



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 13, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 13, 2008 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. 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 Richard Kautz – Land Use Planner.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Agenda as amended by removal of Subdivision #2006-55 under Old Business, and for the processing of C/Z #1637 prior to C/U #1775. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Minutes of February 28, 2008 as amended. Motion carried 4 – 0.

OLD BUSINESS

Subdivision #2006-55 – application of **ALVANNAH R. DAVIS** to consider the Subdivision of land in a GR General Residential District in Cedar Creek Hundred, Sussex County, by dividing 13.63 acres into 8 lots, located west of Road 225, 733 feet south of Road 38.

Mr. Lank advised the Commission that this item was removed from the agenda on March 6, 2008.

PUBLIC HEARINGS

C/U #1731 – application of **WHITE WATER ENTERPRISES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and shop for a well drilling business to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.99 acres, more or less, lying south of Route 16, 300 feet west of Route 30.

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

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Area Study will be required; that the County is currently conducting the planning area study; that the study is scheduled to be completed in 2008; that the County currently has no schedule to provide service to this project; and that a concept plan is not required.

The Commission found that Robert Allen White, Jr. and Brian White were present and stated in their presentations and in response to questions raised by the Commission that they also own a 75-foot wide strip of land across the rear of their property and the adjacent property to provide access to Route 30; that they purchased the strip of land in the last 6 to 8 months; that their site is located adjacent to an iron works/welding shop; that they are proposing an office/storage building and a shop building; that vehicles, PVC pipe, gravel and sand will be stored outside; that the shop building is large enough to store most of the materials; that they will have a small dumpster for trash; that the site will be fenced; that customer parking will be provided in the front area of the site; that they now have 7 employees and anticipate a maximum of 10 employees; that signage could be located on the building; that they have not performed a septic evaluation, but the soils are adequate for septic; that they have not yet met with DelDOT for entrance approval; that they can meet all setbacks from property lines; and that there are 2 billboards 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.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1731 for White Water Enterprises, Inc. based on the record and for the following reasons:

1. The site is at the intersection of Route 16 and Route 30, and there are other commercially zoned properties at this intersection. The use of the property for a well drilling company is appropriate for this location.
2. The project, with the conditions and stipulations placed upon it will not adversely affect neighboring properties.
3. The operation of the well drilling business will not generate a significant increase in traffic or noise, since a majority of the company's work will be performed off-site.
4. This recommendation is subject to the following conditions:
 - A. There will only be one sign on the premises that shall not exceed 32 square feet in size.
 - B. Subject to DelDOT's approval, there shall only be one entrance to the property. The entrance location shall be shown on the Final Site Plan.
 - C. All outside storage and dumpsters shall be screened from view of adjacent properties.
 - D. All parking, dumpsters and storage areas shall be designated on the Final Site Plan.
 - E. No more than 10 employees shall be permitted as part of the business.
 - F. The location of any required stormwater management areas shall be shown on the Final Site Plan.
 - G. Any security lighting shall be screened so that it does not shine on adjacent roadways or properties.

H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson 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 and stipulations stated. Motion carried 4 – 0. Mr. Lank advised the Commission that the Applicants have requested that C/Z #1637 and C/U #1775 be consolidated into one public hearing.

There was a consensus of the Commission that the public hearings for C/Z #1637 and C/U #1775 be consolidated and that the decisions be rendered separately.

For the record, Mr. Lank introduced the two applications.

C/Z #1637 – application of **EAST MARKET, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying at the southeasterly corner and the northeasterly corner of Warwick Road (Road 310A) and Blue Claw Road (Road 313A), to be located on 22.49 acres, more or less.

C/U #1775 – application of **EAST MARKET, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (70 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 22.49 acres, more or less, lying at the southeasterly corner and the northeasterly corner of Warwick Road (Road 310A) and Blue Claw Road (Road 313A).

The Commission found that prior to the meeting the Applicants had provided Exhibit Booklets which contained references to site data, the preliminary site plan, site information, water service, sanitary sewer service, soils feasibility, storm water management, environmental assessment, public facilities evaluation, sketch plan, DelDOT entrance information meeting memorandum, compliance with Ordinance 99-9C, consolidated plan responses, a PLUS letter of no objection, environmental data, utility commitment letters, a Phase I Environmental Site Assessment, on-site sewage subsurface exploration/laboratory testing, total maximum daily loads, a summary of endangered species and natural heritage assessments, an assessment on cultural resource report, and PLUS comments and responses.

