

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 10, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 10, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with Mr. Wheatley, Vice-Chairman, presiding:

The following members were present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, and Ms. Mowbray – Zoning Inspector III.

Motion made by Mr. Phillips, seconded by Mr. Allen, and carried unanimously to adopt the agenda as circulated.

Motion made by Mr. Allen, seconded by Mr. Hastings, and carried unanimously to approve the minutes of August 27, 1998 as amended.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

C/Z #1346—application of DMV PARTNERSHIP to consider a proposal to amend the zoning map from MR Medium Density Residential District to a M Marine District in Baltimore Hundred, located at the southwest corner of the intersection of Route One and Road 360, to be located on a parcel containing 28.64 acres, more or less.

The Commission found, based on comments received from DeIDOT, that the Department does not recommend a traffic impact study; that the site contains 2.78 acres of a 28.64 acre tract; that originally the Department's initial analysis found that Road 360 operates at a level of service "E"; that an error was found in the calculation of the summer peak hour traffic on Road 360, and that with the error corrected the peak hour volume along Road 360 operates at a level of service "D".

The Commission found, based on comments received from the County Engineering Department, that the proposed change of zone is located in the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that sewer service is available to the parcel; that there is an 8-inch terminal cleanout located near the site on Route One; that no service is provided along Road 360; that there is capacity in the sewer system for the proposed use; that one-time system connection charges will be due for any improvements that are constructed on the site; that the rate in effect for 1998 fiscal year is \$2,159.00 per Equivalent Dwelling Unit; and that these fees must be paid before a building permit will be issued.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has concerns regarding this rezoning proposal due to the fact that the site is served by Road 360 which is frequently impassible due to flooding; that according to the Delaware Emergency Management Agency (DEMA), this area is identified as a flood inundation area during a minimum condition hurricane (category 1) as reported in an evacuation study that the Army Corps. of Engineers performed and published in 1990; that a re-zoning which results in greater density of development in flood hazard areas would be inconsistent with damage reduction and storm evacuation goals; that the County should carefully consider the potential for flooding in the course of their deliberations; that DNREC notes the flooding potential and that the majority of the site consist of tidal marsh; that if the project is approved, all wetlands should be avoided; and that the Office of the State Fire Marshal will require submittal of site plans, building plans and fire protections systems.

The Commission found, based on comments submitted through the Office of State Planning Coordination from the Delaware Emergency Management Agency (DEMA), that the area is in a flood prone area; that Road 360 and Route One are prone to flooding during severe storms; that both roads have been impassable due to flooding and consequently closed during the recent Northeaster storm in January; that a review of the evacuation routes identified for the site indicates that there are a very limited number of evacuation routes available; that Route One from Fenwick to Dewey is the only north/south evacuation route available for the entire stretch of coastal properties; that there are east/west connectors to Route One, (Route 54 and Route 26), that are identified as evacuation routes, however, they are also prone to flooding; that the flooding of these connector highways essentially isolates Road 360 to Route One for evacuation purposes; that when Route One floods and is closed as it was during the January Northeaster, then the only method of evacuation is using high axle 4X4s, military vehicles or boats; that this situation would put the proposed hotel occupants at risk; that by rezoning the parcel for the purpose of building a 100 room hotel would be encouraging development in a flood hazard area, increase the evacuation time, and would put more people in harms way; and that this is inconsistent with prudent hazard mitigation efforts.

The Commission found that James Fuqua, Attorney, Jeff Clark of Land Tech, Inc, Peter DeMarie and Mario Viazado, developers, were present on behalf of the application.

The Commission found that Mr. Fuqua stated in his presentation and in response to questions raised by the Commission that this application is a separate and distinct application from the North Beach, L.L.C. application; that three questions need to be addressed: why is DMV seeking M Marine; what is proposed; and what is the impact on the area and properties; that the applicants intend to develop the site with a 100 unit hotel; that private restrictions are proposed; that they propose to utilize the site for the highest and best use in theme with the Comprehensive Plan; that it is their opinion that a

