

## MINUTES OF THE REGULAR MEETING OF MARCH 24, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, March 24, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Martin Ross with Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Planning and Zoning Manager, Dan Brandewie – Planner II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried to approve the Minutes of March 10, 2016 as amended. Motion carried 4 – 0. Mr. Wheatley abstained.

### SPECIAL BUSINESS

#### Hazard Mitigation Plan Presentation

Anthony Mangeri, of The Olsen Group, which has been retained to revise the Sussex County Hazard Mitigation and Risk Reduction Strategy from 2010; that the information is available on the Emergency Services website along with an explanation of the process; that FEMA requires a revision of the plan every five (5) years; that the National Flood Insurance Program also looks at the plan to revise insurance plans for residents; that there have been two (2) meetings held with a working group; that the meetings are open to the public; that the plan is to revise the hazard profile of Sussex County; that they review the risks the County has endured in the past years; that the HIRA (Hazard Identification Risk Assessment) has made a ranking; that data on damage from hurricane “Sandy”, dams, and beach erosion is used for ranking and the revision of the plan; that the hazard assessment gives the Commission information needed when making decisions to offset and mitigate potential risks and vulnerabilities; that information the Commission could provide on policies and master planning needs to be reflected in the plan; that they will involve the public during this process and on the website the public can provide comments; that there will be open meetings and tonight’s presentation informs the public of the process; that they also are coordinating with the University of Delaware, with State authorities to provide us with the best available data; that they are also working with Environmental Resources, the State Flood Plain Manager, and DelDOT; that problems are then assessed and recommendations are made to the working group; and that the goal is to keep residents and development out of harm’s way.

### OLD BUSINESS

**CZ 1759 Osprey Point D, LLC** –

**Application of Osprey Point D, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 126.8795 acres, more or less, land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach, DE) (Tax Map I.D. # 3-34-18.00-83.00).**

**Announcement of receipt of DeDOT comments and applicants response**

Ms. Cornwell stated that Planning and Zoning staff is in receipt of DeDOT comments and the Applicant's response to DeDOT's comments; and that the record will be open for twenty (20) days for the public to review and comment.

Mr. Wheatley stated that any interested parties now have twenty (20) days to review and respond with written comments only.

**C/U #2043 – Edward J. Kaye**

**An Ordinance to amend Condition No. 19 of Conditional Use No. 1431 (Ordinance No. 1530) to allow additional time to complete existing borrow pit operation located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 200.5 acres, more or less.** The property is located at the northeast corner of Rd. 531 (Eskridge Rd.) and Rd. 533 (Sandfilippo Rd.). (911 Address: 22223 Eskridge Rd., Seaford). Tax Map I.D. 331-4.00-49.00

The Commission discussed this application which has been deferred since March 10, 2016.

Mr. Ross stated that he would move that the Commission recommend approval of Conditional Use 2043 for Edward J. Kaye to amend Condition No. 19 of Conditional Use No. 1431 (Ordinance 1530) to allow additional time to complete existing borrow pit operation based upon the record made during the public hearing and for the following reasons:

1. Conditional Use #1413 was approved by County Council on April 9, 2002. Condition 19 of that approval currently states:

*After 15 years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. This permit shall terminate upon the expiration of twenty-five (25) years from the date of enactment.*

2. The applicant has stated that operations on the site slowed during the recent economic downturn, and that more time is necessary to complete all operations on the site. There are mineral reserves on the site that cannot be mined within the original timeframe established by Condition 19.
3. The application does not seek an expansion of the borrow pit area, only the timeframe for completing the work that was previously approved.
4. There continues to be a need in Sussex County for gravel and borrow materials mined from this site.
5. Based on these findings, it is recommended that Condition #19 of Conditional Use #1413 be amended to allow an additional ten (10) years of time to complete all borrow pit operations, so that Condition #19 now reads as follows:

*After 15 years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional twenty (20) years. This permit shall terminate upon the expiration of thirty-five (35) years from the date of enactment.*

6. All other conditions of Conditional Use #1413 that are not affected by this amendment shall remain in effect.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0. Mr. Wheatley abstained.

