

MINUTES OF THE REGULAR MEETING OF MARCH 12, 1992

The regular meeting of the Planning and Zoning Commission was held Thursday evening, March 12, 1992, at 7:30 P.M. in the Superior Court courtroom in the Sussex County Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant 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 February 27, 1992, as circulated.

Mr. Allen asked the Commission to consider the Old Business first due to the inconveniences experienced by the participants at the public hearing held on February 27, 1992.

IV. OLD BUSINESS

1. C/U #996 -- Ronald E. Lankford

The Chairman referred to this application, which was deferred on February 27, 1992, to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, for a Family Amusement Park lying on the northwest side of Route 271, 600 feet northeast of Route One and northwest of Rehoboth Beach and to be located on a parcel containing 96.4 acres more or less.

Mr. Magee stated that he was still reviewing material from DelDOT and the applicants materials and comments.

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

2. Subd. #90-26--George Adams

Mr. Abbott advised the Commission that a request for a one year time extension to obtain final approval for this subdivision has been received.

Mr. Abbott advised the Commission that the developer is in the process of obtaining final agency approvals.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve a one year time extension to receive final approval.

3. Subd. #91-8--S. & T. Estates

Mr. Abbott advised the Commission that a request for a one year time extension to obtain final approval for this subdivision has been received.

Mr. Abbott advised the Commission that the surveyor is in the process of obtaining final agency approvals and that the preliminary approval expires April 25, 1992.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to approve a one year time extension to receive final approval.

4. Subd. #89-11--Richard Carr, Jr.

Frank Lynch, Surveyor; and Edwin Howe and Richard Carr, developers; were present on behalf of the application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 108 acres into 110 lots, located on the northeast side of Route 347, 2,150 feet east of Route 346.

Mr. Abbott advised the Commission that the record plan has been reduced to 93 lots, that the record plan complies with the Subdivision Code, and that all required agency approvals have been received.

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

5. Subd. #86-11--South Forest

No one was present on behalf of the application of John P. Tunnell to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Georgetown Hundred by dividing 220 acres into 253 lots, located on the southeast corner of Route 318 and Route 318 A.

Mr. Abbott advised the Commission that Phase One was approved July 12, 1990, but was never recorded.

Mr. Abbott advised the Commission that Phase One has been revised deleting two lots since the lots contain Federal Wetlands.

Mr. Abbott advised the Commission that the remaining phases are being submitted as a final.

Mr. Abbott advised the Commission that the record plan complies with the Subdivision Code, that all required agency approvals have been received, and that the total number of lots have been reduced to 212 lots.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to approve Phase One as revised and the remaining phases as submitted as a final.

#### PUBLIC HEARINGS

##### 1. RE: C/Z #1152--Paul Edward Calloway

Paul Edward Calloway was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Nanticoke Hundred, located on the northeast side of Route 18, 1,200 feet southeast of Route 527, to be located on a parcel containing 1.92 acres more or less.

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

Mr. Lank read a letter from Deborah Stevenson Papaioanu in opposition.

Mr. Calloway stated that he proposes a produce/vegetable stand and gift shop for summer sales, that the site is directly across from Carl O'day's produce stand, that most of the produce will be raised on another farm owned by the applicant, and that the craft items will be made by the applicant.

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 "D" of Route 404 will not change as a result of this application.

The Commission found, based on comments received from Sussex Conservation District, that the soils on site are mapped to be Evesboro loamy sand and Matawan sandy loam, that the suitability of the Evesboro soils for the intended use may have slight limitations, that the suitability of the Matawan soils for the intended use may have moderate limitations, that the evaluation of the soils with respect to erosion and sedimentation control may require the developer to follow an Erosion and Sediment Control Plan during construction and that slight limitations may be anticipated after completion of any construction, that the farmland rating of the mapped soil types are of statewide importance, that no storm flood hazard areas or tax ditches are 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 Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the district.

The Commission found that the applicant was present and plans to utilize the site for a produce/vegetable stand and gift shop for summer sales; that most of the produce will be raised on a farm owned by the applicant at another location; that the site is directly across from the Carl O'day produce market and in close proximity to Elmers Market, a produce market; and that the craft items will be made by the applicant.

The Commission found that a letter, received in opposition, expressed concerns that two existing fruit/vegetable stands in the area already create excessive amounts of traffic and traffic hazards; that approval of this application would aggravate this present situation; that two fruit/vegetable stands within a quarter of a mile are more than adequate to serve the area; that the additional customer traffic, delivery truck traffic, noise and commercial lighting shall interfere with the enjoyment and utilization of residential properties; and devaluation of property values.

Motion by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is across from a commercial use, a produce stand, and since the site is in close proximity to other commercial uses and districts.

