



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 8, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 8, 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. 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.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of April 16, 2008 as amended and the Minutes of April 24, 2008 as amended. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1741 – application of **DAVID G. HORSEY & SONS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for borrow pit excavation to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 199.50 acres, more or less, lying north of Route 20 (Hardscrabble Road) and east of Road 446 (Asbury Road).

The Commission found that prior to the meeting the Applicant submitted an Exhibit Booklet which contained a listing of the Consultant Team, a design summary which referenced the proposed borrow pit site, boundary and topographic surveys; rare, threatened and endangered species; critical natural areas or unique habitat; historical buildings; compliance with zoning requirements; provisions for water supply; provisions for sewage disposal; and surface and groundwater pollution prevention; with supporting documents and exhibits which included a regional map, a local map, a legal description, a copy of the FEMA map of the area, a copy of the Tax Map of the area, surveys of the site, a copy of the cover letter and application form for the application, a copy of the contract to purchase the site, a copy of the site plan, a Phase I Environmental Site Assessment Report, a copy of a reclamation plan for the site, and a copy of a letter from DelDOT referencing that a Traffic Impact Study was not required.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “A” of Route 20 may change to a Level of Service “B” based on existing conditions with development under the proposed use, plus site generated traffic and projected level of service with no highway improvements during the peak hour.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Planning Area #5; that the project proposes to use an on-site septic system; and that the proposed borrow pit excavation is not in an area where the County currently has plans to provide sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains 11 different soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the site contains areas of hydric soils; that the Applicant will be required to follow Federal and State wetland requirements; that no storm flood hazard areas are affected; that it may not be necessary for any off-site drainage improvements; that the Applicant will be required to follow State Sediment and Storm-water requirements; and that the Stoney Branch and Asketum Branch tax ditches may be affected.

The Commission found that Bobby Horsey was present with Jim Fuqua, Attorney, of Fuqua & Yori, P.A. and Jeff Clark of Land Tech Land Planning, LLC and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to develop a borrow pit facility on the requested 199.50 acre parcel; that the property was previously owned by Glatfelter; that the site is wooded; that a 150-foot wide electrical power line crosses the site; that tax ditches cross the site; that the site is not located within a flood zone; that the site is adjacent to woodlands and farmlands; that their existing Borrow Pit #1 is located across Route 20 from the site; that they have been in the excavation business for 22 years; that they employ 142 people; that they also operate other borrow pit sites south on Route 20, next to the State Landfill, and on Route 9 west of the site; that Borrow Pit #1 is being reclaimed at the present time with re-grading of the existing grade, restoration of the site, seeding, etc.; that Borrow Pit #1 is located on 90 acres; that the proposed borrow pit will contain approximately 135 acres of the 199.50 acre site; that soil studies indicate excellent soils for excavation; that the proposed operation should not impact the area since it is across from Borrow Pit #1 which has been active for 20 years; that approximately 170 trucks per day are anticipated, which is the same number of trucks which traveled to and from Borrow Pit #1; that no rare, threatened or endangered species have been found on the site; that forested buffers of 100 and 200 feet in width are proposed and will remain in their natural state; that they do not propose to disturb any lands south of Asketum Branch, except for the scales location and the access road; that the existing elevations of the site have been established to be from 9-feet to 19-feet; that the project will be phased; that a sand plant is proposed and will be located on approximately 7.0 acres of the site; that there will be no dewatering; that a water truck will be on site at all times to control dust; that the proposed operation hours are from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 2:00 p.m. on Saturday; that there will be no borrow activities within 200-feet of any home of other ownership; that the Final Site Plan shall include a reclamation plan; that the reclamation plan includes safety elements with slopes of 4:1, safety benches in the pond, a

perimeter dike next to the forested buffer to control run-off, and re-vegetation from phase to phase; that the permit is being sought so that the company can prepare it's long range plan; that the site is an ideal location with ideal materials; that the proposed conditions of approval submitted are similar to the conditions places on Conditional Use # 1271 in 1999 for the borrow pit facility on Route 9; that they are working with the State to see if a reduction in the tax ditch right-of-way can be established; that the sand plant is located approximately 500-feet from Route 20 behind a 200-foot minimum width forested buffer; that the Horsey Family has purchased the site since the application was filed in December 2006; that the Applicants have no objections to a stipulation that Asbury Road is not to be used by truck traffic to and from the site; and that an entrance approval has not yet been obtained.

