



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF MARCH 17, 2010

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, March 17, 2010 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson and Mr. Marty Ross along with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Consent Agenda as circulated. Motion carried 5 – 0.

The Consent Agenda included:

Subdivision #2009 – 4 - - application of **ROGER C. TWADDELL** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 1.86 acres into 2 lots, and a waiver from the street design requirements, located at the northwest end of a 50' private road west of Road 228A, 1,150 feet south of Road 38.

This is a final record plan for a 2-lot standard subdivision. The Commission granted preliminary approval on November 12, 2009 with 4 conditions. The final record plan meets the requirements of the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

Time Extensions

a. CU #1723 – John Willey, c/o Peninsula Oil

This is a request for a one-year time extension. This conditional use for a mini-storage facility was approved on March 11, 2008. The Commission granted a one-year time extension on October 14, 2009 retroactive to the anniversary date of approval. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval.

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and approval will be valid until March 11, 2011. The Commission was previously provided a copy of the request.

b. Subdivision #2005 – 95 - - Harlton Associates, L.P.

This is a request for a one-year time extension. The Commission granted preliminary approval for 197 lots on February 8, 2007 and granted one-year time extensions on February 20, 2008 and March 18, 2009. This is the third request for an extension. As of this date, no agency approvals have been received. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until February 8, 2011. Also, it should be stipulated that this will be the last extension granted. The Commission was previously provided a copy of the request.

c. Subdivision #2006 – 27 - - O.A. Newton

This is a request for a one-year time extension. The Commission granted preliminary approval for 131 lots on February 20, 2008. This is the first request for an extension. The Commission would need to grant a one-year time extension from February 20, 2009 to February 20, 2010 and an extension from February 20, 2010 until February 20, 2011. This would actually make the request a second extension. As of this date, no agency approvals have been received. The Commission was previously provided a copy of the request.

d. Subdivision #2006 – 52 - - L.T. Associates

This is a request for a one-year time extension. The Commission granted preliminary approval for 229 lots on March 27, 2008 and granted a one-year time extension on May 20, 2009. This is the second request for an extension and if an extension is granted, preliminary approval will be valid until March 27, 2011. The Commission was previously provided a copy of the request.

e. Subdivision #2006 – 53 - - JW & TG, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval for 12 lots on February 28, 2009 and granted a one-year time extension on February 18, 2009. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until February 28, 2011. The Commission was previously provided a copy of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the items on the Consent Agenda as presented. Motion carried 5 – 0.

OLD BUSINESS

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C/Z #1675 - - application of **BARRY BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Old Orchard Road (Road 269-A) and approximately 1,200 feet southeast of New Road (Road 266), to be located on 9.33 acres, more or less.

The Chairman referred back to this application, which was deferred at the February 25, 2010 meeting.

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

C/U #1853 - - application of **BARRY BAKER** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less, lying northeast of Road 269A (Old Orchard Road) approximately 1,115 feet southeast of Road 266 (New Road).

The Chairman referred back to this application, which was deferred at the February 25, 2010 meeting.

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

OTHER BUSINESS

Subdivision #2005 – 64 - - Palisades Land, L.L.C.

The Estuary – Revised Preliminary

Mr. Abbott advised the Commission that this is a revised preliminary subdivision plan for a 739-lot Environmentally Sensitive Developing District Overlay Zone development application; that the Commission granted preliminary approval for 1,052 lots on 739.70 acres on September 28, 2006 and granted one-year time extensions on October 17, 2007, August 20, 2008 and April 22, 2009; that it was stipulated that the extension granted on April 22, 2009 would be the last extension granted by the Commission; that preliminary approval is valid until September 28, 2010; that this project has been purchased by a new developer (Natelli Communities) and a new engineering firm (Becker Morgan) has taken over the project; that on this revised plan, the acreage has been reduced from 739.70 acres to 458.40 acres, as two of the original parcels are no longer a part of the application; that these two areas are the red cross hatched areas on the phasing plan that was submitted to the Commission; that they are the northern and southern most properties; that the number of lots has been reduced from 1,052 to 739; that in the Environmentally Sensitive Developing District, based on 458.44 acres, the permitted number of lots would be 998 lots; that with 739 lots proposed, the proposed density is 1.61 lots/acre; that the phasing plan depicts the project being built in three phases; that

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Phase 1 contains 4 sub-phases containing 23, 98, 90 and 113 lots; that Phase 2 contains 2 sub-phases containing 81 and 16 lots; that Phase 3 contains 3 sub-phases containing 134, 126 and 58 lots; that the developer and engineers are aware that at least Phase 1 needs to have final approval by September 28, 2010 and that the remaining phases may be submitted at a later date; that if the Commission acts favorably on this request, the conditions of the previous preliminary approval should be attached to this revised plan; and that the Commission was previously provided a copy of the revised plan, a phasing plan and an aerial photograph.

Mr. Smith advised the Commission that this is the third plan reviewed for this project with a three different developers; that during the public hearings there were interested parties present in opposition; that commercial uses were proposed in one application; questioned if any of the required amenities such as boat launch areas have been deleted; and that a new hearing should be held.

