

MINUTES OF THE REGULAR MEETING OF APRIL 29, 1993

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 29, 1993, at 7:30 PM, in Room 115 of the 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 April 15, 1993, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1035 -- Robert L. & Melissa S. Richardson

Robert L. Richardson, Charles Drummond, and Eleanor Penelli were present on behalf of this application to consider the conditional Use of land in a B-1 Neighborhood Business District in Indian River Hundred for a Flea Market with Outside Sales lying on the northeast corner of the intersection of Route 297 (Route 5) and Route 24, to be located on a parcel containing 3.00 acres more or less.

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

Mr. Lank read a petition from citizens in opposition. The petition contains 71 signatures.

Mr. Richardson advised the Commission that the proposal will have no impact on traffic based on comments received from DelDOT, that the flea market will be open on Fridays, Saturdays, and Sundays from 8:00 A.M. to 5:00 P.M. from April to December, that spaces will be rented to vendors, that he has no knowledge of the number of people that will utilize the facility, that the proposal provides a means of utilizing a vacant portion of the site, that the site will be vacant, except for tables, when not in use, that all sales will be from the tables only, that no overnight camping will be permitted, that security lighting will be provided, that two (2) portable toilets will be installed, and that one (1) dumpster will be provided, and that adequate parking is available on the site.

Kenneth Clark, Chief of the Nanticoke Indian Tribe, speaking on behalf of the Tribe and himself, stated that Mr. Richardson had agreed to certain conditions when he created the convenience store, that the convenience store is now operated by a corporation with young employees, not an owner-manager, and expressed concerns in reference to children safety, traffic, traffic safety, that more

people create more traffic, and that a flea market would be out of character near a church and the Indian Museum.

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 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, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, that the suitability of the soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the developer to follow an Erosion and Sedimentation Control Plan during construction and to maintain a vegetative cover after completion of any construction, that the farmland rating of the soil type is of statewide importance, that no storm flood hazard areas or tax ditches are affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements.

The Commission found, based on comments made by representatives of the application, that the proposal will have no impact on traffic based on comments received from DelDOT, that the flea market will be open on Fridays, Saturdays, and Sundays from 8:00 A.M. to 5:00 P.M. from April to December, that spaces will be rented to vendors, that he has no knowledge of the number of people that will utilize the facility, that the proposal provides a means of utilizing a vacant portion of the site, that the site will be vacant, except for tables, when not in use, that all sales will be from the tables only, that no overnight camping will be permitted, that security lighting will be provided, that two (2) portable toilets will be installed, that one (1) dumpster will be provided, and that adequate parking is available on the site.

The Commission found that the Chief of the Nanticoke Indian Tribe submitted a petition containing 71 signatures in opposition.

The Commission found that the Chief of the Nanticoke Indian Tribe expressed concerns that the convenience store is operated by a corporation with young employees, not an owner-manager, that the convenience store has become a hangout for teenagers, children safety, traffic, traffic safety, that more people create more traffic, and that a outside flea market is not compatible to a church or the Indian Museum.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the site is across from a church and a museum, a cultural center, since the road may not be capable of handling the traffic generated by a flea market at this location, and since the flea market would not be compatible with the residential area near the site.

2. RE: C/Z #1190 -- L & L Properties, Inc.

Robert Lyle of L & L Properties, Inc. and Michael McGroerty, Attorney, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HI-1 Heavy Industrial in Broad Creek Hundred, located on the west side of U.S. Route 13, 1,400 feet south of Road 470 to be located on a parcel containing 23.60 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Office of the Secretary of the State DNREC, the DNREC Underground Discharges Branch, the DNREC Pollution control Branch, the Delaware Department of Health and Social Services Division of Public Health, the Sussex Conservation District, the DNREC Wetlands and Aquatic Protection Branch, the DNREC Air Quality Management Section, and the DNREC Water Supply Branch.

Mr. Lank read a letter from R. W. Durham Associates on behalf of Village Brook, Inc. in opposition.

Mr. McGroerty described the area around the site as being industrial, commercial, or agricultural zoned and submitted pictures of the site and the activities around or near the site.

