



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF NOVEMBER 3, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 3, 2005 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Acting Chairman Wheatley presiding. The following members of the Commission were present: Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of October 20, 2005 as circulated.

PUBLIC HEARINGS

Subdivision #2005-1 – application of **PINEWATER WOODS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 18.96 acres into 23 lots, (Cluster Development), located south of Road 49, 0.5 mile east of Route 24.

Mr. Robertson advised the Commission that he would not be participating in this public hearing.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 16, 2005 and that the report will be made a part of the record for this application; that comments have been received from the Natural Resources Conservation Service; that the applicants submitted an Exhibit Booklet that will be made a part of the record; and that a revised plan reducing the number of lots has been submitted.

The Commission found that Mark Woodruff, applicant, and Mark Davidson of DC Group, L.L.C. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that 14 single family lots are proposed; that the previously submitted plan contained 23 lots on 18 acres; that the

preliminary plan has been reduced to 14 lots; that the revised plot will have less density, create less traffic and impervious area; that the storm water management ponds will be wet ponds; that there is 2.3 acres of open space; that a 30 foot forested buffer will be provided along Sloan Road; that there is open space across the road that will be maintained by the homeowners association; that the density is less than 1 lot per acre; that the average lot size is 1.13 acres; that tree removal on the individual lots will be deed restricted; that on site water and sewer is proposed; that they are awaiting a septic feasibility statement from DNREC; that the proposed entrance location provides for a

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safe site distance; that street lights are proposed; that the minimum square footage of the dwellings will be 2,800 square feet; that no homes will be built in the flood plain; that the plan has been redesigned taking into account the recommendations of the Technical Advisory Committee; that no multi-modal paths are proposed at this time; that the applicant has no intentions of subdividing the adjoining parcels; that no lots are located within the wetlands; that none of the spoil dredge area is located on any of the lots; that the wetland delineation has been submitted to the Corps of Engineers for verification; and that the adjacent parcel will not be farmed.

The Commission found that Marie Tallman; the former owner, was present in support of this application and advised the Commission that the proposed design is good.

The Commission found that Bob McGerele and David Achy were present and advised the Commission that they were opposed to 23 lots; that the site is located in the environmentally sensitive developing area; that they hope the applicants retain as many trees as possible; that the dredging material on site will cause drainage problems; that traffic in the area is a problem; that the streets in Pinewater Farms are dedicated to public use; that the streets in the proposed subdivision should be the same; and that there are drainage and run-off problems in the area.

Mr. Davidson advised the Commission that the proposed streets will be private and built to County specifications.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action pending a septic feasibility statement from DNREC and to allow the staff to verify if the site is located in a conservation zone.

Motion carried 4 – 0.

Subdivision #2005-2 – application of **CARRIAGE SPRINGS RUN, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill

Hundred, Sussex County, by dividing 77.55 acres into 155 lots, (Cluster Development), located north of Road 252, approximately 0.75 mile west of Route 30.

Mr. Robertson advised the Commission that he would not be participating in this public hearing.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 16, 2005 and that the report will be made a part of the

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record for this application; that comments have been received from the Natural Resource Conservation Service; that comments have been received from the Office of State Planning Coordination; that the applicants submitted an Exhibit Booklet and revised plans that will be made a part of the record; and read a letter in support of and a letter in opposition to this application.

