

MINUTES OF THE REGULAR MEETING OF OCTOBER 24, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 24, 2002 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Berl – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Planner..

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of August 22, 2002 as amended.

Mr. Berl described how the public hearings would be conducted.

PUBLIC HEARINGS

C/U #1466 – application of **BRIDLE RIDGE PROPERTIES, LLC**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for 38 duplex style homes to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 11.96 acres, more or less, lying at the northwest corner of the intersection of Route 9 and Minos Conaway Road (Road 265).

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that in 2001 the property was proposed for rezoning to B-1 Neighborhood Business for 30,000 square foot of general office space and 60,000 square feet of medical-dental office space; that it was recommended by the Department that the applicant be required to perform a traffic impact study; that in January 2002 the Department learned that an application may be filed for 48 townhouses on the property; and that if an application is filed for Conditional Use for townhouses a traffic impact study will not be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices and maintain vegetation upon completion of construction; that Sassafras soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the property is located within a Secondary Developing area of the

Strategies for State Policies and Spending document approved in December 1999; that the State would prefer to see the Community and Developing areas approved for growth first, however, this project does border both a manufactured home development and a single family development; that the State does not object to this proposal; that the State asks that the County give consideration to the site being located across from the 158 acre Truitt Expansion of the Hopkins Covered Bridge Farm District and the necessity for deed references relating to agricultural activities; that an entrance permit will be required; that while there is a low probability for prehistoric archaeological sites, there is a potential historic property across Route 9, southeast of the site; that the State request that the developers consider this property and work to minimize the visual impact on the proposed project; that DNREC has stated that this parcel can be developed if appropriate and applicable pollution control strategies are employed to protect any adjoining streams and watercourses; that the developer intends to obtain public water from Tidewater Utilities, Inc.; that construction of any wells will require well permits from the DNREC Water Supply Section; that if well pointing (dewatering) is needed during any phase of the construction, dewatering well permits must also be obtained before the points are installed; and that site plans and water for fire protection plans are required to be submitted for review and approval by the Office of the State Fire Marshal.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed project should be subject to review by the Technical Advisory Committee, and that the roads should be designed and constructed in accordance with the street design requirements of Chapter 99 and inspected by the County.

The Commission found that a letter was received from Todd A. Keen, Secretary/Treasurer for Brittany Acres Homeowner's Association in opposition to the application and expressing concerns relating to difference in lot sizes between this project and the lots within Brittany Acres; that none of the present homes in the area are considered multi-family; that the deviation would promote a type of development that will be incompatible with the surrounding area; that they are concerned about community restrictions with any proposed development on the parcel, such as building square footage, building materials and quality, outbuildings, fencing, storage of boats, trailers and vehicles, landscaping requirements and maintenance, owner occupancy requirements and pet policies; the possible negative impact on property values; stormwater management and the disregard for the natural flow of drainage; that no landscape buffers have been proposed adjacent to Brittany Acres; that building setbacks adjoining Brittany Acres need to be increased; that questioning where are the proposed facilities that will supply water (i.e. well, pumps, holding tanks, etc.).

The Commission found that Preston Dyer, Gary McCrea, and Joe Reed, Members of Bridle Ridge Properties, LLC were present on behalf of the application.

The Commission found that Mr. Dyer submitted a reduced copy of the site plan, rendering of a proposed duplex building, and a trip generation comparison for the record.

