



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF NOVEMBER 8, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 8, 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. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Rodney Smith, with Ms. Rebecca Trifillis – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. C. 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 October 17, 2007 and October 25, 2007 as amended. Motion carried 5 – 0.

### OLD BUSINESS

**C/U #1702** – application of **SHILOH HOUSE OF HOPE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a residential school and counseling facility to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 6.01 acres, more or less, lying north of McDowell Road (Road 567), 850 feet east of Hastings Mill Road (Road 568) and one-half mile west of Atlanta Road (Route 30).

The Commission discussed this application which has been deferred since September 27, 2007.

Mr. Johnson stated that in this emotionally charged matter, for the benefit of everyone involved, both for and against C/U #1702 for Shiloh House of Hope, it is important that everyone understands that the Sussex County Planning and Zoning Commission's role is to make decisions and recommendations based on land use issues. It is not our role to decide pro or con on the merits of the program being proposed, the need for the program, let alone the various parties' intentions. As such the Planning and Zoning Commission is here tonight to make a recommendation to the County Council based upon land use issues put before it during the public hearing along with the voluminous materials and considerable letters and petitions submitted prior to and at the public hearing. Our

recommendation to County Council therefore should not be construed as support for or against the program being proposed by the Shiloh House of Hope. Instead our recommendation is based on appropriate land use issues.

Mr. Johnson stated that he would move that the Commission recommend denial of C/U #1702 for Shiloh House of Hope based on the record and for the following reasons:

1. The project does not meet the purpose of the Zoning Ordinance, since it does not promote the orderly growth of the County and because the project is not in a Development District established by the Sussex County Comprehensive Land Use Plan Update.
2. The project is not consistent with the purpose of the "Low Density Area" established by the Comprehensive Land Use Plan Update, which is designed to protect agricultural lands while allowing low density single family residential housing and commercial uses that are normally compatible with residential uses.
3. The "Low Density Area" also seeks to prevent untimely scattering of urban uses such as what is proposed. The Plan directs these types of uses to areas planned for sufficient extension of public services and public services are not planned to be extended to this area.
4. A use such as this is better suited to be located either in or close to municipal or town centers where adequate infrastructure such as police, emergency medical services and fire response is nearby.
5. Although the Applicant stated that the intended use is very specific and limited, there are other locations within municipalities or town centers that are better suited for the intended use.
6. Although the Applicant presented a very specific and limited program to be associated with this use on the property, the County does not have the mechanism in place with the resources available to insure that the proposed conditions offered by the Applicant can be complied with as the program evolves.
7. This project is not consistent with the character of the surrounding properties, which are sparsely located single family homes and farms. The intense residential treatment program requested by the Applicant is not compatible with these surrounding areas.
8. The application does not promote the health, safety, convenience and general welfare of the surrounding rural neighborhood and farming community.
9. Significant opposition from residents in the immediate vicinity appeared in opposition to the proposed use and submitted petitions and letters in opposition. The opposition expressed concerns concerning their health, safety and welfare as a result of the use in the neighborhood and also how such a use would be fundamentally inconsistent with the surrounding rural agricultural area.

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 denied for the reasons stated. Motion carried 5 – 0.

## PUBLIC HEARINGS

**C/U #1707** – application of **THE KEITH CORPORATION** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail store and mini-storage to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 9.47 acres, more or less, lying west of U.S. Route 13, 450 feet north of Route 46 (Elks Road).

The Commission found that prior to the meeting the Applicants provided a revised site plan and an Exhibit Booklet, and that the Exhibit Booklet contained Site Data, Site Information, references to Water Service and Sanitary Sewer Service, Stormwater Management, and an Appendices which contained utility commitment letters, copies of DNREC Septic System Permits, a color rendering of the Site Plan, references to Subsurface Exploration, Laboratory Testing and Geotechnical Engineering Analyses, a Soils Investigation Report, a letter from the Natural Heritage and Endangered Species Section of DNREC, a Report in reference to compliance with Ordinance 99-9 C of the Subdivision Code for reference, a Notice of Intent; and copies of two letters from DelDOT.

The Commission found, based on comments received from DelDOT, that the site is subject to the policies of the Corridor Capacity Preservation Program; that the main goal of the Program is to maintain the capacity of the existing highway; that the State Strategies document references that the site is located within a Level 2 Investment Area; that in this area where the population is concentrated, State policies will encourage redevelopment and reinvestment; that the Department will permit the property owner to develop a direct access along U.S. Route 13; that access shall consist of a rights in / rights out driveway; that in the vicinity of the site, the Department intends to develop a service road; that the “Concept 2” site plan depicts an appropriate amount of area for public easement; that the service road will be developed within the public easement; and that the Subdivision Section will review the site’s entrance and geometric layout.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Planning Area #2; that the proposed project proposes to use an on-site septic system; that the proposed project is not within an area where the County plans to provide sewer service; that the parcel is in a future annexation area for the City of Seaford and that the City may provide sewer service in the future.

