

MINUTES OF THE REGULAR MEETING OF FEBRUARY 13, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 13, 1992, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Bayard - County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner I.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of January 23, 1992, as circulated.

PUBLIC HEARINGS

1. RE: C/U #995--Rodney Allen Baker

Rodney Allen Baker was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred for the Retail Sales of Hunting, Fishing, and Law Enforcement Supplies lying on the southeast side of Route 32, 1,900 feet east of Route 585 and to be located on a parcel containing 2.59 acres more or less.

Mr. Allen did not participate in this public hearing. Mr. Allen turned the meeting over to Mr. Magee, Vice Chairman.

Mr. Lank summarized comments received from the State Highway Department and the Sussex Conservation District.

Mr. Baker stated his business is selling weapons. He stated that 45 to 50 percent of his business is with law enforcement agencies. He has all Federal and State licenses and is bonded. He presently does most of his selling on the road.

Mr. Baker stated that he resides on the proposed site. He plans to operate his business from a manufactured home type structure also located on the site.

Mr. Lank advised the applicant that Board of Adjustment approval will be required to use the manufactured home type structure for a business purpose.

Mr. Baker stated that weapons are presently stored in a vault in his home. He has a temporary burglar alarm in his home. If this application is approved, a permanent burglar alarm, linked to the State Police Barracks will be installed.

Mr. Baker stated that he presently has no employees. If this application is approved, he will have one full time and one part time employee.

Robert Allen Angar and Randall Layton spoke in favor of this application.

No one was present in opposition.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped to be Woodstown sandy loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the evaluation of the soils with respect to erosion and sedimentation control may require following an Erosion and Sediment Plan during construction and that after completion of construction a vegetative cover must be maintained; that the farmland rating of the soils, as mapped, are Prime; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present and plans to utilize the site for retail sales of hunting, fishing and law enforcement supplies.

The Commission found, based on comments made by the applicant, that 45% to 55% of his business is with the law enforcement community; that he most recently outfitted the Dover Police Department for supplies; that he is licensed to handle firearms and related items with all appropriate Federal and State Agencies; that he has a retail license from the State Of Delaware; that he presently operates his business by appointment only; that during hunting season he has some set hours; that he has no advertised hours; that the business has a temporary burglar alarm system; that all firearms are locked in a vault in the dwelling; that the business will be run from the manufactured home type structure on the premise until a structure can be constructed for the gun shop; that presently he is the only employee; that in the future he hopes to add one full-time and one part-time employee; that no additional

septic or water is anticipated for the manufactured home type structure; and that a septic system may be necessary for the new gun shop once completed.

The Commission found that two people spoke in support of the application since the applicant sponsors youth competition shooters, since the business will provide another access to supplies for sportsmen and law enforcement agencies, and since people should have the right to bear arms.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried 4 votes to 0, with Mr. Allen abstaining, to forward this application to the Sussex County Council with the recommendation that it be approved since the business will provide a service to the community and local law enforcement units, since the applicant has taken appropriate safety precautions, and with the following stipulations:

1. The site plan shall be required to be approved by the Planning and Zoning Commission.

2. On site advertising signage shall be limited to one sign containing 32 square feet per facing.

3. Board of Adjustment action shall be necessary for use of the manufactured home type structure for the business.

2. RE: C/Z #1150--Perdue Farms, Inc.

Jim Dennis, Dan Johnson, and Steve Masten were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to LI-2 Light Industrial in Northwest Fork Hundred, located on the south side of Route 584, east of Route 583, and west of Railroad, to be located on a parcel containing 63.56 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, D.N.R.E.C. Division of Water Resources, the Department of Agriculture Division of Resource Management, the Division of Resource Management Solid Waste Branch, the Division of Air and Waste Management Underground Storage Tank Branch, the Division of Water Resources Water Supply Branch, the Sussex Conservation District, and the Division of Water Resources Wetlands and Aquatic Protection Branch.

