



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF SEPTEMBER 16, 2004

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 16, 2004 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00pm with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, and Mr. Lank – Director.

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

PUBLIC HEARINGS

C/U #1555 – application of **PAUL ROBINO AND ROBINO-SANIBEL VILLAGE, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family residential dwelling structures (122 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 15.29 acres, more or less, lying southeast of Route 54 (Lighthouse Road) and 100 feet northeast of Route 394.

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains: a data summary; a revised preliminary site plan showing 61 units; a copy of the Future Land Use Map from the Comprehensive Plan Update; a copy of the LUPA application; a copy of the tax map for the area; copies of LUPA reference maps for the area; a copy of the PLUS application; suggested conditions of approval; copies of DelDOT letters of May 23, 2003 and June 18, 2003; a copy of a letter to DelDOT from Karins and Associates, dated July 28, 2003; a copy of a DelDOT letter, dated July 31, 2003; a letter from Artesian Water Company, Inc. dated September 8, 2004; a copy of the Public Water Systems Map from the Comprehensive Plan Update; a copy of a letter from County Engineering, dated April 7, 2004; a copy of the Public Wastewater Systems Map from the Comprehensive Plan Update; a copy of a County Tax Map depicting the Fenwick Island Sanitary Sewer District; and a copy of a letter from Atlantic Resource Management, Inc.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located within a County

operated or maintained sanitary sewer or water district; that wastewater capacity is available for 61 units as proposed on the plan; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$3,464.00 per EDU; that the location and size of laterals or connection points will be required to be in conformance with the South Coastal Area Planning Study 2004 Update; that the proposed project is located in the West Fenwick Planning Area; that the County has no schedule to provide sewer service to this area; that the proposed project is not currently contiguous to any existing sanitary sewer district boundary; that there appears to be three intervening

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parcels between the project and the Fenwick Island Sanitary Sewer District boundary; and that these parcels will have to be included in any district expansion request. Attached to those comments was a letter from the County Engineering Department to Merestone Consultants, Inc.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed plan depicts a tax ditch, wetlands and streets and should be subject to review by the Technical Advisory Committee; that the roads shall be constructed and inspected to meet or exceed the minimum street design requirements of Chapter 99, the Subdivision Ordinance; that the Applicant needs to provide a minimum of 40 feet turning radius for all turns and intersections unless the zoning ordinance paving width is provided; that the project depicts a central community recreation area; that a means of pedestrian access from the units should be provided; that sidewalks and street lights should be provided for pedestrians to use instead of walking within the streets or in the dark to access community areas.

The Commission found, based on comments received from the Office of State Planning Coordination, that they reviewed the project as if it would be developed as 122 units; that the site is located within the Environmentally Sensitive Developing Area according to both the County Comprehensive Plan Update and the State Strategies Maps; that the State has no objections to this application; that the comments provided agency comments from the Delaware Emergency Management Agency, DelDOT, the State Historic Preservation Office, DNREC Air Quality Division, the Tank Management Branch, and the Department of Education. A second letter from the Office of State Planning Coordination referenced that the Applicants have applied for a PLUS review and that the review is scheduled for September 29, 2004, and that the Office requests that the Commission defer action until comments can be generated from the September 29, 2004 review meeting.

The Commission found that Paul Robino was present with James Fuqua, Attorney, and Roger Gross of Merestone Consultants, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they originally applied for 122 units; that they have revised their plans to show a maximum of 61 units; that sewer is proposed to be provided by the County; that the number of units proposed was revised based on comments from the County Engineering Department; that the Applicant will

construct the sewer lines; that the proposed density equals 3.98 units per acre; that the Applicants have no objections to the County restricting the number of units to 61; that central water will be provided by Artesian Water Company, Inc.; that a traffic impact study was not required by DelDOT; that the site is adjacent to two small parcels included in the Americana Bayside project; that a tax ditch runs along the southwest side of the site; that maintenance of the property will be the responsibility of the Home Owners Association; that no impact on the Indian River School District is anticipated; that retail and service uses are in close proximity to the site; that the Office of State Planning

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Coordination has not indicated any opposition; that the tax ditch can be used for positive runoff outfall; that they plan on designing the project by providing stormwater management retention ponds which will be an improvement over the present agricultural practices; that no wetlands exists on the interior of the site; that the units are all single family detached dwelling units (clustered); that amenities include a pool and walking trails; that an application on a parcel across Road 394 was recently rejected for rezoning to MR; that this application is a Conditional Use which allows the County to impose conditions of approval; that the site is clearly marked for development since both the County and State has recognized that the site is located within a growth area; and that they do not anticipate any changes in the recommendations of the Office of State Planning Coordination after the PLUS review.

