

MINUTES OF THE REGULAR MEETING OF AUGUST 24, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 24, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, Mr. Wheatley, with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to adopt the agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of August 10, 2000 as corrected.

Mr. Schrader described how the agenda and hearings would be conducted.

PUBLIC HEARINGS

C/U #1350 -- application of DELMARVA PAINTBALL to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an amusement (paintball games) to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 1.03 acres, more or less, lying 620 feet south of Route 9 and 860 feet east of U.S. Route 13.

The Commission found, based on comments received from DelDOT, that the Department was opposed to the rezoning of this property; and that a Conditional Use approval, limiting the use of the property to the proposed use, is the best way for the County to address the project; that the Department is concerned about access to the site, which may conflict with the goals of the Corridor Capacity Preservation Program along U.S. Route 13; and that the Department will allow access to the proposed use only from the existing entrance to the flea market on U.S. Route 9.

The Commission found, based on comments received from the Sussex Conservation District, that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Kenansville loamy sand which has slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the Kenansville soils are considered Prime Farmland.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Town of Laurel's proposed service area, according to the Western Sussex Water and Sewer Plan; and that the developer should contact the Town for sewer and water availability.

The Commission found that Dan Wallace of Delmarva Paintball was present and stated in his presentation and in response to questions raised by the Commission that he proposes a safe area for paintball games; that there are many active paintball players in Sussex County and the surrounding areas; that the paintball area will be fenced with safety netting; that referees will be provided; that paintball markers (guns) are tested for speed of the paintballs; that a fee will be charged to participate; that typical hours will be from 9:00 A.M. to Sunset on Saturdays and Sundays; that a special event is proposed for October to parallel the Nightmare Market at the Flea Market; that the paintball area will be generator lighted for the special event; that the special event will include Friday nights during October; that adequate space is available for parking on the site; that approximately 50 players may use the paintball area per day; that the paintball markers make minimal noise; that construction of barriers has already started; that the paintball area will be fenced with safety netting at a height of 20-feet next to the flea market area and 8-feet next to the agricultural fields; that the paintball games are played with a minimum of 2-man teams; that the paintball markers fire paintballs at a speed of 300 feet per second; that he proposes to limit the speed to 280 feet per second; that the participants wear safety equipment, which includes mask, goggles, and padded chest guards; that the paintball markers are powered by Co2 ; that the safety equipment can be leased at the site during events; that fees include \$10.00 for access to play and \$18.00 for a packaged fee, which includes use of the paintball marker and safety equipment; that the minimum age is 10-years; that there are several courses in the area, including one outside of Laurel in a wooded area and one near Milford/Staytonville; that if the use is restricted, he would request that the use be limited to Friday nights, Saturday, and Sunday, and that hours be allowed to 11:00 P.M. on Friday, 11:00 P.M. on Saturday, and Sundown on Sunday; and that there will be no music played outside.

The Commission found that Bill Brown, one of the operators of the flea market was present in support of the application and stated that the flea market is open from 8:00 A.M. to 4:00 P.M. on Friday, and from 6:00 A.M. to 5:00 P.M. on Saturday and Sunday; and that some of the vendors stay at the site all night.

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

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved with the following stipulations: 1) The paintball activity hours shall not exceed 9:00 P.M. on Friday and Saturday, or 5:00 P.M. on Sunday; 2) Any lighting of the

paintball area shall not be directed toward homes or roadways; 3) the site plan shall be subject to the review and approval of the Planning and Zoning Commission.

Subdivision #2000-22 -- application of LESLIE AND BRENDA JOHNSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred, by dividing 55.70 acres into 38 lots, located west of Road 541, 1,230 feet south of Road 20.

The Commission found that Mr. Lank advised the Commission that the Technical Advisory Committee Report of August 16, 2000 would be made a part of the record for this application.

The Commission found that Mr. Abbott summarized comments received from the Natural Resources Conservation Service in reference to this application.

The Commission found that Leslie Johnson, owner, Steve Cooper, Realtor, and Steve Sellers, Surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the proposed square footage of the dwellings will be a minimum of 1,600 square feet; that no manufactured or modular homes will be permitted; that individual wells and septic systems are proposed; that the stormwater management areas will be small ponds; that the proposed streets will be built to State of Delaware Standards and dedicated to public use; that the Handy property has been timbered; that a 50 foot forested buffer is proposed instead of the minimum required 30 foot buffer; and that the wetlands will remain undisturbed.

The Commission found that R.C. Willin was present representing his mother and advised the Commission that they are not opposed to this application but that they do have concerns about the stormwater management areas and the maintenance for these areas; that they have concerns about water run off entering Green Briar Branch; that Green Briar Branch drains the farm fields in the area; that the homes located upstream of Green Briar Branch could be negatively impacted if there is not any maintenance done to the stormwater management areas; and that there is currently no maintenance done to Green Briar Branch.

