

**BEFORE THE DELAWARE STATE
FIRE PREVENTION COMMISSION**

IN RE:)
) **ORDER**
WOLF CREEK CENTER, LLC)
)

NATURE OF THE PROCEEDINGS

Pursuant to 16 *Del.C.* §§ 6609 and 6610, and Delaware State Fire Prevention Regulation 701 Sections 7.0 and 8.0, the State Fire Prevention Commission (“the Commission”) held a properly noticed public hearing on January 17, 2012, to hear the Notice of Appeal and Request for Variance or Special Exception of Wolf Creek Center, LLC (“WCC”).

Specifically WCC seeks a special exception to Regulation 7.01, Chapter 4, Section 8, Limitation of Plan Approval. Section 8.1 reads, "Plans submitted for review other than site plans are valid for two years from the date of issue. If no construction has started by the end of this period, the plan review approval/non-approval and permit issued shall be null and void." Section 8.2 states, "Prior to issuing a new permit, submittal of new plans and the payment of another fee shall be required." WCC is seeking an extension of the approval period.

A quorum of the Commission members deliberated and voted on the appeal. Wolf Creek was present and represented by Thomas Burns, Managing Member for WCC. Elio Battista, Jr., Deputy Attorney General, advised the Commission.

SUMMARY OF THE EVIDENCE

Thomas Burns, Managing Member for WCC was sworn and testified. Mr. Burns testified that back in 2003, WCC bought the piece of land that's now known as Wolf Creek. WCC did a master plan to create an office campus; WCC has constructed 670,000 square feet of that master

plan. WCC had one outlying parcel on the south side of the main entrance that was to be WCC's seventh office building out of the six that were constructed.

Mr. Burns further testified that, in 2003, WCC master planned for DelDOT a traffic impact study, storm water, and all other related issues related to the utility relocations necessary to build this particular building on a separate piece of land. Since then, WCC didn't start construction until 2006 on the office building due to a very difficult economy. In December, WCC closed on the last of WCC's 60,000 square feet of office buildings, a total of six buildings, all of which were approved and a total of 18 building permits and Fire Marshal permits to build those buildings on campus that was as a condominium.

Mr. Burns further testified that, this application today is the result of a free-standing fee-simple-owned piece of land that would have become our seventh office building as part of the master plan. In 2007 and '08, Kent County adopted the Adequate Public Facilities Ordinance, which was a requirement for any application for any building or site plan to meet all brand new stringent requirements related to traffic, stormwater, school impacts, and other related issues. At the time, WCC had been moving through the construction of the buildings in somewhat of a methodical pattern based on the economy.

Mr. Burns further testified that, WCC got caught in the snare of the early days of the Adequate Public Facilities Ordinance where, after WCC built and completed a four-way intersection, signalized as Del-DOT wanted, master planned the storm water, everything was going to have to come under re-review by the County and all the State agencies, which would have set WCC back several years and cost thousands and thousands of dollars to do all that; or our to pull a building permit on the site. WCC proceeded to pull the building permit. WCC had the site plan approved, but WCC had to pull the building permit. So WCC had its architect,

Robert Clendaniel, who designed all WCC's other buildings, design the specific building on this site, presented to the Commission, and received the permit to build the building. The economy has kept WCC from building this particular building; nothing's happened on the site. And in December, WCC's building permit expired with Kent County. So WCC went to the County, and they required other agency reviews, and each of the agencies were going to require all brand new rather significant fees to be paid for WCC to continue on.

Mr. Burns further testified that, in each instance, at the County, at DelDOT, and the Conservation District, because of the long-term nature of this, and because of the master planning concept, and because WCC essentially was forced to create -- design a building and get a building permit, WCC had received relief from all the agencies so far on the basis that WCC, at some time down the road, planned to construct the building. What WCC is simply asking for is an extension of a building WCC hopes to build to finish the office park and for relief on the re-review fee of a building that's already been approved.

Grover P. Ingle, Delaware State Fire Marshal was sworn and testified. Mr. Ingle testified that the Fire Marshal's office did not have any objection to WCC's request.

THE LAW

The current Regulation at issue was previously set forth herein. The Commission's authority to promulgate that Regulation arose from Section 6604 of Title 16 of the Delaware Code, which states in relevant part that "[s]uch regulations shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection"

The Commission's authority to grant WCC's request arises from Section 6610 of Title 16, which states in relevant part that the Commission has the power to:

“(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the State Fire Marshal, or the Marshal's Deputy or Deputies, based on or made in the enforcement of this chapter;

(2) To hear and decide, in accordance with any duly adopted regulation, requests for special exceptions or for interpretation of regulations or for decisions upon other special questions upon which the State Fire Prevention Commission is required by any regulation to pass;

(3) To authorize a variance from particular provisions of the regulations duly promulgated under § 6604 of this title where strict compliance with such provisions would entail practical difficulties or unnecessary hardships, provided such relief may be granted without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulations promulgated under § 6604 of this title;

(4) All decisions, authorizations or interpretations made by the State Fire Prevention Commission hereunder shall be written and signed by the Chairperson or Vice-Chairperson and filed in the office of the State Fire Marshal, or the Marshal's Deputy or Deputies, within 30 days following the appeal.”

FINDINGS OF FACT

Based upon the testimony presented, the Commission finds the following facts to be supported by the evidence.

1. Pursuant to its authority under 16 *Del.C.* § 6610(3), the Commission finds that strict compliance with Regulation 701, chapter 4, Section 8 by WCC would entail practical difficulties as well as unnecessary hardships.

2. The Commission finds that granting of the requested special exception and variance of Regulation 701, chapter 4, Section 8 pursuant to its authority under 16 *Del.C.* § 6610(3), causes no detriment whatsoever to public safety, nor does it impair the intent or purpose of the existing regulations as these were promulgated pursuant to 16 *Del.C.* § 6604.

3. The Delaware State Fire Marshal has no objections.

4. No evidence was presented in opposition to the request.

DECISION

The Commission having heard the testimony presented, and upon a finding of the facts and the law as set forth herein, on the affirmative vote of the undersigned members, hereby **GRANTS** the relief sought by WCC and **ORDERS** the Delaware State Fire Marshal to grant a two year waiver to WCC.

IT IS SO **ORDERED** this 17th day of January, 2012.

STATE FIRE PREVENTION COMMISSION

David J. Roberts, Chairman

Alan Robinson, Vice Chairman

Tom DiCristofaro, Commissioner

Marvin C. Sharp, Jr., Commissioner

William F. Tobin, Commissioner

Bob Ricker, Commissioner

DATE MAILED: _____