

MINUTES OF THE REGULAR MEETING OF AUGUST 13, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 13, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with the following members present;

Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to amend the order of the scheduled public hearings by placing C/Z #1342 last in the order.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of July 23, 1998 as circulated.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

APD #98-3—application of W.G. Passwaters Ent., Inc. to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for three (3) parcels of land totaling 328.87 acres, more or less, located on both sides of Road 594 and on both sides of Road 40, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

The Commission found, based on a summary of a fact sheet prepared by the Delaware Agricultural Lands Preservation Foundation, that the staff of the Foundation recommends that the site meets the minimum criteria to be a district.

The Commission found that Charles Landis Correll, Jr. was present on behalf of his mother and stated that the farm has been in the family for 222 years; that the farm is still being tilled; and that they propose that the land remain in farmland.

The Commission found that 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.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be granted.

C/U #1253—application of ROBERT M. DAVIS to consider the Conditional Use of land in an AR-1 Agricultural Residential District for mini storage and outside recreational vehicle and boat storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.13 acres, more or less, east of Route 17, 587 feet south of Road 386.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service “C” of Route 17 will not change as a result of this application.

The Commission found, based on comments received from the Delaware Office of State Planning Coordination, that the Office has no objections to the Conditional Use proposal; that the Department of Natural Resources and Environmental Control advises that public water supply is not available at the site, and that a well permit will be required; and that the State will require a site evaluation of the property prior to consideration of a septic permit.

The Commission found that Robert M. Davis was present and stated in his presentation and in response to questions raised by the Commission that he proposed five (5) mini storage buildings on one side of the parcel and open storage of recreational vehicles and boats on the other side; that ingress/egress exists on both sides of the ditch; that the site will be fenced with chain-link fencing; that the site will have some security lighting; that no water or sewer will be provided on the site; that a need exist for storage in

the area; that the site is partially wooded; that he would like to place a 32 square foot non-lighted sign on the site; that key-punch access may be used or the access may be limited to daylight hours; that he would like to improve the area around the mini-storage with clamshells or stone; that the nearest mini-storage is approximately 1.5 miles at Selbyville; that he anticipates that the outside storage area will store approximately 300 boats or recreational vehicles; that he anticipates that some of the users will be for seasonal storage, and that the storage will be utilized primarily for winter storage.

The Commission found that 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.

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

1. The site shall be surrounded by chain-link fencing at least six (6) feet in height.
2. One (1) thirty-two (32) square foot non-lighted sign may be permitted.
3. All security lighting shall be directed away from nearby residences and Route 17.
4. The surface of the area of the mini-storage buildings shall be improved with clamshells or crushed stone, at a minimum.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission. A landscape plan shall be submitted with the site plan.

C/Z #1343—application of BURTON BRITTINGHAM to consider a proposal to amend the zoning map from a GR General Residential District to an AR-1 Agricultural Residential District in Broad Creek Hundred, located east of Road 62, intersection of Road 447 and west of Gray's Branch, to be located on a parcel containing 83.38 acres more or less.

Mr. Lank advised the Commission that the application is for downzoning of the property for the purpose of participating in the farmland preservation program.

The Commission found that Burton Brittingham was present and stated in his presentation and in response to questions raised by the Commission that the rezoning excludes the home and shop area; that a 400 acre Agricultural Preservation District exists across Gray's Branch; that 55 acres of his parcel are tillable and 30 acres include woods and area around farm buildings; and that if the rezoning is approved, he will be applying to the Delaware Agricultural Lands Preservation Foundation for an extension to an Agricultural Preservation District.

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

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

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

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a downzoning to AR-1 Agricultural Residential.

C/Z #1344—application of FRANK E. APPEL to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Cedar Creek Hundred, located east of Road 626, 2,460 feet south of Route 36, to be located on a parcel containing 2.55 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended.

The Commission found that the applicant was present and stated in his presentation and in response to questions raised by the Commission that he may have been misinformed by the Planning Office about his application type; that he and his son plan to utilize existing buildings on the site for boat storage for winter months; that some outside storage of boats may be established; that he would not be opposed to a Conditional Use application instead of a Change of Zoning; that he presently operates a boat repair business in Little Heaven, Kent County; that no boat sales are proposed; that he only intends to do repair work, service work, and storage; and that he is not aware of any private deed restrictions on his parcel.

