

MINUTES OF THE REGULAR MEETING OF FEBRUARY 22, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 22, 1996, at 7:30 P.M., in the Court of Common Pleas Courtroom in the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, Mr. Abbott - Planner II. Joel Leidy, ex-officio member representing the Delaware Department of Transportation (DelDOT) was also present.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the minutes of February 8, 1996 as amended.

II. PUBLIC HEARINGS

1. RE: C/U #1147--Delmarva Marine Service, Inc.

John J. Marsh was present on behalf of Delmarva Marine Services, Inc. application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for a Boat Showroom, Office, and Associated Uses on the southeast corner of the intersection of Route 24, and Road 289, located on a parcel containing 26,214 square feet more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the County Engineering Department.

Mr. Marsh stated that trees and landscaping will be provided, that he proposes a 30' by 50' building, that the building will include a showroom, office, and bathroom, that Road 289, a dirt road, needs grading, that no maintenance will be performed in the building, that a maintenance facility already exist at the existing facility, that employees hauling boats to and from the site use Road 289 from Road 279 due to the location on the light for left turns at the intersection of Route 24 and Road 279, that a septic system will be provided for the showroom building, that no negative impacts are anticipated on traffic on Route 24, the neighborhood, or property values, that the building should enhance the area, and that he is not associated with Red Ball Marine, the past tenant at the maintenance facility.

Kathie Shindler, Jack Cluzy, and John Hall, representing Robert Raley, spoke in opposition and expressed concerns relating to increased traffic on Route 24, noises (mechanical, motor, and dogs), early and late business hours, depreciation of property values, loss of the agricultural character of the area, impacts on the residential homes in the area, possible impacts on a future subdivision in the area, questioning if the applicant will

reside on the site, and questioning permits for two manufactured homes on the site, one of which is not yet skirted.

Mr. Hall submitted a letter from Raley-Dukes Partnership, and eight (8) photographs of the site and existing boat storage and maintenance facility.

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 are mapped as Sassafras sandy loam which has slight limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil type is considered Prime Farmland, 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, based on comments received from the County Engineering Department, that the site is located in the area west of the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District where the County Council agreed to restrict zoning changes and conditional uses based on an agreement outlined in a Memorandum of Understanding between the County Council and the Delaware DNREC.

The Commission found that John J. Marsh was present on behalf of this application and stated that trees and landscaping will be provided, that he proposes a 30' by 50' building, that the building will include a showroom, office, and bathroom, that Road 289, a dirt road, needs grading, that no maintenance will be performed in the building, that a maintenance facility already exist at the existing facility, that employees hauling boats to and from the site use Road 289 from Road 279 due to the location on the light for left turns at the intersection of Route 24 and Road 279, that a septic system will be provided for the showroom building, that no negative impacts are anticipated on traffic on Route 24, the neighborhood, or property values, that the building should enhance the area, and that he is not associated with Red Ball Marine, the past tenant at the maintenance facility.

The Commission found that two area residents and a representative of an adjoining landowner spoke in opposition and expressed concerns relating to increased traffic on Route 24, noises (mechanical, motor, and dogs), early and late business hours, depreciation of property values, loss of the agricultural character of the area, impacts on the residential homes in the area, possible impacts on a future subdivision in the area, questioning if the applicant will reside on the site, and questioning permits for two manufactured homes on the site, one of which is not yet skirted.

The Commission found that a letter from Raley-Dukes Partnership, and eight (8) photographs of the site and existing boat storage and maintenance facility was submitted.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

2. RE: C/U #1148--Great Scott Broadcasting

Terry Dalton, Director of Engineering, and Steve Parsons, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential in Baltimore Hundred for a Radio Broadcast Tower on the east side of Road 347, 1/2 mile east of Road 346, located on a parcel containing 3.82 acres more or less.

Mr. Lank summarized comments received from the County Engineering Department and the Sussex Conservation District.

Mr. Parsons submitted a copy of the lease, a survey for the site, and a letter of support.

Mr. Parsons stated that the site is 3.82 acres of a 90 acre parcel owned by Gerald Hickman and Alvin Hickman, that the intended use of the site is for construction of a 505 foot high radio tower and transmitter building, that the station is licensed in Bethany Beach, that the tower will have standing red lights and two blinking red lights, that the base of the tower and transmitter building will be fenced, that the base of the guy wire locations will be fenced, that traffic on the site should not exceed two trips per month once the construction is completed, that no negative impact is anticipated on property values, that no change in the character of the area is anticipated, that the radio signal will benefit the area by providing entertainment and public service messages, that no water or sewer will be necessary on the site, that FAA and FCC

applications have been filed, that the lighting referenced conforms to the FAA and FCC regulations, that the road will be gravel with tar and chip paving, and that the remaining acreage will be farmed.

