

MINUTES OF THE REGULAR MEETING OF AUGUST 8, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 8, 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. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

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

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

PUBLIC HEARINGS

CONDITIONAL USE #1967 – TIDEWATER ENVIRONMENTAL SERVICES, INC.

Application of **TIDEWATER ENVIRONMENTAL SERVICES, INC.** to consider the Conditional Use of land in a MR Medium Density Residential District for a wastewater treatment plant to treat offsite waste, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 10.26 acres, more or less, lying south of Road 283 (Cedar Grove Road) and east of Road 277 (Robinsonville Road) (Tax Map I.D. #3-34-11.00-83.00 and 83.04).

The Commission found that the Applicants had provided an Exhibit Booklet on July 30, 2013 containing a description of the Conditional Use application and property descriptions; a proposed pump station and force main system map; wastewater treatment plant site plans; agreements, etc. for service to The Retreat; capacity studies, evaluations and DNREC permit; a wastewater CPCN (Certificate of Public Convenience and Necessity); a No Violation letter from DNREC; a schedule of construction to connections; a listing of Tidewater Environmental Services, Inc. owned and operated wastewater treatment plants; costs of connection and user charges; and suggested proposed Findings of Facts and Conditions of Approval.

The Commission found that on August 7, 2013 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum advising that the site proposed to be served, owned by S & B Land, LLC and referenced to as Phase I Coastal Club, is located in the Goslee Creek Planning Area; that wastewater capacity is available for the project; that Ordinance 38 construction is required; that Service Connection Charges will apply; that at present, sewer service to the Coastal Club is available through the West Rehoboth Sanitary

Sewer District, although the performance of the Goslee Creek Planning Study could result in Coastal Club being included in the Goslee Creek Sewer District; that the project is capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study and/or the Goslee Creek Planning Study is required; That the wastewater treatment facility is location in the Goslee Creek Planning Area for sewer service; that if the application is not approved, Sussex County is willing and able to provide permanent sewer service to the Coastal Club development through its existing and proposed infrastructure; and that if this application is considered for approval, then the County Engineering Department recommends that conditions include:

1. All improvements for collection, transmission, and treatment and disposal of wastewater shall be constructed and maintained in accordance with the standards of the Sussex County Engineering Department and the regulations of 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. Within 90-days of the approval of this application, 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 listed in the plan.
3. The facility shall not receive wastewater for treatment and disposal from any property or parcel that is located within a Sussex County sewer planning area, territory or sewer district; excepting therefrom those properties or parcels which are approved for service as evidenced by a CPCN being issued by the Public Service Commission by or before August 8, 2013.
4. Wastewater service to the Coastal Club through this Conditional Use shall be limited only to those homes located in Phase 1 totaling 156 EDU's and amenities (not to exceed 153 EDU in accordance with the table shown under Tab #8 of the Exhibit Book included in the Sussex County Planning and Zoning file for this Conditional Use Application #1967). Other phases shall be served by the proposed Wandendale Wastewater Treatment and Disposal Facility, and should that option not be available when additional EDUs are requested by the Developer, then a connection to a Sussex County sewer district shall be permitted.

The Commission found that Gerald Esposito, President of Tidewater Environmental Services, Inc. (Tidewater) was present with Dennis Schrader, Esquire with Morris James Wilson Halbrook and Bayard, LLP and Rich Polk, Professional Engineer with Vista Design, Inc. on behalf of the application and stated in their presentation and in response to questions raised by the

