

**PLANNING AND ZONING COMMISSION**  
**MEETING MINUTES January 21, 2016**

1. Chairman Gary Meredith called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Commission Members Meredith, Wichmann, Smith, and Sharpe were in attendance. Town Solicitor Dennis Schrader, Town Administrative Official Charles McMullen and Town Clerk Donna Schwartz were also present. Planning and Zoning Member Damiano was not present. The meeting was held in the Ocean View Town Hall, 32 West Avenue.

2. **COMMISSION BUSINESS** – none

3. **APPROVAL OF AGENDA**

A motion was made by Mr. Smith, seconded by Mr. Wichmann, to approve the agenda. The motion carried unanimously 4/0.

4. **APPROVAL OF MINUTES**

A motion was made by Mr. Smith, seconded by Mr. Wichmann, to approve the October 15, 2015 minutes as presented. The motion carried unanimously 4/0.

5. **NEW BUSINESS**

A. **Application P-261: Beaver Dam Road (PIDN: 413.000 / Sussex CTM: 134-16.00-various)** Mr. Meredith read the application. He said Application P-261 is a final site plan for Phase II of a Mixed Use Planned Community submitted by Mr. Robert Thornton. Mr. McMullen read his overview to the Commission. He said at the conclusion of the preliminary land development review and approval on March 20, 2014 the following motion was made by the Commission: *“A motion was made by Mr. Smith, seconded by Mr. Liddle, that asked Mr. Thornton to return in four months with a full review of the assisted living facility and that the preliminary site plan be approved with the condition that all the issues pointed out by Mr. McMullen be adjusted, as well as the issue with lot #12, with the understanding that by time they come back we have a better understanding of the assisted living facility but based on the definition of a dwelling they may be limited in what they can have. The motion carried unanimously 5/0.”*

The applicant, who received Final Site Plan approval for Phase 1 of this project on May 21, 2015, has still not presented the full review of the assisted living facility as required by the Commission. In addition some of the issues pointed out have not been addressed satisfactorily. They are as follows:

**PRELIMINARY LAND DEVELOPMENT – SITE PLAN REQUIREMENTS OUTSTANDING:**  
§140-103. Preliminary Development Plan  
E. Plan Contents – The preliminary development plan shall include the following.

- (13) Proposed developments including:
- (l) Parks, playgrounds and other areas dedicated or reserved for public use, with any conditions governing use. *Proposed clubhouse and amenity delineated but no accompanying notes. Becker Morgan Group (BMG) indicates that this will be provided when that Phase of the project is presented to the Commission for approval.*

F. Supplemental Data – The preliminary plan shall be accompanied by the following data:

- (1) Preliminary improvement construction plan, containing the following information:
- (6) Title Search – Title search of the pertinent property that includes at least ownership of the property, easements, deed restrictions and other similar information. *BMG indicates that Mr. Thornton is to provide but it has not been received.*

H. Referrals to other Agencies – Each preliminary development plan shall be referred to the following agencies and departments:

- (1) Sussex Conservation District – *BMG indicates plans have been approved for Phase II. Copy required for Town.*
- (2) Water provider – Plans from Tidewater have not been provided. *A letter from the Office of Drinking Water (ODW) indicates that construction on water required to begin by 1/28/16 or approval is voided.*
- (3) Sewer provider – No plans from Sussex County have been provided. *A letter acknowledging willingness to expand EDU's to accommodate entire development has been provided. A pump station is required as part of the expansion approved by Sussex County Engineering however another engineering firm is doing that work. No approval of this work has been provided to the Town.*
- (9) Delaware Department of Natural Resources and Environmental Control – *A letter dated 08/31/11, valid through 08/31/14, prepared by Melanie Tymes an Environmental Scientist with DNREC's Wetlands and Subaqueous Lands Section, is inclusive in a report referenced in section F (2) above. The letter and accompanying documentation denotes jurisdictional and non-jurisdictional area within the parcel. There is a proposed ditch that will alter an existing non jurisdictional drainage way. The jurisdictional waterway is in the southernmost area of the parcel where there is no work denoted.*
- (10) Army Corps of Engineers – *A letter from the USACOE that denotes approved jurisdictional determination for the site is inclusive with the report noted in section F (2). The letter is valid through 08/30/16 and notes that if work is to be done in a jurisdictional area noted in H (9) above then approval from the Corps would be required. I do not note correspondence from Natural Resources Conservation Services as suggested by the Corps.*

