

## MINUTES OF THE REGULAR MEETING OF JANUARY 28, 1993

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 28, 1993, at 7:30 P.M. in the Court of Chancery, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner I.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to approve the minutes of January 14, 1993 as circulated.

### II. PUBLIC HEARINGS

#### 1. RE: Subd. #93-1--College Fund, Inc.

Michael Makowski, developer and Danny Morris of Coast Survey, Inc. were present on behalf of the application of College Fund, Inc. to consider the Subdivision of land in a GR General Residential Zoning District in Cedar Creek Hundred by dividing 48 acres into 71 lots, located on the north side of Route 38, 1,120 feet east of Route 228-A, and the east side of Route 228, 920 feet north of Route 38.

Mr. Abbott summarized the Technical Advisory Committee Report of January 21, 1993 in reference to this application.

Mr. Abbott summarized written comments received from the Underground Discharges Branch of DNREC in reference to this application.

Mr. Makowski advised the Commission that the intent is to create 71 half-acre lots, that the zoning would permit manufactured homes, dwellings and modular homes, that the developer has a list of some of the possible deed restrictions, that they have a sales contract to purchase the property, that manufactured homes would have to be at least 14 feet in width, that they would not have any objection to revise the plan so that stormwater run-off will not drain onto Route 38, that the drainage ditch can be reshaped, that they have an easement agreement from Clifton Farms, that a Homeowners Association will be created when a percentage of the lots have been sold, that the streets will be private, that the developer will maintain the streets and stormwater management until the Homeowners Association takes over, that it will be mandatory for lot owners to join the Homeowners Association, and that individual on-site wells and septic systems are proposed.

Ruth Wintjen, Wayne Reed, Margaret Reilly, Mrs. Moore, Mr. Grove, W. Nelson Hall, Ethel Beideman, Marian Bennett, Samuel Moore, Chuck Morrissey, Martin Benson, Mary Ann Hearn, Vernon Smith, Paul Smith, Mrs. Tolliver, Mr. Hearn, Jim Larrimore and Jennifer



Ingram spoke in opposition due to drainage problems, number of septic systems and wells proposed, traffic increases, recreation facilities, sizes of proposed homes, pet control, trespassing, fire and police protection, mosquitos, and property devaluation of existing homes in the area, and that there are other manufactured home lots in the area that are not improved, children safety waiting for school buses in the area and the condition of Route 38.

Mary Ann Hearn submitted a petition in opposition with 73 signatures expressing concerns that the development will adversely affect property values, increases in traffic, and a greater density than what should be permitted.

Roland Moore, Chief of Ellendale Fire Company stated that the fire department can provide fire protection to the proposed development.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to defer action.

2. RE: Subd. #93-2--Harry, Jean, and Stephen Seipp

Harry and Stephen Seipp, owners and Charles Adams, Surveyor were present on behalf of the application of Harry, Jean, and Stephen Seipp to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 21.43 acres into 26 lots, located on the north side of Route 524, 1,040 feet northeast of Route 516.

Mr. Abbott summarized the Technical Advisory Committee Report of January 21, 1993 in reference to this application.

Mr. Abbott summarized written comments received from the Underground Discharges Branch of DNREC in reference to this application.

Mr. Lank advised the Commission that this subdivision is located in a conservation zone as defined in the zoning ordinance, and that the Commission should only consider if the subdivision is feasible and that the applicant would have to apply to the Board of Adjustment for a variance in the lot sizes.

Mr. Adams advised the Commission that the plans were prepared before the conservation zone ordinance became a part of the zoning



code, and therefore did not revise the plans.

Mr. Harry Seipp advised the Commission that he would like to keep the plan as submitted and apply for a variance from the Board of Adjustment, that his family is in the rental business and that they would build the dwellings and rent them, that this would be a service to the area, that the streets will be private and maintained by the developers.

Mr. Seipp submitted a letter in support from Robert Williams in reference to this application.

No one was present in opposition to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to defer action pending the correct wording to forward this application to the Board of Adjustment.

3. RE: Subd. #93-3--Wheatley Farms, Inc.

Dale Wheatley, owner and John Wech, Designer, were present on behalf of the application of Wheatley Farms, Inc. to consider the Subdivision of land in a GR general Residential Zoning District in Nanticoke Hundred by dividing 30.10 acres into 47 lots, located on the south side of Route 545, 425 feet west of Route 594.

Mr. Abbott summarized the Technical Advisory Committee Report of January 21, 1993 in reference to this application.

Mr. Abbott summarized written comments received from the Underground Discharges Branch of DNREC in reference to this application.

Mr. Wech advised the Commission that this project was begun in February of 1992, that there are 22 one-half acre lots proposed and 25 10,000 square foot lots proposed with central septic systems, that central water for the entire plan is proposed, that the market wants a mixture of lot sizes, that manufactured homes are an option for the lot owners, that there are two central drainfields proposed, that a septic feasibility study has been submitted to DNREC and that this should be favorable for a community system, that there is an embankment from the wetlands, that no adverse impact is expected on the wetlands, that a walking trail is proposed in the open area, that recreation and picnic areas have



provide, that another stormwater management area will be created, and that the Commission should support a variance request since the embankment protects the wetlands.

Mr. Wheatley advised the Commission that the land has been used for farming in the past, that the land is not suitable for farming because of the sandy soils on site, and that the septic systems would not affect the lands adjoining this proposed project.

There was no one present in opposition to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Ralph, seconded by Mr. Smith, and carried unanimously to defer action pending receipt of a septic feasibility statement from the Underground Discharges Branch of DNREC.

#### 4. ORDINANCE TO AMEND CHAPTER 115 (RPC)

Mr. Lank introduced the Ordinance and presented a summary report on the Workshop held on January 13, 1993. The summary report is attached as exhibit "A".

