



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF DECEMBER 8, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 8, 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. Wheatley, Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Burton with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Mr. Wheatley welcomed Mr. I.G. Burton III to the Commission.

Motion by Mr. Gordy, seconded by Mr. Johnson, 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 November 30, 2005 as corrected.

PUBLIC HEARINGS

C/U #1629 – application of **HANDLER MITCHELL PROPERTIES – ROUTE 5, LLC (STONEWATER CREEK, LLC)** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sewer treatment facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.499 acres, more or less, for the treatment plant site and 6.527 acres, more or less, for a rapid infiltration basin, lying northeast of Route 5 across from Cannon Road (Road 307).

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting. The Exhibit Booklet contained a copy of the application, a site plan for the wastewater treatment facility and rapid infiltration basin, an enlarged site plan of the wastewater treatment facility, a photograph of the exterior of the facility, two photographs of the interior of the treatment facility, a photograph of the basin, a proposed findings of fact and suggested conditions of approval if the use is approved.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Johnson loam or silt loam,

Klej loamy sand and Rumford loamy sand; that the Evesboro soils have slight and moderate limitations for development; that the Johnson soils have severe limitations; that the Klej soils have slight to moderate limitations; that the Rumford soils have slight limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Klej and Rumford soils are considered of Statewide Importance; that the Johnston soils are considered Hydric; that there are no storm flood hazard areas or tax

Minutes

December 8, 2005

Page 2

ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that he did not request comments from DelDOT since the facility already exists to serve the Stonewater Creek Development.

The Commission found that Mark Handler and Randy Mitchell were present with Dennis Schrader, Attorney, and John Fader of Artesian Wastewater Management (Artesian) and stated in their presentations and in response to questions raised by the Commission that the Applicants have a contract with Artesian to operate the facilities for the existing development and future developments to be developed by the Applicants; that the facilities have been approved by the State DNREC and are subject to DNREC regulations; that the use is subject to the Public Service Commission; that the Public Service Commission has approved the rates; that the facilities will have the capacity to handle 225,000 to 450,000 gallons per day; that the facility will continue to be operated in compliance with DNREC regulations; that the propose to serve projects within one-mile of the facility; that all users of the facility will be projects developed by Handler-Mitchell; that the facilities, pipelines, etc. will be designed and built to County specifications so that if in the future the County provides connection to a County system the projects will be capable of immediate connection; that the existing plant which is designed to serve Stonewater Creek Development will be doubled in capacity to serve other projects; that access to the facility will be from an interior access, not Route 5; that landscaping will be provided; that the Propane facility will be fenced; that the area around the facility will be secure, and that Handler-Mitchell owns the facility, not Stonewater Creek.

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 likes the concept and the utilization of the land.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use #1629 for Handler Mitchell Properties – Route 5, LLC to service more

than one project based upon the record and for the reasons recorded in the Applicants Exhibit Booklet:

- 1) The subject property is owned by Handler-Mitchell Associates-Route 5 LLC (Stonewater Creek, LLC).
- 2) The applicant is the owner/developer of the project generally known as Stonewater Creek and is the owner/developer of other sites in the vicinity of Stonewater Creek.

Minutes
December 8, 2005
Page 3

- 3) Artesian Wastewater Management has contracted with Handler-Mitchell to collect, treat and dispose of sanitary sewerage from Stonewater Creek and other projects of Handler-Mitchell.
- 4) The approvals for the earliest phases of Stonewater Creek permitted the use of 0.499 acres, more or less, for treatment plant facilities and 6.257 acres, more or less, for a rapid infiltration basin by Artesian Wastewater Management for the adequate collection, treatment and disposal of sanitary waste for the benefit of the inhabitants of Stonewater Creek.
- 5) There is no County or other available public sanitary waste disposal facility providing for the adequate collection, treatment and disposal of sanitary waste serving the future expansions of Stonewater Creek or other lands of Handler-Mitchell.
- 6) Artesian Wastewater Management has been issued a Certificate of Public Convenience and Necessity to serve the area and has had its tariffs approved by the Public Service Commission.
- 7) The application is appropriate at the subject sites because it is in an area of residential development where central sewer is not otherwise available.
- 8) The granting of this application is the expansion of a pre-existing approved use, will provide a waste treatment facility that will safely serve the communities, and will not harm the environment.
- 9) The expansion requested will promote the health and safety of the inhabitants of Sussex County in Stonewater Creek and the nearby projects of Handler-Mitchell approved for development.
- 10) This recommendation of approval is subject to the following conditions:
 1. The final site plan shall be subject to review and approval by the Planning and Zoning Commission.
 2. All improvements for collection, treatment and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Delaware Department of Natural Resources and Environmental Control, or any other governmental agency with jurisdiction over the use of the site, or any modification thereto.
 3. The expansion of the site for sanitary wastewater treatment and the use of rapid infiltration beds are subject to all other applicable laws, ordinances, rules and regulations.

