



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF DECEMBER 16, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, December 16, 2009 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. I.G. Burton, III, Mr. Michael Johnson, Mr. Martin Ross, Mr. Rodney Smith and Mr. Robert Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

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

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

The Consent Agenda included:

Subdivision #2005 – 2 - application of **CARRIAGE SPRINGS RUN, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 77.55 acres into 155 lots (Cluster Development), located north of Road 252, approximately 0.75 mile west of Route 30.

This is the final record plan for a 155-lot cluster subdivision application. The Commission granted preliminary approval for 155 lots on November 17, 2005 and granted one-year time extensions on December 14, 2006, November 14, 2007 and December 17, 2008. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received except for Sussex County Engineering, however the Engineering Department has issued a letter indicating that they have no objection to the subdivision receiving approval with the following stipulation “ A notice to proceed with construction shall not be issued for this project by Sussex County until: 1. A wastewater treatment and disposal facility approved by DNREC to service this project is substantially under construction; and 2. The corresponding transmission system has been designed and approved to connect this project to said wastewater facility.” This stipulation has been placed on some recent final approvals.

Minutes

December 16, 2009

Page 2

Subdivision #2005 – 86 - - application of **DALE WHEATLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 27.65 acres into 34 lots (Cluster Development), located west of Road 598, 600 feet north of Road 611.

This is the final record plan for a 33-lot cluster subdivision application. The Commission granted preliminary approval for 34 lots on February 22, 2007 and granted one-year time extensions on October 16, 2008 and March 18, 2009. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

Time Extensions

a. CU #1708 – Lisa Phillips, Trustee

This is a request for a one-year time extension. This conditional use for a borrow pit was approved on December 11, 2007. The Commission granted preliminary site plan approval on March 19, 2008 and granted a one-year time extension on January 14, 2009. This is the second request for a time 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 and the approved use needs to be substantially underway by December 11, 2010.

b. CU # 1739 – Eric Sugrue, Big Trips, L.L.C.

This is a request for a one-year time extension. This conditional use for multi-family dwelling structures (6 units) was approved on December 2, 2008 with 12 conditions. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until December 2, 2010. The Commission was previously provided with a copy of the request.

c. CU #1741 – David G. Horsey & Sons, Inc.

This is a request for a one-year time extension. This conditional use for a borrow pit was approved on December 16, 2008 with 21 conditions. This is the first request for an extension and if an extension is granted, approval will be valid until December 16, 2010. The Commission was previously provided with a copy of the request.

d. Subdivision #2005 – 68 - - Sandy Landing, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on November 20, 2006 and granted one-year time extensions on July 18, 2007 and October 16, 2008. **This is the third request for an extension and if an extension is granted, it should be the last granted.** If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and approval will be valid until

Minutes

December 16, 2009

Page 3

November 20, 2010. The Commission was previously provided with a copy of the request.

e. Subdivision #2005 – 74 - - Delmarva Woodlands Alliance 4, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on December 14, 2006 and granted one-year time extensions on January 17, 2008 and January 14, 2009. **This is the third request for an extension and if an extension is granted, it should be the last granted.** If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and approval will be valid until December 14, 2010. The Commission was previously provided with a copy of the request.

f. Subdivision #2005 – 78 - - Delmarva Woodlands Alliance

This is a request for a one-year time extension. The Commission granted preliminary approval on December 14, 2006 a revised preliminary approval on November 14, 2007, and granted a one-year time extension on December 17, 2008. 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 approval will be valid until December 14, 2010. The Commission was previously provided with a copy of the request.

g. Subdivision #2005 – 91 - - Highland Development Corp.

This is a request for a one-year time extension. The Commission granted preliminary approval on February 20, 2007 and granted one-year time extensions on November 14, 2007 and October 16, 2008. **This is the third request for an extension and if an extension is granted, it should be the last granted.** If an extension is granted, preliminary approval will be valid until February 20, 2011. The Commission was previously provided with a copy of the request.

h. Subdivision #2007 – 7 - - Tuong Quan

This is a request for a one-year time extension. The Commission granted preliminary approval on September 25, 2008. This is the first 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 September 25, 2010. The Commission was previously provided with a copy of the request.

i. Subdivision #2007 – 12 - - Ronald Sharp

This is a request for a one-year time extension. The Commission granted preliminary approval on October 9, 2008. This is the first 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 October 9, 2010. The Commission was previously provided with a copy of the request.

j. Subdivision #2007 – 16 - - Daniel Jones

This is a request for a one-year time extension. The Commission granted preliminary approval on November 20, 2008. This is the first 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 November 20, 2010. The Commission was previously provided with a copy of the request.

k. Subdivision #2007 – 20 - - Golden Acres Limited Partnership

This is a request for a one-year time extension. The Commission granted preliminary approval on January 14, 2009. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until January 14, 2011. The Commission was previously provided with a copy of the request.

l. Subdivision #2007 – 27 - - Jestice Farms, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on January 14, 2009. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until January 14, 2011. The Commission was previously provided with a copy of the request.

