



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF MAY 14, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, May 14, 2008 in the County Council Chambers, 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. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Rodney Smith with Ms. Rebecca Trifillis – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Richard Kautz – Land Use Planner and Mr. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that item 2d under the consent agenda and item 13 under Other Business have been removed from the agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the agenda as amended. Motion carried 5 – 0.

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

The Consent Agenda included:

Subdivision #2003 – 27 - - application of **MAIN STREET HOMES, L.L.C.** to consider the Subdivision of land in a MR, Medium Density Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 24.40 acres into 35 lots, located at the end of Fairway Drive within Old Landing Development, approximately 1,950 feet west of Road 274 (Old Landing Road).

This is the final record plan for a 35-lot standard subdivision application. The Commission granted preliminary approval on April 14, 2005 and granted a one-year time extension on July 18, 2007. This time extension was valid until April 14, 2008. The final record plan was submitted on April 11, 2008 but could not be placed on an agenda until now. The final record plan meets the requirements of the subdivision and zoning codes and the conditions of the preliminary approval. All agency approvals have been received.

Time Extensions

a. Subdivision #2005 – 13 - - Lynn and Karen McColley

This is a request for a one-year time extension. The Commission granted preliminary approval on April 27, 2006 and granted a one-year time extension on June 20, 2007. This is the second request for an extension. If an extension is granted, it should be retroactive to the anniversary date of the preliminary approval. All agency approvals except for DelDOT have been received.

b. CU #1639 – Bethany Court

This is a request for a one-year time extension. The Conditional Use was approved on July 25, 2006. The Commission granted final site plan approval on May 16, 2007. This is the second request for an extension and the last one that the Commission has the authority to grant.

c. CU #1664 – Mark J. and Stacie N. Mills

This is a request for a one-year time extension. The Conditional Use was approved on August 15, 2006. The Commission granted preliminary site plan approval on January 18, 2007 and revised preliminary approval on February 20, 2007. This is the first request for an extension. If an extension is granted, it should be retroactive to the anniversary date of approval and will expire on August 15, 2008.

d. CU#1716 – Andrew Lubin

This item was removed from the Agenda. A time extension was granted on February 20, 2008.

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

OLD BUSINESS

Subdivision #2006 – 43 - - application of **SUMMER HILL DEVELOPMENTS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 47.00 acres into 90 lots, (Environmentally Sensitive Developing District Overlay Zone), located west of Road 391, 950 feet north of Route 54.

The Chairman referred back to this application, which was deferred on November 29, 2007.

Mr. Smith stated that he would move that the Commission deny preliminary approval of Subdivision #2006 – 43 for Summer Hill Developments, L.L.C. based on the record and for the following reasons:

1. The Commission is not satisfied that the Applicant established that the requirements of the Subdivision Ordinance have been satisfied, or how the project is in compliance with the County's Comprehensive Land Use Plan.
2. The project, with 10,000 square foot lots, is predicated upon being served by County Sewer as part of the Fenwick Island Sanitary Sewer District, and it is not adjacent to an existing sewer district. Without County Sewer at this time or a more definite means of connecting in the future, the project as proposed is not viable.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny this application for the reasons stated. Motion carried 5 – 0.

Subdivision #2006 – 61 - - application of **MLK PARTNERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 43.29 acres into 36 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 488, 1,100 feet west of U.S. Route 13.

The Chairman referred back to this application, which was deferred on March 13, 2008.

Mr. Gordy advised the Commission that he was not present at the public hearing but he has since listened to the recording of the meeting and reviewed the file and will be participating in the vote on this application.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 61 for MLK Partners, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning. It will have a density of .83 units per acre, with lots ranging in size from .75 acres to 2.0 acres.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The subdivision is consistent with other developments in the area, including Johnson Development, Sussex Manor and Eastern Lane. The applicant has also stated that there are approximately 913 homes already in the general area.
5. DelDOT has not opposed the application, and has stated that it prefers access to the project from Ockels Road and not Route 13A.
6. A variance from the maximum cul-de-sac length of 1,000 feet is appropriate given the configuration of the property.
7. DNREC has indicated that the site is suitable for individual on-site septic systems.
8. This approval is subject to the following conditions:

- A. There shall be no more than 36 lots within the subdivision.
- B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
- C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- D. All entrances shall comply with all of DelDOT's requirements. In addition, the Commission urges the applicant to consider providing clearly marked connection points to adjacent properties in the event those properties are ever developed.
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- G. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, 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. 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. There shall be a 50-foot buffer from any Wetland areas. The buffer shall comply with the requirements of Section 115-193 of the County Zoning Code.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

Subdivision #2006 – 63 - - application of **DEEP BRANCH ROAD, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River, Sussex County, by dividing 202.37 acres into 303 lots (Cluster Development), located at the northwest corner of the intersection of Road 317 and Road 315.