Commission that the purpose of the application is to treat and dispose of wastewater from Phase I of the Coastal Club development at the Tidewater treatment and disposal area within The Retreat development; that Tidewater has a CPCN for 165 EDU for Phase I at the Coastal Club; that the system has a capacity to treat 48,300 gallons per day, equivalent to 340 EDU; that the treatment plant has been operating efficiently and can handle this wastewater capacity; that the treatment plant meets the Inland Bays Standards; that the treatment facility is under roof and has been operating over 5 to 7 years; that there are 10 series of drainfields in the center of the project for disposal; that they have never received a violation from DNREC; that the CPCN and easements for this location have been approved since 2005; that an agreement is being negotiated with the developers of Coastal Club to serve Phase I of the project; that they are proposing to begin construction in April 2014, to begin constructing the forcemain in July 2014, and completion of the construction by December 2016; that they do not anticipate any negative impacts on the residents of The Retreat; that the existing treatment plant and disposal fields are at 50% capacity; that they are only expanding the service area, not the treatment plant; that DNREC inspects the facility on a regular basis; that their rates are subject to the review and approval of the Public Service Commission; that the Coastal Club is a 630 unit development that has been proposed since 2005; that Phase I of the Coastal Club contains 153 units and the clubhouse; that the wastewater will be fed to a pump station on the Coastal Club property down Jimtown Road, down Robinsonville Road to a manhole on the site of The Retreat to the treatment plant; that the project is to be designed to and subject to the review and approval of both DNREC and County Engineering; that the use meets the purpose of the Zoning Code; that no other expansion service is proposed, only Phase I of the Coastal Club; that there should be no impacts on The Retreat; that all of the drainfields are in and the spare drainfields are designed; that within 3 years of the first connection for the Coastal Club the residents along Jimtown Road shall be connected to the system; that the treatment plant has run under capacity for several years, and was re-rated for permit volume to 48,300 gallons per day; that they have no intent to serve any more than Phase I of Coastal Club; that this use is intended as a temporary use pending start and completion of the Wandendale sewer treatment facility; that it is approximately 9,800 feet from the pump station at Coastal Club to the manhole on Robinsonville Road at The Retreat; that they will start building the Wandendale facility prior to the development of the last lot in Phase I of the Coastal Club; that they do not yet have a signed agreement with the developers of the Coastal Club; that the proposed sewer line will become a portion of the Wandendale system and will continue from the manhole at Robinsonville Road to the Route 24 site; that the Wandendale system is 70% engineered to start once customers step forward; and that construction time for the temporary line will take approximately 4 months.

The Commission found that Chase Brockstedt, Esquire, was present in support on behalf of the developers and stated that it is in the best interest of the Coastal Club; that the developers are wanting to proceed, builders are ready to build; and that they are ready to sign a contract.

The Commission found that Preston Schell was present on behalf of the contract purchaser and stated that at this time he can only support the proposal; that the timing for Phase II of the Coastal Club impacts the developers; that builders are ready to start construction of homes; that they would prefer to get service from a County sewer district; that the CPCN was signed by a prior owner and that he cannot get out of the CPCN agreement; that Sussex County has financing opportunities available that make County sewer a more viable option since the County has lower rates for their customers without the likelihood of significant rate increases in the future.

The Commission found that Bill Baydalla, Vice President of the The Retreat HOA, was present, not in opposition but with some concerns about capacity; that he has seen a 40% growth in The Retreat from January 2012 to April 2013, which seems to differ from the calculations provided by the Applicants; that he would prefer that once the temporary service to Phase I of the Coastal Club is completed that there be no further outside connections to the facility at The Retreat; questioning if the agreement between the original developer and the sewer impacts the original agreement or requires a need to modify the agreement.

The Commission found that Mr. Esposito, in response to Mr. Baydalla's concerns, stated that he is very confident that the system will work; that the treatment plant is designed for a certain amount of treatment and can treat more, but is limited to serve a certain amount of wastewater; and that treatment plants run better at capacity.

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

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

There seemed to be a consensus of the Commission that there may be process issues between the Public Service Commission and private v. public services; questioning if they are really ready and willing to serve; questioning if CPCNs can be voided, if not used; and that it appears that there is no expiration to a CPCN.

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

CHANGE OF ZONE #1732 – HEROLA FAMILY, LLC AND ARTISAN'S BANK

Application of **HEROLA FAMILY, LLC AND ARTISAN'S BANK** 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 Lewes and Rehoboth Hundred, Sussex County, containing 25.4219 acres, more or less, lying south of Route 24 (John J. Williams Highway) 2,025 feet west of Route One (Tax Map I.D. 3-34-12.00-127.01 and 127.07 – 127.10).

