



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF FEBRUARY 8, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 8, 2007 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Mr. Lank advised the Commission that Subdivision #2005-93 was withdrawn at 4:36 p.m.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended due to the withdrawal of Subdivision #2005-93. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action on the Minutes of January 25, 2007. Motion carried 5 – 0.

### PUBLIC HEARINGS

Mr. Lank advised the Commission that a letter was received from Dennis Schrader, Esquire, an attorney on behalf of the Applicants, requesting that the public hearings for C/Z #1605 and C/Z #1606 be consolidated into a single public hearing since the presentation would include both applications.

There was a consensus of the Commission that the two applications be consolidated into one public hearing with the understanding that each application will be acted on individually.

For the purpose of the record, Mr. Lank introduced the two (2) applications as follows:

**C/Z #1605** – application of **NENTEGO PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a GR General Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southeast of Route 24, 2,400 feet southwest of Route 5 and Road 297, to be located on 93.67 acres, more or less.

Minutes  
February 8, 2007  
Page 2

**C/Z #1606** – application of **NENTEGO PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southwest of Route 24, 1,400 feet southwest of Route 5 and Road 297, to be located on 15.73 acres, more or less.

Mr. Lank advised the Commission that the Preliminary Land Use Service (PLUS) reviewed the site on November 20, 2005, and that the Technical Advisory Committee agencies reviewed the site and provided written comments by the cut-off date of July 26, 2006.

The Commission found that the Applicants submitted an Exhibit Book with included a listing of the Project Team, an Executive Summary, a Project Overview, references to compliance with zoning regulations, and 33 figures which included site plans, copies of letters, applications, maps, etc.

The Commission found, based on comments received from the Sussex Conservation District on both applications, that the soils are mapped as Downer loamy sand, Fort Mott loamy sand, and Pepperbox loamy sand; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; that the Applicant will be required to follow sediment and stormwater requirements for on-site drainage improvements; that the Downer soils are not limited to the use of septic fields, dwelling with or without basements; that the Fort Mott soils are somewhat limited due to the restricted permeability for septic fields, and are not limited for dwelling with or without basements; that the Pepperbox soils are very limited for the use of septic fields, somewhat limited for dwellings without basements, and very limited for dwelling with basements due to the depth to the saturated zone; that the Downer soils are considered prime farmland; and that the Fort Mott and Pepperbox soils are considered prime farmland if irrigated.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the project is located in a the proposed Oak Orchard Expansion No. 1 Area of the Oak Orchard Sanitary Sewer District; that wastewater capacity is available for up to 4.0 EDUs per acre; that Ordinance No. 38 compliance will be required; that regional infrastructure will have to be installed by the developer; that the project is capable of being annexed into the Oak Orchard Sanitary Sewer District; that conformity to the North Coastal Planning Study will be required; that the project is in the Environmentally Sensitive Developing Area and the Oak Orchard Planning Area; that the County will serve the entire area project within the Inland Bays Planning Area for sewer service; that the County Council adopted the study in October 2006; that pipe line layouts have been identified to serve the project; that the developer

Minutes

February 8, 2007

Page 3

has agreed to build regional sewer infrastructure that will serve the project and benefit several existing communities; that regional infrastructure to be built by the developer includes a pump station and segment of a new force main to temporarily connect to the existing force main; that the developer has agreed to fund a proportionate portion of a new force main to be constructed in order to serve the project and other areas; that the Engineering Department supports the project so long as it connects to the Oak Orchard Sanitary Sewer District and the total project does not exceed 4.0 EDUs per acre based on a total project size of 109.40 acres; that the Engineering Department is currently proceeding with the administrative procedures to complete a sewer district expansion to include the project; that a public hearing on the expansion is tentatively scheduled for March 24, 2007; that following the public hearing, the County Council will act on the expansion request; that the County requires that design and construction of the collection and transmission system to meet the County sewer standards and specifications; that a sewer concept plan must be submitted to the Engineering Department for review and approval prior to the design of the sewer system; that the Engineering Department requires payment of the proportionate portion of the cost of the force main (\$240,750.00) to be paid prior to approval of the expansion request by the County Council; and that the developer is required to provide the district expansion request fee of \$2,500.00 prior to approval of the expansion request by the County Council.