need exist in the north Bethany area for a hotel/motel; that a Conditional Use could not be applied for in a MR Medium Residential District; that the zoning choices for a hotel are: C-1 General Commercial, which has many undesirable commercial uses; B-1 Neighborhood Business with Conditional Use for a hotel/motel, which has many undesirable uses; or M Marine, which permits hotel/motel; that marinas, yacht clubs and tourist oriented services are permitted uses in a M Marine District; that M Marine is the least objectionable of the commercial districts; that the site is located in a Development District, not a preservation area, according to the Comprehensive Plan; that the site will be served by central water; that the site is within a sewer district; that Sussex Shores Water Company is willing to provide central water; that the County Engineering Department has advised that capacity is available for the project; that a hotel in this area needs to be in close proximity to the beaches; that the site is appropriate for the use intended; that the site includes wetlands, a portion of the Salt Pond, and a canal from the Salt Pond; that all improvements are proposed in non-wetland areas; that no encroachments are proposed into the wetlands or water ways; that the use intended is a 100 unit hotel with pool, parking, and stormwater management on the site; that pool hours will be normal hotel hours; that one entrance is proposed off of Road 360; that no docks or boat rentals are proposed; that as much wooded area as possible will be preserved, other than areas disturbed for construction; that the hotel will consist primarily of 1 and 2 bedroom suites, and a breakfast room for use by the guests; that there is no intent to sell alcoholic beverages; that there will be no negative environmental impact on the area; that no impact is anticipated since central water is proposed; that no impact is anticipated since public sewer is available; that the environment will not be impacted since wetlands and the Salt Pond will remain in a natural state; that the wetlands may be conveyed to a conservation group or the State; that no visual impact is anticipated since only two homes exist in close proximity and since the closest developments are along and across Route One; that the height shall be similar to homes in the general area; that signage will conform to the Code; that no impact by stormwater is anticipated, since the stormwater plans are strictly enforced by the State and the Conservation District, and that no stormwater discharge is permitted off the site; that no adverse impact on traffic is anticipated on the level of service "D" of Road 360, since Road 360 and Route One are controlled with traffic signals; that flooding of Road 360 has been on infrequent occasions; that minimal flooding is the nature of the beach area and barrier dunes; that Road 360 is not the only road being closed during flooding; that if an evacuation was necessary, the hotel could close and require evacuation of patrons during storms; that the project should be a benefit to the economy since construction jobs, hotel jobs, and service business jobs will be created; that tourism is the major industry in eastern Sussex County; that the approximate County tax generated per year will be \$13,000.00; that County sewer fees generated will be approximately \$133,000.00 with an annual service charge of approximately \$12,700.00; that there should be no adverse impact on property values, and referenced the Holiday Express Motel near Kings Creek Community near Rehoboth and Harbor Lights Motel near the Cove Subdivision; that a large number of homes in the

Salt Pond Community and in the beach communities are also rentals; that several commercial activities exists in the immediate area, and referenced the National Guard camp, the Bethany Beach service facility, and a seafood business and restaurant; that the applicants intend to restrict the site to uses permitted in a MR Medium Density Residential District or a hotel, not exceeding 100 units, no wetlands disturbance, no alcoholic beverage sales or service, and no amendments to the restrictions without area subdivision approvals.

Mr. Fuqua submitted a letter from the Sussex Shores Water Company relating to the availability of central water; a letter from County Engineering relating to the availability of central sewer; a copy of portions of the M Marine District from the Zoning Ordinance; a copy of a memorandum relating to current taxes on a motel; photographs of the commercial activities, the site, some motels, the water company; a scenario on motel/restaurants with projected sewer charge estimates; a wetlands map; a tax map; portions of the Comprehensive Plan; and a copy of a portion of DNREC regulations relating to stormwater management.

Mr. Fuqua stated in response to questions raised by the Commission that the applicants have owned the property for approximately one year; that the applicants purchased the site with the intent to develop a hotel/motel; that 2.78 acres of uplands exists on the 28.64 acre parcel; that some of the flooding of Road 360 resulted from the canal on the westerly side of the site; that runoff must be controlled on site; that the entrance permit is subject to DelDOT and may require turn lanes; that the motel may provide for 50 employees; that a number of permitted uses in a M Marine District are industrial and that proposed restrictions will not permit this type of activity; that the site plan submitted is conceptual; and that patrons of the hotel will have to drive their personal vehicles to get access to area beaches.

Jeff Clark stated in response to questions raised by the Commission that stormwater management regulations do not permit increased runoff into the canal or the Salt Pond; that the stormwater management pond will be located in an upland setting; that an application has not yet been filed for an entrance permit; that the wetlands were delineated after the applicants purchased the site; that some fill will be necessary to improve the site; that the canal is deeper than the Salt Pond; that no wetlands impacts are anticipated; that he and a traffic engineer met with DelDOT prior to the changes in the level of service for Road 360; that the watertable is close to the surface; that the building will be built to conform to FEMA regulations; that no parking is proposed under the hotel; and that adequate space is available on the site for parking.

