

MINUTES OF THE REGULAR MEETING OF FEBRUARY 28, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 28, 1991, at 7:30 P.M. in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mrs. Monaco, Mr. Hickman, Mr. Smith, Mr. Schrader - Assistant County Attorney, and Mr. Lank - Director.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of February 14, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/Z #1113--Maplewood Industries, Inc.

Althea McDowell, attorney, was present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the north side of Route 24, 581 feet west of Route One and to be located on a parcel containing 4.9 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Sussex Conservation District, and the State Division of Highways.

Mr. Lank stated a letter opposing this application has been received from Norman and Mary Ann Sawyer.

Ms. McDowell stated the proposed site is opposite the entrance to the Rehoboth Mall. There are other businesses in the area. There will be a ten (10) foot buffer area between the proposed site and the residential adjoining properties.

Ms. McDowell stated the applicants are proposing to develop the site into professional areas, offices and shopping areas.

Ms. McDowell stated the applicant plans to relocate the entrance to the Maplewood Development if this application is approved. Central water for the site will be provided by Tidewater Utilities. The applicants have approval for a holding tank for wastewater disposal.

James Kearnin, real estate agent listing lots in Maplewood, spoke stating the proposed site is not suitable for residential use.

Mr. Kelly, Secretary/Treasurer of Maplewood, spoke stating the entrance to Maplewood would be relocated if this application is approved. This would benefit the residents of the development since the new location would be controlled by a traffic signal.

John Plummer, consulting civil engineer, spoke concerning the benefits of relocating the entrance to the development.

Jay Leibforth, Edgar Hill, Barbara Ewing, and Til Purnell spoke in opposition due to traffic, noise, increased drainage problems, existing sewer problems at the Rehoboth Mall, and no need was shown for more shopping areas since there are presently 17 empty stores in the Rehoboth Mall directly across Route 24.

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 D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, the Office of the State Fire Marshal, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Sassafras loam, that the suitability for the intended uses vary from none to slight limitations, that moderate limitations may be anticipated during construction and slight limitations may be anticipated after completion of any construction in reference to erosion and sedimentation control, that the farmland rating of the soil type is prime, that no storm flood hazard area or tax ditch will be affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on several comments from DelD.O.T., that in 1989, a traffic impact study had been recommended; that in 1990, the Division of Highways did not recommend a traffic impact study assuming completion of the Route One project which includes dualization of Route 24 from Route One to Road 275; that the level of service of Route 24 at this location could change from level of service "A" to level of service "B", once the referenced dualization is completed, if the site is developed at an equivalent in per acre trip generation to discount shopping; and that DelD.O.T. has recommended that the entrance line up with the entrance to the Rehoboth Mall.

The Commission found that a letter in opposition had been received from a property owner within Maplewood Subdivision expressing concern about the abundance of commercial property on Route One and questioning the need for more commercial property.

The Commission found that the application was represented by the Secretary/Treasurer of the developers, legal counsel, a realtor, and an engineer, and that professional and office buildings are proposed and possibly a motel or hotel.

The Commission found, based on comments by the applicant, that the parcel is opposite the entrance to the Rehoboth Mall and adjoining a C-1 General Commercial District occupied by a lumber yard and hardware store; that residential use is not feasible on Route 24 at this location; that the proposed entrance location will allow for a better flow of traffic by elimination of offset entrances; that the proposal complies with the Coastal Sussex Land Use Plan; that holding tank wastewater disposal is probable until the West Rehoboth expansion of the Dewey Beach Sanitary Sewer District is operational; that water service will be provided by Tidewater Utilities, Inc.; and that the area will be screened from residential lots adjoining.

The Commission found four (4) persons were present in opposition and expressed concerns in reference to traffic, noise, drainage, permitted uses in C-1 General Commercial, the relocation of the entrance, and questioned the need for more commercial space when the mall has 17 vacant store spaces.

Motion made by Mr. Hickman, 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, traffic congestion, and questioning the need when a number of commercial vacancies exist in the general area.

2. RE: C/Z #1114--Bayville Shore Development Corp.

John Sergovic, attorney, was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HR-2/RPC Multi-Family Residential Planned Community in Baltimore Hundred, located 1,950 feet north of Route 58B on Assawoman Bay, and to be located on a parcel containing 61.12 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Indian River School District, the Sussex Conservation District, the State Division of Highways, and the Roxana Volunteer Fire Company.

Mr. Sergovic stated the applicants plan to build 332 townhouse units. The site is within a sewer district. The RPC Residential Planned Community is being applied for to limit over population of the site. A hydrant system will be provided for fire protection. The project will be built in phases, taking approximately ten (10) years to complete.