The Commission found that James Wingard and Shirley Jackson, of the five (5) persons present in opposition, stated that they oppose commercial zoning and other uses permitted; that they have no problem with boats or boat repairs; that they do oppose junk cars and auto mechanical work; and that the business hours should be restricted since the site is located in a residential area.

At the conclusion of the public hearing for C/Z #1345, Mr. Frank Appel withdrew his application for C/Z #1344.

C/Z #1345—application of DICK APPEL to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Cedar Creek Hundred, located 315 feet east of Road 626, 2,750 feet south of Route 36, to be located on a parcel containing 1.09 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended.

The Commission found that Dick Appel was present and stated in his presentation and in response to questions raised by the Commission that the site includes the area between the rear of his home and the wooded area to the rear; and that he agrees with his father that he would not object to a Conditional Use.

Mr. Allen suggested that the applications be withdrawn; that an application be submitted for a Conditional Use; and that the fee for a Conditional Use application should be waived.

Frank Appel and Dick Appel withdrew their applications at 8:20 p.m.

C/Z #1342—application of NORTH BEACH, L.L.C. to consider a proposal to amend the zoning map from a MR Medium Density Residential District to a M Marine District in Baltimore Hundred, located south of Road 360, ¼ mile west of Route One, to be located on a parcel containing 13.07 acres, more or less.

The Commission found, based on comments received from DelDOT, that on March 23, 1998 the Department recommended that a traffic impact study be performed; that on April 13, 1998 the Department stated that a traffic impact study is not recommended and that the level of service "D" of Road 360 would not change as a result of this application; and that on April 15, 1998 the Department stated that they were originally concerned with the potential traffic impacts with this project and a hotel application on an adjoining parcel; that the Department's initial analysis of the two applications indicated that Road 360 operates at a level of service "E" and would do so with or without either application; that the Department met with Mr. Jeffrey A. Clark of Land Tech, Inc., who represents both applications, and that it was identified that an error in the Department's calculation of the summer peak hour traffic on Road 360; that with the error corrected, the peak hour volume is significantly lower, and that Road 360 operates at a level of service "D".

The Commission found, based on comments received from Mr. Russell W. Archut, Assistant County Engineer, that the application is located in the Cedar Neck Expansion of the Bethany Sanitary Sewer District; that the estimated completion date of the sewer system is May 1, 2001; that there is no service available at this time; that connection to the system will be mandatory; that the developer/property owner will be responsible for installing the collection system; that the collection system must meet County standards and specifications; and that all sewer user fees will be applicable when the system becomes operational.

The Commission found, based on comments received from Mr. Rob Davis, Planning Technician for the County Engineering Department, that temporary holding tank permits may be issued by the State, and that the County will accept wastewater when a discharge authorization is approved.

The Commission found, based on comments received from Mr. David S. Hugg, III of the Delaware Office of State Planning Coordination, that the Office objects to this rezoning proposal due to the fact that the site is in a high hazard flood-prone area and is served by Road 360 which is frequently impassible due to flooding; since a re-zoning which results in greater density of development in flood hazard areas would be inconsistent with damage reduction and storm evacuation goals; and noting that the applicant will need to contact the Town of Bethany Beach and the Division of Water Resources to find out the availability of public water and sewer.

The Commission found, based on a letter from the Honorable Shirley A. Price, State Representative, that she and Representative John Schroeder and Senator George Bunting have been actively attempting to address issues associated with water quality in the inland bays; that she request that the County consult the State DNREC concerning any restrictions that might be needed to safeguard the environmental health of the Salt Pond prior to granting any rezoning; that all applications, whether change of zoning or Conditional Use, should be given the same consideration; that safeguards and controls in the zoning process must be established for properties that border all waterways; suggested that the County allow only Conditional Use applications on any part of the inland bays, and that the County should

request information from the State DNREC to build in any necessary controls and restrictions; and added that the waterways are extremely important to the economics and environmental health of Sussex County, and that if we continue to misuse them, we will lose many of our resources.

The Commission found that prior to this public hearing, one (1) letter had been received in support of the application and thirty (30) letters had been received in opposition.

The Commission found that Robert Hush, managing member of North Beach, L.L.C., David Rutt, Attorney, Jeffrey Clark of Land Tech, Inc. and Evelyn Maurmeyer of Coastal & Estuarine Research, Inc. were present on behalf of North Beach, L.L.C.