Mr. Parsons submitted some possible stipulations.

No parties appeared in opposition to this application.

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 the County Engineering Department, that this Conditional Use is located in a Priority III service area, per the South Coastal Area Planning Study, and that sewer service is not expected to be available in the near future.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Klej loamy sand, Matawan loamy sand, and Rumford loamy sand, that all three soil types have slight limitations, that the Klej and Matawan soils have some moderate limitations, that the Matawan soils also have some severe limitations, that the applicants shall be required to follow recommended erosion and sediment control practices and to maintain vegetation after completion of any construction, that the farmland rating of the Klej and Rumford soils is considered of Statewide Importance, that the farmland rating of the Matawan soils is considered Prime Farmland, 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 application was represented by the company director of engineering and an attorney, who submitted a copy of the lease, a survey for the site, and a letter of support.

The Commission found that the attorney on behalf of the application stated that the site is 3.82 acres of a 90 acre parcel owned by Gerald Hickman and Alvin Hickman, that the intended use of the site is for construction of a 505 foot high radio tower and transmitter building, that the station is licensed in Bethany Beach, that the tower will have standing red lights and two blinking red lights, that the base of the tower and transmitter building will be fenced, that the base of the guy wire locations will be fenced, that traffic on the site should

not exceed two trips per month once the construction is completed, that no negative impact is anticipated on property values, that no change in the character of the area is anticipated, that the radio signal will benefit the area by providing entertainment and public service messages, that no water or sewer will be necessary on the site, that FAA and FCC applications have been filed, that the lighting referenced conforms to the FAA and FCC regulations, that the road will be gravel with tar and chip paving, and that the remaining acreage will be farmed.

The Commission found that the attorney submitted some possible stipulations.

The Commission found that no parties appeared in opposition to this application.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The total area of the site, being a triangular shape, shall be 3.828 acres in total area per the survey, which is a part of the application.
2. The maximum radio tower height shall be 505 feet.
3. The safety lights on the tower shall be red blinking lights (no strobe lights).
4. The building serving the site as the transmittal station shall be fenced.
5. No water or septic shall be placed on the property.
6. The radio broadcast tower will donate space to the County for emergency broadcast systems.
7. The roadway shall be constructed with a gravel base and tar/chip surfacing.

3. RE: C/Z #1275--Joseph J. Balsamo

Joseph J. Balsamo and Steve Parsons, attorney, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the south side of Route 54, one mile west of the Ditch near Fenwick Island to be located on a parcel containing 16, 754 square feet more or less.

Mr. Lank summarized comments received from the County Engineering Department, the Sussex Conservation District, and DelDOT.

The applicant and/or his attorney stated that the applicant owns adjoining parcels already zoned B-1 Neighborhood Business,

that the adjoining parcel was rezoned to B-1 Neighborhood Business in October 1995, that a produce stand site was approved in June 1995 two parcels from the site, that all structures will be removed from the site since they are in such poor condition, that retail stores are proposed to be built on the site, that adequate area is available on the site for parking, that public sewer is available to the site, that no negative impact on property values or traffic is anticipated, that fire protection will be provided by the Roxana Volunteer Fire Company, that it is apparent that the nature of the area is commercial uses, that the boat ramps to the rear of the site will be repaired and will be utilized by the property owners, not for public use.

The attorney submitted a copy of the land contract for the property, photographs of the area and the site, and structures on the site.

No parties appeared in opposition to this application.

At the conclusion of the public hearing, 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 the County Engineering Department, that the site is located in the Fenwick Island Sanitary Sewer District and service is currently available, that capacity should be a concern depending on the use, that the properties are currently assessed 1.0 EDU each, that any increase in these assessments will require the payment of connection charges, and that the current connection charge per EDU is \$2,271.00.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington loam and Tidal marsh which have severe limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation after completion of any construction, that the farmland rating of the Fallsington soils is considered Prime Farmland and of Statewide Importance, that a storm flood hazard area may be affected due to the proximity of tidal waters, that off-site and on-site drainage improvements may be necessary due to the high water table and tidal waters, and that no tax ditch is affected.

The Commission found, based on comments received from DelDOT, that the department feels that continued development along Route 54 between Route One and Sussex 381 is ill-advised due to summer peak hour congestion, that the department is

opposed to this rezoning on principle, that as a practical matter the department acknowledges that approving the application may be the right thing to do, that by themselves the parcels proposed for rezoning are relatively useless, that since the applicant owns adjoining parcels the parcels could be developed with a single access point, that the impact of the additional development may be negligible, that any sort of a traffic impact study for this small of a parcel would be pointless, that the variation in through traffic from one day to the next could be greater than the estimated traffic from the site, that a traffic impact study for the combined parcels may be useful, that because of the summer peak hour traffic on Route 54, the department feels that the County should not encourage further development on this road segment, and that the department simply recommends that the County consider denying the application. An attached support facilities report advised that the last traffic count for this road segment was done in 1994, that the count showed an annual average daily traffic of 8153 vehicles per day, that the count showed a summer average daily traffic of 11,647 vehicles per day and that the level of service of this road segment is considered "E".