The Commission found that the Applicants submitted an Exhibit Booklet on July 26, 2013 for consideration, and that the Booklet contains an Environmental Assessment and Public Facilities Evaluation Report; Preliminary Land Use Service (PLUS) comments; a PLUS response from Davis, Bowen & Friedel, Inc.; a Service Level Evaluation Request; a DeDOT zoning application response; a DNREC response regarding threatened and endangered species; and a zoning map/aerial view of the rezoning parcels and surrounding area.

The Commission found that James Fuqua, Jr., Esquire with Fuqua, Yori and Willard, P.A., provided some documents on July 29, 2013 on behalf of the Applicants, and that those comments included copies of the Planning and Zoning Commission Minutes for December 7, 2006 for Conditional Use No. 1716 for Andrew Lubin recommending approval; copies of the Planning and Zoning Commission Minutes for June 10, 2010 for Change of Zone No. 1683 for J.G. Townsend, Jr. & Co. recommending approval; copies of the Planning and Zoning Commission Minutes for October 14, 2009 for Change of Zone No. 1690 for L. T. Associates, L.L.C. recommending denial; PLUS comments, dated September 19, 2012 for this site; copies of portions of the Sussex County Comprehensive Land Use Plan Future Land Use Map and certain pages; copies of portions of the Zoning Ordinance; and a copy of portions of the Subdivision Ordinance relating to definition of Major Arterial Roadways.

The Commission found that the County Engineering Department Utility Planning Division, dated August 6, 2013, referencing that the site is located in a County operated and maintained sanitary sewer district; that the parcels fronting Route 24 and Parcel 127.10 fronting the internal roadway have been annexed into the West Rehoboth Expansion Area; that Parcel 127.01 is in the Southern Planning Area for sewer service; that the current System Connection Charge Rate is \$4,822.00 Per EDU; that sewer service is available to all parcels; that Parcels 127.06, 127.07 and 127.08 each require installation of a sewer lateral at the Developer's expense; that Parcel 127.09 has been provided with a lateral; that a connection point has been provided for Parcel 127.01; that the parcel is capable of being annexed into the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that conformity to the West Rehoboth Expansion Area Capacity Evaluation and the North Coastal Area Planning Study will be required; that an area of approximately 17.41 acres adjoins, but is not within the West Rehoboth Expansion Area; that the area not in the sewer district is located within a sewer planning area, so the remainder of the project can be annexed into the sewer district by performing certain administrative procedures, although a commitment to an extension of mainline sewers and necessary system upgrades may be a condition for said annexation taking place; that based on a cursory review, it does appear that sewer capacity is available; that the total maximum EDU available for development use is 305.04 EDU; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; and that the County Engineering Department must approve the connection point, and requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation. A listing of steps to be

completed for extending district boundaries and a checklist for preparing concept plans was attached.

The Commission found that two letters were received in support of the application from Rehoboth Mall Limited Partnership and the Delaware Eye Institute.