The Commission found that Pret Dyer and Scott Dailey, applicants, and Mark Davidson of DC Group, L.L.C. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that 155 lots on 77.58 acres are proposed; that the density is 2 lots per acre; that there is a small wetland area and that the delineation has been sent to the Corps of Engineers for verification; that 39 percent of the site is open space; that the average lot size is 10,042 square feet; that Tidewater Utilities will provide central sewer and water; that the design complies with the Land Use Plan; that the site is located in a rural area; that low density single family lots are a permitted use; that the site is located in a Level 4 and that the State objects to this proposal; that the land use plan permits this type of development; that the zoning code permits 2 lots per acre; that the PLUS and Technical Advisory Committee comments are different; that a 30 foot buffer is proposed around the entire perimeter; that the individual lots will have a restricted 15 foot no clear zone; that the storm water management ponds have been relocated out of the forested areas; that the sewer treatment system and recreation areas have been removed from the forested areas; that walking trails with mulch will be provided throughout the forested areas; that no wetlands will be located on any of the lots and there will be a 100 foot buffer from the wetlands; that street trees will be provided; that a bike and walking path will be provided; that rain gardens will be a benefit to best management practices; that the site has no significant archaeological significance; that stub streets have been provided to the east, west and north sides of the site; that they will comply with the requirements of the Sussex Conservation District; that DNREC has issued a septic feasibility statement; that rapid infiltration basins will be used; that a nutrient budget analysis has been done; that the open areas will be landscaped; that fishing areas will be provided and that the ponds will be stocked with fish; that picnic areas are proposed; that the recreation areas will include a swimming pool, tennis courts, trails and a tot lot; that a letter has been received from CPR Management in that they will maintain the site; that a standard 20,000 square foot

lot subdivision would create less open space; that the forested areas would not be retained; that the cluster design creates more open space; that they have addressed the PLUS comments; that all of the items in 99-9C of the subdivision code have been addressed; that the wetlands will not be disturbed; that a fence will be erected along the Huff property; that DelDOT has issued a letter of no objection for the entrance location; that the subdivision will have a positive effect on the adjoining properties; that the typical buyer will be active adults; that there are other single family subdivisions in the area; that the site is located in the Cape Henlopen School District; that the streets will be private

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and built to County specifications; and that there is ample room at the entrance for a school bus shelter.

The Commission found that Rick Huff was present in support of this application and advised the Commission that he is selling the property; that the applicants build nice projects; and that property values in the area will increase.

The Commission found that Jane and Ed Krieger, Michelle Huff and Richard Malone were present in opposition to this application and advised the Commission that the area is rural; that most of the lots in the area are 1 acre; that the cluster design is not in character with the area; that Sussex County is becoming similar to New Castle County; that the project will result in the loss of wildlife in the area; that infrastructure is not in place to handle this growth; that the project could cause groundwater contamination; that Huff Road is in bad shape and in need of repairs; that the project will have negative impacts to the local school district; that emergency services are negatively impacted; that the project will result in the loss of farmland; that the project should be in a resort area; that the local roads cannot handle additional traffic that the project will create; that there are many accidents along Huff Road; that the design should be similar to the Bridlewood subdivision; and that the proposed buffer is not sufficient.

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 4 – 0.

Subdivision #2005-3 – application of **DOUGLAS D. AND JUDITH K. BREEDING** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 37.13 acres into 46 lots, (Cluster Development), located north of Road 224, approximately 1 mile east of Road 213.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 16, 2005 and that the report will be made a part of the record for this application; that comments were received from the Natural Resource Conservation Service; and that the applicants submitted an Exhibit Booklet and revised plan that will be made a part of the record.

The Commission found that Doug Breeding and Mark Davidson of the DC Group, L.L.C. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this application is for 46 lots using the cluster

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option number 2 design; that the lots will be a minimum of 21,780 square feet; that DNREC has issued a septic feasibility statement; that 49 lots are permitted by the zoning code; that the average lot size is 22,365 square feet; that the comments from the Technical Advisory Committee have been addressed; that the wetlands delineation has been submitted to the Corps of Engineers for verification; that a 100 foot buffer from the wetlands is proposed; that landscaping and berms will be created around the storm water management ponds; that on-site septic and water are proposed; that the storm water management design has not yet been finalized; that the applicant is trying to preserve the wooded areas; that street lights will be provided; that a walking path can be provided; that there is room for a school bus shelter; and that the homes will be stick built.

The Commission found that no parties appeared in support of or in opposition to this application.

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

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

Motion carried 4 – 0.

Subdivision #2005-4 – application of **MARK CLARK AND KATHY SCHARDT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 110.80 acres into 135 lots, (Cluster Development), located east and west of Road 207, 1,380 feet north of Road 411A.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on April 20, 2005 and that the report will be made a part of the record for this application; that comments have been received from the Office of State Planning Coordination through the PLUS process; and that the applicants submitted an Exhibit Booklet and a revised plan that will be made a part of the record.