## **ADDITIONAL CODE REQUIREMENTS AND INFORMATION PERTAINING TO APPLICATION P-261 PRELIMINARY REVIEW**

1. §140-49-B defines Tract Standards and sets certain requirements for all Planned Communities.

- The maximum number of dwelling units per Gross Tract Area in an MXPC is 4 per acre. The documents provided define the acreage as being 115.6 or 114.84 which would allow for 462 or 459 dwelling units respectively, depending upon which figure it is. Currently the applicant is showing the following number of dwelling units:
  - ✓ Mixed Use Area – 137
  - ✓ Multi-Family Area – 192
  - ✓ Single-Family Area – 112

This accounts for a total of 441 dwelling units and the number of dwelling units for the assisted living facility has yet to be determined. This is a number that must be known so that the Commission has an accurate count of the proposed dwelling units. *Not completed but should not affect Phase II review. BMG indicates that the number of dwelling units will be determined when plans for the Mixed Use Area, Multi-Family Area and Assisted Living Area are submitted for review. I have some trepidation about this statement and would like to know how the Town receives assurance that the project is completed if the developer does not feel that the final number of units approved is profitable.*

- That a minimum of 40% of the Gross Tract area be set aside for Common Open Space.
  - ✓ Please define the total acreage dedicated to common open space on the plan – *Not addressed.*
- The permissible commercial uses cannot exceed 50% of this net tract area or 34.68 +/- acres. *BMG indicates that this will be addressed upon submission of plans for this area however I reiterate my previous concern.*
- Please make the following adjustments on the corresponding pages:
  - ✓ §140-73-B (1) (c) requires screening and it appears that the Multi-Family area adjacent to lots 85 and 86 may require additional screening as defined by the code as might lot 23 adjacent to the Assisted Living area. *BMG indicates that this will be address upon submission of plans for this area.*
  - ✓ There are no indications of signage or dumpsters. *BMG indicates that this will be addressed upon submission of plans for this area.*
  - ✓ The 25-foot wetland buffer is located in the required yards on lots 38 through 43 and 59 and 61 with the possible intrusion into the building envelope on lot 43. Deed restrictions should include the code restrictions within this area. *Has been noted by the engineer.*
- 2. Please define the number of dwelling units to be included in each residential building in the multi-family and mixed use areas. *BMG indicates that this will be addressed upon submission of plans for this areas.*
- 3. Please affix dimensions for proposed structures on all but single family lots. *BMG indicates that this will be addressed upon submission of plans for this area.*
- 4. Questions regarding site data information for item #10 as it pertains to the Multi-family and Mixed-use area and the delineation of the buildings in these areas on the plat. *BMG indicates that this will be addressed upon submission of plans for this area.*

#### §140-104 Final Development Plan

- A. Definition – a detailed map showing the layout of a site, parcel, tract, land, property or residential planned community submitted for final approval and that incorporates the conditions on which approval of the Preliminary Development Plan was based.
- B. Required information – **listing missing information only**
  - (2)(c) Developer's name, address, phone number and fax number – *not done*
  - (2)(e) Drawing index – *not done*
  - (2)(h) Phasing map if drawings are for one phase of the development – *Done on page C-500 however it only applies to single family lots. The other lots require phasing too.*
  - (2)(i) Design engineer's seal and signature – *not done*