The Commission found that Mr. Dyer and Mr. McCrea stated in their presentations and in response to questions raised by the Commission that they propose to develop 38 duplex units on 12.17 acres at a density of 3.12 units per acre; that the project will be served by public sewer from Sussex County and central water from Tidewater Utilities, Inc.; that the site was a part of a larger tract that was originally divided into four (4) parcels; that Parcel 1 is owned by David Shevock; that Parcel 2 was developed by David Shevock as Brittany Acres; and that this application relates to Parcels 3 and 4; that a search of the title to the Shevock properties indicate that a deed restriction is recorded which references that by acceptance of a deed, the grantee acknowledges that Parcels 3 and 4 fronting on Route 9 may be the subject of B-1 Neighborhood Business development by the Grantor; that the trip generation comparison indicated a substantial reduction in traffic generation from offices to duplex units; that the site is located in a Development District according to the 1997 Comprehensive Plan and meets the purpose and guidelines referenced in the plan; that the Plan suggest an overall density of 4 residential units per acre; that the project is proposed due to the availability of central sewer and central water and since the site is adjacent to Route 9; that the project will create a transitional zone between Route 9 and the single family development of Brittany Acres; that each unit will exceed 2,000 square feet of floor area; that a combined two units will exceed 4,000 square feet of floor area, a similar size to some of the homes in Brittany Acres; that Sussex East and Sussex West Manufactured Home Communities are in close proximity across Road 265; that the price range will vary between the prices of homes in Brittany Acres and Sussex West; that they plan on fencing the area inside of the Cypress trees along Brittany Acres; that a homeowners association will be created to maintain the streets, open space, stormwater management areas, landscaping and fencing; that the stormwater management facilities will meet or exceed the requirements of the Sussex Conservation District; that DelDOT has no objection to an entrance on Road 265; that the PVC vinyl clad fencing will be five (5') feet high; that the berm along Route 9 will not exceed four (4') feet in height; that the divided street sections will be 12.5 feet in width; that the street length is approximately 1,000 feet; that the units will be priced in the \$225,000 to \$235,000 range; and that David Shevock, developer of Brittany Acres, has stated that he has no objection to the proposed project.

The Commission found that Mr. Dyer submitted a copy of the referenced four parcel subdivision, a copy of a deed from David Shevock referencing deed restrictions, the trip generation comparison, and a letter from Davis, Bowen & Friedel, Inc. to the Delaware Department of Transportation.

The Commission found that Mark Baker, owner of Lot 9 in Brittany Acres, was present in opposition, submitted a letter and petition from residents with Brittany Acres, and

stated that the application should not be considered under the AR-1 zoning code and that its approval would result in the direct violation of zoning laws; that Article IV Section 115-22 states the permitted Conditional Use application types and that the only reference to this type application would be references as uses when the purposes of this chapter are more fully met by issuing a Conditional Use permit; that the purposes of the AR-1 District are to provide for agricultural activities, to protect agricultural lands, to protect water resources and at the same time, to provide for low-density single family residential development; that the application is for a high-density multi-family residential development; that a development of high-density multi-family homes in no way can be considered to more fully meet the purpose of the AR-1 District when those purposes are to provide for low-density single-family residential development; that the application is an attempt to circumvent zoning laws and its approval would result in a spot-zoning of this property; that the application must be firmly rejected as it would violate the stated purposes and allowable conditional uses of the AR-1 District; that he and his neighbors expect that the parcel will be developed; that all of the projects in the area are developed with single-family housing; and that the Sussex West Manufactured Home Community has been developed with a density of approximately 2.1 units per acre.

The Commission found that Angelo Delapo, owner of Lot 8 in Brittany Acres, was present and stated that he is concerned about the size of the homes proposed versus the size of the homes in Brittany Acres; that the number of homes and the price range will negatively impact the homes in Brittany Acres; that lots within Brittany Acres are served by private wells; that the area along Road 265 has developed as low density; that the amount of traffic on Route 9 makes it difficult for traffic from Road 265 to get out onto Route 9 and that any additional development will make it more difficult.

The Commission found, by a show of hands, that 13 people were present in opposition.

Mr. Wheatley asked if anyone could clarify Tidewater Utilities, Inc. connection to the water system.

The Commission found that Mr. McCrea stated that Tidewater Utilities, Inc. had advised them that the company could supply water to the project.

The Commission found that Wayne Baker, a resident living along Road 265, stated that Tidewater Utilities, Inc. supplies water to Sussex West from their pump location at Mallard Point Subdivision and that the water lines runs down the westerly side of Road 265 to the entrance to Sussex West, near the entrance to Brittany Acres.

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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action.

Motion carried 5 – 0.

C/U #1467 – application of **BEEBE E. MOORE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family use (2 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.34 acres, more or less, lying west of Road 279, 700 feet south of Road 289.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras loam which has slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation after completion of construction; that Sassafras soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Beebe E. Moore was present and stated in her presentation and in response to questions raised by the Commission that she proposes to build a garage with an apartment above it so that her daughter may live in the apartment and an addition to the garage for an efficiency apartment for her sister; that the garage will be connected to the existing house with a family room; that the existing house contains approximately 1,300 square feet; and that the total number of units will be three (3), which includes the existing house.