The Commission found that James Fuqua, Jr., Esquire with Fuqua, Yori and Willard, P.A. was present on behalf of the application with Zac Crouch, Professional Engineer, and D. J. Hughes, Professional Engineer, with Davis, Bowen & Friedel, Inc., Robert Hood of Herola Family, L.L.C. and Andy Taylor of Artisan's Bank to answer any questions from the Commission; and stated that they are proposing to rezone 25.4 acres of land currently zoned AR-1 Agricultural Residential to CR-1 Commercial Residential; that Artisan's Bank owns Lot 1 and Herola Family, L.L.C. owns the remainder; that the site is west of and to the rear of the Rehoboth Mall; that the Beebe Medical Center is west of the site; that Route 24 and the Delaware Eye Institute are north of the site; and that Sterling Crossing development and the J.G. Townsend Jr. and Company are to the south of the site; that the Beebe Medical Center property was purchased from Herola Family, L.L.C.; that this site was originally approved for an intended office complex (Conditional Use No. 1716) and has not been successfully developed; that a decision was made to apply for a change of zone to CR-1 Commercial Residential to allow for retail use; that the only difference from C-1 and CR-1 is that multi-family use is permitted in C-1 and requires a Conditional Use in CR-1; that retail business use is intended; that the actual use has not yet been determined; that any use of the property is subject to rezoning of the property; that the Zoning Ordinance will dictate the use based on site plan review; that the only thing the Commission needs to consider is if the 25.4 acres of land is suitable for CR-1 zoning; that the site is just west of Route One and adjacent to a major retail use, the Rehoboth Mall; that there are no records of any endangered species, wetlands, historical, or cultural resources on the site; that the site is located in a Tidewater Utilities service area; that the site is partially within the West Rehoboth Expansion Area; that DelDOT did not require a Traffic Impact Study since the area has already been studied; that a road interconnection and road network will be required to be improved by the developer providing interconnection from Route 24 to Old Landing Road at Airport Road; that any development of the property will only occur with the new road in the design; that the concept of the new road was discussed previously when the applications of Andrew Lubin and J.G. Townsend, Jr. & Co. were discussed; that this land is appropriate for CR-1 zoning since: 1) the property is located, according to the Strategies for State Policies and Spending documents, in an Investment Level 2; that Investment Level 2 reflects areas where growth is anticipated by local, County, and State plans in the near term future; that State investments will support growth in these areas; that the Office of State Planning and Coordination has no objections to the proposed rezoning of this project in accordance with the relevant County Codes and Ordinances; 2) since the site conforms to the Comprehensive Land Use Plan Future Land Use Map by being located in the Environmentally Sensitive Developing Area; since it is located close to the

Highway Corridor of Route One; since it has access to Route One and Route 24 and is adjacent to highway commercial areas along Route One, and is located in close proximity to other commercial uses and zonings; that the use conforms to the purpose of the CR-1 zoning classification which references that the 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 particularly along certain major thoroughfares where a general mixture of commercial and service activities now exist; that the requested rezoning is an infill between those previously referenced zonings and uses; that the rezoning will promote the orderly growth, convenience, order, prosperity and welfare of the County and it will encourage commercial activities where substantial commercial activity exists and continues to grow; that the rezoning is in character with the surrounding area and is consistent with the trends of development in this area off of the Route One corridor; that the rezoning is a logical transition to connect these areas; and that the J.G. Townsend, Jr. and Co. has already agreed to dedication of lands for the connector road.

The Commission found that Mr. Fuqua submitted suggested proposed Findings of Fact for consideration which include; 1) The site is located in the Environmentally Sensitive Development District, a growth area as designated by the Sussex County Comprehensive Plan and the CR-1 zoning is in accordance with the Land Use Plan and Future Land Use Map; 2) The site is located near two major thoroughfares, Route One and Route 24. Route One is designated as a major arterial roadway under the Sussex County Subdivision Ordinance; 3) The site is located in an area where a general mixture of commercial and service activities currently exist including the Rehoboth Mall, Beebe Medical Center, Delaware Eye Institute and numerous other commercial and service businesses on Route 24, Route One and Old Landing Road; 4) The site adjoins other lands zoned commercial on the south, east and north and the Beebe Medical Center, a conditional use, on the west; that other commercially zoned land is located in the immediate area; 5) The site will be served water for domestic use and fire protection by Tidewater Utilities, a public water supplier; 6) The site will be served by County sewer as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; 7) The CR-1 zoning classification is consistent with the purposes of the County Zoning Ordinance and Comprehensive Land Use Plan by promoting the orderly growth, convenience, order, prosperity and welfare of the County and will encourage commercial activity at an appropriate location where substantial commercial activity exists and continues to grow; that the CR-1 zoning classification is in character with the surrounding area and is consistent with the trends of development in this area of the Route One corridor; 9) As a result of the surrounding uses and zoning classifications, this change of zoning represents an “infill rezoning” and CR-1 zoning is the appropriate zoning classification; 10) DelDOT indicates that the applicant and adjacent property owner worked with DelDOT on a study of the impact of the development of their properties referred to as the Old Landing Road Traffic Study and that considering the commercial use of the properties, the Route 24 DelDOT widening project and the proposed new

local road serving the sites and providing a connector road from Route 24 to Old Landing Road and Airport Road at the Airport Road intersection, DelDOT is satisfied that the affected intersections will operate at an acceptable level; and 11) Any proposed use on the site will be subject to site plan review by the Sussex County Planning and Zoning Commission.