Mr. Lank read a memorandum from the DNREC Office of the Secretary, for the purpose of land use review and coordination, which advised the staff that comments have been requested from the DNREC Division of Air and Waste Management - Air Resources Section, the DNREC Division of Fish and Wildlife, the DNREC Division of Parks and Recreation, the DNREC Division of Soil and Water Conservation, the DNREC Division of Water Resources - Water Supply Branch, Pollution Control Branch, Underground Discharges Branch, Watershed Assessment Branch, and Wetlands & Aquatic Protection Branch, the Department of Agriculture, the Bureau of Archaeology & Historic Preservation, the Department of Health & Social Services - Division of Public Health, the Department of Transportation, the Office of the State Fire Marshal, State Police Headquarters Communications, and the Sussex Conservation District.

Mr. Lank advised the Commission that members of the Technical Advisory Committee were also forwarded copies of the Ordinance.

Mr. Lank read a letter from Jeffrey A. Clark, a Registered Landscape Architect, which suggested additional amendments providing for Boundary certification and topographic contours by a Registered Delaware Land Surveyor, and providing that the preliminary site plan, illustrating the location and nature of all



proposed improvements should bear the seal of a Registered Delaware Landscape Architect.

Randall Arendt of Natural Lands Trust, the firm contracted to evaluate and prepare revisions to the original text of the Residential Planned Community regulation, discussed the workshop held on January 13, 1993.

Mr. Arendt stated that he has no objection to amending the Ordinance or parts of the Ordinance.

Mr. Arendt stated that a part of the agreement in review of the Ordinance was to review plats of sites and exhibit different ways to layout the sites.

Mr. Arendt exhibited different concepts of development of a site as a regular Agricultural Residential subdivision, as an Agricultural Residential - Residential Planned Community, as a Agricultural Residential - Residential Planned Community with 5,000 square foot lots, as a Medium Density Residential Subdivision, and as a Medium Density Residential - Residential Planned Community.

Mr. Arendt added that developments should be on the least environmentally sensitive land on a site, and that soil types may be another mechanism to establish area of the site that should be protected.

Richard Woodin, a land owner and developer from the Rehoboth area, stated that he supports the Ordinance in general, that the Commission should permit smaller lots, that the square footage of 7,500 square feet may be more appropriate, that smaller lot sizes would be allow more flexibility in layout, that all federal wetlands should not be deducted from density calculations, that the Commission should consider possibly 50 percent of federal wetlands as a deduction from density calculation, that central water and sewer should be required, that an aggregate side yard setback may be appropriate, that the grass swale policy, rather than curb and gutter, should be continues, that the intent to restrict the amount of clearing may be appropriate, but questioned what would happen to a site that is totally wooded.

John Schneider, present on behalf of Edwin H. Clark, II, Secretary of the Department of Natural Resources and Environmental Control, read a letter from Mr. Clark and submitted a packet of comments from Divisions of DNREC, as attached as Exhibit "B".

John Wech, Landscape Architect, concurred with the letter read from Jeffrey Clark, and that street right of ways and parking areas may not need to be a deduction since they contain green areas,



and agreed with Mr. Woodin that 50 percent of Federal wetlands could be calculated for density.

Skip Valiant, President-Elect of the Sussex County Association of Realtors, read and submitted a letter in reference to the Ordinance, as attached as Exhibit "C".

James Fuqua, Attorney, read and submitted a letter in reference to the Ordinance on behalf of Mike Lynn of Sea Colony, as attached as Exhibit "D". The letter includes some suggested amendments.

Mr. Fuqua added that the concept of the Ordinance is fine, but that some details are technically questionable, that the Ordinance is difficult to interpret as written, that some of the comments are vague and that a vague Ordinance is difficult to represent or defend in a court action, questioned if the County or State should be getting into homeowner association policy or rules, referenced Comprehensive Plans, questioned if conservation easements should be perpetual, questioned buffer requirements, stated that if buffers are to be required on a RPC Residential Planned community then they should be required on all types of developments, questioned the reference to habitat disturbance, and that the requirement that 50 percent of the site being required to be open space may be over restrictive on some sites. Mr. Fuqua added that he would forward a letter with comments.

Mr. Valiant stated that after reviewing the concepts prepared by Mr. Arendt, which shows the difference between a subdivision and a planned community, the difference is a significant benefit by development of a site as a planned community, that the Ordinance may need some refinement as drafted, and that the Residential Planned Community concept is far superior to a standard subdivision.

Mr. Schneider offered the Department of Natural Resources and Environmental Control support for additional workshops, if necessary.

Mr. Valiant made reference to the reduction of acreage for a Residential Planned community application and stated that no matter how small the site the RPC Residential Planned community concept should be better.

Claudia Orr stated that she supports the Ordinance, that Landscape Architects should be allowed to do preliminary designs, that roadways should not be allowed to be considered as open space, that she supports the requirement for conservation easements, that she would support the reduction to a 5,000 square feet lot size if more open space is the provided

Mr. Wech stated that he supports any reduced right of way width.

Ms. Orr stated that she encourages passage of the Ordinance, and added that if amendments are necessary after adoption, the amendments can be advertised and processed.

Mr. Fuqua stated that the Ordinance will improve the present Ordinance, and added that amendments are needed.

The Commission discussed the Ordinance.

There was a consensus of the Commission that the record be left open for any written comments until February 10, 1993. No additional oral comments will be received.

Meeting adjourned at 11:15 P.M.



Minutes of Workshop of January 13, 1993

A workshop meeting with the Sussex County Planning and Zoning Department and Randall Arendt of Natural Lands Trust was held Wednesday afternoon, January 13, 1993, at 1:30 P.M. in the Conference Room at the Emergency Operations Center, Georgetown, Delaware, with the following present:

Mr. Lank - Director, Mr. Abbott - Planner I, and Randall Arendt.

It was noted that Sussex County Councilmen Dukes, Collins, and Cole, and that Planning and Zoning Commissioners Magee and Ralph were present. Robert Stickels - County Administrator, was also present.

Mr. Lank introduced Mr. Arendt.

Mr. Arendt discussed the planned community concept and presented a photo slide presentation.