The Chairman referred back to this application, which was deferred on March 27, 2008.

Mr. Johnson stated that this proposed cluster subdivision has raised numerous concerns including the overall number of lots being requested being incompatible with the surrounding area which is predominately rural, the impact on deteriorating area roadways, the impact on the extensive wetlands in the area, that at the public hearing, approximately 40 local residents attended to voice their concerns and opposition to the project, that as originally proposed, Mr. Johnson too has been concerned about the project's impact, that however, with some limiting conditions and stipulations placed upon this requested cluster subdivision, some of Mr. Johnson's concerns and hopefully those of opposing residents can be mitigated.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 63 with limiting conditions for Deep Branch Road, L.L.C. based upon the record and for the following reasons:

1. With the limiting conditions and stipulations placed upon this approval, the proposed subdivision generally meets the purpose and requirements of the Subdivision Ordinance in that it protects the orderly growth of the County. However, as a condition of this approval, the Commission is also requiring that a revised Preliminary Site Plan with a reduced number of lots be submitted addressing many of the conditions imposed by this approval.
2. The land is zoned AR-1. The Applicant is seeking approval of a clustered design subdivision with 303 proposed lots.
3. The Applicant has advised that approximately 115 acres, or 57% of the site will remain open space; and that 50% of the existing wooded area will be preserved.
4. The Subdivision will include amenities such as a community center, tot lots, gazebos, paved walking trails, tennis or multi-sport court and pool that will serve the future residents of this property.
5. The Applicant has adequately addressed the items set forth in Section 99-9C of the Subdivision Ordinance.
6. The proposed subdivision, with the conditions placed upon it, will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
7. The proposed subdivision, with the conditions placed upon it, will not adversely impact schools, public buildings and community facilities.
8. This preliminary approval is subject to the following conditions:
 - A. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, multi-modal paths, buffers, storm water management facilities, recreational facilities, and other common areas.
 - B. The project shall be served by an on-site central sewer system and central water shall be provided. The sewer system shall comply with all County Engineering and State requirements.
 - C. The storm water management system shall meet or exceed the requirements of the State and County, and shall be designed and

maintained using Best Management Practices to maximize groundwater recharge.

- D. All entrances and road improvements shall comply with all of DelDOT's requirements. In addition, it is also recommended that the Applicant, in cooperation with DelDOT, improve Deep Branch Road from the northernmost point of the site to the intersection with Springfield Road.
- E. A hunting notice similar to the Agricultural Use Protection Notice shall be included on the Final Site Plan and within the Restrictive Covenants.
- F. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street and street lighting. The applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscaping design for the project.
- G. The entire perimeter shall be surrounded by a 30-foot vegetated buffer maintaining the existing forest in the buffer areas. The vegetation to be maintained and included in the buffers shall be shown on the Landscape Plan submitted as part of the Final Site Plan.
- H. All amenities, including the pool, community center, tot lots and multi-sport courts shall be constructed and open to use by residents within 2 years of the issuance of the first residential building permit.
- I. All of the existing forested areas that will be preserved shall be clearly shown on the Final Site Plan.
- J. There shall be at least a 50-foot buffer from all wetlands on the site. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.
- K. An area for a school bus stop shall be established with the coordination of the local school district. The location of the bus stop area shall be shown on the Final Site Plan.
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities to be consistent with this plan.
- N. The Restrictive Covenants and Final Site Plan shall contain an "Aviation Nuisance Easement and Non-Suit Covenant" as recommended by DelDOT in its January 10, 2008 Traffic Impact Study Letter.
- O. It has been the Commission's practice to avoid lots that are not adjacent to any open space in cluster subdivision plans. Consequently, lots 109 through 121, 227 through 246 and 247 through 260 should be reconfigured so that they do not abut one another.

- P. The net development area shall be reduced by the acreage of the 2 parcels separated from the rest of the project by Deep Branch Road and Peterkins Road, and the wetlands acreage.
- Q. The Applicant shall submit a revised Preliminary Site Plan with a maximum number of lots not to exceed 263. This number is derived from the approximate number of lots eliminated because they are in the buffer areas, and the reduced net development area. The revised Preliminary Site Plan shall also show a 30-foot buffer around the entire project, the 50-foot wetlands buffer, the elimination of back-to-back lots, and the reduced net development area.
- R. 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 approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

OTHER BUSINESS

King Farm Industrial Park
CU #1705 Site Plan – Park Avenue (Road 321)