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2. RE: C/Z #1153 -- Sea Colony, Inc.

Mike Lynn, President of Sea Colony, Inc., James Fuqua, Esquire, and Charles Miller of Environmental Consulting Services, were present on behalf of this application to amend the zoning map from MR Medium Density Residential to HR-1/RPC--High Density Residential/Residential Planned Community in Baltimore Hundred, located on the west side of Route 361, 1/4 mile south of Route 26, to be located on a parcel containing 104.59 acres more or less.

Mr. Lank summarized comments received from the Technical Advisory Committee, the Department of Transportation, the Division of Parks and Recreation, the Indian River School District, the DNREC Residual Management Branch, the DNREC Wetlands and Aquatic Protection Branch, the DNREC Division of Fish and Wildlife, the Office of the Secretary of DNREC for Land Use Review and Coordination, the DNREC Water Supply Branch, The Sussex Conservation District.

Mr. Lank summarized 16 letters received in support of the application.

Mr. Lank read a letter from Mrs. Jane Barton in opposition.

Mr. Fuqua advised the Commission that the Sea Colony project started in 1971 and has developed continuously with 7 phases in Sea Colony East and 13 phases presently in Sea Colony West with 1554 units to date, pools, tennis court facilities, an ocean beach, fitness centers, and other amenities; that each phase is a separate condominium project with a separate condominium association; that all phases are a part of the recreation association; that the application conforms to the HR High Density Residential District purpose and the purpose of the RPC Residential Planned Community District; that the developers met with the State DNREC Developer Advisory Service in October 1991; that the proposal conforms to the goals of the Coastal Sussex Land Use Plan; that the proposal is located in the Development District proposed by the Coastal Sussex Land Use Plan; that the proposal conforms to the land use map of the Coastal Sussex Land Use Plan, which designates the site in a multi-family residential area; that the site will be served by the Bethany Beach Sanitary Sewer District; that flow from the site will be sewered via Fairway Drive to the South Coastal Regional Waste Water Facility; that the South Coastal Regional Planning Study advises that ample capacity exist to handle both transmission and treatment; that the site will be served by an existing private water facility owned and operated by Sea Colony, Inc. and that the system will meet all requirements of the DNREC and the Office of the State Fire Marshal; that electrical service will be provided by the Delmarva Power and Light Company; that telephone service will

be provided by the Diamond State Telephone Company; that television cable service will be provided by Simmons Cable; that police protection is provided by the State Police, local Police Departments when needed, and by Sea Colony Security, which operates 24 hours a day 365 days per year with 15 full-time staff during the season and 8 full-time staff during the off season; that fire protection is provided by the Bethany Beach Volunteer Fire Department with Millville Fire Company as backup; and that presently Sea Colony has 20 Condominium Councils with typical restriction declarations and codes.

Mr. Fuqua submitted a booklet on the application, a copy of the Developer Advisory Committee report, a copy of a memo from Michael Izzo of the County Engineering Department, a copy of section 3.6 of the South Coastal Area Planning Study, a copy of section 3.3 of the South Coastal Area Planning Study, a copy of a letter from the DNREC Water Supply Branch, a letter from Davis, Bowen and Friedel, Inc., a letter from the Bethany Beach Volunteer Fire Co., a copy of a letter from the Office of the State Fire Marshal, a copy of the Declaration of Condominium for Sea Colony West, a copy of the Code of Regulations of Sea Colony West, a copy of the Traffic Impact Study for Sea Colony West prepared by Greenhorne and O'Mara, Inc., and a copy of a letter from the DNREC Division of Parks and Recreation.

Mr. Miller advised the Commission that wetlands have been mapped, that the area drains into ditches and then into the Assawoman Canal; that the development plan has several lakes to collect water for stormwater management; that the majority of the water will be retained; that discharge will be less than the existing drainage and will minimize sediment and nutrient loss; that salt water intrusion will be less likely since the lakes and ponds provide ground water recharge; that in reference to the Natural Heritage Program he has walked the site and found nothing rare or endangered; that since the site will have central water and sewer there will be very limited impact on groundwater; and that the minimization of discharges into the Assawoman improves the site.