The Commission found that approximately 30 letters and postcards have been received in opposition.

The Commission found that James Griffin, Attorney, was present in opposition on behalf of several homeowners associations for communities along Route One, and stated that only 9 percent of the site is useable for the hotel project; that the fact that the site is located in a Development District does not automatically approve the rezoning; that the purpose of the M Marine District provides for and is intended to preserve waterfront land in appropriate locations for commercial docking, waterfront sales, storage and repair of small boats, including out-of-water repairs, and for seafood packing and processing establishments; that the area residents object to many of the permitted uses in a M Marine District; that the applicants intend to restrict the site with enforcement by the landowners in other communities which becomes cost restrictive on the landowners; that suggested restrictions for North Bethany Seafood have never been recorded; that a Conditional Use application would be more appropriate for this type of use; that the rezoning would be spot zoning; that the North Bethany Seafood rezoning should not establish a precedent for rezoning, since the use was already established, according to the court decision; that the Delaware Emergency Management Agency comments refer that the application does not promote public health, safety, or welfare since it could impact emergency evacuation efforts; that his clients believe that DelDOT traffic counts are not appropriate since the counts were taken on a non-holiday weekend; that the site is an environmentally sensitive area which helps absorb and filter surfacewater runoff from Route One and Road 360; that an environmental impact study should be required prior to any action on this application; that Road 360 should be elevated and improved prior to any rezoning; that the general area is a large MR Medium Density Residential District with single family homes, some of which are valued in excess of \$1,000,000.00, being threatened by spot zoning; that spot zoning does not promote public safety; that 500 acres of land in the immediate area was recently acquired by the State for preservation and conservation; and that rezoning of the parcel to M Marine could provide the applicant with a right to apply for a dredging permit.

The Commission found that John Sergovic, Attorney, was present in opposition on behalf of The Retreat, Inc. and Peaches, L.L.C., and stated that they have concluded that to maintain property values in the area, the best use is single family with the permitted MR Medium Density Residential uses along Route One; that any other uses would be detrimental to area residents; that the Delaware Code provides that rezoning must provide reasonable considerations to uses in the area, property values, and the character and general trend of the area; and that any other uses cause a negative impact on the area.

The Commission found that Robert Witsil, Attorney, was present in opposition on behalf of several property owners in the area, and questioned if the site is suitable for such an intense use; stated that DelDOT and DEMA comments reference flooding and the risks from flooding; that the applicant has not submitted significant reason for approval; that DelDOT comments relate to B-1 Neighborhood Business with a Conditional Use for a hotel, not M Marine; questioned how stormwater management can be obtained on a

high water table site; stated that purchasers of lots in the area have relied on the MR Medium Density Residential zoning; that the applicants have no plans to shuttle patrons from the hotel to the area beaches; that the deed restrictions are not recorded; that the area residents become the enforcement group at their own expense; that the County should enforce any restrictions; and that the application may be a detriment to open space owned by the County and the State.

The Commission found that Mr. Witsil submitted a packet of information which included proposed findings of fact in opposition, portions of the M Marine District from the Zoning Ordinance; a copy of an environmental assessment from Entrix, a consulting firm; copies of portions of the Comprehensive Plan; a copy of the letter from the Office of State Planning Coordination; a copy of the letter from the Delaware Emergency Management Agency; a copy of Land Tech, Inc. letter to DelDOT; and a copy of DelDOT letter referencing that the level of service of Road 360 has changed to "D".

The Commission found that Mr. Witsil and William Naughton submitted and described photographs of the site and the area.

The Commission found that William Naughton, Robert Bishop, Patricia Neff, Donald Stein, John Ellis, Judith Rabinowitz, and Gail Muchie, of the 56 people in attendance in opposition, stated that they are concerned about traffic backups at the left turning lane on Route One; drainage and flooding; the use of fill to improve the site; that the closest public beach access points are 5th Street at Bethany Beach and Indian River Inlet; that tourist can no longer enjoy the beaches; that a State Parks representative advised them that tourist and State residents are turned away each and every weekend; that Road 360 has been impassible to vehicles at the site; that the flooding issue should be enough reason to deny the application; that a growing number of people are retiring permanently to the area; that a 100 unit hotel does not enhance the character of the area; and that safety concerns should be considered for the additional number of people that could walk, bike, or travel along Route One and Road 360; and that the number of vehicle trips per day from a 100 unit hotel could reach 800 trips.

