

**New Castle Planning and Zoning Commission Meeting
Wednesday, February 22, 2017, 7:00p.m., Town Hall**

Call to Order

Commission Chair Chuck Apostolik called the meeting to order at 7:00 p.m.

Deputy Town Clerk Mindy Andis swore in Jeff Ellis as a new Planning & Zoning Commissioner.

Roll Call

Present Chair Chuck Apostolik
Commissioner Copeland
Commissioner Ellis
Commissioner Gates
Commissioner Graham Riddile
Commissioner Ruggles
Commissioner Urnise

Absent None

Also present at the meeting were Town Planner Tim Cain, Town Attorney David McConaughy, Deputy Town Clerk Mindy Andis and members of the public.

Meeting Notice

Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting in accordance with Resolution TC-2017-1.

Conflicts of Interest

There were no conflicts of interest.

Citizen Comments on Items NOT on the Agenda

There were no citizen comments.

MOTION: Commissioner Ruggles made a motion to appoint Commissioner Gates as Commission Vice-Chair. Commissioner Graham Riddile seconded the motion and passed unanimously.

Public Hearing

Conditional Use Permit

Purpose: Application for Multiple Lot Line Adjustment

Legal description: Block 1, Lots 6 &7, and Block 2, Lots 1-6, Coryell's Addition to the Town of New Castle, together with any and all interest in the vacated streets and alleys appurtenant to said Lots as shown on the recorded plat of Coryell's Addition and described in Town of New Castle Ordinance No. 500, Series 1997, recorded in the Garfield County real property records at Book 1032, Page 730.

Common Address: TBD, New Castle

Applicant: Grady & Suzanne Hazelton

Landowner: Grady & Suzanne Hazelton

Resolution PZ 2017-2 Recommending Approving A Multiple Lot Line Adjustment For Certain Lots And Blocks Of The Coryell Addition To The Town Of New Castle And An Amended Plat For The Same.

Chair Apostolik opened the Public Hearing at 7:01 p.m.

Town Planner Tim Cain reported that the application was a request for a Multiple Lot Line Adjustment to create five (5) building sites on vacant land adjacent to Shewana Lane, which served as a utility access road. Planner Cain said that the code required that all new lots have at least five-thousand square feet (5,000). He noted the following square footages for each proposed lot:

- Lot one (1) = 5,250
- Lot two (2) = 5,062.5
- Lot three (3) = 10,412.5
- Lot four (4) = 8,087.5
- Lot five (5) = 5,062.5

Planner Cain said that if the application were approved, it would amend the Original Coryell Addition Plat recorded in 1888. The amended plat must be recorded within one-hundred-fifty (150) days or the application approval will be voided. Planner Cain said that access to the new lots will be from Shewana Lane and a newly created easement. Water, sewer and other utilities must be installed to serve the new lots.

Planner Cain said there were several policies in the Comprehensive Plan that were applicable to the application:

- Policy CG-5A (D): To create walkable communities.
- Policy CG-5A (G): To strengthen and direct development towards existing communities.
- Policy CG-5A (I): To make development decisions predictable, fair and cost effective.

The application will not create new lots but will condense nine (9) non-conforming lots to five (5) conforming lots. The lots are within a walkable distance to the downtown, schools and public transportation.

Development infill to support the local economy and allow future homeowners the ability to walk downtown to access public transportation and local restaurants, retail stores and other services, thereby increasing local revenue.

The lots could not build on until all public improvements were inspected and accepted by the town. The town will require there be a plat note stating that no

building permit may be issued until public improvements are installed. In addition, all real estate transfer documents should include such notice as well as Homeowner's Association covenants.

Planner Cain recommended that before the lots were marketed for sale, the applicant place a highly visible sign between lots two (2) and three (3) stating there is a ten (10) foot wide utility easement proposed. The easement service lines will connect to lots four (4) and five (5).

The Comprehensive Plan section "Population & Demographics" (page 19) states: "The need for housing units in New Castle will increase as the population grows. Assuming an average growth of 4% from 2007 to 2030, population is expected to grow to 9,086 a net increase of 5,417 (people). Housing demand generated by population increase of 5,417 will require 2,037 new residential units based upon an average household of 2.66".

Planner Cain said the Coryell Addition had prescriptive easements. Shewana Lane Serves as an access and utility easement serving the current adjacent properties and will serve the proposed five lots.

Any construction upon the new lots will have to comply with the R-1 zone district setbacks, floor area ratio, lot coverage, maximum building height, minimum floor area, minimum off-street parking and architectural standards.

Planner Cain said that written confirmation by a licensed engineer certifying that historic drainage patterns will not be altered or otherwise affected by the application.