The Commission found that the applicant and his attorney were present and stated that the applicant owns adjoining parcels already zoned B-1 Neighborhood Business, that the adjoining parcel was rezoned to B-1 Neighborhood Business in October 1995, that a produce stand site was approved in June 1995 two parcels from the site, that all structures will be removed from the site since they are in such poor condition, that retail stores are proposed to be built on the site, that adequate area is available on the site for parking, that public sewer is available to the site, that no negative impact on property values or traffic is anticipated, that fire protection will be provided by the Roxana Volunteer Fire Company, that it is apparent that the nature of the area is commercial uses, that the boat ramps to the rear of the site will be repaired and will be utilized by the property owners, not for public use.

The Commission found that the attorney submitted a copy of the land contract for the property, photographs of the area and the site, and structures on the site.

The Commission found that no parties appeared in opposition to this application.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning is an extension to the existing B-1 Neighborhood Business District.

4. RE: Subd. #96-1--Asa V. Peugh

Asa Peugh, developer, and Don Miller, surveyor, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred by dividing 13.19 acres into 4 lots, located on the north side of Road 46, 2,015.5 feet southeast of U.S. Route 13.

Mr. Abbott summarized the Technical Advisory Committee Report of February 14, 1996, and advised the Commission that Mr. Schrader has reviewed the proposed deed restrictions and found them acceptable.

Mr. Miller advised the Commission that the applicant will follow the comments made by the Technical Advisory Committee, that the streets will be private and maintained by the homeowners association, that the applicant will apply for a nation wide permit to be permitted to fill one acre of wetlands, that there is a large ditch on three sides of the site, that the site is a quiet wooded area, that there is a horse farm to the north of the site, agricultural lands to the east side and that the stormwater management area is approximately 400 feet from Road 46.

Mr. Peugh advised the Commission that he has owned the property for approximately seven years, that he proposes to subdivide the property for himself and his children, that he will keep as many trees as possible on the site, and that there will be final deed restrictions.

Mr. Schrader questioned if there will be a forested buffer zone adjacent to the agricultural lands and was advised by Mr. Miller that the site is wooded but a buffer zone will be shown on the final record plat.

There was no one present in support of this application.

Mark Vangessel raised questions about any deed stipulations, the size of the proposed road, proposed setbacks from property lines, and runoff into the tax ditch.

Donald D'Aquila raised concerns about the location of the proposed street, whether the street will be private or public, the type and size of homes to be built, whether the homes will be single family or multi family, the types of proposed septic systems, proposed stormwater management design, possible erosion problems, that there are lots available in Marathon Estates and Clearbrooke subdivisions, and that the land should remain as agricultural.

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.

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve as a preliminary.

5. RE: Subd. #96-2--Springfield Enterprises

Don Miller, surveyor, was present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 109.36 acres into 210 lots, located on the south side of Road 515, 125 feet west of Road 13A.

Mr. Abbott summarized the Technical Advisory Committee Report of February 14, 1996, and read a letter of opposition from Rob and Bridget Forder.

Mr. Miller advised the Commission that the developers will follow the comments made by the Technical Advisory Committee, that the wetlands on site have been flagged on site but they have not been sent to the United States Army Corps of Engineers for verification, that the soil work has been completed and that the site is suitable for a community wastewater disposal system, that an approved entrance plan has been obtained from DelDOT, that the project will be done in phases for 50 to 60 lots per year, that another entrance was considered on Road 515 but that it was not worthwhile, that the streets will be private and built to County specifications, that DNREC will require a minimum of at least a Class 1 operator for the community wastewater disposal system, and that DNREC will monitor the site.

No one was present in support of this application.

Vince Robertson, Attorney, representing Shawn Brittingham, Roy and Joanne Shenk and Mr. and Mrs. Wilson Sturgis read two letters of opposition and submitted a petition with one hundred fifty seven (157) signatures against this application into the record.

Mr. Robertson advised the Commission that the lots should be larger, questioned the type of dwellings permitted, that the land is agricultural, questioned a need for this size of development in Western Sussex County, that the purpose of GR General Residential Zoned lots is for medium density, that the usable acreage is only 58 acres, that the developers are trying to get as many lots as possible, that there would be negative impacts on

the traffic in the area, that the Conrail Railroad presents a safety problem, and that the wetlands need to be verified by the Army Corps of Engineers.