Mr. Plummer, traffic consultant, discussed the proposed traffic layout.

Jerry Friedel discussed the sewer capacity available, the central water system, open land areas, and proposed ponds for storm water runoff.

Andy Lorenz questioned the proposed density and the proposed road improvements.

Pat Ficken spoke in opposition due to the site being near a dangerous intersection, farms in the area, and the destruction of the Inland Bays and wildlife area. Ms. Ficken presented a letter in opposition from the Keenwick Homeowners Association.

Robert McIntyre, Preston Phillips, Melvin McDonnell, Jeanette Williams, Jim Denniston, Betty Bosley, and others spoke in opposition due to increased traffic, increased boat traffic, fire protection, drainage problems, density proposed, and damage to existing roads from construction trucks.

Sixty (60) persons were 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 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 Air and Waste Management, the D.N.R.E.C. Division of Fish and Wildlife, the D.N.R.E.C. Division of Parks and Recreation, the D.N.R.E.C. Division of Water Resources Pollution Control Branch, Underground Discharges Branch, and Wetlands and Aquatic Protection Branch, the Bureau of Archaeology and Historic Preservation, the Department of Agriculture, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Indian River School District, that it does not appear that the proposal will have a significant impact on the district.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Evesboro loamy sand, Rumford loamy sand, Fallsington sandy loam, and Keyport fine sandy loam; that the suitability of the soils for the intended use vary from slight to severe limitations; that the soils may have moderate limitations during construction and slight limitations after completion of any construction in respect to erosion and sedimentation control; that the farmland rating of the soil types is of state wide importance; 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 on-site drainage improvements.

The Commission found, based on comments received from DelD.O.T., that a previous traffic impact study had been reviewed which contained a greater number of units and that they will review the information and make recommendations for off-site highway improvements; that there is adequate sight distance at the present intersection; that a relocated intersection may provide additional sight distance; that a protected left turn lane onto Route 58B will be needed; that a right turn deceleration lane will be needed; that additional right of way may be necessary to make the referenced improvements; and that the summer level of service for Route 54 is expected to be at level of service "E" at this road segment.

The Commission found, based on comments received from Gerald G. Friedel, engineer on the application, that the total project area is 91.88 acres and that the proposed density is 6.15 units per acre.

The Commission found, based on comments received from the Roxana Volunteer Fire Co., that the fire company requests that additional time be provided for the fire company to speak to the developer about some of their concerns.

The Commission found that the application was represented by partners of the corporation, legal counsel, and engineers, and that they plan to develop the entire site jointly with 332 multi-family units and on-site recreation facilities, which includes two (2) swimming pools, a 24 slip marina, tennis courts, clubhouse, and a dry stack boat storage facility.

The Commission found, based on comments made by representatives of the application, that the plans will conform with the Coastal Sussex Land Use Plan which designates the area for high density development; that a Residential Planned Community overlay is proposed to restrict the number of units to 332; that the intent is to create a destination resort community; that all units will be placed in the HR-2 Multi-Family Residential District;

not the M Marine District; that development of the property is limited due to cost for sewer, unless the density is approved; that the proposed zoning is viable since the density does not exceed the adjoining residential development of Swann Keys; that the design provides more open space than a subdivided parcel; that the intended use is consistent with the Land Use Plan by providing higher density when central sewer and water is available, and where open space and buffers are provided; that economically positive impacts will be created by the additional housing, county and state revenues, and area business benefits; that space available for multi-family housing is limited to only a few projects county wide and only one in the immediate area; that no residential or out building construction is proposed in wetlands; that the proposed development should take ten (10) years to complete; that central water will be provided with fire protection capabilities; that storm water management ponds will be created; that dead-end lagoons will be eliminated; and that no negative impacts are anticipated.

The Commission found that nine (9) persons of the sixty (60) present, spoke in opposition and expressed concerns in reference to traffic congestion increases on Route 54 and boat traffic increases, the narrowness of Route 58B, sea level rise, lights and noise of vehicles impacting area farms, poor visibility at the intersection of Route 58B and Route 54, negative impact on wildlife and the Inland Bays, that the community will not be destination oriented due to people's desire to visit the ocean beaches and communities, that State police response times are poor (3/4 to 1 hour typical) in summer months, that the people living on and off of Route 54 and Route 54 itself cannot withstand ten (10) more years of construction, and that parts of Route 54 typically flood.

