



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 26, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 26, 2008 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton with Mr. Richard Berl – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director, and Richard Kautz – Land Use Planner.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Agenda as amended by deletion of the approval of the Minutes of June 12, 2008 and June 18, 2008, and the Old Business Item. Motion carried 4 – 0.

PUBLIC HEARINGS

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

CU #1738 – application of **BAYWOOD, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an equestrian center to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 12.0 acres, more or less, lying 450 feet northeast of Banks Road (Road 298) and approximately 600 feet southeast of Green Road (Road 298-A).

The Commission found that the Applicants had provided an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a listing of the project team, an Executive Summary, references to existing conditions, a proposed Conditional Use Concept Plan, references to development of the Equestrian Center Layout, planning considerations referencing responses to Section 99-9C of the Subdivision Ordinance, references to compliance with the AR-1 Zoning requirements; references to compliance with the Environmentally Sensitive Developing Area requirements, an overall Bridlewood Subdivision with the Equestrian Center Conditional Use area, an existing conditions aerial map, an Equestrian Center Site Layout, a color rendering, a Blue Hen Disposal-All ability to serve letter, a Davis, Bowen & Friedel revised traffic counts letter to DelDOT, proposed Findings of Fact, photographic exhibits of Baywood Community Landscaping, Architectural Elevations, and the Equestrian Center, an Equestrian Center Design and Supplemental Materials from Blackburn Architects, and resumes from Jason Palkewicz, P.E. and John Blackburn, AIA.

The Commission found based on comments received from DelDOT that the proposed number of homes in the Bridlewood Subdivision has decreased and the 48-stall equestrian stables added; that the additional traffic associated with the proposed stable is more than offset by the drop in the number of homes proposed; and that the proposed rate of peak hour trips per stall may have been overestimated by the Applicants' Engineers.

The Commission found based on comments received from the County Engineering Department Utility Planning Division that the project is located in the Herring Creek Planning Area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Area Planning Study will be required; that the Equestrian Center is within the Baywood Development; that the development will utilize a private community central sewer system; and that a Concept Plan is not required.

The Commission found based on comments received from Michael T. Scuse, Secretary of the State Department of Agriculture, that the Department of Agriculture supports this proposal; that the equine industry in the State of Delaware continues to grow as does the demand for first class private and public facilities; and that this facility would be an asset, not only to the local community, but also to Sussex County.

The Commission found that a letter of support was received from Patricia Kline and Bernard Kline of Winding Creek Village which references that they could not attend the meeting and that they have no problem with the proposed Center; that they have met with Mr. Tunnell and reviewed the plans; and feel confident that the Center will be completed as organized as the Baywood project.

The Commission found that Robert Tunnell, III of Baywood, LLC was present with Eugene Bayard, Attorney, Jason Palkewicz, P.E. of McCrone, Inc., and Frank Kea of Frank Kea Communities and that they stated in their presentations and in response to questions raised by the Commission that they are proposing a Equestrian Center with 48 horse stalls; that the use will be an amenity to the Bridlewood at Baywood Subdivision; that the original subdivision proposed 621 lots and has since been reduced to 596 lots; that the subdivision is nearing final approval with the review agencies; that they are intending an upscale recreational project to serve the Baywood residents and residents in the area; that it will be a public facility; that central water will be provided by Long Neck Water Company; that central sewer will be provided by Inland Bays Preservation Company; that the buildings will be a minimum of 300-feet from any property line; that DelDOT has approved the conceptual roundabout on Green Road at the entrance to the project; that the roundabout will accommodate farm equipment; that riding paths will be offered throughout the perimeter of the subdivision; that the subdivision contains 310 acres with 120 acres of open space; that they are proposing a 20,000 square foot outdoor arena and a 20,000 square foot indoor arena; that the indoor arena will be a 2-story structure; that additional structures include 3 horse barns with 16 stalls in each barn, and hay and equipment storage facilities; that the barns are staggered with outdoor space between the barns for caring for the horses; that the arena will have bleachers, restrooms, and elevators; that the facility will be a state of the art facility; that stone and timber features will be included in the construction of the facility; that an occasional regional horse show event with spectators will be held; that there is a lack of facilities of this type throughout the State and area; that only 3 presently exists in the