Shawn Brittingham, Gloria Graham, Glen Hubbard, Donald Cook, Nelson Fastige, Isabell Banks, Richard Parker, Thomas Willey, Pat Willey, John Growan, Joan Dunn, Kim Whaley, Christy Mills, Judy DiRocco, Lester Adams, and Sue Wilkins all spoke in opposition with concerns that the area is predominantly stick built dwellings, that the site is currently agricultural land, that the manufactured homes on the strip lots are on a permanent foundation, that the railroad adjoining the site is in use, that there are numerous farms in the area, that Route 13 A is heavily traveled and that there would be negative impacts on the traffic and property values in the area, that the area has a high water table and there are drainage problems on the site, possible contamination of water wells in the area, negative environmental and habitat impacts, that the use would not be in character with the neighborhood, the type and size of dwellings that would be permitted, the location of the entrance on Route 13A, that the increase in traffic would cause safety problems and speeding and be hazardous to the children in the area, questioned if a traffic impact study was conducted for the site, the proposed density and size of the lots, trespassing and vandalism concerns, questioned if a buffer zone would be required from the strip lots, that when the strip lots were bought the owners were not aware of any future development, questioned who would enforce deed restrictions, who would be responsible for monitoring wells, who the owner or developer is, that pets would be running all around, that manufactured homes do not have a good re-sale profit, that the homes depreciate faster than stick built homes, questioned if anyone on the Commission is related to the applicant or owner, the possible negative impact on the Delmar School District and Delmar Fire Company, questioned if environmental studies have been done on the area, and that since there are more people opposed to the application a democratic vote should be taken.

Dave Bell, a resident of Lincoln, was present representing himself, spoke in opposition since the Coastal Zone Management Act, which is a Federal Act, has not been followed by having the United States Army Corps of Engineers verify the wetland delineation and that government money is being spent on this application, and that work has been done on site without an approved plan from the Sussex Conservation District.

Joel Leidy, representing DelDOT, advised the Commission that an entrance was not applied for on Road 515, and that a traffic impact study was not required.

Mr. Lank advised the Commission that three agencies review drainage calculations, and that both the Delmar School District and Delmar Fire Company were sent notices of the proposed application.

There were sixty one (61) people present in opposition to this application.

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.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried 4 to 1, with Mr. Phillips voting against, to approve as a preliminary.

III. OTHER BUSINESS

1. RE: William and Cheryl McMahon

The Commission reviewed a concept to create a lot with access from an existing fifty foot easement off of Route 24 near Love Creek Bridge.

Mr. Abbott advised the Commission that the easement was approved by the Commission in 1985, that it is recorded on a plot and by deed, that this would be the third lot having access to the easement, and that there would not be an entrance on Route 24.

Mr. Lank advised the Commission that Route 24 would still be considered the front yard.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the request as a concept.

2. RE: Samir Ghabra

The Commission reviewed a commercial site plan for a six unit motel on Rehoboth Avenue Extended.

Mr. Abbott advised the Commission that the site plan meets the minimum requirements of the zoning code, that as of this date, the staff has not received any agency approvals or permits, and read a letter from the Planning Commission of the City of Rehoboth Beach asking that if the site is approved, it be reduced to a maximum of four units allowed.

Mr. Ghabra advised the Commission that the units will be moved from another location, that he is aware of all expenses involved, that he will comply with all agency requirements, that he has resided in Rehoboth for over thirty five years, that he has owned the land since 1980, that he is aware of the traffic in the area and that no matter what the use, there will be traffic, and that the units will be 20' x 26.5' in size.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that the maximum allowed total units not exceed four. Final approval shall be subject to all agency approvals and permits and final review of the Planning and Zoning Commission.

3. RE: Rehoboth Shoppes

The Commission reviewed a commercial site plan for retail sales on Rehoboth Avenue Extended.

Mr. Abbott advised the Commission that the site is for 11,800 square feet of retail space, that the entrance on Rehoboth Avenue Extended is a cross easement with an existing Coffee Shop, that there is a proposed ingress/egress onto Route One, that the total site is 1.33 acres, that the setbacks meet the requirements of the zoning code, that loading spaces are provided, and that adequate parking is provided however it is located within the setbacks and would have to be waived by the Commission, and that as of this date, no agency approvals or permits have been received.

Mabel Granke advised the Commission that the City of Rehoboth Beach Planning Commission requests that this project be deferred until DelDOT and the City of Rehoboth review the site plan and can comment.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to defer action pending receipt of comments from DelDOT and the City of Rehoboth Beach.

4. RE: Family Dollar

The Commission reviewed a commercial site plan for an 8,000 square foot retail sale building on Route 24.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that there are some parking spaces located within the front yard setback and that this would have to be waived, and that the staff has received all required agency approvals and permits.

Minutes
February 22, 1996
Page 13

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

Meeting adjourned at 11:25 PM.