



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 13, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 13, 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. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. C. 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 October 23, 2008 as circulated. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2007-13 – application of **C. LARRY MCKINLEY** to consider the Subdivision of land in a GR General Residential District in Little Creek Hundred, Sussex County, by dividing 97.14 acres into 206 lots, located west of Road 504, 215 feet south of Road 508.

The Commission discussed this application which was deferred on October 23, 2008 for further consideration.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007-13 for C. Larry McKinley based upon the record made at the public hearing and for the following reasons:

1. The project is on land zoned GR General Residential which allows a maximum density of 4 lots per acre.
2. The Applicant has proposed 206 lots within the project, which is significantly less than the allowable density for a GR subdivision on this land.
3. The Applicant has previously received approvals for other subdivisions on this site with individual septic systems. This project has a central sewer system, which is an improvement over the prior approvals.

4. The project, with the conditions imposed, will be a restricted residential development and will not have an adverse impact on the neighboring properties or community.
5. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. The project is also in compliance with Section 99-9C of the Subdivision Ordinance.
6. The proposed subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
7. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 206 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County, and shall maximize groundwater recharge. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be provided.
 - E. A system of street lighting shall be provided.
 - F. No wetlands shall be included within any lot lines.
 - G. The development shall be served by central water and sewer.
 - H. Recreational facilities and amenities shall be constructed and open to use by residents of the development prior to the issuance of the 50th Certificate of Occupancy/Compliance. These recreational facilities shall include walking or jogging paths, tot lots and tennis or basketball courts.
 - I. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
 - J. Sidewalks shall be located on both sides of all internal streets.
 - K. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - L. The Developer shall maintain as many existing trees as possible, with the undisturbed forested areas shown on the Final Site Plan.
 - M. Along with the buffers shown on the preliminary site plan, there shall be a 30-foot forested Agricultural Buffer along boundaries bordering any land used primarily for an agricultural purpose. The Final Site Plan shall contain a landscape plan showing the landscaping and vegetation to be included in all of the buffer areas.
 - N. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to grant preliminary approval of Subdivision #2007-13 for C. Larry McKinley for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2007-14 – application of **BOB BROOKS, BEAVER DAM PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian

River Hundred, Sussex County, by dividing 14.08 acres into 21 lots, (Cluster Development), located at the southwest corner of the intersection of Roads 280 and 285.

The Commission discussed this application which was deferred on October 23, 2008 for further consideration.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2007-14 for Bob Brooks, Beaver Dam Properties, LLC based upon the record and for the following reasons:

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to grant preliminary approval of Subdivision #2007-13 for C. Larry McKinley for the reasons and with the conditions stated. Motion carried 5 – 0.

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum of 7,500 square feet, and the average lot size is approximately 15,000 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
5. I am satisfied that this project is a superior design under the Subdivision Ordinance. It is a superior design because it preserves 3.2 acres of the 14 acre site as open space, protecting woodlands and wetlands. At the same time, at a density of 1.4 lots per acre, the density is within the maximum density allowed in the AR-1 District.
6. The design addresses the requirements of Section 99-9C of the Code.
7. The subdivision will be served by central water and sewer.
8. This preliminary approval is subject to the following:
 - A. There shall be no more than 21 lots within the Subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sedimentation control facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. To the extent possible, its design and location shall minimize tree removal on the site. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities. Efforts should be made to minimize disturbance of the forested area near the stormwater management areas.

