



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF NOVEMBER 1, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 1, 2012, 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. Michael Johnson, Mr. Rodney Smith, and Mr. I.G. Burton, III with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Mr. Robertson advised the Commission that it is the responsibility of the Commission to make a recommendation to County Council on all rezonings and conditional uses, and we do not have a full Commission tonight; that if any recommendation fails for lack of a second or for failing to receive 3 votes, County Council would not have a benefit of a recommendation, or the entire Commission's discussions and reasons for a recommendation in favor of or against an application, including possible conditions on a conditional use; that he understands that there will also only be 3 Commissioners at the November 15, 2012 meeting, so the same concerns hold true for that Commission meeting as well; that the Castaways Bethany, LLC applications on tonight's agenda for a vote are complicated and controversial, with a lot of information in the record both for and against the project; that as a result, thought should be given to whether the agenda should be amended to delete Castaways Bethany, LLC from "Old Business" on the agenda; that since it takes a second and 3 votes for any motion to succeed, I am concerned that with only 4 Commissioners tonight and given the complexity of this case and the fact that it is really 3 separate applications, there is a possibility that one or more recommendations may not receive a second or get 3 votes; that it would seem to be prudent on a controversial project such as this to consider the input of all 5 Commissioners when discussing and voting on the 3 pending applications; that otherwise, County Council will not have the benefit of a solid recommendation from a full Commission with articulated reasons, no matter which way any of those 3 recommendations might go; that there is a requirement that a matter must ordinarily be acted on within 45 days; that, however, a letter from the Applicant's attorney has been received by the County stating that since this is a complicated application with opposition and because the record was left open after the public hearing closed, the Applicant waives any rights or reliance upon a requirement that the Commission act within 45 days on the application; that based on all of these circumstances, it may be prudent for the Commission to remove the Castaways Bethany, LLC items from tonight's agenda; and that knowing that there will only be 3 Commissioners at

the November 15, 2012 meeting, the Commission should consider placing the matter back on an agenda only when it is certain that everyone will be present to deliberate and vote.

Mr. Wheatley stated that he is not prepared to vote on these applications.

Mr. Johnson stated that the Applicant has waived the 45 day requirement for a recommendation, and questioned if that impedes the Commission in any way.

Mr. Robertson stated that the Commission should consider all comments as a whole Commission.

Mr. Johnson stated that he agreed that the full Commission should vote on these applications.

Mr. Burton stated that he reluctantly agreed.

Mr. Smith stated that he had asked that the Old Business items be placed on the agenda and has prepared motions for consideration.

Mr. Robertson stated that he acknowledges that a valid quorum is present and that there are a lot of comments, both pro and con, in references to these applications.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously that the Commission remove C/Z #1719, C/Z #1720, and C/U #1944 from the agenda for this evening and for consideration at a future meeting; to remove Item #3 under Old Business from the agenda; and to approve the agenda as amended. Motion carried 4 – 0.

The Commission recessed for 5 minutes to allow those in the audience time to exit the Council Chambers.

Mr. Lank advised that Commission that he will correct the Minutes of October 25, 2012 by reversing Conditions of Approval G and H under C/U #1947 for Cheer Delaware.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of October 25, 2012 as corrected. Motion carried 5 – 0.

## OLD BUSINESS

C/Z #1719 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential District to a AR-1 Agricultural Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.00 acres, more or less, on two (2) parcels, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358)(part of Tax Map I.D. 1-34-9.00-21.00/24.00).

The Commission removed C/Z #1719 from discussion during the approval of the agenda.

C/Z #1720 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.02 acres, more or less, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358)(part of Tax Map I.D. 1-34-9.00-21.00).

The Commission removed C/Z #1720 from discussion during the approval of the agenda.

C/U #1944 – application of **CASTAWAYS BETHANY, LLC** to consider the Conditional Use of land in a C-1 General Commercial District, CR-1 Commercial Residential District, a MR Medium Density Residential District, and an AR-1 Agricultural Residential District for multi-family dwelling structures, a campground, and an outdoor amusement place, where permitted as conditional uses, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 38.53 acres, more or less, lying east of Cedar Neck Road (Road 357) and across from Sandy Cove Road (Road 358)(Tax Map I.D. 1-34-9.00-21.00 and 24.00).

The Commission removed C/U #1944 from discussion during the approval of the agenda.

#### OTHER BUSINESS

Swann Cove MR/RPC  
Final Site Plan – Phase 6 – Route 54

Mr. Lank advised the Commission that this is a final record plan for Phase 6 of Swann Cove, a residential planned community; that this Phase was previously approved by the Commission on February 24, 2011 but was never recorded; that this Phase contains 34 single-family lots on 10.27 acres; and that the developers are requesting approval so that they may now record this Phase.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve Phase 6 of Swann Cove as a final. Motion carried 4 – 0.

G.W. Shockley & Sons, Inc.  
Lot and 50' Easement – Road 201

Mr. Lank advised the Commission that this is a request to create a 1.85 acre parcel with access from a 50-foot easement; that the owner is proposing to create the easement over an existing dirt lane at the end of Road 201; that the residual lands contain 442.47 acres; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission previously received a copy of a sketch drawing for this request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve this request in concept, and that any further subdivision shall require a public hearing. Motion carried 4 – 0.

Robert P. and Donna M. Stevenson  
2 Parcels and 50' Easement – Road 612

Mr. Lank advised the Commission that this request was removed from the Agenda on October 22, 2012, and that no action was necessary.

Ralph James Givens  
2 Parcels and 50' Easement – Road 465

Mr. Lank advised the Commission that this is a request to create 2 parcels with 1 parcel having access from a 50-foot easement; that Lot 2 will contain 2.60 acres and have access from an existing entrance off of Road 465; that the residual lands will contain 32.37 acres and have access from the existing 50-foot of road frontage off of Road 465; that this request may be approved as submitted, or an application for a major subdivision or a variance can be required; that the Commission previously received a copy of a sketch drawing for this request; and that earlier today the Department received an approval letter from DelDOT on this request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve this request as submitted. Motion carried 4 – 0.

Walter Allen Whaley  
Parcel and 50' Easement – Road 500

Mr. Lank advised the Commission that this is a request to create a 50-foot access to an existing parcel; that a portion of the property is to be an extension to Parcel No. 27; that the remaining frontage will be 50-feet; that this will serve as access to the residual lands; that this request is due to a divorce settlement; and that the Commission previously received a copy of a sketch drawing for this request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this request in concept. Motion carried 4 – 0.

Executive Session  
Pending Litigation pursuant to 29 Del. C § 10004 (b)

At 6:29 p.m., a motion was made by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to Pending Litigation. Motion carried 4 - 0.

At 6:30 p.m., an Executive Session of the Sussex County Planning and Zoning Commission was held in the Caucus Room adjacent to the County Council Chambers for the purpose of discussing issues relating to Pending Litigation. The Executive Session concluded at 7:00 p.m.

At 7:02 p.m., a motion was made by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to come out of Executive Session and to reconvene the Regular Session. Motion carried 4 - 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to adjourn the meeting, therefore the meeting adjourned at 7:04 p.m. Motion carried 4 - 0.