The Commission found that Randy Mitchell, a partner in the application, was present with Dennis Schrader, Attorney, and Jason Palkewicz of McCrone, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the zoning of the property is partially AR-1 and partially GR; that the property is currently in agricultural use; that there is no intent of the applicants to include any commercial uses within the RPC portion of the application; that commercial uses will be limited to the proposed C-1 portion of the site; that the site is in a Level 2 area according to the State Strategies; that the site is located in the Environmentally Sensitive Development District Overlay Zone based on the Comprehensive Plan Update; that the commercial area is proposed to contain approximately 116,000 square feet of retail area, a restaurant site and a bank site; that both sites will be served by public utilities; that

water will be provided by Tidewater Utilities; that central sewer is proposed to be provided by the County; that the County Council recently approved processing a proposed expansion area to the Oak Orchard Sanitary Sewer District; that the area has a mix of residential and business/commercial uses; that an access interconnection is proposed with the adjoining project to the east; that a concept plan was submitted to the PLUS in October 2005 and that after reviewing the PLUS comments the plans were altered by creating the interconnection to the adjacent property to the east, removal of parking within the front yard setback, providing additional rights-of-way along Route 24 and an easement for a multi-modal path, investigating historic properties on the site, and investigating annexation into the Oak Orchard Sanitary Sewer District; that no historic site were found on the site; that the design will achieve a 40% reduction of Nitrogen and

Minutes

February 8, 2007

Page 4

Phosphorus; that the high point to the site is to the northeast; that a portion of the site is located in a well-head protection zone; that 30-foot wide buffers are proposed along the residential portion of the site; that one entrance is proposed on Route 24 to serve both sites; that the developer will comply with the landscaping suggested in the PLUS comments; that no endangered species were found on the site; that parking in the commercial area has been designed for one-way diagonal spaces; that the pad sites will have their own parking design subject to the uses; that all parking proposed exceeds County regulations; that a need exists in the Long Neck Area for multi-family units; that they originally proposed a mix of multi-family units and townhouses; that the proposed plan includes all townhouses; that a manufactured home developments exists to the south and that single family dwellings exists in close proximity; that the closest multi-family project is located near the intersection of Route 24 and Bay Farm Road; that they propose to build moderately priced affordable units starting at under \$200,000.00; that the units will be 20 to 24 feet in width; that they have not decided whether the units will be two story or three story units or a combination of both; that there is still a need for commercial and service uses in the area and that the project may include a super market, a theatre, and general retail; that the interconnection with the adjacent property to the east will provide vehicular access to and from Route 5 without requiring motorist to go out on Route 24 to get to and from the project; that a copy of the Code of Regulations for the project have been submitted to the County Attorney; that they did not provide stub streets to the adjacent agricultural lands; that they are willing to provide the interconnect if the adjacent property owner is in agreement; that they do not have direct access to Layton Davis Road; that sidewalks have been provided throughout the project and will connect the residential and commercial uses and the multi-modal path along Route 24; that recreational uses include a pool house, swimming pool, and trails; that the stormwater management pond near Route 24 may be a dry infiltration pond; that the site plans have been drawn to show an on-site sewer system since originally the County had not yet completed the sewer study for the area; that if the County approves the sewer district expansion the stormwater management facilities may be relocated to the area originally set aside for the on-site sewer system; that there may be an elevated water storage tank erected on the site to serve the projects; that the units are designed to have garages; that

373 units are proposed; that Matthew Hedger of Hickory Environmental Consulting, LLC performed the environmental review of the site; that no single family detached dwelling are proposed; that originally they considered filing an application for a Conditional Use for multi-family use of the site and decided to file an application for a RPC since it provides a sense of community; that the community is calmed by circles, minimum drive widths with curb and gutter, recreational uses, sidewalks and trails; and that suggested findings of fact and conditions of approval are included in Tab 32 of the Exhibit Book.

Minutes  
February 8, 2007  
Page 5

The Commission found that James T. Norwood was present as Chief of the Nanticoke Tribe and representing himself and stated that he is not present to object to the applications, but is concerned about trespass and use of mini-bikes, etc. on his property; that he is concerned about run-off onto the Nanticoke Museum property to the east; and that he request that the property line be buffered with berms and landscaping and fencing to help control trespassing onto his farm.