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

OLD BUSINESS

Subdivision #2008 – 6 - - application of BAY TWENTY to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 34.18 acres into 76 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the southwest corner of the intersection of Route 20 and Road 390.

Mr. Abbott advised the Commission that this application was deferred on October 8, 2009 pending receipt of PLUS' response to the applicant's response to the PLUS comments; and that on November 9, 2009 the Commission was mailed a copy of the State's response to the applicant's response and a copy of a letter from the applicant's attorney to the State.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2008 –6 for Bay Twenty, 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 is on land zoned GR General Residential, which provides for medium density residential use. The proposed density is less than the density permitted by the existing GR zoning.
 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.
 5. The subdivision is consistent with the Sussex County Comprehensive Land Use Plan.
 6. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
 7. The Applicant has stated that the small area of wetlands crossing to access lots 36 through 43 is permitted under the U.S. Army Corps of Engineers' Nationwide Permit process.
 8. The project will be served by central sewer provided by Sussex County as part of the Johnson's Corner Sanitary Sewer District. It will be served by central water provided by Artesian Water Company.
 9. A variance is appropriate from the maximum allowed cul-de-sac length of 1,000 feet given the configuration of the property.
 10. This approval is subject to the following conditions:
 - A. There shall be no more than 76 lots within the subdivision.
 - B. The Applicant shall form a homeowners association responsible for the perpetual maintenance of streets, roads, 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, 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. The Applicant shall also coordinate with DART about locating a DART stop within the project or along County Road 382.
 - 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. An Agricultural Buffer shall be shown as required by Ordinance. 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. All silt fencing shall be located to the interior of all 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, with the exception of the roadway located South of Lots 35 and 45. This exempted roadway area shall have a sidewalk located on one side of the roadway. The portion of this roadway serving the street frontage of Lots 36 – 43 shall contain sidewalks on both sides.
- L. The subdivision shall be served by Sussex County Sewer, and it shall comply with all requirements of the Sussex County Engineering Department for connection into the system.
- M. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- N. 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.

OTHER BUSINESS

Stockley Materials, L.L.C.
CU #1770 Site Plan – Roads 317 & 318

Mr. Abbott advised the Commission that this is a site plan for a 53.32-acre expansion to an existing borrow pit; that this conditional use with 21 stipulations was approved on April 21, 2009; that the 21 conditions of approval are referenced on the site plan; that the site plan complies with the conditions of approval; that 3 phases are proposed; that Phase 1 contains 17.65-acres, Phase 2 17.98-acres and Phase 3 17.70-acres; 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 with a copy of the site plan and an Environmental Impact Study prepared by Duffield Associates, Inc.

Mr. Johnson questioned if all three phases are being reviewed at this time and whether an Environmental Impact Study has to be conducted for each phase.

Mr. Abbott advised the Commission that all three phases are being considered; that the Environmental Impact Study was performed for the entire site; and that every five years, the applicant has to provide documentation to the staff that the borrow pit operation is in compliance with all regulatory agencies and that the staff will report the findings to the Commission.

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

Sports at the Beach
CU #1421 Revised Site Plan – Route 9

Mr. Abbott advised the Commission that this is a revised site plan for 2 new baseball fields; that there are currently 16 ball fields on the site with accessory structures; that the 2 proposed fields are located within an airport approach zone; that the staff is questioning if an amended conditional use application is required; and that the Commission was previously provided with a copy of the revised site plan.

Mr. Abbott read and provided the Commission with a copy of a letter received from the Federal Aviation Administration in reference to the site plan.

Jim Hickin, Director of the Airport advised the Commission that the airport is under the direction of the Sussex County Engineering Department; that the Runway Protection Zone was established in 2007 and approved by the Federal Aviation Administration; that the RPZ has a definite shape and is a two dimensional area; that the RPZ protects people and objects on the ground and in air; that this area was formerly referred to as a clear zone; that the first choice is for the County to own the property in question; that the County has had negotiations with the developers in reference to this area; that the FAA recommends that the area be protected; that the RPZ area extends approximately $\frac{3}{4}$ mile; and that the area in question is a part of the master plan approved by the County in 2006/2007.

