



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 11, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 11, 2008 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of August 20, 2008 and the Minutes of August 28, 2008 as amended. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1744 – application of **STEPHEN WAGNER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office for an architectural firm to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 14,972 square feet, more or less, located southeast of Route 9 (Savannah Road), 1,000 feet northeast of Ebenezer Branch.

The Commission found, based on comments received from DelDOT, that the Department has reviewed the expansion of the site for a 500.00 square foot General Office and advise that neither a traffic impact study nor entrance improvements will be required; and that the site plan shall be required to note that “access to Lot 8 shall be from the existing entrance via a perpetual cross-access easement between Parcel 15 and Parcel 16”.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a proposed or current County operated and maintained sanitary sewer and/or water district; that the proposed use will utilize an on-site septic system; that the proposed use is located on lands within the Growth and Annexation Area of the City of Lewes and the City could provide central sewer service at some future time; that the Applicant should contact the City for information regarding central sewer service; that the County has no objections to the project developing with an on-site septic system; and that a concept plan is not required.

The Commission found that Stephen Wagner was present and stated in his presentation and in response to questions raised by the Commission that he has checked with the City of Lewes and that no immediate expansion for sewer or water is being offered by the City at this time; that he presently has on-site septic and water on the property; that he lives in Virginia and proposes to utilize this property for his residence and office for his architectural firm; that the dwelling will remain; that there are doctors and professional offices on both sides of this property; that the Cape Henlopen High School Athletic Fields are to the rear of the property; that he will have 3 employees; that business hours are from 8:00 a.m. to 6:00 p.m. Monday through Friday; that they close on Fridays at 1:00 p.m.; that there will not be any business hours on Weekends; that he would like to erect a 32 square foot lighted sign; that the existing shed will remain; that trash will be picked up by a trash service; that the parking in the front yard already exists and was established when the neighboring property was converted into doctors offices; that the commercial entrance was built when the neighboring property was converted; and that the driveway is shared by a cross-access easement.

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. Johnson stated that he would move that the Commission recommend approval of C/U #1744 for Stephen Wagner for an office for an architectural firm based upon the record and for the following reasons:

- 1) Many of the nearby properties, including the adjoining properties, via Conditional Use approvals have been and are being utilized as professional and medical offices;
- 2) The proposed use should have minimal or no impact on public facilities, nearby properties or the community;
- 3) This recommendation for approval is subject to the following conditions:
 - a. There shall be no more than 2 parking spaces located in the front yard and they shall use the existing parking footprint;
 - b. Business hours are to be limited to Monday through Friday from 8:00 a.m. to 6:00 p.m.
 - c. One lighted 32 square foot sign shall be permitted. The sign shall not exceed 2 sides or facings;
 - d. Any security lighting shall be located on the building and shall not shine onto Savannah Road or neighboring properties;
 - e. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton 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 #2007-4 – application of **LACROSSE HOMES OF DELAWARE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex

County, by dividing 90.11 acres into 82 lots, located at the southwest corner of the intersection of Road 620 and Road 617.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of June 20, 2007 will be made a part of the record for this application; that the applicant's submitted an Exhibit Booklet and 99-9C considerations on September 2, 2008 that will be made a part of the record; that a revised preliminary plan was submitted on April 7, 2008 addressing comments from the Technical Advisory Committee; and that letters in opposition were received from Timothy and Tina Shockley and the State of Delaware Division of Historical and Cultural Affairs that will also be made a part of the record.

Ring Lardner, P.E. with Davis, Bowen and Friedel, Inc. and Hugh Martin, owner, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that Lacrosse Homes is no longer involved with this application; that the site is located at the corner of the intersection of Lindale and Abbott's Pond Roads; that the site is zoned Agricultural Residential and 82 single-family lots are proposed; that 82 lots are proposed on 90.11 acres for a density of 0.91 lots per acre; that the site is located in the rural area according to the 2002 Comprehensive Plan Update; that there are 0.54 acres of wetlands on the site and the development is designed to minimize the disturbance of wetlands and forested areas; vehicular circulation will be provided throughout the development with one entrance on Lindale Road and that there are no cul-de-sacs proposed in the development; that a 30-foot forested buffer is provided along all adjacent properties that are in active farming and a 25-foot forested buffer is provided for the Scott Parcel located to the north of the site; that the site contains an isolated wetlands area in the wooded area on the northwestern portion of the site that will remain undisturbed; that recreational features will include sidewalks along both sides of all streets; that a large portion of the woods including the wetlands area will remain as open space; that no other amenities are proposed since the minimum lot size is 0.75-acre; that the streets will be designed and constructed to DelDOT specifications; that individual on-site septic and wells are proposed; that DelDOT did not require a traffic impact study to be completed; that there will be a 50-foot riparian buffer from the wetlands; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; that willing and able to serve letters were submitted in the Exhibit Booklet; that 9.67 acres of woodlands will be preserved; that the developer went through the PLUS process and the applicant's response to the PLUS comments is referenced in the Exhibit Booklet; that this application was filed before the adoption of the new forested buffer ordinance and the source water protection ordinance; that a 30-foot forested buffer will be established along the boundaries of the subdivision; that additional right of way will be dedicated to the State; that a 10-foot multi-modal path will be created; that 42.40% of the site will be impervious; that Exhibit #2 in the Exhibit Booklet is a copy of a groundwater recharge map; that the source water protection ordinance allows for a 35% to 60% impervious area; that the project will utilize Best Management Practices; that the items referenced in Section 99-9C have been adequately addressed in the Exhibit Booklet; that the owners did not consider a cluster subdivision; that the site was designed in character with the area; that central sewer was not considered due to the number of lots proposed and it would not be economically feasible for central sewer; that Tidewater Utilities has a CPCN for water service in the area; that sidewalks will be provided on both sides of all streets within the project; that streetlights are not proposed; that the storm water management system will utilize infiltration and

