

CENTER FOR THE INLAND BAYS

Citizens' Advisory Committee Meeting Minutes

Center for the Inland Bays Indian River Inlet Facility
Rehoboth Beach, DE
September 11, 2007

IN ATTENDANCE:

CAC Members Present	Arleen Wilkes
Ron Wuslich, Chair	April Willey
Carol Bason, Vice-Chair	Members of the General Public
June Connor	Valerie Cloutier
Bob Cubbison	Sally Callanen
Muns Farestad	Steve Callanen
Bob Gallagher	Lucinda Dera
Martha Keller	Dan Divilio
Barbara Lifflander	Brian Hall, Office of State Planning
Vicky Mertes	Lyle Jones, DNREC
Graham Purchase	Carl Mantegna
Barbara Sorgeler	Barbara Murray
Peter Tiberi	Teri Munz
Glen Urquhart	Dan Payne
CAC Alternates Present	Todd Smallwood
None	Dave Straub
CAC Members Not In Attendance	Center for the Inland Bays Staff
Joe DeMul	Ed Lewandowski
Jim Elliott	Chris Bason
Jeff Gordon	Eric Buehl
Bob Horst	EJ Chalabala
Helen Truitt	Josh Thompson

MINUTES:

Welcome and Introductions

Citizens' Advisory Committee (CAC) Chairman Ron Wuslich called the meeting to order at 4:00 p.m. and welcomed those in attendance. This was followed the Pledge of Allegiance.

Approval of Meeting Minutes

Graham Purchase motioned and Bob Cubbison seconded that the June 12, 2007 meeting minutes be approved as submitted. Motion passed unanimously.

Results of “brainstorming” sessions

Ron Wuslich gave an overview of the two meetings held with members of the CAC to discuss their ideas and concerns. He reviewed the CAC’s responsibilities and summarized the membership’s feelings that in everything that the CAC does, it should be relevant, transparent, creative, pro-active, as a team (teamwork), and credible.

Update on Center for the Inland Bays’ Activities

Ed Lewandowski, Center Executive Director, was unable to give his presentation due to a power outage that occurred at approximately 4:15 p.m.

Nutrient Load Assessment Protocol Presentation

Due to the power outage, Lyle Jones, DNREC Division of Water Resources, distributed paper copies of his presentation on the Nutrient Load Assessment Protocol. He discussed the history of the Protocol’s development. It is based on an Excel spreadsheet program and utilizes such information as site acreage, current land use, the number of lots or units, proposed land use (residential or commercial), how wastewater is treated, the amount of open space and how it is managed, if buffers are used, and so on. The Protocol allows site designers and planners to compare pre-developed loading rates against post-development rates and propose different best management practices to reduce or control nutrient discharges.

Sussex County 2007 Comprehensive Land Use Plan Update

Carol Bason, CAC Vice-Chair and CCMP Review Subcommittee Chair, distributed copies of her presentation that outlined the review process undertaken by the Subcommittee to date along with the timeline of the County’s Land Use Plan update process. She noted that a request for an extension from the County to the Office of State Planning and Coordination is pending and would give the County until January of 2008 to complete all elements of the plan. Carol reviewed the presentation and a document based on the June 15, 2007 revised recommendations to the Center’s Board of Directors.

Carol was followed by Valerie Cloutier who discussed some of the unfinished ordinances from the previous land use plan and the need to remove suggestive language such as should, could, and may from the proposed plan. She also stated that the requirements in the plan need to be enforceable.

Valerie was followed by Martha Keller who read from the “Statements of Concern” of the Subcommittee’s *Review, Comment & Recommendations* document (see attached document).

Martha was then followed by Carol who read from the “Now Therefore” section of the document (attached). Upon completion of the reading, Ron stated that it is the Subcommittee’s intention to have CAC vote on this and forward it as a resolution to the Board of Directors for their consideration at their next Board meeting on September 21, 2007. If approved by the Board, the recommendations would then be sent on to the County for consideration as the Comprehensive Land Use Plan update process continues.

Following this was a discussion with questions regarding the presentation and readings. Comments and questions focused on the “loose wording” used in the current land use plan such

as “may” and “should.” There was also discussion about the Center’s role in reviewing the required environmental assessments and the use of State Resource Area maps. It was also questioned as to what types of incentives could be offered to draw people away from areas that are heavily congested.

Upon completion of the discussion, Ron Wuslich distributed paper ballots to the 13 CAC members present to vote yes or no on the Subcommittee’s Land Use Plan recommendations (attached) to the Center Board of Directors as their position on the current version of the Comprehensive Land Use Plan. The final vote was 12 in favor (yes) and 1 against (no) to forward the Subcommittee’s recommendations as a resolution from the CAC to the Board. The motion passed.

Old Business

There was no old business brought before the CAC.

New Business

There was no new business brought before the CAC.

Next Meeting

The next CAC meeting will be held on Tuesday, November 13, 2007 at 4:00 p.m. at the Center’s Indian River Inlet Facility.

Adjournment

At 6:15 p.m. it was motioned that the meeting be adjourned, which passed by voice vote with no dissensions or abstentions.

