



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE SPECIAL MEETING OF APRIL 3, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 3, 2008 in the Cheer Center, Sand Hill Road, Georgetown, Delaware.

The meeting was called to order at 6:05 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 Richard Kautz – Land Use Planner. David Baker, County Administrator, and Hal Godwin, Assistant to the Administrator, were also in attendance.

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

Mr. Robertson advised those present that this is the time and the place for the scheduled Public Hearing concerning the Sussex County Comprehensive Plan Update; that these proceedings will be conducted under the rules of the Planning and Zoning Commission that were adopted in October of 1998 and revised in 2007; that like all Commission matters, the Comprehensive Plan Update will be discussed and voted on publicly in open meeting; that the Commission is required to make a recommendation with respect to the Comprehensive Plan Update to the County Council; that the Public Hearing tonight will be conducted as follows: first, a brief overview of the Comprehensive Plan Update will be given by Paul Driscoll of Urban Research and Development Corporation, the County's consultant on the Comprehensive Plan Update; that after Mr. Driscoll's comments, the Commission will invite public comment; that when speaking to the Commission, please begin by identifying yourself by name and your current address for the record; that we ask that you be concise in your statement and avoid being repetitious; that the Chairman does have the ability to limit comment or testimony that is irrelevant or unduly repetitive; that each person will have only one opportunity to speak; that there will be no rebuttals or additional comment allowed; and that in addition, in lieu of giving oral comments, written comments will be accepted tonight and made a part of the record.

Mr. Robertson added that on March 20, 2008, a Master in the Court of Chancery issued his draft report in the form of a Proposed Opinion; that this report has an impact on the Comprehensive Plan Update; that it addresses the subject of State Resource Areas; that for a better understanding of the decision it is helpful to consider the following background:

#### STATE RESOURCE AREAS

The State Legislature adopted the DELAWARE LAND PROTECTION ACT, which directed DNREC to designate open space areas that contained natural and scenic resources, important recreational areas, wildlife habitat or significant cultural, historical or archeological sites.

The Act created the Open Space Council and directed it to adopt the standards and criteria to be used by DNREC in evaluating and selecting the areas to be designated as State Resource Areas.

Since the Open Space Council was required to create the standards and criteria to be used in designating the State Resource Areas and since the Court found in its draft report that the Open Space Council failed to perform the necessary act of creating the standards and criteria, the Court held that DNREC exceeded the authority granted to it by the Legislation.

In effect, the Court has stated that DNREC prepared the State Resource Maps in 1990 and updated them in 2006 without the benefit of any standards and criteria from the Open Space Council. After that, the maps were sent to the three Counties and the Towns for adoption into the Conservation Elements of their respective Comprehensive Plan Updates.

Because the Open Space Council failed to adopt the standards and criteria for selecting the State Resource Areas the Court's draft opinion invalidates the State Resource Area maps and relieves the County of the obligation to include the maps or to adopt ordinances to control the use of State Resource Area land in the current Comprehensive Plan Update. In effect, the Court is telling DNREC and the Open Space Council that the Open Space Council should begin the process anew before it sends the map to the Counties and Towns for inclusion in their Comprehensive Plans and any resulting ordinances or regulations.

## PUBLIC HEARING

2007 LAND USE PLAN UPDATE – AN ORDINANCE ADOPTING THE 2007 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING ORDINANCE NO. 1574, THE COMPREHENSIVE PLAN UPDATE, ADOPTED DECEMBER 10, 2002.

Paul Driscoll of Urban Research and Development Corporation (URDC) presented a Power Point presentation and stated that the Elements of the Comprehensive Plan include: Land Use, Community Design, Conservation, Recreation and Open Space, Water and Wastewater, Housing, Economic Development, Historic Preservation, Intergovernmental Coordination, and Mobility;

that the Tools recommended in the Draft Plan include:

Purchase of Development Rights Easements, Purchase Open Space, Transfer of Development Rights (TDR), Agriculture/Industrial/Commercial Zoning, Density Bonus Fees for Open Space, Open Space Definition, Special Development Tax Districts, Sub-Area Planning, and Density Bonus for Infrastructure;

that in reference to Land Use, the Update has some major initiatives: Updated Future Land Use Map; Transfer of Development Rights and guidelines; to strengthen the definition of open space; to strengthen criteria for clustering with "Superior Design"; Environmentally Sensitive Development Areas and to subtract tidal wetlands from tract sizes in determining density; Agricultural Business Zoning District with Agriculture/Industrial/Commercial and a Voluntary Agricultural District without residential; Density Bonus made possible for major road improvements in developing areas; to address Overlay Zone legal issues; and a Voluntary Agriculture Zoning District and referencing nuisance protections and limited residential;

that in reference to Conservation, the Update has some major initiatives: to preserve more land by easements and acquisitions; to adopt a Wellhead Protection Ordinance; Green Stormwater Management Techniques; to strengthen forested buffer regulations; to promote for the public a Sussex County Land Preservation Guide; Environmentally Sensitive Developing Area referencing maximum allowable impervious surface; to establish criteria for TDR transfers; to create incentives for “Super Green” buffers from waterways and wetlands; and to establish natural open space within development by easements requiring markings and maintenance;

that in reference to Parks and Recreation, the Update has some major initiatives: requiring recreation facilities and multi-use trails for larger developments; to continue the County practice of purchasing open space/easements with Green Ribbon goals to preserve land; and a Park/Recreation Endeavor being considered on a case-by-case basis;

that in reference to Water and Wastewater, the Update has some major initiatives: to develop a County approval process for Private Wastewater; to continue expansion of Public Sewer and to handle existing development and coordinate with land use through Planning and Zoning; and to adopt a Source Water Protection Ordinance;

that in reference to Housing, the Update has some major initiatives: to monitor and make changes to the Moderately Priced Housing Unit (MPHU) requirements; to establish a MPHU program for rentals; and to improve Housing Programs by continuing the CDBG housing rehabs, other housing grants and cooperative efforts through non-profit partners like Habitat for Humanity and West Rehoboth Community Land Trust;

that in reference to Economic Development, the Update has some major initiatives: to continue projects to expand and improve the County Industrial Airpark; to continue to establish and expand industries, i.e. aviation, that complement agriculture, tourism and retail for economic diversification; to continue to promote education and training for employer/County partnerships; to preserve and encourage agriculture by the purchasing of development rights; by creating a new Agricultural/Industrial/Commercial zone; to find complementary businesses; to seek higher paying employers by conducting an Economic Target Market Analysis; and to establish a County Economic Development Committee to make recommendations to improve the job market and to get broad-based by including local Chambers and Towns in the County;

that in reference to Historic Preservation, the Update has some major initiatives: to review historic property demolition; to promote review of historic properties by Towns; to gather and share more historic information; and to establish historic character as criteria for variances and Conditional Uses for the purpose of historic preservation;

that in reference to Intergovernmental Coordination, the Update has some major initiatives: to establish greater coordination with Towns; to promote best management practices for stormwater control; to continue and expand coordinated efforts relating to State Police contracts, State/Federal wastewater funding, CDBG programs, preserve more Sussex farms, DelDOT projects, and the PLUS process:

that in reference to Community Design, the Update has some major initiatives: to promote traditional neighborhood design with shallow yards, porches, trees along streets, sidewalks, garages and alleys; to development interconnectivity by linking open space, trails and bike paths; to buffer commercial uses from housing; to provide an open space definition and to strengthen the cluster development concept; to minimize impervious surfaces and to promote pervious surfaces; to encourage Green Architecture and Site Design which allows for direct runoff to recharge areas, optimizes vegetation coverage, etc.; and to revise regulations on signs;

that in reference to Mobility, the Update has some major initiatives: to partnership with DelDOT to encourage developer contributions in Sub-Area Planning; to assist in transportation infrastructure funding by the creation of Special Development Tax Districts; to improve the policy for sufficient pedestrian networks and bicycle use as travel alternatives; to assist in revisions and information distribution for evacuation routes; and to support DelDOT in prioritizing and improving road infrastructure; and

that in reference to Implementation, the Update references that the Zoning Ordinances should be updated immediately.

