



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 24, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 24, 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. Rodney Smith, 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 amended by deletion of public hearing Item 5, the application of Subdivision #2006-76 – Baywind, LLC from the agenda since it was withdrawn on July 24, 2008. Motion carried 4 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of June 12, 2008 and the Minutes of July 10, 2008 as amended. Motion carried 4 – 0.

OLD BUSINESS

C/Z #1657 – An ordinance to modify Condition No. 10 imposed on Ordinance No. 1573 for Change of Zone No. 1475, the application of Ribera-Odyssey, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse and nature center facilities.

The Commission discussed this application, which has been deferred since July 10, 2008.

Mr. Smith stated that he was not fully satisfied with the applicant’s presentation of reasons for the delay in the construction of the clubhouse and nature center, and that a condition was established that the clubhouse was to be built at a certain time and that the clubhouse has not been constructed.

Mr. Burton stated that the construction of the clubhouse should not be placed on the establishment of golf membership.

Mr. Gordy stated that a lot of the amenities have been provided and that most of the residents that provided comments are in favor of waiting.

Mr. Wheatley stated that he agreed with Mr. Burton; that requiring construction based on a number is hard to police; that a time frame may be more appropriate; that everything, except for the clubhouse, has been built; that the Commission could accommodate a little flexibility; that the applicant provided public testimony; that the people purchased property relying on the testimony; that the Commission relied on the same testimony; and that he would prefer to see a full Commission present when the decision is rendered.

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

C/U #1739 – application of **ERIC SUGRUE; BIG TRIPS, LLC** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (6 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.66 acres, more or less, lying northeast of Road 270A (Munchy Branch Road), 3,000 feet northeast of Route One.

The Commission discussed this application, which has been deferred since July 10, 2008.

Mr. Smith stated that there was a lot of public participation in the public hearing on this application.

Mr. Gordy agreed and added that the application should be deferred.

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

Subdivision #2006-73 – application of **ANTHONY SPOSATO** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 261.99 acres into 400 lots, (Cluster Subdivision), located south of Road (Huff Road), 2,500 feet east of Road 319 (Sandhill Road).

The Commission discussed this application, which has been deferred since July 10, 2008.

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

PUBLIC HEARINGS

C/U #1798 – application of **FIRST STATE CREMATION CENTER, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a crematory as an addition to an existing cemetery (Woodlawn Memorial Park) to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 22.16 acres, more or less, lying west of U.S. Route 113, ½ mile south of Road 329.

Mr. Lank provided the Commission with copies of the site plan/survey and copies of building plans for First State Crematory Services.

The Commission found based on comments received from the County Engineering Department Utility Planning Division that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Area Study will be required; that the County is currently conducting a planning study for the Western Sussex Area; that the Study is scheduled to be completed in 2008; that the County currently has no schedule to provide service to this project; and that a concept plan is not required.

Mr. Lank advised the Commission that the file contains a copy of a preliminary approval of the building plans from the Office of the State Fire Marshal.

The Commission found that C. Kenneth Carter, Surveyor, was present on behalf of First State Cremation Center, Inc. and stated in his testimony that he represents Joe Ann Adams of Woodlawn Cemetery Park, John Cranston of Cranston Funeral Home, Wells A. Faries of Faries Funeral Home, Ed Hannigan of Hannigan-Short-Disharoon Funeral Home, Perry W. Rogers of Rogers Funeral Home, Kelly Pepper of Short Funeral Services, David R. Salmon, a licensed Funeral Director, George M. Short of Short Funeral Services, and Richard T. Watson, Jr. of Watson Funeral Home; that when a family chooses cremation as a manner of disposition, most of the member funeral homes must take the remains to crematory locations in Lewes, Frankford, or Delmar in Sussex County; that the Zoning Ordinance provides that a Conditional Use is required for a crematory associated with a cemetery and requires certain setbacks from property lines; that the proposed building is 240-feet from the southerly property line and 370-feet from the chapel on site; that the closest building to the site is a chicken house approximately $\frac{3}{4}$ mile away and that the closest dwelling is approximately 1 mile away; that the site is surrounded by other lands of the Melvin Joseph Estate; that the cremation rate in Delaware has grown by over 20%; that a need exists to serve the residents of the County with cremation services; that the use will not create any demand on County services; that pet cremation will also be offered; that the only additional traffic will be hearses delivering bodies for disposition; and that building will be in character with the buildings already existing in the cemetery.