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

3. RE: C/Z #1115--Bayville Shore Development Corp.

John Sergovic, attorney, was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to M Marine in Baltimore Hundred, located 1,950 feet north of Route 58B on Assawoman Bay, and to be located on a parcel containing 35.32 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Indian River School District, the Sussex Conservation District, and a letter in opposition from the Swann Keys Civic Association.

Mr. Sergovic asked that all the applicants testimony and exhibits from the previous hearing be incorporated into the record for this application since they are on the same site.

Mr. Sergovic stated this portion of the site is planned for a marina with 24 temporary boat slips and dry stack storage. The marina would be for the adjoining community, and not open to the public. The recreation area would include tennis courts, a clubhouse, swimming pool, and access to the bay using loop canals and existing natural lagoons. There will be no gas tanks and no marine maintenance facilities.

Mr. Sergovic stated the proposed observation tower will be an open gazebo-type structure with a platform. The roof will be approximately 12 feet high.

Pat Ficken, Coalition of Coastal Communities, spoke in opposition due to overcrowding of waterways and stated an environmental impact study should be done before action is taken on this application.

Melvin McDonnell, Walter Pickwick, Preston Phillips, Til Purnell, Randy Holloway, and others spoke in opposition due to the danger to unfamiliar boaters from shallow waters, overcrowding of waterways, and danger to animals and marine life from gas and oil from boats.

Forty four (44) persons were 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 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 Air and Waste Management, the D.N.R.E.C. Division of Fish and Wildlife, the D.N.R.E.C. Division of Parks and Recreation, the D.N.R.E.C. Division of Water Resources Pollution Control Branch, Underground Discharges Branch, and Wetlands and Aquatic Protection Branch, the Bureau of Archaeology and Historic Preservation, the Department of Agriculture, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Indian River School District, that it does not appear that the proposal will have a significant impact on the district.

The Commission found, based on comments received from DelD.O.T., that a previous traffic impact study had been reviewed which contained a greater number of units and that they will review

the information and make recommendations for off-site highway improvements; that there is adequate sight distance at the present intersection; that a relocated intersection may provide additional sight distance; that a protected left turn lane into Route 58B will be needed; that a right turn deceleration lane will be needed, that additional right of way may be necessary to make the referenced improvements; and that the summer level of service for Route 54 is expected to be at level of service "E" at this road segment.

The Commission found, based on comments received from the Roxana Volunteer Fire Co., that the fire company requests that additional time be provided for the fire company to speak to the developer about some of their concerns.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Evesboro loamy sand, Rumford loamy sand, Woodstown sandy loam, Fallsington sandy loam, and tidal marsh; that the suitability of the soils for the intended use varies from slight to severe limitations; that the soils may have moderate limitations during construction and slight limitations after completion of any construction in respect to erosion and sedimentation control; that the farm land rating of the soils is of state wide importance; and that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, that it may be necessary for on-site drainage improvements.

The Commission found that a letter has been received from Swann Keys Civic Association, Inc. in opposition to this application for a marina and that a letter has been sent to Secretary Clark of the D.N.R.E.C. expressing the Civic Association's concerns.

The Commission found that the application was represented by partners of the corporation, legal counsel, and engineers, and that they plan to develop the marina area with a 24 slip marina, clubhouse, observation tower, tennis courts, pool, dry storage facilities and a private beach.

The Commission found, based on comments made by representatives of the application, that the 24 slip marina will be a community marina facility as recommended by the Coastal Sussex Land Use Plan; that the plan attempts to utilize existing lagoons by creating a loop system to eliminate stagnation of the water; that the developers are willing to agree to an RPC overlay if permissible or that the developers are willing to accept a conditional use for the marina to restrict and control the use; that the dry stack storage facility is for residents within the project only; that excavation will be necessary to provide boat

access to the dry stack storage facility; that a waste dumping facility will be provided per D.N.R.E.C. specifications; that no lagoon slips will be permitted; that the dry stack storage facility will have a boat hoist; and that the observation tower will be a typical gazebo and dock, 12 feet high and 2 feet above grade.

The Commission found that five (5) persons, of the forty-four (44) present, spoke in opposition and expressed concerns in reference to boat traffic, the limited size of ditches, where spoil would be placed, shallowness of waters in the area, congestion of Inland Bays, dangers to wildlife and marine life, petroleum products from boats and wash downs, and stating that an environmental impact study should be performed prior to a decision.

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

4. RE: Subdiv. #91-5--Meadow Brook Assoc.

Allen Warfel and Skip Jones, developers, were 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 28.9 acres into 33 lots, located on the southeast side of Route 206, 1,800 feet northeast of Route One.