The Commission found that Dane Bauer and David Peek of George Miles and Buhr and Kathy Schardt were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site is located on both sides of Hudson Road; that the area is rural; that the lots will be located on the west side of the road; that the central sewer treatment system will be located on the east side; that a drip irrigation system is proposed; that there are over 50 acres of open space provided; that 10 percent of the dwellings will be priced at 70 to 80 percent of the market value; that the Office of State Planning Coordination offered positive comments; that a nutrient budget plan has been submitted; that the project will maintain a rural character; that a small clubhouse and swimming pool are proposed; that Tidewater Utilities will provide and operate the wastewater treatment plant; that the applicants will preserve all wooded

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areas; that sidewalks on both sides of all streets will be provided; that walking paths will pavers will be provided; that Ed Lunay performed a wetlands delineation and that it has been submitted to the Corps of Engineers for verification; and that a 100 foot buffer from the wetlands is proposed.

The Commission found that no one appeared in support of this application.

The Commission found that Jerry Passwaters, Greg Hudson, Luray McClung, Patty Griffith, and Michael Barger were present in opposition to this application and stated that the area is rural; that farming is conducted in the area; that there will be negative impacts on property values in the area; that the soils are not suitable for development; that traffic is a problem in the area and this development will only cause more traffic; that Route 24 from Millsboro to Salisbury is a major arterial road; that there are too many developments being constructed in the area; that the project is not in character with the area; that the design is good but it is in the wrong location; that there would be a loss of wildlife habitat if the development is approved; that the road cannot handle any more traffic; and that there is a bald eagle in the area.

The Commission found that Mr. Passwaters submitted a written statement into the record.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action pending a septic feasibility statement from DNREC.

Motion carried 4 – 0.

C/U #1642 – application of **SUNRISE VENTURES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (30 units) to be located on a certain parcel of land lying and being in Lewes

and Rehoboth Hundred, Sussex County, containing 4.51 acres, more or less, lying west of the Lewes and Rehoboth Canal, 450 feet southwest of Route One.

The Commission found that the Applicants had submitted an Exhibit Booklet that contains a copy of the Application Form, site plan, an enlarged layout of the proposed townhouses with and without contours, a sketch drawing of the proposed development, Agendas and Minutes of the Planning and Zoning Commission and County Council, a DelDOT Support Facilities Report, statements from Sergovic and Ellis, P.A. explaining the application and its compliance with the Zoning Ordinance and the Comprehensive Plan Update, 2002, a copy of the deed to the property, and suggested proposed findings of fact for the application.

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The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service of Road 273C will not change as a result of this application.

The Commission found that two (2) letters from Jayant Goyle in opposition to this application expressing concerns relating to access, more traffic and congestion, the loss of one of the few scenic locales left in the area, and the negative impact on his property.

The Commission found that John Sergovic, Attorney, Shannon Carmean, Attorney, and Jessica Nichols, Engineer, from Meridian Architects and Engineers, were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that this application is basically the same as the rezoning application for HR rezoning submitted last year; that the Commission had recommended the rezoning; that the County Council rejected the rezoning and suggested that the Applicants apply for a Conditional Use; that the Conditional Use request is for 30 multi-family units; that originally they applied for 30 units within 15 duplex buildings; that they now propose 30 townhouse designed units; that the townhouse units are more compatible with the Blue Point Villas and the Oyster Bay Villas adjoining; that the townhouse layout provides more open space; that prior to purchase the property was used for auto repair, a City of Rehoboth maintenance and storage facility, and an old oyster house; that there should be no negative impact on the community; that the use complies with the Comprehensive Plan Update; that there should be no negative impact on traffic; that a cross access easement exists to serve the site and lands of others; that the Army Corps. of Engineers directed the Applicant to fence the roadway along the Canal due to encroachments; that Mr. Goyle may have been using an access that had not been authorized by the Army Corps. of Engineers; that 3 parking spaces are proposed per unit; that approximately 35% of the site will remain in open space; that a pool, playground, beach area, and decorative ponds are proposed; that a maintenance easement has been approved by the Army Corps. of Engineers for the area along the Canal so that new landscaping, a gazebo, and picnic tables can improve that site; that it took approximately

