

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 22, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 22, 1994, at 7:30 PM, in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mrs. Monaco, Mr. Phillips, Mr. Ralph, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner II.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the minutes of September 8, 1994, as circulated.

II. PUBLIC HEARINGS

1. RE: C/Z #1240 -- Indian River Associates, Inc.

Edward C. Thomas, III, a General Partner, David Rutt, Attorney, Jeff Clark of Land Tech, Inc., and Brian Carbaugh of Cabe Associates, were present on behalf of this application to amend the zoning map from MR Medium Density Residential to MR-RPC Medium Density Residential - Residential Planned Community in Baltimore Hundred, located on the north end of Route 351, and south and west of White Creek to be located on a parcel containing 83.60 acres more or less.

Mr. Lank summarized or read comments received from the DNREC Development Advisory Service, the Technical Advisory Committee, DelDOT, and Divisions of DNREC.

Mr. Lank provided an overview of the history of the past zoning of the site.

Mr. Rutt stated that the density is not being changed, only the method of layout of the project; that the purpose of the MR District is to provide for medium density residential development in areas expected to become generally urban in character where sanitary sewers and public water supplies may or may not be available at the time of development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings, and that the district is located to protect existing development of this character and contains vacant land considered appropriate for such development in the future; that the project is proposed to include central water and central sewer, and recreational facilities for the use of the residents; that the purpose of the RPC District is to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the Implementation Chapter of the Coastal Sussex Land Use

Plan states that Residential Planned Communities should be encouraged for larger tracts since it offers a means of providing a superior living environment while being sensitive to the environment, that the use would be permitted in the area designated for low, medium or high density provided it meets all other requirements, that central water and sewer are a part of the requirement, that permitted uses would include all types of residential dwellings, both attached and detached, that neighborhood business type uses may be permitted, that before the zoning is granted the developer must specify land uses and densities which will become a part of the zoning indenture, that specific lot layouts of individual units should not be required, that the minimum sized tract for this use is 40 acres and the maximum gross density is four units per net, that net acreage is defined as the total acreage less any land set aside for business use, and that the minimum open space requirement should be 20 percent of the residential acreage; that the project will meet all review standards of the Zoning Ordinance; that the number of units will not exceed the density of 113 units proposed; that the owners have owned the property for approximately 20 acres; and that the RPC concept is superior to the basis subdivision concept since more open space is generated, since the units are clustered, and since wetlands are afforded more protection.

Jeff Clark described the general area of the site, and stated that the site appears to be flat with elevations varying from 2' to 6' elevation, that a portion the easterly side of the site is at 11' elevation, that of the 38.32 acres of wetlands approximately 30 acres are considered State wetlands, that the wetlands were delineated by Charles Miller of Environmental Consulting, Inc., that the Philadelphia office of the U.S. Army Corps. of Engineers has reviewed and approved the wetlands boundaries, that 2 additional ponds are proposed to be created on the site in upland areas totaling 3.25 acres, that 2 lagoon type ponds, existing on the site, are proposed to be filled with spoil from the 2 proposed upland ponds and reclaimed, that soils at the higher elevated portion of the site are the most appropriate for the sewer treatment facility, that DelDOT has advised that no significant impact on traffic is anticipated, that 2 traffic signal agreements exist with other developers for the intersections of Route 26/Road 349 and Route 26/Road 350, that a marketing analysis has established a need for a housing mixture of 40% single family detached housing, 40% cluster housing, and 20% multi-family types of housing, that private streets and drives are proposed with 25' wide travelways throughout the project, that the single family lots will conform to the MR-RPC lot sizes of a minimum of 7,500 square feet with 60' width, that the Federal 404 wetlands line will become the building restriction line, that 42 single family lots, 47 clustered single

family units spaced a minimum of 20' apart are proposed, that 5 multi-family buildings with a total of 24 units are proposed, that recreational areas will be provided, that they have met with the joint processing committee of DNREC and the U.S. Army Corps. of Engineers to discuss boat dock, use of the existing docks, that upgrade of the docks are proposed, that a boat launch is proposed, that the existing dock will not be used for overnight mooring of boats, that stormwater quality will be maintained by stormwater management of the project, that the site will be served by central potable water with fire protection capabilities, that 45 acres of the site is upland, that no commercial uses are proposed, that in designing the project all State wetlands and roads were deducted to create a net area of 50 acres which could permit up to 217 units and that the developers propose to develop a maximum of 113 units, that the proposed pond near Road 351 may have to be moved back away from the right of way as directed by DelDOT, that access to the boat ramp is proposed from Road 351, and that access to the boat ramp will be difficult to accomplish if required to be from the interior of the project only.