The Commission found that Wells A. Faries added that no chemicals are associated with cremation.

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 C/U #1739 for First State Cremation Center, Inc. based on the record and for the following reasons:

- 1) There is a need for this type of facility in Sussex County. And, this will be a crematorium serving several funeral homes, instead of several of these facilities scattered all over the County.
- 2) The location is appropriate, since it is part of an existing cemetery. There are no other homes or other buildings nearby, so there will not be an adverse impact on neighboring properties.
- 3) The crematorium is more than 200-feet from all boundaries.

- 4) This recommendation is conditioned upon Final Site Plan approval from the Planning and Zoning Commission.

Motion by Mr. Gordy, 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 stated. Motion carried 4 – 0.

C/U #1799 – application of **DELMARVA CLERGY UNITED IN SOCIAL ACTION, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for a health, development and crisis center to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 32,905 square feet, more or less, lying north of Philadelphia Drive, a private road, 430 feet west of Route 213 and south of the Town of Ellendale.

Mr. Lank provided the Commission with copies of the site plan/survey and copies of building plans for the project.

The Commission found based on comments received from DelDOT that the Level of Service “A” of Route 213 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 proposed project exceeds sewer system design assumptions, however the estimated 3 additional EDUs are not expected to have an adverse impact on the sewer system for the foreseeable future; that the system design assumption for the parcel is 1.0 EDU reflecting a residential zoned parcel less than one acre; that the current system connection charge rate is \$6,848.00 per EDU; that Ordinance No. 38 construction will not be required; that the location and size of laterals or connection points is to be determined by the County Engineer; that the parcel is served with one 6-inch lateral located along the parcels frontage on the private road; that the 6-inch lateral is not adequate if the proposed use exceeds 4.0 EDUs and a lateral upgrade, at the owner’s expense, may be required; that conformity to the Ellendale Planning Study will be required; that the proposal is to construct a residential facility to temporarily house pregnant women and teens; that the project will be located on an existing residential lot of approximately 32,906 square feet; that the proposed project is within the Ellendale Sanitary Sewer District and that connection to the system is mandatory; that the proposed project exceeds system design assumptions for sewer service; that because of the project’s close proximity to Pumpstation 90, which transmits wastewater to Georgetown, capacity is expected to be adequate if the project does not exceed the preliminary estimate of 4.0 EDUs; and that a concept plan is not required.

The Commission found that a letter was received from the Honorable V. George Carey, State Representative, in support of the application.

The Commission found that no one was present on behalf of the application.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to table the public hearing to the end of the agenda. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman again asked if anyone was present on behalf of this application.

The Commission found that no one was present on behalf of the application.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously that the application be denied due to the lack of the record of support for the application. Motion carried 4 – 0.

Subdivision #2006-74 – application of **DAVID L. WILSON AND CAROLYN D. WILSON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 35.99 acres into 30 lots, located west of U.S. Route 113, 910 feet north of Road 623.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of June 20, 2007 will be made a part of the record for this application and that Mr. Robertson has reviewed the proposed restrictive covenants.

