

MINUTES OF THE REGULAR MEETING OF FEBRUARY 22, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 22, 1990, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Berl - Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of February 8, 1990, as circulated.

PUBLIC HEARINGS

1. RE: C/Z #1054--Great Eastern, Inc.

Melvin Monzak, Mr. Tate, and Jeff Clark, Land Tech, Inc., were present on behalf of this application to amend the zoning map from MR Medium Density Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the southwest side of Route 54, 400 feet northwest of Lincoln Drive in Cape Windsor Development, containing 2.48 acres more or less.

Mr. Lank summarized comments received from the LUPA Coordinator, the Sussex Conservation District, the Indian River School District, and the State Highway Department.

Mr. Berl stated he would not be participating in this hearing.

Mr. Monzak stated the applicants plan to construct commercial buildings with approximately 20,890 square feet of leasable floor area. The only entrance to the site would be from Route 54. The site would be served by central sewer. Some filling and grading would be necessary for drainage purposes. The 404 wetlands on the site would remain undisturbed. The site adjoins Cape Windsor.

Curtis Vargo, Don Muckle, Danny McGee, Elmer Lukert, John Mack, Charles Lampe, Angline Mack, and Ruth Muckle spoke in opposition due to drainage problems, location of the proposed entrance, traffic, quality and quantity of water, and no need was shown for another shopping mall.

Thirteen (13) persons were present in opposition.

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

The Commission found that the application was represented by James Tate, legal counsel, and a consultant, and that the applicants propose to develop the site with a shopping center.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Co-ordinator, that comments have been requested from 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 Sussex Conservation District, that the Westbrook and Carteret soils are poorly drained and that the water table may be at the surface seasonally, that the area is in a storm flood hazard area, that it will not be necessary for any off site drainage improvements, that it may be necessary for on site drainage improvements, and that no tax ditch is affected.

The Commission found, based on comments received from the Indian River School District, that at this time, it does not appear that the change in zone will have a significant impact on the District.

The Commission found, based on comments received from Deld.O.T., that the possible traffic problem that could result at the site would be road segment problems as opposed to intersection problems, that the preliminary site plan shows several improvements to the roadway in the area of the site, that there is no need for a traffic study if the proposed improvements are made, and that the proposed site plan should be followed closely.

The Commission found, based on comments made by representatives of the application, that the site was rezoned to C-1 General Commercial in 1983, but the decision was not upheld by the courts, that the site adjoins the Cape Windsor community, that the proposed B-1 Neighborhood Business zoning will permit convenience shopping to area residents, that two (2) buildings are proposed with a gross leasable area of 20,890 square feet. That the proposed entrance is the most logical location on the site, that the site is located in the Fenwick Island Sanitary Sewer District, and that the proposed use will utilize approximately 1/2 of the allowable EDU's for the site compared to residential development, that the area of Federal 404 Wetlands on site will remain undisturbed, that water supply will be on site or from Cape Windsor Community, that some fill may be necessary when site grading is performed, that no food service is proposed on site, and that no proposed building design or building height has been established.

The Commission found that 13 parties were present in opposition and that seven (7) parties spoke and expressed concens in reference to a shopping center in a residential area, setbacks from adjoining residential lots, congestion on Route 54, poor drainage existing and poorer drainage created by parking lots and buildings, entrance location, possible building heights, similar uses in close proximity, questioning the need for additional shopping in the area, concerns for bikers on bike paths along Route 54, creation of another interruption to traffic on Route 54, water quality and water quantity, and that lots were purchased in a residential area and that the area should remain residential.

Motion made by Mr. Hickman, seconded by Mr. Ralph, 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 and concerns referencing traffic and the questionable need for additional areas for shopping.

2. RE: C/Z #1055--Joseph Brinton

Joseph Brinton was 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 north side of Route 247, 600 feet east of the railroad and 1/2 mile west of Route 261, containing 2.91 acres more or less.