**C/Z #1798 David and Veronica Hamm/Clarksville Auto**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) and a C-1 (General Commercial District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County containing 3.99 acres, more or less.** The property is located northeast of Atlantic Ave. (Rt. 26) approximately 300 ft. northeast of the Clarksville intersection of Omar Rd. (Rt. 54). (911 Address: None Available) Tax Map I.D. 134-11.00-155.00, 155.00, 153.00, and 83.01

The Commission discussed the application which has been deferred since March 10, 2016.

Mr. Burton stated that he would move that the Commission recommend approval of Change of Zone No. 1798 for David and Veronica Hamm/Clarksville Auto from an AR-1 (Agricultural Residential District) and a C-1 (General Commercial District) to a CR-1 (Commercial Residential District) based upon the record made during the public hearing and for the following reasons:

1. This application seeks to create a uniform CR-1 zoning for an area of land that currently has a split AR-1 and C-1 zoning. It also seeks to rezone two adjacent parcels from AR-1 to CR-1.
2. The overall site is improved with businesses including an automobile service facility and auto parts retail sales buildings. These types of uses have existed for at least 30 years on the site.
3. The area is within the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. CR-1 Zoning is appropriate within this Area.
4. There are other commercial zonings and uses in the area, and this rezoning will be consistent with those zonings and uses.
5. The rezoning will not adversely affect neighboring properties or roadways.
6. The site is located along Route 26 in Clarksville, and DelDOT has just reconfigured the Clarksville Route 26 Intersection to include a traffic light that will serve that intersection with an entrance to these properties. This signalized location is appropriate for CR-1 zoning.
7. The Sussex County Engineering Department has stated that sewer construction is currently underway and that sewer service to the property will become available in 2017.
8. No parties appeared in opposition to the application.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0. Mr. Wheatley abstained.

#### PUBLIC HEARINGS

##### **C/Z #1796 Lockwood Design and Construction Inc.**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County containing 35.45 acres, more or less.** The property is located on the northeast side of Warrington Rd. (Rd. 275), 0.25 mile southeast of John J. Williams Hwy. (Rt. 24). (911 Address: None Available) Tax Map I.D. 334-12.00-127.02, 127.04, 127.05

##### **C/U #2046 Lockwood Design and Construction Inc.**

**An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 35.45 acres, more or less.** The property is located on the northeast side of Warrington Rd. (Rd. 275) 0.25 mile

southeast of John J. Williams Hwy. (Rt. 24). (911 Address: None Available). Tax Map I.D. 334-12.00-127.02, 127.04, 127.05

After receiving a request from Gene Byard, Esquire, on behalf of the applicants, it was decided that the public hearings for C/Z #1796 and C/U #2046 would be combined and heard as one public hearing to establish the record and that individual decisions would be rendered on each application after the public hearing.

Ms. Cornwell stated that staff received comments from the Sussex County Engineering Department and the property is not currently located in a sewer district; however, it could be annexed into a sewer district.

Ms. Cornwell read four (4) letters of opposition to the Applications into the record and stated that the Office of Planning and Zoning received an exhibit booklet from the Applicant for review.

