



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 20, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 20, 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 Mr. Vincent Robertson – Assistant County Attorney, 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.

Mr. Robertson explained how the public hearings are conducted.

PUBLIC HEARINGS

Subdivision #2006 – 48 - - application of **DOUG COREY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 26.85 acres into 25 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northwest corner of the intersection of Route 404 and Road 42.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; that the applicants submitted an Exhibit Booklet containing a Project Summary, Plan Considerations for Section 99-9C of the Subdivision Code, a copy of the Subdivision Application, a Preliminary Subdivision Plan, Chaplain's Circle Proposed Covenants and Restrictions, Sussex County Planning and Zoning Department Notice of Public Hearing, a copy of the Tax Map, an Aerial Map, a copy of the FEMA Floodplain Map, Technical Advisory Committee Comments, a DelDOT Letter of No Objection and a DNREC Preliminary Subdivision Feasibility Statement and that the booklet will be made a part of the record; and that a Letter of No Objection was received from DelDOT on January 25, 2007.

The Commission found that Doug Corey, Applicant, John Murray, Project Manager for Kercher Engineering, Inc. and Ellwood Hunsberger, Realtor were present on behalf of this application and stated in their presentations and in response to questions raised by the

Commission that the project is for single family dwellings; that 25 lots are proposed on 26.85 acres; that the minimum lot size is 0.75-acres; that the site is located at the northwest corner of the intersection of Route 404 and Road 42; that individual on-site septic systems and wells are proposed; that DelDOT issued a Letter of No objection and that they will require dedication of additional right of way along Road 42 and Route 404; that there will be a multi-modal path along Road 42; that there is 1.36 acres of passive recreation and storm water management area; that there are several other developments in the area; that the restrictive covenants have been submitted; that the minimum square footage of living space for one-story dwellings will be 1,800 square feet and 2,400 square feet for two-story dwellings; that all homes will be stick built and submitted photographs of the types of homes that will be built; that manufactured and modular homes will not be permitted; that the length of the longest cul-de-sac is 1,095 feet; that a copy of the septic feasibility statement from DNREC is included in the Exhibit Book; that a majority of the lots will have standard gravity systems with the exception of lots 19 through 22 which will have LPP systems; that the types of dwellings built will be up to the individual purchasers; that the agricultural use protection notice will be added to the restrictive covenants; that a traffic calming device such as a speed bump could be added to the long cul-de-sac street or that the entrance could be relocated; that DelDOT wants the entrance as far away from intersections as possible; that the actual storm water management areas have not yet been engineered but they could be a wet pond or infiltration basins; that the storm water pond will be as far away from Road 42 as possible; that DelDOT requires a minimum setback of 25-feet from the top of the bank to the right of way; that the storm water management pond will not be buffered; that a 30-foot forested buffer is proposed along the northern and western boundary lines since they are adjacent to active agricultural uses; that if the project is approved, a landscape plan will be submitted with the final site plan; that this site is approximately ¼ mile from the Punkin Chunkin site; that the applicants have had some dialogue with Tidewater Utilities in reference to central water but at this time it is not available; that a buffer is not required for lots 20 and 21 but a landscape plan could be provided to buffer the lots from noise from traffic along Route 404; that no community amenities are proposed since all of the lots are ¾ acre or greater; and that the price range of the homes will be in the \$200,000.00 to \$300,000.00 range.

Mr. Robertson advised the Commission and the applicants that the restrictive covenants will need to address maintenance issues and notices.

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

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

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

Subdivision #2006 – 49 - - application of **LARRY WILLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek

Hundred, Sussex County, by dividing 4.132 acres into 4 lots, located north of Road 434A, 1,448.9 feet west of Road 436.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the proposed lots are strip lots; that DelDOT issued a Letter of No Objection on July 11, 2006; that lots 12 and 13 have a combined entrance and lots 14 and 15 have a combined entrance; and that the applicant has submitted a petition with 8 signatures in support of this application.