The Commission found that Harry Murphy of Charles D. Murphy Associates, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 30 single-family residential lots are proposed; that the site is located between Ellendale and Lincoln on the west side of U.S. Route 113; that on-site septic systems and wells are proposed; that the streets will be built to State specifications; that 2 stormwater management ponds are proposed; that stick-built or modular homes with a minimum square footage of 2,000 square feet are proposed; that a 50-foot buffer, landward of the wetlands is proposed for lots 1 through 7; that the lots do not abut Hudson Pond; that there will be no wetlands on the individual lots; that no amenities are proposed since the lots are 0.75-acre; that open space is not required but has been provided; that the developer will either install curbing or sidewalks; that swales are more environmentally friendly; that there is a spoil pile located in lots 27 and 28 from the U.S. Route 113 construction; that the entrance is built and is in place; that the entrance was designed for a commercial use and should be sufficient; that there is adequate room for a bus stop and subdivision sign; that the site is adjacent to a single-family residential subdivision; that there are other subdivisions in the area with 0.50 acre lot sizes; that the site is approximately 400 feet from the closest agricultural use; that there are dense woods on the site; that the developer proposes to save as many existing trees as possible; that the stormwater management ponds will be wet ponds; that there is room for sidewalks if required; that tax ditches are affected; that the buffer areas will be marked; that the entrance was built in 1994; that the developer will comply with all of DelDOT's requirements; that walking paths could be provided; and submitted a septic feasibility statement from DNREC into the record.

The Commission found that no parties were 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. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Subdivision #2006-75 – application of **TULL GROUP, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Northwest Fork Hundred, Sussex County, by dividing 139.98 acres into 222 lots, located northeast of Road 590, 2,300 feet northwest of Road 583.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of June 20, 2007 will be made a part of the record; that Mr. Robertson has reviewed the proposed restrictive covenants; that the applicants submitted an Exhibit Booklet and revised preliminary plan on July 10, 2008 that will be made a part of the record; and read letters from the Office of State Planning Coordination and Woodbridge School District.

The Commission found that Mark Davidson, President of Design Consultants Group, L.L.C. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the applicants and Jeff and Rick Tull; that the Exhibit Book contains the Technical Advisory Committee report, Location Map, Site Data Table, Qualifications for Mark Davidson, Project Team, Sussex County Planning and Zoning Commission Application, Section 99-9C comments, Subdivision Plans, Deeds, Declaration of Covenants, Conditions and Restrictions, PLUS application, PLUS review response per DC Group, LLC, PLUS review comments per Office of State Planning Coordination, Approval Letters, DelDOT supporting data, water and nutrient reports, March 2007 Orthophotography, March 2002 Orthophotography, 1997 Aerial Photo, 1992 Aerial Photo, State Agricultural Easement and Districts, 1974 Soils Classification, DNREC Watersheds, Leaking and Other Underground Storage Tanks, Miscellaneous Surrounding Features, 2004 State Strategies and Investment Levels, County Zoning July 2007, FEMA Floodplain Map, Ground Water Recharge, NWI Wetlands, State Wetlands, Tax Ditches, Historical/Cultural Resources, Proximity to Municipal Boundaries, Schools and School Districts, Fire Stations and Districts and Wetland Delineation Review; that the site is located on the east side of Road 590 (Mile Stretch Road) in Northwest Fork Hundred; that the site is southwest of the Town of Greenwood approximately ½ mile south of Route 36 and 1 mile west of U.S. Route 13; that the site contains 139.98 acres; that 130.14 acres is zoned General Residential and 9.84 acres is zoned Agricultural Residential; that the Agricultural Residential lands are in a Level 3 and the General Residential lands are in a Level 4; that the Office of State Planning Coordination does not object to the plan since it is in the Town of Greenwood's Future Annexation area; that 222 lots proposed and are all located in the General Residential zoned lands; that the gross density is 1.58 lots/acre; that the General Residential density is 1.71 lots/acre; that the General Residential District permits 4 lots/acre with central sewer; that the average lot size is 10,478 square feet; that 10,000 square foot lots are permitted with central sewer and water; that 57% of the site is open space; that there are 16.5 acres of wetlands on the site and 37.28 acres of woods; that all of the wetlands are in the forested areas; that there are tax ditches on the east and west sides of the site; that the ditches in the interior of the site are jurisdictional wetlands; that the wetlands delineation has been submitted to the State and Corps of Engineers; that 30-foot forested buffers are provided; that the items listed in Section 99-9C of the Subdivision Code are adequately addressed in the Exhibit Book and discussed these items; that the lots along the front of the site have been moved further away from Road 590; that the site is in a Flood Zone X; that there will be no disturbance to the wetlands;