Pete Townsend of Sports at the Beach advised the Commission that he and his representatives have met with the County; that the Commission previously approved an arena and a maintenance building to be built in this area; that they have tried to avoid the RPZ; that the County made an offer to purchase the area in question; that at this time the County is not going to purchase the area; and that even in times of a bad economy, the ball fields are needed.

The Commission determined that it would be valuable to have Mr. Hickin at a future special meeting to address airport approach zones and other items that may be impacted by the airport's location.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action and to leave the record open to allow Mr. Robertson time to research the approved site plans and for a legal opinion and also for further consideration. Motion carried 5 – 0.

Truitt Properties Phases 1 and 2
Revised Landscape Plan – Route One

Minutes

December 16, 2009

Page 8

Mr. Abbott advised the Commission that this is a revised landscape plan for the 20-foot buffer along Route One; that on July 15, 2009 the Commission granted a reconsideration of the buffer requirements; that it was the consensus of the Commission that the revised buffer plan be prepared by a Landscape Architect and that the plan be in compliance with all of DelDOT's requirements and the power company's regulations paying particular attention to all safety features; that also all of the existing features in the buffer that are not in compliance with the zoning code be removed; that the revised buffer plan has been prepared by a landscape architect; that the plantings include autumn joy shrubs, Edward goucher abelia plants and Hamelin fountain grasses; that the plantings range in height from 18 inches to 30 inches; and that the Commission was previously provided with a copy of the revised buffer plan.

Mr. Johnson advised the Commission that he feels that the Commission has received what the Commission was originally supposed to receive and that the site plan appears to allow for safe vehicular and pedestrian movement within and around the site.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the revised landscape plan as submitted. Motion carried 5 – 0.

Atlantic Auction Co., Inc.

CU #1518 Amended Condition – Route 17 and Road 353

Mr. Abbott advised the Commission that this is a request to amend a condition of approval; that this conditional use for self-storage and a professional office located on 4.799 acres was approved on January 27, 2004 with 10 conditions; that condition of approval #4 reads, "No outside storage shall be allowed on the premises."; that the approved final site plan is for an office and 8 self-storage buildings; that the site plan was approved on October 14, 2004; that the owner is requesting that condition of approval #4 be deleted; that this request is due to the downturn in the economy at this time; that the developer is requesting that outside storage be permitted, until the economy improves and the future buildings are built; that the developer is willing to put a time restriction of 5 to 7 years on the request if the Commission deems it necessary; that when the Commission recommended approval of this application, condition of approval #4 stated, "No outside storage, except for boats and RV's, shall be allowed on the premises." The Council removed "except for boats and RV's". Usually when a condition originates with the Commission, the Commission may amend conditions; and that the staff is questioning since the Council changed the wording if the condition can be amended.

Mr. Robertson advised the Commission that since the wording of the recommended condition of approval was changed by the County Council, the Commission could not take any action on the request and that an amended conditional use application would be required.

No action was taken on the request.

Seagrass Plantation MR/RPC

Mr. Abbott advised the Commission that this is a request to amend a condition of approval; that one of the conditions of approval reads “Recreational facilities, e.g., swimming pool, tennis court, etc. shall be constructed and open to use by the residents within two years of the issuance of the first building permit.”; that the new owners of the development are requesting that this condition be amended to read “The tennis court shall be constructed and open to use by the residents within 2 years of the issuance of the first building permit under the new owner of the property.”; and that the Commission was previously provided with a copy of the developer’s letter explaining the request and what has occurred on the site.

Mr. Smith questioned if the staff has received any correspondence from the property owners in this development wanting the tennis courts built.

Mr. Lank advised the Commission that someone came in and reviewed the file.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action and to leave the record open for receipt of letters of no objection from property owners agreeing to the amended condition. Motion carried 5 – 0.

Endless View
2 Lots and 50’ Easement – Bay Reach Road (Road 272-B)

Mr. Abbott advised the Commission that this is a request to subdivide a 4.67-acre parcel into 2 lots having access from a 50-foot easement; that the owner proposes to create the 50-foot easement over an existing driveway; that Lot 1 will contain 1.62-acres and Lot 2 will contain 3.06-acres; that Lot 2 has an existing dwelling located on it; that DelDOT has issued a Letter of No Objection; 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 with a sketch drawing of the request.

Mr. Johnson questioned if this parcel is a part of a previously approved subdivision and if it would require property owner’s agreement.

Mr. Abbott advised the Commission that the parcel is not a part of another subdivision and that adjoining owners consent is not required.

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

Meeting adjourned at 3:55 p.m.