



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 12, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 12, 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 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 4 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of May 14, 2008 and May 22, 2008 as amended. Motion carried 4 – 0.

OLD BUSINESS

Subdivision #2006-68 – application of **DOVE ESTATES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Nanticoke Hundred, Sussex County, by dividing 73.20 acres into 111 lots, located south of Road 526A and west of Road 525.

The Commission discussed this application, which has been deferred since May 22, 2008.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/U #1788 – application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional water facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.688 acres, more or less, lying at the easterly end of a private road (Meadow Creek Drive) 2,200 feet east of Route 5 and 100 feet north of the centerline of Beaverdam Creek.

The Commission discussed this application, which has been deferred since May 22, 2008.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1788 for Artesian Water Company, Inc. for a regional central water facility based upon the record and for the following reasons:

1. The proposed use of the subject property as a regional central water facility is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.
2. The regional water facility with the stipulations and conditions placed upon it will not have any adverse impact upon the County, its residents, or the environment.
3. The regional water facility is appropriate for this site because it is in an area of residential development where central water is not otherwise available.
4. The site is already approved as a water treatment plant for the residential development known as the Trails of Beaver Creek.
5. The proposed use is subject to the review and approval of the Public Service Commission.
6. This recommendation is subject to the following conditions:
 - a. The treatment plant buildings shall appear to be agricultural buildings.
 - b. One unlighted sign shall be permitted on the site to identify the operator of the system.
 - c. With the exception of emergency generators that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.
 - d. Any security lighting shall be screened so that it does not shine onto neighboring properties or County Roads.
 - e. No elevated water towers shall be constructed on the site.
 - f. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission. The Final Site Plan shall contain a landscape plan showing all vegetation and buffers for the project.

Motion by Mr. Johnson, seconded by Mr. Gordy 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.

C/U #1789 – application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional wastewater facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.76 acres, more or less, lying east of Route 5 on both sides of Meadow Creek Drive (a private road) and 2,000 feet north of Route 9 at Harbeson.

The Commission discussed this application, which has been deferred since May 22, 2008.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1789 for Artesian Water Company, Inc. for a regional wastewater facility based upon the record and for the following reasons:

1. The proposed use of the subject property as a regional wastewater facility is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.

2. The regional wastewater facility will possess sufficient capacity to serve a substantial volume of users beyond the boundaries of the development where the facility is currently located.
3. The regional wastewater facility with the stipulations and conditions placed upon it will not have any adverse impact upon the County, its residents, or the environment.
4. The regional wastewater facility is appropriate for this site because it is in an area of residential development where wastewater treatment is not otherwise available.
5. The site is already approved as a wastewater treatment plant and disposal site for the residential development known as the Trails of Beaver Creek.
6. The proposed regional wastewater facility will be reviewed and approved by the Department of Natural Resources and Environmental Control (DNREC) and shall be designed and constructed in accordance with all other applicable Federal, State and County requirements, including those mandated by the DNREC and other agencies having jurisdiction over the use.
7. The proposed use is subject to the review and approval of the Public Service Commission.
8. This recommendation is subject to the following conditions:
 - a. The proposed regional wastewater facility and its disposal systems shall be reviewed and approved by the DNREC and shall be designed and constructed in accordance with all applicable Federal, State and County requirements, including those mandated by DNREC and other agencies having jurisdiction over same.
 - b. The treatment plant buildings shall appear to be agricultural buildings.
 - c. All improvements for collection, treatment and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Sussex County Engineering Department, if any, and the State DNREC, and any other governmental agency with jurisdiction over the use of the site, or any modification thereto.
 - d. There shall be forested buffers of at least 30 feet from all property lines. Any lagoons, rapid infiltration basins or similar structures shall be located at least 100-feet from any dwellings.
 - e. One unlighted sign shall be permitted on the site to identify the operator of the system.
 - f. With the exception of emergency generators that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators, if any, shall be housed in enclosures to reduce noise.
 - g. Any security lighting shall be screened so that it does not shine onto neighboring properties or County Roads.
 - h. A regional plan shall be submitted to the Sussex County Engineering Department that shows all the areas and/or subdivisions that will be served by the facility. This shall be updated on an annual basis as additional properties or subdivisions are added. The Plan and its updates shall include a list of EDUs planned to be served to ensure that adequate capacity exists.
 - i. The facility shall not receive wastewater from any property or parcel that is located within a Sussex County Sewer Planning Area or Sewer District, unless approval is given by the Sussex County Engineering Department.

- j. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission. The Final Site Plan shall contain a landscape plan showing all vegetation and buffers for the project.

Motion by Mr. Johnson, seconded by Mr. Smith 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.