catch basins; that there is a 1.0-acre to 1.50-acre field that will be available for recreational purposes and will be maintained by a homeowners' association; that a location for a school bus stop will be coordinated with the Milford School District ; that a parking area could be provided with the bus stop; that the applicants are not aware of any historic features on the site and will contact the State if any are found during construction; that a buffer is not provided along Lindale and Abbott's Pond Road but landscaping will be provided; that the landscaping will be on the individual lots; that there will be minimal impacts to the Abbott's Pond Nature Mill and Pond; that there are strip lots along both Lindale and Abbot's Pond Road; that DelDOT will require improvements to Lindale and Abbott's Pond Road that the owner will comply with; that the size of dwellings has not yet been determined; that the site is not feasible for farming operations; that the owner proposes affordable single family homes; that manufactured housing will not be permitted; that no tax ditches are impacted; and that stub streets are not provided due to environmental concerns.

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

The Commission found that Marlene Kosnac, Gary Giles, Paul Layton, Charles Brown, Roger Grieve, Terry Porter and Richard Andrews were present in opposition and advised the Commission that there is only one entrance proposed for the development; that this will have a negative affect on emergency personnel; that the development will cause an increase in traffic to the area; that the bridge across Abbott's Pond Road is only a one lane bridge; that Abbott's Mill is a Natural Historic feature; that there will be increases in noise to the area; that the roads in the area are not in good shape; that the proposed number of septic systems in the area will have negative impacts to the branches in the area; that the area is known as the Milford Millpond Nature Preserve; that the proposed density is too much for the existing infrastructure in the area; that groundwater will be negatively impacted; that there is heavy truck traffic using the roads; that there are already 2 developments under construction in the area and that they have not been completed; that out of the 17 considerations for approval, at least 10 of them have negative impacts; that the site is located in a Level 4 investment area; questioned if deed restrictions are available to the public; that the economy is not good now; and submitted written statements and a copy of a map of the area.

The Commission found by a show of hands that 2 people were present in support of this application and that 14 people were present in opposition.

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 #2007-5 – application of **DAVID EDWARDS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 11.28 acres into 28 lots, (Environmentally Sensitive Developing District Overlay Zone) (Cluster Density Trade) located southeast of Road 277, 1,150 feet southwest of Road 275.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of July 18, 2007 will be made a part of the record for this application; that on August 29, 2008 the applicants submitted an Exhibit Booklet and a revised preliminary plan that the Commission has been provided with; that this application is also a Density Trade Ordinance application; that 22 lots are permitted; that 28 lots are proposed; that if the 28 lots are proposed, the applicants would have to pay a fee of \$20,000.00 per lot for the 6 additional lots; that on September 9, 2008, letters of willing and able to serve were received from Tidewater Environmental Services; that DelDOT has issued a Letter of No Objection for the entrance location; and that a letter with concerns about the location of the stub streets was received from David C. Grider that will be made a part of the record.