- (2)(j) General legend – *not done*
- (4)(f) Property line, lot lines, lot numbers and rights of ways and easements with bearing and distances, and location of all monuments and references – *not done*
- (4)(h) Beginning and end of proposed construction, including phase limits and offsite improvements where applicable – *not done*
- (4)(l) Existing and proposed contours (minimum on one-half-foot vertical intervals) with major vegetation noted. Provide this information within a minimum of 200feet beyond the property line or proposed improvements. Spot elevations shall be provided at building corners, driveways and other locations sufficient to verify proper slopes for surface drainage and minimum cover above pipes is achieved. – *not done*
- (4)(n) Width of street paving, curb lines and sidewalks – done. Variance applied and approved. Variance should be noted on plan.
- (4)(p) Recreation, open space, common use areas and parking – *not done but may not be applicable to Phase II review.*

Mr. Schrader asked if a phasing plan and a construction schedule could be given to Mr. McMullen. Mr. Garth Jones was present representing Mr. Thornton and assured Mr. Schrader this could be done. Mr. Smith asked Mr. Jones what was happening with the 18 homes approved as Phase I. Mr. Jones stated that site work only was being done there. Mr. Meredith asked for public comments.

Mr. Alan Lewis, Newark, DE, stated that he owns a tax parcel in one of the phases and Mr. Thornton told him he could switch parcels with one in Phase II. He stated that there are 11 lots that are owned in what was the previous development of Starlight Woods. Mr. Schrader explained there was nothing the Planning and Zoning Commission could do in helping him to secure his property swap, and suggested he contact an attorney to protect his interests.

Carolyn Willis, Plantation Park, said she was concerned about the storm water plan. She said there is a ditch between the properties and asked Mr. Jones about the problem. Mr. Jones said that the ditch between the properties needs to be cleaned out and Mr. Thornton was unable to secure the easements to do it. They have been told by the Conservation District they cannot add any more water to that ditch. The water in the development will run into storm drains and empty into a retaining pond on the other side of the development.

A motion was made by Mr. Wichmann, seconded by Mr. Smith, to approve Phase II as a final site plan when and if the following items are completed and approved by Mr. McMullen:

- §140-103-H(2) updated letter from Tidewater which includes the easement they need;
- §140-49-B updated phasing plan & define total acreage dedicated to open space;
- §140-104(2)(c), (h), (i), (j);
- §140-104(4)(f), (h), (n);
- Communication with residents of Silverwoods (non-annexed section)

- A bond or letter of credit approved by the Town Solicitor before any work can begin in Phase II of the project.

The motion carried unanimously 4/0.

**B. Application P-279 – 24, 26, & 28 Atlantic Avenue (PIDN: 298.000 & 299.000 / Sussex CTM#: 134-13.00-37.00, 38.00, & 39.00)** Mr. Meredith read the application. He said Application P -279 was a preliminary land development site plan submitted by the Evergreene Companies on behalf of the property owners OK Land Lid and Gerald and Mary Hurley, to construct fifteen townhomes on property zoned GB-1 located at 24, 26, and 28 Atlantic Avenue.

Mr. McMullen read his overview. He said the Commission is being asked to review and approve a Preliminary Land Development Site Plan, (*“preliminary development plan” is a detailed map showing the proposed layout of a site, parcel, tract, land, property, or residential planned community*), which can also be approved as a Final Site Plan, (*“final site plan” is a detailed map showing the layout of a site, parcel, tract, land, property, or residential planned community submitted for final approval and that incorporates the conditions on which approval of the preliminary development plan was based.*) if the Commission chooses to do so. The proposed land development would take place on parcels zoned GB-1 located at 24, 26 and 28 Atlantic Avenue. The three parcels are to be combined into a single parcel for the purpose of constructing 15 townhomes with an amenity in a community to be called Tidewaters. Because the parcels are zoned GB-1 a Special Exception was required to be approved by the Board of Adjustment as noted in §140-24 of the Land Use and Development Chapter of the Town Code. This approval took place on 06/19/14, under application V-285.