Mr. Dennis stated they plan to operate a feed mill and possible a hatchery in the future from the proposed site. Six (6) new employees would be needed at this location. With this feed mill in operation, they would be able to supply enough additional chicken houses that up to 225 new employees would be needed in the Georgetown processing plant.

Mr. Dennis stated they would remove the existing feed mill on the site and replace it with a new facility, but would continue to use the existing warehouse and grain storage tanks. The feed mill would operate 24 hours a day, five or five and one half days per week.

No one was present in opposition.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service "A" may change to level of service "C" if the site is fully developed as General Light Industry.

The Commission found, based on comments received from the Office of the Secretary of D.N.R.E.C. for Land Use Review and Coordination, that comments have been requested from D.N.R.E.C. Division of Air and Waste Management - Waste Management Section - Solid Waste Branch and Underground Storage Tank Branch, the D.N.R.E.C. Division of Parks and Recreation, the D.N.R.E.C. Division of Water Resources - Pollution Control Branch, Watershed Assessment Branch, Water Supply Branch, and Wetlands and Aquatic Protection Branch, the Department of Agriculture, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the D.N.R.E.C. Pollution Control Branch, that the office has no objection to the rezoning, that the applicant must control activity to minimize sediment and erosion impacts, and that if industrial construction activities disturb more than 5 acres they must meet Federal regulations.

The Commission found, based on comments received from the Division of Resource Management of the Department of Agriculture, that the Department supports the application, and that converting the land to a feed mill and future hatchery will contribute toward the continuance of agribusiness operations in Sussex County.

The Commission found, based on comments received from the D.N.R.E.C. Division of Air and Waste Management Solid Waste Branch, that Delaware regulations prohibit the burial of construction/demolition debris, including trees and stumps, anywhere in the State except at solid waste disposal facilities that have a permit or approval from the Department authorizing them to accept this type of waste. The Solid Waste Management Branch encourages recycling of these materials whenever feasible.

The Commission found, based on comments received from the D.N.R.E.C. Division of Air and Waste Management - Underground Storage Tank Branch, that the Branch has no record of a tank at this location, that if any proposed building includes an underground storage tank system the owner must submit plans prior to installation, and that if an underground storage tank is found on the property during construction the Branch must be notified immediately.

The Commission found, based on comments received from the D.N.R.E.C. Water Supply Branch, that the Branch has no objections to the rezoning of the property based upon the use of individual on-site wells at this site.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Sassafras sandy loam and Sassafras loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the evaluation of the soils with respect to erosion and sedimentation control may require following an erosion and sedimentation control plan during construction and that after completion of construction vegetative cover must be maintained; that the farmland rating of the soils, as mapped, is Prime; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some on-site drainage improvements.

The Commission found, based on comments received from the D.N.R.E.C. Division of Water Resources Wetlands and Aquatic Protection Branch, that any activity in wetlands requires a permit from either the State or the Army Corp. of Engineers or both prior to any construction, and that state wetlands and National Wetland Inventory Maps are available for review.

The Commission found that the application was represented by two executives from Perdue, Inc. who advised the Commission that they plan to utilize the site for a new feed mill; that the feed mill presently produces 5,600 tons of feed per week; that the new mill is being designed to produce 8,800 tons of feed per week; that the mill presently has approximately 35 employees at the site; that approximately 6 new employees are anticipated; that approximately 225 new employees are anticipated at related facilities in the area, especially at the Georgetown plant; that the existing warehouse and grain storage facilities will be retained; that the new feed mill will be approximately 600 feet from the existing facility; that the existing railway spur can stack seven (7) rail cars; that the proposed new railway spur is intended to stack 24 rail cars; and that a future expansion of the railway spur may accommodate 100 rail cars; that a new vehicle entrance will be created on Route 583 and that the old entrance will remain; that the feed mill will serve Roaster Bird Production; that the new hatchery may be started in 1996; that a similar operation exists in Candor, North Carolina; and that the mill will make feed 5 days per week.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support; since a need exists for this type of use in the area; since the rezoning will be an extension to an Industrial District and use; since the site adjoins other commercial and industrial uses and zoning districts; and since no adverse impacts on the neighborhood are anticipated.

