

Minutes of the December 17, 2008 Planning Commission

Meeting called to order at 6:00 P.M. by Chairman Toby Gearhart. Planning Commission members Martin Sokolich and Margaret Haven were present. The following were also in attendance: Joe Mangini, Town Manager; Missy Vanskiver, Asst. Clerk; Kathy Smith, Town Commissioner; Zeb Brodie; Alexander Brodie; Dan Divilio, Times Record; Dale Mumford; Rick Schwab; Cathy Schwab; Jeanne Saulsbury; Orrell Saulsbury; John Balderson; Steve Horne, Elm Street Dev.; Shane Johnston; and Nancy Gearhart.

Approval of the Minutes

A motion to approve the minutes of November 19, 2008 was made by Margaret, seconded by Martin, unanimously approved.

Town Manager's Report

Joe stated that there hadn't been much building permit activity in town recently. He also reviewed the WWTP Capacity Management Plan and stated that the upgrade to the WWTP is slightly ahead of schedule. Joe stated that JOK Walsh had been at a recent town meeting speaking about the Rails to Trails project. JOK Walsh is requesting the Commissioners preserve the rails from Central Avenue to Park Avenue; the town is currently working with the state on that issue.

Old Business

207 Park Avenue – Joe explained the options available to the owner of the property. After many attempts to contact Ms. Raikes, a call was received from her son, who will be representing her. Joe talked about the town possibly providing a loan to Ms. Raikes, using the Urban Renewal Line of Credit. He stated that progress is being made.

New Business

Cyber Ridge – Toby referenced the letters from Mr. Brodie's attorney. Toby said this is similar to a PG-13 situation; a child under 13 can enter/play games but when the parent leaves, so does the child. Kathy Smith asked if Cyber Ridge was open. Alexander stated that there was a pretty good turn out the prior week. Joe mentioned that the sign may be another item of business to address. Toby asked if there was any discussion. Nancy asked about the original wording of the Cyber Ridge agreement. Martin said that the original agreement stated that no person under the age of 13 shall be admitted or permitted on the leased premises. There was discussion concerning various scenarios. Martin made a motion to amend the language of the agreement with Cyber Ridge with the condition that persons under the age of 13 be allowed with a parent on the premises, seconded by Margaret. Nancy asked if there was going to be any discussion between the second and the vote; she suggested gathering public input regarding this issue. Toby stated that this particular issue is not what had the public so concerned with previously. There was additional discussion. Martin said the proprietor has not only the discretion, but also the obligation to handle the issues. Toby stated that there is a motion and a second on the floor; the amendment was unanimously approved.

Ridgely Park – Steve Horne of Elm Street Development made a presentation of the amended Ridgely Park project, which included an overview of the market, the limits of the project as far as

land is concerned, and a revised site plan. He stated that it is not possible to construct the previous Ridgely Park plan based on today's economics, and the project has been reduced by two-thirds. He also stated that currently, builders and the housing market do not look favorably upon alleys. Mr. Horne reviewed the revised project: lot size has increased approx. 10% (avg. lot size 9,472 SF), the number of units has been reduced (from 403 to 146), the street pattern has basically remained the same, the alleys have been removed thus reducing the impervious surface by approx. 40% and making the project more marketable, the pond and recreation elements are still included, and garages can be set back or side-loading.

Rick Schwab asked if the only parcel of land Ridgely Park has an option on is the piece currently included in the presentation; Steve Horne said yes. Rick Schwab also asked about the proposed price of the homes; Mr. Horne stated that he would guess the expected price to be somewhere in the low to mid \$200,000's. Mr. Horne reviewed the benefits of redesign: larger lot sizes, which benefit the town and the buyer; less impervious surface, which facilitates a "greener" project; enhanced marketability; a quicker turn around; and the project stays alive. Margaret inquired as to the size of the homes. Steve Horne estimated the size at approximately 1,800-2,000 square feet, maybe slightly larger. Toby said the style of homes was a major component of the original plan. Mr. Horne stated that the quality of materials and the architectural will still be of a high design. He also stated that building a TND (Traditional Neighborhood Development) project is approx. 40%-50% higher than a non-TND project. Toby stated that the zoning was changed to allow a TND neighborhood. Steve Horne stated that alleys are a component of a TND project, but not the totality of it; he also stated that he agrees with Toby that without the alleys, it's not a pure TND. Toby stated that the lack of alleys affects the situation of garages, too.

