

MINUTES OF THE REGULAR MEETING OF MAY 9, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 9, 2013, in the County Council Chambers, County Administrative Office Building in 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, Mr. I.G. Burton, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that the Delf site plan under Other Business has been removed from the Agenda.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of April 25, 2013 as amended. Motion carried 5 – 0.

OLD BUSINESS

CONDITIONAL USE #1962 – application of **CHESAPEAKE AGRISOIL, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a composting facility as an extension to Conditional Use No. 1314 and Conditional Use No. 1691 (A micro-nutrient plant with related truck entrance and rail spur for processing and handling of poultry litter), to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 228.88 acres, more or less, lying west of Route 13A north of Road 485 (Tax Map I.D. 1-32-6.00-88.01 and 95.00 and Tax Map I.D. 1-32-11.00-41.00).

The Commission discussed this application which has been deferred since April 25, 2013.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried 4 votes to none, with Mr. Ross not participating, to defer action for further consideration. Motion carried 4 – 0 – 1.

PUBLIC HEARINGS

CHANGE OF ZONE #1728 – application of **LIGHTHOUSE CARILLON, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.81829 acres, more or less, lying southwest of Route 5 (Indian Mission Road) 600 feet west of Route 24 (John J. Williams Highway)(Tax Map I.D. 2-34-23.00- Part of Parcels 260.00 and 269.18).

The Commission found that on April 26, 2013 the Applicants provided an Exhibit Booklet for consideration which contains a copy of the Application form, a copy of the Deed to the property; a copy of a site plan depicting the boundaries of the rezoning requested; a resume for Richard F. Polk, Professional Engineer of Vista Design, Inc.; a location depiction of the site on the 1868 Beers Atlas; a location depiction of the site on the State Strategies Map; a soils map and legend in reference to the map; a wetlands reference; a site plan depicting the existing zoning in the area; an aerial map depicting the site plan; a site plan depicting wood lands in the area; a copy of the Response from the Applicants to the PLUS comments; a copy of DelDOT comments, dated February 7, 2013; references to utility services; and suggested proposed Findings of Fact.

The Commission found that the County Engineering Department Utility Planning Division provided comments on May 8, 2013 which reference that the site is located in the Long Neck Sanitary Sewer District; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,711.00 per EDU; that there is no sewer service to the parcels at this time; that conformity to the North Coastal Area Planning Study and Amendment No. 1, Expansion Area No. 1, Long Neck Sanitary Sewer District Planning Study will be required; that the parcel areas are in the Sewer District and connection is mandatory; that sewer service is not available at this time; that in order to receive sewer service, an extension of mainline sewer along the east side of Route 24 must be completed before the parcels can connect to sanitary sewer; that the County does not have a schedule at this time to provide sewer service to the parcel areas; that a shopping center is proposed; that the total EDU for the current proposal is approximately equal to the previous shopping center that received conceptual sanitary sewer plan approval on March 22, 2012 and sewer capacity is available for the project; that the Carillon Square project shall undertake an extension of mainline sewer to serve the project in accordance with sewer planning for the area; that the extension of sewer service to the project would be at the expense of the developer of Carillon Square; that the County requires design and construction of the collection system to meet County Engineering requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; and that a checklist is available for preparing sewer concept plans.

The Commission found that Gene Bayard, Esquire, with Morris James Wilson Halbrook & Bayard, LLP, and Rich Polk and Brian Zollinger of Vista Design, Inc. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that no commercial buildings are planned for this expansion area; that this is the fourth rezoning request for this site; that rezoning were approved in 2000, 2004 and 2009; that a Rite-Aid pharmacy site is being prepared for construction on the existing commercially zoned portion of the site; that a WAWA is proposed to be built on another portion; that the area has a mix of commercial uses, i.e. shopping centers, service/gas stations, medical facilities, convenience store; that the neighborhood is trending toward commercial activities; that the site is irregularly shaped and to squares up the boundaries and to provide access to Route 5; that there are no wetlands on this portion of the site; that there are no reported rare/endangered species on the site; that there are no archaeological features on the site; that no sewer expansion is needed to serve this portion of the site; that they submitted to the PLUS process and heard no objections,

and that the PLUS agencies seem to support the application; that DelDOT supports the use and the proposed improvements to the intersection of Route 24 and Route 5, and provides for safe vehicular/pedestrian traffic; that the rezoning will provide access to Route 5 and improves the layout of the project; that there should be no negative impact on the community or property values; that the rezoning complies with the Comprehensive Plan Update and the State Strategies; that a Traffic Impact Study has been submitted for consideration by DelDOT and that a response has not yet been received; that the rezoning allows for corrections to the site plan to improve parking and pedestrian access; that interconnection with Timber Acres Manufactured Home Park is being discussed; that a sewer pump station is planned near the Route 5 entrance; and that the Route 5 entrance lines up with the rear entrance to the Food Lion Shopping Center across Route 5.