The Commission found in reference to both applications and based on comments received from the County Engineering Department Utility Planning Division that the site is located in the Oak Orchard Planning Area; that Ordinance No. 38 construction will be required; that sewer service has not been extended to the parcels at this time; that sewer service is not available to the area; that the County does not have a firm schedule to provide sewer service; that a schedule will be proposed in the North Coastal Planning Study; that the parcels are not capable of being annexed into a sewer district at this time since the parcels do not adjoin an existing sewer district; that the project is in the Environmentally Sensitive Developing Area near the Oak Orchard Sanitary Sewer District and that the County is considering serving the entire project within the Inland Bays Planning Area for sewer service; that this study is nearing completion; that the study will

develop options for sewer service and make a recommendation; that the project proposes to develop using a private central community wastewater system; that the Engineering Department opposes community systems in planning areas unless there are no other solutions; that the County requires design and construction of the collection and transmission system to meet 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 a review and approval of the treatment and disposal system by the Engineering Department is required and plan review fees may apply; that the Department recommends that the wastewater system be operated under a long-term contract with a capable wastewater utility that meets TMDL limits for the Inland Bays; that the Department recommends that they have a wastewater utility provider prior to approval of the project; that wastewater disposal fields should not be counted as open space and should be clearly identified on recorded plats; that when the County provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the County system at the developers and/or owners expense; and that a concept plan is required.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service "A" of Warwick Road will not change as a result of this application; that a "Letter-of-No-Objection" has been received from DelDOT for the entrance location only; that this site shall have full access from Road 313A and only an emergency access from Road 310A; that the roundabout shall be designed to FHWA standards; and that the entrance plans shall be developed in accordance with DelDOT rules and regulations prior to entrance approval.

Mr. Lank advised the Commission that PLUS comments were received and that they are included in the Exhibit Booklet Volume II along with the Applicant's responses.

The Commission found, based on comments received from DNREC Division of Water Resources, that the Department is in receipt of a Preliminary Site Investigation and is anticipating a detailed Soil Investigation Report; that the Department conveys that all requirements of Section 9.00000 Preliminary Wastewater Treatment and Disposal Review of the Regulations Governing the Design Installation and Operation of On-Site Wastewater Treatment and Disposal Systems have been met; and that based on the findings to date, the Department believes the proposed project would be feasible under the current criteria cited in those regulations.

The Commission found that Kevin Whittaker of East Market, LLC was present with James Fuqua, Jr., Attorney, and Gary Cuppels of ECI, Engineering Consultants International, LLC and that they stated in their presentations and in response to questions raised by the Commission that they are applying for rezoning to MR so that they may also apply for multi-family use of the parcel; that 70 units are proposed on 22.49 acres; that there are mixed housing types in the area and referenced single family homes, duplexes and multi-family structures; that the project density equals 3.1 units per acre; that the area to be developed is mostly wooded; that the plans provide for a preservation of 38% of the forest; that buffers are proposed along the east and west sides and the shoreline; that 70% of the site is preserved in open space; that one entrance is proposed on Blue Claw Road and that a gated emergency access is proposed on Warwick Road;