Martin reviewed the aspects of the plan that he views as traditional: the preservation of a grid, connectivity, the fact that cul-de-sacs are not included, the lot sizes, the inclusion of parks, etc. There was brief discussion concerning various points of entry to Ridgely Park; Nancy stated that if they want this project to be an extension of town, a main entrance isn't required. Margaret commented on the number of houses between Park and Maryland Avenues. Toby asked if other elements previously discussed remained the same; items such as the narrowing of the streets at intersections as a speed control device, the sidewalks, the trees, etc. Steve Horne stated that the sidewalks, pedestrian connections all remain the same. Toby asked if Steve Horne calls the project a TND. Steve Horne replied no, and stated there are very few pure TND's being built because the ones already built haven't fared so well and have been modified; this project is more of a hybrid.

Kathy Smith inquired about the DRRA, asking if it needed to be pulled off the table and started from scratch. Mr. Horne said he doesn't believe it needs to start from scratch, but it needs to be revisited because the document was scaled on 403 units. There was discussion regarding funding, the DRRA, and WWTP upgrade, and a debate on whether or not those issues were related. Kathy Smith asked if the upgrade to the spray irrigation (WWTP) and was part of the DRRA. Steve Horne stated that the only thing tied to the DRRA was the expansion of the WWTP to 300,000 gallons. Toby stated that the original agreement was that Ridgely Park would pay for that expansion, after the 184th house was built; he asked how that would now be structured. Toby stated that the town has taken out a loan for \$1.5 million to pay for the upgrade which was predicated upon the money coming back from the houses that are built. Steve Horne stated that the 146 units would each pay tap (connection) fees. Toby said this amount was beyond the connection and impact fees; this is a specific amount of money. Joe stated that the upgrade is not being done for Ridgely Park, it is being done because the town needed it do it. He also said that if the 146 units are in play, the amount of gallons available in the plant will go to Ridgely Park, and they will have to pay all associated fees. Toby stated that was

a major disconnect, and that it is known that Ridgely Park is going to pay those fees. He also stated that after a certain amount of time/sales, Ridgely Park was supposed to pay \$4.5 million, above and beyond the connection fees, for the upgrade. Steve Horne stated that the agreement was for Ridgely Park to pay fees up to the 184th unit, and beyond that they would construct a plant in lieu of paying those fees. Toby asked if that meant that the town doesn't get \$4.5 million. Steve Horne stated he will not be constructing a 300,000 gallon plant for 146 homes. Martin stated the sequence of events as he recalled them, beginning with not being allowed to build a single unit to meet what the town believed the capacity of the plant was until the upgrade was done, and then Ridgely Park was held up along with other projects because the town couldn't do any more connections. This was separate entirely from the DRRA, which had already been done; the DRRA was to get the town up to 400 units. This upgrade was supposed to get the town up to the capacity for field that we have currently. The loan and the new plant were two separate pieces. When Ridgely Park originally came in, the first 180 units were going to be able to be connected to the existing WWTP; the town signed that agreement then got hit by MDE stating the town couldn't do what was originally planned.

Toby said the \$1.5 million loan, whether you think it's for development or not, has been sold on the fact that the town was going to get the money for Ridgely Park, to pay for the upgrade. Steve Horne said that Ridgely Park was paying for the capacity they would use. He also said that if the issue is thought about from a non-Ridgely-Park-specific point of view, the expansion of any treatment plant is a demand-driven event. Therefore, if and when units 147 to 403+ come to Ridgely, they will need capacity, and they will have to bear the burden of its creation. Toby said that it isn't Steve Horne's doing, but the question of the loan for the upgrade was sold to the people of Ridgely, although there was no referendum on it, that once it's built Ridgely will be paid back. Mr. Horne asked if Toby was referring to the WWTP expansion to 300,000 gallons; Toby said yes. Steve Horne said Ridgely Park would have constructed that, if they were going to use that capacity, which they now are not because they don't need it. Toby asked if the entire loan was to handle that upgrade. Martin stated that the loan and the upgrade are two different issues; 403 units would never be able to be built with the amount of land at the plant now. Joe stated that there are 80 proposed housing units that have been approved by the Planning Commission, and that the economy has played a part in it, but MDE has played the biggest part. No money has been received for those 80 lots as of yet, and that's not in addition to Ridgely Park's 126 lots (originally the first phase). Once the market breaks, the town should begin receiving funds. Martin suggested reviewing the documents again to get a better understanding of what has happened. Nancy asked if there would be a new DRRA. Steve Horne said that he wouldn't want to cross that bridge until he believes he has a project that could be supported by the town. Nancy stated she thought the previous agreement was that approximately \$1 million more than the total of the basic fees per unit, based on 403 units. She asked if the town is not going to receive those additional funds now that the project was one-third its originally proposed size. Steve Horne stated that the "overage" was probably accounted for in the expansion, which was a direct funding cost. Ridgely Park was contributing up to \$4.825 million to expand the WWTP; none of that money would have gone to the town other than to pay the bills associated with the WWTP expansion, that's not over and above those units. He stated that under the new plan, the funding would be comparable, on a per-unit basis, and that is why he doesn't think another DRRA would have to be started from scratch. Dale Mumford stated that he feels that principles have been violated, and the town has no choice but to eliminate the existing DRRA. He also suggested that there may be another party out there that may make better use of that capacity.