Brian Carbaugh advised the Commission that preliminary wastewater management plans were submitted to DNREC. that DNREC has issued a non-binding statement of feasibility for the project, that the system is designed to remove nitrogen by rapid infiltration prior to disposal into ground water, that similar systems exist in Sussex County, that a wastewater utility firm will maintain and operate the system, that the system will be abandoned in the future when public sewer service is available, and that the system is designed for a maximum of 113 units.

Edward C. Thomas III stated that he is one of the general partners of the project, that they have owned the site since August 1971, that they have performed a market analysis and reviewed other developments in the area, sales, prices, anticipates no adverse impact on the character of the neighborhood or property values, that when he had originally applied for MR-RPC in 1973 wetlands were not mapped and were not required to be deducted from an application, that the original approval proposed 302 units, that the lagoon construction was stopped by the U.S. Army Corps. of Engineers and then the project stopped.

Robert Witsil, Attorney for some of the land owners within Rogers Haven Subdivision, William Scott, John Morrison, William Gorman, Danny Cobiello, Margaret Gorman, and Veronica Cobiello, of the 31 people present in opposition, expressed concerns about the proposed plan layout, not the RPC, that they object to multi-family use in an area of single family homes, the wastewater

disposal location near Whites Creek and other environmental issues, that the wetlands and topographic information on the site plan are based on studies made 5 and 9 years ago, that photographs taken by residents in the area depict different topographic and wetland information, that the site is extremely low and environmentally sensitive, that the lagoons should not be filled, that the only ones to benefit by filling the lagoons will be the developers, that no site plan information has been provided on the types of recreational improvements will be provided for the residents of the project, that multi-family units across from Rogers Haven will directly impact the character of the subdivision, questioning what wetponds are and if they remain wet, that the present plans should be denied and then resubmitted in compliance with DNREC requirements, that the wetlands should remain in single ownership as recommended by DNREC, that wastewater discharge directly or indirectly into the Inland Bays should not be permitted unless the degree of treatment enhances water quality of the bays, that no comments were provided by the Indian River School District about possible impacts on the district, that no comments were provided by the State Police due to the distances to a troop, that the opposition could not inspect a similar sewer treatment project since they did not know what type of system was proposed or where a similar system exist, that a current traffic study should be performed, increases in traffic on Road 351 and other roads in the area, that 6 years ago a study was performed about improvements on Route 26 and Road 351, that the area has grown 35% since the study, that the roads are poorly maintained, that crime in the area may increase if the units are rented, that wetlands will be impacted, that wetlands are a natural resource, that good water quality benefits all, that wildlife may be impacted, questioning how long it will take to develop the site, and questioning the number of families that will reside in the project.

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 a DNREC Development Advisory Service report for a meeting dated June 2, 1994, that the DNREC Groundwater Management Section, the DNREC Pollution Control Branch, the DNREC Water Supply Branch, the DNREC Wetlands and Aquatic Protection Branch, the DNREC Division Fish and Wildlife, the DNREC Division of Parks and Recreation, the Delaware State Historic Preservation Office, the Department of Health and Social Services, the Department of Transportation, and the Office of the State Fire Marshal provided preliminary comments on the application.

The Commission found, based on a Technical Advisory Committee Report for a meeting dated August 18, 1994, that the Office of the State Fire Marshal, the Department of Transportation, the County Engineering Department, the Sussex Conservation District, and the Soil Conservation Service provided comments on the site plan.

The Commission found, based on additional comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the site is located in a water utility area granted to Public Water Supply company, that the owner or developer should obtain a statement of water availability from the water company, and that if any on-site public wells are needed the developer is encouraged to locate the wells in compliance with the State Wellhead Protection Plan.

The Commission found, based on comments received from the DNREC Wetlands and Subaqueous Lands Section, that wetlands regulated by the State and the U.S. Army Corps. of Engineers appear to be within or adjacent to the area of proposed development, that any activity such as filling, dredging, construction of a stormwater management facility, crossing with a road or utility line, or placement of a structure may require a permit, that Spring Gut and its tributaries are regulated by both the State and Corps., that their office encourages the installation of a stormwater management facility to prevent surface water run-off from directly entering wetlands, that applications and permits for docks or piers may be administered jointly through the State and Corps., that the State tidal wetlands line should be staked to establish the building setback line, that a statement indicating the presence and boundaries of wetlands should be included in the record plan and individual deed and plot plans to alert future property owners of potential limitations regarding activities within or adjacent to wetlands, that wetland areas could be dedicated to as undisturbed community open space, and that the developer may be eligible for tax benefits if conservation easements are adopted.