that the lots abut open space; that sidewalks will be provided on one side of all streets; that walking, jogging and biking paths will also be provided; that the open areas will be landscaped and street trees along all streets will be planted; that a community wastewater disposal and treatment plant is proposed and will be operated by Tidewater Environmental Services, that a spray irrigation system will be utilized; that Tidewater will also provide a central water system to the project; that a nutrient loading assessment report has been done and Best Management Practices will be utilized; that the stormwater management ponds will be dry basins; that the 2 farm ditches in the interior of the project will also be utilized for stormwater management; that there will be rain gardens at the entrance of the site; that a 15-foot multi-modal path along Road 590 is required by DelDOT; that a clubhouse and swimming pool will be provided; that the project will increase property values in the area; that stick-built or modular homes will be permitted; that the site is located in a rural area; that the Woodbridge School District does not oppose the project; that a bus stop with parking is proposed at the entrance of the site; that a traffic impact study was performed and has been approved by DelDOT; that the developers will comply with all of DelDOT's requirements; that the project is compatible to the area; that proposed Findings of Fact were read into the record; that streetlights will be provided and maintained by Delaware Electric Cooperative; that Natalie Lane and Courtney Avenue could be revised to meet Town of Greenwood street specifications if the project were annexed into the Town of Greenwood; that the lots will range from \$50,000.00 to \$60,000.00; that lots 6 through 16 and 191 through 194 abut existing strip lots; that no lots are located in the Agricultural Residential area; that walkways will be located in the wooded areas; that stub streets have been provided to adjoining properties; that the tax ditch easements have been reduced to 25-feet; that rain gardens are shallow ponds/depressions with landscaping; that the spray irrigation is treated water regulated by DNREC; that the pond along Road 590 is approximately 150-feet from the road; that the maintenance building for the wastewater and water system will be compatible to the area; and that the developers are working with the Town of Greenwood about future annexation.

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

The Commission found that Sam Rintz, Jessica Jansen, Sharon Stran and John Mills were present in opposition to this application and advised the Commission that they oppose the number of homes proposed; raised concerns about the prices of the homes; that property values will decrease; that crime will increase in the area; that there could be negative impacts to wells in the area; raised concerns about the entrance location causing headlights to shine into windows; that improvements will be needed for Mile Stretch Road; that the Town of Greenwood has not contacted anyone about annexation and submitted a petition with 31 signatures opposed to this application.

Mr. Davidson responded that lot/home sales would probably begin at \$200,000.00; that property values will be increased; and that the parcel that Mr. Mills owns is not the parcel that the Town is looking to annex.

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.

Subdivision #2006-76 – application of **BAYWIND, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 44.46 acres into 42 lots, (Cluster Subdivision), located northeast of Route 5, 4,600 feet northwesterly of Route 24.

Mr. Lank advised the Commission that this application was withdrawn by the Applicant on July 24, 2008.

ADDITIONAL BUSINESS

Mr. Lank provided the Commission with copies of a Revised Open Space Definition prepared by Urban Research and Development Corporation, copies of a Superior Design Criteria Proposal prepared by Urban Research and Development Corporation, and copies of a “Supergreen” Criteria Proposal prepared by Element for a study group on behalf of DNREC.

Mr. Lank advised the Commission that the County Council would appreciate the Commission comments in referenced to these proposals.

There was a consensus of the Commission that they should meet in a workshop to discuss these proposals and that it was decided that they would meet on August 7, 2008 at 3:00 p.m. in County Council Chambers to discuss the proposals.

Mr. Lank provided copies of the PLUS response from the Office of State Planning Coordination in reference to C/U #1792, the application of Tidewater Environmental Services, Inc. which was deferred for further consideration on June 26, 2008 leaving 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.

Mr. Lank advised the Commission that the 15-day written comment period would start tomorrow, July 25, 2008 and written comments can be received until the close of business on August 8, 2008 at 4:30 p.m.

Meeting adjourned at 8:15 p.m.