The Commission found that Mr. and Mrs. Robert Hood, Pete Malmberg, Don Lockwood, and John Barwick, of Lockwood Design were present with Gene Byard, Esquire of Morris, James, Wilson, Halbrook, & Bayard, P.A. and they stated in their presentation and in response to questions raised by the Commission that this Application is a do over from CZ 1780 to allow for a HR-1 RPC, with density of five (5) units per acre; that he asks the record of that hearing be made as part of the record tonight; that the only change is the zoning classification; that CZ 1780 was recommended to be denied for excess density if the zoning was approved and the RPC classification lapsed; that when the RPC overlay lapses in HR-1 zoning the density restriction in the RPC lapses and the zoning classification of HR-1 increases the density; that in the motion to recommend denial the Commission stated that the MR zoning classification with a Conditional Use is a more appropriate application; that there are multiple commercially zoned properties in the area; that there are properties zoned MR, CR-1, HR-2, and two (2) conditional uses with significant density; that Sterling Crossing and Sea Chase both have approximately six (6) units to the acre; that to the north of the property is the Beebe Medical Center; that in the last 15 years at least 12 Change of Zone applications or Conditional Use applications have been approved in that area; that the property is entirely wooded at this time; that the proposed use will be marketed to empty-nesters and 55 and over families; that water will be provided by Tidewater Utilities and sewer will be provided by Sussex County; that any upgrades are at the developers expense; that the project has been reviewed by PLUS, TAC review, stormwater design review by Soil Conservation, Envirotech has studied the woods; that there are no wetlands or endangered species on the site; that the Applicant met the Sussex County Planning Manager's suggestions have incorporated additional sidewalks for future connection to the Beebe Medical property; that opposition was concerned about trees and traffic; that the Applicant could remove all trees and cultivate the property or have a poultry farm on the property; that the neighboring properties were also built on what was farm land; that it seems ironic that the residents of the neighboring developments feel an entitlement to preservation of the Applicant's property; that the Applicant

plans to preserve as many trees as possible; that the project did not require a traffic impact study; that the Applicant will participate in the cost of intersection improvements; that DeIDOT has a timeline for improvements to the intersection of Old Landing Road and Warrington Road; that the response still does not define whether a traffic light will be required; that the response does define that road improvements will begin in fiscal year 2017; that the road improvements will coincide with final site plan approval of this project and Osprey Landing if approved; that the project is consistent with the Zoning Ordinance, Comprehensive Land Use Plan, and Future Land Use Map; that the density housing mix is consistent with the Zoning Code and the neighboring developments; that residents from this project will have walking access to the neighboring CR-1 zoned property; that there will be 14 acres of impervious area; that there will be 21.2 acres of open space; that storm water management, ponds, and swales will cover approximately 60% of the property; that with the Conditional Use the Commission is able to define the density of this project; that this project follows the residential character and development of this area; that this parcel is the last large undeveloped parcel in the area; that this property is in a Level 1 and Level 2 State growth area; and that it should be treated accordingly.

The Commission found that no parties were present in support of this application.

The Commission found that Steve Dolmack, a home owner in Sea Chase, was present and stated that he reviewed the plans; that he was surprised to find there were no changes made to the plans; that the developer has not taken into any consideration the concerns in reference to the trees and traffic from the previous application; that the existing 70 foot tall trees will be compromised within a 20 foot buffer; that once the root system is compromised the trees will have to be removed; that the existing developments were created over 20 years ago; that a lot has changed in the area over the last 20 years; that treating this application the same as 20 years ago is not realistic; that traffic is a huge concern and has greatly increased over the years; that DNREC is concerned that the applicant is not preserving enough trees; and that the additional units proposed will put added stress on the roads.

The Commission found that C.J. Bailey, a resident and property owner, was present with interest and stated that his primary concern with the plan is the entrance; that his property is directly across from the proposed entrance; that he would like to see some turn lanes proposed to better accommodate the traffic; that turn lanes would help with the flow of traffic; and that without these improvements traffic will be in his front yard.

The Commission found that Harvey Grider, a resident and property owner, was present with interest and stated that he represents the homeowners in Sterling Crossing; that he is the advocate for the Homeowner's Association; that rezoning is not a right for property owners; that rezoning should not come at the expense of others; that they are opposed to growth without proper infrastructure; that the area is so congested the nearby emergency station less than ½ mile from his property could not get there for over 25 minutes due to traffic; that during the summer this

time would have been doubled; that without improvement to the existing roads this development will greatly increase traffic issues; and that there have been no changes made to the original plan.