The Commission found that there were no parties present in support of or in opposition to this application.

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

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

SUBDIVISION #2013-1 – application of **BOARDWALK DEVELOPMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.52 acres into 35 lots, (Cluster Development), located north of Road 277 (Angola Road) approximately 2,200 feet west of Road 278 (Tax Map I.D. 2-34-12.00-13.01).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of April 15, 2013 is a part of the record for this application and that on April 26, 2013 the applicant submitted an Exhibit Booklet which contains a copy of the subdivision application, a copy of a reference to the 2007 Comprehensive Plan Update, a copy of an on-line zoning map, a copy of an aerial photograph of the site, a Phase 1 Environmental Assessment Report, a copy of the FEMA map, a wetlands report, copies of the Technical Advisory Committee report, a copy of the preliminary site plan, compliance with Chapter 99-9C of the Subdivision Code and proposed findings of fact; and that the Exhibit Booklet is a part of the record.

Ken Christenbury, P.E. with Axiom Engineering, LLC and Joe Reed, developer, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site contains 17.50 acres; that 35 single-family cluster lots are proposed; that the minimum lot size is 7,500 square feet; that the site is in close proximity to other single-family developments and manufactured homes parks; that the site is zoned AR-1 and complies with the AR-1 zoning code; that walking trails will be provided throughout the project; that 47% of the site will be open space; that minimal amenities are proposed as they are not cost effective; that the developer has been involved in other projects in the immediate area and resides not far from the site; that 20-foot buffers have been provided using existing vegetation; that additional

plantings will be installed where required and necessary; that the storm water management ponds will be lines; that a Phase 1 Environmental Assessment study was conducted and nothing of concern was found; that there are no Federal or State tidal wetlands on the site; that the Technical Advisory Committee comments are standard comments and the applicant can comply with all comments; that the site will be served by Sussex County sewer; that central water will be provided by Tidewater Utilities; that if the development were a standard subdivision, 47% of the site would not be open space; that no walking trails would be provided since the minimum lot size would be 0.75 acre; that this design exceeds the minimum buffer requirements; that sidewalks are proposed on one side of all streets; that other projects in the area are more dense than what is proposed in this application; that there is a Tidewater storage tank located across the road; that minimal tree cutting will occur; that the storm water management design will be designed under current regulations; that the developer has not met with the Cape Henlopen School District; that wet storm water management ponds are constructed with safety benches; that the applicants will contact the local post office about the location of a centralized mailbox; that the site drains to the northeast corner of the site; that there will be a budget for the homeowners' association; that the property adjacent this site is wooded; and read the following proposed findings of fact into the record: a) The proposed subdivision is designed in accordance with the Sussex County Subdivision Ordinance. The proposed subdivision utilizes the cluster development option in order to maximize the amount of open space. The Applicant has proposed 35 lots on 17.52 acres while preserving over 47% of the site in common open space. There shall be no more than 35 developed lots within the subdivision., b) The proposed subdivision is located within the Development District (Environmentally Sensitive Developing Area) as designated on the Future Land Use Map of the Sussex County Comprehensive Plan., c) The statutory requirements of Chapter 115, Article VI Agricultural Residential (AR-1) District have been satisfied by the preliminary subdivision plan., d) The statutory requirements of Chapter 99-9C (subdivision code) have been satisfied by the preliminary subdivision plan, including the preservation of wetlands, existing forests, forested buffers and integration., e) The proposed subdivision will not have an adverse impact on the neighboring properties or community., f) The proposed subdivision is consistent with other existing land uses in the vicinity. The existing neighboring land uses include: (i) single family residential communities such as Bay Ridge Woods, and Angola By the Bay (ii) manufactured home parks – Angola Estates and Angola Beach, (iii) a Delaware Electric Cooperative power substation, (iv) Tidewater Utilities water tower – under construction and (v) agricultural uses., g) The subdivision will not cause any adverse impact upon traffic in the area. For a project of this size, DelDOT does not require the preparation of a traffic impact study. Road improvements related to the entrance design will be installed as required by DelDOT. Right of way dedication along Route 277 has been provided as requested by DelDOT., h) The lots will be served by central sewer provided by the County-owned and operated Angola Neck Sewer District., i) The lots will be served by central water provided by Tidewater Utilities., j) The site contains no regulatory wetlands or floodplains., k) The storm water management system shall meet or exceed applicable Federal, State and local requirements., l) The Applicant shall form a homeowners' association to be responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities and other common areas., m) Restrictive Covenants governing the subdivision shall include the agricultural use protection notice and wetland notice. A copy of the proposed Restrictive