The Commission found that Wendy Fulton of The Keith Corporation was present with James Fuqua, Attorney, and Gary Cuppels of ECI and that they stated in their presentations and in response to questions raised by the Commission that they acknowledge that the Report in reference to compliance with Ordinance 99-9 C of the Subdivision Code does not relate to this application, but that it does provide information to the Commission that relates to the site plan; that the intended use of the site is a retail “Tractor Supply” facility and self-storage project; that the site contains 9.47 acres with a depth of 400-feet; that Tractor Supply is a home improvement, farm use supply, and provider for pet and animal supplies; that 50% of the site will be utilized by Tractor Supply and 50% will be utilized for the self-storage; that each parcel will have an on-site

well; that each site will have an on-site septic system; that the septic systems have already been approved; that the Tractor Supply site will water tank on-site for fire protection; that stormwater management will be subject to the approval of the Sussex Conservation District; that DelDOT has not voiced any objection to the joint-use entrance; that DelDOT would like to build a service road to the rear of the site sometime in the future; that the area north, south and east of the site is zoned and used commercially and includes automotive sales, boat sales, retail, real estate offices, a sign company, a trucking company, a lumber company, a bakery outlet, mini-storage and warehousing; that the site is on the border of the City of Seaford growth area; that the State Strategies indicates that the site is located within a Level 2 Investment Area; that they have already submitted an application to the PLUS process and had their hearing with the agencies; that written comments have not yet been received; that verbal comments were supportive; that in designing the site plan good circulation was designed for loading and unloading of delivery trucks; that security lighting will be provided on both sites and that the lighting will not be directed toward residential or neighboring parcels; that they have prepared suggested proposed conditions and findings of fact; that the contract purchaser has had experience with self-storage facilities; that there will be no outside storage; that access to the self-storage facility will be restricted to the hours of 7:00 a.m. to 9:00 p.m.; that signage will not exceed Code; that the water tank will meet or exceed the requirements of the State Fire Marshal; that the self-storage buildings will all be sprinkled; that the Tractor Supply facility will have some outside storage of display items in designated areas; that roof-top drainage will be down spouted to the stormwater management facility; that they plan on in-filling the vacant spaces along the property line to the west with landscaping; that business hours for the Tractor Supply store will be from 6:00 a.m. to 11:00 p.m. Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sunday; that maintenance agreements will be established on both sites for the maintenance of the service road area until the service road is built by DelDOT; that the tree buffer along the westerly property line should remain since it is on both sides of the property line between this site and the adjacent subdivision, that the stormwater management facility is approximately 125-feet from the pavement on U.S. Route 13; and that the stormwater management facility will be fenced.

The Commission found that Mr. Fuqua submitted a set of suggested proposed conditions and findings of fact for consideration.

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

Mr. Kautz advised the Commission that the site was reviewed by PLUS on October 24, 2007.

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 receipt of PLUS comments and then for 14 days after receipt of the PLUS comments for written comments. Motion carried 5 – 0.

**C/U #1708** – application of **LISA PHILLIPS, TRUSTEE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit/pond reclamation to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 19.248 acres, more or less, lying southeast of Road 495, 1,785 feet southwest of the intersection with Road 497 and also 785.14 feet west of Road 497.

Mr. Gordy announced that he would not be participating in this public hearing.

The Commission found that prior to the meeting the Applicant provided the Commission with a Site Plan and an Exhibit Booklet, and that the Exhibit Booklet contained a copy of the application form and tax map, an aerial photograph, a site plan/reclamation plan, a copy of DelDOT correspondence and a letter from Adams-Kemp Associates, Inc., a FEMA map, a vicinity map, a letter from Kenneth W. Redinger Environmental Services, a memo from Lisa S. Wood of Atlantic Resource Management, Inc., a report on Borrow Pit Evaluation Services by John D. Hynes & Associates, Inc., support letters from Hopkins Construction, Inc. and A.P. Croll & Son; suggested proposed conditions and findings of fact, and credential references for R. B. Kemp, III.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that traffic volumes in the area are relatively light; that the Department does not expect that the borrow pit will generate enough traffic to create congestion; that they are concerned that truck traffic to and from the pit could damage roads in the vicinity; that the Department recommends that the County require the applicant to provide DelDOT with additional information pertaining to trip generation and trip distribution before the Department makes recommendations about any entrance requirements; that the Applicant's surveyor submitted a Traffic Generation Diagram and estimated that the Average Daily Traffic for the site to be approximately 100 vehicular trips per day with 95% of those trips being trucks; that according to the vehicle trip distribution the vehicular trips will be split evenly with 50 entering from the south and 50 exiting to the south on Hickory Road; and that if the County chooses to approve this application the Department will consider the provided information in determining what improvements are needed in relation to the site access.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Planning Area #4, and that the proposed project is not in an area where the County plans to provide sewer service.