4. The facilities and infrastructure shall be designed to comply with County specifications.

Motion by Mr. Johnson, seconded by Mr. Gordy 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. Motion carried 5 – 0.

Minutes
December 8, 2005
Page 4

C/U #1630 – application of **PHILIP L. TROYER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair garage to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.0 acres, more or less, lying west of a private road, 315 feet south of Route 16 and 750 feet east of Route 44.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “C” of Route 16 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam and Woodstown sandy loam; that the Fallsington soils have severe limitations for development; that the Woodstown soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Fallsington soils are considered of Statewide Importance, Prime Farmland and Hydric; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; 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 that Philip Troyer was present, submitted a typed proposal, a tax map and photographs, and stated in his presentation and in response to questions raised by the Commission that he proposes to reopen a auto repair facility; that the site was utilized as an auto repair garage for 17 years by a Mr. Humphries; that the business closed upon Mr. Humphries passing in 1999; that he proposes to rent the garage; that the garage cannot be seen from Route 16; that the use will provide a service to the area; that the garage is hidden behind trees, a home and a privacy fence; that he proposes to provide auto repair services for the Greenwood and Ellendale agricultural and residential communities; that there is only one auto repair shop left in Greenwood; that this garage will help meet the expanding need for local auto repair services; that he has spoken to neighbors on either side of the property and heard no objections; that one neighbor did express some concern about dust; that there are several business uses in the area, i.e. antique store, furniture manufacturing, produce sales, etc.; that his normal business hours shall be Monday through Friday from 8:00 a.m. to 5:00 p.m. with some Saturday morning

activities to complete work already started; that he will not be open to the public on Saturdays; that there will be no Sunday hours; that almost all of the work will be performed indoors; that he has no intention to accumulate vehicles in storage on the site; that there will be no storage of junk on site; that the access is from an existing gravel drive; that a well exists on the site for water; that he may install a portable toilet; that the majority of his work will be on cars and pickups, not large trucks; that a dumpster exists on the site and will be shared with the occupant of the dwelling in front of the garage; that there will be some deliveries of parts daily; that the only noises should be from the

Minutes

December 8, 2005

Page 5

air compressor in the lean-to, air impact wrenches, and lift motors; that the nearest neighbor lives several hundred feet away and closer to Route 16; that he will not be operating a tow service; and that a security light already exists on the site.

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. Smith, seconded by Mr. Burton and carried unanimously to defer action on this application. Motion carried 5 – 0.

C/U #1631 – application of **DESIGN CONSULTANTS GROUP, L.L.C.** to consider the Conditional Use of land in a B-1 Neighborhood Business District for multi-family dwelling structures (120 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 11.86 acres, more or less, lying at the south end of a private road, 400 feet south of Route 24 and 200 feet west of Route 5 (Road 297).

The Commission found that the Applicants had submitted a revised site plan and an Exhibit Booklet prior to the meeting. The Exhibit Booklet contained a copy of the application, a site plan, legal descriptions, a copy of the PLUS application, a copy of the PLUS comments from the Office of State Planning Coordination, a copy of the Applicants response to the PLUS comments, a copy of a letter of approval from DNREC on the Preliminary Groundwater Impact Assessment, copies of correspondence from DelDOT, a copy of an Environmental Assessment Report, a series of maps and aerial photographs, photographs of the site and surrounding area, a Nutrient Loading Assessment, and a soils report from Atlantic Resource Management, Inc.

The Commission found that the Applicants submitted a drawing of the proposed units and floor plans for 2-bedroom and 3-bedroom units.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Rumford loamy sand,

which have slight limitations for development; that the Applicants will be required to follow recommended erosion and sediment control practices during construction; that the soil types are considered of Statewide Importance; 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 that Robert Reed and Mark Davidson of Design Consultants Group were present and stated in their presentations and in response to questions raised

