



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF AUGUST 23, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 23, 2007 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. I.G. Burton, III, Mr. Benjamin Gordy, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Richard Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of August 9, 2007 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/U #1697 – application of **DANSK, LLC** to consider the Conditional Use of land in a C-1 General Commercial District for a waterpark and miniature golf course to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.352 acres, more or less, lying north of Route 54, west of Virginia Avenue, approximately 350 feet west of Route One.

The Commission discussed this application which has been deferred since August 9, 2007.

Mr. Smith stated that he had no real objections to the use since the use already exist and since the uses provides a recreational amenity, but was concerned about parking and the DelDOT easement.

Mr. Johnson stated that he is also concerned about the parking and the DelDOT easement.

Mr. Wheatley stated that since this is a Conditional Use application, the Commission can recommend conditions of approval and would have to come back to the Commission for site plan review and approval; that the use is appropriate for the site since it already exist; and that he is also concerned about parking and the DelDOT easement.

Mr. Gordy stated that he agrees with Mr. Wheatley that the use exist, but could be improved.

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

Subdivision #2006-26 – application of **GRAVEL HILL PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 204.47 acres into 276 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Route 30, 200 feet north of Road 251.

The Commission discussed this application which has been deferred since August 9, 2007.

Mr. Lank advised the Commission that two (2) letters have been received in reference to the northerly entrance, one from the neighboring property owner and one from the attorney representing the applicant.

Mr. Robertson stated that the information is in the file for the application and may not need to be considered at this time.

Mr. Johnson stated the he would move that the Commission conceptually approve Subdivision #2006-26 for Gravel Hill Properties, L.L.C. based upon the record and for the following reasons:

1. The applicant is seeking approval of a clustered subdivision within the AR-1 zone. The applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
4. My motion is for approval of the subdivision as a concept only, because I am concerned that the preliminary site plan, as presented, may not reflect the same conditions on the site as what will be present at the time the applicant seeks final site plan approval. Specifically, there is an operating borrow pit on the site. The applicant's engineer was surprised at the amount of borrow that has been removed since the application was first filed, and the applicant stated that the borrow operation would continue if preliminary approval was granted. Since the pond is such a prevalent aspect of the project, this could impact the layout of the site, and the location of amenities, the extent of usable open space, etc. For this reason, I am recommending approval of this application in concept only, directing the applicant to confirm exactly where the limitations on borrow pit operations will be and the final location of the pond.
5. While I believe this project may be a superior design under the Subdivision Ordinance, and also satisfies the requirements of Section 99-9C, I will be in a better position to verify that once a revised preliminary site plan is submitted.
6. The proposed subdivision will have no more that 276 lots on 204 acres. This results in a density of approximately 1.35 lots per acre, which is less than the maximum density permitted in the AR-1 zone.
7. This conceptual approval is subject to the following:

- A. There shall be no more than 276 lots within the subdivision.
- B. The lots located in the existing stand of trees near the southern entrance to Route 30 shall be relocated so that the trees are preserved.
- C. The applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, the pond and other common areas.
- D. The stormwater management system shall meet or exceed the requirements of the State and County.
- E. All entrances shall comply with all of DeIDOT's requirements.
- F. The applicant shall maintain as many existing trees as possible. The undisturbed-forested areas shall be shown on the revised Preliminary Site Plan.
- G. Agricultural buffers shall be shown along boundaries bordering on any land used primarily for any agricultural purposes. Buffers shall also be added to the southern boundary of the project. The Final Site Plan shall also contain a landscape plan for all of the buffers areas, signed by a licensed Landscape Architect and showing all of the landscaping and vegetation to be included within the buffer areas.
- H. No wetlands shall be included within any lots.
- I. Street lighting shall be provided and the location of the streetlights shall be shown on the Final Site Plan.
- J. Sidewalks shall be installed on both sides of all streets within the subdivision. There shall also be walking, jogging and bike paths throughout the subdivision as shown on the Preliminary Site Plan.
- K. The subdivision shall be served by a central sewer system as defined by the Sussex County Ordinance, designed in accordance with the Sussex County Engineering Department specifications and conformity with all DNREC regulations.
- L. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- M. A school bus shelter with parking shall be provided on the Final Site Plan. The developer shall coordinate and cooperate with the local school district's transportation coordinator to establish the school bus stop area. The location of the bus stop area shall be shown on the Final Site Plan.
- N. Within two (2) years of issuance of the first residential building permit, the developer shall construct all of the recreational amenities.
- O. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- Q. The proposed Preliminary Site Plan must be revised to show the actual limits of borrow pit operations and the final location of the pond, access points to the pond, open space between the pond and adjacent lots, the amenities, and the forested area between the pond and the eastern boundary of the site. It shall also state that all borrow pit operations shall cease at the time the first residential building permit is issued.

