



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF OCTOBER 11, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 11, 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, Mr. Shane Abbott – Assistant Director, and Mr. 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 September 19, 2007 as amended, and the Minutes of September 27, 2007 as circulated. Motion carried 5 – 0.

PUBLIC HEARINGS

Pret Dyer requested that the public hearings for C/U #1758 and C/U #1759 be consolidated into one public hearing.

There was a consensus of the Commission that the public hearings for C/U #1758 and C/U #1759 be consolidated and that the decisions be rendered separately.

For the record, Mr. Lank introduced the two applications.

C/U #1758 – application of **BRIDLE RIDGE PROPERTIES, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 16.18 acres, more or less, lying west of Plantations Road (Road 275) across from Shady Road (Road 276).

C/U #1759 – application of **BRIDLE RIDGE PROPERTIES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 13.00 acres, more or less, lying at the

southwest corner of the intersection of Plantations Road (Road 275) and Beaverdam Road (Route 23).

The Commission found that prior to the meeting the Applicant had provided an Exhibit Booklet which contained an Illustration Plan, Site Data, a listing of the project team, qualifications of Mark H. Davidson, copies of the Applications for C/U #1758 and C/U #1759, proposed suggested conditions of approval, legal descriptions and a survey, a conceptual use plan, references to the Environmentally Sensitive Development District, a copy of the PLUS application, a copy of State agency comments in reference to the PLUS application, a copy of the Applicant's responses to the PLUS comments from agencies, several letters and maps from DelDOT, an Environmental Assessment Report, a Modified Phase I Environmental Site Assessment, a Nutrient Loading Assessment, references to Green Technology Best Management Practices for Stormwater, a Soils Investigation Report, a copy of the County comments to PLUS on wastewater, and a series of maps and aerials.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Expansion Area; that the current System Connection Charge Rate is \$3,944.00 per EDU; that connection points are located in the existing gravity sewer system installed by the developer to serve the previously developed portion of Henlopen Landing; that conformity to the North Coastal Planning Study will be required; that the project proposes to add an additional 138 multi-family units to an undeveloped portion of the previously approved Henlopen Landing project and an adjoining parcel; that the connection to the sewer system is mandatory; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the existing pump station in Henlopen Landing and the forcemain was designed and built by the developer under a different development concept for Henlopen Landing; that the pump station is not adequate to handle assumed build out flow as currently proposed; that the developer has agreed to upgrade the pump station at their expense; that the pump station will be addressed during the concept plan review process; that the extension of the existing gravity system in Henlopen Landing and any required upgrades to serve the project will be at the developer's expense; that the County Engineer must approve the connection point; and that a sewer concept plan must be submitted for review and approval prior to construction plan approval.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Downer sandy loam and Greenwich-Urban land complex; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that the applicant will be required to follow State sediment and stormwater guidelines for this project.

The Commission found that Jay Diaz submitted a letter in support of the application since he prefers the development as proposed to the alternative which could include another

commercial project such as Lowes; that he believes that, as proposed, the development could serve to increase property values; that the proposed development may act as a wind barrier to his deck which currently needs to have anything on it secured to it or blows off what seems like weekly; and that his experience with the developer and Ryan Homes has been for the most part pleasant as both groups seem to be concerned with the neighborhood that they created.