Mr. McGroerty stated that the best use of the property is not residential due the other types of uses in the area which includes salvage yards, commercial sales of machinery equipment, a speed shop, a gas station, warehousing, and a pipe furniture store, that the use is presently situated on a leased parcel in the City of Seaford, and that the applicant proposes to manufacture hydroseeders, sprayers, and related equipment.

Mr. Lyle stated that the business has existed for 25 years, that the business has operated in the City of Seaford for 6 years, that he proposes to relocate so that he can expand his facilities, that presently he employs 17 employees, that he anticipates that the maximum number of employees may be 25, that the proposed nursery will utilize 4 to 5 employees, that a market exist for container grown plants, that approximately 2 to 3 acres will be needed for the manufacturing site, that the remainder will be utilized for the nursery, that no room exist at the present site in Seaford for a nursery, that sales are primarily wholesale, that 1 or 2 commercial vehicles come to the site per week, that all cardboard is recycled, that a licensed waste hauler handles all waste oils and greases, that the proposed building may contain 15,000 to 18,000 square feet, that a material storage yard will be fenced, that he proposes that the building be setback off of Route 13 trying to preserve an existing tree growth along Route 13, that he was aware of the annexation of the adjoining property, but not aware of an approval for a housing project, that there are no indications of wetlands on the site except in the tax ditch, that no adverse impact on property values or the neighborhood is anticipated, that the hydroseeders and strayers are designed for both trailer installation or skid types, that typically there are ten (10) in stock ready for shipping, and that he would have no objection to reducing the application to a LI-2 Light Industrial if the use is appropriate in that district.

No parties appeared 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 DelDOT, that a traffic impact study was not recommended and that the existing level of service "B" of Route 13 will not change as a result of this application.

The Commission found, based on comments received form the Office of the Secretary of the State DNREC, for the purpose of land use review and coordination, that comments have been requested from the DNREC Division of Air and Waste Management Air Resources Section, Waste Management Section Hazardous Waste Branch and solid Waste Branch, the DNREC Division of Water Resources Pollution control Branch, Watershed Assessment Branch, Wetlands and Aquatic Protection Branch, Water Supply Branch and Underground Discharges Branch, the Department of Agriculture, the State Historic Preservation Office, the Delaware Health and social Services Division of Public Health, and the Sussex Conservation District.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed to be via individual on-site disposal, that the soils on the site are suitable for on-site disposal, that the septic system may require pressurization due to the depth of seasonal high water table, that a site evaluation with a minimum of three soil borings must be conducted by a licensed Class D soil scientist, that a site evaluation report must be submitted in compliance with regulations to the Branch with the appropriate fee, and that the maximum siting density will be 500 gallons per 1/2 acre.

The Commission found, based on comments received from the DNREC Pollution Control Branch, that the Branch has no objection to the proposed change.

The Commission found, based on comments received from the Division of Public Health, that plans for the water system will be required to be submitted to a Division Environmental Engineer and that if the facility employs more than 25 people it will be classified as a non-transient non-community water system subject to the Safe Drinking Water Act.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Fallsington sandy loam, that the suitability of the Evesboro soils for the intended use may vary from none to slight limitations and that the Fallsington soils may have severe limitations due to wetness if not adequately drained, that the evaluation of the soils with respect to erosion and sediment control may require the applicant to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soils as mapped are of statewide importance, that no storm flood hazard areas or tax ditches are affected, and that on-site and off-site drainage improvements may be necessary.

The Commission found, based on comments received from the DNREC Wetlands and Aquatic Protection Branch, that the information provided is insufficient for making a preliminary wetland determination, that the Branch has assumed that wetlands exist on the site, that any activity such as filling, dredging, crossing with a road or placement of a structure may require a permit from the Branch or the U.S. Army Corps. of Engineers, and that the extent of wetlands should be identified on-site and depicted on a site plan before final approval is granted.

The Commission found, based on comments received from the DNREC Air Quality Management Section, that any activity which may cause or contribute to the discharge of air contaminant are required to obtain a permit from the Section, and that manufacturing processes that apply paints or use solvents for metal cleaning are required to obtain approval of equipment installed to control emission of non-exempt organic compounds.