- G. The Final Site Plan shall contain a landscape plan for all of the buffer areas shown on the Preliminary Site Plan, showing all of the landscaping and vegetation to be included in the buffer areas.
- H. The developer shall maintain as many existing trees as possible, particularly on Lots 5 through 11. The undisturbed forested areas shall be shown on the Final Site Plan.
- I. No wetlands shall be included within any lots.
- J. A system of street lighting shall be established.
- K. Sidewalks shall be located on both sides of all streets in the subdivision.
- L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinances, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- M. As proposed by the Applicant on the Preliminary Site Plan, a 50-foot wide buffer shall remain from the ordinary high water line of Wall Branch. In addition, the buffer from the 404 Wetlands on the Preliminary Site Plan shall be maintained.
- N. 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 grant preliminary approval of Subdivision #2007-14 for Bob Brooks, Beaver Properties, LLC for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1817 – application of **COLONIAL EAST, LTD.** to amend Ordinance No. 1187 for Conditional Use No. 1198, a Conditional Use of land in an AR-1 Agricultural Residential District, for an expansion of an existing manufactured home park by adding 82 lots (Phase 2) to the currently constructed 108 lots (Phase 1), creating a manufactured home community of 190 lots, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, Delaware, containing 55.29 acres, more or less, lying on the northeast corner of the intersection of U.S. Route 9 and Minos Conaway Road (Road 265).

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in a County operated and maintained sanitary sewer district, the West Rehoboth Expansion Area; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that potential connection points for an extension of mainline sewer are located within the existing park; that conformity to the Technical Memorandum for the Graves Property and North Coastal Area Planning Study will be required; that the project proposes to add an additional 82 units to an existing manufactured home park with 108 previously approved lots; that connection to the sewer system is mandatory; that the project exceeds planning study and system design assumptions for sewer service; that Downstream Pump Station No. 207 requires immediate upgrades; that the County is in the process of accepting plans and executing an agreement with area developers for the upgrade of Pump Station No. 207; that the agreement will include the applicant (Colonial East, Ltd.) for the proposed expansion of the existing park; that the pump station upgrade will be undertaken by the developer of the Vineyards at Nassau Valley project; that when that agreement is final and all other requirements are complete with the sewer system

in the proposed expansion of the park, the developer will be allowed to connect up to 25 units of the proposed expansion; that the remaining 57 units will be permitted to connect after upgrades to Pump Station No. 207 are complete and Beneficial Acceptance has been approved by the County; that a schedule for the execution of the agreement with developers including The Vineyards at Nassau Valley and completion of upgrades to Pump Station No. 207 is uncertain at this time; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the connection point must be approved by the County Engineer; that a sewer concept plan must be submitted for review and approval prior to construction plan approval; that onetime System Connection charges will apply; that payment of System Connection is required prior to issuance of a building permit; that sewer hookup permits will not be issued until all necessary off-site upgrades have been completed and the County Council has approved Beneficial Occupancy of the collection system; and that a concept plan is required.

The Commission found, based on comments received from the Office of State Planning Coordination, that this project was seen through the PLUS Review Process in February 2006 and that the State provided comments; that the developer provided comments on the information provided by the State and made improvements when necessary and upon receipt of these modifications, the State provided no further objection allowing the project to proceed through County processes; that the proposed project will be required to be reviewed by the County again as part of a Delaware Chancellor Court decision sighting a technicality as a means to void the previous Conditional Use application and supporting County Code; that at the request of the applicant and to further assist in this required re-submittal, this Office has reviewed the materials provided by the applicant and based upon this revised information find that the applicant has made no significant changes in the project with exceptions to those meeting regulatory requirements and conditional uses identified by the County and will not require the proposal to be re-submitted to PLUS for review by the State.