Mr. Lynn advised the Commission that the project proposes 8 units per acre density; that the structures will include some veranda style duplex, some fourplex, and some 8 unit buildings; that the road system will link up with existing streets and roads within the existing complex; that the mixture of housing types reflects the market; that the duplex and fourplex units will have garages to provide additional open space; that clustering helps preserve open space; that additional paths and trails are proposed for walking, jogging, and biking; that sidewalks will tie into the path/trail system; that Sea Colony is working with the DNREC

Division of Parks and Recreation to create a walkway along the Assawoman Canal and hope to see a linkage created from the Assawoman Bay to the Indian River Bay sometime in the near future for pedestrian traffic; that a 70 foot wide non-disturbed natural buffer is proposed along the existing developments to the north and northeast of the site; that additional trees and landscaping will be provided where needed for screening to reduce light glare from vehicles into neighboring yards; that a 50 foot wide buffer is proposed from the existing Sea Colony West Condominiums; that one (1) tennis court will be provided for each 65 units; that 1 swimming pool will be provided for each 200 units; that the site plan provides for 16 acres of coverage by structures, 12 acres of parking and driveways, 10.5 acres of road right of ways, 2.8 acres of recreational amenities, 9 acres of lakes, and 54 acres of open space; that Sea Colony is working with DelDOT and will make whatever improvements that are necessary; that no negative impact is anticipated on the Indian River School District; that a positive impact is anticipated on the school district due to taxation; that medical services are available at the Beebe Medical Clinic on Route 26 and at Beebe Hospital in Lewes; that shopping areas are in close proximity in Bethany Beach, South Bethany, Millville and Ocean View; that the development will increase the existing economic contribution by increases in payrolls, construction work and jobs, sewer fees, transfer taxes, and property taxes; and that the proposed project should take 10 years to complete based on the past trend of development of Sea Colony.

Mr. Fuqua added that recreation areas will be phased as units are built, that the project is a continuation of the existing development, that no negative environmental impacts are anticipated, that no negative impacts on the school districts are anticipated, that no negative impacts are anticipated on traffic, and that the site is appropriate for multi-family use per the Coastal Sussex Land Use Plan.

Mr. Fuqua submitted a list of possible conditions that the developers would support as conditions of stipulations if the project is approved.

Mr. Magee asked if dry hydrants are going to be installed in the ponds for additional water supply during fire emergencies.

Mr. Lynn stated that they will work with the Fire Marshal and the Fire Company.

Mr. Magee questioned the number of phases existing and proposed and the total build out intended in the entire project.

Mr. Lynn stated that 14 phases of Sea Colony West exist, that the expansion area may be developed with 20 phases, and that the total number of units for the entire complex will not exceed 2400 units.

Mr. Magee questioned the makeup of the security service.

Mr. Lynn stated that the number of employees on the security force is determined by the Sea Colony Recreational Association and Communities, not by Sea Colony, Inc.

Mr. Magee questioned if the ditch system is a tax ditch system.

Mr. Lynn stated that the ditch system is private, not a tax ditch.

Mr. Magee questioned where the first phase will be located.

Mr. Lynn stated that the first phase is proposed to be next to the existing Sea Colony development to be able to tie into the existing sewer lines.

Mr. Magee questioned the time frame for completion of the project.

Mr. Lynn stated that build out is anticipated within ten (10) to twelve (12) years.

Mr. Magee questioned the location and/or relocation of tennis courts in the expansion area and into the existing phases.

Mr. Lynn stated that some of the tennis courts may be located in the central tennis facility and that if the tennis courts are moved the area originally intended for courts will remain as some type of open space.

Mr. Magee questioned the amount of beachfront that exist on the project.

Mr. Lynn stated that approximately a quarter of a mile of beachfront exist at Sea Colony East.

Mr. Magee questioned who has the privilege to use the pools and tennis courts.

Mr. Lynn stated that the residents, as members of the Recreation Association, may utilize any of the recreational amenities at any of the locations throughout the project.

Mr. Allen questioned what percentage of the structures contain eight units.

Mr. Lynn stated that 65 percent of the structures contain eight units each.

Mr. Allen questioned if any single family detached dwellings had been considered in the project.

Mr. Lynn stated that no single family units exist in the existing project and that none are proposed, that the duplex structures are designed to appear as single family dwellings and should be compatible with the adjoining dwellings.

David C. McLaughlin, an adjoining land owner in William F. Wilgus Jr. Subdivision, spoke in support of the application if certain stipulations could be provided to protect property values. Mr. McLaughlin submitted a letter which included four (4) stipulations.

Mr. McLaughlin submitted a letter from Edwin P. Kennedy, Jr. and Peter W. Kennedy, land owners within William F. Wilgus Jr. Subdivision, in support of the application if a buffer zone of seventy (70) feet and a landscape screening is provided with no fencing.

Milton Moskowitz and Daniel J. Lane, land owners within the William F. Wilgus Jr. Subdivision, spoke in support of the application for the same reasons as Mr. McLaughlin and the Kennedys.

Mrs. Jane Barton, land owner within William F. Wilgus Jr. Subdivision, stated that she had written in opposition due to environmental concerns, and that she now supports the application for the same reasons as the neighbors.