The Commission found that the Office of the Secretary of the State DNREC, for the purpose of land use review and coordination, requested that the DNREC Division of Fish and Wildlife, the DNREC Division of Parks and Recreation, the DNREC Division of Soil and Water, the DNREC Division of Water Resources, Surface Water Discharge Section, Water Supply Section, Watershed Assessment Branch, Watershed Assessment (Soil), Policy and Administration Section (Wetlands), Planner for the Office of the Secretary, the Department of Agriculture, the Delaware Development Office, the

Delaware State Historic Preservation Office, and the Department of Transportation provide comments on this application to the County.

The Commission found that the application was represented by a general partner, an Attorney, a representative of the surveying firm, and a consultant from an engineering firm.

The Commission found, based on comments made by the attorney on behalf of the application that the density is not being changed, only the method of layout of the project; that the purpose of the MR District is to provide for medium density residential development in areas expected to become generally urban in character where sanitary sewers and public water supplies may or may not be available at the time of development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings, and that the district is located to protect existing development of this character and contains vacant land considered appropriate for such development in the future; that the project is proposed to include central water and central sewer, and recreational facilities for the use of the residents; that the purpose of the RPC District is to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the Implementation Chapter of the Coastal Sussex Land Use Plan states that Residential Planned Communities should be encouraged for larger tracts since it offers a means of providing a superior living environment while being sensitive to the environment, that the use would be permitted in the area designated for low, medium or high density provided it meets all other requirements, that central water and sewer are a part of the requirement, that permitted uses would include all types of residential dwellings, both attached and detached, that neighborhood business type uses may be permitted, that before the zoning is granted the developer must specify land uses and densities which will become a part of the zoning indenture, that specific lot layouts of individual units should not be required, that the minimum sized tract for this use is 40 acres and the maximum gross density is four units per net, that net acreage is defined as the total acreage less any land set aside for business use, and that the minimum open space requirement should be 20 percent of the residential acreage; that the project will meet all review standards of the Zoning Ordinance; that the number of units will not exceed the density of 113 units proposed; that the owners have owned the property for approximately 20 acres; and that the RPC concept is superior to the basis subdivision concept since more open space is generated, since the units are

clustered, and since wetlands are afforded more protection.

The Commission found that the representative of the surveying firm described the general area of the site, and stated that the site appears to be flat with elevations varying from 2' to 6' elevation, that a portion the easterly side of the site is at 11' elevation, that of the 38.32 acres of wetlands approximately 30 acres are considered State wetlands, that the wetlands were delineated by Charles Miller of Environmental Consulting, Inc., that the Philadelphia office of the U.S. Army Corps. of Engineers has reviewed and approved the wetlands boundaries, that 2 additional ponds are proposed to be created on the site in upland areas totaling 3.25 acres, that 2 lagoon type ponds, existing on the site, are proposed to be filled with spoil from the 2 proposed upland ponds and reclaimed, that soils at the higher elevated portion of the site are the most appropriate for the sewer treatment facility, that DelDOT has advised that no significant impact on traffic is anticipated, that 2 traffic signal agreements exist with other developers for the intersections of Route 26/Road 349 and Route 26/Road 350, that a marketing analysis has established a need for a housing mixture of 40% single family detached housing, 40% cluster housing, and 20% multi-family types of housing, that private streets and drives are proposed with 25' wide travelways throughout the project, that the single family lots will conform to the MR-RPC lot sizes of a minimum of 7,500 square feet with 60' width, that the Federal 404 wetlands line will become the building restriction line, that 42 single family lots, 47 clustered single family units spaced a minimum of 20' apart are proposed, that 5 multi-family buildings with a total of 24 units are proposed, that recreational areas will be provided, that they have met with the joint processing committee of DNREC and the U.S. Army Corps. of Engineers to discuss boat dock, use of the existing docks, that upgrade of the docks are proposed, that a boat launch is proposed, that the existing dock will not be used for overnight mooring of boats, that stormwater quality will be maintained by stormwater management of the project, that the site will be served by central potable water with fire protection capabilities, that 45 acres of the site is upland, that no commercial uses are proposed, that in designing the project all State wetlands and roads were deducted to create a net area of 50 acres which could permit up to 217 units and that the developers propose to develop a maximum of 113 units, that the proposed pond near Road 351 may have to be moved back away from the right of way as directed by DelDOT, that access to the boat ramp is proposed from Road 351, and that access to the boat ramp will be difficult to accomplish if required to be from the interior of the project only.