The Commission found that Robert Caden, President of the Homeowner's Association for Sea Chase; that they are disappointed the original plan has not been changed; that the same issues exist with this plan; that there are multiple accidents in the area; that the infrastructure will not accommodate another development; and that the removal of trees is an issue.

The Commission found that Paul Berger, lives in Sea Chase, and stated that Sea Chase was the first or second development prior to the moratorium; that the recent development in the area has been haphazard; that the concept of gearing the development towards empty nesters and 55 years and older is deceiving; that in the summer months the grown children and their children visit their parents; that this influx creates more issues during the summer season; that DelDOT improvements will not be enough to accommodate all cars using the roads in the area; that the developer and bankers only take into consideration what they know; that multiple builders and bankers are used and that is how you end up with too much development; and that in this case the developer is essentially too late and should not be able to develop the property as others had, due to the issues that already exist and the issues this development would increase; that the 20 foot buffer proposed will not accommodate the existing trees; that the trees will fall; that traffic lights are needed to allow for turns; and that the 3 story units are out of character with the neighborhood.

The Commission found that Robert Bauer, President of Board for Sea Chase Condominium Association, and stated that he agrees with the traffic issues; that other neighborhoods in the area have roads that will lead to Warrington Road; that this creates more congestion points on this road; that they previously requested another entrance be proposed for this development to access Route 24; that 3 story buildings are not in character of the area; that this type of building would be an eyesore to neighboring communities; and that a larger buffer is needed.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for C/Z #1796 for further consideration. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for C/U #2046 for further consideration. Motion carried 5 – 0.

#### OTHER BUSINESS

Ms. Cornwell advised the Commission that this is a final subdivision plan for the construction of 69 single family lots with amenities, open space and private roads. The Planning Commission granted preliminary subdivision approval on March 12, 2015. The subdivision complies with the conditions of approval and there have been no significant changes made to the plan since the preliminary plan approval. The property is located near Park Rd. The tax parcel is 335-7.00-1.01 and is zoned AR-1. The Planning Office is in receipt of all agency approvals.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the Final Subdivision Plan. Motion carried 5 – 0.

**Cape Henlopen State Park**  
Final Site Plan

Ms. Cornwell advised the Commission that this is a Final Site Plan for the construction of six (6) cabins and site improvements to be located within Cape Henlopen State Park. There will be a total of twelve (12) cabins. There are six (6) existing cabins on the site. The Planning Commission granted preliminary site plan approval on February 11, 2016. The applicant has provided bike racks as required by the Planning Commission. The property is zoned AR-1. The use as a park is permitted within the zoning district. The tax parcel number is 335-5.00-12.00. The Planning Office is in receipt of all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Final Site Plan. Motion carried 5 – 0.

**Bay Forest Club Phases 4.3, 4.4, & 5.1**  
Final Site Plan

Ms. Cornwell advised the Commission that this is the final site plan for phases 4.3, 4.4 and 5.1 of Bay Forest Club MR-RPC. The Planning Commission granted preliminary site plan on March 25, 2015. The phases include a mixture of 144 single family dwellings, and townhouses. The plan complies with the conditions of approval. Sidewalks are provided on at least one side of the street. The revision to the overall number of lots within the development are not impacted with these phases as the site including these phases is under the currently approved 892 units. The property is zoned MR with a RPC and is located off of Whites Neck Rd. and Old Mill Rd. The Planning Office is in receipt of all agency approvals.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Final Site Plan for Phases 4.3, 4.4, & 5.1. Motion carried 5 – 0.