Steve Horne said he had three points of response. First, in terms of the current \$1.5 million upgrade, he was very involved in the discussions with MDE. Ridgely Park had a vested interest as to whether or not the capacity promised to them in the DRRA was actually available. The town contractually

agreed to provide capacity for 184 units, but MDE didn't believe that capacity existed. After 6-8 months of working on it, MDE's final stance was that the town needed to do the upgrade, regardless of development, the plant was deficient as it stood. MDE would have required that upgrade at a later date if it wasn't already being addressed by the town; it was in no way connected to the first phase, or any phase, of Ridgely Park. Mr. Horne also stated that he would be violating principles if he stood in front of the Planning Commission and told them that he could build 403 units in the fashion that they said they would; the dynamics have changed in a way that nobody could have anticipated. Mr. Horne said that he thinks the DRRA would have to be revised. Toby said that the DRRA and its elements were major components of the Ridgely Park project being approved, along with the TND and other factors, and that if this is roughly 1/3 less it should reflect 1/3 of the value of what was included in the existing DRRA. Steve Horne agreed and said he had one last comment. He said he agrees with Dales' comment regarding the best use of the capacity; the town owes it to itself to consider that. If this (revised plan) is not to the town's accord, he needs to know as well. What has been presented is what can be done, even though it's not 100% of what the town may want. Mr. Horne said the revised plan is what can be done and that he wouldn't say he could do it, if it can't be done in a first class way. Margaret stated she would like to see some concept plans for the houses. Toby stated he is still concerned about the proportional reduction or the division of the \$4.5 million. Steve Horne stated that there will be no division of an expense that was dedicated to expanding the WWTP; it was an expense tied to new capacity and was off-setting connection fees. The other payments will be addressed on a pro-rated basis. Dale asked if Ridgely Park is willing to contribute some funds towards the \$1.5 million loan. Mr. Horne stated that market-rate connection fees for 146 units, and he thinks that would cover the cost. He also said Ridgely Park would be readdressing the other amounts they had committed to contributing on the original 403 unit project (Parks and Rec., Rails to Trails, etc.) on a per unit basis.

Martin stated that the initial proposal the build-out was approximately 8 years, but in the DRRA was a 30-year agreement in which everything was based on accomplishing a certain number of units, not a certain date. Steve Horne stated there were some 'no later than' dates included in the DRRA. Martin theorized that if the capacity had been available, and the project proceeded with 403 units, the situation could be that Phase II wouldn't be reached for 10 years or so, under the existing DRRA. Mr. Horne said that optimistically he likes to look at this scenario as Phase I of Ridgely Park. However, he can't say that for certain because he no longer holds options on the other areas of land. Rick Schwab asked how long Elm Street had the option on the land; Steve Horne said he couldn't reveal that information.

Margaret asked about lot widths, driveways and house designs. Mr. Horne stated he is certainly willing to look at different design combinations. Toby inquired about the frontage of the lots. Steve Horne said the lots would have an average frontage of approx. 70-75 feet. Martin stated that with a 2,000 sq. ft. house on that size of a lot, there should be enough room to get a driveway to the rear. Mr. Horne stated that the issue is finding an interested builder with a product that works that way; he is committed to working with a builder to find a product that works for Ridgely Park.

Toby stated that since the original plan was presented as a Smart Growth TND, the town changed their zoning. He said the zoning that exists for anything development other than a TND, a minimum lot size of 15,000 sq. ft. and conformity to the town's grid system to include alleys is required; an exception was made to allow for a TND.