Covenants is included with this application., n) Sidewalks shall be located on one side of the streets as indicated on the preliminary subdivision plan., o) The interior street design shall be in accordance with, or exceed Sussex County street design requirements and specifications., p) There shall be a forested buffer around the perimeter of the entire subdivision., q) Street naming has been reviewed and approved by the Sussex County Mapping and Addressing Department., r) All items listed in Section 99-9C of the Subdivision Ordinance have been addressed by the proposed subdivision., and s) The Final Subdivision Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

Carol Hughes, Russell Meredith, John Kitchenman and Jens Wegscheider, residents of Bay Ridge Woods, were present in opposition to this application and advised the Commission that they are adjoining property owners; that they are not on County sewer; that the site is wooded and there will be a loss of forested areas; that they were assured the site would not be developed; that the project will result in a loss of wildlife habitat in the area; that there are not enough bats in the area; that the storm water management ponds are too close to adjoin properties; that traffic and school bus safety will become problems; that they are opposed to 35 new families with their dogs and cats; that the site should be kept as open space with the old timber growth that now exists; that the development would cause hunters to lose their hunting rights; that birds, mammals and reptiles need a place to live; that the land needs to be preserved; that water ponds on the site; that the water comes from the wetlands near the site; that not all storm water management systems work; questioned the average value of the proposed homes; and that the site drains to Cherry Creek.

Mr. Christenbury and Mr. Reed responded that DNREC has not inspected the site; that DNREC comments did not reference bats on the site; that no one had the authority to tell adjoining owners that the site would never be developed; that the project if developed, cannot let more water run off the site than what currently runs off site; that the average proposed homes would be in the \$300,000 to \$350,000 range; that if hunting is occurring on the site, people are trespassing; that sidewalks are proposed for one side of all streets; and by not having sidewalks on both sides, this creates a reduction in previous area.

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. Motion carried 5 – 0.

SUBDIVISION #2013-2 – application of **VESCO, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, for a 30 lot expansion to a preliminary approved 183 lot cluster subdivision for a total of 213 lots on 162.95 acres, located east of Road 277 (Robinsonville Road), 400 feet south of Road 287 (Kendale Road)(Tax Map I.D. 2-34-6.00-90.00).

Mr. Abbott advised the Commission that this is a 30-lot expansion to a previously preliminary approved plan for 183 lots; that the Commission approved the 183-lot application; Subdivision #2008 – 8 on October 22, 2009; that a 30 unit multi-family project was also applied for within the 183 lot subdivision application; that the Commission denied the 30 unit multi-family project; and that the Commission recommended that the applicant apply for the additional 30 lots under the subdivision process if they so choose.

Mr. Abbott summarized a letter received from Sergovic, Carmean and Weidman that was received on May 9, 2013.

Dennis Schrdaer, Esquire, and Tom Ford of Land Design, Inc. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that 183 single family lots were approved on October 22, 2009; that a conditional use application for 30 multi-family units was denied at that time; that this application is for a 30-lot expansion to the previously approved 183 lots; that the proposed density is lightly less than 1.3 lots per acre; that this preliminary plan has been slightly altered from the previously approved plan in that a street has been shortened and a cul-de-sac has been added; that the intent of this application is to provide for affordable housing in lieu of the multi-family units; that the revised design provides for more open space; that 20% of the site is pervious; that the best soils on the site have been identified; that no disturbance to the adjacent Webb's Landing is proposed; that the applicant will preserve as many trees as possible; that the developer is requesting that conditions of approval A and M of the preliminary approval for Subdivision #2008 – 8 be amended to allow 213 total lots and to keep the proposed amenities in their proposed locations; that tennis courts and tot lots will be located near the front portion of the site and the community building and pool will be located near the rear portion of the site near Love Creek; that no multi-family units are proposed; that the project will not change the adjacent properties; that 60% of the site is forested; that all of the lots abut open space; that PLUS or Technical Advisory Committee comments were not solicited since the project was previously reviewed by PLUS and the Sussex County Technical Advisory Committee; that Subdivision #2008 – 8 is a part of the record for this application; that an Exhibit Booklet was submitted with the previous application; that the proposed homes will be similar to other homes in the area; that an Environmental Phase 1 Assessment study was completed; and requested preliminary approval of the 30-lot expansion.

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

Steve Britz, Warren Sandberg and William Payne, area residents, were present in opposition to this application and advised the Commission that instead of tying into a central sewer system, the developers have opted to install their own community waste water treatment system; that the drain fields are too close to Love Creek; that Love Creek is an Environmentally Sensitive Area; that storm water runoff will seep into Love Creek; that there are standing water problems in the area; that there is a large area of impervious surfaces that will increase run-off; that the septic area is too close to Love Creek; and submitted written comments into the record.

