

REGIONAL PLANNING COMMISSION  
BUSINESS MEETING  
MINUTES  
November 8, 2018

The Business Meeting of the Regional Planning Commission was held Thursday, November 8, 2018 in the Levy Court Chambers, Room 203, of the Kent County Administrative Complex, 555 Bay Road, Dover, Delaware 19901.

CALL TO ORDER FOR BUSINESS MEETING

The Business Meeting was called to order at 6:30 p.m.

THE PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL AND DETERMINATION OF QUORUM

The following members were present:

William Spanarelli  
Albert Holmes, Chairman  
William Jester, Vice-Chairman  
David Peterman  
Paul Davis  
Denise Kaercher

Members absent:

Gene Thornton

Also present were:

Sarah Keifer, Director of Planning  
Craig Eliassen, Attorney

ADDITIONS TO, DELETIONS FROM, AND APPROVAL OF AGENDA

On a motion made by Ms. Kaercher and seconded by Mr. Jester the Regional Planning Commission voted to APPROVE the agenda of the November 8, 2018 Business Meeting.

APPROVAL OF MINUTES

On a motion made by Mr. Spanarelli and seconded by Mr. Peterman, the Regional Planning Commission voted to APPROVE the minutes of October 11, 2018 Business Meeting.

LEVY COURT ACTION ON COMMISSION RECOMMENDATIONS:

| <u>Application</u>                             | <u>RPC Rec.</u> | <u>L.C. Action</u> |
|--|-----------------|--------------------|
| CS-18-07 Meyer & Meyer, Inc.                   | Approval        | Approved           |
| CS-18-09 Frederica Park & Ride/Sports Med Fac. | Approval        | Approved           |
| CZ-18-06 / LC18-12 Crothers, Bryan             | Approval        | Approved           |

## **Old Business**

None

## **New Business**

**C-18-07 Price, Raymond E. Jr.:** Request Conditional Use approval of a Home-based Contractor located outside the Growth Zone Overlay District.

On a motion made by Mr. Peterman and seconded by Ms. Kaercher, the Regional Planning Commission recommended **conditional approval** of application C-18-07 for a home-based contractor establishment located outside the Growth Zone Overlay District. This is based on Exhibit A - Staff Recommendation Report dated November 1, 2018, Exhibit B - Public Hearing Testimony dated November 1, 2018, and the findings of fact that:

- a. The subject site is zoned AR (Agricultural Residential) in which a home-based contractor establishment is permitted per §§205-63 and 205-397.7 of the Kent County Code.
- b. The application complies with the Comprehensive Plan.

Pursuant to Chapters 187 and 205 of the Kent County Code and pursuant to 9 Del. C. §§4802 and 4811, the Commission has reviewed the application and the November 1, 2018 Staff Recommendation Report, and, furthermore as part of this approval, the applicant shall maintain compliance with all requirements of Chapter 205, Zoning including but not limited to:

- a. The subject property shall be the primary residence of the owner of the home based contractor business and shall remain the primary residence of the owner of the business for the entire length of time that the business exists on the subject property.
- b. Approval of a home based contractor establishment shall be location specific and shall not be transferable to another location.
- c. Approval of a home-based contractor establishment shall be applicant/owner-specific and shall not be transferred or conveyed to another person without reapproval.
- d. Except for vehicles already permitted by the parking regulations of Chapter 205, Zoning, all other vehicles and construction equipment shall be stored within a building.
- e. Retail sale of goods and products shall be prohibited on the premises.
- f. The hours of operation shall be limited to 7:00 a.m. and 10:00 p.m.

Mr. Peterman: I vote yes to approve based on the recommendations.

Ms. Kaercher: Yes per the motion.

Mr. Spanarelli: Yes per the motion.

Mr. Davis: Yes per motion.

Mr. Jester: Yes for all reasons given.

Mr. Holmes: Yes per the motion.

The Commission voted unanimously in favor of recommending **conditional approval** of application C-18-07.

**CZ-18-07 / LC18-13 RO-Z Camden:** Request to amend the Zoning Map / Comprehensive Plan from RS1 (Single Family Residential) / Medium Density Residential to BG (General Business) / Highway Commercial located inside the Growth Zone Overlay District.