Margaret asked if the homes included on the revised plan would be more energy efficient. Steve Horne stated that less pavement overall, possibly using some pervious pavement for the driveways

or the sidewalks, and various storm water management options are being considered. Margaret asked specifically about the homes. Mr. Horne stated that new homes are more energy efficient, based on customer demand. Toby stated that even though there isn't a builder at this point, the homes were a major component of the project. Steve Horne said that as part of the approval process, HOA covenants are submitted which include an architectural review.

Toby stated there are positive elements to the plan, but there is a lot to digest. He said he is still trying to figure out certain aspects of the financing for the WWTP. Steve Horne asked if he had specific questions. Nancy stated that the \$1.5 million is only the beginning of it, it's only to cover Phase I of what has already been approved; she asked Joe for confirmation. Joe said that might be all that is done; the town might stop at 200,000 gallons. That upgrade covers the changing of the actual spray irrigation system as was proposed 3-4 years ago. That upgrade gets the town to the point that it can utilize the WWTP at 200,000 gallons per day that the permit authorizes. The state was saying that the system the town had could only do 150,000 gallons per day; that was the issue that was brought up July 2007. Nancy stated that the connection fees for the first 184 homes were supposed to pay that amount. Toby asked if the proportional division of the \$4.5 million dollars after the 184th home was totally off the table. Steve Horne stated that those funds were directly funding the expansion of a plant which they will no longer be utilizing, but that as he stated before, that is a market demand event – such that once someone needs that capacity, they bear the burden of creating it, just what was going to be done by Ridgely Park.

Dale stated his interpretation of the situation – there's an agreement that 184 houses able to connect to the town's sewer system, but the state says the town doesn't have the capacity so the town spends \$1.5 million dollars and now the capacity is available for these houses; he asked how that isn't expansion. Steve Horne stated that the plant was deficient for the units it was serving and that he doesn't know how else to explain it other than whether or not Ridgely Park was there, the plant had to be expanded because it was deficient to serve the existing town. Toby said, not to disparage Ridgely Park, but the town would have been just fine and this was all done for Ridgely Park. Joe said the town would not have been ok and this was not done for Ridgely Park. Martin stated what he recalled – the Superintendent of Water and Sewer concerned about the rising water level of the holding pond because it's been raining for a week and a half. Should it freeze up and the water is unable to be discharged through the spray irrigation, it must be stream discharged. Toby said that the town has a permit for a stream discharge. Martin stated that is where MDE becomes involved, they were tired giving after-the-fact permits to the town for the discharge of untreated waste into a stream; MDE stated they were going to start issuing fines instead of permits when that happened. Regardless of whether or not anything else was built in Ridgely, that system wasn't working out. Toby said the issue with MDE came up around February 16th because of the proposal from Ridgely Park and that it was never addressed before. Steve Horne stated it came up because there was a complaint that was investigated. Joe said that it has been addressed by the town since the spring of 2005. Toby said that no requirements were put on the town until the town started to proceed with Ridgely Park. Joe said that MDE stopped all subdivisions after July 2007; Toby added that subdivision was for Ridgely Park. Joe stated that it wasn't just Ridgely Park – it was Ridgeway Estates and other subdivisions already approved by the Planning Commission. When Ridgeway Estates went to have their subdivision recorded, they were stopped.

Orrell Saulsbury asked for the opportunity to explain the situation. He said that Ridgely has a WWTP that's permitted, and has been that way for a number of years, at 200,000 gallons per day. Ridgely Park/Elm Street Development came in and started looking at what capacity was left to get to 200,000 gallons. After the negotiations were complete between the town and Ridgely Park/Elm

Street, it was MDE who and changed the rules. Mr. Saulsbury also stated that he has been at a number of meetings over the past few years in which he has heard both Robin (Director of Public Works) and David (Superintendent of Water/Sewer) state that this was going to be an issue, but the town chose to ignore it figuring that it would work out when development came online. Mr. Saulsbury asked about growth in the town and stated that the town has to grow to continue to provide services to its citizens. Tax revenue will be decreasing because of falling assessments. The town must grow to keep the revenue stream so that services can continue to be maintained, which is going to require a certain amount of growth and that growth should be controlled. He said that the only avenue the town currently has, with the expansion to 200,000 gallons, is to use the additional 37,000 gallons of capacity so the town can grow at this point in time. Mr. Saulsbury also said that he does not have a dog in this fight any more; he is speaking as a citizen of the town. He said the question is how the town pays \$1.5 million to get to expand the plant to get to the capacity for which the state has already permitted; the state is requiring the town to spend that money. The town will use the connection and impact fees that whoever uses that capacity will pay.