Minutes

December 8, 2005

Page 6

by the Commission that they are proposing 9.9 units per acre; that the entire site has been approved as a 24-lot subdivision for B-1 Neighborhood Business permitted uses; that the area along Route 24 that is not included in this application will be divided into 6-parcels for development of B-1 uses; that they propose to develop the site with 2 phases with the first phase containing 72 units and the second phase containing 48 units; that an on-site wastewater design will be submitted for the first phase for use until access can be obtained to a County Sewer District; that 2 areas of the site have suitable soils for septic treatment; that the proposed units will contain 2 and 3 bedroom units; that this site replaces 18 lots that are zoned B-1; that the proposed condominiums should establish a nice transition between Oak Meadows Community and the B-1 uses along Route 24; that they have been dealing with DelDOT to establish a joint stormwater management pond to improve the drainage problems along Route 24 and Route 5; that based on the Traffic Impact Study a joint access agreement with the Boys and Girls Club has been established; that the entrance location aligns with the proposed Royal Farm Store entrance across Route 24; that a cross access easement has been proposed to the westerly adjacent property; that landscaping will be provided along the west side and throughout the site; that sidewalks will be provided throughout the site with landscaping between the sidewalks and the streets and drives; that a pool, clubhouse and tot lot are proposed; that they propose to erect a 6-foot high fence along Oak Meadows; that 3 parking spaces are proposed for each unit; that central water is being provided by Tidewater Utilities, Inc.; that no wetlands exists on the site and that the site is not located within a flood plain; that an Environmental Assessment Report and a Nutrient Budget are referenced and provided in the Exhibit Booklet; that the County Engineering Department has advised them that sewer is coming in this direction in the future; that a fence can be erected along the property line with the Boys and Girls Club; that the closest multi-family units are under construction near the Happy Harry's site at Route 299; that they hope to keep the price of some of the units under \$200,000 since a need exists for affordable housing; that this proposal should be much better for the neighbors than B-1 uses; and that the B-1 uses could be a fast-food restaurant, a bank, offices and other small business uses.

The Commission found that Don Simmons, President of the River Village Homeowners Association, and Barbara Maulina, a property owner in Oak Meadows, were present in opposition and expressed concerns that the County should look at the big picture; that there are other proposed development in the area; that the need for additional units is

questionable; that 95 units have been approved near Happy Harry's, none of which have been sold; that the site floods during storms; that Route 24 needs widening; that traffic will increase; that the use impacts the State Police; that privacy fencing would be supported; and questioning the number of units that may become rentals.

Mr. Wheatley advised those present that regulations do exist that relate to stormwater management and erosion and sediment control and that a developer cannot cause more runoff from a site than the amount of runoff that already exists.

Minutes
December 8, 2005
Page 7

Mr. Robertson advised, in response to Mr. Burton's inquiry, that it is not unusual for on-site central sewer systems to be constructed and then later removed once County sewer becomes available to the site.

Mr. Reed stated advised the Commission, in response to questions, that no Section 8 housing is proposed; that no rental units are intended; and that the units are to be offered for sale.

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 and to leave the record open for input from the County Engineering Department on the number of EDUs anticipated for this project. Motion carried 5 – 0.

C/Z #1583 – application of **PENINSULA AT LONG NECK, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community (as an addition to Change of Zone No. 1475 for the Peninsula) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, lying lying northeast of Road 299 (Bay Farm Road) across from Road 299A (Trinity Road), to be located on 1.26 acres, more or less.

The Commission found that the Applicants had submitted a legal description and survey of the property.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Road 299 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered on Statewide Importance and Hydric in small depressions;

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 James Fuqua, Attorney, was present on behalf of the Applicant and stated in his presentation and in response to questions raised by the Commission that The Peninsula project was approved as Change of Zone #1475 in 2003 for 1404 units, a golf course and a small commercial area; that this site was purchased for a sales facility for The Peninsula project and received approval by the Board of

Minutes
December 8, 2005
Page 8

Adjustment; that the Applicant is requesting that this site be rezoned so that it can be incorporated into The Peninsula project; that all restrictions of The Peninsula project shall be imposed on this site and that the site will be used for the sales, rental and development offices for the project; and that the site could be sold in the future and will be restricted to the recommended conditions.

The Commission found that Mr. Fuqua submitted a small color copy of the Master Plan for The Peninsula, two photographs of the Discovery Center sales facility on the site, a copy of the Minutes of the Sussex County Council for the decision on Change of Zone #1475, and a copy of a suggested condition of approval.

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 Change of Zone #1583 for Peninsula At Long Neck, L.L.C. with the following conditions:

- 1) The 1.26 acre parcel shall be added to The Peninsula MR/RPC (C/Z #1475) subject to the existing conditions of approval of the MR/RPC.
- 2) The 1.26 acre parcel may be used for sales, rental, administrative and similar uses.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved with the conditions stated. Motion carried 5 – 0.

Subdivision #2005-5 – application of **PETER E. DEMARIE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 5.06 acres into 2 lots, located south of Road 353, 0.1 mile west of Road 374.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since it is for strip lots only; that in 2003 the applicant

created 4 lots by right; and that the reason for this hearing is that there was not enough acreage remaining to create the 2 lots by right.

The Commission found that Peter DeMarie was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the application is for 2 lots; that DNREC has approved site evaluations for both lots; and that DelDOT has approved a joint entrance for the 2 lots.