Mr. Lank summarized comments from the Technical Advisory Committee meeting of February 20, 1991.

Mr. Warfel stated the applicants are proposing 32 single family lots, with lot sizes larger than the required one half acre.

David Shockley, Ronnie Joseph, Bill Chasanov, Mona Steele, John Stinger, and others, spoke in opposition due to the poor condition of the existing road, increased traffic, the effects of drainage to the existing stream and wetlands, the area is basically a farming community, and the effect on existing wildlife.

Quintin Johnson, soil scientist, stated that no Federal Wetlands were found within the project area.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the application as a preliminary.

5. RE: Subdiv. #91-6--David Webb

David Webb was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 11.45 acres into 21 lots, located on the north side of Route 490, 1,800 feet south of Blades Town Limits.

Mr. Lank summarized comments from the Technical Advisory Committee meeting of February 20, 1991.

Mr. Webb stated the area is a residential area. If central water is required, it would be provided by the Town of Blades. If the Town of Seaford makes central sewage available within six (6) months, dry sewer lines will be installed.

Brett Johnson and Bruce Ruark spoke in opposition due to the proposed lot size, and the location of the proposed subdivision along the Nanticoke River, and questioned compliance with the Western Sussex Land Use Plan.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a preliminary with the stipulation that if central sewer is not available through the Town of Blades agreement within six (6) months, that Mr. Webb need not install a dry sewer collection system.

OTHER BUSINESS

1. RE: Bethany Bay

a. The Commission reviewed a site plan for a temporary sales office in one of the single family units in section 2.3 of Bethany Bay (Building C-4).

b. The Commission reviewed the building plans for the clubhouse for Bethany Bay, which includes an ornamental clock tower above the second floor.

It was noted that only two (2) floors are proposed and that no floors are proposed in the clock tower.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the temporary sales office and the clock tower (ornamental) as submitted.

2. RE: Thetavest, Inc.

The Commission reviewed a site plan for a produce market and office at the northwest corner of the intersection of Route One and Route 264.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the site plan with the stipulation that all parking be on-site. Final approval for a building permit shall be subject to receipt of all necessary agency approvals or permits.

3. RE: Subdiv. #88-26--Seawinds

The Commission reviewed a concept to create a fire pond on lots 2 through 4 of Seawinds.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the fire pond concept.

4. RE: Richard W. Aydelotte

The Commission reviewed a concept to relocate a fifty (50) foot private right of way entrance on Route 16 from an existing entrance to another existing entrance approximately 200 feet easterly.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the concept as submitted.

5. RE: Fenwick Miniature Golf

The Commission reviewed the final site plan for a miniature golf course at the southwest corner of the intersection of Route One and Route 54.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the final site plan.

OLD BUSINESS

1. RE: C/Z #1110--Millard F. Murray

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Indian River Hundred, located on the east side of Route 305, 200 feet south of Route 24, and to be located on a parcel containing 2.37 acres more or less.

The Commission discussed this application which was deferred on February 14, 1991.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried 3-2, with Mr. Ralph 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.

2. RE: C/Z #1112--Custis Alston Harmon

No one was present on behalf of this application to amend the zoning map from GR General Residential to C-1 General Commercial in Indian River Hundred, located on the northeast side of Route 312A, 1,800 feet southeast of Route 24, and to be located on a parcel containing 6.5 acres more or less.

The Commission discussed this application which was deferred on February 14, 1991.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried 3-2, with Mr. Ralph and Mr. Allen opposed, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and due to the close proximity of other commercial activities and Indian River, and the intended use is to be owner operated.

3. RE: ORDINANCE TO AMEND CHAPTER 115 (Mobile Home Setbacks)

AN ORDINANCE AMENDING CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND ZONING PROVISIONS REGARDING MOBILE HOME USE AND SET-BACKS IN TRAILER PARKS OR MOBILE HOME PARKS.

The Commission discussed the proposed Ordinance.

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

4. RE: ORDINANCE TO AMEND CHAPTER 115 (Zoning Procedures)

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY RELATING TO ZONING PROCEDURES.

It was the consensus of the Commission to defer action.

5. RE: Subdiv. #90-15--Doe Run

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 19.25 acres into 14 lots, located on the south side of Route 597, 700 feet east of Route 600, and an application for a variance from the maximum 600 foot cul-de-sac length.

Mr. Lank advised the Commission that all necessary approvals or permits have been obtained.

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

Meeting Adjourned 12:15 A.M.

Lawrence B. Lank, Secretary