The Commission found that Mr. Fuqua submitted proposed Findings of Fact, proposed Conditions of Approval, and photographs of an existing borrow pit, scales, and sand plant equipment for the Commissions consideration.

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. Gordy stated that he would move that the Commission recommend approval of Conditional Use #1741 for David G. Horsey & Sons, Inc. based upon the record provided at the public hearing and for the following reasons:

1. The Conditional Use is for the use of fill dirt used in construction of residential, commercial and road construction.
2. The proposed site is centrally located and will be used by the entire County.
3. The proposed site is similar to an operation on the south side of Route 20 that has terminated its use after 20-years.
4. The application will not have an adverse affect on nearby properties, public facilities or public highways.
5. The proposed use will be subject to comply with the requirements of Section 115-172(B) of the Sussex County Zoning Ordinance.
6. This recommendation for approval is subject to the following conditions:
 1. No materials may be brought from off the site for processing, mixing or similar purposes.
 2. The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties, as follows:
 - a. A 200 foot buffer shall be maintained along that portion of the site which abuts the State Route 20 (Hardscrabble Road) and the Route 446 (Asbury Road) rights-of-way. Existing vegetation within the buffer area between the property line and the perimeter dike shall remain undisturbed.
 - b. A 100 foot vegetation buffer shall be maintained along all other perimeter property lines within the site. Existing vegetation between the property lines and the perimeter dike shall remain undisturbed.
 - c. A water truck will be available to control dust from interior trucking traffic when conditions require.

3. Hours of operation of trucking activities shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 6:00 a.m. to 2:00 p.m. on Saturday. There shall be no trucking activities on Sunday.
4. Entrance improvements required by the Delaware Department of Transportation in connection with this land use will be completed by the Applicant.
5. The borrow pit entrance shall have a fenced gate, which shall be secured when the operation is closed.
6. No materials will be stored on any access roads or within any buffer areas.
7. Signage will be placed at appropriate locations to designate pit areas.
8. Fuel shall be stored in storage tanks with confinement areas as required by the Department of Natural Resources and Environmental Control (DNREC) and the Office of the State Fire Marshal.
9. No stumps, branches, debris or similar items will be buried on the site.
10. A Final Site Plan, including all pit side slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to commencement of operations.
11. Before any excavation operations begin, a complete Environmental Impact Study as defined in connection with Ordinance No. 1310 will be conducted and presented with the Final Site Plan.
12. Owner shall comply with all State and County erosion and sediment control regulations.
13. Owner shall be responsible for monitoring ground water quality. Specifically, owner shall install two wells, one above the excavation, and one below the excavation. Monitoring shall be performed by a licensed geologist, and the results filed on an annual basis with Sussex County and the Department of Natural Resources and Environmental Control (DNREC). Owner shall be responsible for all cost associated with the water monitoring. Owner shall also be responsible for the cost of correcting any adverse impact on water quality which may be occasioned by the excavation operation. Necessary remediation shall be determined by Sussex County, upon guidance from the Department of Natural Resources and Environmental Control.
14. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation will be completed in phases as excavation operations in a section are completed. Applicant will notify the Planning and Zoning Department in writing on or about April 1st of each year as to the status of the reclamation and reclamation plans for the following year.
15. The 199.5 acre parcel shall be divided into three (3) phases of approximately 45 acres each. Phase Two will not be started until 75% of Phase One is completed. Phase Three will not be started until 75% of Phase Two is completed.
16. The dredge may operate 24 hours per day, but no front-end loaders, backhoes, or other construction equipment with safety buzzers will operate after 10:00 p.m.

17. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control, or any successor. Upon certification by the Department of Natural Resources and Environmental Control of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.
18. Trucking vehicles shall be prohibited from using Road 446 (Asbury Road). The entrance to the borrow pit shall be from Route 20 (Hardscrabble Road).

Motion by Mr. Gordy, 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 stated. Motion carried 5 – 0.

C/U #1780 – application of **BARRY BAKER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for temporary storage of construction equipment to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less, lying northeast of Road 269-A, 400 feet north of Railroad and 1,000 feet southeast of Road 266.

