FAX Cover

Department of Planning & Inspections
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TO: Mr. Nick Rodriguez, Esq.
Schmittinger & Rodriguez

FROM: James Galvin, Jr., AICP
Director

YOUR FAX #:302. 674. 1830

MY PHONE #:302.736.7010

DATE: **December 16, 2004**

RE: Code Interpretation

Nick:

At the Parks, Recreation and Community Enhancement Committee meeting of Tuesday, there was some discussion over whether a stormwater pond may be included in the calculation of required active recreation space. As we discussed, the Committee requested a "legal opinion" on the matter. They have deferred decision on the related item until a special meeting on Monday at Noon to consider the determination.

In lieu of asking you to research the issue, I have prepared an interpretation memo that provides such determination. I appreciate any insight you might have on this issue. If this document is appropriate, I would appreciate an e-mail letting us know if you concur.

Thank you for your assistance with this matter. Should you have any questions, or need additional information, please contact me at 736.7010.

Jim

Dear Jim,

I agree with your interpretation of Stormwater Management Ponds as qualifying for recreational area use

12/16/04

MEMORANDUM

Department of Planning & Inspections
P.O. Box 475
Dover, DE 19903
Phone: (302) 736-7010 Fax (302) 736-7177

DATE: December 16, 2004

TO: The Files

FROM: James J. Galvin, Jr., AICP
Director of Planning & Inspections

RE: Code Interpretation: Active Recreation Areas

ISSUE:

May Stormwater Management Ponds be considered Active Recreation Area for the purposes of complying with the requirements of Appendix B, Zoning Ordinance Article 5 §10.1 Recreation Area?

FINDINGS:

Recreation Area
Every application for a residential development that requires conditional use, site plan or subdivision approval is required to provide open space, active recreation space and required public facilities. (Dover Code of Ordinances, Appendix B, Article 5, §10). The amount of active recreation area required for Planning Commission approval is determined by the number of dwelling units or a minimum area requirement. Article 5 §10.13 provides guidance on the nature of recreation areas, as follows:

> "The following are illustrative of the types of recreation areas and subsequent facilities that shall be deemed to serve active recreational needs and therefore to count toward satisfaction of the recreation area requirements of this section: tennis courts, handball courts, racquetball courts, swimming pools, saunas and exercise rooms, meeting or activity rooms within clubhouses, baseball and soccer fields, basketball courts, volleyball courts, swings, slides and play apparatus, and developed walking, jogging or biking trails."

The Planners Advisory Service publication, *A Planners Dictionary*, offers the following as a definition of active recreation:

> "Leisure activities, usually performed with others, often requiring equipment and taking place at prescribed places, sites or fields. The term "active recreation" includes but is not limited to swimming, tennis, and other court games, baseball and other field sports, golf and playground activities." (A *Planners Dictionary* APA PAS 521 and 522, 2004)

To paraphrase, active recreation activities generally require space or a place to enjoy.

The walking, jogging or biking trails are further described in Article 5 §10.155 to limit their inclusion only "…when constructed as an accessory to a central recreation facilities. The developed trail shall be the only area counted toward the area requirement."

Stormwater Management Ponds
Stormwater Management (SWM) facilities are required for any development, project or plan that disturbs over 5,000 square feet of land. They are considered in all Planning Commission applications. The detailed engineering of such facilities are submitted to the relevant agencies after Planning Commission approval. An storm water management plan approved by DNREC or Kent Conservation District according to their requirements is required before final endorsement of the development, project or plan by the Department of Planning and Inspections. Sizing and form of stormwater facilities is somewhat speculative at the application stage because the detailed engineering has not been completed.

There are varying types of stormwater management facilities. A pond is a typical solution for accommodating storm water. There are two general types of ponds. A dry pond that is primarily without standing water until a storm event and remains wet for a period of hours or days after the event. A wet pond has standing water for a significant period of time. For the purposes of this determination, the time period would be sufficient to limit the regular use of the pond area as recreation field space or where the soils become hydric (soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. *A Planners Dictionary* APA PAS 521 and 522, 2004).

Development Scenarios
The Planning Commission reviews applications for projects that range in size from less than an acre of land to several hundred acres. The scale of storm water facilities and active recreation areas reflect the relative size and natural conditions of the project development area.

CONCLUSIONS:

Active Recreation space is space that may actually be used for active recreation activities such as those listed in Article 5 §10.13 and included above. Such activities may take place in a space that a user would have reasonable expectation the space would be available.