C/U #1791 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in a MR-RPC Medium Density Residential District – Residential Planned Community for a central drinking water facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.03 acres, more or less, lying south of Road 336, 100 feet east of Road 336A.

The Commission discussed this application, which has been deferred since May 22, 2008.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1791 for Tidewater Utilities, Inc. for a central drinking water facility based upon the record and for the following reasons:

1. The proposed facility benefits the health, safety and welfare of the current and future residents of the area and will not have an adverse impact on neighboring properties.
2. The Applicant has been issued a Certificate of Public Convenience and Necessity to serve the area by the Public Service Commission.
3. The proposed facility is appropriate to provide public water to an area where several residential developments are planned and approved.
4. The proposed site is appropriate and had originally been planned as the site of a central wastewater treatment and disposal site as part of an approved MR-RPC prior to that project being included in the Sussex County Sewer System.
5. The location and proposed use are in accordance with the Sussex County Comprehensive Plan.
6. The proposed use will be subject to the following conditions:
 - a. All improvements for central water distribution, including wells, pumps, treatment and storage facilities, shall be constructed and maintained in accordance with the requirements of the Delaware Department of Health, the Public Service Commission, the Department of Natural Resources and Environmental Control and any other governmental agency with applicable jurisdiction.
 - b. The water storage tank shall be an “on-ground” tank, not exceeding 29 feet in height. No elevated water tower shall be constructed on site.
 - c. There shall be a landscaped buffer surrounding the entire site, including the water storage tank. The landscaping shall be of sufficient density and height to screen the plant from view of neighboring properties and the County Road. A landscape plan showing this buffer shall be submitted as a part of the Final Site Plan review.
 - d. All generators and equipment shall be located inside of structures, and the structures housing the generators shall be designed to reduce noise caused by the operation of the generators.

- e. Unlighted signage shall be permitted to identify the operator of the plan. No signs shall be permitted on the water tank.
- f. The buildings associated with this use shall appear to be agricultural or residential style buildings.
- g. Any security lighting shall be screened so that it does not shine onto neighboring properties or County roads.
- h. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy 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 4 – 0.

PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be conducted.

Subdivision #2006-69 – application of **CLEARLAKE PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 86.00 acres into 134 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north and south of Route 54, 3,050 feet east of Road 504.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of May 23, 2007 will be made a part of the record for this application; that the final PLUS response letter of October 29, 2007 will be made a part of the record; that Mr. Robertson has reviewed the restrictive covenants and found them acceptable; and that the applicant's submitted an Exhibit Booklet and revised preliminary plan that will be made a part of the record.

Dennis Schrader; Attorney, Jennifer Murphy; P.E. with Greenstone Engineering and Jerry Gray; one of the owners were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located on both sides of Route 54 west of Delmar between Providence Church and Horsey Church Roads; that the site contains 86 acres; that the site contains 69.14 acres for lots, 11.50 acres for streets, 12.00 acres of open space and 1 acre of wetlands; that the site is zoned AR-1 which permits 2 lots per acre; that Greenstone Engineering is the second engineering firm to work on this project and that the site has been reduced to 123 lots; that the project is a standard AR-1 subdivision with central sewer and water; that the average lot size is 25,000 square feet; that this project is a low density project located in a Level 4 investment area; that an Exhibit Booklet was previously submitted into the record; that the project was originally designed as a cluster subdivision; that the original plan was for 134 lots and this one has been reduced to 123 lots; that the proposed density is 1.4 lots per acre; that the design is consistent with the surrounding area; that there are wetlands on the southern portion of the site; that a 50-foot buffer is provided from the wetlands; that there are 12 acres of open space provided; that 30-foot forested buffers are proposed where required; that a clubhouse is proposed; that sidewalks on one side of all streets and streetlights are proposed; that the lots have no direct access to Route 54; that Tidewater Utilities will provide central sewer and