Mr. Lank reminded the Commission that this application had been withdrawn on April 21, 2008.

C/U #1790 – application of **MARTHA'S LIGHT, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a continuing care retirement community to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 42.85 acres, more or less, of a 54.87 acre tract, lying 500 feet northeast of Muddy Neck Road (Road 361) and adjacent to the westerly side of the Assawoman Canal and 150 feet east of Ogre Drive within the Town of Ocean View.

The Commission found that prior to the meeting the Applicant submitted an Exhibit Booklet which contained references to the Peninsula United Methodist Homes, Inc. and their existing communities in Wilmington, Seaford and Hockessin, Delaware, and Chestertown, Maryland; a listing of the Project Team; an Executive Summary; references to existing conditions including a boundary survey and an overview of current site conditions; a proposed development concept; references to the Preliminary Land Use Service (PLUS); references to Chapter 99-9C for compliance to subdivision considerations; references to compliance with zoning requirements; references to compliance with the Comprehensive Plan Update and the Environmentally Sensitive Developing Area; references to compliance with Chapter 99 Design Requirements and Standards; 34 exhibits; preliminary plans; and suggested proposed Findings of Fact and Conditions of Approval.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “B” of Muddy Neck Road may change to a Level of Service “C” as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Hurlock sandy loam and Mullica mucky sandy loam; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the site contains areas of hydric soils; that the Applicant will be required to follow all Federal and State wetland requirements; that the site is located within a FEMA Flood Zone AE; that it may not be necessary for any off-site drainage improvements; that the Applicant will be required to follow all State sediment and storm-water requirements; and that no tax ditches are affected.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Bethany Beach Sanitary Sewer District Planning Area; that wastewater capacity is available for up to 4.0 EDUs per acre; that Ordinance 38 construction shall be required; that the current System Connection Charge Rate is \$4,088.00 per EDU; that the proposed project must extend mainline sewer and make its connection in the 15-inch gravity line in Ogre Drive; that the project is capable of being annexed into the Sewer District after following completion of certain administrative procedures; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed project is within the Bethany Beach Planning Area for sewer service and connection to the sewer system is mandatory; that the parcel adjoins the Sewer District; that the proposed project exceeds system design assumptions for sewer service; that because of the projects close proximity to pump-station 100, capacity is expected to be adequate if the project does not exceed the preliminary estimate of 330.67 EDUs; that there is excessive capacity in the system that can accommodate the proposed project; that there will be adequate capacity for the remaining portion of the parcel if development is in accordance with the South Coastal Area Planning Study Update 2005; that the proposed project will require a developer installed collection system in accordance with County standard requirements and procedures and the Study Update 2005; that the County Engineer must approve the connection point; that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation into the Sewer District; that the Concept Plan shall include provisions for an 8-inch connection point extended to the remaining portion of the parcel; that one-time system connection charges and annual front footage and service charges will apply; and that there will need to be a memorandum of understanding signed prior to annexation, obligating the developer to pay front footage assessment and system connection charges in accordance with County policies and procedures for non-exempt properties.

Mr. Lank advised the Commission that the file contains copies of comments from the Office of State Planning Coordination, dated December 21, 2007 and April 3, 2008, and that the comments are a part of the Exhibit Booklet provided by the Applicant.

The Commission found that a letter was received from the Honorable Gerald W. Hocker, State Representative, in support of the application and referencing that this community will provide a vital addition to the resources and services available in the area; that increases in population are

due in part to the aging of citizens and the desire of many retirees to re-locate to the area due to their summer experiences as visitors and the high quality of life offered in the area; that over the last several years Mr. Hocker has supported and lobbied for an increase in medical and long-term care facilities to serve not only the citizens, but the visitors as well; that Beebe Medical Center, Atlantic General and Peninsula Regional are all paying close attention to this need and new medical services are being made available to this area; that the benefit of having this project in the area are numerous and are certainly ones that will enhance the entire community, not just a specific age group; that being able to provide long term services for the citizens will allow them to stay a part of the community and reduce the burden to families since few options exists in this venue; that creation of jobs and other opportunities for the citizens will also be welcomed since they will range from service oriented positions to health professionals; that the proposed number of residents in addition to the need for 200-year round positions will be a tremendous stimulus to the economy; that as a non-profit facility many of the facilities created at this site will be made available to the community; that Mr. Hocker heartedly endorses the project and is confident that the positives associated with this undertaking will not only meet a growing need for the residents of the area, but will impact positively on the young people who want to continue to stay in this area by providing them with solid job possibilities; and that Mr. Hocker encourages the Commission to support this initiative.