Thirty-three (33) people were in attendance.

Concerns were expressed in reference to reduction of the required acreage for applications, the loss of flexibility in design due to the additional restrictions proposed, that federal wetlands should be deducted from density calculations, that it may require at least two (2) different engineering designs to obtain approval, that the regulations may be cost prohibitive, the requirement for tree planting and cutting, maintenance and liability on residual lands within a development, percentage of open space required, the need for reduction of parking space sizes and drive widths, separation between buildings, lack of a formal definition on open space, elimination of pond area from open space calculation, and that the Technical Advisory Committee should be a requirement prior to any action by the Planning and Zoning Commission and the County Council.

Meeting adjourned at 4:15 P.M.





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY

PO BOX 1401

DOVER, DELAWARE 19903

OFFICE OF THE  
SECRETARY

January 28, 1993

TELEPHONE (302) 739-4403  
FAX (302) 739-6240

Mr. John L. Allen, Chairman  
Sussex County Planning and Zoning Commission  
Sussex County Courthouse  
Georgetown, Delaware 19947

Dear Jack:

The purpose of this letter is to express our support and encouragement regarding proposed amendments to the Residential Planned Community District Ordinances. Implementation of the concepts promoted by those amendments will go a long way toward meeting Sussex County's and Delaware's quality of life and environmental protection goals.

On January 13, at the request of the Department, Lawrence Lank and Randall Arendt reviewed the proposed ordinances with Department staff. Representatives from the Division of Parks and Recreation, Division of Soil and Water Conservation, Division of Fish and Wildlife, and the Division of Water Resources attended the two-hour meeting. Comments were extremely favorable and supportive.

As a result of the meeting, staff provided written comments. Those comments are attached for consideration by the Commission.

Thank you for the opportunity to participate in the development and review of the proposed amendments. We stand ready to provide additional technical, financial, and moral support.

Sincerely,

*Edwin H. Clark, II*

Edwin H. Clark, II

EHC/JWS/klr

cc: Distribution List w/comments

Attachments

Exhibit "B" (n)

*Delaware's good nature depends on you!*

*Submitted by  
John for  
distribution*



Distribution List

Jerry Esposito  
John Hughes  
Mary McKenzie  
Chazz Salkin  
Bill Wagner  
Joan Brown  
Bill Cohen  
Sarah Cooksey  
Pat Emory  
Lynn Herman  
Laura Herr  
John Kennel  
Susan Laporte  
Chuck McNally  
Bill Moyer  
Earl Shaver  
Ron Vickers  
Bob Zimmerman

Exhibit "B" (2)





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF PARKS & RECREATION  
89 KINGS HIGHWAY  
PO BOX 1401  
DOVER, DELAWARE 19903

M-E-M-O-R-A-N-D-U-M

TO: John Schneider, Water Resources *JB*  
FROM: *SL* Susan Laporte, *RD* Ron Vickers and *JB* Joan Brown  
SUBJECT: RPC Residential Planned Community District  
Discussion Draft #2  
DATE: January 27, 1993

Attached are the comments by the Division of Parks & Recreation as displayed in bold for additions and deletions in brackets on the doublespaced copy furnished for this purpose.

We recommend adding definitions of the following terms:

- a. Dock - (As defined in the Marina Regulations).

NOTE: If the definition of docks includes boat ramps and/or slips, what provision is made to access the docks through the buffer in paragraph E of Section 115-125?

- b. Open Space - "Open space" means any open lands characterized by (a) great natural scenic beauty, or (b) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources. Open space shall include significant cultural, historical or archaeological sites. Open space will not include long-term stormwater retention areas.

NOTE: This definition closely follows the definition of open space in the Land Protection Act, 7 Del. C. Chapter 75.

Exhibit "B" (3)

*Delaware's good nature depends on you!*



- c. Open water - "Open water" means water appearing naturally on the earth's surface, including rivers, streams, ponds, bays and oceans.
- d. Pond - "Pond" means a body of standing water, usually fresh and artificially formed, exclusive of stormwater retention areas.
- e. Trail - "Trail" means a paved or nonpaved pathway used for pedestrian, bicycle or other recreation activities exclusive of motorized vehicle use. Trails may be utilized or accessed by emergency vehicles or for health and safety purposes.

115-131 INCORPORATION OF ADDITIONAL LAND AREA

If, after approval and recording of the final site plan, the permit holder desires to incorporate additional or after-acquired adjacent land area into the development plan, an informal conference with the Planning and Zoning Commission shall be requested pursuant to Section 115-123 for the purpose of outlining the scope of the application. If an application is filed for inclusion approval, the general procedural requirements of this Article shall apply with the application being deemed an application to extend or amend an existing RPC. Any application for an extension or an amendment of an RPC District to incorporate additional land area into a previously approved plan shall be considered within the parameters of the establishment of a new and separate RPC District.



June 10, 1992  
Rev. July 2, 1992

ARTICLE XVI

RPC RESIDENTIAL PLANNED COMMUNITY DISTRICT

Discussion Draft #2

\* Suggested deletions are enclosed in brackets: [example]

\* Suggested additions are underlined: example

115-118 PURPOSE

In order to encourage [large-scale] environmentally sensitive developments as a means of creating a superior living environment through [unified developments] better site planning, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan,

including the Open Space and Recreation Element of said Plan,  
the RPC District is hereby established. The overall purpose  
of this Article is to offer design flexibility regarding the  
location of buildings and roads in order to create desirable  
and usable open space, while protecting tree cover, wildlife  
habitat and water quality, and preserving environmentally  
sensitive features. The provision of upland buffer areas  
around wetlands and waterbodies, ultimately creating a  
network of greenways with wildlife corridors and [informal]  
trails, is a key objective. A secondary objective is the  
encouragement of development design principles based on  
traditional neighborhoods in Sussex County's small historic  
towns.

