

## MINUTES OF THE REGULAR MEETING OF APRIL 25, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 25, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of April 11, 1991, as circulated.

### PUBLIC HEARINGS

#### 1. RE: Subdiv. #91-7--Wheatley Marvel Corp.

Herbert Wheatley and Harvey Marvel, Jr. were present on behalf of the application of Wheatley Marvel Corp. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 46.05 acres into 24 lots, located on the east side of Route 113, 2,000 feet north of Route 623.

Mr. Lank summarized the Technical Advisory Committee Report of April 22, 1991, in reference to this application.

Mr. Wheatley advised the Commission that if only one entrance is permitted by DelD.O.T., a northerly entrance is preferred by the developers.

Mr. Wheatley submitted a revised plot plan showing a northerly entrance with streets proposed to be dedicated to public use.

Mr. Wheatley stated that deed restrictions will be proposed to protect the wetlands.

Laura Morley questioned the use of Hudson Pond, a privately owned pond, the use of the words Recreation Area on Hudson Pond, and the liabilities to property owners.

Mr. Marvel responded that the developers plan to donate the wetlands and the portion of the pond owned by the developers to a conservation trust; that only canoes and row boats will be permitted; and that the words Recreation Area will be changed to Conservation Area on the plat plan.

Dennis McColley stated that the pond is privately owned.

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

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

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a preliminary with one entrance. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals. The reference to Recreation Area shall be Conservation Area.

2. RE: Subdiv. #91-8--S. & T. Estates

Robert Rykiel of Coast Survey, Inc. was present on behalf of S. & T. Estates to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 95.1 acres into 35 lots, located on the southeast side of Route 277, 750 feet northeast of Route 285-A.

Mr. Lank summarized the Technical Advisory Committee Report of April 22, 1991, in reference to this application.

Mr. Rykiel submitted comments from D.N.R.E.C. granting feasibility for sewer treatment.

Mr. Rykiel stated that greater setbacks may be required by the developer which exceed County regulations; that the existing large dwelling on the premises will remain a part of the subdivision on a 2.4 acre lot; that some out buildings on the site will be removed; that the small dwelling along Route 277 will be on a separate lot and will not be a part of the subdivision; that the entrance for the subdivision includes the present driveway to the existing large dwelling; and that the developer preferred large lots which average 2.65 acres per lot.

Betty McGinnis spoke in opposition and expressed concerns in reference to traffic, the future impact of well water, and questioning the need for additional development in the area.

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. Smith, seconded by Mr. Hickman, and carried unanimously to approve the subdivision as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

3. RE: Subdiv. #91-9--Back Bay Cove

No one was present on behalf of this application to consider the subdivision of land in an MR Medium Density Residential Zoning District in Cedar Creek Hundred by dividing 18.7 acres into 13 lots, located as an extension to Bay Shore Drive (Broadkill Beach), 1.5 miles north of Route 16. This application also includes a request for a variance from the required cul-de-sac length.

Mr. Lank summarized the Technical Advisory Committee Report of April 22, 1991, in reference to this application.

Mr. Allen questioned if fire hydrants were required and questioned the depth of water lines and expressed some concern of possible pipe freezing during winter months.

Joe Giber of Broadkill Beach questioned where the water supply will come from and expressed concerns over water supply, water pressure, and street construction, both existing and proposed. Mr. Giber stated that the pavement section of Bay Shore Drive ends at California Avenue.

Mr. Schrader referenced the comments from the office of the State Fire Marshal which referenced hydrants being required.

Chris Battalini stated that a 2 inch water line presently exists within 18 inches of grade; that some freezing of pipes has been experienced; and that a 2 inch water line is not appropriate for fire hydrants.

Mr. Battalini also stated that Bay Shore Drive is poorly maintained and that the U. S. Postal Service has stated that the street is inadequate for postal vehicles. Mr. Battalini stated that he is not opposed to development, but opposed to the utilities being served from Broadkill.