The Commission found that a letter was received from David Shevock opposing this application, referencing that he had also opposed Conditional Use #1675; that he was obliged to challenge the approval of Conditional Use #1675 in the Court of Chancery; that the Conditional Use #1675 had opposition registered by neighboring Edgewater Estates, Mallard Point, Red Mill Farms and Brittany Acres communities; that one of the objections was the development of the type and density proposed by Colonial East (3.9 units per acre) was inconsistent with the character of the neighborhood; that in 1997 the County Council had reached a reasonable and fair compromise granting the applicant approval to place 108 units on the 54 acre parcel, or a density of 2 units per acre, consistent with the character of the neighborhood as developed; that the County Council gave the applicant the option to place those 108 units anywhere on the property, consistent with County lot size and setback requirements; that the applicant chose to place the 108 units on 34 acres of the 54 acre parcel; that the applicant is now asking to place those homes and that density that County Council rejected in 1997 on the property he left vacant by placing the 108 units on 34 acre section of the parcel; that the density which County Council rejected in 1997 is the only subject of this newest application; that County Council must keep the faith with Edgewater Estates, Mallard Point, Red Mill Farms, Brittany Acres, the Shevock family, the Davidson family, and the Baker family; that this application must have been motivated by the applicant's belief that the County Council has forgotten it's 1997 decision; that the property

owners near Minos Conaway Road have not forgotten; that the County Council has already granted the applicant a reasonable return on his investment in the property; that development on Minos Conaway Road is nearly complete from Route 1 to Route 9, with only the second phase of the Nassau Grove project to be finished; that traffic is at peak and any additional traffic will adversely affect safety and the quality of life on the Minos Conaway Road neighborhood; that one of the conditions imposed in the 1997 conditional use approval was that the existing hedgerow on the east side of Minos Conaway Road was to be maintained as a buffer, undisturbed; that since the adoption of the 1997 Conditional Use the hedgerow has been substantially thinned with many trees removed without replanting; that I have been blessed with a view of a stockpile of material (dirt and stone) and views of stored manufactured homes; that the County Council made a legislative decision in 1997, not to the liking of the neighbors and obviously not to the applicant, but a reasonable and fair compromise; that there is no compelling reason to approve this application; that there is every reason not to approve this application; if granted the applicant gets exactly what he was denied in 1997; that the County Council's wise compromise decision is rendered meaningless and becomes a poor practical joke on people who live on and near Minos Conaway Road; questioning why should the County Council ever consider changing a legislative decision it made after listening to the neighborhood and after much thought, unless certain County Council members have undisclosed obligations to the applicant or his company; that an unsigned letter is attached, assumed to be from a resident of Colonial East; and that he is hopeful that the County Council will do the right thing for the entire Minos Conaway Road neighborhood and not merely serve the interest of the applicant.

The Commission found that for the purpose of the history of the record the staff provided copies of the Minutes of the Planning and Zoning Commission for January 11, 2007 and February 20, 2007, and the Minutes of the Sussex County Council for June 12, 2007.

The Commission found that prior to the meeting the applicant had provided an Exhibit Booklet and that the Exhibit Booklet contains an Executive Summary, references to Existing Conditions with a boundary survey and overview of current site conditions, a proposed development concept with a development concept, PLUS comments, Chapter 99-9C considerations and responses, references to compliance with the Zoning Ordinance, references to compliance with the Comprehensive Plan, references to compliance with the Subdivision Ordinance, and 27 exhibits.

Mr. Lank provided the Commission with a copy of the letter from the Office of State Planning Coordination as an insert under Tab 12 of the Exhibit Booklet at the request of the applicant.

The Commission found that Steve Class of Colonial East, Ltd. was present with Heidi Balliet, Attorney, and Dan Speakman, Professional Engineer, of McCrone, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to expand the development of the site by 82 units; that they request that the Exhibit Booklet be made a part of the record for this application; that access to the site is from Road 265, Minos Conaway Road; that the lots will have access to Minos Conaway Road through the internal road system only; that the property will facilitate proper drainage; that the size of the site is appropriate for development; that the lot sizes are appropriate with square footage ranging from 6,600 square feet to 15,000 square feet; that existing open space amenities should be adequate; that residents will have access to the existing recreational amenities by the use of pass-cards; that