The Commission found that Mr. Schrader responded by stating that the amount of fencing that would be required to fence the perimeter of the site would be very expensive.

The Commission found that Mr. Palkewicz responded by stating that the project will be designed to maintain all stormwater on the site.

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

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action on C/Z #1605 for Nentego Properties, LLC for further consideration. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action on C/Z #1606 for Nentego Properties, LLC for further consideration. Motion carried 5 – 0.

**Subdivision #2005-92** – application of **LARRY E. WILLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 7.53 acres into 4 lots, located east of Road 493, 431 feet south of Road 494.

Mr. Lank advised the Commission that the applicant has maximized the by-right number of lots for this parcel; that 4 lots were approved in 2004; and that there is enough frontage and acreage remaining and that is the reason for this application.

Larry Willey was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he proposes to create 4 additional lots for dwellings; that the dwellings will be similar to the ones in the area; that an old trailer has been removed from the site; that double wides will not be permitted; that the homes will probably be stick built; that each lot has an approved site evaluation; that the lots are in character with the area; that each lots has over 150 feet of road frontage; that DelDOT has approved shared entrances; and that he is not looking to maximize the total number of lots that he could obtain through a major subdivision.

There were no parties present in support of or in opposition to this application.

Minutes

February 8, 2007

Page 6

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

Mr. Gordy stated that he would move that the Commission grant preliminary approval for Subdivision #2005 – 92 for Larry E. Willey, based upon the record and for the following reasons:

1. The Subdivision meets the requirements of the County Subdivision Ordinance and it promotes the orderly growth of the County.
2. The proposed Subdivision is consistent with the neighboring and adjacent properties, which have developed with similar residential lots.
3. The Subdivision will not adversely affect schools, public facilities or roadways.
4. The Applicant has stated that the lots are suitable for individual septic systems.
5. This approval is subject to the following conditions:
  - There shall be no more than 4 lots.
  - The Applicant shall comply with all of DelDOT's requirements.
  - The Final Site Plan shall clearly show the lot frontage measurement for each lot.
  - The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

**Subdivision #2005-93** – application of **PINEHAVEN ASSOCIATES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork

Hundred, Sussex County, by dividing 38.44 acres into 68 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Route 404, 1,150 feet northwest of Road 580.

The Applicant withdrew this application on February 8, 2007.

**Subdivision #2005-95** – application of **HARLTON ACQUISITIONS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 90.56 acres into 197 lots, (Environmentally Sensitive Developing District Overlay Zone), located east of Road 348A and south of Road 349.

Minutes  
February 8, 2007  
Page 7

Mr. Lank advised the Commission that this application received comments from the Sussex County Technical Advisory Committee on August 23, 2006 and that the comments will be made a part of the record for this application; and that the Applicants submitted an Exhibit Book and Appendices on February 5, 2007 and that they will be made a part of the record for this application.

Mr. Abbott advised the Commission that a letter has been received from the Indian River School District and that it will also made a part of the record.

James Fuqua; Attorney, Richard Boyle Vice-President of Natelli Communities and a member of Harlton Acquisitions, and Kevin McBride of Morris and Ritchie Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that an Exhibit Book and Appendices have been submitted; that the project is for 197 single-family lots on 90.56 acres; that the site is located on the south side of Road 349 near Millville and across from Bethany Ridge Subdivision which has received preliminary approval; that the site is agricultural fields and woodlands; that there are not any wetlands on the site and this has been verified by the Army Corps of Engineers; that the site is zoned AR-1, Agricultural Residential and that the purpose of the AR-1 zoning district allows single-family detached dwellings; that based on the State's Maps for Strategies and Spending, the site is located in a Level 3 and a portion of Level 2; that the site is also located in an Environmentally Sensitive Developing Area based on the Comprehensive Land Use Plan; that the cluster ordinance permits the lots to be a minimum of 7,500 square feet; that the proposed density is 2.17 lots per acre; that Tidewater Utilities will provide central water to the site and Sussex County will provide central sewer; that infrastructure will be provided by Delaware Electric Cooperative, Delmarva Power and Light, Sharp Energy, Mediacom and Verizon; that fire and emergency medical services are provided by the Millville Fire Department; that the site is located in the Indian River School District; that DelDOT did not require a traffic impact study for this site since there was one already done for the Bethany Ridge Subdivision and Bethany Forest Subdivision; that the developers will comply with all of the recommendations made by DelDOT; that there is commercial uses available on the