State; that the Harrington Fair facility is always booked with small events and some large events; that the economic impact on Delaware by equine is positive; that 3,000 people in Delaware work in the equine industry; that 27,000 acres in Delaware is presently used for equine; that they are proposing 2 full-time staff members and 3 to 6 part-time laborers; that a State approved Nutrient Management Plan will be in place; that the use is consistent with the Comprehensive Plan; that the use is consistent with the intent of agricultural uses; that the project will be built to the same quality as other Baywood projects; that the facility will include paddocks, riding arenas, and trails; that retail sales will be equine related products, i.e. tack, bits, bridles, saddles, clothes and boots, etc.; that they are proposing 150 improved parking spaces; that additional overflow parking for events can be accommodated in the paddock areas; that if horse trailers are to be parked on site they will be parked in a specific area with screening provided; that the only lighting will be security lighting; that outdoor spectator areas will be grassed berms, not bleachers; that a need exists for this service in the area according to the Department of Agriculture; that all ponds will be fenced; that fencing will be installed along all roadways and along all trails; that there is no intent to provide any housing on the facility; that the sediment and storm water ponds plans have been approved by the Conservation District; that the indoor arena can also be utilized for social and community events; that typical events are intended to function for one day; that the events may only include 5 to 10 horses and could generate up to 100 spectators; that they may have an event every 2 or 3 weeks on a seasonal basis with a maximum of 15 events per year; and that the facilities are approximately 1,000 feet from Banks Road.

The Commission found that Lori Twing of Winding Creek Village was present and expressed concerns about traffic on Banks Road and the Long Neck area and the location of the parking area.

The Commission found that Diane Koch, a resident living along Green Road, was present and expressed concerns about property values decreasing, the number of vacant properties in the area, the housing market forecast, and the saturation of homes in the area, and suggested that the Applicants donate the entire site to the State of Delaware for open space preservation. Ms. Koch submitted written comments.

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried with 3 votes to defer action for further consideration. Motion carried 3 – 0 with Mr. Burton absent.

CU #1792 – application of **TIDEWATER ENVIRONMENTAL SERVICES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional wastewater collection, treatment and disposal facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 320.21 acres, more or less, lying on both sides of Route 24 (John J. Williams Highway), southeast of Road 277 (Robinsonville Road), both sides of Road 298 (Jolyns Way) and both sides of Road 279 (Camp Arrowhead Road).

The Commission found that the Applicants had provided an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a listing of the project team, an Executive Summary with

references to the location, the purpose, County zoning, Environmentally Sensitive Developing Area considerations, land use, soils and hydrogeology, capacity and phasing, the application, the revised site plan, statements of conformity to the Comprehensive Plan, proposed Findings of Fact and Conditions of approval for consideration, and exhibits.

The Commission found based on comments received from the County Engineering Department Utility Planning Division that the site is located within the Angola Neck Planning Area; that conformity to the North Coastal Planning Area Study will be required; that the Engineering Department has met with the Applicant and his representatives and by mutual agreement of both parties, the following language has been agreed upon for use as conditions for this application: 1) 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, or the Delaware Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site, or any modification thereto. 2) The Applicant shall submit to the Sussex County Engineering Department a regional plan that shows all the areas and/or subdivisions to be served by the wastewater treatment and disposal facility. Said plan shall include technical support that demonstrates that capacity exists at the treatment and disposal facility to serve the areas and/or subdivisions. 3) The facility shall not receive sanitary waste for treatment and disposal from any property or parcel that is located within a Sussex County sewer planning area or sewer district; excepting therefrom those properties or parcels which are currently being served by Tidewater Environmental Services, Inc. treatment and disposal facilities or approved for service as evidenced by a CPCN being issued by the Public Service Commission on or before the adoption of this Conditional Use ordinance. 4) The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission; Should the above conditions be included, the Sussex County Engineering Department has no objections to this application; and that a concept plan is not required.

The Commission found based on comments received from the Sussex Conservation District that there are 12 soil types on this site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood hazard area is affected; that no tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that the Applicant will be required to follow State and Storm Water Program guidelines.