3. RE: C/Z #1151--Kings Creek Associates

Steve Ellis, attorney, and Jack Daggett, project manager, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the west side of Route 273, approximately 600 feet south of Route One and southwest of Patriots Way in Kings Creek Country Club, to be located on a parcel containing 1.98 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Division of Water Resources Underground Discharge Branch, the Division of Water Resources Water Supply Branch, the Division of Water Resources Wetlands and Aquatic Protection Branch, and the Sussex Conservation District.

Mr. Lank summarized letters received from Jack Daggett of Lingo Real Estate, Tidewater Utilities and the Cape Henlopen School District.

Mr. Lank summarized letters received in opposition to this application from Richard H. Derrickson and Tunnell and Raysor on behalf of Great South Beach Development Company.

Mr. Lank stated a petition has been received in opposition to this application containing 153 signatures.

Mr. Daggett stated the applicants plan to construct a suite hotel for guests of residents of Kings Creek Development and golf tournament participants. The hotel will be two (2) stories and contain 32 luxury suite units. The hotel would also be open to the public. Each suite would consist of a full bedroom and a room for living area with a convertible sofa for extra sleeping space. There would be no cooking facilities.

Joe Zimmerman spoke in opposition.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 273 will not change as a result of this application.

The Commission found, based on comments received from the Office of the Secretary of D.N.R.E.C. for Land Use Review and Coordination that comments have been requested from the D.N.R.E.C. - Division of Fish and Wildlife, Division of Parks and Recreation, Division of Soil and Water Conservation, the Division of Water Resources-Underground Discharges Branch, Watershed Assessment Branch, Water Supply Branch, Wetlands and Aquatic Protection Branch, the Department of Health and Social Services - Division of Public Health, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the D.N.R.E.C. Underground Discharges Branch, that wastewater disposal is proposed to be via a pending central sewer system, and that as a result of a moratorium placed on new installations of on-site disposal systems for commercial properties along the Route One corridor pending construction of the central sewer system, a holding tank must be used as an alternative interim disposal method.

The Commission found, based on comments received from the D.N.R.E.C. Water Supply Branch, that central water service is proposed to be provided to the property by a public utility, and that the Water Supply Branch has no objections to the rezoning request.

The Commission found, based on comments received from the D.N.R.E.C. Wetlands and Aquatic Protection Branch, that any activities in wetlands requires a permit or approval from the State or the Army Corp. of Engineers or both prior to any construction activity, and that State and National Wetland Inventory Maps are available for review.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Sassafras sandy loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the evaluation of the soils with respect to erosion and sediment control may provide that the developer follow an Erosion and Sediment Control Plan during construction and that vegetative cover be maintained after completion of any construction; that the farmland rating of the soils, as mapped, are Prime; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that one letter was received in support of this application for a maximum of 30 to 50 suite motel units, if the improvements are consistent with that of the community.

The Commission found, based on a letter received from Tidewater Utilities, Inc., that the utility company is willing and able to provide public water utility service for the use intended, and that providing the service will not impact the utility company's ability to service the neighboring areas.

The Commission found, based on comments received from the Cape Henlopen School District, that no impact is anticipated other than a positive impact to increase the value of the tax base for the district.

The Commission found that two letters were received in opposition which expressed concerns in reference to a commercial business at the entrance to the Kings Creek Development; expansion of the commercial district beyond the 600 feet off of Route One; increased traffic on an already heavily traveled Route 273; that Route 273 as presently constructed is not adequate to meet increased traffic demands; that the original intent of Kings Creek was a residential subdivision and that the developers should not be allowed to change the thrust of the development to the detriment of

the neighbors and the surrounding area; that the rezoning may establish a precedent to further commercial development and additional traffic; and that there is no economic need for a motel/hotel complex since numerous motels and hotels exist within a short commuting distance of the site.