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

The Commission found that David Racine, a resident of Truitt's Midway Development, was present and expressed concerns that no one was notified in his development of this application; that he is concerned that a smoke-screen is being present about the real intended use of the site; that rumors are that the site is to be improved by a Super Wal-Mart store; questioning if the property will be sold or leased; and expressing concerns about traffic, run-off, flooding, and drainage.

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.

OTHER BUSINESS

Cheer

CU #1947 Revised Site Plan – Route 16

Mr. Abbott advised the Commission that this is a revised site plan for a 6,600 square foot one-story building located on 4.35 acres; that the site is zoned AR-1 and this Conditional Use was approved on November 27, 2012 with 8 conditions; that the Commission granted preliminary site approval for a 6,000 square foot building on January 10, 2013; that the revisions are for an additional 600 square feet, a revised parking area for 190 vehicles and that the entrance has been relocated further east on the site; that the conditions of approval are noted on the site plan; that if revised 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 revised site plan.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to approve the revised 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 5 – 0.

Salman Choudhary

CU #1964 Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a site plan for a used car sales facility along with an existing tire sales store located on 37,500 square feet; that the site is zoned AR-1 and this Conditional Use was approved on July 16, 2013 with 7 conditions; that the conditions of approval are noted and depicted on the site plan; 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. Johnson, seconded by Mr. Burton and carried unanimously 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 5 – 0.

Everett and Marlene Warfel
Lot on 50' Easement – Route 16

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from an existing 50-foot easement; that the Commission approved the 50-foot easement in 2008; 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, this would be the third lot having access from the 50-foot easement, and that 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. Burton, seconded by Mr. Johnson 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.

Brandy Irwin
Parcel and 50' Easement – Road 577

Mr. Abbott advised the Commission that this is a request to create an 83.0 acre parcel with access from a 50-foot easement; that the residual lands contains 9.0 acres; that the owner is proposing to create the 50-foot easement over an existing driveway; that the request may be approved as submitted or an application for a major subdivision can be required; 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. Motion carried 5 – 0.

Dutton Properties, LLC
Lot on 50' Easement – Road 410

Mr. Abbott advised the Commission that this is a request to create a 1.50 acre lot with access from an existing 50-foot easement; that there is an existing dwelling and three accessory buildings located on the parcel; that the residual land contains 4.69 acres; that this would be the third lot having access from the 50-foot easement; 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.

Jody Sweetman
Parcel and 50' Easement – Road 370

Mr. Abbott advised the Commission that this is a request to create a 3.0 acre parcel with access from a 50-foot easement; that the owner is proposing to create the easement over an existing stone driveway; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

John and Joan J. Tregoe
3 Lots and 50' Easement – Road 364A

Mr. Abbott advised the Commission that this is a request to subdivide a 3.226 acre parcel into 3 lots with access from a 50-foot easement; that the owner is proposing to create the 50-foot easement over an existing paved driveway; that Lot 1 will contain 1.250 acres and there is an existing dwelling located on it, Lot 2 will contain 0.897 acres and Lot 3 will contain 1.079 acres; 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.

Mr. Smith advised the Commission that he is familiar with the area; that he has concerns about the size of the smaller lots being created where the other parcels in the area are larger; and that he feels that a public hearing should be required so that area residents have the right to be heard.

Mr. Johnson agreed with Mr. Smith.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny the request as submitted. Motion carried 5 – 0.

Meeting adjourned at 9:10 p.m.