Eugene Bayard, Attorney, David Edwards, owner and Mark Davidson of Design Consultants Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located on the east side of Robinsonville Road and north of Cedar Grove Road; that the parcel to the north of the site is vacant; that the site is in close proximity to Henlopen Landing, Seawood, Mourning View; Gosling Creek and Plantations subdivisions; that there is a borrow pit also adjacent to the site; that the site is currently in meadow and has a dwelling located on it; that there are no wetlands and woodlands on the site; that there will not be any storm water management issues; that central sewer will be provided by either Tidewater Environmental Services or Sussex County; that central water will be provided by Tidewater Utilities; that DelDOT has issued a Letter of No Objection for the entrance location and the location of the proposed connector streets; that the entrance is across from the entrance to Seawood subdivision; that the minimum lot size is 7,500 square feet; that all of the proposed lots abut open space; that an extensive landscape plan has been established and a rendering is included in the Exhibit Booklet; that the entrance will also be landscaped; that street lighting and sidewalks located on both sides of all streets are proposed; that the storm water management design has been approved by the Sussex Conservation District; that self contained landscaped ponds are proposed and will be planted with no-mow grasses; that the ponds are designed to be dry ponds; that there is adequate space for a bus shelter; that the project will be targeted to 55 years and older; that the Cape Henlopen School District has issued a letter advising that the project will not have any negative impacts on the school district; that 34% of the site contains 28 single-family lots; that 33% of the site is open space and that 22% of the site are streets; that the project was designed using the Bonus Density Ordinance; that the underlying zoning could permit 44 lots; that the standard subdivision permits 22 lots and that 28 are proposed by Ordinance No. 1842; that no active open space is proposed; that the items referenced in Section 99-9C are addressed in the Exhibit Booklet; that the existing hedgerow to the north and east will remain; that the site also includes a pump station site; that a 30-foot landscaped/forested buffer is proposed around the project; that the Exhibit Booklet contains 6 support letters and submitted an additional letter in support; that the homes will range in size from 1,800 to 2,500 square feet; that the design and use are consistent with the Comprehensive Plan; that the project meets the purpose of the Cluster and Density Trade Ordinance; that the Density Trade Ordinance requires a 4/5 vote of the County Council; that if the Council approves the project, the developer will pay \$120,000.00 for the 6 additional lots; that the open space includes buffers, and open areas; that the applicant will continue to reside adjacent to the site; that there is a need for housing for people 55 years and older; that the small lots will be a benefit to future owners; that the borrow pit adjacent to the site is an active borrow pit; that street trees

will be planted on the up-slope of the swales as recommended by Sussex County Engineering; that if the bonus density is rejected, 24 lots would be permitted by the under-lying zoning; and that Ordinance No. 1842 allows 2 lots per acre.

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

Tom Gainey of Robinsonville Road questioned if consideration has been given to DelDOT's Western Parkway design.

Mr. Bayard responded that the location for the Western Parkway has not been established.

The Commission found that 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. Burton and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Subdivision #2007-7 – application of **TUONG T. QUAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 20.25 acres into 18 lots, located north of Road 78, 800 feet west of Road 490A.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of July 18, 2007 will be made a part of the record for this application; that the applicants submitted as Exhibit Booklet on August 19, 2008 that will be made a part of the record; and that DelDOT has issued a Letter of No Objection on September 14, 2007.

John Murray, Project Manager with Kercher Engineering, Inc., was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 18 single-family lots are proposed; that the site is located on Woodland Ferry Road near the Woodland Ferry; that the site contains 20.25 acres; that the minimum lot size is 0.75 acres; that on site septic and well are proposed; that the soils work has been completed and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; that the site is currently in sparse vegetation since it was once used for agricultural purposes; that it was not economically feasible to continue farming the site; that selective clearing is proposed; that the applicant will retain a 1.71 acre parcel with a dwelling on it for his residence; that the proposed restrictive covenants have been submitted and some revisions will be necessary; that the owner intends to participate in the development of the project; that streetlights and a bus stop will be provided; that 10-foot paved walking paths are proposed across the front of the lots in an easement form; that DelDOT has issued a Letter of No Objection for the entrance location; that the proposed square footages for the dwellings will be 1,800 square feet for one-story dwellings, 2,000 square feet for 1 ½ story dwellings and 2,200 square feet for 2-story dwellings; that only stick-built dwellings will be permitted; that manufactured housing will not be permitted; that the proposed streets will be built to County specifications and will be maintained by a homeowners' association; that a 30-foot forested buffer is provided along the western boundary since the adjoining land is used for agriculture; that the storm water

management areas and buffers will be maintained by the homeowners' association; that there are several other developments in the area such as Patty Cannon Estates, Cypress Point and Old Mill Subdivision; that the on-site septic systems will be sand mound, gravity and LPP systems; that there probably will not be many sand mound type systems due to the large size of some of the lots; that central water and sewer are not available in the area; that there are no wetlands on the site; that a buffer along the eastern boundary line is not required but one could be provided if required; that the owner has owned the property since 1989; that the agricultural use notice is provided on the site plan and will be included in the restrictive covenants; that a similar hunting notice can be provided; that if approved, a formal landscape plan will be submitted with the final site plan; that the restrictive covenants will also cover landscaping; that there will be selective clearing permitted; that reforestation will occur and will be included in the restrictive covenants; that the items referenced in Section 99-9C are addressed in the Exhibit Booklet; that a traffic calming device can be provided along the main street in the project; that the development will not create a negative impact on traffic; that a Fox Squirrel study has not been conducted but the applicant will permit the State a chance to do so; and that the storm water management system will utilize an infiltration system to help with groundwater recharge.