The Commission found that a petition, which contained approximately 153 signatures, was submitted in opposition to this application and expressed concerns to a precedent being established to move the commercial district beyond 600 feet from Route One, and since the rezoning would cause more congestion which has already been increased by the entrance to Ocean Outlets and Route 273.

The Commission found that the application was represented by legal counsel and the project manager for the realtor for Kings Creek Country Club, who advised the Commission that the applicants propose to develop the site with 32 suite type motel units.

The Commission found, based on comments made by the representatives of the application, that as the Country Club grows-golf tournaments and the number of guests will grow; that the motel proposed will provide temporary quarters for tournament players and guests of the residents in the development; that the rezoning will create a quality built motel to serve the area; that two (2) two story structures are proposed with 16 units each; that the site will be better suited for guests of area residents than in Rehoboth; that the location is not the best for residential use since the park and ride is across Route 273; and that a suite motel room provides a living room, bedroom and bath with no cooking facilities.

The Commission found that one person spoke in opposition since the area is predominantly residential, since the rezoning will impact the homeowners in the surrounding area, since there is no guarantee as to what will be built, other uses permitted in the commercial district, and since the area is growing residentially.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, since the site is not appropriate for a commercial zone due to the number of permitted uses, since the area is predominantly residential from the site westerly, and since the commercial area should be limited to the 600 foot strip already existing.

4. RE: ORDINANCE TO AMEND CHAPTER 115 (Flood Prone Districts)

Mr. Lank introduced the proposed Ordinance to amend Chapter 115, the Code of Sussex County, Delaware, by amending Articles XXV and XXVIII, relating to Flood Prone Districts.

Mr. Lank read the text of the Ordinance and advised the Commission that the amendments were recommended by the Federal Emergency Management Agency to bring Chapter 115 into compliance with federal regulations. Mr. Lank added that one of the amendments was to delete a section of a paragraph which was placed in the Ordinance in error, and the other amendment was to correct a typographical error.

Mr. Lank read a letter from Steven A. Adukaitis, Community Planner for the Federal Emergency Management Agency, which advised that the amendments were acceptable.

No one appeared in support or in opposition to this Ordinance.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that it be approved.

OTHER BUSINESS

1. RE: Shellpointe, The Shoppes of Long Neck

The Commission reviewed a commercial site plan for retail shops, a restaurant and a movie theater on Route 22.

Mr. Abbott advised the Commission that the total area for the project is 11.47 acres and that the site plan meets the requirements of the zoning code with a few exceptions.

Mr. Abbott advised the Commission that at three locations the driveways do not meet the minimum required width of 25 feet and at these locations the drives are one way only.

Mr. Magee questioned whether the State Fire Marshal has approved the 18 foot driveways.

Mr. Abbott advised the Commission that the staff has not received any comments from the Fire Marshal's office.

Mr. Ralph questioned the size of the proposed stormwater management area.

Mr. Abbott advised the Commission that no comments have been received from the Sussex Conservation District.

Mr. Abbott advised the Commission that the site plan shows more parking than what is required.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to defer action pending receipt of comments from the Sussex Conservation District and Office of State Fire Marshal.

2. RE: The Beaver Point Corp.

The Commission reviewed a site plan for a 36 hole miniature golf course located on Route One and Route 270-A.

Mr. Abbott advised the Commission that a determination will have to be made concerning whether this parcel is a corner lot or a through lot.

The Commission discussed the lot and it was the consensus of the Commission that the parcel is a corner lot.

Mr. Abbott advised the Commission that the site plan is in compliance with the zoning code and that all required agency approvals have been received for the site plan.

Motion made by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to approve the site plan as submitted as a final.