The Commission found that petitions were submitted containing approximately 600 signatures in opposition to the application from area residents and homeowners associations.

The Commission found, after review of the sign-in sheets passed out during the meeting, that 5 people were present in support, and 56 people were present in opposition.

At the conclusion of the public hearings, the Vice-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. Allen, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the following comments referenced in the decision for C/Z #1342:

Mr. Allen stated that the references made by Mr. Phillips on C/Z #1342 are appropriate to this application and that the references included that the application is not compatible with the purpose clause of the M Marine District, as contained in Article XII of the Zoning Ordinance, and referenced that the Salt Pond is not a major body of water; that the application should be denied based on the following factors: that the proposed project would not be integrated into the existing terrain and surrounding landscape; that the project would represent more than minimal use of wetlands and floodplains; that the project would not preserve open space and scenic views; that it would be impossible to screen objectionable features from neighboring properties and roadways; that he anticipates that there would be an inability to provide for safe vehicular and pedestrian movement within the site and adjacent roadways; that the project may have an adverse effect on area property values; that the project may have an adverse effect on area roadways and public transportation; that the project would not be compatible with other land uses in the area; and that the project represents a potential for adverse effects on area waterways; and added that the Commission's primary charge is controlling land use so as to protect public safety, health, welfare and the quality of life; that the site is a fragile parcel of ground; and that he cannot believe that any responsible person involved in planning would ever approve the site for the use requested.

Mr. Phillips agreed that the references made on C/Z # 1342 are appropriate to this application and added that the proposed use will be an isolated commercial use in a MR Medium Density Residential District; and that the use will not be consistent with the character of the area.

Mr. Lynch agreed and added that he is very familiar with the Salt Pond area, having hunted it for many years; that the Salt Pond is a very shallow body of water which is almost landlocked, and could be damaged by surface water runoff; and that the site is already subject to frequent flooding.

Motion Carried 5-0.

C/Z #1347—application of INTEGRAL MARKETING PARTNERS, INC., T/A ROSSES RIDES to consider a proposal to amend the zoning map from AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, located southeast of Road 276, 740 feet southwest of centerline of

Route One (southbound lane), to be located on a parcel containing 0.27 acres, more or less.

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 Road 276 will not change as a result of this application.

The Commission found, based on comments received from the Sussex County Engineering Department, that the proposed C/Z is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the parcel was connected to the sanitary sewer system on July 10, 1998 by permit #1887; that a 6-inch lateral serves the parcel; and that the Department is not concerned about capacity to serve the parcel.

The Commission found that Bert Naller and John Sergovic, Attorney, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site was purchased to be accessory to the used car sales lot on Route One; that the zoning line diagonally crosses the parcel 600' from the right of way of Route One; that 0.754 acre of the front of the parcel is zoned C-1 General Commercial, and that 0.27 acre of the rear of the parcel is zoned AR-1 Agricultural Residential; that rezoning of the parcel will create uniformity of the parcel; that the rear of the parcel cannot be utilized for commercial activities without rezoning; that the rear of the parcel is proposed to be fenced, and used for reconditioning vehicles and storage of vehicles for sale at the used car sales lot on Route One; that utilization of the rear of the parcel will permit reduction of the number of vehicles displayed at the uses car sales lot on Route One; that there should be no change in the character of the area; that there should be no adverse impact on the neighborhood or property values; that the use is consistent with the Comprehensive Plan since the parcel is located in a Development District.

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

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

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

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning will bring the parcel into conformity with the same zoning classification.

III. OTHER BUSINESS

1. Sussex Vo-Tech School

The Commission reviewed the site plan for expansion to Conditional Use #976, approved by the County Council on August 13, 1991, on Route 9.

Mr. Lank advised the Commission that the stipulations of the original approval required Commission action on any future expansions, but did not require additional public hearings; that the site plan proposes a 140 space parking lot with 10' by 20' spaces and 25' interior driveways; that two (2) additions to the existing school building will be built in another phase; and that the site plan may be approved as a preliminary with final approval subject to receipt of all agency approvals by the staff.

Motion by Mr. Phillips, seconded by Mr. Allen, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all agency approvals by the staff.

2. Avian Aquatics, Inc.

The Commission reviewed the commercial site plan for assembly of pre-manufactured parts for bird feeders, etc... and a showroom on the south side of Route 9.