the applicant has worked and continues to work with agencies and community groups; that the "Manor House" on the site is rented out to agencies and groups for events; that the vegetated buffer along Minos Conaway Road already existed and will remain; that proper setbacks will be met; that the community is restricted for the type of units and size; that the lots are for lease only, not for sale; that there are no current violations of any regulations; that a demand for lease lots still exists and that they have a waiting list for tenants; that no retail services are proposed; that the applicant will continue to work with DelDOT on road improvements; that 2 entrances exists to serve the project; that trash collection is provided; that single wide manufactured homes will not be permitted in this section of the park; that no sheds or accessory buildings are permitted; that attached garages are permitted; that the internal streets are maintained by the developers; that the use is consistent with regulations and the community; that there should be no adverse impact on the neighborhood since the use is an extension to an existing park; that it is proposed that residents average 55 years of age or older; that few trees have been removed from the buffer, only pruning and scrub-brush clearing; that there are no mapped wetlands on the site; that the site is not located in a Flood Zone; that 23% of the site will remain in open space; that the stormwater management facilities have been designed for maximum build-out of the site; that grades changes are minimal to provide positive drainage; that central water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Sussex County; that all runoff goes to the stormwater management facilities; that the entrance only Minos Conaway Road was designed in 1999 and is designed for maximum build-out of the site; that the project is an in-fill with no agricultural lands disturbed; that Best Management Practices will be utilized in the maintenance of the site; that there should be no negative impact on schools, roads, or waterways; that the site is in an excellent recharge area; that the County has the right to modify the site if requested since the site is all one parcel of land; that the impervious cover equals approximately 37.5% of the site; that they will comply with the Source Water Protection Ordinance; that the Source Water Protection Ordinance limits sidewalks, trails, etc.; that they have an updated entrance permit from DelDOT noting that no additional improvements are required; that this Conditional Use will revise the number of units from 108 units to 190 units; and that the density calculates to 3.44 units per acre on 55 acres.

Mr. Class agreed with all of the statements made by his representatives.

For the benefit of the record, Mr. Lank read the 9 conditions of approval for Conditional Use No. 1198 per Ordinance No. 1187 as follows:

1. The preliminary site plan shall be required to be reviewed by the Technical Advisory Committee and the Planning and Zoning Commission.
2. The preliminary site plan shall include a phasing schedule and projected development time table. The phasing schedule may include an average of 25 units per year, not exceeding 35 units per year in any one given year.
3. The development shall comply with requirements of DelDOT regarding entrance improvements, a street connection to the existing Sussex East development, construction of a sheltered bus stop on Route 9 of a design and location acceptable to DelDOT, and no signs advertising commercial use shall be directed toward Route 9.
4. The lots may be developed at a minimum of 5,000 square feet per lot, and the number of lots shall not exceed 108, for lease only.

5. The development shall be served by central sewer as part of the existing West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
6. The development shall be served by a central water system, including fire protection.
7. A fifty (50) foot buffer shall be maintained along the southerly, westerly and northerly boundaries of the site; the existing growth along the northerly and westerly boundaries will be preserved subject to appropriate pruning; the southerly boundary along Route 9 will be appropriately landscaped which will provide visual screening at the rear of residential dwellings; fencing shall be installed parallel to the railroad right-of-way acceptable to the Delaware Transit Authority @ DelDOT recommendations; the buffer landscaping planting, layout, and design shall be subject to approval by the office of the State Forester and the Planning and Zoning Commission.
8. Final plans shall be subject to the Planning and Zoning Commission for review upon receipt of all appropriate agency approvals and/or permits.
9. Amenities shall be required by the Planning and Zoning Commission after the completion of the construction of 75 units.

For the benefit of the record, Mr. Kautz read a portion of one of the findings of fact for Conditional Use No. 1198 per Ordinance No. 1187 as follows: The Council found that a reduction in the number of units to a maximum of 108 will result in a density which is compatible with the AR-1 Agricultural Residential zoning of the surrounding area.

Mr. Lank advised the Commission that this portion of the site is designated as an “undeveloped area” on the original site plan.