On a motion made by Ms. Kaercher and seconded by Mr. Peterman, the Regional Planning Commission recommend approval of Ordinance LC18-13, to amend the Zoning Map / Comprehensive Plan from RS1 (Single Family Residential) / Medium Density Residential to BG (General Business) / Highway Commercial located inside the Growth Zone Overlay District. This is based on Exhibit A - the Staff Recommendation Report dated November 1, 2018, Exhibit B - public testimony dated November 1, 2018 attached hereto and the findings of fact that:

- a. The proposed zoning and land use designations are consistent with the surrounding area.
- b. The proposed BG zoning district does partially conform to the 2018 Comprehensive plan and is located within the Growth Zone Overlay District.
- c. Adequate infrastructure exists or is planned to serve the site.

Mr. Peterman: Yes to approve.

Ms. Kaercher: Yes per my motion.

Mr. Spanarelli: Yes per the motion.

Mr. Davis: Yes for all reasons given.

Mr. Jester: Yes for the motion.

Mr. Holmes: Yes for all reasons given.

The Commission voted unanimously in favor of recommending **approval** ordinance LC-18-13.

**CZ-18-08 / LC18-14 Eastern Woodland Holdings, LLC:** Request to amend the Zoning Map / Comprehensive Plan from AC (Agricultural Conservation) / Low Density Residential to IG (General Industrial) / Industrial located outside the Growth Zone Overlay District.

Mr. Jester: Thanks Staff for getting the list of the violations, it looks on here Sarah the last one here where it has a history of 5-7-18 it says still pending so that violation is still open?

Ms. Keifer: It actually isn't we pulled that list before the violation was cleared, we actually pulled that list several weeks ago for a different purpose so no that violation has been cleared.

Mr. Jester: So basically there is no violations on the other parcel right now?

Ms. Keifer: There are no current violations.

Mr. Peterman: I got a lot of phone calls about this, and I wouldn't discuss it. I told them you come and make your voice heard here, but they discussed it for about two minutes, I haven't talked to anybody. I went out there and looked the site over, and talked to people, nobody was happy with this, and they want the property to stay zoned the way it is because once they do zone it that way the agriculture conservation/residential is all done. They are not happy with that at all, they're not happy with the way that the land next to it has been managed, and they don't think that he would be a good landlord for this land. I think it's in the respect of the residents out there that it should stay zoned the way it is.

Mr. Davis: I'm prepared to make a motion and I've tried to study this issue as much as I can, and look at all the issues that's been discussed, testimony, and it has a history, and it's not a good history, and I do support businesses, but there is just a lot of concerns that I have here personally about this site. I listened to the testimony of the adjoining neighbors and I share their feelings. I certainly understand that and appreciate that. Having said that; I'm not really familiar with this new plan, this master plan that they are talking about, but I understand some of it, but there are still things that need to be worked out. I've read the Staff Report, and I happen to agree with Staff on this issue right here so I'm prepared to make this motion.

On a motion made by Mr. Davis and seconded by Mr. Spanarelli, the Regional Planning Commission recommend **denial** of Ordinance LC18-14, to amend the Zoning Map / Comprehensive Plan from AC (Agricultural Conservation) / Low Density Residential to IG (General Industrial) / Industrial located outside the Growth Zone Overlay District. This is based on Exhibit A - the Staff Recommendation Report dated November 1, 2018, Exhibit B - public testimony dated November 1, 2018 attached hereto and the findings of fact that:

- a. The site is identified as an Employment Center on the Future Land Use Strategies Map in the 2018 Comprehensive Plan.
- b. The site will be included in a forthcoming master plan for the area expected to emphasize aviation related uses in keeping with the Joint Use Agreement with the Department of Defense.
- c. Zoning reclassifications should be delayed until completion of the master plan.

Mr. Peterman: I vote yes to deny.

Ms. Kaercher: I vote yes also, it's a shame that we didn't have any dates when all this discussion with the City, and all that, that we didn't have any background as far as what the in decision time would be, but as a result of that I vote to deny.

Mr. Spanarelli: Yes per the denial motion.

Mr. Davis: Yes per the motion.

Mr. Jester: Yes per all the reasons given in the motion.

Mr. Holmes: Yes for all reasons given.

The Commission voted unanimously in favor of recommending **denial** of ordinance LC-18-14.