- R. If wastewater is treated and disposed off-site, the on-site treatment and disposal areas shall remain as open space.
- S. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- T. The applicant shall submit a revised Preliminary Site Plan in compliance with the conditions of this conceptual approval, to be considered by the Commission at a future meeting under “Old Business”.

Motion by Mr. Johnson, seconded by Mr. Burton and carried with 4 votes to grant conceptual approval of this application for the reasons and with the conditions stated.

Motion carried 4 – 0 with Mr. Gordy not voting.

PUBLIC HEARING

C/U #1760 – application of **FRANCES B. PREKUP, JR.** to consider the Conditional Use of land in a GR General Residential District for a produce and landscaping business to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.508 acres, more or less, lying at the northwest corner of Route 16 and Slim Street, 1,100 feet west of Road 212.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not required and that the Level of Service of Route 16 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Glassboro sandy loam and Henlopen-Rosedale complex; that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Frances B. Prekup, Jr. was present and stated in his presentation and in response to questions raised by the Commission that his previous application included an auto sales lot; that the auto sales lot proposal has been removed; that he plans on selling produce, firewood, landscaping materials, and birdhouses; that he has a sign at the corner of Route 16 and Slim Street; that business hours will be from 8:00 a.m. to 4:00 p.m. Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturdays with no Sunday hours; that the firewood and top soil will be stored on the west side of the site; that he has one part-time employee; that he recently remodeled the old produce stand and walk-in cooler; that landscaping materials include mulches, stones, and top soil; that he will not be storing any clamshells on the site; that if a client desires clamshells he will order them and have them shipped directly to the client's property; and that he only displays a few birdhouses in a landscaped area near Slim Street.

Mr. Lank advised the applicant that the number of entrances may be a concern of DelDOT; and that the number of signs permitted will be limited by the Zoning Ordinance.

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. Burton stated that he would move that the Commission recommend approval of C/U #1760 for Frances B. Prekup, Jr. for a produce and landscaping business based upon the record and for the following reasons:

1. The project, with the conditions placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The use promotes local agriculture.
3. This recommendation is subject to the following conditions:
 - A. The use shall be limited to the sale of produce, firewood, landscaping materials and birdhouses.
 - B. There shall be only one unlighted sign on the property, not to exceed 32 square feet in size. One sign shall also be allowed on the building.
 - C. Hours of operation shall be Monday through Friday 8:00 a.m. to 4:00 p.m. Saturday 8:00 a.m. to 12:00 p.m. and only produce sales on Sunday from 8:00 a.m. to 4:00 p.m.
 - D. No more than two (2) employees shall work at the site.
 - E. Restroom facilities shall be in the existing dwelling. There shall not be any portable toilets on the property.
 - F. All entrances shall be subject to DelDOT's approval.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, 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 5 – 0.

Subdivision #2006-27 – application of **O. A. NEWTON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 95.24 acres into 137 lots, (Cluster Development), located north of Road 404, 1,900 feet west of Road 525.

The Commission found that prior to the meeting the applicants provided an Exhibit Booklet and that the Exhibit Booklet contains a letter of intent, a property history, a project summary, references to Section 99-9C, and numerous appendices.

Mr. Lank advised the Commission that Technical Advisory Committee responses were received on a due date of January 24, 2007; that the staff received a letter of No

Objection from DelDOT on August 13, 2007; that the applicant's engineers submitted a revised preliminary plan addressing the comments from the Technical Advisory Committee and PLUS on August 17, 2007; and that the Exhibit Booklet was received on August 20, 2007.

The Commission found, based on comments received from the Office of State Planning Coordination, that this project is located in a Level 4 area according to the State Strategies; that since the site is located in a Level 4 area the State opposes the project; that the State did make recommendations regarding the technical aspect of the plan; that the State appreciates that the applicant has increased the buffers from 30-foot width to 50-foot width creating approximately 12 acres of useable open space; that the applicant had advised them that due to the proximity to the Town of Bridgeville, it will allow people to live in the country and still be within the amenities of town living; that the State questions how Bridgeville will feel about these residents using Town services and Town parks without paying taxes to the Town; that the applicant advised them that this project will create opportunities for individuals on the western side of the County to purchase more affordable homes; that the applicant did not offer the expected home price; that larger lots require more maintenance and that the owners will have to pay homeowners association fees for the upkeep of the open space and the central septic system; that residents will have to rely on a vehicle to take them the few miles to services and alternative transportation options, such as walking and DART might not be available; and that the State supports affordable housing, but the State would like to see it built in areas where infrastructure and services are available, not a few miles away.