that both entrances have location approval by DelDOT; that additional right-of-way is proposed to be dedicated to DelDOT; that the wastewater treatment plant is proposed on the northeasterly corner of Blue Claw Road and Warwick Road; that the wastewater treatment facility will be operated by a licensed operator; that central water will be provided by Tidewater Utilities; that a Homeowners Association will be created to enforce the restrictions; that shopping and services providers are in close proximity in Long Neck and Millsboro; that they have performed a Phase I Environmental Site Assessment; that they have performed on-site sewage subsurface exploration and laboratory testing to establish compliance with the TMDL regulations; that they have performed a summary of endangered species and natural heritage assessment; that they performed an assessment of cultural resources report; that they have provided responses to Ordinance 99-9C references in the Subdivision Ordinance; that the site is located in a growth area, the Environmentally Sensitive Developing Area; that the site is located in a Investment Level 3 of the State Strategies; that the Office of State Planning Coordination has stated that the State has no objections to the development of the property; that the use is compatible to area housing and referenced Gull Point, a housing development containing condominiums and townhouses, Warwick Cove, a condominium project, and Piney Point, a mobile home community with similar density; that the project is consistent with the zonings in the area, the uses in the area and the density of projects in the area; that a minimum of 4.0 acres of woodland will be preserved; that street trees and landscaping will be provided to balance out the woodland removed; that a minimum 50-foot buffer with an average 75-foot buffer will be provided along the shoreline wetlands; that amenities will include a clubhouse, swimming pool, tot-lots, gazebos, and trails; that a dock exists at the shoreline; that a marina may be created and they acknowledge that they must obtain approval from the State DNREC; that the marina will be designed to be environmentally friendly; that 50% of the site on the northeasterly corner of Blue Claw Road and Warwick Road will be utilized for sewerage treatment and disposal; that TMDL calculations have been balanced per State Guidelines; that stormwater management facilities will be designed using green technology; that the site was once used as a seasonal camp; that no unmarked graves have been found and that they will contact the State Historic Preservation Office if any remains are found during construction; that a ferry once traveled across the river from the end of Warwick Road; that private streets, sidewalks on both sides of the streets, and street lighting will be provided; that there is no intent to expand the sewer treatment facilities to serve others; that the treatment plant will be located within a structure; that the structure will resemble a barn similar to the one utilized along Route 9 at the Reserves at Lewes Landing development; that DelDOT will require road improvements along Blue Claw Road; that there will be no on-site storage facility for boats/trailers; that there should be no need to bring fill in from off-site; that no road improvements have been requested from DelDOT for Warwick Road; that interconnection to the Rogers property has not been proposed since the Rogers family has no intent to develop their site; that all properties in the area drain toward the Indian River; that tot-lots can be relocated in the project; that the intent of the marina is primarily for the residents in the community; that the trails and sidewalks can be interconnected; that the amenity areas have been established as drawn to take advantage of the views of the river; that space is available to provide a school bus shelter area if required by the school district; that a State boat ramp exists within 100-yards of the site; that the existing dock is approximately 75-feet long and provides 4 slips; that the proposed marina facility proposes 24 to 25 slips; that a standard subdivision, zoned MR, could generate 4 dwellings per acre on this site; that the buffer areas will be left in natural vegetation and shall not be grassed; that greater buffers are proposed than the 50-foot required;

that sewer treatment is proposed as far away from the river as possible; that landscaped and forested buffers will be provided along the east and west of the site.

The Commission found that Mr. Fuqua submitted possible Findings of Fact for C/Z #1637, possible Findings of Fact for C/U #1775, and possible Conditions of Approval for C/U #1775.

The Commission found that there were no parties present in support of these applications.

The Commission found that Darrell Patterson, Johnny Rogers, Wayne Miller, James Farmer, Wayne Rogers, and Steve Savakis were present in opposition to this application and stated that they are concerned about living next to a sewer treatment facility, road widening, the impact on farm animals, the loss of a beautiful area to development, water quality, run-off into the river, increased traffic, multi-family use, the impact on adjacent farms and anticipated complaints on their farming operations, the negative impact on property values for parcels next to a sewer treatment facility, traffic difficulties getting onto Route 24 from Warwick Road, the increased density, that accidents or construction along Route 24 sometimes detours traffic through Warwick Road and Blue Claw Road; emergency vehicle access, impacts on existing users of the boat ramp and the parking of vehicles and boat trailers along Warwick Road by hunters and fishermen, loss of wildlife and wildlife habitat, trash, noise, drainage causing pollution, the need for more development in this area, the over-crowding of the river with boats, slopes and grades, and the need for more design for erosion and sedimentation control.

The Commission found that Mr. Farmer submitted a letter in opposition from Glenn and Gloria Barrentine in opposition and supporting the concerns of their neighbors.

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 for further consideration on C/Z #1637. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action for further consideration on C/U #1775. Motion carried 4 – 0.

Subdivision #2006-60 – application of **ALBERT L. JOSEPH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 31.33 acres into 4 lots, located south of Road 72, 258 feet east of Road 458.

Mr. Abbott advised the Commission that the Technical Advisory Committee did not review this application since 3 of the 4 lots are strip lots along Road 72 and the 4th lot is the residual lands.

Mr. Abbott advised the Commission that DelDOT, based on a letter dated August 24, 2006, voiced no objections to the Minor Subdivision.