**Harbor Point 2013-4 – Amenities**  
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for the amenities for the Harbor Point Subdivision. The amenities proposed are a swimming pool with a pool house. There are eight (8) parking spaces proposed along the front of the pool house. A sidewalk will connect from the lots into the swimming pool and pool house area. The amenities are located near the entrance of the subdivision. The property located near Park Rd. The tax parcel is 335-7.00-1.01 and is zoned AR-1. The Planning Office is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the Final Site Plan approval subject to staff upon receipt of agency approvals. Motion carried 5 – 0.

**Coastal Station**  
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of a convenience store with gas pumps and an 11,295 SF building for a restaurant and retail area with site improvements. The plan complies with the required number of parking spaces, loading spaces, and other code requirements. The site is located along Coastal Highway and complies with the landscaping required for the Combined Highway Corridor Overlay Zone. The property is 10.3+/- acres in size; however, only a portion of the site (5.0723 +/- ac.) is proposed to be utilized as the convenience store with gas pumps and an 11,295 SF building for a restaurant and retail area. The property is split zoned CR-1 and C-1. The property is located on the northwest corner of Coastal Hwy. and Holland Glade Rd. The tax parcel is 334-13.00-325.08. The Planning Office is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the Planning and Zoning Commission. Motion carried 5 – 0.

**Lands of Reyna, Jr on Coon Den Rd.**  
Minor Subdivision with 50 ft. easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one new parcel of land with a residual and the creation of a 50 ft. easement. The 50 ft. easement will go over the existing driveway. The new lot (Lot #1) will be 0.889 ac. with the residual of 14.637 ac. There is also a lot line adjustment shown on the plan. The lot line adjustment does not require approval by the Planning Commission. Staff notes that variances and a special use exception may be required. If required they shall be addressed prior to final approval and recordation of the minor subdivision. The property is zoned AR-1 and the tax parcels are 430-3.00-1.00, 1.08 & 1.09. Staff is awaiting approval from DelDOT.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minor Subdivision with 50 ft. easement as preliminary with a final approval subject to the Planning and Zoning Commission. Motion carried 5 – 0.

**Lands of Farmer John B. Calhoun Farm, LLC on W. Beach Rd.**

Minor Subdivision with 50 ft. easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one new parcel of land with a residual and the expansion of the existing 50 ft. easement. The 50 ft. easement goes over the existing driveway. The new parcel will be 32,825 SF+/. The property is located off of W. Beach Rd. and is zoned AR-1. The tax parcel is 134-7.00-94.00. Staff is in receipt of DelDOT approval.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minor Subdivision with a 50 ft. easement. Motion carried 5 – 0.

**Lands of George West off West Beach Rd.**

Minor Subdivision off 50 ft. easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one new parcel of land with a residual of the existing 50 ft. private road. The new parcel will be 2 ac. +/- The residual will be 66.8569 ac. +/- The 50 ft. private road goes to the end of W. Beach Rd. The property is located off of W. Beach Rd. and is zoned AR-1. The tax parcel is 134-7.00-78.00. Staff is in receipt of DelDOT approval.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minor Subdivision off a 50 ft. easement. Motion carried 5 – 0.

**Lands of Calvanesa off Dublin Hill Rd.**

Minor Subdivision with 50 ft. easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one new parcel of land with a residual and the creation of a 50 ft. easement. The new parcel will be 7.292 +/- ac. The residual will be 34.8 +/- ac. The easement will go over the existing driveway. Staff notes that the rear property line will be adjusted so the building will comply with the rear yard setback. The property is located off of Dublin Hill Rd. and is zoned AR-1. The tax parcel is 131-9.00-31.02. Staff is in receipt of DelDOT approval.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minor Subdivision with 50 ft. easement. Motion carried 5 – 0.

At the conclusion of the evening, Mr. Rodney Smith announced his resignation from the Planning and Zoning Commission, effective immediately. The Commission members wished him well and stated that he would be missed.

Mr. Wheatley turned over responsibility of the meeting to Mr. Smith who called the meeting to be adjourned.

Meeting Adjourned 7:41 p.m.