3. RE: Fentiki Golf

The Commission reviewed a site plan for an 18 hole miniature golf course located on Route One, Route 58 and Fenwick Avenue.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, and that fence to screen the parking area from adjacent dwellings will have to be erected.

Mr. Magee had concerns about fencing the remainder of the site.

James Hall and Fred Mitchell developer advised the Commission that they would not have any problem being required to erect a fence around any areas of concern.

Mr. Abbott advised the Commission that all required agency approvals have been received for the site plan.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted as a final with a stipulation that a revised site plan showing fencing be submitted to the staff.

4. RE: Sea Colony West Phase 14

The Commission reviewed a site plan for 32 units within a multi-family project.

Mr. Abbott advised the Commission that this site plan received preliminary approval January 9, 1992.

Mr. Abbott advised the Commission that all agency approvals have been received and that the site plan is in compliance with the zoning code.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted as a final.

5. RE: Clyde Yoder

The Commission reviewed a request to create a one acre parcel off of an existing 15 foot right of way on Route 16.

Mr. Lank advised the Commission that the one acre parcel has an existing dwelling and accessory structures and would be retained by Mr. Yoder and that the remaining acreage would be conveyed to Mr. Yoder's son.

Mr. Allen advised Mr. Yoder that the regulations require a fifty foot right of way to a new parcel of land, and questioned whether Mr. Yoder could obtain additional land to make the right of way at least 50 foot wide.

Mr. Yoder advised the Commission that the adjoining property owner will not sell him any additional lands, and that the existing 15 foot right of way serves the existing parcel.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action on this request.

6. RE: Sussex County Community Action Agency

The Commission reviewed a request to create an additional 7 lots to Fisher Mill Park Subdivision.

Mr. Lank advised the Commission that Sussex County Community Action Agency owns other properties in this area and that there are not any zoning violations on this parcel of land.

Mr. Abbott advised the Commission that the 7 lots are in compliance with the subdivision and zoning codes.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the 7 lots as submitted as a final.

OLD BUSINESS

1. RE: ORDINANCE TO AMEND CHAPTER 115 (Lot Area)

The Commission discussed the Ordinance which was deferred on January 9, 1992.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of additional information. The Ordinance shall not be placed on the agenda until the appropriate information has been received to the satisfaction of the Commission.

2. RE: ORDINANCE TO AMEND CHAPTER 115 (Setback Line & Federal Wetlands)

The Commission discussed the Ordinance which was deferred on January 9, 1992.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of additional information in reference to Federal wetland definitions and regulations. The Ordinance shall not be placed on the agenda until the appropriate information has been received to the satisfaction of the Commission.

3. RE: Subdiv. #90-38--Theodore B. Simpler

No one was present on behalf of the application of Theodore B. Simpler (East Middlecord Circle) to consider the Subdivision of land in a GR General Residential Zoning District in Nanticoke Hundred by dividing 8.0 acres into 16 lots, located on the northeast side of Route 526-A, 1,200 feet northwest of Route 525.

Mr. Abbott advised the Commission that preliminary approval was granted for 16 lots on January 24, 1991, and a one year time extension was granted January 23, 1992.

Mr. Abbott advised the Commission that all required agency approvals have been received and that the total number of lots has been reduced to 14 and that the record plan is in compliance with the subdivision code.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the record plan as submitted as a final.

4. RE: Subdiv. #91-17--John Huber

John Huber; developer, and Mike Makowski; Realtor, were present on behalf of the application of John Huber (Nesbitt Station) to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 26.63 acres into 38 lots, located on the south side of Route 265, 2,574 feet south of Route One.

Mr. Abbott advised the Commission that this project received preliminary approval on June 27, 1991 for 38 lots.

Mr. Abbott advised the Commission that the record plan has not changed, that all agency approvals have been received, and that the record plan is in compliance with the subdivision code.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the record plan as submitted as a final.

Meeting Adjourned 9:50 P. M.