The Commission found that Ellen Magee, an area resident, spoke in opposition to the application and stated that she has spoken to the County Engineering Department and found that the next upgrade to the Fenwick Island Sanitary Sewer District is not until the year 2011; that the County has no plans to extend sewer to the area in the immediate future; that Williamsville is a rural area; that the proposed use is not compatible to the area; that the Perch Creek Tax Ditch Committee has not been contacted by the Applicants; and that action should not be taken without comments from the Indian River School District.

At the conclusion of the Public Hearings, the Commission discussed this application.

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

Motion carried 4 – 0.

C/U #1557 – application of **CLINTON PROPERTIES, LLC** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (95 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 22.24 acres, more or less, lying on the south side of Sandy Cove Road (Road 358), east of White Creek and 0.7 mile west of Cedar Neck Road (Road 357).

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a presentation outline, references to zoning, land utilization, civil engineering, traffic, environmental issues, and architectural renderings.

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The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that there is sufficient capacity for the project; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$3,219.00 per EDU; that the proposed project is served with an 8-inch sewer line; and that conformity to the South Coastal Planning Area Study will be required.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed plan should be subject to review by the Technical Advisory Committee; that the roads shall be constructed and inspected to meet or exceed the minimum street design requirements of Chapter 99, the Subdivision Ordinance; that the Applicant needs to provide a minimum of 40 feet turning radius for all turns and intersections unless zoning ordinance paving width is provided; that the project depicts a central community recreation area; that a means of pedestrian access from the units should be provided; that sidewalks and street lights should be provided for pedestrians to use instead of walking within the streets or in the dark to access community areas.

The Commission found, based on comments received from the Office of State Planning Coordination, that this Conditional Use is to replace an existing campground with 95 units; that the site is located within the Environmentally Sensitive Developing Area according to both the County Comprehensive Plan Update and the State Strategies Maps; that the State has no objections to this application; that the comments provided agency comments from the Delaware Emergency Management Agency, DelDOT, the State Historic Preservation Office, DNREC Air Quality Division, and the Tank Management Branch.

The Commission found that Clinton Bunting and Zac Crouch of Davis Bowen & Friedel, Inc. were present and stated in their presentations and in response to questions raised by the Commission that they have altered the site plan to depict 84 townhouse type units, rather than 95; that the marina on the site contains 84 slips and they want to maintain the same number of units; that the proposed project consist of three existing GR zoned parcels; that the site is located within an Environmentally Sensitive Developing Area

according to the Comprehensive Plan Update; that the property will be governed by restrictive covenants; that the site presently contains 180 campsites with sanitary unloading, not central sewer; that existing trailers encroach onto wetlands; that there is no stormwater management; that the existing site contains 5 entrances; that the townhouse units are proposed with a clubhouse, pool and nature trail; that a 50-foot wide protected buffer is proposed from State wetlands; that they propose a walking community; that the recreational amenities are centrally located; that they plan to improve the existing crabbing pier, boat marina and boat ramp; that street lighting will be provided; that 35%

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of the site is open space; that central sewer will be provided by the County; that the sewer service will connect to an existing manhole on Road 358; that central water will be provided by Sussex Shores Utilities, Inc. for domestic water and fire protection; that stormwater management will be provided and will be treated for water quality and quantity per DNREC requirements; that streets will be designed and constructed per County specifications and will be maintained by the Homeowners Association; that the number of entrances is proposed to be reduced to 2 entrances; that DelDOT did not require a traffic impact study; that the average daily vehicle trips may be reduced by 1,000 trips per day; that a Phase I Environmental Site Assessment has been performed by Environmental Testing, Inc. which reveals no evidence of recognized hazardous environmental conditions in connection with the property; that runoff will be treated through 2 stormwater management facilities; that impervious surfaces will be reduced by 4%; that the townhouses are proposed to be designed with a coastal colonial design and will include one and half car garages; that this proposal is a down zoning which reduces from 180 campsites to 84 units and is equal to or less dense than adjoining developments, which include condominiums and small residential mobile home lots; that the number of entrances will be reduced; that the number of vehicle trips per day will be reduced; that there will be an economic benefit to the County and the area established by development of the project; that the application is in keeping with current zoning and uses in the area; that Mrs. Jumps lot is not a part of the application site and will be provided with a cross access easement; that the crabbing pier and walking trails already exist and will be improved; that additional right-of-way will be dedicated to public use along Road 358; that Sun Marine will be hired to improve the existing bulkheads and boat ramp; and that the marina and boat ramp are only intended for use by residents in the project.