The Commission found that there were no parties present in support or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved with the following stipulations:

- 1) The number of residential units shall not exceed three (3) units (one of which is the existing single family detached dwelling).
- 2) Parking shall comply with the requirements of the Zoning Code.

- 3) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

SUBDIVISION #2002-24 – application of **KUHN FAMILY SUSSEX PARTNERSHIP** to consider the Subdivision of land in an AR-1 Agricultural Residential District and GR General Residential District in Indian River Hundred, Sussex County by dividing 138.80 acres into 120 lots, located southwest of Road 279, approximately 580 feet southeast of Road 277.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on September 18, 2002 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that the applicant's attorney submitted a packet on October 21, 2002 and that the packet contained a copy of the application, Technical Advisory Committee comments, a Nutrient Assessment report, and a revised copy of the preliminary plan.

Mr. Abbott read a letter received from Mr. Schrader in reference to the restrictive covenants and a letter received from Julie Bernheimer in opposition to the application.

The Commission found that Bill, Bill, Larry and Rick Kuhn, Jim Fuqua, Preston Lee, and Rob Ament were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the revised plan that was submitted has reduced the number of lots from 120 to 119; that the site consists of 138.8 acres on 2 tracts of land; that the proposed use is an AR-1 Agricultural Residential single family residential subdivision; that the density is 0.8 lots per acre; that the average lot size is 23,000 square feet; that approximately 86 acres of the site is cleared land; that the large parcel contains 101 lots and the small parcel contains 18 lots; that each section has a separate entrance; that the entrances will conform to DelDOT standards; that Tidewater Utilities is willing and able to provide public water service and submitted a letter from Tidewater Utilities; that the septic system will be a spray irrigation system and will be built to Ordinance No. 38 requirements; that the applicants will comply with all requirements of the Sussex Conservation District; that the streets will be private and maintained by a homeowner's association; that 31 % of the site is wetlands and that no lots are located in the wetland areas; that there are two areas of open space and that they are 2.2 and 1.5 acres in size; that there is a proposed pedestrian bridge to open area in the wetlands area; that there is a cemetery located in the common areas and family members will have access to visit the site if they so desire; that there will not be any piers, boat docks or marinas except for the existing pier and bulkhead that will be sold with either

Lot 41 or Lot 42; that there are not any environmental concerns; that the revised reduction of nitrogen will create a net decrease of 77 % and reduction of phosphorus will create a net reduction of 88 % and submitted An Assessment of Nutrient Impacts report into the record; that the Kuhn's have owned the property since 1983 and submitted a copy of the deed into the record; that there will be a buffer of 50-feet along the westerly property line; that all lots have a 50-buffer from the State Wetlands line; that the homeowner's association will maintain the common areas; that the items referenced in Subsection 99-9 have been addressed; that there will be no disturbance to the wetlands; that DNREC favors spray irrigation septic and submitted a letter from DNREC in reference to a previous application in the area; that the area is a mix of single family residential homes with dwellings and manufactured homes; that the proposed restrictive covenants are greater than those of The Woods on Herring Creek; that the minimum dwelling size will be 1,800 square feet; that the property is located in the development district based on the 1997 Comprehensive Land Use Plan; that there are other developments in the area; that there is a 30-foot easement that connects the 2 parcels; that 2 pump stations will be used; that the system will be gravity fed utilizing the existing contours; that the cemetery dates back to the late 1800's and will be maintained by the homeowner's association; that the recreational uses in the common areas have not been determined yet but will probably include some type of playground depending on what the owners want; that manufactured homes will not be permitted; that the lots will be sold for custom built homes; and submitted a copy of the tax map of the area depicting other developments; a copy of the restrictions and recorded plot of the Woods on Herring Creek subdivision; and a copy of findings of approval and proposed conditions.

The Commission found that Trevor Gourke a realtor was present representing the Dormans, an adjoining property owner, in support of this application.