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

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

AN ORDINANCE TO REPEAL CHAPTER 80, “LOT MAINTENANCE,” § 80-3 IN ITS ENTIRETY AND AMEND CHAPTER 115, ARTICLE XXV, “SUPPLEMENTARY REGULATIONS,” §§ 115-91.4 AND 115-191.5 OF THE CODE OF SUSSEX COUNTY BY INCLUDING IN § 115-191.4 MINIMUM STANDARDS FOR LOT MAINTENANCE PERTAINING TO PROHIBITED ACCUMULATIONS OF OVERGROWN GRASS AND WEEDS AND TO INCLUDING FAILURE TO COMPLY WITH THE MINIMUM LOT MAINTENANCE STANDARDS PROHIBITING OVERGROWN GRASS AND WEEDS IN THE PENALTY AND ENFORCEMENT PROVISIONS OF § 115-191.5.

Mr. Lank advised the Commission that this Ordinance Amendment repeals Chapter 80, “Lot Maintenance” which currently establishes minimum standards for lot maintenance with respect to prohibited growth, but does not address the penalties and enforcement procedures violations; that the Ordinance Amendment will move the standards into Chapter 115, the Zoning Ordinance, and creates a minimum standard for lot maintenance pertaining to prohibited growth of grass and weeds and the penalties and enforcement procedures for failure to comply with the minimum standards of lot maintenance; and that the enforcement will continue to be handled through the Constables Office.

The Commission discussed the proposed Ordinance Amendment, and expressed concerns that the Ordinance Amendment was not identified clearly or correctly in the Agenda and possibly legal notices, since incorrect Code sections were identified (Section 115-91.4 was identified as being one of the Sections being amended when no such section of the Code currently exists); that the incorrect identification of the relevant Code sections could be a procedural error if the Ordinance were to be acted upon; that the purpose or need for the Ordinance Amendment was not clearly explained to the staff, the Commission’s Attorney or the Commission; that the method of enforcement and the penalties for non-compliance were not clearly explained; that there was no apparent reason to transfer the grass cutting requirements currently in Chapter 80 to Chapter 115 and that the Commission felt that they should remain in Ordinance 80; that if the reason for this amendment is to create stricter enforcement and/or penalties for non-compliance, that can be dealt with through Chapter 80 where the requirement currently exists; that the County is generally a rural county that should not require standards like this; that this type of enforcement should be limited to HOAs and towns (for example) that are more developed and not as rural and where such enforcement can be undertaken where it is more appropriate by HOAs and towns (for example); that ornamental grasses should be excluded from the ordinance; and questioning if the Ordinance Amendment has any impact on the State right-of-way maintenance program.

The Commission found that Joe Reed was present and advised the Commission that this Ordinance is a bad idea, and that the Commission and staff already have enough on their plates and do not need to be enforcing grass height regulations.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the Commission recommending denial of the proposed Ordinance Amendment for the fact that it was (1) miss appropriately advertised, and (2) the Commission feels that it is better addressed in another section of the Code. Motion carried 5 – 0.

OTHER BUSINESS

Logo Motive

Commercial Site Plan – Road 275A

Chairman Wheatley turned to the meeting over to Vice-Chairman Johnson and advised the Commission that he would not be participating in the discussion and review of this item.

Mr. Abbott advised the Commission that this is a preliminary site plan for a 1,000 square foot office with an attached 4,455 square foot warehouse located on 23, 758 square feet; that the site is zoned CR-1 Commercial Residential; that the proposed building setbacks meet the minimum requirements of the zoning code; that 11 parking spaces are required and provided; that 4 spaces are located within the front yard setback and are subject to site plan review; that other commercial uses in the area have parking located within the front yard setback; that the project will be served by Sussex County sewer and a private, on-site well; that there are not any wetlands on the site and the site is not located in a flood zone; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Burton, and carried 4 votes to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0 – 1.

Vice-Chairman Johnson turned the meeting back over to Chairman Wheatley.

Delf

Commercial Site Plan – Road 275A

This item was removed from the Agenda.

Ronald Wyatt

2 Parcels and 50' Easement – Road 474

Mr. Abbott advised the Commission that this is a request to subdivide a 15.0 acre parcel into 2 parcels with access from an existing 50-foot easement; that the Commission approved the

easement in 2010 to serve as access for a 1.0 acre lot; that 1 parcel will contain 4.0 acres and the residual land will contain 11.0 acres; that the 11.0 acre parcel has a poultry operation located on it; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, there would be three parcels having access from the 50-foot easement and that any further subdivision should be required to go through the major subdivision process; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Michael W., Sr. and Lori T. Short
3 Parcels and 50' Easements – Road 494

Mr. Abbott advised the Commission that this is a request to subdivide an 107.02 acre parcel into 3 parcels with access from 50-foot easements; that Parcel A will contain 18.84 acres and Parcel C will contain 62.21 acres; that they will both have access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing lane; that Parcel B will contain 25.97 acres and be accessed from an existing 50-foot easement; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Meeting adjourned at 9:00 p.m.