



Remarks of Robert Weiner, New Castle County Council 2nd District to the New Castle County Planning Board Regarding Reform of “Redevelopment” and Proposed Ordinance 11-026, Sub. 2, New Castle County Council Meeting

Date: July 26, 2011

Introduction

Mr. President and fellow Council members, thank you for the opportunity to speak regarding this important policy issue. As other members of Council and many interested citizens know, I am the sponsor of Ordinance 11-026, Substitute 2 which also seeks reforms to redevelopment. I appreciate the hard work of council members Reda and Tackett, as well as the many citizen activists who have kept Council focused on the need for redevelopment reform. Because the Reda/Tackett Sub 1 to 11-020 is a step in the right direction with regard to reducing “paper redevelopment” I will be supporting the measure we are voting on tonight. However, consistent with Council rules, I have pre-filed an oral amendment today to require a Traffic Impact Study for all redevelopment projects which include rezonings. This is absolutely essential so that the UDC reflects Delaware Code requirements as I’ll explain more fully during my remarks. While I will be voting yes tonight because I am a realist about tonight’s measure having the support to pass despite the lack of positive planning board recommendation and many problems identified by PLUS that remain problems in the substitute, I have comments regarding the work that still needs to be done to fix redevelopment.

[Slide 2] I will be going over key provisions of the original version of this ordinance, what changes were made and the concerns that remain and that we as a Council must continue to address. For your reference, my aide Lou Hinkle is again distributing to you

a comparison chart which compares the Reda/Tackett and Weiner legislation, its current pending substitutes and the current law. You may recall that my aide distributed this to you at last Tuesday's Council Land Use Committee meeting.

[Slide 3] The areas upon which I will focus are listed here: paper redevelopment, sunseting, site improvements, traffic studies and required improvements, community character, public input in the plan acceptance and approval process, credit for new floor area, and protection of agricultural lands.

[Slide 4 – Ending Paper Redevelopment] The current law is that developers get 100% credit for unbuilt floor area depicted on any recorded plan. Tonight's ordinance in its original form extended this even to plans that had sunsetted, so the practice would have been expanded. Sub. 1 appears to do a total about face on this by removing the words any "recorded plan" but even with that amendment, the law will be that a developer could still built out the remaining GFA of any recorded, grandfathered plan and seek redevelopment status for a future addition, not pay any impact fees, have it reviewed as a minor plan, and add 50,000 GFA. The real problem with concurrency comes in when these plans propose a change in use, maybe even a rezoning, but they don't have to do a site carrying capacity analysis or a TIS, even though that new use may have totally different peak hour trips or other impacts on the community. If it's a minor plan review we will know every little about those potential impacts. Plus I anticipate the department will continue to ignore the part of the current law that says there has to be a 50% demolition to qualify a project as a redevelopment. Also, if the market is already there to incentivize a project, I don't think New Castle County should be giving up on impact fees or ignoring concurrency. This law should help end blight and prevent vacancy, not just increase developer profits. I think these things still need to be addressed so we don't end up with projects with a lot of impacts the current infrastructure can't handle and that the developer is not paying to address.

[Slide 5 – Sunsetting of Plans] Under the UDC, most recorded plans sunset, or are of no further effect if they are not built for 5 years. However, the plan will be grandfathered even if just a small part of the improvements depicted on the plan are made. In its original form, this ordinance let even expired plans qualify for redevelopment, which could have led to old non-conforming, expired plans coming back to life. However, even though Sub-1 dials this back and references only “formerly built structures”, this language still gives new life to structures that lost their non-conforming status because they were demolished and not rebuilt in time.

[Slide 6 – Proportional Compliance] Sub. 1 is not substantially different than current law in that redeveloped sites have to show certain improvements in design that in theory make them more compliant with current law. However, having better buffers or landscaping islands in a parking lot where the old code would not have required them is not the big issue. The big issue is whether surrounding intersections can handle increases in peak hour trips or whether if a UDC carrying capacity analysis were performed the site would pass, and proportional compliance does not address that.

[Slide 7 – Traffic Background] One of the hardest parts about discussing traffic concurrency is that the common terminology is poorly understood, so this slide is a primer. The important point is that a Traffic Operations Analysis does not study or require improvements to surrounding intersections. A Traffic impact study does.