The Commission found that Patricia Williams, a resident of the Sussex East Community, spoke in support of the application and stated that the park has limited access roads with 15 m.p.h. speed limits; that residents in the park walk and bicycle on the streets in the park with no objections; that the roads and lighting are in good condition; that RV and boat storage is available on site; and that the Manor House on the site provides recreational facilities and functions.

The Commission found that Wayne Baker, Karen Lora, and Frances Baker were present in opposition to this application; that the 1997 application was opposed because there were too many lots proposed on 55 acres; that they object to the additional 82 lots; that the County Council approved the 1997 application for 108 lots on the entire 55 acres, not 33 acres; that they assumed that the developer would develop the 108 lots on the entire site; that they never thought that the developer would build the project for 108 lots on the front portion of the parcel and then come back and apply for 82 lots on the remainder of acreage; that it appears that the developer had full intention to comeback and apply again; that the stormwater management facilities and entrances were designed and built to accommodate the entire 190 lots; that nothing has ever been done to the buffer hedge row along Minos Conaway Road by the developer; that some of the trees have been removed and that no plants or trees have been added; that there have been no other changes in any of the other developments in the area; that all lots in the area remain at least ½ acre or larger; that traffic is a major concern; that speed limits have been reduced; that stormwater management ponds in the area are not working; that some trees have died due to run-off; that there was some kind of stormwater management agreement for this site and the

Millschase project across Minos Conaway Road; that local residents cannot walk or bicycle along Minos Conaway Road due to traffic; that the intersection of Route 9 and Minos Conaway Road is very dangerous; that there has been at least one fatality at the intersection; that trash collects in the hedgerow along Minos Conaway Road; and that the density should not be altered.

The Commission found that Mr. Baker submitted his comments in writing.

Mr. Wheatley stated that the issue whether the applicant anticipated this application is not an issue since the applicant has the right to reapply; that the Commission does not design site plans; and that this is a density issue.

Mr. Wheatley asked Mr. Lank to read the findings of fact from Ordinance 1187.

Mr. Lank read the findings of fact as follows: The findings of fact and recommendations of the Planning and Zoning Commission were incorporated into the record. The County Council found that the proposed conditional use is in accordance with the Comprehensive Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County. The County found that the conditional use is of a public or semi-public character and is essential and desirable for the general convenience and welfare. The Council found that a reduction in the number of units to a maximum of 108 will result in a density which is compatible with the AR-1 Agricultural Residential zoning of the surrounding area. Recognizing concerns expressed about traffic in the area, the Council found that the lower number of units will have no greater effect on traffic than development currently permitted in the area under the existing zoning classification.; The Council found that the area is contained within a development zone in the Land Use Plan, and that the availability of central sewer makes the area appropriate for development.; The Council also specifically found:

1. That the request is for the extension of an existing mobile home park.
2. That there was no negative response from any State agency.
3. That despite concerns raised by neighbors regarding traffic, the Delaware Department of Transportation does not believe that the project will have a significant negative impact on traffic.
4. That the project is limited to 108 units. This is half of what the maximum build-out could be.
5. That the project is within the boundaries of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
6. That the project is within the boundaries of the Development District of the Comprehensive Land Use Plan.
7. That the project complies with the housing element of the Land Use Plan by providing affordable housing.

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

Mr. Johnson stated he has increased density concerns, the taking of open area and excellent recharge area for housing units, 82 additional lots with no amenities, that the site is not conducive for active or passive open space for the entire Sussex East and Sussex West

Communities, that no amenities are being offered, and that there is nothing being offered that supports his vote.

Mr. Wheatley reminded the Commission that the Commission only makes a recommendation and that the County Council makes the final decision.

Mr. Robertson reminded the Commission that this Conditional Use is an amendment to an existing Ordinance.