The Commission found that Lawrence Lewandowski, owner of Angola Crest, was present in opposition and stated that 94 residents in Angola Crest are opposed to the application; that Road 279 has blind curves where the entrances will be located and submitted photographs; that the residents have concerns about the spray irrigation system and it's location; that there will be odors from the lagoons; that trash is being dumped all along Road 279; and expressed concerns about wells being contaminated.

Preston Lee, engineer, advised the Commission that the septic design has to be approved and permitted by the DNREC; that the lagoons could be moved; that the spray irrigation has to be a minimum of 150-feet from adjoining property lines; and that the system will be similar to the one in use at The Plantations near Lewes.

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 5 to 0.

OLD BUSINESS

C/U #1465 – application of **CHARLES H. HAYES, JR.**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for go-karts, parts and repairs, and building material storage for a contractor to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39,610 square feet, more or less, lying north of Route 9 and 850 feet east of Route 319 (Sand Hill Road) and east of Georgetown.

The Commission discussed this application, which has been deferred since September 26, 2002.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved with the following stipulations:

- 1) All repairs of go-karts and assembly shall be performed in the existing building. All testing and running of engines shall be conducted in the sound proof room.
- 2) No outside storage of parts and materials for either business shall be permitted.
- 3) Concrete parking bumpers shall be provided to delineate the required off-street parking.
- 4) Business hours may be from 8:00 A.M. until 10:00 P.M. Mondays through Fridays, 8:00 A.M. until 2:00 P.M. on Saturdays, with no Sunday hours.
- 5) One (1) lighted ground sign, not exceeding 32 square feet per side, may be permitted.
- 6) The site plan shall be subject to the review and approval by the Planning and Zoning Commission upon receipt of all required agency approvals.

Motion carried 5 – 0.

C/Z #1481 – application of **ROBERT HARRIS** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the northwest intersection of Road 361 and Road 368 and east of Road 362, to be located on 64.28 acres, more or less.

The Commission discussed this application, which has been deferred since October 10, 2002.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is an expansion to an existing RPC (C/Z #1361, a.k.a. Ordinance No. 1283) and with the following stipulations:

- 1) Central sewer service shall be provided as part of the Sussex County South Coastal Regional Sewer System and design shall be as approved by the Sussex County Engineering Department.
- 2) A central water system shall be provided complying with the regulations of DNREC, the Office of the State Fire Marshal and the Division of Public Health.
- 3) Stormwater management and erosion control plans shall conform with all State and County regulations.
- 4) Road and entrance improvements shall be completed by the developer per requirements of Delaware Department of Transportation.
- 5) Prior to completion of the 100th unit, recreational facilities including tennis courts, swimming pool and Club House shall be constructed on site with appropriate fencing as determined by the Planning and Zoning Commission. Location of the recreational area as submitted to Sussex County Council, as revised.
- 6) A buffer shall be provided along the boundary of [the storage unit parcel and] lands to the north and south which shall be landscaped as required by the Planning and Zoning Commission.
- 7) All lots shall contain a minimum of 7,500 square feet of lot area, exclusive of ponds.
- 8) The maximum number of residential units shall not exceed [202] **217**.
- 9) The final site plan shall be reviewed by the Planning and Zoning Commission.
- 10) A landscape buffer shall be provided between Greenwich Lane and lands of Vernon P. Ciekot.

Note: Wording or number in [] shall be deleted. **Bold** printing is a correction.

Motion carried 5 – 0.

SUBDIVISION #2002-20 – application of **ROBERT W. AND SHARON L. WALLS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 2.57 acres into 2 lots, and a waiver from the street construction requirements, located west of Road 317, 1,535 feet south of Route 47.

The Chairman referred back to this application which was deferred at the October 10, 2002 meeting.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary and to approve the waiver from the street construction requirements. Final approval shall be subject to receipt of an entrance approval from DelDOT, an approval from the Sussex Conservation District, and a septic approval from the State DNREC.

Motion carried 5 – 0.

SUBDIVISION #2001-11 – application of **DYER MCCREA VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 58.70 acres into 67 lots, located south of Route 22, 600 feet east of Route 24.