The Commission found that Mr. Sellers advised the Commission that water run off cannot enter Green Briar Branch any faster than what is currently permitted; that they cannot put an easement in the wetlands; that Green Briar Branch is not located on the developer's property; and that falling trees are creating dams in Green Briar Branch.

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

Subdivision #2000-22--application of JAMES D. PARKER to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred, by dividing 36.48 acres into 39 lots, located east of Road 410, 1,160 feet north of Road 412.

The Commission found that Mr. Lank advised the Commission that the Technical Advisory Committee Report of August 16, 2000 would be made a part of the record for this application.

The Commission found that Mr. Abbott summarized comments received from the Natural Resources Conservation Service in reference to this application.

The Commission found that James Parker was present on behalf of this application and advised the Commission in his presentation and in response to questions raised by the Commission that he resides within one mile of this project; that the minimum square footage of the dwellings will be 2,100 square feet; that attached garages will be required; that no manufactured or modular homes will be permitted; that only on-site stick built dwellings will be permitted; that a homeowners association will be responsible for the maintenance of the streets; that most of the adjoining properties are residences; that a buffer is proposed adjacent to the Moore lands; that there are no wetlands on the site; that he has spoken to most of the neighbors and has not found any objections; and that the proposed deed restrictions have been revised to meet Mr. Schrader's comments and submitted the revised deed restrictions for review.

The Commission found that Mr. Schrader stated that his comments have been addressed in the revised restrictions and that they are acceptable.

The Commission found that no parties appeared with any interest 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 by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

Subdivision #2000-24--application of RACE STREET, L.L.C. to consider the Subdivision of land in a C-1 General Commercial Zoning District and AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 7.88 acres into 5 lots, located northeast of Route One, east of Road 268 and west of Road 268-A.

The Commission found that Mr. Lank advised the Commission that the Technical Advisory Committee Report of August 16, 2000 would be made a part of the record for this application.

The Commission found that Mr. Abbott summarized comments received from the Natural Resources Conservation Service in reference to this application.

The Commission found that Mike Makowski; developer, Jim Fuqua; Attorney, Ken Christenbury; Engineer, and Ian Kauffman; Soil Scientist, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is bounded by Delaware Route One, Kings Highway, and Road 268-A; that the site is zoned C-1 General Commercial with a small portion zoned AR-1 Agricultural Residential; that the site is located within a development district based on the Comprehensive Land Use Plan; that the site is located in a community district based on the State of Delaware Strategies for Spending maps; that central sewer provided by Sussex County is proposed; that central water provided by Tidewater Utilities is proposed; that no negative comments were received from the Technical Advisory Committee; that access to all of the lots will be from an internal subdivision street; that the lot owners will make up a lot owners association and be responsible for the maintenance of the street, buffers and wetlands; that the wetlands on lot 2 can be filled under a nation wide permit from the Army Corps of Engineers; that the drainage problems on site are caused by the drainage ditches and catch basins along Route One; that the entrance locations are based on the suggestions of DelDOT; that a traffic impact study was approved by DelDOT approximately three years ago based on office buildings and warehouse uses; that the lots will be sold for offices and small retail shops; that the entrance on Route One is for right ins only; that the existing dwelling located on the site will remain and be converted to a commercial use; that the site has been zoned C-1 since the adoption of the zoning map; and that the existing billboard on site will be relocated subject to the approval of the Board of Adjustment.

The Commission found that no parties appeared in support of this application.

The Commission found that Mike Tyler and Rich Anthony both residents of Lewes were present in opposition to this application and advised the Commission that the project has not been designed for the worst case scenario; that there are problems with DelDOT allowing an acceleration and deceleration lane in the same area; that bicyclists use Kings

Highway; that the cumulative impacts to the area need to be considered; and that the County Code should prevail over DelDOT's entrance location.

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

Subdivision #2000-25--application of GLADE POINT, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred, by dividing 132.00 acres into 115 lots, located west of Road 257, approximately 0.8 mile west of Road 258.

The Commission found that Mr. Lank advised the Commission that the Technical Advisory Committee Report of August 16, 2000 would be made a part of the record for this application.

The Commission found that Mr. Abbott summarized comments received from the Natural Resources Conservation Service and the Delaware Agricultural Lands Preservation Foundation in reference to this application.