Route 26 corridor; that all lot owners will be required to become members of the homeowners' association; that the site is located in the North Millville Expansion of the Bethany Beach Sanitary Sewer District area; that there are other subdivisions in the immediate area; that the site is in a growth area; that the entrance to this site is directly across from the entrance to Bethany Ridge; that 73% of the site is wooded; that there are 2 ridges on the site; that there is an existing cemetery on the site that will be preserved and upgraded, and that the homeowners' association will be responsible for the maintenance of it; that the applicants are preserving as many mature trees as possible by using curved streets and cul-de-sacs; that 90% of the lots abut open space; that the amenities will include paths, trails, tennis courts, open ball fields, swimming pool and

Minutes  
February 8, 2007  
Page 8

community center; that there is an average 115-foot buffer provided around the perimeter of the project; that sidewalks totaling about 4 miles are proposed for both sides of all streets; that 35% of the site will be open space and provide village greens, tot lots and trails; that 30 acres of passive open space is provided; that there will be a 30 to 40 foot buffer surrounding the cemetery; that the developers have contacted the State Historic Preservation Office and will allow them to visit the site; that the site drains east to west and there will not be any run-off leaving the site; that the storm water management design will utilize best management practices; that the storm water management pond will be located in the low area of the site; that the applicants have responded to the PLUS comments and provided an Environmental Assessment report and that both are found in the Exhibit Book; that the items listed in Section 99-9C of the subdivision ordinance have been addressed and are in printed form in the Exhibit Book; that the site is in a low density area and that the proposed density conforms to the area; that there are no plans for a shuttle bus service but the developers will provide a school bus shelter; that there will be a buffer along Murray Road and the McCabe property; and submitted proposed findings of fact and conditions of approval.

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

The Commission found that Don Klima and Russell Banks, adjoining property owners, were present in opposition to this application and expressed concerns about the safety of the Klima's dwelling; that the site drains to the west and could affect their home; that there is a ditch within 4 feet of the Klima's home; that they have concerns about the proposed pumping stations; that Murray Road is not in good condition for heavy traffic usage; that the woods in the area is walkable and will cause trespassing issues; that the developer should be required to build a fence along the perimeter of the site; and that Mr. Banks is going to build a farm shop on the adjoining parcel.

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



Mr. Smith stated that he would like to make a non-binding statement that the applicants continue to work with the opposition on their concerns and that he would move that the Commission grant preliminary approval of Subdivision #2005 – 95 for Harlton Acquisitions, L.L.C., based upon the record made at the public hearing and for the following reasons:

1. The project is located within the Environmentally Sensitive Development Area according to the 2002 Land Use Plan.
2. The applicant has proposed 197 lots within the project, which is within the permitted density in the Environmentally Sensitive Development Area. Also, through the clustered design, at least 35% of the property is maintained as open space.

Minutes  
February 8, 2007  
Page 9

3. The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community. Other similar projects on neighboring or adjacent parcels include Bethany Ridge, Whites Neck Village and the Bay Forest Club.
4. The project is located within the Millville Expansion of the Bethany Beach Sanitary Sewer District.
5. Central water will be provided to the project.
6. The subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. The applicant has also favorably addressed the items described in Section 99-9C of the Subdivision Code.
7. This recommendation is subject to the following conditions:
  - There shall be no more than 197 lots within the Subdivision.
  - The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, storm water management facilities, and other common areas.
  - The storm water management system shall meet or exceed the requirements of the State and County.
  - The storm water management system shall maximize ground water recharge and erosion and sediment control measures and shall comply with all State and County requirements.
  - All entrances shall comply with all of DelDOT's requirements.
  - No wetlands shall be located on any individual lots.
  - A system of street lighting shall be provided by the Applicant.
  - Sidewalks shall be installed on both sides of all streets within the Subdivision.
  - Within 2 years of the issuance of the First Residential Building Permit, the Developer shall construct a community swimming pool and community center, tennis courts, trails, and a tot lot.

- The development shall be served as part of the Millville Expansion of the Bethany Beach Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
- Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- A school bus stop shall be established within the project. The location of the bus stop shall be established in coordination with the local school district, and it shall be shown on the Final Site Plan.
- The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- The cemetery will be protected, and maintained by the Homeowners' Association.