#### 115-119 PERMITTED USES

Uses permitted in an RPC District under this Article shall  
be as follows:

- A. Uses, accessory uses and signs permitted in any  
residential district in accord with the additional  
requirements and specific provisions of this Article.
- B. Commercial uses of convenience and necessity to the  
development as a whole, such uses and accessory off-



street parking and loading spaces incident to such commercial uses not to exceed one (1) acre for each (100) dwelling units in the planned development.

- C. Conditional uses in accord with the procedures, standards and specifications of Article XXIV and the additional requirements of this Article.

#### 115-120 SUPERIMPOSED DISTRICT; EFFECT ON OTHER PROVISIONS

- A. To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations and in accordance with duly adopted Comprehensive Plans pertaining to land use in Sussex County, the RPC District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map.
- B. The housing types, minimum lot requirements, maximum height, minimum yard requirements and accessory uses and accessory signs shall be determined by the requirements and procedures set forth in this Article, which shall prevail over conflicting requirements of these regulations or ordinances governing the subdivision of

land.

115-121 MINIMUM DISTRICT AREA

A. The minimum area for an RPC District under this Article shall be as follows:

- (1) In the AR, MR, and GR Districts: [40] 15 acres
- (2) In the HR Districts: [10] five (5) acres
- (3) In any residential district if the only development proposed is single-family detached dwellings: [10] five (5) acres

B. In calculating the minimum area for an RPC District, the measurement shall not include the area of any dedicated streets or alleys, nor shall the minimum area include any wetlands as defined in Section 115-193 herein.

115-122 OWNERSHIP

A. The land in an RPC District need not be under single ownership, provided that proper assurances are given, through the procedures contained in this Article or elsewhere in these regulations, that the project can be



successfully completed.

B. Any commonly held land or facilities shall be owned by a homeowners' association, in which all property owners become members automatically upon signing their deeds. The bylaws of such associations shall provide for liens to be placed against the real property owned by any member who fails to pay his/her dues or assessments. Such bylaws shall be reviewed by the County's legal counsel for compliance with these basic requirements prior to project approval.

A Homeowner's Association may convey title to commonly held land to a public agency or to a nonprofit conservation agency qualified under 501(C)(3) of the Internal Revenue Code, amended 1986, when approved by such accepting agency.

C. Private utilities or roads serving an RPC development shall be adequately maintained and any disrepair which threatens the public health or safety may be corrected by the State or the County, with all related costs recoverable through special levies assessed to each property-owner, enforceable through tax liens.

#### 115-123 REQUIRED PROCEDURES

The procedures for establishment of an RPC District and approval and amendment of the site plans are contained in Article XXVIII. The proposed development shall follow all applicable procedures, standards and requirements of the ordinance or ordinances and regulations governing the

subdivision of land. No building permit shall be issued until a final plot of the proposed development or part thereof is approved, filed and recorded.

#### 115-124 CONCURRENT ESTABLISHMENT WITH OTHER DISTRICTS

An application for approval of and RPC District may show and be processed concurrently with separate applications for establishment of a Commercial Marine District, and LI-1 District or a residential district in accord with regulations applicable to those districts. Establishment of the district boundaries shall be in accord with the procedures for changes and amendments contained in Article XXVIII.

#### 115-125 REVIEW STANDARDS; CONDITIONS

- A. The Planning and Zoning Commission shall review the conformity of the proposed development with the standards of the Comprehensive Plan and recognized principles of civic design, land use and ecological planning, and landscape architecture. The minimum lot and yard requirements and maximum height requirements of the zoning district in which the development is located need not apply, except that the Commission shall ensure an appropriate relationship between uses of high



intensity or height within the RPC District and uses of low intensity or height, existing or future, outside the proposed RPC District and to this and may require that the regulations for minimum lots and yards and maximum height shall be complied with inside of and near the boundaries of the RPC District.

B. The Planning and Zoning Commission may impose conditions regarding the layout and design of the proposed development and, where applicable, shall require that appropriate deed restrictions be filed to assure compliance with the development plan. <sup>Commission and/or</sup> ~~The County~~ Council may also require conservation easements permanently restricting the open space within the RPC from further residential development or parking expansion, with such easements being <sup>granted to</sup> ~~co-signed by the~~ County ~~Commission~~ a state agency, and/or a local, regional or state-wide land trust or conservancy. Such easements shall also be recorded in the County Recorder of Deeds.

C. Residential developments under this Article shall provide open space comprising not less than 50% of the site area, excluding land set aside for churches, schools, state wetlands as defined in Section 115-193, and the actual area of proposed streets and parking lots. The required open space may include perimeter buffers, non-wetland floodplains and self-draining

stormwater retention areas designed for short-term storage (because these types of lands would also be suitable for recreational activities). Ponds may also be included in as part of the required open space, but open water may not be used to comprise more than 25% of this requirement. <sup>^</sup> This open space shall be laid out and distributed in a manner that provides convenient access to it by the majority of residents. Footpath connections to the open space shall generally be provided ~~at the ends of cul-de-sacs,~~ to improve pedestrian circulation. Where appropriate in the judgment of the Planning and Zoning Commission, the required open space shall also contain a variety of recreational areas suitable for active and passive uses by residents of different ages, as well as a central common or green, wherever appropriate.

- D. The minimum open space provision in RPC's may include dry upland buffer strips. Such buffers shall be required alongside all waterbodies including but not limited to state wetlands, perennial streams, lakes, rivers, ponds, bays and the Atlantic Ocean. Buffers shall also be required where a proposed RPC development abuts ~~lands~~ lands owned or administered by the State for park, recreation, wildlife, forests or other ~~state park, or forest,~~ a Natural Area designated under natural or cultural resource purposes; <sup>^</sup> the Delaware Natural Areas Preservation System Act; a Critical Area identified pursuant to the Delaware Land Use Planning Act; or a preserve owned by a land trust or



conservancy.