The Commission found that Albert L. Joseph and Albert E. Joseph were present and stated in their presentations and in response to questions raised by the Commission that they had created 7 minor lots and desire to subdivide 3 additional lots; that the 3 lots exceed 0.75 acre each; that

individual septic evaluations have been approved for each lot; that the agricultural protection notice will be included in the deed for each sale; that site constructed homes will be required; that the residual lands have a buyer if the subdivision is approved; that Lot 8 and Lot 9 have approval from DelDOT for a combined entrance; and that Lot 10 has approval for a single entrance.

The Commission found that Kathy Johansen questioned the square footage of the dwellings proposed.

The Commission found that Albert L. Joseph responded that the dwellings would contain a minimum of 1,700 square feet of living space.

The Commission found that Eric Johansen questioned the number of lots proposed.

The Commission advised Mr. Johansen that the 4 lots include 3 residential building lots and the residual 25 acre parcel.

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

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2006-60 for Albert L. Joseph based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 4 lots on 31.33 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This preliminary approval is subject to the following conditions:
 - a. Any required stormwater management system shall meet or exceed the requirements of the State and County.
 - b. All entrances shall comply with all of DelDOTs requirements.
 - c. The Final Site Plan shall be subject to the review and approval of the staff upon submission of all agency approvals.
 - d. The Agricultural Use Protection Notice shall be included on the Final Site Plan and in the deeds to each of the lots.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of this subdivision for the reasons and with the conditions stated. Motion carried 4 – 0.

Subdivision #2006-61 – application of **MLK PARTNERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by

dividing 43.29 acres into 36 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 488, 1,100 feet west of U.S. Route 13.

The Commission found that prior to the meeting the Applicants had provided an Exhibit Booklet which contained references to a request for narrative acceptance, a project summary, the project application, a State Strategies/Aerial Map, the site as depicted on the Comprehensive Plan Update Existing Land Use Map, the site as depicted on the Comprehensive Plan Update Future Land Use Map, a copy of the County Tax Map of the area, a soil survey map, a USGS Quad Map of the area, Technical Advisory Committee comments, a preliminary subdivision plan, a Wetlands Investigation Report, a DNREC non-binding statement of septic feasibility, an approval document from the Office of the State Fire Marshal, a DelDOT "Letter-of-No-Objection" in reference to the entrance location, E-mail correspondence from DelDOT, photographs of Ockels Road, accident reports for Ockels Road, a DelDOT Corridor Plan Map, a news article from the Seaford Star Newspaper, a copy of the Declaration of Covenants and Restrictions, letters of support, a letter from the Seaford School District in reference to bus shelters, a letter from Perdue Fertilizer Products, Inc. referencing truck routes, ability to serve letters from utility providers, references and responses to Ordinance 99-9C, and suggested proposed Findings of Fact and Conditions of Approval.

Mr. Abbott advised the Commission that the Technical Advisory Report for April 18, 2007 is a part of the record for this application; that revised subdivision plans were submitted on September 17, 2007; that Mr. Robertson reviewed and approved the proposed restrictive covenants by letter of February 7, 2008; and that a letter of opposition was received from Herman J. Ockels on February 29, 2008.

The Commission found that Mike Mahatta, Richard Mahatta, and Joe Kollock of MLK Partners were present with Stephanie Hansen, Attorney, John Murray of Kercher Engineering, and Greg Sizemore of Sizemore Real Estate and that they stated in their presentations and in response to questions raised by the Commission that Mahatta Construction has built over 150 homes in Sussex County, some of which are in Holly Shores, Crestfield Development, Little Meadows, and Old Church Landing, etc.; that they constructed 3 homes adjacent to the site; that their homes range in price from \$180,000 to \$800,000; that the homes planned for this subdivision are anticipated to range in price from \$190,000 to \$220,000; that the homes will contain at least 1,300 square foot of livable area and will be designed for expansions; that the Commission denied a similar application on April 27, 2006 with reasons; that the Town of Blades has approximately 900 residents; that the area near the site has 913 homes; that the use intended is in character with the area; that the homes proposed are similar in size to the existing homes in Johnson Development, Sussex Manor, Easter Lane, etc.; that other developments exist in the area; that the area includes active farming activities and residential development that have functioned in harmony for years; that the existing Comprehensive Plan Update and the proposed Update depict the site as a Low Density Area; that on-site septic and wells are proposed; that the purpose of the AR-1 district is to provide for a full-range of agricultural activities and to protect agricultural lands, as well as to provide for low-density single-family residential development; that the State Strategies reference that the site is in Investment Levels 3 and 4; that the DelDOT Current Corridor Plan depicts the site in a Multi-modal Transportation Investment Area, not in a preservation area; that 36 lots are proposed on 43 acres; that the density proposed equals 0.83