The Commission found that Larry Willey was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 4, 1.0 acre lots are proposed; that stick built or modular homes will be permitted; that the restrictive covenants prohibit any commercial uses on the lots; that an adjoining property owner has expressed an interest in purchasing some of the lots; that the proposed septic systems will be engineered mound or LPP systems; that the proposed housing will be compatible to the area; that DelDOT has approved two combined entrances; and that he has no plans at this time for developing the interior lands.

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

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

Mr. Gordy stated that he would move that the Commission grant preliminary and final record plan approval for Subdivision #2006 – 49 for Larry Willey based on the record and for the following reasons:

1. The subdivision generally meets the purpose of the Subdivision Ordinance and it protects the orderly growth of the County.
2. The 4 lots proposed are consistent with other existing lots on Johnson Road.
3. The proposed subdivision will not adversely affect nearby properties, schools, public buildings, traffic or community facilities.
4. This approval is subject to the following conditions:
 - A. Lots 12 and 13 and Lots 14 and 15 shall have shared entrances.
 - B. The deeds to these lots shall contain the Agricultural Use Protection Notice.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary and as a final for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2006 – 50 - - application of **TRAP INVESTMENTS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 57.80 acres into 49 lots, located south of Road 449, 3,100 feet east of Road 463.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; that DelDOT issued a Letter of No Objection on July 5, 2007; that the applicants submitted a revised preliminary plan on November 2, 2007 addressing the comments made by the Technical Advisory Committee; and that the applicants submitted an Exhibit Booklet containing a Project Summary, Plan Considerations for the Items referenced in Section 99-9C, a copy of the Subdivision Application, a Preliminary Subdivision Plan, the proposed Restrictive Covenants, a copy of the Public Notice, a copy of a Tax Map, an Aerial Map, a FEMA Floodplain Map, comments from the Technical Advisory Committee, a Letter of No Objection from DelDOT and a JCM Environmental Wetland Report; and that the booklet will be made a part of the record.

The Commission found that John Murray, Project Manager with Kercher Engineering, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the project is for 49 single-family lots located on 57.8 acres; that the site is located on Road 449 approximately ¼ mile from Trap Pond State Park; that individual on-site septic and wells are proposed; that there is 6.4 acres of passive recreation/storm water management areas provided; that 3 storm water management areas are proposed; that the plan has been revised to address the comments made by the Technical Advisory Committee; that a 30-foot forested buffer is provided along the southerly and easterly boundaries of the site; that DelDOT has issued a Letter of No Objection for the entrance location; that the applicants are required to dedicate additional right of way for a multi-modal path; that an interconnection road has been added to the south side of the project; that a wetlands report was conducted and there are no wetlands on the site; that the soils work has been completed and submitted to DNREC; that the applicants are awaiting the septic feasibility statement from DNREC; that there are other single family developments in the area; that the project is in close proximity to Trap Pond State Park; that the future residents will be able to utilize the Park; that the Restrictive Covenants have been submitted; that the minimum size of the dwellings will be 1,600 square feet; that the homes will be stick-built; that these homes will be similar to the existing strip lots; that the Agricultural Use Protection Notice will be added to the restrictive covenants; that the homeowners' association will maintain the common areas; that a hunting notice will be included in the restrictive covenants; that there is not a dwelling located on the lot across from the proposed entrance; that there is adequate room for a bus stop if required; that sidewalks are not proposed due to the ¾ acre lot size; that if streetlights are put in, it will be up to the homeowners' association if they want streetlights; that the individual septic systems are proposed to be standard gravity fed systems or LPP systems; that the original plan was for 66 lots; that the plan was revised and the lot sizes increased; that central sewer and water is not available in the area; that swales will be adjacent to the right of ways; that there are no plans at this time to buffer the strip lots previously approved; that the storm water management ponds could be relocated; that there is a drainage at the northwest portion of the site with an outfall; and that the existing woods won't be cleared.