The Commission found that Mr. Rutt submitted a packet of exhibits on behalf of the application, which included a copy of the deed to the property; a copy of an application for a joint processing meeting with the State DNREC and the U.S. Army Corps. of Engineers; a memorandum from Evelyn Maurmeyer; portions of the 1997 Sussex County Comprehensive Plan; portions of the Comprehensive Conservation and Management Plan for the Inland Bays; portions of the Delaware Coastal Management Program; portions of Shaping Delaware's Future Issues; and a copy of the findings of the Delaware General Assembly on oil pollution liability.

The Commission found that Mr. Hush and Mr. Rutt, Attorney, in their presentations and in response to questions raised by the Commission, stated that the site is in a Development District; that rezoning to M Marine was chosen since it permits all of the uses proposed; that mortgage companies are not receptive to funding Conditional Use applications; that the rezoning will comply with the Comprehensive Plan and the Comprehensive Conservation and Management Plan; that Mr. Hush lives in the general area and has a history of professional tennis and recreational activities; that the Salt Pond is conducive to canoes, kayaks, and small sail boats; that the tennis complex will include four (4) tennis courts enclosed with a bubble for winter use; that four (4) or five (5) tennis courts can be closed and covered with artificial turf for soccer fields; that the proposed indoor swimming pool

facility will be made available for the community and local school use; that the swimming area will include a small children's pool, an outdoor pool, and an enclosed competition pool; that the clubhouse will include motel accommodations for professionals participating in activities at the complex, a pro shop, a physical therapist, day care, administrative offices, and a wellness center; that no adverse impact is anticipated on the area, the environment, or property values; that a B-1 Neighborhood Business rezoning and a C-1 General Commercial rezoning have been approved in the immediate area; that Mr. Hush has spoken to the Mayors of Fenwick Island, Bethany Beach, and Dewey Beach, the Town Manager of Bethany Beach, the Principals of Lord Baltimore School and Selbyville Middle School, Athletic Directors for schools in the area, scout leaders and church group representatives in the area and received no negative comments to the project; that Mr. Hush travels the Salt Pond at least four (4) times per week; that a motor boats cannot travel over all of the Salt Pond due to shallowness; that motor boats cannot access the Salt Pond at low tide; that a motor boat will be needed to rescue or retrieve canoes, kayaks, or sailboats; that no jet ski watercraft are proposed; that jet ski watercraft are not compatible with canoes or kayaks; that Road 360 has a reduced speed limit; that no encroachments are proposed into the wetlands; that the proposed entrance location to the project is the same as the existing entrance to the residential improvements on the site; that the intended use will provide year round recreation for the residents of the area; that flood waters have been up to the first step of the residential improvements on the site since the large ditch along Road 360 overflows when flooding occurs in the area; that the waters of the Salt Pond are available for public use; that the land area below the Salt Pond is privately owned; that the site extends out to the wetlands, not to the pond; that business hours for tennis are proposed from 7:00 a.m. to 10:00 p.m.; that some of the tennis courts will be lighted; that the tennis bubble will not be lighted; that 1 to 1.5 feet of fill may be required for the clay tennis courts; and that the tennis club and swimming club will be membership oriented.

The Commission found that Evelyn Maurmeyer stated that she performed the wetland delineation in 1992 and 1993; that the delineation was approved; that the site plan was submitted to the Joint Processing Committee

and that the plan was favorably received with modifications; that the site plan was revised to conform with suggestions; that the marina plan requires review and approval by the Joint Processing Committee; that a walkway to the marina is proposed to be elevated over the wetlands; that the project avoids all impacts on wetlands and provides a buffer to the wetlands; that if the project was to be developed residentially for 20 lots, the State DNREC may allow 20 piers which could support up to 80 watercraft; that the only disturbance of wetlands will be pilings to support the walkway decking to the pond; that the walkway is proposed to be elevated to allow continued growth of marsh grasses; that the wetlands delineation was approved in 1995 and is valid for 5 years; and that the type of watercraft proposed will have minimal impact on the shoreline.

The Commission found that Jeffrey Clark described the area ownership, the site plan, and stated that the competition pool is a 25 meter pool; that the location of the piers was chosen for the least impact; that the piers in the pond are floating piers and removable during the winter; that the boat house will be utilized for watercraft storage; that the parking lot proposes 105 parking spaces; that potable water is proposed to be supplied by Sussex Shores Water Company; that central sewer will be available in the year 2001; that temporary holding tanks are proposed to be utilized until access to central sewer is available; that stormwater management will be subject to review and approval by the Sussex Conservation District; and that fire protection will be provided by the Millville Fire Department.