Town Attorney David McConaughy reported if the application were a new subdivision of vacant land, the Town Code would require that each lot have a minimum of 25 feet of frontage on a dedicated public street. The Town Code included an exception where other arrangements were approved as part of a Planned Unit Development (PUD). NCMC § 16.28.030.

Planner Cain suggested that the planning commission should consider the policy implications of allowing five (5) new lots to be served by a private roadway. Arrangements for road maintenance will need to be done, via a homeowners' association or a private maintenance agreement amongst lot owners. No proposed documentation had been submitted with the application. Private maintenance agreements were often neglected and private roads fall into disrepair. When that happens, the developer is typically no longer involved, and the lot owners will come to the town asking the town to help or take on ownership of a roadway that was never dedicated or constructed to town standards. The town will then face political pressure to solve the problem, incurring expenses that were avoided by the original developer. Code Section 16.28.030 was adopted to avoid the situation and to ensure that all new homes will be served by public streets built in accordance with Town standards. The commission should consider whether to require a public roadway built according to town standards.

Planner Cain said that public improvements will be required as a condition of the development and occupancy of the proposed lots. The improvements will include

extension of the water main line, fire hydrants, and any work necessary to facilitate the connections of the private water and sewer service lines to the main line. There was no information concerning other public utilities such as gas, electric, or cable, which typically would be also installed as part of the public improvements.

Planner Cain said that it is town's policy to require a contract obligating the developer to install all public improvements in accordance with engineered plans approved by the Town Engineer. No such plans were submitted. If a contract for public improvements was not done before recording the plat, then the obligation must be secured by a letter of credit or other collateral to ensure that the work was completed for the benefit of lot owners. The amount of security required will represent the cost the town would incur if the developer sold the lots and then failed to complete the improvements necessary to serve them. It will also including a contingency amount. While cash or a letter of credit was preferred, town council had the discretion to approve other forms of security such as an arrangement with a construction lender, a contractor's bond, or a lien on the property. A lien may not be advisable because of an existing loan, unless the bank agreed to subordinate to the town.

Planner Cain said it was illegal under Colorado Statutes to sell, contract to sell, or negotiate to sell an unplatted lot, which is why developers typically post security for the public improvements rather than waiting to record the plat until after the improvements are done. Developers typically want the revenue from lot sales to help fund their costs. If the lots cannot be accessed or served with utilities, then building permits and/or certificates of occupancy (CO) can be withheld.

Attorney McConaughy recommend that the developer be required to provide engineered plans that included cost estimates for all public improvements; to enter into a development agreement with the town; and to post adequate security prior to recording the plat. Alternatively, the work could occur after approval and prior to recording, but no lots may be sold.

Attorney McConaughy said that requiring engineered plans and security was an expense for the developer. Attorney McConaughy recommended that if the planning commission was inclined to waive the requirement that any such waiver be subject to review and confirmation by the town council.

Attorney McConaughy said that alternative mechanisms to ensure completion of public improvements could be to refuse to issue building permits until the improvements were complete or adequate security was provided. Adequate disclosures and warnings would need to be provided to all potential lot purchasers that the lots may not be useable until the public improvements were complete, which could fall on the first lot to developed. That would raise other issues about contributions from subsequent lot purchasers. Such issues could be addressed via covenants or other agreements as mentioned above, but no such proposals had been received.

Attorney McConaughy advised that the commission should decide whether to require access via a public street or private. If they agreed on a public street then the street design and costs should be included as part of the public improvements.

Attorney McConaughy recommended that the application be continued until such time that the applicant provided engineered plans for all public utility connections; that the applicant provided proposed documentation for either a Home Owners Association (HOA) or a shared utility/driveway maintenance agreement; and that a development agreement with the town had been prepared that included requirements for adequate security for public improvements.

Attorney McConaughy recommended the following alternatives:

Alternative #1: All of the following conditions shall be satisfied prior to recording the plat and prior to the marketing or sale of any lots:

A. The applicant shall submit engineered plans for all public improvements for review and approval by the Town Engineer, including access, water and sewer, other utilities, and drainage improvements. The plans shall include as-built locations of any existing utilities and improvements in the construction area. Additional conditions may be imposed by the Town Engineer relating to construction details in connection with the review and approval of the engineered plans.

B. The applicant shall submit documentation for review and approval by the Town Attorney regarding either a homeowner's association or a shared access and utility maintenance agreement. Either way, the documentation shall be approved and recorded simultaneously with the final plat and be referenced in a plat note.

C. The applicant and the Town shall enter into a development agreement to provide for the construction of all public improvements and security therefore, generally consistent with Chapter 16.32 of the Town Code.