The Commission found that Pret Dyer, present on behalf of Bridle Ridge Properties, LLC and Bridle Ridge Investment, LLC, with Mark Davidson of DC Group stated in their presentations and in response to questions raised by the Commission that Henlopen Landing was approved with 4 Phases; that Phase 4 included 46 lots in the MR Medium Residential District portion of these applications; that Salt Marsh Boulevard, a private street, was built to State specification; that the 13.41 acre parcel falls almost totally within 600-foot commercial strip of the Highway Corridor Overlay Zone for Route One; that the Lowes store and garden center, a "Big Box" store, is located across Plantation Road; that they originally intended the apply for commercial use of the 13.41 acre tract; that they now intend to combine the 16.18 acre parcel with the 13.41 acre parcel to develop 138 multi-family dwelling structures; that DelDOT has expressed a need for a portion of the site for expansion of the rights-of-way of the Five Points area; that they propose to combine the two tracts; that the Henlopen Landing restrictions give the developer the right to change and realign the boundaries of the Common Areas, any lot or other portion of the development owned by the developer, including the realignment of boundaries between adjacent lots and Common Areas; that the restrictions also give the developer the right to make changes in the location of the boundaries of Common Areas, annexed property and developer owned lots; that the restrictions include the right to change the number, shape, size and location of lots, the shape, size and locations of Common Areas, Utility Systems, Recreational Facilities, Annexed Property or any part thereof; that the existing plans of Henlopen Landing, Phases I, II, III and IV contained 105.47 acres with 277 lots for a lot density of 2.63 lots per acre; that the amended plan for Henlopen Landing, Phases I, II and III will contain 89.70 acres with 231 lots for a lot density of 2.58 lots per acre; that Section 99-13 of the County Subdivision Ordinance clearly states that no consent of property owners in a subdivision is required if the alteration in the plan does not result in an increase in density; that by removing Phase IV, which contains 46 lots, the density of Phase I, II and III is not increased, but, in fact, decreases from 2.63 lots per acres to 2.58 lots per acre; that they will not withdraw Phase 4 of Henlopen Landing until a decision is made on these applications; that this project would separate single family lots from commercial uses creating a buffer or transitional separation plus lands for DelDOT to utilize for improvements; that the site is within the Environmentally Sensitive Developing Area; that they are proposing dry ponds, rain garden parks, bio-filtration, the use of Best Management Practices, natural parks, and vegetative landscaping; that Tidewater Utilities will provide central water; that the County will provide central sewer; that access to the project will be from Salt Marsh Boulevard, not Beaver Dam Road or Plantations Road; that two access points are proposed off of Salt Marsh Boulevard; that no endangered species or wetlands have been found on the site; that they have agreed to convey 3.8 acres to DelDOT in the future; that amenities will include a clubhouse, several park areas, pools, paths, sidewalks, and 1.46

miles of pedestrian trails; that stormwater management facilities are included in the open space calculation; that parking exceeds the requirements of the Zoning Ordinance; that they have agreed with County Engineering to upgrade the pump station at the developer's expense; that Salt Marsh Boulevard will be maintained by this project, not Henlopen Landing; that groundwater recharge will be improved; that recreational benefits will serve both projects; that there will be no impact on cultural or historic resources; that improvements will be separated from historic Belltown by the DelDOT conveyance and the bio-filtration pond; that the use complies with the Comprehensive Plan; that the site is depicted on the State Strategies map as located in Investment Level 2 and a small portion of Level 3; that PLUS supports the application; that DelDOT is not opposed to the application; that they have agreed to mitigate Pond 2 within Henlopen Landing by taking drainage for overflow emergencies into the project; that 12 other multi-family projects exist in the general area; that the submitted aerial photograph depicts the location of the other projects; that the project is proposed to be titled the "Villas at The Cape"; that they offer the following suggested conditions of approval for consideration: (1) The Developer of the Villas at The Cape agrees to limit the total number of units to 138 multi-family villa homes; (2) Phase IV of Henlopen Landing will be withdrawn from the approved subdivision; (3) Salt Marsh Boulevard will be maintained, repaired and replaced by HOA of the Villas at The Cape; (4) The Villas at The Cape will grant an easement for stormwater management as shown on the site plan in favor of Henlopen Landing Subdivision; (5) The Villas at The Cape will only have access from Salt Marsh Boulevard with no additional access points from Plantation Road or Beaver Dam Road; (6) The Villas at The Cape will have its own amenity package which shall include a clubhouse, pool, 1.46 miles of walking trails, school bus stop and open space; (7) Residents at the Villas at The Cape will not have any privileges or obligations to pay for the utilization of the amenities of Henlopen Landing; (8) The Developer of the Villas at The Cape agrees to install four-way Stop signs at the two access points on Salt Marsh Boulevard and to install street lights along Salt Marsh Boulevard, as well as install internal street lights within the Villas at The Cape; (9) The Developer of the Villas at The Cape agrees to construct the clubhouse and pool prior to the conveyance of the first villa unit; (10) The Developer of the Villas at The Cape agrees that the sanitary sewer collection system will be installed in accordance with Sussex County standards and agrees to pay for the cost of the upgrade of the existing pump station; that the project will be a benefit to adjacent properties by improvements to the DelDOT road system; that the project will not be detrimental to the neighbors or the community; that the project separates single family homes for commercial uses; that the original plans to PLUS proposed a large Park & Ride site and has since been replaced with the referenced DelDOT conveyance; that sidewalks will be provided on one side of all streets, which is similar to the Henlopen Landing project; that some of the residents of the Henlopen Landing project have requested the referenced four-way stop signs and that no sidewalks be created along Salt Marsh Boulevard; that a 15-foot wide easement is being provided to DelDOT for multi-modal paths along Plantations Road; that 138 multi-family units creates a similar traffic impact as 46 single family homes causing no negative impact on roads according to DelDOT; that the proposed tree line along the bio-filtration pond will be at least 10-feet wide and that the bio-filtration pond will be vegetated; that they will comply with all Sussex Conservation District requirements; that they anticipate buyers that are active

adults, second home buyers, and small family buyers; that the units are proposed to be larger than typical townhouse units; that the units will have a similar price range to the single family dwellings in Henlopen Landing; that Salt Marsh Boulevard is a private right-of-way dedicated to public use and is not maintained by the State; that parking in front of the units is not designed to block any sidewalks; that the units will be sold as condominiums; and that cluster mailboxes will be provided.