E. These upland buffers shall generally not be less than 100 (one hundred) feet in width. Where not wooded, buffers shall be thickly planted with fast-growing native ~~species~~ trees<sup>species</sup> and shrubs<sup>species</sup> to retard erosion, filter runoff, and provide wildlife habitat and cover. Species recommendations shall be made by the applicant's landscape architect, <sup>and/or</sup> with approval by the State Forester of a forester with the US Soil Conservation Service or the US Forest Service. Lower limbs of tall trees may be removed to create view openings through the upland buffer, and a minimal number of trees may be removed to create pathways not exceeding five feet in width to access<sup>a</sup> community docks<sup>[ ]</sup> shared by other residents of the RPC, with a detailed site plan identifying all trees to be trimmed or removed, which plan requires ~~[Commission]~~ Council approval prior to implementation.

F. Except where habitat disturbance is an issue identified by staff at the County or state agency level, such buffer areas shall generally be provided with a ~~[passive-use]~~ trail system by the developer as part of the required improvements, subject to performance bonding, from which motorized vehicular recreational usage shall be excluded. (In RPC's designed around golf courses, golf carts shall be allowed on paved trails that are

provided for that purpose.) ~~[Wherever feasible, such]~~  
trails shall be designed to connect with the likely  
location of future trails in the buffer strips on  
adjoining properties. Because of their importance in  
removing sediments and other pollutants from stormwater  
and their value in conserving habitat, no other uses  
shall be allowed in designated buffer areas. ~~[(including)]~~ Prohibited  
activities include but are  
but not limited to active recreational playingfields,  
and underground septic systems). There shall be no mowing, fertilizing  
or clearing of vegetation except for health, disease control, or safety concerns.

G. In cases where a proposed RPC development does not  
contain or abut land requiring buffer strips to be  
designated, a pedestrian circulation network including  
trails shall be designed and implemented by the developer  
[applicant], within the project's required open space.  
This network shall be laid out to connect with any  
trails or officially designated greenway corridor on  
adjoining properties, wherever applicable and feasible.

H. Areas proposed for site disturbance (including clearing,  
regrading, construction, paving, and new landscaping)  
shall be located on the environmentally least-sensitive  
portions of the parcel. To the fullest extent that is  
practicable, site development activities should avoid  
disturbing wildlife habitats (including afforested  
areas), consuming prime farmland, intruding upon 100-  
year floodplains, or covering aquifer recharge areas



with impervious materials. In addition, wherever possible, site design should attempt to minimize blockage of existing water views from the public roads, and other scenic vistas.

I. Within the Conservation Zone (an overlay zone defined in Section 115-194 below), tree clearing for development shall be minimized to the greatest extent practicable. Trees may be removed (outside the protected 100-foot buffer areas) in order to facilitate development if the applicant demonstrates to the satisfaction of the Commission that such locations are the most suitable ones on the site for construction, from an environmental view. If more than 20% of the woodland on a parcel is removed for development, the developer shall replant ~~the~~ similar or native ~~[same or similar]~~ species on a two-for-one basis on another part of the parcel, or on other nearby land ~~he may] acquired for~~ that purpose. Replacement woodlands shall assure a diversified habitat by including native species providing a canopy layer, an understory layer, and a shrub layer. Trees and shrubs should be planted at roughly eight-foot intervals in rows eight feet apart, with a minimum of 400 trees per acre being established after the first growing season. Plant material should be a balanced combination of seedlings, whips, 2-3 foot trees, and 4-5 foot trees. Such reforested areas shall be protected by a conservation

easement prohibiting future clearing, but allowing for sustained-yield selective harvesting according to established forestry standards. Planting plans and easements shall be reviewed and approved by the State Forester, or a forester with the US Soil Conservation Service or the US Forest Service.

J. In general, design approaches based upon traditional neighborhood principles shall be encouraged. Under this approach front yard depth is minimized, a continuous sidewalk system is provided, and shade trees are planted at 50-foot intervals between sidewalks and roadways (or curbs, where applicable). In addition, much of the parking requirement is met by on- street parallel parking spaces, to minimize the need for off-street parking lots, while maintaining a reasonable street width (which would not be achievable with angled or 90-degree parking).

K. The Planning and Zoning Commission shall review the location of proposed townhouses, multiple family dwellings or commercial uses, where allowed, and shall determine the appropriate character of such uses. The streetscapes of new RPC developments shall be designed in detail to avoid repetitious setbacks, elevations, and landscaping. They should reflect the physical diversity of existing towns in Sussex County, with a mixture of



housing types, styles, and sizes.

115-126 NUMBER OF DWELLING UNITS PERMITTED

The number of dwelling units permitted shall be determined by dividing the net development area by the minimum lot area per family or dwelling unit required by the district or districts in which the area is located. Net development area shall be determined by subtracting the area set aside for churches, schools, state wetlands as defined by Section 115-193, [or] commercial uses, and any areas located in that part of the 100-year floodplain identified as being a high-hazard area due to the high velocities of anticipated storm surges. [from the gross development area and deducting] In addition, twenty-five percent (25%) of the remainder shall be deducted for streets or the actual area of proposed streets and parking areas, whichever is less. The area of dry, usable land set aside for common open or recreational use, including <sup>as defined in Section 115-125D herein</sup> upland buffers ~~alongside wetlands and waterbodies, non-wetland floodplain land, and self-draining short-term stormwater retention areas~~ shall be included in determining the number of dwelling units permitted.

115-127 MINIMUM LOT AREA [AND] WIDTH AND SETBACKS

Exhibit "B"  
(18)

The minimum lot area and minimum lot width of detached single-family dwelling lots established within the development shall not be less than [two-thirds (2/3)] three-fifths (3/5) of the normal minimum lot area and minimum lot width required for detached single-family dwellings in the district in which the lot is located. In no case shall a detached single-family lot be created with an area of less than [seven thousand five hundred (7,500)] five thousand (5,000) square feet or a lot width of less than [sixty (60)] fifty (50) feet, except that the minimum lot width at the front lot-line may be reduced to thirty (30) feet around cul-de-sacs, at right-angle street curves, and in situations where "flag-lot" configurations would enable better site planning to be achieved. (Flag-lots shall generally be discouraged, but may be approved in special cases by the Commission if they would not diminish neighbors' privacy or create driveway access difficulties for emergency vehicles.) All lots with reduced street frontage requirements shall possess a minimum lot width of fifty (50) feet in the location where the principal structure is to be located.