The Commission found that Kevin Sagers, the current property owner, spoke in support of the project and stated that the campground has existed for 40 years; that current camping units are larger and need more utility services; that the campground is full from June through Labor Day; that there are normally 250 automotive vehicles on the site and 750 people; that vehicle trips per day will be lessened; that the number of entrances will be lessened; that camping vehicles will not be travelling along Road 358; that no more EDUs will be generated; that the manhole connection is located at the entrance to Cedar Shores Condominium project; and that the project should generate less water usage.

The Commission found that Larry Petchel, an area resident, stated that he has no objections as long as the State maintains access to the water at the end of Road 358.

The Commission found that Bob Klopfenstein, Leonard Pollitt and Marsha Thomas, area property owners, stated that they had no major objections but were concerned about traffic, the lack of a bikepath, accidents in the area, the number of EDUs, the widening of the road and the taking of trees along the road for the widening; that DelDOT should require a Traffic Impact Study; that the site should not be permitted to add any boat slips

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along the small lagoon to the east of the site; and that flooding of the wetlands has occurred during major storm events.

The Commission found that Mr. Bunting and Mr. Crouch responded to the concerns by advising the Commission that they have no intent of disturbing the small lagoon to the east of the site; that they have no intent of taking any trees out along Road 358; that the State does intend to improve the roadway; and that they will not be creating any more boat slips that those that already exists.

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

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that C/U #1557 for Clinton Properties, LLC be approved for the following reasons and with the following conditions:

- 1) The project is a redevelopment of an outdated use.
- 2) The project is a reduction of density from 180 campsites to 84 residential units.
- 3) The project will generate a reduction in traffic, based on traffic studies (a possible reduction of 1,000 vehicle trips per day).
- 4) The number of entrances is being reduced from 5 to 2.
- 5) The project will have amenities including a pool, clubhouse and nature trail, and use of an existing 84 boat slips.
- 6) The site is located in a developing area and a GR General Residential Zoning District, therefore the use is appropriate for the area.
- 7) This Conditional Use shall be subject to the following conditions:
 1. The project shall be served by a County sanitary sewer district.
 2. All amenities shall be open to use by the residents of the project within 2 years of issuance of the first building permit.
 3. A 50-foot wide buffer shall be maintained from all State wetlands.
 4. Stormwater management and erosion and sediment control shall use Best Management Practices to reduce the affects on any wetlands.
 5. No construction activities, site work or deliveries of materials on, off or to the property shall occur except between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.

6. Street lighting and sidewalks shall be provided throughout the project and shall be shown on the final site plan.
7. The boat ramp shall be private and open to the use of the project's residents and guests only.
8. There shall be no boat docks or slips or moorings for boats on the small lagoon east of the project.

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9. The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

Motion carried 4 – 0.

C/U #1558 – application of **DOUG MEYER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for a used car sales lot to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.53 acres, more or less, lying at the northwest corner of Route 404 (a.k.a. Route 18) and Road 594.

The Commission found that the Applicant had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains references to Conditional Uses from the County Code; a letter from Mr. Lank to the applicant, dated February 15, 2002; a copy of a portion of the tax map for the area depicting the zoning boundary crossing the parcel; photographs of the site; a site plan; a copy of a DelDOT traffic summary report for the site; and suggested conditions of approval.

The Commission found, based on comments received from the County Engineering Department, that according to the Western Sussex Water and Sewer Plan Area study the site is located in the Bridgeville Service Area and that the Applicant should contact the Town of Bridgeville concerning the availability of water and sewer service.

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 Office of State Planning Coordination, that the site is located in a "Rural" area according to the Strategies for State Policies and Spending document; that the primary land uses in the area should be agriculture and passive uses consistent with agriculture; that the State would prefer to see a uses car dealership in a "Community" or "Developing" area; that the State objects to this Conditional Use; and that the comments included comments from DelDOT, the State Historic Preservation Office, and DNREC.

The Commission found that Doug and Glenda Myer were present with Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the parcel is split with two zonings, AR-1 and GR; that the existing grocery store and proposed used car sales display are located within the AR-1 district area; that they propose to develop a sales display area for 12 vehicles between the store and garage; that the grocery has existed on the site since prior to zoning; that the office for the used car sales lot will be maintained in the store building; that they do not intend

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to change any entrances to the site; that one wall sign exists on the store; that they propose to erect a ground sign to advertise the used car sales lot; that they will acquire all necessary permits; that the site is located in a Low Density Area according to the Comprehensive Plan Update where limited retail and commercial business uses are appropriate; that the Applicant has never ventured into the used car sales business; that repair work will be performed off site; and that business hours for the sales lot would conform to the store hours of 6:00 a.m. to 6:00 p.m. six days per week, and closed on Wednesdays.

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

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied since the use would not be an appropriate use of the property, and would not be an improvement to the property or the area.

Motion carried 4 – 0.