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

The Commission found that Wayne Hudson, Eric Johansen, and Lee Collins, area residents, were present in opposition to this application and advised the Commission that there are agricultural operations in the area; that the proposed buffers may not prevent odors and noises; that they want to be good neighbors; that new residents complain about farming operations; that the number of septic systems in the area could negatively impact wells; that there is too much traffic in the area; that too much density is proposed in the area; that there are problems now trying to move farm equipment; and that they enjoy farming and a country life style.

Mr. Murray responded that the existing woods will not be disturbed and that the landscape buffer will be planted with evergreen trees.

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 pending receipt of a septic feasibility statement from DNREC and for further consideration. Motion carried 5 – 0.

Subdivision #2006 – 51 - - application of **WOLFE PROPERTIES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 155.00 acres into 184 lots and a waiver from the forested buffer requirements, located north and south of Route 24, 1,200 feet east of Road 493 and Road 514.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; that the Applicants responded to the P.L.U.S. comments on March 21, 2007 and that a copy of their letter is a part of the record; and that the developer has met with the Office of State Planning Coordination in reference to the 30-foot forested buffer requirements and that their department finds the proposed buffer requirement adequate.

The Commission found that Heidi Balliet, Esquire, Jim Wolfe, Developer, John Salm, P.E. with Salm Engineering, Matt Metz with Charles D. Murphy Associates, Inc. and Brian Carbaugh with Artesian Water Company were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project proposes 41.5 acres of open space; that the proposed density is 1.2 lots per acre; that the items listed in Section 99-9C have been addressed in that the subdivision layout and design was dictated by the existing terrain and surrounding landscape; that the most prominent feature on the site is Tussocky Branch, a natural stream corridor; that the stream and its wetlands were set aside from the developed areas and will be left in its natural state in the project's open space; that there is no planned development in the wetlands or floodplains; that the wetland impact has been limited to the minimum necessary for the storm water management outfalls; that there is a cemetery plot located on the site; that the applicants have worked with the State Archeologist's Office to protect and preserve the plot; that the project is a standard subdivision however 27% of the project will remain as open space; that the design minimizes clearing and grade changes; that forest clearing and plantings were reviewed with the State in order to

achieve a design that meets the forest cover objectives; that the project will be fully screened with natural and planted landscape buffers; that the plantings will begin as soon as possible; that individual wells will be utilized; that a central sewage collection and treatment system managed by Artesian Water Company will be provided; that the sewage system use a groundwater discharge system; that there will be no surface water discharge; that the central sewer system will be continually monitored by DNREC to ensure groundwater protection; that DNREC well regulations afford further protection of the groundwater; that the project will have a centrally-located storm water management system which will minimize the potential for flooding while maximizing ground water recharge; that large areas of the site will be left with natural forest cover which will promote additional flood mitigation and groundwater recharge; that there are two common entrances across from each other on Route 24; that the entrances will be designed as boulevard entrances and will meet or exceed all State and County requirements; that the streets will be private; that the project will enhance the local property values; that the project is consistent with the property's low-density agricultural residential zoning; that the project will contribute to the tax base of Sussex County which funds schools, public buildings and community facilities; that all improvements required by DelDOT will be provided and funded by the developers; that the proposed use is compatible with the surrounding area; that no development is planned within the entire water course and there will be no impacts to area waterways; that the site is located in a low density area; that the dwellings will be stick built; that the amenities will include a clubhouse and pool, and streetlights; that at this time sidewalks are not proposed; that there will be a gate house structure at the entrance on both sides of Route 24; that manufactured homes will not be permitted; that the restrictive covenants have been submitted for review; that there were no negative comments from any agencies during the P.L.U.S. review process; that the project will serve a need for affordable housing in the area; that the developers are requesting a waiver from the forested buffer requirements in that there will be buffers however they will be included on the individual lots; that the forested buffers will be deed restricted; that the project complies with the subdivision and zoning ordinances; that 181 lots are proposed on 153 acres; that minimal clearing is proposed; that buffers have been provided throughout the project; that the entrances will be landscaped; that the buffers from the wetlands range from 30 to 80 feet; that there are no wetlands on any individual lots; that there is adequate room on the south side of the project for a school bus shelter; that the storm water management ponds will be feature ponds; that the ponds will be landscaped; that a 50 foot buffer surrounds the waste water treatment plant; that the septic treatment area will be fenced; that the preliminary plan has been revised to address the PLUS and TAC comments; and submitted 4 letters in support of this application.