The minimum setback from the front lot line shall be 12 (twelve) feet and side yard setbacks shall be not less than 8 (eight) feet.



115-128 REQUIREMENTS REGARDING PARKING AND STREETS AND  
DRIVEWAYS

Off-street parking shall be provided meeting the minimum requirements of these regulations. Design and improvements of parking lots and garages shall also conform to these regulations (particularly Section 115-125 J above) and other applicable regulations or ordinances. Design, arrangement and improvement of streets and driveways shall conform to the ordinance or ordinances and regulations governing the subdivision of land. In general there shall be a presumption in favor of interconnected streets, allowing cul-de-sacs when street connections would not be practicable or when they would produce significant through-traffic. Internal streets within RPC developments should also be designed with "stubs" to adjoining parcels, to facilitate road connections between adjacent subdivisions (both existing and future) wherever feasible. Garages may be located within five feet of rear lot lines and be accessed by service lanes, as an alternative to conventional arrangements in which garage doors and driveways visually dominate the streetscape in neighborhoods with narrow-lots. Such service lanes may have 10-foot cartway widths if traffic is one-way. Except for rear access lanes, all streets shall be planted with shade trees not less than 2 1/2" diameter at chest height, <sup>at</sup> [as] 50 (fifty) foot intervals on both sides of the street. Such trees shall be of deciduous species that attain a height of at least 50

(fifty) feet at maturity, such as oak, maple, sycamore, willow oak, white oak, pin oak, and sweet gum.

#### 115-129 GUARANTY OF COMPLETION

Before approval of a development plan, the Planning and Zoning Commission may recommend, and the County Council may require, a contract with safeguards approved by the County Attorney guaranteeing completion of the development plan in a period to be specified by the Commission in approving the site plan.

#### 115-130 SCHEDULE OF CONSTRUCTION

In approving an RPC District, the Planning and Zoning Commission may recommend and the County Council may adopt a schedule of construction. If such a schedule is adopted, no permits for construction shall be issued except in accordance with the adopted schedule. Where both single-family and multi-family dwelling types are part of the development, the schedule of construction may require concurrent construction of a given type, number or use in that proportion recommended by the Commission and adopted by the Council.

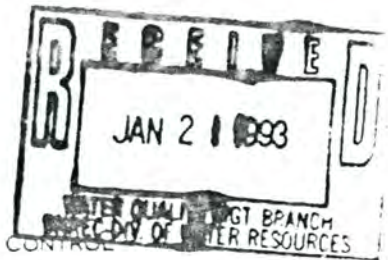




STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION

89 FINEST HOPKIN  
PO BOX 1401

DOVER, DELAWARE 19903



OFFICE OF THE  
DIRECTOR

TELEPHONE (302) 739-4411

MEMORANDUM

TO: John Schneider, Program Manager II  
Watershed Assessment Branch

FROM: *Sue*  
Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program

SUBJECT: Proposed Amendments to Sussex County Residential  
Planned Community District Ordinances

DATE: January 14, 1993

I have reviewed the above referenced document. I regret being unable to attend the briefing because several items are confusing to me and I haven't had the opportunity to explore it with Mr. Arendt. Nevertheless, here are my comments.

It is my understanding that RPCs are not required at this time, and that this ordinance only applies if a developer chooses to participate. If that is so, I don't see clearly why a developer would choose to do this. It seems as if there are some benefits, but one must read between the lines to find them. Can the developer build more houses, or utilize more side yard setback space, or provide separate garages? Perhaps an accompanying introduction that illustrates the potential economic incentives would be helpful.

Additional specific comments are:

1. Chapter 115-125 A. The last sentence in this paragraph doesn't make sense. It seems as if some words or punctuation marks are missing.
2. Chapter 115-127 end of first paragraph, sixth sentence from the bottom. The word "Commission" is typed twice.
3. Chapter 115-128 ninth line. "Or" should be "of".

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Exhibit (B) 77

4. Section 114-128

-second line from the top. "As" should be "at".

-third line from bottom. "50" needs to be followed by "feet".

-third line from bottom. I suggest deleting "deciduous". White pine is an evergreen. Other conifers should also be permissible.

Another general comment. There should be some flexibility with the use of the word "tree". Delaware, Virginia and Maryland's Coastal Management Programs have been participating in a two year project assessing what coastal habitat(s) are used the most by new-tropical migratory birds (warblers, vireos, thrushes, etc.). The report isn't finished yet, but early analysis of extensive data collection implies that coastal scrub/shrub vegetation is critical during migration (for most species) as well as for nesting (in some species). RPCs near the ocean or bays should be allowed to work this vegetation into the landscape. Finally, because native shrubs are also encouraged, I suggest working the word "shrub" in with the word "tree" in Chapter 115-125 E and I.

I think this is an excellent idea. Nicely designed neighborhoods that provide environmental amenities tend to attract affluent buyers. I think this may lead to environmental protection and economic growth for Sussex County. Both of these aspects are consistent with the goals of the Delaware Coastal Management Program.

A:\rpcs.dft





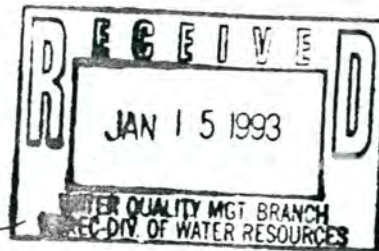
STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION

89 KINGS HIGHWAY  
PO BOX 1401

DOVER, DELAWARE 19903

TELEPHONE (302) 739-4411

OFFICE OF THE  
DIRECTOR



InterOffice Memo

To: John Schneider

From: Earl Shaver *Earl Shaver*

Date: January 15, 1993

Subject: Proposed Amendments to Sussex County Residential Planned Community District Ordinances

I have reviewed the above referenced document with respect to coordination with the sediment and stormwater program which exists within Sussex County. That program is implemented, subject to minimum State criteria, by the Sussex Conservation District.