water and have provided a willing and able to serve letter; that the project will have no affects on area waterways; that the site is not located in a floodplain; that the storm water management design will utilize green technology and best management practices; that there will not be any objectionable features in the project; that property values will not be decreased and may be increased by the development; that the project will have a positive economic benefit on the Delmar School District in the form of increased revenues through property taxes; that the previous engineer went through the PLUS process and responded to the State; that under the proposed Land Use Plan Draft, this site is located in a developing area; that a homeowners' association will be created and will be responsible for the maintenance of streets, roads, buffers, recreation areas and other common areas; that there are no wetlands located on any of the lots; that there is no phasing plan for the project; that a central wastewater design will be served from the Blackwater North Farm site; that buffers along Route 54 are provided; that there is an existing cemetery located on the site and access to the cemetery will be provided for visitors; that the clubhouse will be located in front of the cemetery; that the applicants will maintain as many existing trees as possible; that the cemetery will be maintained by the homeowners' association; that the large cul-de-sac located on the southern portion of the site is approximately 200-feet in diameter; that drainage easements can be provided if needed; that lots 9 and 42 on the northern portion could be set aside for stub streets if needed; that the amenities will include a clubhouse, that the clubhouse will be for a meeting facility and recreation building, that a playground could be provided; that a bus shelter will be erected to the entrance of the project; that the applicants will work with the local school district on the exact location of the bus shelter; that there is a 50-foot riparian buffer from the wetlands; that the clubhouse area will be approximately 3 acres in size; that Tidewater Utilities will be applying for a regional wastewater and central water plant; and that the items referenced in section 99-9C of the Subdivision Code are addressed in the Exhibit Booklet; and that proposed findings of fact and conditions of approval have been submitted in the Exhibit Booklet.

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

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/Z #1622 – application of **GARY F. FARMER, DVM** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying north of Route 26, 2,820 feet northeasterly of Road 382 (Route 20), to be located on 2.54 acres, more or less.

The Commission found that prior to the meeting the Applicant had provided an Exhibit Booklet which contained a copy of the Tax Map of the area, photographs of the site, aerials of the site, a copy of the Minutes of the Planning and Zoning Commission for June 9, 1977 for Conditional Use #423, the application of Gary F. Farmer, t/a Sussex Veterinary Hospital, Ltd., and a copy of the Sussex County Council Finding of Fact for Conditional Use #423.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Applicant intends to seek a rezoning through the County to bring the existing veterinary office into compliance; that the Office of State Planning Coordination has the authority to waive the pre-application review requirements for projects in special circumstances; and that because the proposed rezoning is for an existing facility and there are no plans for any additions or modifications to the site, the Office of State Planning Coordination will waive the pre-application requirement for this project.

The Commission found, based on comments received from DelDOT, that a traffic impact study is not recommended and that the existing Level of Service of Route 26 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 the site is located in the Dagsboro/Frankford Planning Area; that the veterinary hospital will continue to use an existing septic system; that the project is not capable of being annexed into a County operated sanitary sewer district at this time; that conformity to the Dagsboro/Frankford Planning Area Study will be required; that when the County provides sanitary sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

The Commission found that Gary F. Farmer, DVM, was present with Jim Fuqua, attorney, and that they stated in their presentations and in response to questions raised by the Commission that Dr. Farmer is requesting rezoning from AR-1 to CR-1 for the existing veterinary hospital; that the photographs and aerials in the Exhibit Booklet show the commercial use of the site and some of the commercial uses in the area; that Dr. Farmer has been practicing at this location since 1977; that Dr. Farmer plans on continuing his practice into the future; that the purpose of the CR-1 District is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located primarily along certain existing major thoroughfares where a general mixture of commercial and service activities now exists; that Route 26 is a major thoroughfare; that a mixture of commercial uses already exists; that commercial uses include RV storage, a plumbing business, auto storage, an auto mechanic, a campground, convenience store, golf cart sales and service, RV sales and service, mini-storage and other retail and business uses; that some of the uses are zoned C-1 General Commercial, some are Conditional Uses, and some are non-conforming uses; that the site is located in the Environmentally Sensitive Developing Area, a growth area; that on-site water and septic exists on the site; that the Office of State Planning Coordination waived the requirement that the Application be reviewed through the PLUS process; that DelDOT did not require a traffic impact study; that rezoning the property brings the property into compliance; that if the use changes they realize that agency approvals will be required; and that they offer the following Findings of Fact: 1) The site is located just east of Dagsboro on the north side of Route 26, a primary roadway in Sussex County; 2) The site is located in an area containing a wide variety of commercial and service activities including mini-storage, trailer storage and sales, automotive repairs, a convenience store, a plumbing contractor and other retail establishments; 3) A large campground (Gullsway Campground) is located just east of the site; 4) The site has been used as a veterinary hospital and office for over thirty years permitted through Conditional Use. The Applicant stated that this use will not change in the immediate future; 5) The rezoning will

not have an adverse impact on the neighboring properties or community and is in character with the area; 6) CR-1 zoning is appropriate since the site's location along Route 26 is in accordance with the stated purpose of the CR-1 District in that: a) Route 26 is a major throughfare to South Eastern Sussex County, b) A general mixture of commercial and service activities already exists in the immediate area, c) The proposed site will benefit the neighboring residents and campground visitors; 7) The rezoning meets the general purpose of the Zoning Ordinance by promoting the orderly growth, convenience, order and welfare of this County.