[Slide 8, 9 & 10 summarizes continuing problems with redevelopment and traffic concurrency] Under current law and the current version of the ordinance, redevelopment projects are failing to account for dramatic increases in peak hour trips. The current infrastructure was not necessarily designed to support these increases. Understand that under the memorandum of understanding between DeIDOT and NCC, DeIDOT CANNOT ask for TIS’s for redevelopment projects, so all those references in this measure to DeIDOT doing so are meaningless. Also, I have no

confidence the Department will request one for projects it happens to support. I am very disturbed that this measure will allow intersections to go to E or F, and even more disturbed that we really won't know how the intersections are operating at all without a TIS. It's not a total fix, but I'm so concerned about this that I will be introducing an amendment to at least require them for rezonings. Title 9 requires it and if we don't start acting responsible about this, H.B. 101 which came out of committee in Dover last session could go to the floor this session and require a TIS for practically every project, taking local control away from us.

[Slide 11 – community character] I want to see this addressed because the taxpayers should not be subsidizing projects that are not consistent with the surrounding community.

[Slide 12 – public process] There is no reason that a developer cannot seek a planning board recommendation on whether a major plan really qualifies as a redevelopment. A major plan has to go to planning board anyway. This measure does not add any check or balance or public input into the process and I think this is still a deficiency.

[Slide 13, New GFA] Let me explain how this works in real life so you can understand my continuing concern. In 1980 developer builds a 100,000 square foot office under a plan that allows a total build out of 150,000. To enlarge it more than 51,000 square feet, because the grandfathered plan allows another 50,000, it normally has to comply with site capacity requirements and proportionally comply with the UDC. Under the current law and the one proposed tonight, as a redevelopment, the owner could build another 100,000 by right as a minor plan, doubling what is in the field with no partial demolition, no traffic impact study, and no site capacity calculation. How are the nearby intersections functioning now? We won't know without a TIS, so the requirement that they not drop down to E or F might as well not be there. Will doubling the size fit in with the community character? Maybe it will tower over nearby homes. The law does not

care. Will the public have any hearings about this? Not one. Would a developer have done this anyway without redevelopment incentives because it's a great location and the buildings are actually in pretty good shape? Maybe, so why are we waiving impact fees when the property is showing no signs of distress? Redevelopment is supposed to help the community, not make developers richer, and I don't see the protections here or in the current law.

[Slide 14 – Ag lands and open space] The current law and this measure do not call out protections for green vacant lands and agricultural lands. Today's editorial in the paper suggests it does. Remember how I explained before that an old plan can get grandfathered by just building a little bit? I have no doubt that full build-outs plus additions to such plans will still be accepted as redevelopments under this law. The problem is if the addition is major, even if it has to be reviewed as a major plan, it could potentially gobble up green space and agricultural lands without paying impact fees, and I don't think a redevelopment should do that. Two lawsuits have happened because the code needs to be clearer about agricultural lands not being eligible for redevelopment. This is another area that needs future work.

Conclusion: I believe that many of my fellow council members want to respond to their constituents and end the abuses that have been associated with the processing and acceptance of redevelopment plans. New Castle County Council is poised to vote on the Reda / Tackett Redevelopment Ordinance (11-020 Sub 1) despite its having receiving a vote to "not recommend" from the NCC Planning Board in its original version. The revised version has not been reviewed by the Planning Board, and a vote by Council tonight will go against the Planning Board's July 19th conclusion that "it is premature for County Council to make a decision on any of the proposed redevelopment text amendments because they are "all works in progress". The

Planning Board would prefer to see a composite of the proposed ordinances prepared and to see the ambiguities in the code resolved.

This critical ordinance will affect how our entire county develops. Why the rush? If the administration knows the right answers to protecting green spaces while promoting responsible growths where infrastructure exists, why the about-face on paper redevelopment and amendments to the traffic concurrency sections. Why the refusal to even discuss constructive public input in the process? Whether anyone admits it or not, my competing measure forced these changes. For the reasons above, we should all understand, though, that there is more work to be done on redevelopment to fix the problems. As a first step, I urge you to support my amendment to Sub 1 to 11-026 requiring redevelopment plans including rezonings to perform a Traffic Impact Study, known as a TIS, which doesn't just mean a study, but that a fair share of needed improvements have to be paid for by the developer. TIS waivers would still be available where the *study* is not necessary because of an existing corridor management or other study, but as we saw when DelDOT denied a TIS waiver for Governor's Square III, *changes in use rezonings were often not accounted for in past studies, so a new one has to be done*. This is common sense, and if Council adopts this amendment we will be protecting New Castle County citizens from some of the possible unintended consequences of redevelopment without traffic concurrency being properly considered. Thanks for your time and consideration.