My reading of the proposed amendments makes it unclear if there will be any conflict between the existing sediment and stormwater program and the proposed amendments. From a reading of the document, the author of the language is, apparently, unaware of the statewide stormwater program and our order of preference of structural practices. While there is some language discussing stormwater detention basins the issue of their consideration from an open space standpoint is confusing. This is especially true in light of our reliance and encouragement of wet ponds for stormwater control. If we fail to at least clarify the issue now, we will have to face up to it later.

The issue may be adequately addressed with language that I am not comfortable with; I just don't know. Even the terminology is different from that which I am familiar with.

One other issue that may be of concern is the discussion of vegetative buffer areas with their consideration for water quality protection. Vegetative buffers are only effective where surface runoff is in the form of sheet flow. If there is concentrated flow, buffers are not effective. They need to be given careful individual attention in lieu of a "blanket" consideration.

If you have any questions or comments, please do not hesitate to contact me.

cc: Sarah Cooksey

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Exhibit "B" (24)





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES  
89 KING HIGHWAY, P.O. BOX 1401  
DOVER, DELAWARE 19903

SUSSEX WATER MANAGEMENT SECTION  
WATERSHED ASSESSMENT BRANCH  
POLLUTION CONTROL BRANCH  
FACILITY SUPPORT BRANCH  
WETLANDS & AQUATIC PROTECTION BRANCH

(302) 739-5728  
(302) 739-4590  
(302) 739-5731  
(302) 739-5081  
(302) 739-4691

MEMORANDUM

TO: JOHN SCHNEIDER

FROM: WILLIAM F. MOYER *WFM*

DATE: JANUARY 27, 1993

SUBJECT: WETLANDS AND AQUATIC PROTECTION BRANCH COMMENTS ON THE  
PROPOSED AMENDMENTS TO SUSSEX COUNTY RESIDENTIAL  
PLANNED COMMUNITY DISTRICT ORDINANCES

The Wetlands and Aquatic Protection Branch has reviewed "An Ordinance To Amend Chapter 115, The Code of Sussex County, Relating To RPC Residential Planned Community District" which was received on December 30, 1992. The Branch supports the implementation of the proposed amendments because it would give the county a useful tool for meeting conservation goals while providing economically attractive site development options.

This proposed amendment can be made more effective and workable if preliminary plans have wetland delineations (including federal Section 404 wetlands) overlaid on all site plans. Such wetland delineations should be submitted during the early planning process prior to the Technical Advisory Committee (TAC) reviews. Accurate identification of wetlands early in the planning process will: 1) enhance the implementation of the provisions of the proposed RPC, 2) identify site building and regulatory limitations, 3) facilitate compliance with applicable federal or state wetlands requirements, 4) raise the quality of comments sent to the county, and 5) help the County address conservation and development issues on proposals that are not Residential Planned Communities. Since these delineations are currently required by the County Engineer, no additional expense to the developer or the county is expected.

Individual lots inside or outside RPC subdivisions that contain wetlands should have the delineation included with the individual deed and record plan with a statement that reads: "This site contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers or the State of Delaware." This should lower the potential for wetlands violations by subsequent owners of the property.

Exhibit "B" (25)

*Delaware's good nature depends on you!*



MEMORANDUM

January 27, 1993

Page Two

A clear definition of the permitted uses of the common areas, unless it is documented elsewhere, should be on the RPC plan to reduce confusion concerning maintenance and the purpose of naturally vegetated water resource buffer strips. Feel free to call John Kennel at x4691 if you have any questions.

WFM/JK/jk

Exhibit 'B'  
(26)



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
89 KING HIGHWAY, P.O. BOX 1401  
DOVER, DELAWARE 19903

OFFICE OF THE  
DIRECTOR

TELEPHONE (302) 736-4661

MEMORANDUM

TO: John Schneider  
FROM: William J. Cohen, AICP  
DATE: January 28, 1993

*Bill*

SUBJECT: Proposed Amendments to Sussex County RPC Zoning District

You have asked for a review of the proposed amendments that have been proposed by Randall Arendt as part of his consulting work with Sussex County.

Overall, I fully support the thrust and intent of the amendments that Randall has incorporated in the RPC District, as per his presentation and our meeting on January 13th. He has incorporated provisions for sensitive and responsive development that will, in the long run, be to the County's benefit.

The planning concepts as contained in the review standards and conditions will, for the first time, allow Sussex County the ability to approve new development projects that must meet long established environmental safeguards and performance standards.

Randall took notes on the few minor technical points I raised at the meeting, so there is no need to reiterate them here. At this point it is more important for the County to adopt a new planning approach to development approval, as Randall has very admirably done.

Exhibit 'B' (27)



# SUSSEX COUNTY ASSOCIATION OF REALTORS'

540-B South Bedford Street • Georgetown, Delaware 19947  
(302) 855-2300 • Fax (302) 855-2319

*Chairman Jack Allen  
Planning and Zoning Commissioners  
Sussex County Planning and Zoning  
Georgetown, DE 19947*

*RE: RPC Ordinance*

*Dear Chairman Allen and Commissioners:*

*Thank you for the opportunity to present our comments for the record this evening.*

*My name is Skip Valliant and I am the President-Elect of the Sussex County Association of REALTORS®, a 750+ member trade organization of independent business owners, property owners, real estate brokers and salespersons here in Sussex County.*

*We applaud the County's continuing efforts to protect and promote Open Space while striving to provide affordable housing for the generations to come. Our membership has long been active in efforts which have taken place for over a decade working with our County government and this Commission toward wise land use decisions and environmental protection.*

*Although our Association's Committee is still in the deliberation process as to the particulars of this proposal, we support the concepts embodied in your efforts to adopt the amendments to the RPC District for Open Space Preservation. We urge you and our County government to act expediently not only in its adoption, but the related and necessary amendments to our Land Use Plan and County Zoning ordinances that need to be brought into compliance to make adoption of this evening's proposal most effective for all our futures.*

*We stand ready to help in any way possible and are hopeful that you can afford us the opportunity to assist in the successful implementation of the RPC amendments for Open Space preservation.*

*Thank you.*

*Exhibit "C"*



*"The Voice for Real Estate" in Southern Delaware*



January 28, 1993



Sussex County Planning & Zoning  
PO Box 417  
Georgetown, DE 19947

Attn: Lawrence Lank  
Re: Proposed RPC revision.