The Commission found that a copy of the Office of State Planning Coordination PLUS comments were a part of the record for this application.

The Commission found that a letter was received from Norma H. Daisey, Substitute Trustee for John J. Marsh, Trustee, voicing opposition to this application expressing concerns that the use will be detrimental to the value to her land.

The Commission found that Bruce Patrick, P.E. of Tidewater Environmental Services, Inc. was present with Dennis Schrader, Attorney, Frank Kea of Frank Kea Communities, LLC, Lee J. Beetschen, P.E. and Steven H. Lewandowski, P.E. of CABA Associates, Inc., Thomas E. Dwyer, P.G. of Eastern Geosciences, Inc. and Russell Marsh, property owner, and that they stated in

their presentations and in response to questions raised by the Commission that they are proposing to create a regional wastewater facility on 320 acres to serve 3,700 EDUs; that the treatment plant only utilizes approximately 0.5 acre of the property; that the purpose of the proposed facility is the treatment and land-based irrigation and aquifer recharge of treated wastewater from existing neighborhood homes as well as proposed neighborhoods outside of any existing and proposed Sussex County Sanitary Sewer District or Engineering Department Planning Area and the extension of central wastewater systems in this area to serve failing on-site systems and new development will protect the Inland Bays from excessive amounts of nutrients; that the site is located in the Environmentally Sensitive Developing Area where public investment is required in these areas to address ground water pollution from failing septic systems and eutrophication of the Inland Bays from surface water runoff and point source discharges of wastewater; that the breakdown of the use of the 320.21 acres on the sites includes 97.59 acres for agricultural spray area (31%), 54.29 acres for forested spray area (17%), 19.72 acres for rapid infiltration basins (6%), 12.02 acres for irrigation storage lagoons (4%), 0.48 acres for buildings and facilities (0.2%), 3.11 acres for roadway, driveway and parking (1%), and 133.00 acres of woodland, wetland, and agricultural lands preservation (41%); that the site is located in a Investment Level 3 according to the State Strategies; that wastewater treatment and water will be provided by Tidewater Utilities, Inc.; that wetlands have been delineated; that the use will create enhanced nutrient disposal and reduction to meet State drinking water standards at a minimum; that the buildings will appear to be agricultural buildings; that the rapid infiltration basins will be 18-inch basins; that a basin will be used for one day and then move to other basins on a daily basis; that the basins will be fenced; that soil reconnaissance has been completed and the soils are appropriate for the intended use; that there should be no impact on area water bodies or wells; that they have calculated that there will be 40% less nitrogen than an agricultural use; that the project will be phased into 2 or 3 phases; that the County Engineering Department supports the application with conditions; that the Nature Conservancy supports the use; that the undisturbed property will remain in agricultural uses; that they are a public utility serving a public use; that the use will protect surrounding properties; that the use is desirable to serve existing and future uses in the area; that they have not yet received a response from PLUS; that 1,500 septic systems exists in the area that can be eliminated by creation of this system; that solids will be trucked off to landfills; that there should be no odors from any part of the system; that they will provide aeration in ponds if needed; that minimal changes in the buildings would be necessary if expanded in the future.

The Commission found that Betty Lee Carmine, Terry Carmine, Sam Fresa, and Donna McCullum spoke in support of the application and referenced a need to serve the overdevelopment of the area, and that central sewer is needed to eliminate septic use. They did express concerns about the cost on users; that a clay layer exists approximately 16-inches below the surface; flooding in the area and water run-off; and if the collections system will be installed by the Applicant for existing uses and who will put in the collection system in new developments.

The Commission found that the representatives for this application responded that the cost is based on the number of users and is comparable with County sewer rates; that individuals are not forced to connect to the system; that if a septic or community system fails in the area the State may require connection to the system; that they are aware of the clay layer and note that the

under layer of soils is primarily sandy; that storage ponds will be utilized when soils are saturated; that new development will put in the connections and connect to the system; and that they anticipate 24 months to being able to accept sewerage.