Minutes
December 8, 2005
Page 9

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

The Commission found that Bob Miskin was present in opposition to this application and stated that the approval of the lots would have negative impacts on the surrounding drainage ditches; questioned where the water flows; that there is a superfund site located within a ½ mile of the site that has benzene in the water; and that there is a need for central sewer and water in the area.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary and a final since the application promotes the orderly growth of the County; that the application will not have any negative impacts on the area; and that the site is zoned AR-1 which permits low density single family residences. Motion carried 5 – 0.

Subdivision #2005-7 – application of **THOMAS HEAD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 46.43 acres into 43 lots, located south of Road 410 (Godwin School Road), 500 feet southeast of Route 20 (Hardscrabble Road).

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 18, 2005 and that the report will be made a part of the record for this application; that the engineers submitted a revised plan on December 5, 2005; that a septic feasibility statement has been received from the DNREC indicating that the site is suitable for individual on-site septic systems; and read a letter from Charles R. and Kay Cieslik in opposition to this application.

The Commission found that John Barwick of Meridian Engineers and Architects and Thomas Head and Mark Handler, developers, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed lots are ¾ acre in size; that streetlights and sidewalks will be provided throughout the project; that the site contains 46.43 acres; that the proposed density is 0.93 lots/acre; that the restrictive covenants are being revised and will be submitted for

review; that the Cieslik's are not a part of this subdivision and will not be required to relocate their entrance to be off of the interior subdivision street; that a 30-foot forested buffer has been provided around the perimeter and a 15-foot buffer adjoins the Cieslik and Bond properties; that the DNREC has issued a septic feasibility statement; that the minimum square footage for single family dwellings will be 1,800 square feet and 2,200 square feet for 2-story dwellings; that the site is basically flat with farming operations and strip lots in the area; that the site is located in a growing area west of Millsboro; that the site does not contain any wetlands and it is not located in a flood plain; that there are not

Minutes

December 8, 2005

Page 10

any known natural features on the site; that additional open space could be provided if the stormwater management area is not required to be as large as shown; that there will not be any grading to the site; that individual on-site septic and well are proposed; that the developers are trying to minimize impervious areas; that the stormwater management ponds will be dry infiltration ponds; that a maintenance area has been provided to the ponds; that the subdivision meets the requirements of Chapter 99; that the project will have positive impacts to the area; that the streets will be private; that the proposed lot 1 has a dwelling located on it; that there are large scale, nice homes in the area; that a homeowners' association will be established; and that there is an adequate area for a mail box and bus shelter location.

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

The Commission found that Floyd Vaughn raised questions about buffers being provided; that location of the entrance; that there is a lot of school bus traffic on the area roads; and that construction materials are being stolen in the area.

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 for further consideration. Motion carried 5 – 0.

Subdivision #2005-8 – application of **BUNTING ROAD, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 6.00 acres into 8 lots, (Cluster Development), located west of Road 335, 1.016.56 feet north of Road 336.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 18, 2005 and that the report will be made a part of the record for this application; that on December 5, 2005 the applicants submitted an Exhibit Booklet that will be made a part of the record; and that a letter from Mr. and Mrs. Kenneth Shank was received in opposition to this application.

The Commission found that Gary Moore, developer and engineer with River Basin Engineering and Tim Willard, Attorney, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the proposed lots are ½ acre in size; that the DNREC has approved a site evaluation for each lot for individual on-site septic systems; that the site is currently farmed and adjoins a wooded area; that the area is predominately residential; that 16% of the site is open space, stormwater management and recreational area; that there are not any wetlands on the site; that no trees are being removed; that the streets will be private; that on-site septic and

Minutes

December 8, 2005

Page 11

well are proposed; that interconnectivity to adjoining sites is not feasible; that sidewalks and streetlights will be provided; that the restrictive covenants have been submitted; that there will be an architectural review committee; that the site is located in the Indian River School District and will not cause any negative impacts to the district; that a traffic impact study was not required by DelDOT; that the site is located in the Delaware State Police Troop 4 jurisdiction and Station 73 Fire District; that the dwellings will be stick built homes; that the stormwater management areas will be infiltration ponds; that trees will be planted along the streets and buffer areas; that a standard subdivision would result in one less lot; that the project will enhance area property values; that a study for a Bald Eagle nesting area has not been conducted; that a Bald Eagle in the area has moved across the river; that Coastal Soils did a wetlands delineation; and that the delineation has not been verified by the U.S. Army Corps of Engineers.

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. Johnson, and carried unanimously to defer action and to leave the record open for an environmental assessment report. Motion carried 5 – 0.

Additional Business

It was the consensus of the Commission to have a special meeting for Old and Other Business on Wednesday, January 4, 2006 at 3:00 p.m.

Meeting adjourned at 9:17 p.m.