units per acre which is consistent with the Comprehensive Plan Update; that the lots range from 0.75 acre to 2.0 acres; that the two abandoned poultry houses and the existing dwelling will be removed; that the 6.81 acres of open space includes the buffers and stormwater management facilities; that no sidewalks are proposed; that street lighting will be provided; that wetlands have been delineated; that no impacts on the wetlands are proposed; that the septic feasibility references that the site is suitable for on-site gravity systems with no sand mounds; that no endangered species or historic or cultural features have been found on the site; that 5.37 acres of forested cover exists and that 2.5 acres will remain; that forested buffers will be provided along active agricultural lands; that the site should have good groundwater recharge; that 30-foot rear yard setbacks are proposed; that they anticipate that the impervious cover will not exceed 20%; that 3 acres has been set aside for the establishment of a wetpond with access proposed to the wetpond area between lots 35 and 36; that the Seaford School District has advised them that a school bus shelter is not required for this size project; that all homes proposed would be within the MPHU Ordinance guidelines; that the Applicants build quality homes; that a need exists for this type of product price range; that the real estate sales market in this area has not been impacted; that tracts continue to be sold; that DelDOT has voiced no objections to the application; that according to a DelDOT representative, there have been 5 accidents reported on or near Ockels Road since 2004, none of which were fatal; that DelDOT prefers access to the site from Ockels Road, rather than Route 13A; that the streets will be constructed to County standards with 50-foot rights-of-way and 20-foot pavement; that open space near the entrance can be expanded to allow for placement of a bus shelter and pull-off area for buses; that a sight distance analysis is being performed and will be sent to DelDOT; that the variance request for the cul-de-sac length will allow for a 1,100-foot street length and does not affect adjacent properties; that sidewalks could be installed if required; that the stormwater management location was chosen due to the close proximity to the outfall at a drainage ditch; that the ditch is not a tax ditch; that no wetlands will be within any lots; that they did not propose any interconnections due to the ditch and active farmlands adjacent; that the area is developing; that they cannot participate in the MPHU procedure since part of the site is located in an Investment Level 4; that the buffers will be planted during the clearing/grading phase of the project to allow for landscaping in berms; and that all of the homes will be on-site construction or modular, not mobile homes.

The Commission found that Russ Neal spoke in support of the project and stated that he has no problems with the type of homes or the project; that the project should provide affordable housing for 1st time homebuyers; that the Applicants operate a first class operation; and that the Applicants keep their sites clean during construction.

The Commission found that Sue Ockels, Steve Savakis, Marty Ockels, Rita Salisbury, and Ashley Ockels were present in opposition to this application and expressed concerns about their fear for pedestrians and cyclists traveling along Ockels Road, the number of accidents in the area of Ockels Road, the number of vehicle trips per day (642) per DelDOT statistics, farm and large truck traffic along Ockels Road, the impact on the farming community along and near Ockels Road, the fear of complaints about farming activities from new residents, that farmers have to be certified for nutrient management, the impact on the economics of the farmers in the area, safety concerns for the children in the area, that the site is surrounded by active poultry farms and dairy farms, crime and vandalism, questioning the need for more homes, urban sprawl, that the growth

area for Seaford is to the north of Seaford, that the majority of the housing in the immediate area has existed for 40 years, the depth of the ditches along Ockels Road, and the curves along Ockels Road.

The Commission found that Sue Ockels submitted two letters from independent truckers expressing concerns about development along Ockels Road, that Ockels Road is a very busy heavily traveled roadway utilized by large trucks and equipment, the sharp curves along Ockels Road, the increase in traffic, and accidents and traffic safety.

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

Mr. Wheatley suggested that the Commission should afford Mr. Gordy the opportunity to review the record and listen to the recording of the hearing.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action to give Mr. Gordy the opportunity to review the record if he desires. Motion carried 4 – 0.

Meeting adjourned at 10:00 a.m.