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

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

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

Subdivision #2007-8 – application of **CORNERSTONE DEVELOPERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 49.73 acres into 112 lots, (Environmentally Sensitive Developing District Overlay Zone) located north of Road 283, 263 feet east of Road 277.

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of July 18, 2007 will be made a part of the record for this application; that on October 17, 2007 a revised plan was submitted reducing the number of lots from 112 to 92 lots; that on August 28, 2008 an Exhibit Booklet and Environmental Assessment and Public Facility Evaluation was submitted that will be made a part of the record; and that a letter in opposition from Joan Deaver has been received and that the letter will also be made a part of the record.

James Fuqua, Attorney, and Roger Gross, P.E. with Merestone Consultants were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project is an AR-1 cluster subdivision to be known as Sheperd's Walk; that a revised plan reducing the number of lots to 92 was previously submitted; that Tidewater Utilities will provide central water and sewer to the site; that DNREC has issued a septic feasibility statement; that there are 2 areas of isolated wetlands on the site; that the only disturbance to the wetlands will be for 1 road crossing; that there are not any wetlands on the individual lots; that DelDOT did not require a traffic impact study; that the developer is required to dedicate an additional 5-feet of right of way across the project; that there are 2 entrances proposed; that the proposed entrances line up with the entrances to The Retreat subdivision; that

23 acres or 48% of the site is open space; that proposed amenities include a community center, swimming pool, playground trails and passive open space; that the developer will coordinate with the local school district a location for a school bus shelter/stop; that a homeowners' association will be responsible for the maintenance of all common areas; that the streets will be private and built to County specifications; that street lights and sidewalks on both sides of all streets are proposed; that the site is located in an Environmentally Sensitive Developing Area based on the Comprehensive Land Use Plan; that the site is located in a Level 3 Investment Area based on the State's Map for Strategies and Spending; that the project has been designed using the cluster option; that the lots contain 17.95 acres, streets 6.30 acres and 23.04 acres of open space; that the wetlands have been delineated but a jurisdictional determination has not been issued by the Corps of Engineers; that there are 22 acres of woodlands; that the storm water management area will be located in a concave in the wooded area; that there is an easement for the storm water management area; that the site does not have a positive outfall; that the project was reviewed by PLUS for 115 lots in 2006; that the plan has been reduced to 92 lots; that PLUS did not require another submittal; that the owner will retain acreage and have access to the subdivision through an easement; that 3 of the lots are less than 25 feet from the wetlands; that the storm water management area is located on the lowest point on the site; that there is an outfall to Gosling Creek by an easement; that the applicants have no objections to the State conducting a study to determine if there are any plants/wildlife on the site; that the impervious surface will be less than 25 to 30%; that a 30-foot buffer will be landscaped and fenced; that the storm water management designed has been over-managed; and submitted proposed findings of fact and conditions of approval for the record.

Doreen Truitt was present in support of this application and stated that the use is consistent with other land uses in the area.

Tom Gainey, Frank Kosac, Virginia Lewis and Robert Lucas were present in opposition to this application and raised concerns about the Western Parkway notification; questioned proposed setbacks and cost associated with the project; that wildlife will be negatively impacted; that Tidewater Utilities has not met with residents of the Retreat subdivision about taking on additional sewer capacity; that the water quality of the area will be impacted; that they have concerns about silt filtering into Gosling Creek; that Cedar Grove Road is a narrow road; and questioned if a traffic impact study was done.

Mr. Gross responded that the storm water management system will be piped; that the run-off will go into the storm water management pond, then to the wetlands then to the outfall; and that DelDOT will require improvements such as decal lanes, dedication of additional right of way and multi-modal paths; and possible monetary contributions is required.

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

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action for further consideration and receipt of PLUS comments and PLUS's response. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Ordinance Discussion

Mr. Lank provided the Commission with a memo from David Baker, County Administrator, dated September 5, 2008; with an attached possible ordinance to further define open space in subdivisions or developments.

There was a consensus of the Commission to review the ordinance and to discuss it at a future meeting.

The Commission discussed, in general, the previously provided ordinance, dated August 21, 2008, on superior design. It was suggested that some of the Super Green criteria could be incorporated into the superior design ordinance.

Mr. Lank provided the Commission with copies of a “First State Geology” brochure from Delaware Geological Survey Vol. 26, No. 2 for the Summer of 2008, which had an article on Rapid Infiltration Basin Systems in Delaware for the Commissions’ review.

Mr. Lank announced that Item 21, titled Bay City Mobile Home Park – Corrective Survey, of the Agenda for September 17, 2008 has been removed from the Agenda.

Meeting adjourned at 9:50 p.m.