

MINUTES OF THE REGULAR MEETING OF NOVEMBER 21, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 21, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planning Technician.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of November 7, 1991, as circulated.

PUBLIC HEARINGS

1. RE: ORDINANCE TO AMEND CHAPTER 115 (Conservation Zone)

AN ORDINANCE TO AMEND CHAPTER 115, OF THE CODE OF SUSSEX COUNTY, BY AMENDING ARTICLE XXV RELATING TO CONSERVATION ZONES

Mr. Lank summarized the proposed amendments.

John Kennel of the State D.N.R.E.C. stated that the agency has examined the Ordinance and found that the amendments comply with the Western Sussex Land Use Plan and that the agency supports the proposed amendments.

Dot White questioned the definition of a tidal tributary stream.

Mr. Lank read the definition, as written in the Code of Sussex County and exhibited the Western Sussex Land Use Plan Map which addresses the location of the Conservation Zones.

R. C. Willin expressed concerns about one (1) acre lots and central sewer designs.

George Farnell expressed concerns about one (1) acre lots and the proposed 150 foot frontage along waterfronts.

John Kennel of the State D.N.R.E.C. summarized the definition of a central sewer system.

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

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

The Commission found that the State D.N.R.E.C. supports the proposed amendments.

The Commission found that concerns were expressed in reference to the definition of tidal tributary streams and central sewer systems, one (1) acre lots, and 150 feet of water frontage.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as written since recommended by the Western Sussex Land Use Plan.

2. RE: Subdiv. #91-23--ROBERT HICKMAN AND ROBERT DURHAM

Don Miller, surveyor and Robert Hickman, developer, were 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 33.55 acres into 26 lots, and a variance from the allowed 600 foot maximum cul-de-sac length, located on the western side of Route 447, 635 feet south of Route 446, and on the northern side of Route 74, 860 feet west of Route 447.

Mr. Abbott summarized the Technical Advisory Committee Report of November 18, 1991, in reference to this application.

Mr. Miller advised the Commission that the concerns of the Technical Advisory Committee are being addressed.

Mr. Miller advised the Commission that the entrance on Route 74 cannot be shifted due to other approved lots being stripped off along Route 74.

Donna Bennington had concerns of all adjacent property owners being notified and any building restrictions.

Mr. Hickman advised the Commission that there will be restrictions such as 1,000 square foot floor area for dwellings, no chicken houses and hog pens and the such.

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

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

Mr. Lank advised the Commission that a septic feasibility has not been received.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility for this subdivision.

2. RE: Subdiv. #91-24--SARA M. SHORT

Bob Sigler of Charles Murphy Surveyors, and F. A. Humphries of H. E. I., Inc., were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 32.46 acres into 46 lots, and a variance from the allowed 600 foot maximum cul-de-sac length, located on the northeastern side of Route One, 915 feet northwest of Route 200.

Mr. Abbott summarized the Technical Advisory Committee Report of November 18, 1991.

Mr. Sigler submitted a list of restrictions and covenants to the Commission.

Mr. Sigler advised the Commission that three (3) lots may be deleted to provide for water quality measures.

Mr. Humphries advised the Commission that a survey of the marketing has been done and there is need for new lots in the area.

Mr. Humphries advised the Commission that there is no objection to removing the hedgerow if required by DelD.O.T. for safety and sight easements. The entrance to the subdivision is directly across from a cross over on Route One, and that two adjacent crossovers could be closed for safety purposes.

Mr. Sigler advised the Commission that the length of Rosebush Court is about 620 feet long.

Lida Wells, realtor, spoke in favor due to a need for housing lots in the area, the appearance of new dwellings and the layout of the proposed subdivision.

Dot White of the Delaware Audubon Society requested that this application be deferred pending a septic feasibility study being completed.

Mr. Sigler advised the Commission that Rizzo and Johnson, Soil Scientists, are conducting a 200 by 200 foot boring grid.

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

The Commission discussed the points and issues raised during the hearings.

Mr. Lank advised the Commission that a septic feasibility has not been received.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility for this subdivision.

4. RE: C/Z #1145--Delmarva Properties, Inc.

James Fuqua, attorney, Joe Cross, Fred Jarvis, and Bob Paljusky, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to MR-RPC Medium Density Residential-Residential Planned Community in Broad Creek Hundred, located on the northwest and southeast of Route 490-A, north of Route 78 and east of the Nanticoke River, to be located on a parcel containing 475.22 acres more or less.

Mr. Lank summarized comments received from the Development Advisory Service, the Department of Fish and Wildlife, the Department of Parks and Recreation, the Division of Soil and Water Conservation, the Department of Agriculture, the Bureau of Archaeology and Historic Preservation, the Department of Health and Social Services, the Department of Transportation, the Office of the State Fire Marshal, the Land Use Review Coordinator Office of the Secretary, the Division of Water Resources, and the Sussex Conservation District.

Mr. Fuqua presented a packet of information to the Commission.

Mr. Fuqua stated the applicants plan to develop the proposed site with 560 units, a commercial area, an 18 hole golf course with club house, tennis courts, a pool, and a boat launching ramp. All amenities will be private except the golf course. Central water would be provided. Clustering of units would be used in some areas. No lots would front on the river or county roads. There would be a separate area for boat and recreational vehicle storage. Approximately 60 per cent of the site would remain open space. Interior roads would be private.

Mr. Fuqua stated the wetlands have been identified by the Army Corps. of Engineers.