Mr. Abbott advised the Commission that this is a site plan for an industrial park; that the Conditional Use was approved on October 2, 2007 with 29 conditions; that the 29 conditions of approval are referenced on Page 2 of the set of drawings; that the project is divided into 4 phases; that 4 warehouse buildings containing 385,110 square feet and 11 contractor condominium buildings containing 101,700 square feet are proposed; that this is a change from the site plan that was submitted during the public hearing and condition number 21 allows the Commission to change the type and square footage of the buildings; that the total square footage for this plan is 486,810 square feet and the approved ordinance permits 486,850 square feet; that the setbacks meet the requirements of the zoning code; that the developers are requesting that traffic from warehouse 1 be able to utilize Park Avenue; that the conditions of approval allow the Commission to change this; that a required landscaping plan for the buffer areas has been provided; that the buffer will be planted on a 3-foot berm and staggered with 4 rows of trees along Park Avenue; that the buffer along the Oaks of Georgetown, L.L.C. and is staggered with 2 rows of trees; that the plan indicates that 313 trees will be planted; that these species include Red Maple, River Birch, Red Cedar, Magnolia, Pine and White Pines; that the minimum height of the plantings is 8 to 10-feet; that water to the project will be supplied by Sussex County and that sewer will be provided by the Town of Georgetown; that the retained forest area has been reduced to 16.15 acres (38%) from the 17.5 acres shown on the plan that was submitted for the public hearing; that parking has been calculated on 1 space for every 2 employees. The 4 warehouses propose 140 employees with 70 parking spaces; that the 11 contractor condominiums propose 330 employees with 165 parking spaces; that 235 parking spaces are required under this calculation and 325 spaces are provided; that 13 loading spaces are required and 89 are provided; that Phase 1 contains

10 contractor condominium buildings; that 8 buildings are 9,000 square feet each and the other 2 each contain 9,900 square feet; that the landscaped buffers and storm water management pond number 1 is also included in this phase; that this phase includes 146 parking spaces; that Phase 2 includes warehouse number 1 which contains 157,200 square feet along with 57 parking spaces; that Phase 3 includes a 72,000 square foot warehouse and 9,900 square foot contractor condominium building with 52 parking spaces; that Phase 4 includes a 39,910 square foot warehouse and an 116,000 square foot warehouse; that 70 parking spaces are included in this phase; that preliminary approval could be considered; and that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals.

Mr. Johnson noted that the number of contractor condominiums has been reduced; that the square footage for these condominiums has also been reduced; that the square footage of the warehouses has increased; questioned the multi-modal path within the required 50-foot buffer along Park Avenue; questioned if the neighbors across the street have requested landscaping along the frontage; and questioned if the warehouse should be able to have access to Park Avenue.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to grant preliminary site plan approval with the stipulation that final site plan approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 5 – 0.

Tidewater Utilities, Inc.
CU #1696 Site Plan – Camp Arrowhead Road (Road 279)

Mr. Abbott advised the Commission that this is a revised site plan for a 24-foot by 60-foot addition to an existing 35-foot by 60-foot wastewater treatment building; that the proposed building height is 13 feet; that the setbacks meet the requirements of the zoning code; that a 6-foot chain-link fence is also proposed; and that if a revised preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the revised 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.

Royal Farms
Commercial Site Plan – Route 54

Mr. Abbott advised the Commission that this is a preliminary site plan for a 4,987.50 square foot convenience store with 6 gas islands, a 1,190 square foot car wash and a 4,229.10 square foot bank located on 2.90 acres; that the site is zoned B-1; that the setbacks meet the requirements of the zoning code; that 52 parking spaces are required and 70 are provided; that 14 spaces are located within the front yard setback and are subject to site plan review; that there is parking within the front yard setback for other

projects in the immediate area; that a 6-foot high stockade fence is proposed along the rear property line; that Tidewater Utilities will provide central water and Sussex County will provide central sewer; that there are no wetlands on the site; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to grant preliminary site plan approval with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Subdivision #2006 – 31 - - South Shore Builders, L.L.C.
Revised Preliminary – Winding Brook Estates

Mr. Abbott advised the Commission that this is a revised preliminary plan for lots 11 through 16 based on the Commission's reconsideration of approval for this subdivision on March 19, 2008; that the required 30-foot forested buffer is provided, a 50-foot buffer is provided on both sides of the "blue line stream"; and that the revised preliminary plan complies with the other conditions of the preliminary approval of November 14, 2007.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the revised plan as a preliminary with the stipulation that permanent monumentation be placed marking the upland side of the wetland buffer. Motion carried 5 – 0.