Mr. Allen questioned who maintains the streets.

Mr. Lank responded that the streets have been dedicated to public use and are State maintained.

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

The Commission discussed this application.

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

4. RE: Subdiv. #91-10--James Tate

Jeff Clark of Land Tech, Inc. was present on behalf of this application of James Tate to consider the subdivision of land in an MR Medium Density Residential Zoning District in Baltimore Hundred by dividing 2.48 acres into 6 lots, located on the southwest side of Route 54, 2,000 feet northwest of Bennett Avenue.

Mr. Lank summarized the Technical Advisory Committee Report of April 22, 1991, in reference to this application.

Mr. Lank read the memo received from the Indian River School District which anticipated no significant impact on the district as proposed.

Mr. Clark stated that the eye brow cul-de-sac type entrances were preferred by DelD.O.T.; that the Federal 404 Wetlands have been delineated; that no state wetlands exist on-site; that the site will be served by the Fenwick Island Sanitary Sewer District; that all lots will conform to or be greater than the MR Medium Density Residential requirements; that individual wells are proposed; that connection to the Cape Windsor water system is not available; that adequate space is available on each lot for parking vehicles; that 90 percent of Lot #1 is Federal 404 wetlands; and that the dwelling will have to be built on pilings; that Lot #1 cannot be filled; and that the eye brow cul-de-sacs and a five (5) foot strip along Route 54 shall be dedicated to public use for State maintenance.

Mr. Lank asked if the developer would be willing to dedicate or delete Lot #1 from the proposal.

Mr. Clark responded that the developer would probably not wish to delete Lot #1.

Elmer Lugard, Barbara Vargo, Donald Moffitt, Catherine Lesby, Doris Everett, and Andrew Lorenz spoke in opposition and expressed concerns in reference to the impact on wetlands, possible filling of wetlands, water on the road during high water, drainage, storm water run off onto adjacent wetlands and lots, why two entrances are proposed for six lots and only one entrance on other applications for larger developments, and traffic.



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

The Commission discussed the application.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the 6 lot subdivision as a preliminary since the State DelD.O.T. has conceptually approved the entrance design. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

5. RE: Subdiv. #91-11--James Ward

Mr. Lank stated that this application is to consider the subdivision of land in an MR Medium Density Residential Zoning District in Baltimore Hundred by dividing 8.9 acres into 20 lots, located on the west side of Route One, 3,600 feet north of Route 360.

Mr. Bernie Kostelnik, an area resident, stated that this application should not proceed until discrepancies are corrected and referenced that the application includes an improper location reference; questioned who was the applicant, James Ward or Ward Development Co.; that lot widths were not noted; that existing zoning is MR Medium Density Residential but no proposed zoning was noted; and that the application form was not signed.

Jeff Clark was present on behalf of the applicant, but without legal counsel.

Mr. Lank advised the Commission that a signed application form was on file with the application.

Mr. Schrader questioned Mr. Lank in reference to Mr. Kostelnik's concerns.

It was found that all of the concerns raised were noted either on the application form or on the subdivision plat proposed.

Mr. Schrader stated that the public hearing could continue as proposed.

Mr. Lank read the sections of the Technical Advisory Report of April 22, 1991, which referenced this application.

Mr. Lank read the memo received from the Indian River School District which anticipated no significant impact on the district as proposed.

Mr. Clark stated that wetlands were surveyed and established by a wetlands expert; that Federal wetlands have been mapped; that no State wetlands exist on-site; that the existing ditch at Lots 1, 19, and 20, is proposed to be relocated to permit development of Lots 1, 19, and 20; that water will be obtained from Sussex Shores Water Co.; that the site is within the North Bethany extension of the Bethany Beach Sanitary Sewer District; that all lots will contain a minimum width of 75 feet and 10,000 square feet; that private streets are proposed; that paving radii of loop streets will be corrected per request of the County Engineering Department; and that the office of the State Fire Marshal has voiced no objection to the loop streets.