The Commission found that Darin Lockwood; developer, and Roger Gross; Engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the preliminary plan has been revised to address the comments received from the Technical Advisory Committee; that 115 dwellings on 132 acres is proposed; that the development will be similar to the Glade and Pine Bay subdivisions; that the minimum square footage of the dwellings will be 1,800 square feet; that the site is partially located within a Conservation Zone; that the subdivision will be served by a central water and community sewer system thereby allowing for 20,000 square feet minimum lot sizes; that the proposed subdivision conforms to Chapters 99 and 115 of the Code of Sussex County; that this site received preliminary subdivision approval August 10, 1989 under the name Bay Lewes, Subdivision #88-32; that DNREC has re-issued a septic feasibility statement noting that additional soils work will not be required at this time but at the time of construction more extensive soils information will be required; that the subdivision streets will be private; that a private community marina, consisting of 25 boat docking facilities and a community pier is proposed subject to receiving the required state and federal permits as may be applicable; that access to the marina will be provided through a 20' wide pedestrian access easement between lots 25 and 26; that individual lot development will be subject to site plan review with the intent of preserving the natural wooded buffers

existing along the Broadkill River and Beaverdam Creek; that they are not sure of the distance from the closest dwelling to the hunting grounds on the adjoining property; that no manufactured homes will be permitted; that the project would be built out within five years; that a hunting notice similar to the agricultural protection use deed restriction will be incorporated into the restrictive covenants and noted on the record plan; and that there are no agricultural lands located adjacent to this site however there is an Agricultural Preservation District located in close proximity to the site.

The Commission found that no parties appeared in support of this application.

The Commission found that John P. Reed, III, and adjoining property owner was present in opposition to this application and advised the Commission that he hunts for a living on the lands across from Beaverdam Creek; that a firearm cannot be discharged within 100 yards of an occupied dwelling of other ownership; that hunting and trapping are not permitted in a safety zone; that the wetlands would be negatively impacted; that the site is located within a three mile radius of the endangered Delmarva Fox Squirrel; that there would be a lose of wildlife habitat to the area; that damage would occur to the natural waterways; that Beaverdam Creek flows into the Broadkill River; that there are numerous duck blinds located along Beaverdam Creek; that there would be a substantial increase in traffic on Road 257; and submitted copies of a portion of hunting laws referenced in the Delaware Code.

The Commission found that Mark Nardi, an adjoining land owner was present in opposition to this application and advised the Commission that he has concerns about the proposed location of the community wastewater disposal system; that the site does not drain well; that there are low spots on the entire parcel; that the individual wells in the area will become contaminated; that the development should not cause negative impacts to adjoining property owners; that the proposed size of the proposed dwellings needs to be larger such as 2,000 to 2,500 square feet; and read and submitted a petition with 63 signatures opposing this application.

The Commission found that Michael Tyler, President of the Citizens Coalition was present in opposition to this application and advised the Commission that the proposed subdivision plan is a classic example of sprawl; that the proposal is to place high density development in a conservation zone; that the subdivision is adjacent to or near the McCabe Preserve and a large farm preservation district; that community septic systems are prone to failure and the applicant has provided no description of the system or how it will function in the fragile Broadkill estuary; that managing growth and following the comprehensive plan are critical to maintaining what makes Sussex County livable and beautiful; that good water quality is key to all life in our rich watershed; that the proposed marina that is intended to be a part of the development has not been included with the

submitted plans; and that by segmenting the development fails to provide the public with the true scope of the project and its cumulative impact on the surrounding environment.

The Commission found that Richard Anthony, Secretary for the Southern Delaware Group, Delaware Chapter, Sierra Club, was present in opposition to this application and advised the Commission that the Sierra Club is the nation's oldest and largest grass-roots conservation organization; that the group has concerns regarding the impacts upon and compliance with the area's Total Maximum Daily Loading; that the proposed subdivision lacks an area set aside for a stormwater management area; questioned the wetland delineation; that there is a lack of information for the proposed wastewater treatment system; that the location of the proposed well has not been referenced; that the preliminary plan does not comply with Chapter 99 of the Code of Sussex County; that the plan conflicts with the spirit, intent and letter of the Sussex County Comprehensive Plan's Land Use Element; and submitted a written statement.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing and expressed concerns relating to the environmentally sensitive area; that the site is partially in a conservation area, and not in a development district; questioned the sewer system and the location of the water system; and concerns relating to Road 257.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to deny this application as submitted.

V. OLD BUSINESS

C/U #1347--application of KLASIK KARTS to consider the Conditional Use of land in a C-1 General Commercial District for a hot dog cart for retail sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.56 acres, more or less, lying at the southwest corner of the intersection of Delaware Route One and Road 274.

The Commission discussed the points and issues raised during the public hearing on August 10, 2000.

The Commission questioned if permits had been obtained for the sheds and if the sheds were properly placed on the property.

