr. Chairman, that is a 4-5-page letter. It's based on the decision Mr. Vriendt referred to, but what also accompanies it is a letter from Darrell Rolston, a real estate appraiser, who was engaged by my client to analyze the impact and he opined that there would be no less than a 58% devaluation of my client's investment in this property, based simply on the downzoning, remarking that the differences in housing products that are today of interest and development costs for this particular site could completely preclude development under an R-4. His letter is quite interesting and I recommend everyone read his letter.

MR. MARGOLIS: Dan, I would just hope that if you all bring it back, that you all feel very confident that this would likely pass a litigation. You can't stop litigation, anybody can sue. So, the Planning Department is recommending table this item. Do we have any discussion by the commission?

Motion and Vote: On motion of Terry Pickett, seconded by Deanna McKinney, the Commission voted 10-0, to table Bill No. 7880.

MR. VRIENDT: Aric, for the purpose of the record, could we have the caller that's online, 304-925-7006, state who they are?

MR. SMITH: It's me. It's Quintie Smith.

No new business.

Minutes of the November MPC meeting: On motion of Quintie Smith, seconded by Terry Pickett, the Commission voted 10-1 to approve the November 4, 2020 minutes.

Adjournment.