The Commission found, based on comments received from the DNREC Water Supply Branch, that individual on-site wells may be installed at this site provided the requirements of the "Regulations Governing the Construction of Water Wells" are met.

The Commission found that the application was represented by a company representative and an attorney.

The Commission found, based on comments made by representatives of the application that the best use of the property is not residential due to others types of uses in the area which includes salvage yards, commercial sales of machinery equipment, a speed shop, a gas station, warehousing, and a pipe furniture store, that the use is presently situated on leased land in the City of Seaford, that the applicant proposes to manufacture hydroseeders, sprayers, and related equipment, that the business has existed for 25 years, that the business has operated in Seaford for 6 years, that relocation of the business is proposed for expansion of the facilities, that presently the business employs 17 people, that a maximum of 25 employees are anticipated, that the nursery will employ 4 or 5 people, that a market exist for container grown plants, that 2 to 3 acres will be needed for the manufacturing site, that the remainder will be utilized for the nursery, that no room exist at the present site in Seaford for a nursery, that sales are primarily wholesale, that 1 or 2 commercial vehicles come to the business per week, that all cardboard is recycled, that a licensed waste hauler handles all waste oils and greases, that the proposed building will contain 15,000 to 18,000 square feet, that a material storage yard will be fenced, that the building will be setback off of Route 13 to preserve an existing tree growth along Route 13, that they are aware of a recent annexation into the Town of Laurel of an adjoining parcel, that they were not aware that the adjoining parcel has an approval for a housing project, that there are no indications that wetlands exist on the site except in the tax ditch, that no adverse impacts are anticipated on property values or the neighborhood, that the hydroseeders and sprayers are designed for trailer installation or on skids for installation on trucks, that normally there are ten (10) sprayers in stock ready for shipment, and that they would have no objection to reducing the application to a LI-2 Light Industrial zoning if the use is appropriate in that district.

The Commission found that a letter was received in opposition since the adjoins property, containing 81.83 acres, was recently annexed into the Town of Laurel for a housing project, since the project has obtained the approval of the Town of Laurel and the Sussex Conservation District, since contracts are presently being let for water, sewer and roads, since the industrial use and zoning could create a nuisance on the housing project, expressing a concern for possible impacts on an additional 109 acre parcel, which adjoins the site, and stating that the highest and best use of the site is residential.

Motion by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action. The staff to request comments from the Town of Laurel.

3. RE: C/Z #1191 -- Michael W. and Cindy E. Bunting

Michael W. and Cindy E. Bunting were present on behalf of their application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broadkill Hundred, located on the north side of Route 212B, 120 feet east of Route 212 to be located on a parcel containing 1.4 acres more or less.

Mr. Lank summarized comments received from DelDOT and the Sussex Conservation District.

Mr. Bunting advised the Commission that he proposes to build a 30' by 50' building for a shop for automotive alternator and starter repair, that no vehicles will be stored on the premises, that he intends to work on the unit only, not the vehicle, that the building will be utilized for an office and inventory storage, the shop, and personal storage, that no adverse impact is anticipated on the neighborhood or property values, that they have been in contact with DelDOT about requirements for an entrance, and that the business will operate normal daytime hours 5 days per week.

No parties appeared 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 DelDOT, that the proposed action will have on significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Rumford loamy sand, that the suitability of the Rumford soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the applicant to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soils, as mapped are of Statewide Importance, 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 made by the applicant, that he proposes to build a 30' by 50' building for a shop for automotive and starter repair, that no vehicles will be stored on the premises, that he intends to work on the units only, not the vehicles, that the building will be utilized for an office and inventory storage, a shop, and personal storage, that no adverse impact is anticipated on the neighborhood or property values, that they have been in contact with DelDOT about requirements for an entrance, and that the business will operate normal daytime hours 5 days per week.

The Commission found that no parties appeared in opposition.

Motion by Mrs. Monaco, 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 intent is a small operation with no adverse impact on the neighborhood.