The Commission found that Robert Steinbach spoke in support of the application and raised questions as to why the State DelDOT rejected Salt Marsh Boulevard, questioned if the proposed stormwater management ponds are adequate, and questioned the intended use of the 3.8 acre parcel to the State which has changed from using the site proposed to be dedicated to them from a Park & Ride to right-of-way for improvements at Five Points.

The Commission found that Mr. Dyer responded that Salt Marsh Boulevard was built to State specification and that the State decided not to accept the Boulevard into their maintenance system; that the project will contain an independent stormwater management system with bio-filtration and that they propose to accept overflow from Henlopen Landing to improve the drainage at Henlopen Landing; and that the State originally intended to use the site for a Park & Ride and now propose to use the site for right-of-way for improvements at Five Points.

The Commission found that Mike Bragdon spoke in support of the application and stated that he prefers this use to commercial uses; that it creates a buffer from the commercial uses along Route One; that stormwater management issues are being addressed; that the use provides less users of the amenities within Henlopen Landing, which will create less wear and maintenance on the amenities; that commercial development would create more traffic; and concessions have been made by the applicant; that lighting will be provided along Salt Marsh Boulevard; and that the residents within Henlopen Landing are ready to take over the HOA.

The Commission found that Ed Mutch, Jr. and Joe Campos were present in opposition to the application and expressed concerns about purchasing lots with the understanding that the site would be developed with single family homes; that multi-family use is not an asset to the residents in Henlopen Landing; that more traffic will be generated; that the application was filed 16 months ago and that no residents were aware of the application until recently; and that they prefer single family development of the site.

Mr. Johnson asked if a letter of support has been received from the HOA of Henlopen Landing.

The Commission found that Mr. Dyer responded that an HOA Board has not yet been established for Henlopen Landing.

The Commission found, by show of hands, that 2 parties were present in support of the application and that 2 parties were present in opposition to the application.

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

In reference to C/U #1758:

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action and to leave the record open until receipt of a Legal Counsel opinion on the memo provided by the applicant and for further consideration. Motion carried 5 – 0.

In reference to C/U #1759:

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action and to leave the record open until receipt of a Legal Counsel opinion on the memo provided by the applicant and for further consideration. Motion carried 5 – 0.

Subdivision #2006-35 – application of **2416 JOPPA ROAD, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 109.45 acres into 56 lots, located north of Road 553, 1,820 feet west of Road 558 and 900 feet east of the Delaware/Maryland State Line.

Mr. Abbott advised the Commission that the Technical Advisory Committee comments of January 24, 2007 in reference to this application will be a made of the record; that this application was reviewed by PLUS on May 3, 2006; that the applicant's attorney submitted supporting statements on July 2, 2007; that a revised preliminary plan and an Exhibit Booklet were submitted on October 5, 2007; and that 1 letter in support of and 4 letters in opposition have been received.

The Commission found that James Fuqua, Attorney, Tim O'Shea, Developer, Chuck Merritt, Engineer, and Al Rizzo, Soil Scientist were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 56 single family lots are proposed; that the site is southwest of Atlanta and northwest of Seaford; that the site adjacent is to the Delaware/Maryland State Line; that the site contains approximately 109 acres; that the site is mostly cleared with some woodlands; that there are no wetlands proposed on the individual lots; that a final wetlands jurisdictional determination is pending; that the site is in a rural area; that this application is for a standard subdivision; that the minimum lot size is 1.0-acre and the average lot size is 1.30-acres; that the proposed gross density is 1 lot per 2 acres; that on-site septic and wells are proposed; that DNREC is currently reviewing the soils study and a non-binding septic feasibility statement should be issued in the near future; that the streets will be private and built to County specifications; that the site is located in the Seaford School District and that there is adequate capacity available for students; that restrictive covenants have been submitted; that the developers have met with DelDOT; that the site is closer to Federalsburg, Maryland; that the site is zoned agricultural residential; that the site is located in a Level 4 area based on the State's Strategies and Spendings Map; that the applicants disagree with the State's opinion; that not everyone wants to live in urban areas; that the subdivision and zoning code permits single family dwellings in agricultural districts; that the Comprehensive Land Use Plan also allows single family dwellings; that the items referenced in Section 99-9C of the subdivision code are referenced in the