The Commission found that a letter was received from the Board of Directors of the Bethany-Fenwick Area Chamber of Commerce in support of this application and referencing that the County remains one of the fastest growing counties in the mid-Atlantic region, with much of that growth fueled by retirees; that the area lacks sufficient medical and long-term care facilities to serve the current and future population and their relatives; that other medical providers see this as well; that Beebe Medical Center is working towards a new campus in the area, and new physician offices linked to Atlantic General and Peninsula Regional are opening on almost a monthly basis; that the facility will benefit the area by providing services to an area with few options enabling residents and their families to remain a part of the community as they age, creates more than 200 year-round jobs in positions that range from food service and maintenance to health professionals, adds 300 residents in addition to the employees who will add year-round stimulus to the local economy, and since as a non-profit will make many of its facilities available to the community; and that the Board of Directors believes that the project will be a valuable addition to the community and County.

The Commission found that David West and Sarah Jawala were present on behalf of this application with Stephanie Hansen, Attorney, Keith Rudy and Kevin Burdette of McCrone, Inc. and Vernon Feather, Architect, and that they stated in their presentations and in response to questions raised by the Commission that the Applicant, Martha's Light, LLC, has been changed to Mariposa at Bethany; that Peninsula United Methodist Homes are operating four (4) existing facilities, Methodist Country House in Wilmington, Delaware, Methodist Manor House in Seaford, Delaware, Cokesbury Village in Hockessin, Delaware, and Heron Point of Chestertown in Chestertown, Maryland; that development activities surround the property including Sea Colony, Ocean Way Estates, Clearwater, and the Town of Ocean View; that this project could be considered an infill project; that the site is located in Investment Levels 2 and 3 according to the State Strategies; that they attempted to annex the site into the Town of Ocean View; that the Town of Ocean View supports the project, but does not desire to annex the site at this time; that

the Town of Ocean View has submitted a letter in support of the project; that they considered applying for a nursing home/care facility through the Board of Adjustment but were advised by Richard Berl, Assistant County Attorney, that the Board could not give consideration to the additional commercial type of activities related to this application; that a Continuing Care Retirement Community is defined by the U.S. Census Bureau's 2007 North American Industry Classification System as "establishments primarily engaged in providing a range of residential and personal care services with on-site nursing care facilities for (1) the elderly and other persons who are unable to fully care for themselves and/or (2) the elderly and other persons who do not desire to live independently. Individuals live in a variety of residential settings with meals, housekeeping, social, leisure, and other services available to assist residents in daily living. Assisted-living facilities with on-site nursing care facilities are included in this industry"; that this application is for construction of a continuing care retirement community with 232 independent living units in main building apartments (164), villa building apartments (30) and single family homes (38), 94 health care units with assisted living units (40), assisted living memory units (15) and skilled nursing units (39); that the main building square footage equals 365,000 square feet; that they intend to serve the needs of the aging community; that all religious faiths are accepted; that there is a need to serve the southeastern portion of the County; that residents will have access to all facilities within the community; that typically a resident could move from one area of the community into another area; that they have two proposed points of access, one onto Ogre Drive and one from Canal Landing; that it may be possible to provide an emergency connector to Ocean Way Estates; that sidewalks and walking paths will be provided throughout the project; that outside amenities will also include a grand lawn, water features, and gazebos; that they hope to connect to DNREC's future walking path along the Assawoman Canal; that a bridge is proposed to cross the man-made pond on the site; that additional facilities include a small bank, a library, dining facilities, transportation facilities, a fitness center, an aquatic center, a café, an indoor pool, a beauty shop, game rooms, a convenience/gift shop, a post office, and arts and crafts rooms; that they will be providing fulltime security services; that they will be responsible for maintenance of streets and street lighting; that the Millville Fire Company has been advised of the use and its needs; that they anticipate a start of 130 to 140 job positions related to the project with a total of 200 positions in the future; that Peninsula United Methodist Homes has over 1,000 employees in their existing facilities; that they will be working with local high schools and Del-Tech for trained employees; that the density calculates to 7.6 units with the health care units or 5.4 units without the health care units; that they met with area residents to explain their proposal and received positive responses from those residents in attendance; that they realize that they will need to apply for variances in the height of the building since they are proposing 67-feet to the top of the chimney and 58-feet to the top of the roofline; that the height is needed to allow for taller ceilings due to the dining facilities, etc. and since they are planning on using air handlers within the roof structure area causing a need for the higher roof line; that the air handlers within the roof structure area was established due to the possible high winds and storm events that sometimes impact the coastal areas; that they are proposing a 10-foot separation between single family dwellings since there are no property lines proposed; that they are proposing to develop this site as a LEED certification project for high energy sustainable buildings; that they received PLUS comments on December 21, 2007, responded to the PLUS comments on January 22, 2008, and received a final response from the Office of State Planning Coordination in reference to the PLUS response on April 3, 2008 which referenced that the Office of State Planning Coordination has no objections to the project provided it will be in