Mr. Lank summarized comments received from the LUPA Coordinator, the Sussex Conservation District, and DelD.O.T.

Mr. Brinton presented a letter of support from Mid Atlantic Realty Company, on behalf of Tall Pines Mobile Home Park. Mr. Lank read the letter into the record.

Mr. Brinton stated he plans to operate a sales lot for recreational vehicles and sell parts and accessories for recreational vehicles. He does not plan to have a service area. All service work would be done at the site where the unit being repaired is located.

Mr. Brinton stated his business would be seasonal. He would be open from April to mid December, six (6) days per week.

Mr. Brinton stated he plans to use the existing well on site.

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 that the applicant was present and plans to utilize the site for a sales lot for recreational vehicles and a sales store for parts and accessories for recreational vehicles.

The Commission found, based on comments received from the Sussex Conservation District, that the Rumford loamy sand on site is suitable for the intended use, that in reference to erosion/sediment control, moderate limitations may be anticipated during construction and slight limitations may be anticipated after completion of construction, that the farmland rating of the soils is of Statewide importance, that no storm flood hazard area is affected, that it may not be necessary for any on site or off site drainage improvements, and that no tax ditch is affected.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Parks and Recreation, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from Deld.O.T., that a traffic impact study was not recommended and that the level of service "A" of Route 247 should not change as a result of this application.

The Commission found that the applicant submitted a letter from Mid Atlantic Realty Management, Inc. representing Tall Pines, an adjoining manufactured home park and campground, who expressed no opposition to the application.

The Commission found, based on comments by the applicant, that service work shall be performed on properties of recreational vehicle owners, that the principal location of the business shall be north of the railroad, that a sales display area shall be created south of the railroad in the future, that the business will probably operate seasonally from April to December, six (6) days per week, and that no adverse impact is anticipated on property values or Route 247.

Motion made by Mr. Smith, seconded by Mr. Hickman, 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 and since the proposed use can serve an adjoining manufactured home and camping area.

3. RE: C/Z #1056--Margaret L. Isaacs

Steve Parsons, attorney, and Margaret Isaacs were present on behalf of this application to amend the zoning map from UR Urban Residential to UB Urban Business in Baltimore Hundred, located on the northwest corner of the intersection of Route 26 and Route 350 containing 0.70 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District, the State Highway Department, and the Indian River School District.

Mr. Lank stated a letter of opposition was received from the Commissioners of Millville.

Mr. Parsons stated the applicant plans to lease the site to Bullis Real Estate Company. They would use the existing dwelling on the site as a real estate office.

Mr. Parsons stated there are other businesses in the area.

Virgil Bullis, Bullis Real Estate Company, spoke in support of the application stating the proposed use would have no effect on traffic or property values.

Mr. Bullis stated the office would be open from 9:00 A.M. to 5:00 P.M., six (6) days per week. There would be no evening hours.

Marilyn Legery spoke in opposition due to traffic problems and no need was shown.

Stephanie Campbell, Karl Gude, Clement Shackle, Bill Campbell, and Gary Willey spoke in opposition for similar reasons.

A petition in opposition containing seventeen (17) signatures was presented.

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 that the applicant was present with legal counsel and a realtor who plans to lease the site for a real estate office.

The Commission found, based on comments received from DelD.O.T., that trip generation from a 1,900 square foot office is minimal, that it is anticipated that the Harbor View project will be making improvements to the intersection of Route 26 and Route 350, that DelD.O.T. requests that the owner dedicate or donate enough right of way along Route 26 to provide thirty (30) feet from centerline, that the parking area be placed to the rear of the structure, and that if the two requests are addressed, then DelD.O.T. has no objection to the rezoning.

The Commission found, based on comments received from the Indian River School District, that at this time, it does not appear that the proposed change of zone will have a significant impact on the District.