Mr. Robertson advised the Commission that kayaks and a boat launch were not permitted by the conditions of the preliminary approval.

Mr. Wheatley advised the Commission that the revised plan is not a problem since there are less lots proposed than what was allowed by the preliminary approval; and that he doesn't think it is fair to have a new hearing.

Mr. Johnson advised the Commission that the revised plan is totally different than what was approved; questioned why the developer doesn't build what was originally approved; questioned the loss of open space; and that there is no interconnection provided.

James Fuqua, Attorney, was present and advised the Commission that the owner of the project is Chesapeake Double Bridges, L.L.C. which is a corporation of M & T Bank; that the project has a valid preliminary approval until September 28, 2010; that the revised plan is for the deletion of two large parcels that were never purchased; that the internal parcels of the project are unchanged from the original preliminary plan; that the revised subdivision is a smaller subdivision of what was originally approved; that no additional lots have been incorporated into the project; that better road circulation has been provided; and that the density increased from 1.4 lots per acre to 1.6 lots per acre which is still under the allowable density of 2 lots per acre.

Motion by Mr. Ross, seconded by Mr. Burton and carried 4 votes to 1, with Mr. Smith opposed to approve the revised plan as a preliminary with the stipulation that condition of approval A be revised to read "The maximum number of lots shall not exceed 739 lots." and that the previous conditions of approval are subject to this revised plan. Motion carried 4 – 1.

Bay Forest Club MR/RPC

Revised Phase 2 – Roads 347 and 349

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Mr. Abbott advised the Commission that this is a revised preliminary plan for Phase 2 of the Bay Forest Club residential planned community; that the approved master plan for this area is for 25 single-family lots and 55 multi-family units; that the revised master plan was last approved by the Commission on July 16, 2008; that the revised plan is for 16 single-family lots and 89 multi-family units; that the multi-family units will be in 23 buildings; that this is an increase of 25 more total units in this phase; that the street design has also been revised to include a round about and a proposed bridge over wetlands; that the developers believe that the revisions will enhance community circulation and improve access to the water front area and community center for the future phases of the project; that if the Commission is favorable to this request, only preliminary approval should be considered, as more detailed drawings are required; that the break down of unit types has been revised from 244 85-foot single family lots to 216, 149 70-foot single family lots to 172, 88 28-foot by 42-foot villas to 94, 177 34-foot villas to 146, 68 30-foot villas to 132 and 82 22-foot townhouses to 48; that the multi-family type units has increased, but there are still 808 total units proposed and permitted by Ordinance; and that the Commission was previously provided a copy of the most recent approved master plan and a conceptual plan for this request.

Mr. Smith advised the Commission that he has reviewed the plan with the staff; that the density is not changing and that the Engineering Department will have to approve the bridge structure.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the revised Phase 2 plan as a preliminary and to approve the change in the types of units permitted. Motion carried 5 – 0.

Artesian Wastewater Management, Inc.
CU #1747 Site Plan – Road 290

Mr. Abbott advised the Commission that this is the preliminary site plan for Phase 1 of a wastewater treatment plant and disposal site and a water distribution facility; that this conditional use was approved on July 17, 2007 and the Commission granted one-year time extensions on September 17, 2008 and July 15, 2009; that Phase 1 is for the wastewater treatment facility; that this site contains a 1-story 9,600 square foot treatment facility and 5.62 acres of rapid infiltration basins; that 3 parking spaces are provided for the treatment building; that the setbacks meet the minimum requirements of the zoning code; that the 10 conditions of approval need to be referenced on the final site plan; that the required rail fencing is provided around the perimeter of the infiltration basins; that the final site plan needs to indicate that there are no dwellings within 100 feet of the rapid infiltration basins; that condition of approval #3 requires forested buffers of at least 30 feet in width, with the Commission determining the property boundaries along which the buffers shall be located in connection with the site plan approval process; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and the aforementioned included on the final site plan; and that the Commission was previously provided a copy of the preliminary site plan.

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Mr. Johnson advised the Commission that buffers should be provided along the three single-family lots and that buffers should be provided along Log Cabin Road to shield the infiltration basins.

Jessica Nichols, P.E., with Artesian Consulting Engineers, Inc. advised the Commission that buffers can be provided; that the required vinyl fence around the infiltration basin is provided on the site plan; that a daylight easement has to be provided for DelDOT's requirements; that the middle parcel is owned by a different entity; that this site plan is for Phase 1 only and that the site plan for Phase 2 should be submitted within the next six months.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with the stipulations that 30-foot forested buffers be installed along the fencing along Log Cabin Road and the eastern boundary of the fence and that final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Delmarva Power and Light Co.
CU #1857 Site Plan – Road 258

Mr. Abbott advised the Commission that this is a site plan for an electrical substation; that this conditional use was approved on February 23, 2010 with 7 conditions; that the conditions of approval are referenced on the site plan; that the plan is the same as the plan submitted during the hearing but includes the buffer areas and the wooded areas that are to remain; that there are 2 areas that are not buffered due to the location of the overhead transmission lines; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the preliminary site plan.