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REDEVELOPMENT IN NEW CASTLE COUNTY



Redevelopment

- ◆ Proposed Ordinance 11-020
- ◆ Proposed Ordinance 11-020, Sub 1
- ◆ Remaining Concerns

Areas of Focus

- ◆ Paper Redevelopment
- ◆ Sunsetting of Plans
- ◆ Site Improvement Required
- ◆ Traffic Study Required and Traffic Standards for Intersections
- ◆ Community Character Protection
- ◆ Process/Public Input
- ◆ New Gross Floor Area
- ◆ Protection of Agricultural Lands and Open Space

Paper Redevelopment

- ◆ 11-020
 - 100% credit for previously recorded but unbuilt square feet
- ◆ 11-020, Sub 1
 - Credit for all previously built structures
- ◆ Concerns
 - Credit for structures even if they have been long torn down
 - Should only apply to existing structures in need of redevelopment incentives, not to increase developer profits

Sunseting of Plans

◆ 11-020

- Any recorded plan eligible for paper redevelopment regardless of whether it has otherwise sunsetted

◆ 11-020, Sub 1

- Any formerly built structure eligible for redevelopment, even if demolished or destroyed for long periods

◆ Concern

- Normally a plan loses its non-conforming status if all the buildings are destroyed and no rebuilding takes place for 10 years
- Appears to create an exception to the loss of non-conforming status

Site Improvement Required

- ◆ 11-020
 - Equal to the percentage of approved but unbuilt GFA—as determined by Department of Land Use
- ◆ 11-020, Sub.1
 - Same as current law: proportional compliance required of at least 400%
- ◆ Concern
 - Required site improvements may not address key issues of traffic concurrency or protection of community character

Traffic Study Required and Traffic Standards for Intersections Background

- ◆ Studies that could be required: TIS v. TOA
 - TIS examines all significant intersections and road segments within a development's area of influence *
 - TIS requires improvements to intersection
 - TOA only examines one or more specific problem areas *
 - TOAs do not involve LOS calculations *
 - TOA relates site traffic safety, not how heavy traffic is in surrounding community

* See PLUS review – 2011-04-01, Ordinance No. 11-026

Traffic Study Required and Traffic Standards for Intersections

- ◆ 11-020 (No mandatory TIS)
 - “An operational analysis or a traffic impact study shall only be required if requested by DeIDOT. . . . If an existing LOS is between A and D, the proposed development may not reduce the LOS below D. If existing LOS is below D, the proposed development may not be made worse. ”
- ◆ 11-020, Sub.1 (Still no mandatory TIS)
 - “An operational analysis or a traffic impact study shall be required if requested by DeIDOT or the Department If an existing Level of Service (LOS) is A, B, C, or D, the proposed development may not cause that LOS to become E or F. If the existing LOS is E, the proposed development may not cause that LOS to become F. ”

Traffic Study Required and Traffic Standards for Intersections con't

◆ Concerns

- TIS or TOA required only if DeIDOT or County requests regardless of how much traffic will increase = too much discretion
- TOAs don't count trips or require intersection improvements
- TOAs don't determine LOS at supporting intersections or require intersection improvements
- DeIDOT cannot specify scope for a TOA analysis

Traffic Study Required and Traffic Standards for Intersections con't

◆ Concerns con't

- DeIDOT can't require a TIS for redevelopment plans under MOU between DeIDOT and NCC
- No way to tell where intersections operating now without TIS
- No deadline to implement required improvements
- Possible traffic concurrency failures
- Title 9 requires TIS for rezoning
- State legislation has been introduced to address abuses = loss of local control

Community Character Protection

- ◆ 11-020
 - No requirement of Community Character Protection
- ◆ 11-020, Sub 1
 - No change
- ◆ Concerns
 - Should account for community character when reviewing projects
 - No reason to incentivize incompatible developments

Process/Public Input

◆ 11-020

- No public hearing for any paper redevelopment which is processed as a minor plan
- No public hearing on whether a plan proposing all unbuilt GFA plus 50,000 more meets all criteria for redevelopment

◆ 11-020, Sub 1

- No Change, except “unbuilt” now limited to “previously built”

◆ Concern

- No public hearings to address abuses
- Process should be fair and transparent in accepting questionable plans

New GFA allowed

- ◆ 11-020
 - 50,000 GFA beyond what code allows and another 20,000 still qualifying as a minor plan
- ◆ 11-020, Sub 1
 - No Change
- ◆ Concern
 - If the use changes from previous one and the peak hour traffic counts for the new use are greater, there should be a TIS

Protection of Agriculture Lands and Open Space

- ◆ 11-020
 - DeIDOT recommendation on GFA reduction removed
- ◆ 11-020, Sub 1
 - DeIDOT restriction on GFA restored
 - Farmland and open space can be “redeveloped” without limit risking further litigation similar to *Stopyra* case
- ◆ Concern
 - Continued litigation over “redevelopment” of farmland
 - High value open space can be “redeveloped” if contiguous to old, torn down structures



REDEVELOPMENT IN NEW CASTLE COUNTY