Mr. Johnson stated that he would move that the Commission recommend denial of C/U #1817 for Colonial East, Ltd. based on the record and for the following reasons:

1. I am concerned about developing an area that has been maintained as an open area ever since the original approval in 1997 for this parcel for 82 additional housing units. This area is also considered an excellent recharge area.
2. The County Council originally approved 108 lots on 54+ acres for a density of 2 lots per acre which was similar to nearby communities and allowable in the AR-1 District. The approved 108 lots was also apparently a compromise reached as a result of the significant opposition from nearby residents.
3. The developer chose to locate all of the dwelling units on approximately 34 acres, leaving the approximately 20 acres vacant.
4. The applicant is now requesting to increase the density on this parcel significantly without any justification other than additional units.
5. No additional amenities are being proposed. The current facilities which are limited in nature are available to the 295 units already built in Sussex East and Sussex West.
6. Since the development of Sussex West no provisions were made for safe pedestrian and bicycling travel.

Motion by Mr. Johnson, seconded by Mr. Smith to forward this application to the Sussex County Council with the recommendation that this application be denied for the reasons stated. Motion carried 3 – 2. Vote by Roll Call: Mr. Smith, Yea; Mr. Gordy, Nay; Mr. Johnson, Yea; Mr. Burton, Yea; Mr. Wheatley, Nay.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE OPEN SPACE AND TO INCORPORATE OPEN SPACE REQUIREMENTS INTO THE APPLICATION AND APPROVAL PROCESS IN ALL RESIDENTIAL ZONING DISTRICTS AND IN RESIDENTIAL PLANNED COMMUNITIES AND TO CLARIFY PROVISIONS RELATING TO RESUBDIVISION, PERMITTED USES, BONDS, SITE PLANS AND OTHER APPROVAL CRITERIA.

Mr. Lank summarized the proposed Ordinance Amendment relating to open space.

Mr. Lank provided copies of letters received in reference to this Ordinance Amendment from Lee Ann Walling, Chief of Planning, for the Department of Natural Resources and Environmental Control; Gary T. Cuppels, President, of ECI, LLC, Environmental Consultants International, LLC; Mark H. Davidson of DC Group, L.L.C., Design Consultants Group, L.L.C.; and Deborah Schultz of Lewes. These letters are made a part of the record for this application.

The Commission recessed for 5 minutes to allow the Commission time to review the letters received.

Mr. Wheatley reopened the meeting at 7:45 p.m.

Mr. Burton stated that the County Council should consider some of the DNREC comments.

Mr. Robertson advised the Commission that there are some limitations as to what can be amended in the proposed Ordinance and that major changes would require a rewrite and re-advertisement.

Mr. Smith questioned how closely this Ordinance Amendment follows what the Commission wanted from URDC and the County Council.

The Commission found that Roger Gross, P.E. with Merestone Consultants, was present and stated that he has reviewed the Ordinance Amendment, making specific reference to Section 99-5 - Uses not Permitted and referenced that he had met with representatives of New Castle County recently and that New Castle County allows stormwater management areas in open space areas and that dimensional requirements are set; that State stormwater management requirements have changed; that he understands that there is a need to provide upland usable open space; that green technology should be considered open space; that people will be penalized for creating rapid infiltration beds, etc, rather than ponds; that Best Management Practices should be utilized; that a set percentage of open space should not include wetlands and stormwater management facilities; and that 99-5 D "Stormwater management facility areas" should be deleted under "The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space" on page 2 of the Ordinance Amendment.

Mr. Robertson stated that the Ordinance Amendment does not distinguish between ponds and green space and that clarification is needed.

Mr. Johnson stated that stormwater management is a part of infrastructure; that the County should steer engineers to utilize green technologies; and that large ponds serve no purpose.

Mr. Gross added that the State is pushing new initiatives; that ponds with fountains should be acceptable; that there are contradictions in the language of the Ordinance Amendment; that he would like consideration of an open space parcel being utilized with parking, i.e. community centers.