The Commission found that the consultant from the engineering firm stated that preliminary wastewater management plans were submitted to DNREC, that DNREC has issued a non-binding statement of feasibility for the project, that the system is designed to remove nitrogen by rapid infiltration prior to disposal into ground water, that similar systems exist in Sussex County, that a wastewater utility firm will maintain and operate the system, that the system will be abandoned in the future when public sewer service is available, and that the system is designed for a maximum of 113 units.

The Commission found that the general partner stated that the partnership has owned the site since August 1971, that they have performed a market analysis and reviewed other developments in the area, sales, prices, anticipates no adverse impact on the character of the neighborhood or property values, that when he had originally applied for MR-RPC in 1973 wetlands were not mapped and were not required to be deducted from an application, that the original approval proposed 302 units, that the lagoon construction was stopped by the U.S. Army Corps. of Engineers and then the project stopped.

The Commission found that an Attorney representing some of the land owners within Rogers Haven Subdivision, and 6 of the 31 people present in opposition, expressed concerns about the proposed plan layout, not the RPC, that they object to multi-family use in an area of single family homes, the wastewater disposal location near Whites Creek and other environmental issues, that the wetlands and topographic information on the site plan are based on studies made 5 and 9 years ago, that photographs taken by residents in the area depict different topographic and wetland information, that the site is extremely low and environmentally sensitive, that the lagoons should not be filled, that the only ones to benefit by filling the lagoons will be the developers, that no site plan information has been provided on the types of recreational improvements will be provided for the residents of the project, that multi-family units across from Rogers Haven will directly impact the character of the subdivision, questioning what wetponds are and if they remain wet, that the present plans should be denied and then resubmitted in compliance with DNREC requirements, that the wetlands should remain in single ownership as recommended by DNREC, that wastewater discharge directly or indirectly into the Inland Bays should not be permitted unless the degree of treatment enhances water quality of the bays, that no comments were provided by the Indian River School District about possible impacts on the district, that no comments were provided by the State Police due to the distances to a troop, that the opposition could not inspect a similar sewer treatment project since they

did not know what type of system was proposed or where a similar system exist, that a current traffic study should be performed, increases in traffic on Road 351 and other roads in the area, that 6 years ago a study was performed about improvements on Route 26 and Road 351, that the area has grown 35% since the study, that the roads are poorly maintained, that crime in the area may increase if the units are rented, that wetlands will be impacted, that wetlands are a natural resource, that good water quality benefits all, that wildlife may be impacted, questioning how long it will take to develop the site, and questioning the number of families that will reside in the project.

The Commission found that photographs, copies of interagency correspondence between representatives of DNREC in reference to the application, copies of opponents notes, a copy of a letter to the attorney on behalf of the applicant from the Office of the Secretary of DNREC, and a copy of a memorandum from Daniel M. and Veronica A. Coviello were submitted for the record.

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

2. RE: Subd. #94-6--Donald K. Miller

Donald Miller was present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Broadkill Hundred by dividing 44.01 acres into 80 lots, located on the north side of Route 16, 600 feet east of Route One.

Mr. Abbott summarized the Technical Advisory Committee Report of September 15, 1994, comments received from the DNREC Wetlands and Subaqueous Lands Section, United States Department of the Interior Fish and Wildlife Service Prime Hook National Wildlife Refuge, DNREC Water Supply Section, and a letter in opposition from John and Phyllis Wapniarek.

Mr. Miller advised the Commission that there is a buffer proposed on all sides of this development, that the on site sewer disposal system will be located 300 feet from any adjoining property owners, that a central water system will be provided, that the wetlands have been delineated, that there is no forested lands on site, that the streets will be private and built to Sussex County specifications, that a homeowners association will be established and that they will have perpetual maintenance of the streets and the stormwater management areas, that the owners prefer to keep the street design as shown on the preliminary plat since many buyers prefer cul-de-sacs, and that there will be a wet pond for the stormwater management area as per the Sussex

Conservation District's recommendation.

Robert Snepfey, Robert Graham, Joyce Lindsay, Homer Dawson, Karen Seigfried Jim Cassidy, Rick Aydelotte, and Ann Porter all spoke in opposition due to the negative effects on Broadkill Beach, increased traffic, that the area is agricultural, harm to wildlife habitat, the area is used for hunting, that there is no demand for lots in the area, that there are enough available lots within a ten mile radius, if the lots will be rented, the types of soils mapped on site, preservation of agricultural lands, traffic on Route One and Route 16, the area is predominately single family stick built dwellings, that people don't want this type of dwellings, and the devaluation of properties if manufactured homes are permitted.