The Commission found that David Hutt, Attorney, and R. B. Kemp, Surveyor, were present on behalf of the Applicant, who could not be present due to an illness in the family, and stated in their presentations and in response to questions raised by the Commission that a 5 acre borrow pit is proposed and that the site will be reclaimed into a

wildlife pond, wildlife tree planting and habitat area; that the area is sparsely populated; that the pond is approximately 1,000 feet from Old Hickory Road; that the area is wooded on the north and west by woodlands and on the east by woodlands and a ditch; that a State wildlife area is adjacent to the site on the west and south; that the site is currently in agricultural use; that the nearest residence is owned by the Applicant; that residences of other landowners are at least 1,000 feet away from the site; that the proposed access is via a temporary 25-foot wide access across other lands of the Applicant; that the pond will have a minimum buffer of 50-feet; that the pond will have a depth of 28-feet below grade and a water depth of 25-feet; that 6:1 slopes and reverse benches are proposed down to the water line and 3:1 slopes down to the bottom of the pond; that planting and landscaping for wildlife will be established around the pond; that the pond will provide a feeding area for migrating geese, ducks and shorebirds; that the impact on the surrounding area should be limited due to family ownership of the majority of the lands; that security is not necessary; that there will be no fuel storage on the site; that a washdown area for the trucks was not considered; that a stone driveway would assist in cleaning the dirt from the truck tires prior to leaving the site; that completion of the project depends on the market; that there is no intent to develop the site in the future; and that there were no questions raised by any of the environmentalist that review the project about the close proximity to the pond from the existing poultry houses.

The Commission found that Charles Toler, a neighbor, was present in support of the application and submitted a petition containing signatures of 9 families in the area.

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

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

Motion by Mr. Smith, seconded by Mr. Johnson and carried with 4 votes to defer action for further consideration. Motion carried 4 – 0. Mr. Gordy did not participate in the vote.

**Subdivision #2006-41** – application of **CAPTAINS GRANT HOMEOWNERS' ASSOCIATION, INC.** to consider the Subdivision of land in a GR General Residential District in Indian River Hundred, Sussex County, by converting 31,047 square feet into 1 single family lot, (maintenance area), located north of Captain's Way, 250 feet east of Harford Court within Captain's Grant Subdivision.

Robert King, President of the Captain's Grant Homeowners' association was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the homeowners' association wants to revise a maintenance area lot to a buildable lot; that the association has no use for the maintenance lot since all site work is done by individuals on contracted out; that there is not a community pool or maintenance group in the development; that the association would like to convert the lot to a building lot; that the funds received from the sale of the lot will go towards having the streets upgraded; that a maintenance ballot was sent out and out of 253 property owners, 159 voted in support of selling the lot; that 5 owners voted against the sale; and

that 89 owners did not respond; that over 62 percent agreed to sell the lot as a building lot; that there association requires at least 60 percent approval; and that the lot is owned by the homeowners' association.

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

**Subdivision #2006-42** – application of **GLEN R. JONES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 65.91 acres into 38 lots, located northwest of Road 488, 2,450 feet northeast of Road 487.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 21, 2007 will be made a part of the record for this application; that on October 16, 2007 a revised preliminary plan was submitted; that on October 29, 2007 the draft restrictive covenants were submitted; and that on November 1, 2007, a Delmarva Fox Squirrel Report, and DNREC feasibility statement and a wetlands delineation report were all submitted and will be a part of the record.

The Commission found that Robert Witsil, Attorney, Steve Engel with Vista Design Group and Randy Hill, Realtor with Calloway, Farnell and Moore were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicant is on vacation; that the proposed development is for 38 lots located on 45.20-acres; that the project will allow for affordable housing with modular, stick-built and class C type structures; that the proposed density is 0.84 lots per acre; that the standard setbacks for the AR-1 district will apply; that the lot sizes range from 33,164 square feet to 1.33 acres; that restrictive covenants have been submitted and reviewed by Mr. Robertson; that none of the individual lots contain wetlands; that 99-9C of the subdivision code requires 17 items to be addressed and addressed these items; that there is adequate room for a bus shelter; that sidewalks and streetlights are not proposed; that the existing vegetation will remain; that there are no restrictions on cutting wooded lots; that this will be up to the purchaser of the individual lots; that there are no buffers from the wetlands; that wetlands are near but not on lots 27 through 29; and that a landscaping plan has not been submitted.