4. RE: C/Z #1192 -- Melvin L. Joseph

Don Pfaff was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Baltimore Hundred, located northeast of the corner of the intersection of Route 353 and Route 365, lots 1 through 8 of the Subdivision of lands of Melvin L. Joseph Construction Co. to be located on a parcel containing 4.91 acres more or less.

Mr. Lank summarized comments received from the DelDOT, the Office of the Secretary of the State DNREC, the DNREC Pollution Control Branch, the Division of Public Health, the Sussex Conservation District, the Indian River School District, the DNREC Wetlands and Aquatic Protection Branch, the DNREC Underground Discharges Branch, and the DNREC Water Supply Branch.

Mr. Lank read a letter received in opposition from Blaine Phillips.

Mr. Pfaff stated that Sherwood Acres, a GR General Residential District subdivision exist across Route 353, and a GR General Residential District exist across Route 365, that the entire area is predominantly GR General Residential, that the lot separating the subdivision lots is occupied by a dwelling and a manufactured home, that the applicant proposes modest lots for affordable housing, that the lots are approximately 3/4 acre in size, that an active borrow pit exist to the rear of the site, and that the borrow pit and spoil site for borrow will remain as presently utilized on the adjoining parcel.

Florence and Merle Gray, adjoining land owners, spoke in opposition and expressed concerns in reference to all terrain vehicles utilizing the property without permission, trespassing on their property, and trash in ditches.

Mr. Gray submitted a series of photographs of debris in ditches.

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 "A" of Route 353 and Route 365 will not change as a result of this application.

The Commission found, based on comments received from the Office of the Secretary of the State DNREC, that comments have been requested from the DNREC Division of Water Resources Pollution control Branch, Watershed Assessment Branch, Wetlands and Aquatic Protection Branch, Water Supply Branch, and Underground Discharges Branch, the Department of Agriculture, the Delaware State Historic Preservation Office, the Division of Public Health, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the DNREC Pollution Control Branch, that the Branch has no objection to the change.

The Commission found, based on comments received from the Division of Public Health, that the Division has no comment on the project as long as individual wells are installed.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, that the suitability of the soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the applicant to follow an Erosion and sedimentation control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soils as mapped are of Statewide Importance, 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 Indian River School District, that it does not appear that the proposed change will have a significant impact on the District.

The Commission found, based on comments received from the DNREC Wetlands and Aquatic Protection Branch, that the information provided to their office was insufficient for making preliminary wetland determination, that the Branch assumes that wetlands are present on the site and that any filling, dredging, crossing with a road or placement of a structure may require a permit from the Branch or the U.S. Army Corps. of Engineers.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed to be via individual on-site disposal systems, that the soils on the site are suitable for on-site wastewater disposal, and that the maximum siting density will be 1 dwelling per 1/2 acre.

The Commission found, based on comments received from the DNREC Water Supply Branch, that individual on-site wells may be installed provided that the "Regulations Governing the Construction of Water Wells" are met.

The Commission found that the application was represented by an employee of the applicant who stated that Sherwood Acres, a GR General Residential Subdivision exist across Route 353, that a GR general Residential District exist across Route 365, that the area is predominantly occupied by manufactured homes, that the lot separating the subdivision lots is occupied by a dwelling and a manufactured home, that the applicant proposes modest lots for affordable housing, that the lots are approximately 3/4 acre in size, that an active borrow pit exist to the rear of the site, and that the borrow pit and spoil site for the borrow will remain as presently utilized on the adjoining parcel.

The Commission found that two parties spoke in opposition and expressed concerns in reference to all terrain vehicles utilizing the property without permission, trespassing on their property, and trash in ditches.

The Commission found that one letter was received in opposition which expressed concerns that the introduction of mobile homes to the land would be detrimental and would irrevocably blight the neighborhood, that the rezoning would damage economics, aesthetics and the environment, would increase burdens on county services without a commensurate increase in taxes, and would impose further demands and risks upon potable water supply.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning would be compatible with the area due to the areas already zoned GR General Residential and the number of manufactured homes in the area.