Mr. Lank questioned the whereabouts of a fifty (50) foot right of way for a one way street loop at Lots 5 thru 11 and lack of upland buildable areas for a number of the lots.

Mr. Clark stated that the concept had been addressed with the Planning staff prior to formal application; that the streets are private and proposed to be maintained by a property owners association; therefore, the recreation area should be permitted in the right of way since the recreation area and the streets are to be maintained by the association. In reference to Federal Wetlands, they are buildable on pilings.

Andrew Lorenz of the State D.N.R.E.C., expressed concern about building in wetlands and possible use of fill material without permits.

Bernie Kostelnik stated that he is not opposed or in favor of the application, only concerned that all applications be complete and in proper form. The application forms were again discussed.

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

The Commission discussed this application.

Motion made by Mr. Hickman, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

6. RE: Subdiv. #91-12--W. G. C. III Development

Joseph Hudson, David Rutt, Esquire, and Paul West of Land Tech, Inc., were present on behalf of this application to consider the subdivision of land in an MR Medium Density Residential Zoning District in Baltimore Hundred by dividing 11.12 acres into 23 lots



and a variance from the required 600 foot maximum cul-de-sac length, located on the west side of Route One, 2.2 miles north of Route 360.

Mr. Lank read the Technical Advisory Committee Report of April 22, 1991, in reference to this application.

Mr. Lank read the memo received from the Indian River School District which anticipated no significant impact on the district as proposed.

Mr. Lank advised the Commission that Tracy Sckabal of the State D.N.R.E.C. Wetlands and Aquatic Protection Branch has called and confirmed that no action should be taken on this application until it is again reviewed by the Joint Permit Processing Committee of D.N.R.E.C. and the Army Corp. of Engineers since the lagoon is being relocated.

Mr. Hudson stated that he is present on behalf of he and his partners, of which each have 25% of the partnership.

Mr. Hudson stated that Land Tech, Inc. has the authority to create the proposed plans for compliance with all agency requirements; that police protection is provided by the State Police; that fire protection is provided by the Bethany Beach Fire Co.; that hydrant systems will be provided; and that the developers have no objection to other users in cases of emergency; that single family dwellings are proposed on pilings; that a home owners association will be created and private deed restrictions; that the developers or their representatives have met with the joint processing committee and discussed the project and propose minimal changes in the project; that the right of way on Sea and Pines lands to the north for the street will be an easement or purchased; that no adverse impact is anticipated on the neighborhood or property values; that the street construction is undetermined as to whether they will be private or dedicated to public use.

Mr. West described the project and stated that fill areas will not be built upon; that they plan to excavate the southerly side of the lagoon and fill the northerly side; then revegetate the area to make the shoreline organic to reduce sediments and to keep the canal from stagnating; that all lots will conform to the minimum or be greater than the MR Medium Density Residential requirement; that the setbacks from wetlands will be met; that the northerly street is approximately 900 feet long and the southerly street is approximately 800 to 825 feet long; that the necessary entrance criteria will be met; that erosion and sedimentation plans will be provided; and that the wetlands have been delineated and will be noted accordingly.

Mr. Lorenz read the comments from the Wetlands and Aquatic Protection Branch again and added that Tracey Skrabal and Bill Moyer of D.N.R.E.C. have not even acknowledged knowing about the changes proposed in the lagoon.

Jeff Clark of Land Tech questioned Mr. Lorenz's comments.

Mr. Bernie Kostelnik questioned who the applicants were and what information would be provided to purchasers in reference to access to beaches across Route One.

Mr. Hudson commented that deed restrictions will be provided and that public beach access areas will be addressed.

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

The Commission discussed this application.