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

The Commission found that Tracey Hill, Tamara Ward, Lori Wilson, and Ruth Tull were present in opposition to this application and stated that there are agricultural operations adjoining the project; that some site clearing has already taken place; that there are concerns about the amount of water run-off that will be put in the tax ditch; that existing wetlands have been cleared; that wells in the area went dry this past summer; that the

wastewater treatment plant is close to an existing dwelling; that the project will take away farmland; that the project will have a negative impact to property values; that there are concerns about the appearance of the proposed wastewater treatment facility; that there is a day care facility in the area; that 181 lots is too many; questioned where will potential buyers come from since there are already numerous homes in the area for sale; and that the tax ditch drains 23 miles.

Mr. Carbaugh responded that the treatment location is subject to DNREC; that the site is usually where the best soils are located; that there will be no open areas of water; that DNREC requires monitoring wells; and that no loss of groundwater is anticipated.

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 pending receipt of a septic feasibility statement from DNREC and for further consideration. Motion carried 5 – 0.

Subdivision #2006 – 52 - - application of **L.T. ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 119.14 acres into 242 lots (Environmentally Sensitive Developing District Overlay Zone), located southeast of Road 267, and south of Hawkseye and Wolfe Runne Subdivisions.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of March 21, 2007 will be made a part of the record for this application; that the Applicants submitted a Development Report with the application; that the Applicant's submitted an Exhibit Booklet on December 17, 2007 that will be made a part of the record and that letters in opposition have been received from the Citizens Coalition, Inc., Tiffany B. Derrickson, Plan Delaware, David L. Greer, Nadine Wick, Reverend Dorothy P. Greet, David H. Ennis, and the City of Lewes.

The Commission found that Dennis Schrader, Esquire, Paul Townsend, Developer, Tom Ford, RLA with Land Design, Inc. and Steve McCabe, P.E. with George, Miles and Buhr, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that an Exhibit Booklet was previously submitted into the record; that the site is zoned AR-1 which permits 2 lots per acre; that the proposed density is 2.1 lots per acre; that the project has been designed utilizing the Environmentally Sensitive Development District Overlay Zone Ordinance; that the site is in a Level 3 based on the State's Strategies Maps; that conditions of approval and findings of fact have also been previously submitted; that the site is located on the northeast corridor of Route One and is southeast of the City of Lewes near King's Highway; that the site has been farmed for over 150 years; that there are other developments in the area; that farming is becoming less a use in the area; that Wolfe Runne was developed in the 1980's, Wolfe Point in the 1990's and Hawkseye in the 2000's; that these 3 developments were larger lot subdivisions; that the Senators subdivision is a clustered subdivision that will be more affordable; that Gills Neck Road