The Commission found, based on comments received from the Sussex Conservation District, that the Evesboro soils on site are suitable for the intended use, that in reference to erosion/sediment control, moderate limitations may be anticipated during construction and slight limitations may be anticipated after completion of construction, that the farmland rating of the soils are of Statewide importance, that no storm flood hazard area is affected, that no on site or off site drainage improvements are anticipated, and that no tax ditch is affected.

The Commission found that a letter submitted from the Commissioners of Millville indicated the Town's opposition to this application and any further commercialization.

The Commission found, based on comments by representatives of the application, that several parcels in close proximity are zoned UB Urban Business, that no impact is anticipated on Route 26, the neighborhood, or property values due to other business uses in the area, that the general area is a mixed residential and business area, that the Commissioners of Millville have supported several rezonings in close proximity, that the hours of business are intended to be from 10:00 A.M. to 5:00 P.M., six (6) days per week with no Sunday hours, that the applicant agrees to comply with the requests from DelD.O.T., and that if the Town wants involvement in zoning decision making, the Town Commissioners should establish zoning regulations.

The Commission found that six (6) parties spoke in opposition and expressed concerns in reference to traffic, the amount of existing business area in Millville, permitted uses, signs, questioned the need for additional business, traffic delays, and depreciation of residential properties.

The Commission found that two (2) petitions of opposition containing 30 signatures were submitted.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried 3-2, with Mr. Allen and Mr. Hickman opposed, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since the rezoning should be compatible to the area.

4. RE: ORDINANCE TO AMEND ORDINANCE NO. 90
(Buffer zone)

AN ORDINANCE TO AMEND ORDINANCE NO. 90, AS AMENDED, SUB-DIVISION ORDINANCE FOR THE UNINCORPORATED AREA OF SUSSEX COUNTY, DELAWARE, BY AMENDING ARTICLE 7, SECTION 2, TO IMPOSE A BUFFER ZONE BETWEEN RESIDENTIAL SUBDIVISIONS AND AGRICULTURAL OPERATIONS.

Mr. Lank introduced the proposed amendment to create a buffer strip adjacent to agricultural operations.

Mr. Lank read a letter from Kevin C. Donnelly, Planner for the State Department of Agriculture, which supports the effort to require buffer zones between residential subdivisions and agricultural operations. The letter suggested that confusion exists in a definition of "open space". The Ordinance should require a "landscaped buffer strip" but not necessarily a "landscaped buffer strip of open space". The letter encouraged the requirement of planting a mixture of slow and fast growing evergreen and deciduous trees and included a list of examples. The letter suggested that the County offer several alternative widths depending on the type of development, the size and density of the subdivision, and the use of natural buffers, such as hedgerows and forested windrows. The letter urged that strip developments provide the same buffer or that strip development be discouraged.

The Commission found that seven (7) parties spoke with concerns to the Ordinance in reference to the 150 foot width being excessive, the definition of a subdivision includes any lot created, fears of poor maintenance of buffer areas, that a narrow strip design of landscaping and berms may be a better choice, that the ordinance leaves a lot for interpretation, that the ordinance needs more specific definition of an agricultural operation, that landscaping is not defined or described, that the creation of a buffer causes loss of land value and acreage, that the ordinance creates an arbitrary taking of land, that setback amendments could solve the problems, that buffers cause trespassing and dumping of trash, that the buffer should be required on a case by case basis with established criteria, i.e.: number of lots or units, size of parcels, and that a landscaping ordinance could be created within the Subdivision Ordinance.

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

The Commission discussed the issues raised during the public hearing.

Motion made by Mr. Ralph, seconded by Mr. Smith, and carried unanimously to defer action.

5. RE: Subdiv. #90-1--Thetavest, Inc.

Craig Hudson was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 122.5 acres into 131 lots, located on the southwest side of the intersection of Route One and Route 207.

Mr. Moore summarized comments from the Technical Advisory Committee meeting of February 19, 1990.

No one was present in opposition.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the application as a preliminary.