Mr. Driscoll added that the County has issued a PLUS response to the State for comments; that the Staff appeared before the Governor's Advisory Council on Planning Coordination and generally had a favorable reception from the State; that some members praised the County's response; that the Comprehensive Plan Update draft has been revised to include more detail, tighter language and highlights various concepts and initiatives, including, voluntary agriculture preservation and agri-business districts, an affordable rental housing program, a voluntary TDR program, and deletion of wetlands from lot size calculations; that we are now in the public hearing process for the Commission and the County Council; that the Commission will render a recommendation and the County Council will render a decision; that the Update is scheduled for adoption by April 30, 2008; that the Plan will then move on to the Governor for certification; and that the County staff and the Consultant will team up to draft and bring forth ordinances necessary to implement the Plan.

The Commission found that Robert Maegerle, Joan Deaver, Gail White, Betty Deacon, Gina Miserendino, Betsy Farlow, Chris Weeks, Sandy Spence, Mable Granke, Ed Jestice, Rich Collins, Gerald Esposito, Christian Hudson, Guy Phillips, Wayne Baker, Robert Robinson, Roslyn Allen Echols, Doug Simpson, and Dan Kramer of the approximately 50 parties in attendance commented on the Plan Update. Their comments included reference to over population; the pollution of the Inland Bays; public sewer; that there is a need to restrict population growth; that the Citizens Coalition suggest no density bonuses in the Environmentally Sensitive Developing Area and that no developments in excess of 50 units should be approved unless all infrastructure is in place; that 100-foot buffers from wetlands should be required unless reduced by the State DNREC; that the Environmentally Sensitive Developing Area should not be a developing area; that the Development District around Lewes should not be in a Developing Area; that 2-units per acre in the AR-1 District is a problem; that until the Inland Bays have a protection plan no further development should take place; that Special Tax Districts should not be created; that the County needs more MPHU sites for low income individuals; that the Economic Development Element is very weak, as presented; that the Western Parkway concept

in the Plan should be removed; that there is a need for a Plan that has the force of law, i.e. where the word “may” is used it should be “shall”, and where the word “should” is used it should be “will”; that Source Water Protection must be top priority; that a glossary that defines key terms should be created; that the Plan must focus less on dwelling units; that density bonuses should be eliminated from the Cluster Development concept; that carrying capacity and cumulative impacts need to be addressed; that the Plan must require that an applicant direct growth where the State and the County view growth to be appropriate; that intergovernmental coordination between the County, the State and the Towns is a must; that things need to be put into perspective; that the process needs housekeeping; that it is in the interest of the County to prohibit residential growth in existing and proposed commercial districts; that community open space is an essential element that should be included in every development; that stormwater management practices need to be brought up to modern techniques; that the approximately 1,300 residents of Plantation Road are concerned about the Mobility Element, the 2-dwelling units per acre, and that the Western Parkway should be deleted; that where it is agriculture, it should be left as agriculture; that there are needs for farms, schools, hospitals and affordable housing; that there is some encouragement about affordable housing in the Plan; that the Plan does not include a strategy to achieve any affordable housing goals; that an assessment of the need for affordable housing and a plan with a time line and evaluation is missing; that environmentally friendly building should be considered; that public transportation improvements are needed; that it is the County’s responsibility to guard and plan for the greatest good including a balanced approach to housing, agriculture, job creation, infrastructure development, services, recreation, and a safe and clean environment; that property values are a concern; that a moratorium on building should be considered due to the economy; that the County needs affordable and workforce housing; that economic development needs to be better addressed when related to population, education, skills, and land use; that expedited review should be considered for projects with green buildings; that tax breaks should be offered for projects using local contractors; that mixed use buildings should be encouraged; that there is a concern for the number of vacant lots and homes that already exists; that the number of substandard homes needs to be addressed; that assistance programs should be expanded to assist those in need; that the manufactured housing references are appropriate; that the County should be applauded for the efforts in the MPHU programs; that the Plan needs to be the Commissions plan; that the 2020 population is already here; that the people to support the retirees are not available; that there is a need for health care and emergency support; that Transfer of Development Rights will not succeed unless there is market; that there is a need to establish what farms need to be protected; that the Proffer Ordinance should be eliminated; that the County needs an Open Space program with good definitions and regulations; that Sub-Area Planning cannot only look at transportation; that the area of Route One from Five-points to south of Dewey needs to be reviewed now; that Special Tax Districts will not help; that there is a need for an Adequate Facilities Report; that the Plan is coming together with economic development; that agriculture in the County is alive and well; that the County is 27<sup>th</sup> in the nation in market value for farming operations; that the County produces the most poultry in the nation; that the Plan keeps agriculture viable; that farmers are willing to preserve farms; that farmers support the Agriculture/Industrial/Commercial concept proposed; that affordable housing concerns exist; that property rights are a concern; that local control is needed; that the State Resource Area process has been nullified by the Court; that the need for the Western Parkway is questioned; that streetlighting should be a choice of the developer, not mandated; that private enterprise can do a better job than the government; that septic system use should not be eliminated; that the Plan is