2 years to acquire the maintenance easement; that Phase I of Blue Point Villas has a density of 12 units per acre; that Oyster Bay Villas has a density of 8 units per acre; that the subdivision to the west has a density of 4 units per acre; that central water will be provided by the City of Rehoboth Beach; that stormwater management facilities will meet or exceed any State or County requirements; that they have submitted plans to the County Engineering Department for construction of the sewer under the Ordinance No. 38 standards with some upgrades; that Mr. Goyle and two other private lots have access to the access drive within the project and that curb-cuts are proposed to serve the lots; that a wetlands investigation has been performed and that no wetlands exists on the parcel.

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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.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1642 for Sunrise Ventures, L.L.C. for multi-family dwelling structures base upon the record made at the public hearing and for the following reasons:

- 1) The project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area as established by the Comprehensive Plan Update.
- 2) There are similar residential projects in the immediate area.
- 3) The project will not have an adverse impact on neighboring properties or community.
- 4) The Conditional Use will likely lead to the redevelopment of a property that was recently used for outside storage of refuse and waste and is in disrepair.
- 5) This project will be served by central water and sewer. Any development will be subject to the approval of the County Engineering Department. The Developer of the property will be required to test, design, fund and construct any upgrades to the County sewer system that are necessary to serve any density greater than the capacity allowed by the County Engineering Department.
- 6) This recommendation for approval is subject to the following conditions:
 1. Any security lighting shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring residential properties. The lights shall be downward illuminated.
 2. The maximum number of residential units shall not exceed 30 units.
 3. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.

4. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
5. Construction, site work, grading and deliveries of construction materials, etc., to the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday.
6. The Site Plan shall be subject to review and approval by the Planning and Zoning Commission.
7. Addressing shall be subject to the approval of the Addressing Department.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated.

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Motion carried 4 – 0.

AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS.

Mr. Lank introduced the proposed Ordinance Amendments relating to appeals.

Mr. Robertson stated that this amendment revises the appeals provisions of the Subdivision Ordinance. It eliminates the ability to have a public hearing on a subdivision appeal before both the Commission and the County Council. It also includes the standard review to be applied on appeal, requires the appealing party to pay for the preparation of a hearing transcript and pay an appeal fee for each level of review. It also allows an appeal to be filed from either the approval or disapproval of a plat as required by 9 Del. Code 6811, whereas the present wording only allows an appeal to be filed by an applicant (developer) from the denial of a plat.

The Commission discussed the Ordinance Amendments and there was a consensus of the Commission that a few minor changes may be appropriate.

Mr. Robertson stated that he and Mr. Kautz would get together and correct the proposed Ordinance Amendments.

The Commission found that there were no parties present in support of or in opposition to the Ordinance Amendments.

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

Motion carried 4 – 0.

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY BY
AMENDING ARTICLE III, 62-7 RELATING TO PERMITS AND
APPLICATIONS AND ARTICLE II 99-14 RELATING TO FEES FOR
SUBDIVISION APPLICATION, REVIEW AND APPROVAL.**

Mr. Lank introduced the proposed Ordinance Amendments relating to fees.

Mr. Robertson stated that this amendment revises the fee schedule for building and zoning permits and subdivisions to bring them in line with the County's current costs of taking applications, issuing permits and holding hearings before the Board of Adjustment, the Planning and Zoning Commission and the County Council and approving subdivision plats.

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Mr. Lank stated that the fees for the Board of Adjustment are proposed to be increased from \$150.00 to \$400.00; that the fees for a Change of Zone, a Conditional Use, and a Subdivision are proposed to be increased from \$300.00 to \$500.00; and that the fees are still less than some of the Coastal Communities.

It was noted that a hand written note on the file copy of the Ordinance Amendment referenced that a fee of \$25.00 was indicated for a Demolition Fee.

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

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to forward a recommendation of approval to the Sussex County Council for the proposed Ordinance Amendments relating to fees.

Motion carried 4 – 0.

Meeting adjourned at 10:05 p.m.