**SLV-18-17 Evans, Mark & Colleen:** Request for waiver of §187-78(B) Water Bodies, Streams & Other Watercourses; Riparian Buffers located outside the Growth Zone Overlay District.

Ms. Kaercher: Sarah is there some way to explain it better to me? I understand what you were saying, I guess I can't picture it looking at that sheet as to how there's other ways to locate things.

Ms. Keifer: The site would have to be reconfigured; the proposed construction would have to be reconfigured that's all.

Ms. Kaercher: And it's very feasible?

Ms. Keifer: In our opinion it is which is why I granted a number of waivers for this property. This one I did not because there appeared to be spaced to meet the requirement.

**In Favor**

Colleen Evans

Ms. Evans: My husband Mark and I live in Smyrna; we purchased this property on Alley Corner Road in 2013 with the intention of building our dream home our forever home. We are finally ready to embark on that adventure and look forward to providing a home for our three children that has enough space to entertain our extended family, enjoy the woods and outdoor activities that this piece of land offers. We originally applied for waivers for the driveway location, and a waiver to reduce the setback on the blue-line stream that runs on the left side of the property to 50 foot. That request was approved with stipulations; I included the email from Mr. Connelly in your packets there. Of these stipulations the one that we wanted to address tonight was the non-blue-line stream setback that was laid out. There's an overall drawing of the property in your packet, I don't know if you were emailed an updated copy, but I have some updated stamped versions with the driveway relocated as per the recommendations from the Planning office so I have some of those here tonight if anyone needs

to see that in a larger version. There's also a blown-up, like zoomed in area there that's in your packet that shows the house and the pole building. There's four corners marked there; 38' 3" off of the manmade swale, 39' 5" off the manmade swale, 42' 9" there on the back of the pole building, and then 26' 2". There's also the GIS map in your packet, and some photos of the swale as well. Can see from the pictures that this is not a formally dug ditch on our property it is merely a depression in the land. In closing I'd like to add that we worked really closely with our surveyor for this project in trying to meet the requirements that were put forth by the Planning office. We tried flipping the structures, we've tried moving them closer together, but we couldn't come up with something that made sense from an aesthetics standpoint, but also from a budget standpoint so I hope that in reviewing this packet you will consider that we do have nearly 40 foot of clearance from this manmade swale on three of the points in question. Does anybody have any questions for me?

Mr. Jester: So this is about the house placement and the proposed pole building or just the proposed pole building?

Ms. Evans: Well, according to the stipulations laid out by the office they were wanting us to have 50 foot off of the manmade swale versus the 25 foot that is drawn on the drawings, but we actually have even more than that on three of the four points, almost 40 feet on the majority of those points.

Mr. Jester: Typically with this much going on I'd love to see the site or known about it. I don't know what the Commission feels, but basically the site is bare now there's no structures right? (Correct) So what we are doing is looking at placing both structures on there according to a blue-line stream with reducing the setback from 100 to 50.6, and then doing something with the back which is 38. I see that is from the Miller Lewis drawing. (Yes, correct) And your wetlands were delineated by Mr. Mark Evans?

Ms. Evans: No, that's my husband; the delineation was done by this survey group and also Bruce Bagley.

Mr. Jester: Okay, because you do have to have a soil scientist delineate the wetlands. (Yes)

Ms. Kaercher: Sarah who is delineating the fact that this is a manmade swale that we're dealing with?

Ms. Keifer: It's a non-blue-line stream, terminology is irrelevant, it's a non-blue-line stream and it requires a 50 foot setback.

Mr. Peterman: This is the blue-line stream?

Ms. Evans: No sir, that is the manmade swale that is at the rear of the property that we're requesting that the setback be put from 50 foot which was set out by the Planning office to 25, we're asking it to be reduced. It's a non-blue-line stream; it's not a natural waterway or anything like that.

Mr. Jester: Are you on a rushed schedule or are you on a schedule where we could postpone this for 30 days so we would have a chance to go to the site

because I would really like to be able to look at the site. What kind of a schedule are you on?

Ms. Evans: I am at your mercy so if you want 30 days to take a look at it that's fine.

On a motion made by Mr. Jester and seconded by Ms. Kaercher, the Regional Planning Commission voted to **table** application SLV-18-17 for 30 days to give the Commission time to review the site.