Jake Marine
3 Lots and 50' Right of Way – Road 62

Mr. Abbott advised the Commission that this is a request to subdivide 31 acres into 3 parcels and create a 50-foot right of way; that Parcel 1 has the required road frontage along Road 62; that Parcel 2 has 3 poultry houses on it and will be combined with an existing parcel that has road frontage along Road 62; that Parcel 3 has a horse farm located on it and the owner is proposing to create a 50-foot right of way over an existing dirt lane to serve as access to this parcel; and that the request may be approved as submitted or require an application for a major subdivision.

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

Branson S. Smith
2 Lots and 50' Right of Way – Road 535

Mr. Abbott advised the Commission that this is a request to subdivide 6.55 acres into 3 lots and extend an existing right of way to serve as access to the lots; that the lots will contain 1.576-acres, 1.576-acres and 1.309-acres; that the owner is proposing to extend an existing right of way to serve as access to the lots; that the request may be approved as submitted or require an application for a major subdivision; and that if the request is

approved as submitted, it should be stipulated that any further subdivision will require a public hearing.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request 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.

Ronald and Rachel Edwards
Lot and 50' Right of Way – Road 288

Mr. Abbott advised the Commission that this is a request to create a 50-foot right of way to serve as access to an existing 1.00-acre lot; that the lot was created by a deed that did not have an approved survey attached; and that the request may be approved as submitted or require an application for a major subdivision.

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

Donald Brittingham
Lot and 50' Right of Way – Road 331

Mr. Abbott advised the Commission that this is a request to create a 1.60-acre lot with access from an existing 50-foot easement; that the easement serves as access for a 5.00-acre parcel; and that if approved, this would be the second lot with access from the 50-foot easement.

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

Joyce L. Pinkine
3 Lots and 50' Easement – U.S. Route 13A

Mr. Abbott advised the Commission that this is a request to subdivide 3.18-acres into 3 lots and create a 50-foot easement to serve as access; that 2 of the lots will contain 32,671 square feet and the other will be 1.04-acres; that the owner proposes to create the 50-foot easement over an existing paved driveway; that the survey notes that the existing dwelling and shed are to be moved; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted or require an application for a major subdivision; and that if approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request 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.

Douglas P. Corey

Parcel and 50' Easement - Road 545

Mr. Abbott advised the Commission that this is a request to subdivide a 4.41-acre parcel out of a 37.82-acre parcel and create a 50-foot easement to serve as access; that the residual land will contain 33.41-acres; that both parcels will have access from the 50-foot easement; and that the request may be approved as submitted or require an application for a major subdivision.

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

Ronald L. and Susan L. Berwick
2 Lots and 50' Right of Way – Road 225

Mr. Abbott advised the Commission that this is a request to create a 1.06-acre lot and create a 50-foot right of way; that the residual land contains 3.11-acres; that both parcels will be accessed by the 50-foot right of way; that the owner proposes to create the 50-foot right of way over an existing driveway; and that the request may be approved as submitted or require an application for a major subdivision.

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

KGH Property Development, L.L.C.
3 Lots – Road 257 (Round Pole Bridge Road)

Mr. Abbott advised the Commission that this is a request to subdivide 14.94 acres into 3 parcels; that the parcels will contain 1.10-acres, 2.36-acres and 11.47-acres; that this area was part of a major subdivision but lots were removed from a previous application on the north side of Round Pole Bridge Road; that when the south side received preliminary approval, it was stipulated that any subdivision of the north side is subject to the review and approval of the Planning and Zoning Commission; that DelDOT has issued a Letter of No Objection; and that the individual lots contain both State and Federal Wetlands.

Mr. Kautz reviewed State Wetland Maps provided by DNREC and it appears that there is a conflict in the accuracy of the wetlands delineation and what was provided by the State.

The Commission discussed the subdivision plan. It has been the Commission's policy to not permit wetlands on individual lots.

Mark Dunkle, Attorney, and Gary Cuppels, Surveyor with ECI were present and advised the Commission that this is a minor subdivision request; that the State and Federal wetlands were delineated by Ed Lunay; that the owners have tried to give the wetlands away but no one is interested in taking them; that the State wetlands maps are not accurate; that a community septic system is proposed on lot 1 to serve all 3 lots; that DNREC has approved the septic design; that the upland areas do not contain 0.75 acres; and that they will provide the square footage for the upland areas.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action pending receipt of a revised plan verifying the accuracy of the State wetlands and the square footage of the upland areas. Motion carried 5 – 0.

Sugar Maple Farms
Revised Lot 39 – Route One
This item was removed from the agenda.

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on June 18, 2008 at 3:00 p.m. for Old and Other Business items.

Meeting adjourned at 4:15 p.m.