The Commission found that Carol W. Bason, present on behalf of the Center for the Inland Bays, presented the Commission with a marked up copy of the Ordinance Amendment and submitted a written statement and report, and stated that the Citizens Advisory Committee has reviewed the Ordinance Amendment and suggest the following under 99-5. Definitions. 1) The definition of OPEN SPACE should be amended to read "those land areas within all residential subdivisions, residential planned communities, or other residential developments which have a bona fide purpose to provide action and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, promote conservation, protect wildlife or serve as a

buffer between residential and non-residential areas and/or commercial and non-residential areas, or as protection for wetlands and waterways, or as required to meet Federal, State, and/or County regulations, whichever are most protective of the environment. 2) “A” under 99-5 permitted uses should be amended to read: Recreational facilities, including swimming pools, game courts, play areas, walking paths, bike paths and multi-modal paths that are not located on State road rights-of-way. Allowable impervious cover on recreational facilities in the open space shall not exceed 15% of the calculated open space area. 3) “F” under 99-5 permitted uses should be amended to read: Pervious sidewalks not located within street rights-of-way. 4) 99-5 permitted uses should be amended by adding “H” Non-tidal Wetlands. 5) “E” under 99-5 uses not permitted should be amended to read: Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons, spray irrigation areas, septic fields, and rapid infiltration basins, for sewer, water, gas, electric utilities. 6) “(19)” under 99-26 Information to be shown should be amended to read: The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the % impervious cover within the open space, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multi-modal paths located within State rights-of-way; and that the same wording be incorporated into the Ordinance Amendment within 115-4 as follows: Definitions. 1) The definition of OPEN SPACE should be amended to read “those land areas within all residential subdivisions, residential planned communities, or other residential developments which have a bona fide purpose to provide action and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, promote conservation, protect wildlife or serve as a buffer between residential and non-residential areas and/or commercial and non-residential areas, or as protection for wetlands and waterways, or as required to meet Federal, State, and/or County regulations, whichever are most protective of the environment. 2) “A” under 115-4 permitted uses should be amended to read: Recreational facilities, including swimming pools, game courts, play areas, walking paths, bike paths and multi-modal paths that are not located on State road rights-of-way. Allowable impervious cover on recreational facilities in the open space shall not exceed 15% of the calculated open space area. 3) “F” under 115-4 permitted uses should be amended to read: Pervious sidewalks not located within street rights-of-way. 4) 115-4 permitted uses should be amended by adding “H” Non-tidal Wetlands. 5) “E” under 115-4 uses not permitted should be amended to read: Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons, spray irrigation areas, septic fields, and rapid infiltration basins, for sewer, water, gas, electric utilities. 6) “(15)” under 115-221 Final site plan requirements B. The final site plan shall show the following should be amended to read: The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the % impervious cover within the open space, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multi-modal paths located within State rights-of-way; that the Center appreciates the prompt action on proposing the Ordinance Amendment on the recently adopted Comprehensive Plan Update; and added that in order to clarify the open space definition, and provide further protections for the Inland Bays watershed, the Center would like to also submit for consideration the following: A. We recommend a requirement that a certain percentage of total open space must be natural lands that have as their primary purpose habitat conservation. These lands may be called conservation open space or conservation lands, and would include freshwater wetlands, natural upland forests

and grasslands, water quality buffers, wildlife corridors, and certain property buffers. Recreational opportunities in agreement with the primary purpose of these lands should be encouraged. and B. This requirement would encourage and ensure the protection of wildlife habitat within and among developments, and would partially accomplish Tactic B of the Habitat Protection Plan of the CIB CCMP. This requirement would avoid the scenario that open space requirements be met without protecting or providing any of these conservation lands within a development.