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

The Commission found that Keith and Jeanette Baker, adjoining property owners, and Jason Biel from Milford, were present in opposition to this application and raised concerns about the wetlands being negatively impacted; that the area floods; that watermelons were grown on the site this summer; and raised concerns about the types of buffers being proposed, the size and types of homes and septic systems.

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.

**ORDINANCE AMENDMENT – AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE, XXV, SECTION 115-191 RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM.**

Mr. Lank summarized the proposed Ordinance Amendment.

Mr. Lank read a letter in support of the Amendment from Joe McCann and Kathryn Teller and submitted to the Commission pictures received with the letter depicting an abandoned sailboat near the intersection of Wilkerson Road and Green Street in Prime Hook Beach.

The Commission discussed the proposed Ordinance Amendment.

Mr. Kautz stated that there may be a need for a definition for an “antique vehicle” or a “vintage car” and that there may be a need for a vehicle licensing reference in the proposed amendment.

Ms. Trifillis agreed.

The Commission found that Helen Gilfoy, a resident living on James A. Street near Dewey Beach, Nancy LaFountaine, a resident of Lazy Lake, Paul Bloose, a resident of the Oak Orchard area, Alan Lynch, a landowner of lands near Dewey Beach, and Richard Miller, a resident of the Oak Orchard area, spoke in support of a need for this type of ordinance and referenced that they object to the storage of unlicensed and junk vehicles and boats; that a camper in one of the photographs has been parked in the same location for approximately 30-years; that another vehicle has been parked in the same location since 1992; that the Amendment addresses most of their concerns, excludes agricultural lands, and addresses hobbyist; that there is a need for a definition for “antique”; that the existing conditions at some locations depreciates property values; that some people have had to put up fencing to screen neighboring lots containing junk and debris; that debris and junk attract snakes and rats; that consideration should be given to “No” unlicensed vehicles being permitted: and that the ordinance needs enforcement.

The Commission found that Ms. Gilfoy submitted photographs; that Ms. LaFountaine exhibited photographs, but did not submit them; and that Mr. Bloose submitted



photographs. The photographs depicted debris, overgrowth, junk and dilapidated vehicles.

The Commission found that Mr. Bloose also submitted petitions in opposition containing 108 signatures.

The Commission found that Cheryl Roach, Wolfgang vonBaumgart, President of the Independent Party of Delaware, Carl G. Swanson, Jason Beil, Roland West and Richard West were present in opposition to the proposed ordinance amendments and expressed concerns that fines should not be imposed for not cutting grass; that some people work on and restore old vehicles for their own use and that the vehicles are not licensed until the restoration is completed; that cutting grass sometimes harms the environment; that the ordinance amendment is grammatically incorrect; that two unlicensed vehicles on a property is a reasonable use of land; that real evidence, i.e. an appraisal, is needed if someone claims depreciation of property values; that growth of some weed type plants should be encouraged, i.e. Joe-Pye Weed and Goldenrod, which can be purchased for landscaping; that Milkweed is vital in the life cycle of the Monarch Butterfly; that there are many ornamental plants utilized in landscaping and could be confused as weeds; that vegetation should not be included in ordinances; that there are several yards in the County that are certified as a "Backyard Habitat"; that all clauses referencing grasses should be eliminated from the ordinance; that planting can be helpful to the environment; that the Comprehensive Plan Update references that the County will continue to focus on preserving more land and strengthening regulations that protect natural features; that using zoning and subdivision regulations to help protect critical wildlife habitat should focus that wildlife habitat in residential areas would be encouraged; that tipping fees at the State landfill causes more trash and debris being dumped on properties of others; and questioning if the State is required to maintain the grass on the State road rights-of-way.

The Commission found that Mr. Swanson submitted written comments and that Mr. Beil submitted two booklets, titled "Controlling Backyard Invaders" and "Livable Plants for the Home Landscape" for the record.

At the conclusion of the public hearings, the Commission discussed this proposed Ordinance Amendment.

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

#### ADDITIONAL BUSINESS

- 1) The Commission discussed the number of applications for Change of Zone, Conditional Use, and Subdivision still pending and whether it may be necessary to add additional meeting dates for public hearings. There was no decision.
- 2) Mr. Lank provided the Commission with a tentative schedule for public hearing dates for 2008.

- 3) Mr. Lank provided the Commission with copies of the proposed Comprehensive Plan Update Draft and Mr. Kautz described the scheduling with the State for consideration of the Update and for future public hearings.
- 4) Mr. Lank provided the Commission with copies of proposed "Consent Agenda Procedures".

Meeting adjourned at 9:50 p.m.