D. The private water service lines to serve Lots 4 and 5 shall be extended through the easement on Lot 2 prior to sale of Lot 2 or, alternatively, the easement area on Lot 2 shall be visibly staked and signed as a utility easement with additional notation on the final plat.

E. Unless the Commission requires a public roadway, the plat shall include notations concerning the private nature of the access road including a prohibition on accessing any of the subject lots via any other public street.

F. A plat note shall be included to identify the need for private lift stations maintained by individual homeowners for sewer service on each lot.

G. All representations of the applicant during the public hearing before the Planning Commission shall be considered additional conditions of approval.

H. The applicant shall reimburse the Town for all consulting fees and other expenses incurred in connection with the application.

Alternative #2: In lieu of providing security for public improvements, the completion and acceptance of all public improvements could be required prior to issuance of building permits for any homes on the individual lots, unless adequate

security is provided at a later date. As mentioned above, this approach may create a risk of shifting the obligation to construct improvements to the first lot purchaser, who may be in less of a position to recapture a share of costs from the other lots than the original developer. Therefore, if this is the Commission's decision, then Attorney McConaughy recommends that this approach be subject to review and approval by town council at a public meeting.

Town Engineer Jeff Simonson has recommended that a new fire hydrant be installed with a six (6) inch new water main line. Individual service lines would tap into the new main line. Lots four (4) and five (5) would be served via private service lines through a utility easement over Lot two (2), which would be dedicated on the plat. If Lot two (2) sold and developed before the private lines were installed, then excavation and construction will be required through Lot two (2), which may impact improvements, landscaping, or at least yard area. If the service lines were not installed before lot sales, then specific disclosures should be required to ensure that Lot two (2) owner is on notice of the future disturbance. Notice might include plat notes, a disclosure in deeds or real estate contracts, or perhaps posting signs to identify the easement area. He felt a better idea to avoid future dispute among lot owners would be to require installation of the service lines prior to lot sales. Private service lines were not the town's responsibility.

Engineer Simonson said the lots will require private pressurized sewer service lines to connect to the town's sewer main line. The pressurized service lines will be within the private roadway/utility easement, and at least two (2) other service lines either are or will be in the same area to serve adjacent property. Lots should not be allowed to share pressurized service lines, and for practical reasons they should all be installed in the same trench at the same time. The road maintenance agreement or HOA documents should include provisions regarding those utilities within the private roadway, including how the road will be repaired when excavation is needed.

Engineer Simonson said that from a drainage perspective, a central ditch existed that drained through the site that is proposed to be relocated. It will be important to identify the timing and provide details for construction of that relocation prior to recording the plat to assure the defined plan can be implemented when on-lot development ensues as the feature also conveyed offsite drainage through the site. In order to avoid drainage trespass occurring, he recommended that the proposed access and utility easement be renamed to be a proposed access, utility and drainage easement. In that manner, assurance can be provided that allowed improvements to be constructed in the future (if necessary) to assure drainage from the site as a whole continued to exit the site in the south west corner of lot three (3) and the southeast corner of lot four (4).

Applicant Grady Hazelton said his intention was to clean up the nine (9) small lots and make them into five (5) larger lots. In doing that, the lots will be better for resale. Also, he did not want to have a cluster of homes or the potential for a buyer to do so.

He said the largest lot was 10,000 square feet because it has the most easements through it and that is why it was bigger than the other four (4) lots.

Chair Apostolik asked Mr. Hazelton if he had looked into the cost of utility extension would the street be maintained by the town. Mr. Hazelton said he had not because if it became a street to be maintained by the town, then the street would need to be built to town's standard which was not feasible. He said he wanted to go through the process to see if the proposed lots were acceptable.

Marilyn Gleason, 980 W. 2nd Street. Ms. Gleason said there was an easement on her property which went to the river and was intended for a possible future trail and a utility easement. She was also concerned about the wetland with cattails on the subject property and she felt there were issues with wetlands being protected. Planner Cain said there was an easy solution for the wetland in that an permit could be obtained from the Army Corps of Engineers to move the natural runoff from the existing location to another. There was also a pond on the one of the lots which would need to stay and not to be moved.

Nancy Daniels, 445 Shewana Lane. Ms. Daniels said that her concern was that there was no fire hydrant on Shewana Lane and adding 5 more homes would add more impact to the area. Her second concern was that the existing road was narrow and 2 cars can't pass at the same time. She felt the road would need to be widened to keep people safe.

Attorney McConaughy said that the resolution required actual plans to be submitted to Engineer Simonson who could impose other conditions. They could include snow storage, fire truck turn around and more.