Issues with storm water management and conveyance that caused some delays have been rectified and the site plan has been reviewed by the Town Engineer whose report is to be provided. I have reviewed the site plan and the applicant has met all of the requirements outlined in Article XVI, §140-103 of the LUDC for preliminary approval with a few minor exceptions as follows:

Plan Contents:

13. Proposed development, including:
  - b. Suggested street names (in conformance with the provision of §185 and coordinated with Sussex County 911 Addressing and Mapping Dept. – requires approval letter from Sussex County Mapping and submission to Town Council for approval if the Commission approves the site plan.
15. Certification of Ownership
19. Source of Title
22. Calculation of Required Parking (2 off street parking spaces in addition to the garage have been shown and calculations simply need to be placed in the site data on page CS1001 sheet 4 of 14.)

Supplemental Data:

7. Title Search – Title search of the pertinent property that includes at least ownership of the property, easements, deed restrictions and other similar information (previously noted)

Referrals to Other Agencies:

5. Sussex County 911 Addressing (previously noted)
6. State Fire Marshal's Office – needed to determine if the driveway is sufficient for emergency responder vehicles.)
7. Electricity provider (noted on cover sheet without provider)

The land development plan depicts fifteen townhomes in four groupings the façade of the structures in each group is staggered as required in §140-29 (figure 1) and the configuration meets the requirements of §140-44 of the LUDC.

Additional comments:

- Item #8 under notes on the cover sheet should indicate drives or driveways as streets are not permitted to be privately owned per the Town code.
- The Town engineer and Sussex County signature boxes are not needed on the cover sheet or record plan.
- A landscaping plan, as required by code, has been provided on page CS2001, sheet 8 of 14.
- Landscaping has been provided around the dumpster which is enclosed completely as required §140-73-C. The enclosure is to be as determined by the Planning and Zoning Commission during development plan review. It is shown on Sheet CS6001 as being constructed of solid cinderblock walls with a chain link fence for access.

Mr. Schrader made note of the fact that the street is considered a driveway, or drive, and will not ever be considered for ownership by the Town Council. Mr. Smith asked if it will be plowed by the Town. Mr. McMullen replied, "No plowing by the Town." Mr. McMullen also noted that Mr. Schrader has certification of ownership papers in hand. Mr. Carlton Savage and Josh Mastrangelo of Pennoni Associates were present to answer the Commission's questions.

Mr. Savage commented that the "private drives" condition would be written into the ownership documents when the units were sold. Mr. Smith asked about any additional parking at the pool and was told that the project was too small for additional parking and the furthest unit was about 150' and the walk was short. Mr. Smith also commented on the chain link fence and stated he would prefer a vinyl fence, which Mr. Savage and Mr. Mastrangelo agreed to.

Mr. Pete Fedorkowicz, Savannah's Landing, stated he was very happy with the storm water management plan and said they (Savannah's Landing) would be addressing shared costs with the developer in the future. In all, he said he is very pleased with the outcome of their meeting.

Mr. Schrader suggested to the Commission that they could, if they chose to, approve this application as a final site plan with the following conditions:

- Plan concept item #22 – calculation;
- Provide electric provider;
- That the drives/driveways will not be dedicated to the Town;
- Chain link fence at dumpster will be changed to vinyl.

A motion was made by Mr. Wichmann, seconded by Mr. Smith, to approve Application P-279 as a final site plan with the above listed conditions noted by Mr. Schrader. The motion carried unanimously 4/0.

**6. OLD BUSINESS - none**

**7. ADJOURNMENT**

A motion was made by Mr. Smith, seconded by Mrs. Sharpe, to adjourn the meeting at 8:15pm. The motion carried unanimously 4/0.

Respectfully submitted,  
Donna M. Schwartz