The Commission found that permits had not been obtained for the sheds and that the sheds do not meet the required setbacks.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried 4 - 0, with Mr. Wheatley not voting, to forward this application to the Sussex County Council with the recommendation that it be denied.

VI. OTHER BUSINESS

- 1) Jungle Jim's
Revised Commercial Site Plan Concept - Route 273

Bill Lingo, Bryce Lingo, John Lingo, owners, and Kevin Burdette of McCrone, Inc. were present as the Commission reviewed a revised conceptual site plan for an amusement park located off of Road 273 near Rehoboth.

Bill Lingo advised the Commission that the existing water slide is outdated and needs replacing; that the use has been in operation since 1975; that an activity pool, children's pool and fogging systems are proposed; that some of the existing uses will be re-located on the site; and that the uses are similar to what the existing park is.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised site plan as a concept.

- 2) Lynn and Mabel Kenney
Lot on Private Road - Road 457 (a/k/a Route 62)

The Commission reviewed a concept to create a lot with access from a private road extending off of Road 459.

Mr. Abbott advised the Commission that the existing private road is thirty feet wide; that additional right of way will be required to be dedicated; and questioned whether a public hearing would be required.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the lot as a concept.

- 3) Baywood Manufactured Home Community
Revised Site Plan - C/U #1034 - Route 22 (Long Neck Road)

The Commission reviewed a revised site plan for Tee Dell Street located within the Baywood Manufactured Home Community.

Mr. Abbott advised the Commission that when originally approved, Tee Dell was a street with a cul-de-sac; that when the street was built, it was built with a "T" shaped turn

around; and that the Sussex County Engineering Department has no objections to the street being revised.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the revised site plan as submitted.

- 4) SBA Towers, Inc.
C/U #1259 - Amended Site Plan - Route 16

The Commission reviewed an amended site plan for a 150' telecommunications tower within a 100' x 100' leased area.

Mr. Abbott advised the Commission that this site plan was deferred at the August 10, 2000 meeting so that an inspection of the site could be performed to find out if the owner is complying with the conditions of approval for Conditional Use Number 1259; that two of the conditions have not been met as of this date according to the zoning inspector; that the owner is waiting to use the dirt for the road to the tower site for the required berm; and that the site plan is similar to all other telecommunication tower site plans.

The Commission discussed the findings of the zoning inspector.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny the site plan as submitted since the owner has not followed the conditions of approval for C/U #1259.

- 5) AAA Storage Limited Partnership
Commercial Site Plan - West of Route One Service Road
(Nassau)

The Commission reviewed a preliminary commercial site plan for a mini storage facility located on the West Side of the service road near the Nassau Overpass.

Mr. Abbott advised the Commission that six buildings are proposed; that two buildings will be 9,870 square feet; that two buildings will be 5,100 square feet; that one building will be 7,560 square feet and the last building will be 8,850 square feet; that 200 square feet will be used for an office; that two parking spaces are proposed; that the buildings will be concrete slab, wood frame, with metal siding; that the buildings will be 16 feet in height; that there is a 25 foot separation between buildings; that the travelways are proposed to be gravel; that the setbacks meet the requirements of the zoning code; and that the site plan is suitable for preliminary approval only since no agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals and permits.

- 6) Walkers Meadow Manufactured Home Community
C/U #1316 - Preliminary Site Plan - Road 594

Randy Duplechain, Engineer from Davis, Bowen and Friedel was present as the Commission reviewed the site plan for C/U #1316, a manufactured home park located off of Road 594.

Mr. Abbott advised the Commission that 40 lots are proposed; that 16,577.52 square feet of recreation is proposed; that 12,000 square feet is required; that a tot lot area is provided for; that the site plan references the proposed street lighting; that dimensions and square footage of the lots need to be added; that approvals have been received from DelDOT, Sussex Conservation District, Sussex County Engineering, and the Office of the State Fire Marshal; that the only approval needed is for the sewer; and that the site plan meets the requirements for preliminary approval.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving the sewer approval and revised plans showing the required lot information.

- 7) Ward Warehouse and Maxi Storage
Preliminary Commercial Site Plan - Route 17 and Road 353

Rob Ward, owner, and Douglas Warner, engineer with ECI Corporation were present as the Commission reviewed a commercial site plan for a warehouse and storage facility located at the intersection of Route 17 and Road 353.

Mr. Abbott advised the Commission that three buildings are proposed; that two buildings are proposed to be 6,600 square feet; that the other building is proposed to be 9,600 square feet; that a 40' x 60' garage and warehouse is proposed; that the setbacks meet the requirements of the zoning code; that the proposed entrance is located off of Road 353 and not Route 17; and that the site plan is suitable for preliminary approval since the staff has not received any agency approvals or permits.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals and permits.

Meeting adjourned at 10:50 P.M.