The Commission found that Mr. Clark submitted a support letter from the Sussex Shores Water Company, and a letter from the Sussex Conservation District.

The Commission found that Carmen A. Zambeno, John A. Kasado, Joseph Connor, and Peter DeMarie, of the 22 people present in support, stated that recreational facilities would be a benefit to the community; that boating is acceptable on the Salt Pond; that they support non-motorized watercraft use of the pond; that a recreational facility would be preferred over development of townhomes; that the use would benefit all ages; that Sussex County has no parks and recreational system or department; that the use provides a good

source for a public/private partnership; that there are no indoor soccer programs in the immediate area; that some of the children in the area have to travel to Ocean City and the Kirkwood area of New Castle County for indoor soccer programs; and that a need exist in the area for year round health and fitness programs.

The Commission found that William Naughton, a resident of Salt Pond Residential Community, and Robert Witsil, Jr., Attorney, were present in opposition and stated that the application is a fiction, and very commercial in nature; that they are not opposed to residential use; that portions of the Salt Pond are privately owned; that no easements of record have been submitted; that their primary objection is the commercial uses, a restaurant and bar, and an 18 room inn; that they oppose many of the marine uses listed as permitted uses in the M Marine District of the Zoning Ordinance; and that the Comprehensive Plan references that commercial uses within residential areas, especially those in the Inland Bays and other areas which are influenced by cultural, environmental and/or mobility concerns, should be limited to neighborhood shopping and businesses should be clustered in village scale centers which are integrated with residential areas to create mixed-use communities.

The Commission was advised by Mr. Witsil that he had just spoken to Mayor Frederick of Dewey Beach and that Mayor Frederick stated that he had spoken to Mr. Hush, but that he had not stated any approval.

The Commission found that Mr. Witsil submitted proposed findings of fact in opposition to the application, and an environmental assessment of the proposed development prepared by Christopher Pfifer of Entrix, an environmental consulting firm.

The Commission found that Christopher Pfifer summarized the environment assessment report, and added that he has no disagreement with the wetlands delineation performed; that no change in the delineation was found; that there may be a physical impact on the wetlands by pile driving; that the proposed pier appears to be located on lands other than the applicant; that the average water depth in the vicinity of the marshes appears to be above

one (1) foot; and that the Salt Pond appears to be over populated with sea nettles.

The Commission found that Mr. Witsil was opposed to Mr. DeMarie's support of the rezoning since his only interest was a proposed application Of DMV Partnership, of which Mr. DeMarie is a partner, on the adjoining parcel to the east.

The Commission found that Mr. Witsil submitted photographs of the site, the area surrounding the site, the pond, the residential improvements on the site during flooding, and wildlife on or near the site.

The Commission found that James Griffin, Attorney, was present on behalf of some of the landowners in Seabreak, Sussex Shores, Tower Shores, Indian Harbour, and Bayberry Dunes, and stated that it appears that almost all of the uplands area of the site will be improved with impervious surfaces; that his clients have specific objections to the purpose of the M Marine District; that a Conditional Use could have been applied for; that some of the uses proposed are not permitted in M Marine District; questioned why a marina is proposed over land that is not owned by the applicant; expressed concerns relating to the restaurant and liquor being served, increases in traffic, noise; that the rezoning may be considered spot zoning; that the use would be out of character with the immediate neighborhood and the area; that the applicant will be the only one to benefit by the rezoning; that the Salt Pond should be preserved and cannot support commercialization; that the changes in the DelDOT comments seem questionable; that the site should be reviewed for environmental impact; that the rezoning will establish a precedent to the proposed application of DMV Partnership, and that both applications should be denied; that no further applications should be considered until Road 360 is improved; and that the rezoning will impact property values in the area.

The Commission found that John Sergovic, Jr., Attorney, was present on behalf of the developers of The Retreat, and that the Camalier family supports the MR Medium Density Residential classification and the "Quiet Resorts"; that the rezoning request is a reversal of the past and present

character of the area; and that the proposed use is a commercial intrusion into the resort area.

The Commission found that Richard Deason, James Stephen, Lisa Carey, Joe Thomas, Amos Hitchens, and David Rupert, of the 104 people present in opposition expressed concerns relating to setbacks; run-off; the use of fill for the marina; flooding; the vertical elevation of the property above sea level; that the inground pool will require pilings and counterweights; the impact on the wildlife; that motor boats, pontoon boats, and jet skis do come into the pond; that a no wake law exist, and that the law is not complied with by boaters; that the entrance is too close to the entrance to Pond Acres; and that every year it will be necessary for fill to be placed on the clay courts because of run-off.