The Commission found that Robert Rider, Rob Rider, Eugene Bayard, Attorney, and Kevin Smith of Kercher Engineering, Inc. were present and stated in their presentations and in response to questions raised by the Commission that the PLUS comments were in error since this project is not in Kent County, it is not in the Capital School District, and it is not opposed by the Town of Bridgeville; that they have owned the site since 1943; that it has been their intent to develop the site; that the area around the site is agricultural and residential; that they have sold a 7.0 acres parcel to the County for a buffer area from the landfill; that the project has been reduced to 131 acres on 87.64 acres; that the project will contain natural material walking paths in open space areas; that it has been estimated that 19 percent of the project will contain 19% impervious surfaces; that no sidewalks are proposed; that street lighting will be provided; that they feel that they have complied with and responded to all of the concerns referenced in Section 99-9C; that existing trees will remain; that trees will be planted in the buffer; that central water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Tidewater Environmental; that DelDOT has issued a letter of No Objection; that barely 10% of the teachers from the school district live in the district; that they plan on developing the project for moderately priced homes; that a 20-foot wide easement will be created between Lots 120 through 124 and Lots 125 and 131 so that all lots back up to open space; that this Cluster Subdivision plan is superior to a standard plan because the cluster option allows for more open space, that more landscaping will be provided; that they plan to keep the project as green as possible, and that natural walking trails enhance the open space; that the PLUS comments received improved the project by minimizing lot sizes creating more open

space and allows for more curves in the street layout; that the price range of the homes should be from \$175,000 to \$200,000; that a need exist for affordable housing; that an area can be set aside for a bus shelter with a review by the School District; that the natural walking paths material will be either bark or stone; that the County Engineer is asking for fencing to be placed along the recently acquired County property; it is not the intent of the applicant to erect a fence along County property; that the lots along Road 404 will back up to a berm and landscaping ; that the sewerage disposal method will either be rapid infiltration or drip irrigation; that sidewalks impact the cost on the homeowners association in the future; that they tried to balance the amenities with the cost; that Tidewater Utilities, Inc. will have the option of an on-site well or connecting to existing Tidewater features; that the referenced walking paths will be maintained by the homeowners association; that DelDOT will require the construction of a multi-modal path along the front of the site; that it has been estimated that 0.6 students per home will live in the site creating a minimal impact on the school district; that sewer feasibility has been received from DNREC; that access will be available for the County Engineering staff to inspect monitoring wells on the site; and that there are 12 acres of passive open space and 6 acres of buffer open space.

The Commission found that Mr. Smith submitted a copy of the DNREC statement of feasibility for sewer on the site, and a color rendering of the subdivision.

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

Subdivision #2006-28 – application of **SUSSEX VENTURES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 61.17 acres into 44 lots, located east of Road 550, ½ mile south of Route 20.

The Commission found that prior to the meeting the applicants provided an Exhibit Booklet and that the Exhibit Booklet contains a letter of intent, a project summary, a copy of the application form, a site plan, an aerial of the property, a copy of an Entrance Location approval from DelDOT, a copy of the preliminary subdivision feasibility study response from DNREC, a copy of the FEMA Flood Insurance Rate Map for the area, a copy of the street naming approval letter from Sussex County Addressing, an overview of the project, references to Section 99-9C, proposed restrictive covenants, and renderings of three house plans.

Mr. Lank advised the Commission that Technical Advisory Committee (TAC) responses were received on a due date of January 24, 2007; that a letter of no objection to record was received from DelDOT on January 11, 2007; that on May 25, 2007 the applicant's

engineers submitted a revised site plan addressing the TAC comments; that the septic feasibility statement was received from DNREC on May 23, 2007 indicating that the site is suitable for on-site septic systems; that letters in support of the application were received from Jimmie L. McWilliams and Bruce Wardell; and that the applicants submitted an Exhibit Booklet on August 17, 2007.