Joe said he agrees with everything that Orrell said, except for one point – the town was not ignoring the problem. The town was addressing the problem and changing the spray irrigation system over. Joe, Robin, and David personally met with and presented a plan to MDE in the spring of 2005; that's the plan they've been working with, and the plan being done right now. Joe said something which he will address later happened in July of 2007, but the town has knocked down every argument MDE had, they came to the one point MDE wanted, which was the same point for which the town had requested their approval. That approval was received within three weeks. Mr. Saulsbury stated that the impact fees on the 37,000 gallons of capacity that will be available when this upgrade to the discharge field is done. He said time is money and the reason these discussions are being had now is because of the previous delays due to the town; the town needs to make a decision. Toby stated that he agrees, it's just that there have been a lot of surprises tonight.

Rick Schwab asked Steve Horne what he was looking to walk away with from this meeting. Mr. Horne said he wanted to provide an update, and to let everyone know that Elm Street Dev. has taken a lot of time to do what they wanted done. He would like an invitation to come back and continue the dialogue; if it's something worth considering he would like to know that. Margaret stated that she, for one, would like to continue the dialogue and she thinks that the Planning Commission has some adjustments to consider.

Martin asked how Elm Street's clientele has changed. Mr. Horne said he doesn't think it has changed much. Kathy Smith asked about the price range of the homes. Steve Horne said if he had to guess, he would estimate the low \$200's. Kathy said that she wants to mention to the Planning Commission that on a drive through this side of town, the existing houses for sale are listed around the low \$200's; if a new development comes into town priced in the low \$200's it's going to directly affect the sale of the existing homes in town.

Toby said that what has been presented is not too far removed, as far as the street plan, from Lister Estates. The zoning was changed to try to do better, but the Planning Commission is basically over a barrel. Dale said that one mistake doesn't excuse making another. Margaret said the Planning Commission doesn't have to be over a barrel if Elm Street can do what the Planning Commission would like to see. Toby said that the plan is already radically changed – it's definitely not a TND, it's something different, and the way it's described it's a nicer Lister Estates, it's sort of on a grid system. Martin said he grew up in traditional neighborhoods where there weren't any alleys, the houses were 50-75 years old, there were detached garages and longer driveways; those were

traditional neighborhoods in the part of the country where he grew up. He would have to look at the Planning Commission's TND description to see how many of those elements are required before it meets the threshold of a TND. There was some discussion about lot size and alleys.

Kathy Smith said that when the town originally started talking about development and expansion, many citizens wanted it to be an extension of the existing Ridgely – alleyways and garages behind the homes were important. She asked if alleys could be incorporated into the new plan, now that there is an extra 10% in lot size. Steve Horne said that alleys are not a function of space; they are a function of cost and marketability. The majority of the buyers who would be buying these houses or have bought similar houses in Caroline County are not looking for alleys. It's very hard to get a national home builder interested in a project that has alleys. Alleys are also 40% more pavement and pavement is very costly. There was some additional discussion concerning homes and alleys. Kathy asked about the style of homes – single or two-story. Steve Horne said that he would love to come back with representative architecture; he didn't want to be presumptuous. Martin said he was surprised that the lot size increased instead of decreasing. Mr. Horne said that was driven by the town's comments.

Toby stated there is a lot involved in this, but he is not sure what approach to take as far as the town's ordinances. There was something very specific that allowed this to happen. The Planning Commission can't approve something that is in violation of their existing ordinance. Martin asked if Mr. Horne has seen Denton's pattern book. Steve said he has seen that pattern book, and he would be more than happy to discuss anything. He said he appreciated the Planning Commission's time, he knows there is a lot to digest. Mr. Horne stated that they are still on board, and are committed to working something out with Ridgely to make the project a success.

Toby asked about a projected ground-breaking date. Steve Horne said the spring selling season of 2010 is expected to be a much a better time than the present. Toby asked if there was a consensus of the Planning Commission that what was presented was something with which they could work; Margaret and Martin said yes. There was some additional discussion concerning zoning and ordinances.

Adjournment

A motion to adjourn was made by Margaret, seconded by Martin. Meeting adjourned at 8:12.

Sincerely,

Missy Vanskiver
Asst. Clerk