Phillip W. Baush of Edgewater House of Sea Colony East, Ben McCalloway of Middlesex Beach, and Paul Reimann, Daniel Shirley, Richard Proctor, John Barton, and Tom Barton, all of William F. Wilgus Jr. Subdivision, and Joseph McHugh of Bethany West, spoke in opposition and expressed concerns in reference to increased traffic; limited parking available at the Sea Colony East for beach access; rental tenants traffic; the beach is not capable of handling the additional density; maintenance is performed by the Recreation Association, not Sea Colony; the security service is provided by the Recreation Association, not Sea Colony; if the plans are approved no major changes should be allowed in the plans; drinking water contamination; evacuation routes during emergencies; dredging of the Assawoman Canal and questioning the placement of

spoils from the dredging; construction during the summer season with heavy equipment; loss of trees; maintenance of drainage ditches; dumping of debris, trees, and stumps; that single family detached dwellings would be preferred; and that the proposed non-disturbance buffers, if created, be undisturbed with no clearing and no grading.

Mr. Magee questioned the number of units rented within the existing project.

Mr. Lynn stated that approximately forty-five (45) percent of the units are rented by the owners.

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

The Commission discussed the public hearing.

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

### III. Other Business

#### 1. Maplewood - Recreation Area Site Plan

The Commission reviewed a site plan for the recreation area of Maplewood subdivision consisting of a swimming pool, community building, and parking area.

Mr. Abbott advised the Commission that the site plan conforms to the zoning code.

Mr. Abbott advised the Commission that lots 70, 71, & 72 will have to be deleted and revised to the recreation area.

Mr. Abbott advised the Commission that no agency approvals have been received to date.

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

#### 2. M.J. Webb Farms, Inc. - Site Plan

Joseph Conaway was present on behalf of this site plan for C/U #955 for a borrow pit operation off of Route 595.

Mr. Abbott advised the Commission that there are not any problems with the site plan and that agency approvals have been received from DelDOT, Sussex Conservation District, and the Army Corps of Engineers.

Mr. Lank advised the Commission that a bond equalling 125 % of the estimated cost for reclamation of the pond will be required before any activity may begin.

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

### 3. Townsends, Inc. - Site Plan

The Commission reviewed a site plan for C/U #989, a borrow hill, off of Route 307.

Mr. Abbott advised the Commission that the site plan complies with the Zoning Code, that agency approvals have been received from DelDOT and Sussex Conservation District.

Mr. Abbott advised the Commission that the use of this site and materials will be by Townsends, Inc. only.

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

### 4. Iacchetta Builders, Inc. - Commercial Site Plan

The Commission reviewed a commercial site plan on Route 54 for an office, warehousing and retail stores.

Mr. Abbott advised the Commission that this site plan was deferred at the August 8, 1991 meeting pending receipt of comments from DelDOT concerning the entrance / exit and parking on Route 54.

Mr. Abbott advised the Commission that DelDOT has approved the entrance / exit area on Route 54.

Mr. Abbott advised the Commission that the site plan conforms to the requirements of the Zoning Code.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried 4 -0, with Mr. Magee not participating, to approve the site plan as a preliminary. Final approval is subject to receiving required agency approvals and final site plan review by the Commission.

5. Fulmer Enterprises - Commercial Site Plan

The Commission reviewed a commercial site plan for a video store, laundromat, hardware store, 20 unit motel and swimming pool on Route 22.

Mr. Abbott advised the Commission that there is presently a restaurant existing on site.

Mr. Abbott advised the Commission that the site plan complies with the Zoning Code and at this time no agency approvals have been received at this time.

Mr. Abbott advised the Commission that if they are favorable to the site plan, only preliminary approval should be considered and that the site plan be reviewed by the Commission when all required agency approvals have been received.

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

6. Clyde Yoder - lot & 50' right of way

The Commission reviewed a request to create a one acre lot for an existing dwelling with access from a fifty foot right of way off of Route 16.

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

7. Paul Miller - 4 lots

The Commission reviewed a request to create 4 lots off of an existing right of way.

Mr. Lank advised the Commission that in 1990, the Commission approved 3 lots and a fifty foot right of way on the site and that the site adjoins another 3 lot subdivision owner by a neighbor.

Mr. Lank advised the Commission that the owner wants to revise the 3 lots and one of the lots owned by the neighbor to change the configuration of the lots to allow deletion of the 50 foot right of way and permit the lots to front the existing private road.

Mr. Lank advised the Commission that the fifty foot right of way should still be required.

It was the consensus of the Commission that the staff should discuss the Commissions concerns with Mr. Miller.

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Meeting adjourned at 11:15 P.M.