compliance with all applicable rules and regulations, and acknowledging that it appears that the developer is willing to work to address any concerns the State agencies might have regarding this project; that Tidewater Utilities will be providing water service; that Sussex County will be providing sewer service; that approximately 45% of the site will be impervious cover; that Best Management Practices will be utilized; that the site is not located in a source water protection area; that a portion of the site is located within a Flood Zone AE requiring 5-foot elevation; that wetlands have been delineated and that approximately 0.5 acre of the site is considered tidal wetland; that a 50-foot setback from tidal wetlands has been provided; that storm-water management will include disconnected run-off from roof drains into bio-swales and filter strips with vegetation plantings, bio-filtration and a large wet pond; that the area calculation of open space equals approximately 26-acres or 63% of the site; that open space will include walking trails, sidewalks, the grand lawn near the main building, and community greens; that they are proposing a buffer and open space management plan and maintenance plan; that they have created an agreement to eliminate the 50-foot requirement for a buffer from agricultural lands; that a 30-foot buffer is proposed along the adjacent 12 acre parcel and additional buffers are proposed along Ocean Way Estates and the southerly property line; that the buffers will be improved with a minimum of 1,000 native species trees; that a Phase I Environmental Assessment Study is being performed; that a traffic impact study was not required by DelDOT; that DelDOT will require some roadway and intersection improvements; that the streets will be privately maintained; that additional rights-of-way will be provided to Muddy Neck Road and Ogre Drive; that there are no known cultural or historical sites on the site; that it has been established that 368 parking spaces are required and that 405 spaces are being provided; that they have received letters in support from the Town of Ocean View, the Bethany-Fenwick Area Chamber of Commerce, the Greater Seaford Chamber of Commerce, and Dave Smith, a Seaford resident that utilizes the Methodist Manor House facilities at Seaford, in addition to the letters already in the Exhibit Booklet; that elevators will be provided; that they may be able to use some pervious pavers in some of the parking areas to help reduce the amount of impervious cover; that a shuttle to the beach will be provided; that evacuation issues are being studied; that the finished floor of the buildings is proposed to be raised up to elevation 8-feet to equal the 500-year flood criteria due to the close proximity to the Assawoman Canal; that the man-made ditches on the site are proposed to be filled if approved by the Army Corps. Of Engineers; that the site is a part of a 132 acres drainage area; and that the pool and fitness center will be open to the general public.

The Commission found that Ms. Hansen submitted copies of the letters in support for the record and copies of the exhibits presented during their presentation.

Mr. Robertson stated that the length of the building may need further review since it contains apartments and due to the length of the building, as it relates to apartments.

The Commission found that Jonathan Souder, Fitness Manager for the Methodist Manor House, spoke in support of the project and added that he has been employed at the Manor House for 10-years and that the use will benefit the community; that the concept works; and that the use outreaches to the community.

The Commission found that Bill Wickum, Pastor for the Episcopal Church in Bethany Beach, was present and stated that the Trustees of the Protestant Episcopal Church of Delaware are selling the land; that the Church found that a continuing care facility would be a good use of the land; and that the Church supports the use.

The Commission found that there were no parties present in opposition to the application.

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

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

Meeting adjourned at 8:45 p.m.