The Commission found, based on the sign-in sheets passed out during the meeting that 19 people were present in support of the application and that 104 people 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.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

III. OTHER BUSINESS

1. Beneficial National Bank

John Sergovic, Attorney, and Jeff Clark of Land Tech Inc. were present as the Commission reviewed a revised preliminary site plan for 19 multi-family dwelling units on the west side of Route One north of Fenwick Island.

Mr. Schrader advised the Commission that he has researched the Ordinance and has found that there is not any basis for denying the site plan; that the previous approved plan is still valid; and that there are less encroachments into the buffer setback than the approved preliminary plan.

Mr. Clark advised the Commission that the developers would have all approvals within one year.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried four votes to one, with Mr. Allen opposed, to approve the revised site plan as a preliminary. Final approval shall be subject to receipt of all required agency approvals and review by the Commission.

2. Clifton Bay Country Storage

The Commission reviewed the final site plan for C/U #1219 for indoor boat storage on Road 38.

Mr. Abbott summarized the stipulations that the County Council put on this application and advised the Commission that the plan is the same as what was submitted for the public hearing.

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

3. Eugene D. Bookhammer

The Commission reviewed a concept to create a parcel with access from an existing fifty-foot right of way off of Route 24 near Love Creek.

Mr. Abbott advised the Commission that the proposed lot will be close to seven acres; that lot A was approved by the Commission on July 9, 1998; and that the proposed lot will be the third parcel on an existing right of way.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the parcel as a concept with the stipulation that any further subdivision will require a public hearing.

4. Swann Estates II

The Commission reviewed a concept to create two lots off of Sea Gull Road Extended within Swann Estates II Subdivision.

Mr. Abbott advised the Commission that this area was reserved for future development on the record plan that was recorded in 1990; and that the proposed lots conform to the subdivision and zoning ordinances.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the two lots as a concept.

5. G. Wayne Jagers

The Commission reviewed a concept to create a parcel with access from an existing fifty-foot right of way off of Road 462.

Mr. Abbott advised the Commission that the proposed lot would be the third lot on an existing right of way; that the proposed lot will be close to two acres; and that this was originally approved by the Commission on September 23, 1993 but was never approved by the staff or recorded.

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve the lot as a concept with the stipulation that any future subdivision will require a public hearing.

6. Otha Furniss, Sr.

The Commission reviewed a revised four-lot subdivision plan in Carsyljan Acres.

Mr. Abbott advised the Commission that there are presently four lots and a street that has not been built; that the owner wishes to delete the street and revise lot 12A into 2 lots; that lot 12C will remain as is; that lots 12B and 12 D will be combined into one lot; and that there would still be four lots.

Motion made by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to approve the revised four-lot subdivision as a concept.

7. Bogart's Cove Subdivision

The Commission reviewed a revised subdivision plan for Bogart's Cove Subdivision located off of Road 341.

Mr. Abbott advised the Commission that the developer proposes to delete one lot and to make the remaining two lots larger; and that the length of the cul-de-sac will be smaller.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the revised subdivision plan as a concept. Final approval shall be subject to receipt of all required agency approvals.

8. Sussex County Vocational Technical School

Mr. Abbott advised the Commission that this item was removed from the agenda on August 11, 1998 at the request of the engineer.

9. Michael J. Evans

The Commission reviewed a request for a time extension for Conditional Use #1195.

Mr. Abbott advised the Commission that a time extension is needed since the applicant has to file for a variance from the Board of Adjustment and that this is the first request for an extension.

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve a one-year time extension.

10.Dewey Beach Suites

Ben Carr, Architect, was present as the Commission reviewed a conceptual site plan for a 48-unit hotel.

Mr. Abbott advised the Commission that 48 units are proposed; that the building will be four stories; that there is ingress/egress proposed from F. Benson Street and Josephine Street; that the developer wishes for Route One to be considered the front of the property with no access to Route One; and advised the Commission that there is parking within the front yard setback along Route One.

It was the consensus of the Commission that if parking is proposed along Route One, the developer should have some type of curbed bumpers or fencing to keep vehicles from encroaching over the property line.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a concept only. Preliminary and final plans shall be required to be submitted for formal review.

Meeting adjourned at 11:40 P.M.