"Dry Ponds" would likely be available for recreation activities if there was no precipitation or had not been any precipitation for a relatively short period, but they must offer sufficient space for an active recreation activity. **Therefore, dry ponds may be considered as active recreation area to meet active recreation area requirements if they are of sufficient area, such as the area required for a soccer, baseball or other playing field.**

"Wet Ponds" would either have extended periods of standing water, be permanently inundated, or have soil conditions that would prohibit use as recreation space. **In general, wet ponds may not be considered as active recreation area to meet the recreation area requirements of the Zoning Ordinance.** The **exception** is that **wet ponds of a sufficient size or character that would allow water based active recreation activities within the area of the pond, such as boating or fishing are appropriate recreation areas**. The total area of the wet pond supporting water based active recreation activities may be considered in the calculation of the active recreation area.

DATA SHEET FOR RECREATION PLAN REVIEW

PARKS, RECREATION AND COMMUNITY ENHANCEMENT COMMITTEE
MEETING OF DECEMBER 20, 2004

PLANNING COMMISSION MEETING OF DECEMBER 20, 2004

Plan Title:	Tall Pines Condominiums (S-04-33)
Plan Type:	Recreation Plan associated with a Site Plan review
Owner:	Robert and Irene Sadusky PO Box 1375 Dover, DE 19903
Equitable Owner:	Woodbrook Development, LLC 2 North State Street Dover, DE 19901
Project Engineer:	Becker Morgan Group 738 South Governors Ave. Dover, DE 19904
Site Area:	2.647 acres currently 2.34 acres after right-of-way dedication to DelDOT
Present Use:	Residential
Proposed Use:	Garden Apartments as Condominiums; 24 units
Off Street Parking:	2 per dwelling unit; 48 total parking spaces required
Sewer & Water:	City of Dover
Zoning Classification:	RG-2 General Residential Zone

Recreation Plan Review
Tall Pines Condominiums S-04-33
December 2004

Discussion:

The Zoning Ordinance requires a recreation plan for all residential developments, projects and plans that come before the Planning Commission (Dover Code of Ordinances Appendix B, Article 5 §10). A minimum area is required to be reserved for the pursuit of active recreation activities. The area is based on 275 square feet of land area per dwelling unit or one half acre, whichever is greater (Art. 5 §10.16).

Tall Pines Condominiums consists of 2.647 acres. The developer has agreed with DelDOT to dedicate 13,246 square feet to the State of Delaware for new right-of-way to realign Chestnut Grove (Fire School) Road with Kenton Road, an improvement that has been under consideration by the State and encouraged by the City for some time. Therefore the functional amount of land for the project is 2.34 acres. The project requires the minimum 0.5 acres (21,780 square feet) to be reserved for active recreation space.

The recreation area indicated on the revised plans originally presented to the Parks, Recreation and Community Enhancement Committee on December 14, 2004 included 28,347 square feet between the three active recreation areas. The applicant stated that the stormwater pond was a wet pond of approximately 10,000 +/- square feet. The Department of Planning and Inspections has made a determination that wet stormwater ponds may not be considered as space for active recreation activities. Therefore, the net area proposed for active recreation is 18,347 +/- square feet.

In discussions with the applicant, staff identified that the 13,246 square feet to be dedicated to the State for the road realignment may reduce the amount of land reserved for active recreation. Article 5 § 10.3 are the regulations for public facilities. Section 10.32 allows the amount dedicated to be deducted from the amount of active recreation area requirements of Section 10.1, as follows:

> "Where public facilities are shown or proposed in the city comprehensive plan, or in any other plan or study accepted by the city council or other public body and are located in whole or in part in a proposed subdivision or site plan, the commission may require the dedication or reservation of the area required in lieu of the requirements of Section 10.1."

The land identified to be dedicated for right-of-way has been discussed with DelDOT and was a part of the Development Advisory Committee comments submitted by their representative to the DAC. It is a part of DelDOT's plan to make improvements to the intersection., and therefore "…accepted by…(an)other public body…" The land is located "…in whole…in a proposed …site plan." Under these circumstances, "… the commission may require the dedication or reservation…" In this case, the developer was pro-active and offered the land to DelDOT realizing this will benefit the entire area and the Planning Commission did not need to require the dedication of the land. He should be commended for his foresight.

In summary, the area required for active recreation space is 21,780 square feet. The area to be dedicated to DelDOT is 13,246 square feet. The dedicated area may reduce the amount required for active recreation, thus the amount required is 8,534 square feet. The net area of proposed active recreation area is 18,347 square feet and includes a gazebo, park benches, horseshoe pits, a walking path and two areas for lawn games. The plan for Tall Pines Condominiums submitted by Woodbrook Development LLC meets the area requirements of the Zoning Ordinance and is acceptable to the Department of Planning and Inspections. The DAC comments recommend design improvements for paved pathways to the gazebo and horseshoe pits and for segregation of the walking paths from the slopes of the stormwater management pond. We recommend the Parks, Recreation and Community Enhancement Committee forward the Plan to the Planning Commission with a recommendation for approval including the recommendations of the DAC.