Dear Lawrence,

As a follow up to the workshop recently held by the County to discuss revisions to the RPC District, I would request the County consider the following:

1. 115-118 Purpose: RPC application offers design flexibility for building and roads in order to create desirable and usable open space so that, where possible tree cover wildlife and water quality are protected. change: delete the word while and substitute so that, where possible on the eleventh (11th) line in the Purpose paragraph.

2. Section 1 B: Regarding the requirements to establish a Homeowners Association (HOA). Is there a mechanism currently in place for the review of these type of documents by the county?

. If a review process is established, the review of these documents should be made a part of the conditions of the approval but review of the document should occur after RPC approval but before recordation and sale of the lots.

. In certain instances a developer may establish a condominium association in the RPC district which would serve the same purpose as the HOA, regarding commonly held land or facilities. Therefore the County should add the concept of a condominium to the requirement of a HOA.

3. Section 1 C: Concerning recoverable costs to the County for work on private utilities or roads serving RPC development:

A. There should be both a formal notice to repair and a specific opportunity to cure incorporated in this concept.

Exhibit "D" (1)



4. Section 1 115-125: Review Standards

A. The County proposes to review a RPC application for for conformity to the principles of several disciplines. The County should be specific with regards to the following:

- . What is civic design and what are its principles.
- . What are the principles of ecological planning as they would relate to conformity by a developers RPC application.

B. Conservation Easements. This concept is used in various states to assure protection of wetlands; stream buffer; 100 year flood plains or steep slopes by precluding development in recorded "sensitive" areas of Conservation Easements. It should be used by the County as an exception not as a rule in specific situations in order to protect "sensitive" areas within an RPC development from encroachment.

5. Open Space Requirements. This proposal requires an applicant to provide no less than 50% open space excluding certain portions of the development. In order to ascertain whether the 50% criteria is both reasonable and achievable, the County must review its standards and requirements for the following:

- . Parking space size
- . Road width's particularly the 50' right of way requirement
- . Front, rear and side yard setbacks

Without consideration to modify these standards and of open space requirements within a RPC development no percentage can be reviewed as appropriate.

. Should revisions to these standards and requirements be made, the County must assure that all agency review will adhere to these revised criteria.

Exhibit "D"  
(2)

- . The percentage of open water which can be used in the open space calculation should increase from 25% as the benefits from ponds and lakes to water quality and ground water recharge should be promoted. I would suggest increasing the allowable percentage from 45% to 55%.
- . Add the words where possible to the sentence reading "This open space shall be laid out and distributed in a manner that provides convenient access to it....."
- 6. Buffers. Clarify that the requirement for buffers are not necessary alongside man-made lakes, ponds and/or permanent storm water retention facilities.
- 7. Upland Buffers. A specific review and turn around time should be clearly established for the forester review.
- 8. Passive Use Trail Systems. The RPC ordinance should not contain specific exclusions such as motorized vehicular recreational usage on passive-use trail systems. The County should specifically promote the use of trail systems in the RPC but not specifically dictate who or what uses the system. The developer and/or the HOA will establish the rules of use.
- 9. Areas Proposed For Site Disturbances. Add the words "Where possible" to the beginning of the first sentence of this paragraph ie. "Where possible areas proposed for site disturbances....."  
  
The second sentence of this paragraph beginning with "to the fullest extent...." should be reviewed closely as it appears to exclude most land in Sussex County from development if all the criteria established in this sentence is applied.
- 10. I & K. The County should specifically promote the theory of tree cover, reforestation and preservation through the RPC district, but should not specifically establish dimensions, clearing heights, planning programs, etc. These specifics are a part of the developers RPC application and should be reviewed by the County for appropriateness and adequacy during the application process.

Exhibit 'D' (3)



11. Section 1: Minimum Lot Area.

. In order to achieve the goals of flexibility, diversity of housing type and methods that house are placed on lots, the specific setback requirements for the reduced lots must be flexible when applied in an RPC development. The County should allow the developer to site the homes freely with minimal front rear and side yard setbacks within the 7500 sq foot lot., In this way, the street scapes of traditional Sussex neighborhoods as promoted in the RPC Purpose can be established .

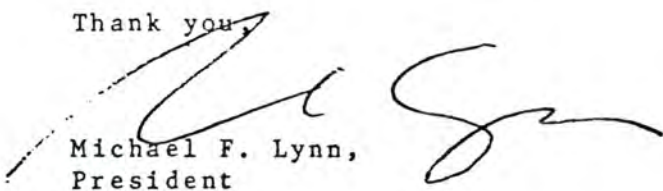
12. Section 1. 115-128: Parking Streets & Driveways.

. The County should review the size requirements for its parking space and reduce it accordingly to current accepted traffic standards.

. The County should allow relieve from the 50' right of way requirements on internal primary streets that are privately built and maintained. By reducing the right of way and paving section requirements in a RPC, the County will create opportunities for flexibility and diversity in land planning.

Thank you for the opportunity to participate in this process as I believe that the approach that Sussex County is taking toward creative land planning and open space in its RPC district is commendable. I would request that you consider these comments and where appropriate to the County's goals review the changes outlined for incorporations into the final ordinances.

Thank you,

  
Michael F. Lynn,  
President

MFL:dn

Exhibit "D"  
(4)