Mr. Lank advised the Commission that the site, which was rezoned several months ago, is the front 300' of the parcel; that 9 parking spaces are required and provided; that all parking spaces are 10' by 20' with 25' interior driveways; that all building and parking setbacks comply with the Code; and that the site plan may be approved as a preliminary with final approval subject to receipt of all agency approvals by the staff.

Motion by Mr. Phillips, seconded by Mr. Allen, and carried unanimously to approved the site plan as a preliminary. Final approval shall be subject to receipt of all agency approvals by the staff.

3. Virginia P. Young

The Commission reviewed a concept to subdivide a 56.12-acre parcel into 2 lots with access from a 50' wide easement off of Business Route One near Milford.

Mr. Lank advised the Commission that one parcel, proposed to contain 30.12 acres, is presently occupied by a harness horse training track, barn and paddock areas; that the second parcel, proposed to contain 26 acres is presently occupied by a dwelling and related outbuildings; that a 50' wide easement, located at the existing driveway, is

proposed to serve both parcels; and that if the Commission is favorable in approving this subdivision concept, the approval shall be subject to action by the Board of Adjustment since the new dividing line is approximately 80' from the barn, and that 200' is required from the barn, used to board approximately 20 horses.

Mr. Allen stated that the horse training facility has existed in excess of 30 years.

Motion by Mr. Allen, seconded by Mr. Lynch, and carried unanimously to approve the subdivision in concept only, since the Board of Adjustment must review and approve the setback for the commercial (public) stable prior to approval of the subdivision.

4. Robert Kaplan

The Commission reviewed a preliminary multi-family site plan off of Route 272 and Route One.

Mr. Lank advised the Commission that the preliminary site plan proposes 5 single family detached dwelling for condominium sales; that the units are located within a 165' building envelope (pod); that typically 14' is proposed between units; that 10 parking spaces are proposed within the front yard off of Route 272; that a 10' setback is proposed along Route One, an elevated bridge section; that 10' setback have been permitted on the adjoining three condominium projects due to the elevated bridge section; that no access is permitted onto the elevated bridge section; and that if the Commission is favorable in granting approval of this site plan, it should be for preliminary only, since no agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary only. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

IV. OTHER BUSINESS

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 Vice-Chairman referred back to this application which was deferred on August 13, 1998.

The Commission discussed the points and issues of the public hearing.

Mr. Phillips stated that the application is not compatible with the purpose clause of the M Marine District as contained in Article XII of the Zoning Ordinance, and referenced that the Salt Pond is not a major body of water; that the application should be denied based on the following factors: that the proposed project would not be integrated into the existing terrain and surrounding landscape; that the project would represent more than minimal use of wetlands and floodplains; that the project would not preserve open space and scenic views; that it would be impossible to screen objectionable features from neighboring properties and roadways; that he anticipates that there would be an inability to provide for safe vehicular and pedestrian movement within the site and adjacent roadways; that the project may have an adverse effect on area property values; that the project may have an adverse effect on area roadways and public transportation; that the project would not be compatible with other land uses in the area; and that the project represents a potential for adverse effects on area waterways.

Mr. Allen agreed and added that the Commission's primary charge is controlling land use so as to protect public safety, health, welfare and the quality of life; that the site is a fragile parcel of ground; and that he cannot believe that any responsible person involved in planning would ever approve the site for the use requested.

Mr. Lynch agreed and added that he is very familiar with the Salt Pond area, having hunted it for many years; that the Salt Pond is a very shallow body of water which is almost landlocked, and could be damaged by surface water runoff; and that the site is already subject to frequent flooding.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated above.

Motion Carried 5-0.

SUBDIVISION #98-3—application of MIKE MOCK to consider the subdivision of land in a C-1 General Commercial and AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred by dividing 5.68 acres into eleven (11) lots, located northeast of Road 268, 500 feet north of Delaware Route One.

The Vice-Chairman referred back to this subdivision reviewed during public hearing on July 23, 1998, and continued to August 27, 1998 for additional public hearing and deferred.

Mr. Lynch stated that DelDOT representatives have advised us that an entrance approval can be accomplished.

Motion by Mr. Lynch, seconded by Mr. Allen, and carried unanimously that the subdivision be approved for no more than five (5) lots as a preliminary only. Final approval shall be subject to review and approval by the Commission upon receipt of all agency approvals and/or permits.

Motion Carried 5-0.

Meeting adjourned at 10:30 P.M.