inconsistent in the Water and Wastewater Element; that wording that references “prohibited” should read “limited” and that wording that references “eliminated” should read “reduced”; that private wastewater providers should be permitted to operate in Secondary Service Areas, on an interim basis, until County services are provided; that the private wastewater providers are willing to co-exist with the County; that similar language in Kent County is being litigated; that there have been some oversights in the mapping of some of the Developing Areas on the Future Land Use Map in that some parcels should have been included; that some developers that are proposing to provide affordable housing under the MPHU process cannot proceed since their properties are not in a Developing Area; that the general term “farmland” is the basis of the livelihood of the farmer; that 2 units per acre is viable in the view of the farmers; that if a farm is no longer used for farming, the farm owner should be able to develop his farm per zoning; that there is no reason to consider the Plan if ordinances are going to be created that impact an individual’s land; that 2 lots per acre must stay in the Code; that towns have been taking everything away from residents in the unincorporated areas by over developing; that individual property rights are important; questioning what happen to the areas of concern originally mapped; that the citizens of Jintown are concerned about the Western Parkway disturbing their way of life; that there is no benefit to the area if the Western Parkway is created; that services are being forced on the residents, i.e. sewer and water; that residents should not be forced to hook-up to central water and sewer; that it is impossible for the residents of Jintown to incorporate the cost of sewer and water services since they are mostly low income individuals; that if they cannot afford the sewer and water services, they will lose their homes; that the proposed TDR boundary should be expanded further out than the suggested 8-miles; that there should be incentives to preserve lands, not regulations; that wetlands should be calculated into the overall density, not deducted; that land can be preserved by overdevelopment with a maximum density to create more open space; that the only tax increases in the County have been school taxes; that more mobile homes should be permitted; that Special Tax Districts are opposed; that people will live where they can afford to live; and that affordable housing is available in the County.

In response to the questions about the oversights in the mapping of the Developing Areas, Mr. Lank advised the Commission that the Department has received approximately 20 requests for inclusion in Developing Areas for the Commission and the County Council to consider.

In response to the mapping of the Areas of Concern, Mr. Driscoll advised the Commission that those areas are no longer a part of the Plan and that those areas were areas where the Towns may eventually consider annexation.

For the record and in addition to written comments previously received, Gina Miserendino presented written comments on behalf of the Sussex Housing Group, Gail White presented written comments on behalf of the Citizens Coalition, Inc., Gerald Esposito presented written comments on behalf of Tidewater Utilities, Inc. and Tidewater Environmental Services, Inc., and Christian Hudson presented written comments on behalf of Hudson Management.

Mr. Lank advised the Commission that a 7-page report was received by FAX from Richard Anthony on behalf of Plan DE, Save our Coastal Communities and the Sierra Club’s S. DE Group and requesting that the November 2007 submission of the Sierra Club and that report be entered into and made a part of the record of the public hearing.

Mr. Driscoll advised those present that they have received some suggested addendums for consideration which relate to State Resource Area maps, Energy Star certification, additional height and density for LEED certification, density bonuses, green community certification, waste water treatment language, and map changes.

At the conclusion of the public hearing, the Commission discussed the Plan.

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

Meeting adjourned at 8:00 p.m.