5. RE: Subd. #93-8--Fine Home Builders, Inc. &
Pegasus Construction Co., Inc.

Jim Riordan, President of Fine Home Builders, was present on behalf of the application of Fine Home Builders, Inc. and Pegasus Construction Co., Inc. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 17.70 acres into 26 lots, located on the southern side of Route 277, 2,550 feet southwest of Route 275, and across from Gosling Creek Road in Gosling Creek Subdivision.

Mr. Abbott summarized the Technical Advisory Committee Report of April 22, 1993 and additional comments received from the Underground Discharges Branch and Water Supply Branch of DNREC in reference to this application.

Mr. Riordan advised the Commission that the developers will comply with the recommendations of the Technical Advisory Committee and that they would like to keep the design of the entrance as shown.

Mr. Allen questioned if the developers would be willing to redesign the entrance and Mr. Riordan stated that they would rather not make any changes since they hired a specialist to design the entrance.

No one was present in opposition.

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

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

Mr. Abbott advised the Commission that a septic feasibility statement from DNREC has not yet been received.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to defer action pending receipt of a septic feasibility statement.

III. OTHER BUSINESS

1. RE: Bethany Bay AR-RPC Revised Master Plan Concept

The Commission reviewed a revised master plan concept for Bethany Bay.

Jeff Clark of Land Tech Inc. advised the Commission that this project was approved four years ago, that the approved master plan was approved for 375 units for Phase 1 and that the revised plan also references 375 units, that this revision is for cluster type housing and some multi family dwellings and a nine hole golf course, that more than half of the multi family dwelling units have been deleted, that this revision will create more open space, that all of the units will face golf, open space or wetlands, that the existing cluster homes are twenty feet apart and the proposed units will also be twenty feet apart, that the streets will be twenty five foot in width, that the developer has agreed to install curbing and a sidewalk system, that no units are encroaching into wetlands, and that all foundations that were in violation have been removed.

Mr. Lank advised the Commission that an inspection was done by the staff and verified that the violations have been corrected.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve as a concept with the stipulation that each phase be reviewed and approved by the Commission.

2. RE: William H. & Rebecca A. Prettyman

The Commission reviewed a concept to create a parcel off of an existing public subdivision street.

Mr. Lank advised the Commission that this subdivision went through site plan review, was approved for a certain amount of lots, that the streets were originally private and then dedicated to public use under Senate Bill #313, and questioned if this would be considered as an extension of an existing subdivision that would require a public hearing.

Jeff Clark of Land Tech Inc. advised the Commission that the cul-de-sac has not been built, and stated that this should be considered the same as creating a lot off of a numbered road, and that the Soil Conservation Service would allow the developer to install a pipe across the ditch for access.

Mr. Ralph questioned who would be responsible for completing the cul-de-sac.

Reggie and Lillian Melson and Stacy Colegrove spoke in opposition since this would be an extension to an existing subdivision.

Mr. Lank asked Mr. Clark if he has spoken with DelDOT and Mr. Clark advised that he had not.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action so that the staff can research the subdivision file.

IV. OLD BUSINESS

1. RE: C/Z #1188--Allen Family Foods, Inc.

The Chairman referred back to this application that has been deferred since March 25, 1993.

Motion made by Mr. Smith to recommend that this application be forwarded to the County Council with the recommendation that this application be denied.

Motion died for a lack of a second.

Motion made by Mr. Magee, seconded by Mr. Ralph, and carried 3 - 1 - 1, with Mr. Allen opposed, and Mr. Smith not voting, to forward this application to the County Council with the recommendation that this application be approved since farming is Sussex Counties largest industry, and this application supports the farming industry.

2. RE: C/U #1034--Tunnell Companies, L.P.

The Chairman referred back to this application that was deferred at the April 15, 1993 meeting.

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

3. RE: C/Z #1189--Tunnell Companies, L.P.

The Chairman referred back to this application that was deferred at April 15, 1993 meeting.

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

4. RE: The Plantations East MR-RPC

The Commission reviewed the final record plan for The Plantations East RPC.

Mr. Abbott advised the Commission that the plan meets the requirements of the zoning and subdivision codes, and that all required agency approvals and permits have been received.

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

Meeting adjourned at 10:10 PM.