Mr. Johnson advised the Commission that the site plan is better than the plan that was presented at the public hearing.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Subdivision #2008 – 24 - - Greg and Charlotte Hastings
Hastings Heritage – Amended Condition

Mr. Abbott advised the Commission that this is a request to clarify a condition of approval for this subdivision; that condition #7 requires a 30-foot forested agricultural buffer along boundaries bordering on any lands used primarily for agricultural purposes; that the eastern and western boundaries are both used for agriculture; that the engineer has provided the 30-foot buffer except where there is an existing drain field serving an existing manufactured home and in the vicinity of 2 proposed storm water management ponds; that the engineer proposes to erect a privacy fence to tie into the buffer where the

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drain field is located; that the engineer is also requesting that the buffer not be required in the vicinity of the storm water ponds as this would require more ponds if the buffer is required; and that the Commission was previously provided a copy of the preliminary plan and a letter from the engineer explaining this request.

Ken Christenbury, P.E. with Axiom Engineering advised the Commission that buffers can be provided along the boundary except for where the existing drainfield is located and the proposed storm water management ponds; that a privacy fence can be located near the drainfield location; that the developer is utilizing the existing septic system for the manufactured home; that if the buffers are required, forested areas would have to be cleared for the storm water management ponds and that there are tax ditch issues along the western boundary line.

Mr. Abbott advised the Commission that this application was filed on November 7, 2008, which was after the new buffer ordinance being adopted; and that applications with waivers are advertised prior to the hearings.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action to allow Mr. Robertson time to review the buffer ordinances. Motion carried 5 – 0.

Shannon Argo

2 Parcels and 50' Right of Way – Route 36

Mr. Abbott advised the Commission that this is a request to subdivide a 156.0-acre parcel into 2 parcels with access from a 50-foot right of way; that Parcel A will contain 52.0-acres and Parcel B will contain 104.0-acres; that there is an existing recorded easement serving as access to the parcel; that the purchaser proposes to extend the easement to serve as access to Parcel B; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Joseph H. and Cynthia Black

3 Parcels and 50' Right of Way – Road 249

Mr. Abbott advised the Commission that this is a request to subdivide a 31.10-acre parcel into 3 lots with access from a 50-foot right of way; that Parcel A will contain 5.88-acres, Parcel B 16.64-acres and Parcel C 7.64-acres; that the owners propose to create the 50-foot right of way over an existing farm road; that Parcel C has 3 poultry houses located on it; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Dolphie J. and Bonita E. Daigle
2 Parcels and 50' Easement – Road 462

Mr. Abbott advised the Commission that this is a request to subdivide a 4.87-acre parcel into 2 parcels with access from a 50-foot easement; that Parcel A will contain 2.38-acres and the residual lands 2.49-acres; that the residual lands contains a dwelling and accessory buildings; that the owner proposes to create the 50-foot easement over an existing driveway; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a survey of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Henry Seppi
3 Parcels and 50' Right of Way – Road 431

Mr. Abbott advised the Commission that this is a request to subdivide a 12.19-acre parcel into 3 parcels with access from a 50-foot right of way; that Lot 1 will contain 1.75-acres, Lot 2 1.50-acres and the residual lands 8.94-acres; that the right of way will be created over an existing driveway; that the request may be approved as submitted, or an application for a major subdivision can be required; that the disputed fence along the boundary line of the Elliott's has been removed; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Dolores A. Williams
2 Lots and 50' Right of Way – Road 74

Mr. Abbott advised the Commission that this is a request to create 2, 1.0-acre lots with access from a 50-foot right of way; that the owner proposes to widen an existing 30-foot right of way to 50-feet to serve as access to the 2 lots; that the residual land will contain approximately 2.0-acres and has road frontage along Road 62; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Mr. Ross advised the Commission that he visited the site and the property was under water.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept with the stipulation that approved site evaluations shall be presented prior to the survey being approved for recordation. Motion carried 5 – 0.

Robert and Sarah Druckenmiller
2 Parcels and 50' Easement – Road 84

Mr. Abbott advised the Commission that this is a request to subdivide an 11.83-acre parcel into 2 parcels with access from a 50-foot easement; that Lot 1 will contain 8.71-acres and Lot 2 3.12-acres; that the owner proposes to extend an existing 50-foot right of way to serve as access to the 2 lots; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Charles and Tamela Duffy
Lot and 50' Easement – Road 589

Mr. Abbott advised the Commission that this is a request to create a 0.75-acre lot with access from a 50-foot easement; that the owner proposes to extend an existing easement and widen it to 50-feet to serve as access to the lot; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Lottie Lucinda Moles
Lot and 50' Right of Way – Route 404

Mr. Abbott advised the Commission that this is a request to subdivide a 2.346-acre parcel into 2 lots; that Lot 1 will contain 0.775-acres and have access from road frontage of 50-feet; that the residual lands will contain 1.571-acres and has 196.06 feet of road frontage; that both parcels will have access from the 50-feet; that the request may be approved as submitted, or an application for a major subdivision or a variance from the Board of Adjustment can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that the next meeting is March 25, 2010 and provided Mr. Wheatley a copy of the League of Women Voters letter to the County.

Meeting adjourned at 4:40 p.m.