Respectfully reviewed and submitted,

Ron Wuslich, Chair
RW/ehb

ATTACHMENT FOLLOWING

**Sussex County 2007 Comprehensive Plan Update
Future Land Use Element Draft (July 31, 2007)
CAC Management Committee – Review, Comment & Recommendations**

This document presents the CIB CAC Management Committee’s review, comments, and recommendations about the Future Land Use Element Draft dated July 31, 2007 (DRAFT) of the Sussex County 2007 Comprehensive Plan Update (SCCP 2007). This review is a follow-up to the Recommendations¹ made by the CAC Ad Hoc Subcommittee tasked with evaluating Land Use requirements for the SCCP 2007 Update, and subsequently adopted by the CIB Board of Directors. This review is based on these CIB Recommendations.

The CAC Management Committee reviewed the following documents to perform this analysis:

- The SCCP 2007 Future Land Use Element (Draft, July 31, 2007)
- The Sussex County 2003 Comprehensive Plan Update (SCCP 2003) – Land Use Element
- Delaware Inland Bays Comprehensive Conservation Management Plan (CCMP)
- Pollution Control Strategy (Draft, April 2007)
- Sussex County Code, Zoning, Chapter 115

We first present comments regarding the general nature of the DRAFT including its incorporation of CIB Recommendations and its effectiveness for implementing ordinances and enforceable code. We then present a statement of concerns regarding the Inland Bays current environmental health status. Third, we present the further actions that we believe must be taken by the Sussex County Council in the Future Land Use Element of the SCCP 2007 to ensure the survivability of the Inland Bays environmental health, water quality, and Sussex County quality of life. CIB, other Inland Bay stakeholder organizations, and the citizenry of Sussex County must embrace these recommendations and demonstrate their significance to the County Council.

General Comments

In the July 31 draft of the Future Land Use Element, the County indicates that it continues to subscribe to land use goals consistent with CCMP goals. On page 13, goals such as “protect critical natural resources...by guarding against over-development and permanently preserving selected lands” and “ensure that new developments incorporate preserved usable open space and other best practices in subdivision design” demonstrate that. However, it is only by enactment of ordinances and enforceable code that implementation of these goals by the County will be achieved.

Much of the DRAFT references or generally describes potential changes to the SCCP 2007 that are directly or indirectly related to the CIB Recommendations. These references are as follows:

- Restatement of Growth Management Districts with permitted uses, density, and infrastructure requirements (p. 14-24)
- Potential special protection of tidal wetlands where the County “may also consider” a “net” tract size reduction resulting in a reduced density for new developments within the Environmentally Sensitive Developing Area (ESDA) (p. 20)

¹ Recommendations entitled “Requirements for the 2007 SC Comprehensive Plan Update”, adopted June 15, 2007

- The potential conversion of the underlying ESDA zoning districts into “regular zoning districts” to legally implement the Density Bonus Program for the purpose of permanent preservation of a “substantial percentage of the tract” (p. 20)
- Retention of the rural environment in Low Density Areas (AR-1 zoning) through the use of “plant landscaped buffers”, additional incentives such as Transfer of Development Rights (TDR’s), and “significant open space” (p. 22)
- Potential establishment of an Agricultural zoning district (p. 24)
- “Special interest” topics such as TDR use in Density Bonus Incentives and consideration of State Resource Areas/Natural Areas (SRAs) maps in protection of open space and permanent land preservation (p. 26-29)
- Community Design criteria for cluster development planning that includes the identification of lands to be preserved through mapping of wetlands, flood-prone areas, etc. prior to drawing lot lines (p. 33)
- “Interest” in establishing eligible open space. This section describes valid purposes for open space and some criteria that may be used for assessing its value in a development. The main criterion for defining open space requirements is still based on volume (p. 33)

The Committee regrets that the County did not address the following CIB Recommendations in the DRAFT:

- Establishment of buffer specifications for nontidal wetlands
- Utilization of Public water and sewer in all ESDA zoning districts
- The creation of a Wetlands/Critical Habitat Protection Element
- Restriction of growth in areas where there is no planned infrastructure or services
- The creation of an overall Sussex County Growth Plan through the analysis of land/environmental capacity versus development demand. The Growth Plan must evaluate population (current and future) and define infrastructure, nutrients, natural resources, sensitive areas, preservation areas, EMS, fire, police, public education, and Open Space requirements for the entirety of Sussex County
- Enforcement

Effectiveness of Future Land Use Element

The CAC Management Committee notes that the County’s intent is commendable and is pleased to see references to TDR’s, SRAs preservation, and a listing of valid purposes for Eligible Open Space. However, the Committee is concerned that most of the DRAFT is non-binding and unenforceable as currently written. While the County’s goals are in line with the CCMP goals, the above references to the CIB Recommendations are just that – references and descriptions. In fact, the Committee finds that the DRAFT regresses from the 2003 SCCP². There are simply no requirements included in the DRAFT to implement through enforceable ordinances the goals set out in the 2003 update. For example, the section on future growth in ESDA contains only suggestions such as: “The following major guidelines should apply to future growth in ESDA”, ...”It may be advisable for legal reasons to convert this overlay into regular zoning districts”, ...”The County may also consider an additional layer of protection in the ESDA”, ...Tidal wetland area could be subtracted from the total tract size...”. Another example is the section on TDR which is described as “a voluntary program” with a listing of “generalized guidelines”. Therefore, because of the extensive unmanaged and unregulated growth that has occurred in the Inland Bays causing significant damage to the ESDA watershed since the SCCP 2003, the CAC Management Committee believes that major revisions set forth below must be made to the 2007 SCCP.