Exhibit Booklet; that 1 entrance is proposed; that there are 2 lots at the entrance to the subdivision street; that sidewalks and streetlights are proposed; that buffers are provided; that play and picnic areas will be provided; that walking trails are provided; that a 30-foot buffer is proposed on the eastern and western boundary lines; that the existing trees at the rear of the site will not be disturbed; that 15.4-acres or 14% of the site is open space and will be maintained by the homeowners' association; that 21.20-acres or 19% of the site is buffers; that storm water management will utilize bio-swales and will be subject to the Sussex Conservation District; that the applicants have addressed the requirements of Section 99-9C of the Subdivision Code in the Exhibit Booklet; that the applicants response to PLUS is also in the Exhibit Booklet; that the application is for a standard subdivision, not a cluster subdivision; that the project complies with all regulations; that there are native species in the open fields; that landscaping will be provided along the street scape; that hunting notices will be provided in the restrictive covenants; that there are no known tax ditches along the site; that the lots can be adjusted if there are more wetlands found; that a school bus stop will be provided; that one-half of the lots must have gravity fed septic systems based on DNREC regulations; that all of the open space is poor soils for septic systems; that the minimum size of the dwellings will range from 1,800 to 2,000 square feet; that 2 car garages will be required; that the dwellings will have a colonial style appearance; that the dwellings will be stick-built on-site; that manufactured housing will not be permitted; that sidewalks are proposed for both sides of all streets; and submitted proposed conditions of approval and findings of fact into the record.

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

The Commission found that Bill O'Day, Charles Callaway, Jason Callaway, Delema M. Callaway, Jamie Willey and Noble Callaway, all area residents, were present in opposition to this application and advised the Commission that there are agricultural ditch maintenance concerns, that agricultural restrictions are needed; that hunting occurs in the area and that there are setback requirements; that the ditch on the property is not a tax ditch; that the residents in the area chose to live in a rural setting; that flooding occurs on the site and in the area along Callaway Road; that there is limited cell phone reception in the area; that the closest store is 7 miles away; that there are concerns with police and emergency response times; that few doctors are accepting new patients; that one property owner allows his dog to run loose; that the project will create an increase in traffic to the area; that there is a high water table in the area; that the residential dwellings will negatively impact the agricultural community; that the streets and sidewalks will create more impervious areas; that wells in the area will be impacted by 56 septic systems; that agricultural fields are treated by planes spraying fields; and questioned if the existing strip lots will be made a part of the subdivision.

The Commission found by a show of hands that 14 people were present 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 and for receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

Subdivision #2006-37 – application of **FRED AND CHARLENE FOWLER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 14.14 acres into 3 lots, located at the southeast corner of the intersection of Road 620 and Road 617.

The Commission was advised that this application was withdrawn on September 10, 2007.

Subdivision #2006-38 – application of **SCOTT BATZ AND RUTH SMITH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 10.96 acres into 2 lots, and a waiver from the street design requirements, located southeast of Road 255, 85 feet northeast of Road 248 (Route 30).

Mr. Abbott advised the Commission that the Technical Advisory Committee comments of February 21, 2007 will be made a part of the record for this application.

The Commission found that Scott Batz was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he proposes to subdivide his parcel into 2 lots; that the smaller parcel will be sold to a family friend; that there is an existing dwelling on the 10.20-acre parcel; that this dwelling is approximately 900 feet back off of Road 255; that access to both parcels will be from an existing lane; that there is not enough road frontage to create 2, 150-foot lots; that the right of way will be jointly maintained by the two property owners; that septic approval has been granted for each parcel back in 1998; and that restrictions will require the new dwelling to be at least 1,400 square feet in size.

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

The Commission found that Jacob Tingle, Louis Sensi, Ken Sunagrun and Jana Sensi were present in opposition to this application and advised the Commission that they have concerns about water run-off and flooding in the area; raised questions about the number of lots proposed and questioned if the deed restrictions permit subdividing the property; that most of the parcels in the area are larger than $\frac{3}{4}$ acres; that the subdivision will create a negative impact on surrounding properties; and that some residents in the area have had to install swales for drainage improvements.

Mr. Batz responded that he has seen some flooding and has installed swales along his driveway to improve drainage; and that he is not aware of any deed restrictions prohibiting the re-subdivision of the property.

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

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for further consideration and receipt of an updated septic feasibility statement. Motion carried 5 – 0.

Meeting adjourned at 9:20 p.m.