The Commission found that Kevin Burdette of McCrone, Inc. was present and suggested that “harvesting agricultural states” should be added to 99-5 permitted uses; that some States allow gardens as open space; questioned why motorized watercraft are referenced in 99-5 B permitted uses; questioned why land area included within designated lot lines is referenced in 99-5 A uses not permitted; stated that 99-5 D does not consider any other Ordinances that relate to bioswales, recycling water facilities, etc.; suggested that 99-5 E uses not permitted be amended to read: Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, primary treatment, lagoon and rapid infiltration basins, for sewer, water, gas, electric utilities.; and that the proposed language in 115-172 G. (6) should be deleted since it appears to discriminate against manufactured home parks.

Mr. Kautz stated that 99-13 D should be revised to read: If [an amendment] a subdivider proposes to resubdivide in order to create or establish lots in areas shown on the final record plan as parks or common areas set aside for the use of all property owners, the Director shall not accept an application under this Section unless the applicant has obtained a ruling from a court of competent jurisdiction deleting or removing the requirement that said area or areas be maintained in perpetuity as a park or a common area available for the use of all property owners.

Mr. Johnson stated that the Commission appreciated the suggestions from all of the speakers and letter received.

Mr. Wheatley stated that the Commission could pass the Ordinance Amendment forward to the County Council with a recommendation that they consider the comments received.

The Commission recessed for 2 minutes.

The Chairman reopened the meeting at 9:12 p.m.

Mr. Smith stated that he would move that the Commission recommend approval of the Ordinance Amendment to amend Chapter 99 and Chapter 115 regarding open space based on the record and with the following specific recommendations:

- 1) The exclusion of buffers from open space calculations in mobile home parks in Section 115-172 G (6) should be deleted.
- 2) The County Council should consider changing Section 99-5 and 115-4 regarding the definition of Open Space to allow certain types of stormwater management to be included in open space calculations, such as green technologies, etc.
- 3) The County Council should consider all of the written recommendations considered by the Planning and Zoning Commission during the public hearing.

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

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND THE PROVISIONS RELATING TO SIGNS AND TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS FOR FEES FOR PERMITS FOR SIGNS.

Mr. Lank introduced and summarized the Ordinance Amendment relating to signs in Chapter 115 and Chapter 62 of the Code and referenced that the purpose of the amendments is to change the format of the ordinance by relocating existing provisions into one section of the Code; that new definitions have been added; that each zoning district will reference the sign section; that electronic message displays have been added to certain districts; that the square footage of off-premise signs and wall signs have been increased; that fees have been increased; and that fees are referenced in Chapter 115 and Chapter 62 of the Code.

The Commission discussed the Ordinance Amendments.

Mr. Robertson stated that on page 17, Section 115-159-1D – A (4) line 5, there should be a period (.), rather than the comma (,) after “moves”.

Mr. Robertson stated that on page 18, Section 115-159-1E – A (4) line 5, there should be a period (.), rather than the comma (,) after “moves”.

Mr. Robertson stated that on page 16, Section 115-159-1A – B should be revised to read “No off-premises signs shall be permitted.”

Mr. Kautz stated that the definition of “Direction Sign” should be deleted since it is not referenced in the Ordinance Amendment.

The Commission found that Kevin Burdette of McCrone, Inc. thanked the staff for the work performed on the document and that the changes bring the County Code into compliance with State laws.

At the conclusion of the public hearings the Commission discussed the Ordinance Amendment.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to forward the Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the referenced changes which include:

1. Revise page 17, Section 115-159-1D – A (4) line 5, where there should be a period (.), rather than the comma (,) after “moves”.
2. Revise page 18, Section 115-159-1E – A (4) line 5, where there should be a period (.), rather than the comma (,) after “moves”.

3. Revise page 16, Section 115-159-1A – B which should be revised to read “No off-premises signs shall be permitted.”

Motion carried 5 – 0.

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Wednesday, December 17, 2008 at 3:00 p.m.

Meeting adjourned at 9:30 p.m.