² See SCCP 2007 – SCCP 2003 Comparison in Supplemental List

Statements of Concern³ Regarding Inland Bay Environmental Health and Actions Required

- Whereas, the Delaware Inland Bays Estuary was declared “an estuary of national significance” by the US Congress;
- Whereas, there exist numerous instances of government inconsistencies and lapses in application and enforcement of policies, laws, and regulations;
- Whereas, improving water quality in the Inland Bays is vital to maintaining the tourism and recreation of eastern Sussex County;
- Whereas, in the Delaware Surface Water Quality Standards, the Inland Bays were designated “waters of exceptional ecological and recreational significance”;
- Whereas, only 29% of the streams feeding the Inland Bays fully support aquatic life designated use;
- Whereas, the waters of the Inland Bays are highly enriched with nitrogen and phosphorous;
- Whereas DNREC warns visitors to various State Parks that “Waters of the Inland Bays may contain organisms that could be harmful to your health. Swimming could result in an increase risk of rashes, infections or gastrointestinal distress. Especially during and after rainfall.”⁴;
- Whereas, the primary activities maintaining a eutrophic condition in the Inland Bays are agriculture and urbanization;
- Whereas, aquatic life and primary contact recreation uses are not supported in each of the Inland Bays;
- Whereas, the Sussex County population increased 56% between 1990 and 2005, not including approximately 37,000 homeowners who live in other states;
- Whereas, most of that growth has been concentrated near already congested communities Rehoboth Beach, Bethany Beach, and Fenwick Island;
- Whereas, growth will put people and buildings closer to sensitive natural areas, increasing the potential for their degradation;
- Whereas, urban areas with high relevant percentages of impervious surface contributed to significant pollution loads in waterways;
- Whereas Sussex County records show that through 2006, a total of 26,233 residential lots have been approved and recorded but not yet developed;
- Whereas, promulgation of a Pollution Control Strategy for the Inland Bays has repeatedly been delayed;
- Whereas, the Sussex County 2007 Comprehensive Plan Update makes no reference to achieving TMDL’s and does not include the SCCP 2003 requirement of identifying and mitigating the impact of a proposed ESDA development on TMDL’s⁵;

³ Sources: Pollution Control Strategy (Draft April 2007); SCCP 2007 Future Land Use Element (Draft, 7/31/2007); Delaware WAVE; DNREC; Sussex County Zoning Code (Chapter 115)

⁴ Source: DNREC, Fenwick Island State Park signage

⁵ See SCCP 2007 – SCCP 2003 Comparison in Supplemental List

- Whereas, the Sussex County Council signed the CCMP and in doing so, promised to enact policy that meets its goals, objectives, and tactics, including the Land Use Action Plan, which requires Inland Bays reduction of nutrients and habitat protection;

NOW THEREFORE,

It is the recommendation of the CAC Management Committee that the CIB Board approves and forwards the following recommendations to the Sussex County Council for implementation:

1. That Sussex County Council specifies in the SCCP 2007 Update a mandate for ordinances and enforceable code defining **new** zoning districts explicit to development within the ESDA at a minimum, but desirably the entire Inland Bays Watershed, that accomplish the following:
 - a. Requires a minimum of 100' effective buffers for tidal wetlands within the ESDA
 - b. Requires functional, effective⁶ buffers for ESDA non-tidal wetlands
 - c. Utilizes Public sewer and water for all land uses in all ESDA zoning districts
 - d. Mandates implementation of the State Pollution Control Strategy (PCS) when legislated, and achieves established TMDL's utilizing DNREC's Nutrient Loading Protocol as part of the approval process
 - e. Creates and codifies an overlay of the State Resource Area/Natural Areas Maps that delineates protection areas, requires Environmental Impact Assessments (EIA's) and supporting mitigation for those critical areas impacted within and/or adjacent to ESDA
 - f. Codifies "Open Space" definition; categorizes types of Open Space by the habitat quality, sensitivity, and protective value; requires the calculation of housing density and Open Space for all development on the protective value of the Open Space, not just area; and codifies and enforces recommended wetland and other critical habitat removal from density calculation
 - g. Codifies a TDR program in conjunction with Density Ordinance #1920 and Open Space acquisition that creates interconnecting habitat corridors, restores/protects contiguous habitat, and requires the limit for sending tracts and receiving tracts in ESDA to be within the Inland Bays Watershed

⁶ As specified and/or endorsed by the CIB Science and Technical Advisory Committee (STAC)