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. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/U #1736 – application of **MATTHEW AND KAREN WEIDMANN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to expand Conditional Use #1068 to include towing service and storage of vehicles and boats to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.01 acres, more or less, lying southeast of Road 277 (Robinsonville Road) 227 feet southwest of Road 275 (Plantations Road).

The Commission found that prior to the meeting the Applicant had provided an Exhibit Booklet which contained a copy of the application form, a site location map showing the site and the Conditions of Approval for Conditional Use #1068 for Robert E. Mitchell, a copy of the Deed to the property, a copy of the survey of the property when originally purchased, suggested proposed Findings of Fact, and suggested proposed Conditions of Approval.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Goslee Creek Planning Area; that the proposed use will use an existing septic system; that conformity to the North Coastal Area Planning Study will be required; that when the County provides central sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

The Commission found that seven (7) letters in opposition were received from Joseph and Susan Donahue, Joseph Donahue, Owen S. and Shirley L. Rollison, Carol A. Walls, Richard M. and Gloria K. Lepson, Harry S. and Rita L. Smith, and Kevin O'Brennan.

The Commission found that a letter with a petition of signatures was received from the residents of Sea Wood Subdivision in opposition to this application. The petition contained 36 signatures.

The Commission found that Matthew and Karen Weidmann were present with David Hutt, Attorney, and stated in their presentation and in response to questions raised by the Commission that they use the property for the same use as the previous owner, an auto repair shop, and that

they propose to expand the use by applying for a towing service; that the towing service is an accessory use to the auto repair service; that the parcel contains approximately one acres and is improved by a dwelling and the repair shop; that they have owned and operated the business for two years; that their son lives in the dwelling and works jointly with them; that there are several other business uses in the area and referenced a construction company, a power washing business, a tax accountant, and a church; that there are also subdivisions and private residential lots in the vicinity; that they provide towing services and are affiliated with AAA; that 2 tow trucks, 2 roll-back trucks, 2 service vehicles, 2 personal vehicles, 1 four-wheel drive vehicle, and their sons 2 personal vehicles are normally on the site during working hours; that their normal repair shop hours are from 8:00 a.m. to 5:00 p.m.; that they tow an average of 60 vehicles per month; that security lighting already exists on the site; that he has parked tow trucks in the front yard to advertise the business; that he is willing to screen the site; that the towing service is a natural extension to the mechanical repair shop or auto repair; that towing traffic is expected at any auto repair shop; that disabled vehicles are parked to the rear of the building waiting for repairs; that there are no parts vehicles on the premise; that he has an average of a 2-day hold on towed vehicles; that the back property line is fenced; that he is willing to plant landscaping or fencing if required; that he has been a towing contractor for AAA for 20-years; that he is willing to cleanup the site; that the only boat stored on the site is his personal boat; that there is no intention to provide long-term storage of vehicles; and that their only intent in this application is to expand Conditional Use #1068 to include a towing service, not the storage of vehicles and boats.

Mr. Lank advised the Commission that when the application was being reviewed the storage of vehicles and boats was included in the request due to the large number of vehicles and boats stored on the premise and since one of the Conditions of Approval for Conditional Use #1068 referenced that "No junk automobiles or boats shall be stored on the site".

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

The Commission found that Marian Guold and Joseph Donahue, residents of Sea Wood Subdivision were present in opposition to this application and expressed concerns that they have never seen the site without vehicles parked in the front yard; that they could not acknowledge the other businesses in the area referenced by the Applicant; that the area is primarily residential; that a precedent for more applications could be established by the approval of this application; that the use could impact negatively property values; that Robinsonville Road is a narrow two-lane roadway; that farm equipment and school buses travel this road; that there was an accident at the entrance to Sea Wood Subdivision yesterday; that there is not a traffic signal at the intersection of Robinsonville Road and Plantations Road; that the use is not compatible with the area; that the use is a heavy duty use and should not be located in a residential area; that the use should be located on a major roadway; that they can hear tow truck traffic at nighttime; that the 1994 Conditional Use was low scale in activities and that you would not even know that the business was there; and that the use will change the character of the area.

Mr. Weidmann responded to additional questions raised by the Commission by stating that the repair shop was built in 1994 and is a two-bay garage, and that they have an office in the shed next to the garage.

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

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Additional Business

Mr. Lank provided the Commission with the latest draft of the Comprehensive Plan Update for review and advised the Commission that the Update is on the agenda for consideration on June 18, 2008 and/or June 26, 2008.

Mr. Lank provided the Commission with a listing of permits issued from January 1, 2008 through June 11, 2008 for informational purposes.

Meeting adjourned at 8:20 p.m.