Mr. Peterman: Yes.

Ms. Kaercher: Yes.

Mr. Spanarelli: Yes.

Mr. Davis: Yes, I just think it's fair to the applicant, I actually haven't been out there so I want to be able to treat them correctly, and the only way to do that is to go out there, maybe have them meet us to show us where the house would be, thank you.

Mr. Jester: Yes per my motion, and I hope it helps in your final product.

Mr. Holmes: Yes for all reasons given, I plan to look at it in the next couple of weeks before we meet next month, and thank you.

The Commission voted unanimously in favor of tabling application SL-18-17 for a period of 30 days.

**SL-10-06 (REV) Loganberry Village:** Request revisions to plan located inside the Growth Zone Overlay District.

**In Favor**

Tim Metzner  
Davis Bowen & Fridel  
1 Park Avenue  
Milford, DE

Mr. Metzner: We're here on behalf of the owners requesting a revision to one of the conditions of approval. The original Loganberry PUD and subdivision plan specifically during the preliminary conditions the Staff and Commissioners made the condition of that basements were prohibited for this development. We are here to request that we revised that note to the one that's in the packet, and the reason for that is what we intend to do is to analyze each building permit on a case by case basis. What we are proposing is that a geotechnical engineer would do a soil analysis to distinguish the determined ground water elevation, and at that case from the bottom basement floor elevation there'd be a minimum of 12 inches separation between the determined ground water elevation from the geotechnical engineer to the bottom elevation of the basement. If it doesn't meet that then the basement wouldn't be permitted or if they don't prepare that exhibit to provide to the County it wouldn't be processed.

Ms. Kaercher: Originally my question was going to be what has suddenly changed with the nature of this ground water since the last time this has been in front of us, but my question now is; you're going to have to have all of that done before you even start selling lots so people can pick out which lots because which ones can have basements and which ones can't. Am I correct about that, will all that be predetermined?

Mr. Metzner: If it was not predetermined the potential buyer, the contract purchaser would have to understand that there is a stipulation with this, and that there is potential for a basement not to be granted otherwise it would have to be done prior to, they wouldn't be able to sell that lot as a basement home without having any documentation from the geotechnical engineer.

Ms. Kaercher: So you couldn't get a contract on a lot until that was done so the people can back out ahead of time.

Mr. Metzner: That would be between the builder and the contract purchaser, or the potential buyer.

Ms. Kaercher: I know what I was like when I bought my first house and I was 26 or whatever. The naiveté and the lack of knowledge what to ask what could happen, that disturbs me to hear what you just said.

Mr. Metzner: The building permit wouldn't be issued without that report prepared so the buyer wouldn't go for the building permit until that geotechnical determination was provided.

Ms. Kaercher: I'm still not at all comfortable with that.

Mr. Davis: Sir I'm sorry, but I went back and read that public hearing testimony 2010, and I just, personally, I think you are getting things all turned around, doing this project piece by piece, and I don't think that is the way to do business. 2010 I was here on this Planning Commission when that was discussed. There's just a lot of issues down there, a lot of water issues, and it talks about you have to have a soil scientist, this, that, and the other. I don't see where you've made much movement since 2010 now you want us to approve something that you yourself you don't know whether you are going to be able to sell that parcel or not. Now to me that's not good business. If you make a big investment like that, are you still building the 157 homes?

Mr. Metzner: Yes, so the homes aren't, it was just the option of providing a basement otherwise it would a crawlspace or a slab.

Mr. Davis: I understand that, but you're not going to sell the home, well maybe you will sell the home if you don't have the basement maybe that's what you plan on doing?

Mr. Metzner: That's correct they still know that a crawlspace with the stipulation based on the original condition of approval with the sump pump and the vapor barrier so all that's still required so the purchaser would know that there's crawlspace or slab that's going to be in this development. The times have obviously gone by; it's been a few years since it was originally approved. One of the things now that the builder is seeing is basements are a very good commodity, a very good selling point so this development, when it was originally approved, it was approved without a basement option so we're just simply asking, we will take further, we would get a soil geotechnical engineer to analyze the ground water depths, and if it meets that criteria then that specific lot would be permitted to have a basement otherwise if it doesn't it would go back to the original approval of the crawlspace or slab



on grade.