The Commission found that Francis Scull, Joan Deaver, and Steven Britz were present in opposition and expressed concerns about pump station noises and traffic to and from the site; that a County system would be preferred; questioning if the lagoons are treated for mosquitoes; questioning if the Center for the Inland Bays has offered any response; questioning if there have been any problems with drugs, caffeine, etc. in the treated water; questioning when the site was posted and how many notices were sent out; and questioning if landscaping and/or forested buffers will be provided.

The Commission found that representatives for the application responded that the spray irrigation system is a center-pivot in an agricultural field; that traffic is low volume; that once every couple of month trucks will be utilized to remove and haul away solids; that they have never had issues with mosquitoes and that the ponds could be aerated, if needed; that they have had no issues relating to drugs or caffeine in the treated water; that force mains will be located in road rights-of-way; that road crossing will be drilled under roadways not cut across roadways; that a row of Leyland Cypress trees can be planted along the perimeter fencing; that it is required that lagoons are designed for 30 to 60 days of storage capacity; that there is very little storage in the lagoons when spray irrigating; and that the basins are lined.

Mr. Lank advised the Commission that the site was posted on May 9, 2008 and that 61 notices were sent to area residents.

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 and to leave the record open for the State response to the Applicants response to the PLUS comments and then for 15 days for the public to respond in writing to the response from the State. Motion carried 4 – 0.

Subdivision #2006 – 70 - - application of **PAF, L.L.C. C/O PAUL KRUGER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 21.22 acres into 14 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 321, 900 feet north of U.S. Route 113.

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 and that a forested buffer is required along lots 10 through 14 since the adjoining property is in crop.

Tim Willard; Attorney, Paul Kruger; Partner and John Road; Engineer were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the preliminary plan has been revised to include the forested buffer along lots 10 through 14 and submitted copies of the plan; that 14 lots are still proposed; that the storm water management area has been made larger; that the required buffer has been provided; that

the project is located east of U.S. Route 113, south of Sussex Correctional Institute, and north of Seacoast Speedway; that the project adjoins a strip lot subdivision known as Rawlins Manor; that according to the Land Use Plan Update, the site is located in a developing area; that there are mixed residential, commercial and agricultural uses in the immediate area; that based on the State's Strategies Map for Spending, the site is located in an Investment Level 2; that 14 lots are proposed; that there are 4 strip lots along Road 321 and 10 interior lots proposed; that there are no wetlands on the site; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems and submitted the feasibility statement; that DelDOT will not permit access to U.S. Route 113; that the site drains from Road 321 to the cul-de-sac; that the proposed storm water management pond will be a dry pond; that the ditch located to the north of the site was dug 3 years ago and is not a tax ditch; that the streets will be built to DelDOT specifications and dedicated to public use; that the project will not have any negative impacts on the Indian River School District; that the site is located within the Georgetown Volunteer Fire Company's fire district; that the site has not been farmed for over 7 years; that individual on-site septic and wells are proposed; that the project will not have any negative impacts on adjoining property's values; that the applicant has not had any discussions with the Town of Georgetown about providing central sewer to the project; that the State is not opposed to the project; that they are not sure of a starting price range; that a bus stop could be provided if required; that sidewalks are not proposed since the lots are 0.75-acres or greater; and submitted proposed findings of fact and conditions of preliminary approval.

David Weidman, the applicant's son-in-law, was present in support of this application.

No parties appeared in opposition to this application.

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 4 – 0.

Subdivision #2006 – 71 - - application of **THOMAS E. AND CHARLENE A. JONES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 34.09 acres into 2 lots, located at the southwest corner of Emma Lane and Route 30 and 1,001 feet north of Road 252.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the street is already existing; and that the Commission reviewed this request as an Other Business item at the February 1, 2006 special meeting and denied the request as submitted and determined that an application for a major subdivision would be necessary since the proposed lots would be the fourth and fifth lots having access from the right of way.

Thomas Jones was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a 3.00 acre lot is proposed; that the remaining land contains 30 plus acres and that he will continue to reside on that site; that the 3.00 acre lot will be sold; that the 3.00 acre lot is similar to other parcels in the area; that he currently maintains Emma Drive; that any dwelling to be built on the new lot will be required to

be a stick-built dwelling; that the new lot will not be permitted to be re-subdivided; and that Emma Drive is currently a 14 foot gravel road.