C/Z #1553 – application of **HOWARD DARBY** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, land lying south of Road 505, 0.7 mile west of Road 5505A, to be located on 1.15 acres, more or less.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that according to the Western Sussex Water and Sewer Plan Area study this site is located in the Delmar Service Area and that the Applicant can contact the Town of Delmar concerning the availability of water and sewer service.

The Commission found, based on comments received from the Office of State Planning Coordination, that the proposed use would be inconsistent with the Comprehensive Plan Update.

The Commission found that Howard Darby was present and stated in his presentation and in response to questions raised by the Commission that he owns the site and the adjoining farm; that he intends to provide a site for a tenant; that several of the homes in the area are mobile homes; that the site is paid for and not mortgaged; and that a mobile home was located on the site in the 1970s.

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Mr. Lank advised Mr. Darby that a double wide manufacture home, not any older than 5-years, could be permitted on the lot without requiring a public hearing, and that the farm is large enough to permit a single wide manufactured home for a family member or employee on the farm.

Mr. Darby stated that he did not want to place a manufactured home on the farm since the farm is under mortgage.

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

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

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied since the site would be considered spot zoning.

Motion 4 – 0.

Subdivision #2003-56 – application of **DOUGLAS D. AND JUDITH K. BREEDING** to consider the Subdivision of land in an AR-1 Agricultural Residential District and GR General Residential District in Cedar Creek Hundred, Sussex County, by dividing 5.70 acres into 6 lots, located at the northeast, northwest and southwest corner of the intersection of Roads 224 and 213.

The Commission found that no comments or concerns were received from the Technical Advisory Committee relating to this application.

Mr. Lank advised the Commission that due to the location of public roads through the site the site is considered as three parcels; that the northwest corner of the site has been developed with 4 lots in the year 2000 and proposes 2 additional lots; that the northeast corner of the site has been developed with 4 lots in the year 2000 and proposes 2 additional lots; that the southwest corner of the site has been developed with 4 lots in the

year 2002 and proposes 3 lots; that all of the lots contain a minimum of 0.75 acre; that each section of the subdivision has reached the maximum allowable minor lots; and that DelDOT granted approval of the entrance locations for the new lots on January 9, 2004.

The Commission found that Douglas Breeding and Robert Nash, Surveyor, were present and stated in their presentation and in response to questions raised by the Commission that the lots fit in with the character of the area; that some of the existing lots are improved with dwellings; and that the lots will have deed covenants with the same restrictions as the existing lots.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the subdivision based on the testimony given.

Motion carried 4 – 0.

Subdivision #2004-1 – application of **COLTER CONSTRUCTION, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 13.47 acres into 12 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 326, 3,200 feet south of Road 432.

Mr. Lank advised the Commission that this Subdivision was reviewed by the Technical Advisory Committee on February 18, 2004 and that the Technical Advisory Committee Report for February 18, 2004 is a part of the record for this Application.

The Commission found that a letter was received from William C. Betts and Doris R. Betts in support of the Subdivision.

The Commission found that Terrance Babbie of Colter Construction, Inc. was present with Tim Willard, Attorney, and Sharon Cruz of D.C. Group, and stated in their presentations and in response to questions raised by the Commission that they are proposing to develop 12 lots on 13.47 acres; that the cul-de-sac is designed with a length of 1,279 feet due to the uniqueness of the shape of the parcel; that the Fire Marshal's Office has voiced no objections to the length of the street; that stormwater management is being designed to assist the neighbors with an existing drainage problem; that bio-retention ponds are proposed and are being designed to meet or exceed the requirements for a 100-year storm; that the Subdivision will conform to the requirements of the Subdivision Code; that the homes will be similar to the existing homes in the area; that no wetlands exist on the site; that agricultural buffers are proposed along the north and south property lines; that a landscape plan will be submitted with the final site plan; that

on-site wells and on-site septic systems are proposed; that DNREC has written that the site is feasible for septic; that no pollution concerns have been expressed; that the street right-of-way will be 50-feet wide with a 20-foot wide paved street and a 38-foot radius cul-de-sac; that there should be no negative impact on the Indian River School District; that the neighbors support the application and have written letters of no objections; that a Homeowners Association will take over maintenance of the streets and common areas upon completion of 75% of the project; and that no manufactured homes will be permitted.

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The Commission found that Mr. Babbie submitted some examples of house plans of the proposed homes to be developed in the project.

The Commission found that Mary Hill, owner of the lot immediately adjacent to the entrance, spoke in support of the application and thanking the Applicant for his intent to assist the neighbors with their existing drainage problems.

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant approval of this application with a waiver for the length of the cul-de-sac based on the testimony given.

Motion carried 4 – 0.

Meeting adjourned at 9:50 p.m.