Mr. Abbott advised the Commission that this is the final record plan for a 66-lot subdivision; that preliminary approval was granted on May 24, 2001 for 67-lots; that the final plan has been reduced by 1 lot; that the Commission granted a time extension in April 2002; that the final plan similar to the preliminary plan except that 50-foot wide common areas have been added for landscaping and stormwater management areas and that Bay Shore Boulevard has been relocated further east due to DelDOT requirements; that the smallest lot sizes are 16,500 square feet and the Board of Adjustment granted a variance for lot sizes are Case No. 7934; that the final record plan meets the requirements of the subdivision code; that the staff has received all agency approvals; and that the plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve this application as a final.

Motion carried 5 – 0.

SUBDIVISION #2001-27 – application of **BRIDLE RIDGE PROPERTIES, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 105.88 acres into 277 lots, located at the southwest corner of the intersection of Road 285 and Road 277.

Mr. Abbott advised the Commission that this is the final record plan for a 277-lot subdivision; that preliminary approval was granted on February 28, 2002 for 277-lots; that the final record plan meets the requirements of the subdivision code; that the staff has received all agency approvals; and that the plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

Motion carried 5 – 0.

SUBDIVISION #2001-33 – application of **DR. LAWRENCE A. AND BONNIE KAPLAN** to consider the Subdivision of land in a GR General Residential District in Broadkill Hundred, Sussex County, by dividing 3.00 acres into 4 lots, located southeast of Best Lane, 480 feet southwest of Route One.

Mr. Abbott advised the Commission that this is the final record plan for a 4-lot subdivision; that preliminary approval was granted on December 27, 2001 for 4-lots; that lots 2 and 3 will have a shared driveway which is noted on the record plan; that the burial plot located on lot 1 is depicted on the record plan and access is provided by an easement; that the final record plan meets the requirements of the subdivision code; that the staff has received all agency approvals; and that the plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary.

Motion carried 5 – 0.

OTHER BUSINESS

Bay Crossing RPC
Master Record Plan – Delaware Route One

Mr. Abbott advised the Commission that this is the master plan for a 256 unit residential planned community; that the application was approved at Ordinance No. 1382 at C/Z #1402 by the County Council on June 17, 2000; that 12 conditions of approval are referenced on the site plan; that there are 172 single family homes on 7,500 square foot lots; that the single family homes are requesting a 20-foot front and rear yard setbacks and 8-foot side yard setbacks; that the setbacks for the townhouses are 10-foot front and 20-foot rear for an aggregate of 30-feet; that the Commission can permit lesser setbacks since this is a residential planned community; that central sewer will be provided by Sussex County; that central water will be provided by Tidewater Utilities; that the master plan is similar to the preliminary plan; that each phase is required to be reviewed and approved by the Commission; that the intent of master plans is to show how the project will be developed; and that master plans are usually recorded.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the master plan as a concept for recordation.

Motion carried 5 – 0.

Bayshore Subdivision
Final Multi Family Site Plan – Route 22

Mr. Abbott advised the Commission that the site plan is for 146 units; that preliminary approval was granted by the Commission on May 10, 2001 for 170 units; that the total number of units has been reduced and the layout has changed due to the relocation of Bay Shore Drive being further east as required by DelDOT; that 365 parking spaces are required based on a variance granted by the Board of Adjustment at Case No. 7933; that the maximum building length is 186.79 feet also based on the same variance number; that there are 20 buildings with 6 units; 2 buildings with 5 units; and 4 buildings with 4 units proposed; that the site plan meets the requirements of the zoning code; that central water will be provided by Tidewater Utilities and central sewer will be provided by Sussex County; that the staff has received all agency approvals; and that the site plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a final.

Motion carried 5 – 0.

Bethany Bay RPC
Revised Master Plan – Road 350

Mr. Abbott advised the Commission that this is a revised master plan for a residential planned community; that the revisions are for sections 1.2B, 1.4, and 1.6; that the only revisions are for the style of units and reducing the number of units; that an additional clubhouse for golfing only is proposed; that the setbacks meet the requirements of the zoning code; and that final approval of each phase will be required to be reviewed and approved by the Commission.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised master plan as a concept for recordation.

Motion carried 5 – 0.

Meeting adjourned at 9:35 P.M.