6. RE: Subdiv. #90-2--Antonio Nero

Antonio Nero was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Little Creek Hundred by dividing 50.5 acres into 25 lots, located on the west side of Route 70, 2,135 feet north of Route 64.

Mr. Moore summarized comments from the Technical Advisory Committee meeting of February 19, 1990.

Mr. Nero stated D.N.R.E.C. reports indicate each lot is suitable for a standard septic system.

Tom Vincent spoke in opposition.

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

OTHER BUSINESS

1. RE: Robert Reed

Withdrawn from the agenda.

2. RE: Richard Drodgy
Route 20

The Commission reviewed a proposal to create one (1) additional lot having access from an existing fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the one (1) additional lot.

3. RE: Paul Miller
Route 536

The Commission reviewed a proposal to subdivide ten (10) acres into three (3) lots having access from a fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the three (3) lot subdivision as submitted.

4. RE: Wayne Pepper
Route 471

The Commission reviewed a request to create one (1) additional lot by creating a fifty (50) foot right of way from an existing 14 foot easement.

No one was present on behalf of the proposal.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the subdivision as submitted.

OLD BUSINESS

1. RE: C/Z #1051--Robert and Mary Anne Dillon

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Dagsboro Hundred, located on the south side of Route 26, across from Route 330, containing 9,900 square feet more or less.

At the conclusion of the public hearings, the Chairman referred to this application which was deferred on February 8, 1990.

The Commission found, based on a report by Mr. Lank, that the State Division of Revenue Licensing Section reported to him that Taylor Cropper's license ran out December 1987, and that no record in the name of Taylor Cropper or Wayne Robinson was found in 1988 or 1989. No trade name was known for identification of Taylor Cropper or Wayne Robinson for licensing.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried 4 to 1, with Mr. Hickman opposed, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since the use has been established for approximately 50 years, and since the rezoning provides the appropriate zoning classification for the use.

2. RE: C/U #24--Sussex Shores Water co.

Mr. Lank submitted to the Commission copies of a letter dated February 1, 1990, from James D. Griffin, attorney, on behalf of Sussex Shores Water Company. Attached to the letter was a site location map, a site plan exhibiting the tank location, a copy of the Conditional Use approval dated October 12, 1971, and a base map exhibiting the Conditional Use location.

Mr. Lank summarized a letter dated February 20, 1990, from James D. Griffin which had an attached copy of an order of the Public Service Commission (PSC) dated November 29, 1988, copies of certifications which the company has filed with the PSC since the date of the order, a copy of the FAA approval, and a letter in the form of a FAX telecommunication from the PSC dated February 20, 1990.

Mr. Lank read the PSC letter dated February 20, 1990.

James D. Griffin and Rodney Short were present on behalf of Sussex Shores Water Company and advised the Commission that the company was not aware that a building permit was needed for a water tower; that Mr. Short had only asked questions in reference to height of a water tower and found that there was no height limitation; that the company presently serves 930 customers; that the Public Service Commission has determined that the tower is necessary, a justified expense, and serves the need of the area; that FAA approval has been obtained; that construction started below grade in October 1989, and above grade January 8, 1990; that the tower base is setback approximately 75 feet from the right of way of Route One; that denial of a request for an amendment to the site plan would have an adverse impact on customers, and requested approval of an amendment to the site plan.

The Commission discussed the points and issues raised by the request for an amendment to the site plan.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried 3-2, with Mrs. Monaco and Mr. Allen opposed, to deny the request for an amendment to the site plan. The company shall be required to apply for an amendment to the Conditional Use through the public hearing process.

3. RE: Sign Report

Mr. Lank submitted copies of a sign report that he had prepared for the County Administrator.

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Mr. Lank summarized the report and asked the Commission to review the report and recommendation for next meeting for discussion.

Meeting Adjourned 11.45 P.M.

Lawrence B. Lank, Secretary