Scott Daniels, 445 Shewana Lane. Mr. Daniels said his concern was also the impact the new homes would have on the road. He said that he and Mr. Hazelton maintain the road. Mr. Daniels said he would stop maintaining the road if the five lots were added because the liability would go up. He also said that currently there was no place for a fire truck to turn around, and the runoff drained onto his property, and any changes to the drainage would affect his property. Mr. Daniels said he was afraid that when a lot is sold that it will turn into a junk yard for the owner. Planner Cain said there was code prohibiting junked vehicles to be stored on property, however, code enforcement was complaint driven.

Rob Matthews, 480 Shewana Lane. Mr. Matthews' concern was being forced into an HOA to have the road maintained, which was an easement through his property. Mr. Hazelton explained the outer bounders were not changing.

Chair Apostolik closed the Public Hearing at 7:56 p.m.

Attorney McConaughy walked the commission through the two (2) similar resolutions for the application.

Both resolutions stated under the town code the applicant was not creating new lots and the lots did meet the current town zoning for the district. The lot or lots that will have an infeasible building envelope pursuant to any town setback, floor area ratio, or other building/zoning requirement.

All utility companies and/or any other beneficiaries having an interest in existing easements on the property have granted approval in regard to the disposition of

existing easements as a result of the application, if any.

All easements associated with Property are properly addressed and/or granted;

The Application does not alter or affect the location or arrangement of any other lot line within the subdivision;

No lot line adjustment or vacation has been granted by the Town with respect to or in connection with the Property or any adjoining property under common ownership or control of same person within the past one year; and

The Application does not in any way adversely affect any lot surrounding the Property.

The first proposed resolution said:

The Commission hereby approves the Application and amended plat, subject to the following conditions, all of which shall be fulfilled prior to recording the amended plat:

A. The Applicants shall submit engineered plans for all public improvements for review and approval by the town engineer, including access, water and sewer, other utilities, and drainage improvements. The plans shall include as-built locations of any existing utilities and improvements on the property. Additional conditions may be imposed by the town engineer relating to construction details in connection with the review and approval of the engineered plans.

B. The Applicants shall submit documentation for review and approval by the town attorney regarding either a HOA or a shared access and utility maintenance agreement. Either way, the documentation shall be approved and recorded simultaneously with the final plat and be referenced in a plat note.

C. Applicants and the town shall enter into a development agreement to provide for the construction of all public improvements and security therefore, generally consistent with Chapter 16.32 of the Town Code.

D. The private water service lines to serve Lots four (4) and five (5) shown on Exhibit A shall be extended through the easement on Lot two (2) prior to sale of Lot 2 or, alternatively, the easement area on Lot two (2) shall be visibly staked and signed as a utility easement with additional notation on the final plat.

E. The roadway shown on Exhibit A shall be dedicated to the town as a public road and open for public use and a plat note to that effect shall be included on the final plat [OR] The final plat shall include notations concerning the private nature of the access road, including a prohibition on accessing any of the subject lots via any other public street.

F. A plat note shall be included on the final plat to identify the need for private lift stations maintained by individual homeowners for sewer service on each lot.

G. The plat shall include a subordination and consent certificate to be signed by any lender holding a lien on the subject property.

H. All representations of the Applicants made during the public hearing before the Commission and reflected in the minutes thereof shall be considered additional conditions of approval.

I. The Applicants shall reimburse the town for all consulting fees and other expenses incurred in connection with the application.

J. The final plat shall be reviewed and subject to approval by the town engineer and town attorney prior to recordation thereof.

The second proposed resolution said:

The Commission hereby approves the Application and amended plat, subject to the following conditions:

A. No building permits shall be issued for any dwelling units on the property until and unless the town engineer has approved engineered plans for all necessary improvements, including access, water and sewer, other utilities, and drainage improvements and until all such improvements have been constructed, inspected, and accepted by the Town in accordance with the procedures and requirements of Section 16.32.020(B) of the Town Code, including a written warranty. Alternatively, building permits may be issued if the applicant and the town first enter into a development agreement with adequate security in general conformity with Chapter 16.32 of the Town Code. The construction plans shall include as-built locations of any existing utilities and improvements on the Property. Additional conditions may be imposed by the town engineer relating to construction details in connection with the review and approval of the engineered plans.

B. The Applicants shall submit documentation for review and approval by the town attorney regarding either a HOA or a shared access and utility maintenance agreement. Either way, the documentation shall be approved and recorded simultaneously with the final plat and be referenced in a plat note.

C. The approvals in this resolution shall be subject to, and contingent upon, review and approval of the conditions set forth herein by the New Castle Town Council by motion at a regular meeting.