Motion made by Mr. Hickman, seconded by Mr. Ralph, and carried 4 to 1, with Mr. Allen opposed, to approve the subdivision as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

#### OTHER BUSINESS

1. RE: Bethany Bay

Jeff Clark of Land Tech, Inc. was present on behalf of the developers to discuss the parking requirements for the clubhouse and related recreational areas to Bethany Bay.

Mr. Lank summarized the parking requirements per the Code of Sussex in reference to indoor commercial recreation and assembly halls or community centers.

Mr. Clark proposes to create paved parking for 110 cars and 45 additional spaces as overflow area on turf.

Motion made by Mr. Hickman, seconded by Mr. Ralph, and carried unanimously to approve the parking as proposed.

2. RE: Dale Wheatley

Mr. Lank submitted a proposed five (5) acre parcel north of Route 545 which adjoins a fifty (50) foot right of way approved for a Conditional Use for a borrow pit. If approved, the fifty (50) foot right of way will serve the remaining acreage and the borrow pit.



Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the lot with frontage along Route 545 since the fifty (50) foot right of way already exists to serve the borrow pit which is on the remaining acreage.

OLD BUSINESS

1. RE: Donna Thomas

Mr. Lank reported to the Commission his site inspection of the proposed lot on a fifty (50) foot right of way off Route 571.

Mr. Lank and Mrs. Monaco questioned the road and right of way width and the accuracy of the road's location.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to deny the request for an additional lot on a fifty (50) foot right of way due to the inadequate right of way.

2. RE: Subdiv. #90-31--Donald Riggins

Mr. Lank reported that the application of Donald Riggins (Coventry Gardens) to consider the subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred by dividing 36.7 acres into 29 lots, located on the southeast side of Route 266, 2,300 feet north of Route 266A, which has been deferred since November 29, 1990, pending on-site waste water feasibility from D.N.R.E.C., has recently received a feasibility statement.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the subdivision as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals and/or permits.

3. ~~RE~~ Subdiv. #90-32--Route One Limited Partnership

Mr. Lank introduced the application of Route One Limited Partnership (The Pines) to consider the subdivision of land in an MR Medium Density Residential District in Baltimore Hundred by dividing 19.95 acres into 47 lots, located on the west side of Route One, 5,900 feet north of Route 360.

Jeff Clark of Land Tech, Inc. and Michael Badger of Route One Limited Partnership were present to discuss wetlands issues addressed in the letter for the preliminary approval.

Mr. Clark stated that no State wetlands exist on the site; that Federal 404 wetlands have been delineated; and that response has not been received from the Army Corp. of Engineers.

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

Mr. Lank stated that if the Corp. of Engineers disagrees with the delineation, then revised subdivision plans shall have to be submitted for review.

4. ~~RE~~ Subdiv. #89-23--George W. Marshall, II (The Hollys)

Mr. Lank reported that George W. Marshall II has requested a time extension for preparation of the final plan for the application to consider the subdivision of land in an MR Medium Density Residential District in Cedar Creek Hundred by dividing 55 acres into 70 lots located on the northwest side of Route 619, 2,400 feet northeast of Route 36.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to grant a one (1) year extension.

5. RE: Subdiv. #89-1--"Briarcliffe"  
lands of William McMahon and James Lukens

Mr. Lank reported that the applicants have requested a second time extension for preparation of the final plan for the application to consider the subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred by dividing 117 acres into 151 lots, located on the southwest side of Route 298, and southwest of the intersection of Route 298 and Route 298A.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to grant a one (1) year time extension.

6. RE: Subdiv. #90-1--Thetavest, Inc.  
"Sugar Maple Farms, Section 2"

Mr. Lank reported that the application of Thetavest, Inc. to consider the subdivision of land in an AR-1 Agricultural Residential 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 has obtained all necessary approvals for consideration as a final.

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



7. RE: Subdiv. #89-10--Mary Handy  
Crestfield

No action was taken on this application.

Meeting Adjourned 11:35 P.M.

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Lawrence B. Lank, Secretary