The Commission found that Drew Ward and Donald Ward of Sussex Ventures were present with Kevin Smith of Kercher Engineering and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop 44 lots on 61 acres to provide housing for the local work force; that 10 acres are being set aside as a conservation area; that approximately 5 acres of wetlands exists on the property; that over 6 acres of stormwater and buffer area has been established; that over 34% of the site will be open space; that the proposed size and density of the project better fits with the overall character of the community than one of higher density and less open space; that they feel that their responses to Section 99-9C of the Subdivision Ordinance favorably addresses the criteria of the Ordinance; that buffers have been established along both sides of the project; that no lots contain any wetlands; that a 100-foot buffer has been established from wetlands; that they will attempt to reduce the rate of run-off; that no trees are contained within any lot lines; that the conservation area will be owned by the homeowners association with the Nanticoke Conservancy overseeing any use of the area; that wetlands areas will be marked; that a school bus shelter area can be provided at the entrance; that the site is within 5 miles of Seaford; that a future interconnection can be provided to the southern property line; that a future interconnection can not be provided to the north due to the existing ditch; that access can be provided to the stormwater management area between lots 3 and 4; that landscaping will be provided; that 30-foot from the top of the ditch back will be forested; that they have spoken to some of the neighbors and that the neighbors expressed concerns about drainage onto Line Road; that they have also met with DelDOT representatives about drainage problems in the area; that if the subdivision is approved run-off will be directed into stormwater management areas on site; that DelDOT and the Conservation District will not approve the project unless the drainage is corrected; that Turtle Branch has not been able to handle excessive run-off due to the need to clean-out the branch; that density is deliberately low and open space is larger than the norm; and that they propose a nice affordable community.

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

The Commission found that Jeffrey Hill and Carlton Jones were present in opposition to the subdivision and expressed concerns about water run-off; that the public road is very well traveled and not paved; that the number of vehicle trips will increase; that there is a need for road improvements; that if the Turtle Branch drainage problem can be handled there would be no objections from the neighbors; that they are concerned about development when agricultural lands exists on all four sides of the project; that development should not be at the neighbors expense; that the streets, dwelling, driveways, etc. increase impervious surfaces; that Turtle Branch is at capacity now; that the branch needs to be cleaned out; and that run-off comes from Reliance and Maryland

across and through Turtle Branch and that Sussex County should not be responsible for the run-off from Maryland.

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

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

Subdivision #2006-29 – application of **THOMAS HEAD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 47.22 acres into 47 lots, (Cluster Development), located north of Road 224A, 1,250 feet west of Road 224.

This application was withdrawn on July 24, 2007.

Subdivision #2007-17 – application of **SEASIDE BAPTIST CHURCH, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 4.99 acres into 2 lots, located west of Road 277 (Robinsonville Road), 125 feet north of Gosling Creek Road within Gosling Creek Subdivision.

Mr. Lank advised the Commission that the Technical Advisory Committee did not review this application since the proposed lot is on an existing subdivision street; and that on April 5, 2007 a letter was received from the President of the Gosling Creek Homeowners Association indicating that the development and property owners are in support of this application.

The Commission found that Pastor Charlie Arnold was present on behalf of the Seaside Baptist Church and stated in his presentation that they are requesting permission to sell the rear lot for a home lot which will help the Church's budget; that they are building a church on the front of the parcel fronting Robinsonville Road; that selling of the lot will not impact the proposed church improvements or the site plan; that a 10-foot strip of land will be purchased from the Gosling Creek Subdivision to allow connection and frontage to the proposed lot on streets within Gosling Creek.

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

Mr. Robertson stated that he would have to review the easement from Gosling Creek to the buyer for compliance.

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.

ORDINANCE AMENDMENT – AN ORDINANCE TO AMEND SECTION 115-160 OF THE CODE OF SUSSEX COUNTY WITH RESPECT TO ILLEGAL SIGNS.

Mr. Lank introduced the proposed ordinance which will eliminate the need to notify the owner of the sign, or the owner of the land, and will allow for the immediate removal of an illegal sign, and allow for a collection fee of \$25.00, which the County may collect from either the owner of the sign or the owner of the land on which the sign was located.

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

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved as circulated. Motion carried 5 – 0.

OTHER BUSINESS

Comprehensive Land Use Plan – Time Extension

Mr. Lank advised the Commission that there may be a need for the County to ask the State for a time extension for the completion of the Comprehensive Land Use Plan Update and summarized a letter that he had prepared for consideration.

The Commission discussed the need for a time extension.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried with 4 votes to have Mr. Lank forward his letter requesting a 6-month time extension to the Office of State Planning Coordination for consideration. Motion carried 4 – 1. Mr. Smith opposed the motion.

ADDITIONAL BUSINESS

Mr. Wheatley stated that he has had discussions with Dale Dukes, President of County Council, in reference to holding additional meetings for public hearings on applications.

The Commission discussed the positives and negatives of holding additional meetings. It was noted that additional meetings could impact staff and Commissioners time. It was also noted that the goal of additional meetings would be to reduce the backlog of applications.

There was a consensus of the Commission to not take any action at this time, but to allow the Commission time to think about the need and to discuss this issue again at a future meeting.

Meeting adjourned at 9:00 p.m.