There were fifteen (15) people present 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. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

III. OTHER BUSINESS

1. RE: S & W Partners

The Commission reviewed a multi family site plan for nineteen (19) units located on the west side of Route One north of Fenwick Island.

Mr. Abbott advised the Commission that this site plan is revised from the one that was denied on June 9, 1994, in that only 836 square feet of building is encroaching into the 50 foot buffer from State Wetlands compared to 3,663.69 square feet and questioned if this is a less intrusive use than the approved plan for 4 single family lots.

John Sergovic, Attorney, and Jeff Clark, Consultant, were present and showed a plan that could be built if the single family lots were developed and the encroachment that would be allowed into the buffer.

Mr. Sergovic explained the text of the ordinance.

Mr. Allen stated that he felt the developers should apply for a variance from the Board of Adjustment.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried three votes to two, with Mr. Allen and Mrs. Monaco opposed, to approve as a preliminary and that the encroachment is a less intrusive use.

2. RE: Ocean Outlets Seaside Phase II

The Commission reviewed a commercial site plan for outlet retail sales at the northwest corner of the intersection of Route One and Route 271.

Mr. Abbott advised the Commission that the site plan shows 157,212 square feet of building space, that 32 stores are proposed, that the building setbacks meet the requirements of the zoning code, that the required parking is provided, and read a comment received from DelDOT that they will issue an entrance permit to the developers when all conditions have been met.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve as a preliminary.

3. RE: Steamboat Landing Campground

The Commission reviewed a request to create 30 additional campground sites in an existing campground.

Mr. Lank advised the Commission that the area has been approved for camping.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the revised site plan.

4. RE: Charles and Ruth Conrad

The Commission reviewed a concept to create a 7.65 acre parcel of land on Route 471 with access from a fifty foot right of way.

Mr. Abbott advised the Commission that there is an existing drive that serves the area to be created and that this is shown on the 1972 aerial photograph, that the owner is going to widen the drive to fifty foot and that the drive is approximately 1,320 feet in length.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve as a concept.

5. RE: Jennette M. Wingate

The Commission reviewed a concept to create a one acre lot with access from a fifty foot right of way on the south side of Route 26.

Mr. Abbott advised the Commission that there is an existing 12 foot drive and that the owner is going to widen the drive to fifty feet, and that if the Commission is favorable to the concept, it should be subject to the owner receiving a special use exception for a manufactured home on less than 5 acres and a variance from the front yard setback.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve as a concept subject to the Board of Adjustment approval.

6. RE: Donald Martin

The Commission reviewed a concept to revise 14 lots into two parcels in Messick Development.

Mr. Abbott advised the Commission that two lots will be revised to one lot with access from Harriet Tubman Avenue, and that twelve lots will be revised into one lot with access from Nat Turner Street.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve as a concept with the stipulation that a final survey be done deleting the existing lots.

7. RE: Subd. #92-7--Larry E. Willey

Mr. Abbott advised the Commission that a request for a one year time extension has been received so that the developer may obtain final approval, that the only remaining agency approval needed is DelDOT, and that this would be the second time extension approved by the Commission.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve a one year time extension with the stipulation that this be the last time extension granted.

8. RE: Sea Colony West Phase 1E

The Commission reviewed a revised site plan for Phase 1E of Sea Colony West.

Jim Fuqua advised the Commission that the floor plan and what was built were different, that the roofs were for

architectural purposes, and that certificates of compliances have been issued.

The Commission discussed the revised site plan.

Mr. Schrader advised the Commission that the RPC section of the zoning code needs to be amended.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the revised site plan for Phase 1E based on the RPC section of the zoning code, and that it be for this phase only.

IV. OLD BUSINESS

1. RE: C/U #1090--Townsend, Inc.

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Land Application of Sludge to Forested Land lying on the southwest corner of the intersection of Route 48 and Route 296, on a parcel containing 351.00 acres more or less.

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

2. RE: Subd. #94-1--Harley R. Hickman

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 49.66 acres into 29 lots, located on the south side of Route 465, 1,500 feet west of Route 479.

Mr. Abbott advised the Commission that the staff has received a non binding feasibility statement from DNREC and that the site is suitable for individual on site septic systems.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve as a preliminary.

Meeting adjourned at 11:45 PM.