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

Subdivision #2006-72 – application of **GREGORY A. AND CHARLOTTE HASTINGS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 14.23 acres into 13 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, and a waiver from the forested buffer requirements, located south of Route 18 (Route 404), 2,700 feet west of Road 528.

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of May 23, 2007 will be made a part of the record for this application; that on May 28, 2008 the applicant's engineer submitted a revised preliminary plan reducing the number of lots proposed to 10; that DelDOT issued a Letter of No Objection on September 12, 2007; that the Sussex Conservation District approved the plan on May 18, 2008; that on June 23, 2008, the applicant's attorney submitted a packet that contains 99-9C considerations, HOA organization and management overview, site data summary and proposed findings of fact; that a letter in opposition from John T. Cadle was received and that a petition with 34 names was also received and that they will be made a part of the record.

David Weidman; Attorney, apologized for not submitting the packet within the Commission's 10 day window, and advised that the information in the packet is what he will discuss and that parts of it are already in the file.

David Weidman; Attorney, Rich Sinegar of Century Engineering and Charlotte Hastings were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicant has not yet received a septic feasibility statement from DNREC; that on-site septic and wells are proposed; that the Office of the State Fire Marshal has also approved the plan; that the lots have been reduced to create more open space and retain more wooded areas; that the project is a planned, low-density subdivision with restrictions for single-family stick-built and modular homes; that the site is zoned Agricultural Residential; that the application is for 10 lots located on 14.37 acres; that the project design has a system of bio-swales that will force the surface water to be diverted to a designed storm water management area; that best management practices will be used; that the subdivision street will be built to County standards; that the cul-de-sac will provide ample turning area for emergency vehicles; that the subdivision is expected to have minimal effects on property values in the area while providing affordable housing; that the subdivision will increase the supply of affordable lots and decrease the pressure to sell other farmland in the vicinity; that the proposed entrance is visible on Route 18 in both directions; that DelDOT has issued a Letter of No Objection for the entrance location; that the project is located in a rural residential agricultural area along the main

east west highway in central Sussex County; that the area consists of single-family homes and farmland and that this subdivision will be compatible with the area; that the project will not touch or impact the existing tax ditch that borders the southern and western boundary line; that the open area will be maintained by the homeowners' association; that all lots are more than 100 feet from any wetlands; that there are no wetlands on the site; that the positive outfall is the tax ditch; that a bus stop can be provided if required; that a cluster design would have permitted more lots and that the applicant wanted larger lots; that the PLUS process was not required; that there are no rare or endangered species on the site; that sidewalks are not proposed; that there would be approximately 60% forest loss; that the area is predominately mini-farms; that a buffer is not required on the west side since there is a tax ditch separating the site from the adjoining farm field; and that they are not aware of any other subdivisions in the area.

No parties appeared in support of this application.

Lewis Briggs, II, Richard Rockemann, Joe Pyles, Ernest Hosse, Robert Lambden and Sandy Rockemann, area residents, were present in opposition to this application and advised the Commission that the site is not located in a growth zone; that the site is in a flood plain; questioned when the buffers would be put in if the project is approved; that there are traffic and safety concerns along Route 18 in this area; that the cul-de-sac is longer than what is permitted; that traffic in the area has increased dramatically since 2004; that Route 18 is a major arterial roadway; questioned a need for variances and waivers; that there is no need for any more lots in the area; that there are wetlands on the site; that property owners were not notified; that other lots in the area are greater than 0.75 acres; that there are drainage problems in the area; that there are agricultural uses in the area and there is a right to farm law; and that there is another subdivision planned for the area for over 400 homes.

Mr. Weidman asked that the record be left open for 30 days for an opinion on the buffer issue.

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

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC, an opinion from Mr. Robertson in reference to the buffer requirements along a tax ditch, and to allow Mr. Burton to review the file and recording. Motion carried 3 – 0. Mr. Burton was absent.

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Wednesday, July 16, 2008 at 3:00 p.m.

Meeting adjourned at 10:07 p.m.