has been widened in front of the Hawkseye development; that the project proposes central sewer and water; that the average lot size is 10,400 square feet; that 242 lots are proposed; that 51% of the project is for lots, 17% is right of ways and streets and 32% of the site is open space; that there is a 6.0-acre wooded and wetlands area that will be put in a conservation easement; that there are no wetlands on the site; that the amenities will include a bathhouse, pool veranda, bus shelter, park walkways and multi-modal path; that the project has been reviewed by the State through the PLUS process; that the State had no negative comments about the project; that the photographs in Tab #1 depict Gills Neck Road, the subject site, the bike trail and dwellings in the area; that the woodland and wetlands areas have been delineated; that there is an archeological area on the site; that none of the proposed lots are located in this area; that there will be extensive improvements done to Gills Neck Road; that additional right of way will be dedicated along with decal and excel lanes, bike paths and walking paths with landscaping; that the developers will fund these improvements; that an Endangered and Threatened Species study was conducted and none were found; that the site is located in the Cape Henlopen School District; that telephone, electric and cable will be provided; that Tab #2 references the PLUS comments and the applicant's responses; that 68% of the lots adjoin open space; that Tab #3 is a copy of the development report required by the Environmentally Sensitive Development District Overlay Zone Ordinance; that Tidewater Utilities will provide central water to the site; that Sussex County will provide central sewer; that there is interconnectivity provided to the Hawkseye Subdivision; that there is a 160 foot buffer from the wetlands; that the streets will be private and built to County specifications; that the Exhibit Booklet addresses all 17 items referenced Section 99-9C of the Subdivision Ordinance; that a 30-foot landscape buffer is proposed around the perimeter of the project; that the design complies with the requirements of the cluster ordinance; that the Exhibit Booklet contains a copy of the Sussex County Future Land Use Map, a copy of the State of Delaware Policies and Spending Map, a copy of the zoning map, an aerial photograph of the site, a copy of the preliminary site plan and site data, and a survey of the site; that some of the road improvements will require taking out the sweeping curve along Gills Neck Road; that a biking path and multi-use paths will be provided; that there are over 5 miles of sidewalks proposed within the project; that there are 36.24 acres of open space provided; that Tab #7 provides service letters; that an open space management plan is included in the Booklet; that there will be economic benefits to the County if the project is approved; that there will be 3 million dollars in initial fees to construct the project; that fees will also be made through transfer taxes and user fees; that groundwater recharge will be better since an irrigation used for farming will be taken out of service; that the developers met with the State Agencies in both 2006 and 2007; that the storm water management system will consist of bio-swales, ponds, infiltration and bio-retention; that no archeological sites exist in the 100-year floodplain; that the restrictive covenants will address non-disturbance of the archeological sites; that DelDOT did not require a traffic impact study for this project; that a traffic impact study has been done for this project and two other pending applications; that the sewer will be treated at the Wolf Neck Treatment Plant; that the County Engineering Department has indicated that there is adequate sewer capacity available; that it has become difficult to farm in this area and there are problems with moving farm machinery along roads in the area; that the developers are working with the City of Lewes on a new water tower; that the applicant

have participated in the construction of the Breakwater Junction Trail project; that the applicants started developing projects in the 1980's; that they are now buying farm land in western Sussex County and Kent County to continue farming; that the actual acreage of the site is 114.75 acres; that there are no Federal or State wetlands on the site; that the wetlands delineation has been submitted for a jurisdictional determination; that the Office of Historic Preservation has visited the site and does not want the archeological site disturbed; that 98% of the wooded areas will be preserved; 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 Barbara Vaughn, City of Lewes Councilwoman, Reverend Dorothy Greet, Dan Fendler, Maria Sumose, Patricia Gibler, Dave Ennis and John Matyko, area residents, were present in opposition to this application and advised the Commission that the Commission needs to take into account the cumulative effects of the projects that impact the City of Lewes; that all 3 applications need to be considered as one; that this site is located on an excellent recharge area; that there are concerns about wellhead protection; that the conditions of Kings Highway need to be addressed; that Gills Neck Road is a dangerous road with a bad curve; that there are safety concerns for pedestrians and bicyclists; that the developers should have met with the community first; that they have concerns about evacuation routes in the area; whether affordable housing will be provided and the price range of the homes; that the public notice signs should be larger; that the Town of Lewes will triple in size; that Lewes is the oldest town in the State; that there are only 3 roads leading into the City of Lewes; that there will be negative impacts to Beebe Hospital, fire and ambulance services and to the Cape May-Lewes Ferry; that the area roads cannot handle more traffic; that people come here to use the beaches and tennis courts at the Cape Henlopen High School; and submitted letters into the record.

The applicants responded that additional right of way will be dedicated along Gills Neck Road; that bike and walking paths will be added; that a bathhouse and pool are proposed; and that the developers cannot control or prohibit who uses the beaches and tennis courts; and that residents don't want tennis courts in a development.

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 to determine the actual acreage of the site. Motion carried 5 – 0.

Meeting adjourned at 10:50 p.m.