Mr. Davis: Well personally speaking I have a problem with crawlspaces. I think the 2010 statements were that you would put sump pumps under somebody's crawlspace, and a big ole guy like me is not going under there looking around for that sump pump, and if it's under the house it's going to be issues with it, and if you have the electricity go out then you got another problem. I just have a lot of issues about that water down there. I read that report twice, and that was a big discussion about the secondary, not the ground water, but the next level of water and how high it was. There was a lot of discussion on the engineer, and the Commission, and this, and that, and the other, but even a crawlspace, and you sell it to somebody, and they got a sump pump and the electric goes out guess what. And then the other issue that you are dealing with, you're dealing with the issue of getting mold down there then comes health issues so I just think there are a lot of issues here that we need to legitimately look at for the customer that may be buying those houses. I really have major concerns about those things. Is that going to be a senior center project, over 55?

Mr. Metzner: At this time no, there's no age restriction for this development.

Mr. Jester: I pulled up our Pride site, and County does a great job with their mapping, and this place is surrounded by wetlands, and it's also pierced right through the middle with a blue-line stream so that just dictates to me that the water table down there is exceptionally high, and I think it was already said in our previous statements back when we hashed this out before, and I certainly don't see supporting this.

Mr. Peterman: I'm concerned about first time homebuyers too. They get their self in a mess and they can't afford to get out of it. Is there going to be any warnings to first time homebuyers? And I'm also concerned about what Mr. Davis is talking about, and Mr. Jester, and the other Commissioners; that's a high water level, low land, and how high is the house going to be above the ground so where is the crawlspace going to be? Is the crawlspace going to be from ground level up? And if there's a big person that purchased that property the entrance to the crawlspace isn't big enough for a big person you'd have to get a dragline to pull Mr. Davis through there. I don't think this is a good idea. I can't see this very seriously with the people that is unaware of what low land is in Delaware because I own property that has low land on it, and it fills up, it can get six inches above the ground quick, and that's ground level. Do you have any reservations or anything that's going to help those kinds of people with the kind of problems the other Commissioners are talking about?

Mr. Metzner: The ultimate fallback would be that we're analyzing each lot from a geotechnical engineer analysis so they are going to analyze each lot, understand the soils, understand the perks, understand the ground water levels because ground level fluctuates as the topo goes around so it's not where those wetlands are, it's not the same elevation where the lots are. Ground water does fluctuate.

Mr. Peterman: Do they have County sewage here?

Mr. Metzner: It will yes, central water and sewer.

Mr. Spanarelli: I'm going to make a motion because what concerns me the most is buyer beware on a (inaudible). People think of a wonderful basement then they end up flooded, and everybody gets very upset, and you have a problem on your hands.

On a motion made by Mr. Spanarelli and seconded by Mr. Jester, the Regional Planning Commission **deny** the requested condition revision and maintain the original condition in Note 28 prohibiting the construction of basements. This is based on the memorandum from staff dated November 1, 2018 and the finding that the proximity of delineated wetlands, as well as drainage concerns for the area and indications of poorly drained soils and a high water table indicate the homes within this subdivision should be prohibited from utilizing basement foundations as previously determined by the Regional Planning Commission.

Mr. Peterman: I vote yes to deny.

Ms. Kaercher: Yes.

Mr. Spanarelli: Yes per my motion.

Mr. Davis: Yes per motion.

Mr. Jester: Yes for all reasons given.

Mr. Holmes: Yes per the motion.

The Commission voted unanimously in favor of **denying** the request to revise the conditions of approval for SL-10-06.

### **Public Comments**

None

### **Commission Comments**

Ms. Kaercher pointed out that she was in attendance for last month's meeting even though the minutes did not show her attending. The correction was made.

### **ADJOURNMENT**

On a motion made by Mr. Jester and seconded by Ms. Kaercher the Regional Planning Commission voted unanimously to ADJOURN the Business Meeting of November 8, 2018 at 7:10 p.m.

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Albert Holmes, Jr.  
Chairman

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Sarah E. Keifer, AICP  
Director, Kent County Planning Services

Respectfully submitted by:

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Nancy L. Thompson – Senior Secretary  
Kent County Department of Planning Services