Minutes  
February 8, 2007  
Page 10

- The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design. This plan shall also clearly show the wooded areas that will be preserved.
- Lots 93, 94, 95, 96 and 97 shall be re-aligned to reflect a consistent, minimum 30-foot buffer along the property boundary that is outside those lot lines in the rear.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

**Subdivision #2003-50** – application of **KAPLAN, GALLO & HOWLETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 57.00 acres into 53 lots, located on both sides of Road 257, approximately 2,465 feet southwest of Route One.

Mr. Lank advised the Commission that the applicants submitted an Exhibit Book and a letter on February 2, 2007 and a revised plan on January 24, 2007 and that they will be made a part of the record for this application.

Mr. Abbott advised the Commission that this is a rehearing for a 48 lot subdivision; that the Commission denied this application on September 9, 2004; that the applicants appealed that decision to the County Council; that the County Council upheld the Commission's decision on April 19, 2005; that the applicants appealed the Council's decision to Superior Court; that the Court remanded the application back to the Council so that the votes could be recorded on tape; and that the County Council remanded the application back to the Commission for a new hearing.

Mr. Abbott advised the Commission that a letter in opposition to this application has been received from Preston and Ellen Shockley and that the letter will be made a part of the record.

Mark Dunkle; Attorney, Gary Cuppels; Surveyor with ECI Corporation, Eric Ostenchuk; P.E. and Jody Hudson were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this is a new and improved application; that this application is for 48 lots and that the original application was for 53 lots; that the proposed lot 48 will be eliminated and dedicated to the open space along the creek; that there are other approved or pending subdivisions in the immediate area; that Round Pole Bridge Road is currently 18 to 22 feet in width and will be upgraded with paved shoulders; that there will be a combined driveway entrance for lots 46 and 47; that the entrance locations are along the straight section of the road; that a traffic impact study

Minutes  
February 8, 2007  
Page 11

was preformed and is a part of the Exhibit Book; that there are no traffic safety issues; that DelDOT did not voice any objections to this application; that the property will be posted that there are hunting activities in the area; that the deed restrictions will include the agricultural use protection notice and hunting and fishing activities; that Gallo is no longer a part of this application; that the applicants have offered formal hunting rights along the marsh; that central on-site sewer will be provided and meet all requirements of the State and County; that there are not any wetlands located on any of the lots; that a 50-foot buffer has been provided from the State wetlands; that a 30-foot forested buffer is provided; that sidewalks will be provided on both sides of all streets; that 47 lots are proposed; that the project will have no negative impacts on the school district; that the entrance location is appropriate; that no site obstructions are proposed; that by upgrading the road, the width of improvement will be 32-feet with shoulders; that farm equipment will be able to use this road and not cause any impacts; that a corn crop would more negatively impact the site distances than the proposed subdivision; that a Phase 1 Environmental Assessment report was prepared by ECI; that the applicants will comply with all of DelDOT's recommendations; that a multi-modal path will be incorporated into the project; that the wastewater treatment plant will be drip irrigation or low pressure system; that the streets will have curb and gutter; that the storm water management ponds will have aeration systems; that the subdivision meets the requirements of Section 99-9C; that no berms along the storm water management ponds are proposed; that the wetland areas will be monumented; that parking can be provided for the tot lot area; that a school bus shelter will be provided; that the project will not have a negative impact on hunting in the area.

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

The Commission found that Pete Reed, Mark Nardi, William Downs, Joe Larrimore and Brian Reed were present in opposition to this application and stated that the development will impact hunting activities that occur along the marsh and creek; that the streetlights will be out of character with the area; that the location of the storm water management ponds causes concerns; that the density is too much for the area; that individual wells will contamination to the area; that the sewer system will have negative impacts on Beaver Dam Creek and the Broadkill River; that the pump stations will be a problem; that there is an airport in the vicinity of the project and that future owners should be aware of this; that the project will have a negative impact on traffic in the area; that steel gun shot travels over 990 feet; that hunters are not permitted to shoot across public roads; that there will be a loss of hunting privileges in the area; and that Level 4 areas should not be developed.

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

Minutes  
February 8, 2007  
Page 12

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Meeting adjourned at 9:50 p.m.