D. The private water service lines to serve Lots four (4) and five (5) shown on Exhibit A shall be extended through the easement on Lot two (2) prior to sale of Lot two (2) or, alternatively, the easement area on Lot two (2) shall be visibly staked and signed as a utility easement with additional notation on the final plat.

E. The roadway shown on Exhibit A shall be dedicated to the Town as a public road and open for public use, and a plat note to that effect shall be included on the final plat [OR] The final plat shall include notations concerning the private nature of the access road, including a prohibition on accessing any of the subject lots via any other public street.

F. A plat note shall be included on the final plat to identify the need for private lift stations maintained by individual homeowners for sewer service on each lot.

G. The plat shall include a subordination and consent certificate to be signed by any lender holding a lien on the subject property.

H. All representations of the Applicants made during the public hearing before the Commission and reflected in the minutes thereof shall be considered additional conditions of approval.

I. The Applicants shall reimburse the town for all consulting fees and other expenses incurred in connection with the application.

J. The final plat shall be reviewed and subject to approval by the town engineer and town attorney prior to recordation thereof.

Attorney McConaughy said the commissions' three options were:

- 1) Continue the application until there were more details,
- 2) Approve it subject to a development agreement with some type of security,
- 3) Approve it without security, but hold issuing building permits until everything got built.

He advised that the commission needed to decide if the road would be a public road or a private road.

Commissioner Riddile asked Attorney McConaughy if the road improvement agreement would be between Mr. Hazelton and the town. Attorney McConaughy said no. It would work like an HOA, just there was no board. He said before lots were sold, there should be some recorded document to make sure the road got maintained and there was a way to pay for it. Once the lots were sold it would be too late to force someone into an agreement.

Commissioner Graham Riddile asked Mr. Hazelton respond whether it would be a public or private road. Mr. Hazelton said there should be a road agreement between the five (5) lots and he would extend the offer to any of the current property owners that would be interested in the agreement. He felt the current property owners would benefit from the agreement whether they were a part of it or not. Mr. Hazelton said he was not intending to install curb, gutter and sidewalk because of the expense.

Commissioner Riddile asked Planner Cain what he recommended. Planner Cain said he supported Attorney McConaughy's option known as Alternative 2 which met the policy goal of CG 5A (I). Planner Cain concurred with Attorney McConaughy that the burden of public improvements could fall upon the first lot owner. He felt it was very important that the first buyer be well-informed that s/he cannot gain a building permit approval until construction documents were approved, security was posted and an agreement with the town was in place. That will allow Mr. Hazelton to secure funding upon the sale of the lot and use the money for the infrastructure and improvements. A road maintenance agreement also needed to be done.

Planner Cain said the town could help with mediation to help prepare the agreement.

Motion: Commission Chair Apostolik made a motion recommending approval of Resolution PZ-2017-2, Alternate 2 Recommending Approving A Multiple Lot Line Adjustment For Certain Lots And Blocks Of The Coryell Addition To The Town Of New Castle And An Amended Plat For The Same. No Building Permit Will Be Issued. The final plat shall include notations concerning the private nature of the access road and town council review and approval of the conditions. Commissioner Ellis seconded the motion. The motion passed on a roll call vote: Commissioner Graham Riddile: Yes; Commissioner Urnise: Yes; Commissioner Ellis: Yes; Commissioner Ruggles: Yes; Commissioner Copeland: Yes; Commissioner Gates: Yes and Chair Apostolik: Yes.

Items for Consideration

Consider Appointing Vice-Chair and Appointing a Commissioner to the Historic Preservation Commission.

Motion: Commission Chair Apostolik made a motion to appoint Commissioner Gates as Commission Vice- Chair. Commissioner Ruggles seconded the motion and passed unanimously.

Motion: Commission Chair Apostolik made a motion to appoint Commissioner Gates as Commissioner to Historic Preservation Commission. Commissioner Graham Riddile seconded the motion and passed unanimously.

Items for next Planning and Zoning Agenda

There were no items.

Commission Comments and Reports

There were no comments or reports.

Staff Reports

There were no reports.

Review Minutes from Previous Meeting

Motion: Commission Chair Apostolik made a motion to approve the January 25, 2017 meeting minutes as corrected. Commissioner Gates seconded the motion and it passed unanimously.

Motion: Chair Apostolik made a motion to adjourn the meeting. Commissioner Gates seconded the motion and it passed unanimously.

The meeting adjourned at 8:55p.m.

Respectfully Submitted,



Planning and Zoning Commission Chair
Chuck Apostolik

Deputy Town Clerk Mindy Andis