Mr. Fuqua stated the project would be phased. They plan to develop 50 to 100 units per year. The golf course would be developed with the first phase.

Mr. Fuqua stated they are planning a small business area, approximately three (3) acres, to be developed with B-1 Neighborhood Business uses. The shopping area would be open to the public.

Carl Pobst, Donald Trice, Allen Pierce, Dorothy White, Wayne Murray, George Farnell, Bob LePrad, and Paul Carey spoke in favor of the application.

Allen King, John Duria, Fred O'Neal, Susan Gum, Steve Gum, Judy Swartz, Don Martin, and Karen Pepper expressed concerns due to the size of the development, traffic, density, handling of disposal water, and the effect on existing wells.

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

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

The Commission found, based on a report from the State D.N.R.E.C. Development Advisory Service, that the Underground Discharges Branch advise that certain soils on the site are suitable for on-site wastewater disposal and certain soils are not suitable, that a soil feasibility study must be conducted on a 300 foot grid, that a certain review fee must be paid for review of the feasibility study, and that the maximum siting density shall be one dwelling per half acre; that the Pollution Control Branch stated that effective stormwater management and erosion controls should be maintained; that the Water Supply Branch advise that a central water supply system is proposed, that the operator must first obtain a Certificate of Public Convenience and Necessity before providing water service to the community, and that public wells should be located in compliance with the State Wellhead Protection Plan; that the Wetlands and Aquatic Protection Section advise that wetlands regulated by the State and the Army Corp. of Engineers appear to be within or adjacent to the project and that any activities such as filling, dredging, crossing with a road, or placement of a structure, may require a permit, that a stormwater management facility should be implemented to prevent surface water runoff from directly entering adjacent wetlands and waterways and should be designed to manage both water quantity and quality and should not be located in wetlands unless there are no practicable non-wetland alternatives, that the proposed community pier facility is preferred to that of individual dock structures, that in order to reduce the likelihood of wetlands impacts and future wetland violations property lines should not extend into wetlands, and that the State wetlands line should be staked out in the field to establish the building restriction line; that the Planning Branch

advise that the proposed development plan should conform to the goals, objectives, and policies of the Western Sussex Land Use Plan; that the Division of Air and Waste Management advise that State regulations prohibit the burial of debris except at permitted disposal facilities and that the Division encourages recycling of materials whenever feasible; that the Division of Fish and Wildlife recommend that as much undisturbed buffer as possible be provided around wetlands, ditches, drainage ways, and the Nanticoke River, that buffers provide critical wildlife habitat and help filter water runoff to minimize pollution of fisheries habitat, that the plan should discourage or minimize human trespass or impact in wetlands and buffer areas, that the site should remain in as much a natural or unmanicured state as possible since undergrowth and understory vegetation is needed for wildlife habitat, that the Division prefers just one crossing of the white cedar wetland area adjacent to Patrick's Pond; that the Division of Parks and Recreation has identified certain outdoor recreational facilities needed for the region and that some of the needs for the development are walking trails, open space for frisbee and soccer, swimming pools, and golf and tennis, that with the limited outdoor recreational facilities in the western part of the County this site will be an asset for recreation; that the Division of Parks and Recreation Natural Heritage Program advises that they are encouraged that the project proposed cluster development, that the retention of mature vegetation is planned, and that most of the nontidal wetlands will be undisturbed, that ten rare plant species are located in the Patrick's Pond area, that any activities that occur upstream along Gum Branch that would have adverse impacts on water quality in Patrick's Pond should be avoided, that the Atlantic white cedar swamp along Gum Branch is a critical wetland habitat, that the proposed mid-swamp road crossing should be eliminated and replaced with an upgrade of the old crossing at the west end of the white cedar area, that a concern is expressed in reference to the tidal wetland areas along the Nanticoke River, and that they request permission to enter the property to do a natural heritage study for rare plants; that the Division of Soil and Water Conservation advise that the project will require an approved sediment and stormwater plan prior to any land disturbing activities; that the Department of Agriculture advise that they have reviewed the site using the Sussex County LESA system which reflected the high percentage of land in managed forests, that the site scored 222 out of 300 points which is above average for Sussex County, that if development takes place, this proposal is not unreasonable as long as the area to be developed is minimized, that impacts on forested wetlands should be minimized, and that any commercial development should be basic service oriented; that the Bureau of Archaeology and Historic Preservation advise that the proposed major crossing of the Gum Branch to be in an area of high prehistoric archaeological potential, that the minor stream

crossing is in an area of known archaeological sites, and that any upland disposal sites and the upland parking area associated with the boat access should be evaluated for archaeological resources; that the Division of Public Health advise that plans and specifications for the drinking water system and the swimming pool must be approved by the Division prior to any construction; that the Division of Public Utilities Control of the Public Service Commission advise that if a central water system is proposed applications must be made to the Public Service Commission for approval; and that the Office of the State Fire Marshal advise that they will require a full site plan with water distribution plans for review.

The Commission found, based on comments received from Del. D.O.T., that the Department has performed a preliminary assessment of the traffic impact since the proposed use will add significant traffic to Sussex Routes 490 and 490A; that Sussex Route 490A is a 20 foot wide tar and chip road and that its current condition is substandard for the additional traffic this project will generate; that the Department has agreed to waive the requirement for a traffic impact study since the developers have agreed to widen Sussex 490A to 22 feet width and to pave Route 490A from the site entrance to the point where the existing pavement ends; and that the Department reserves the right to require a traffic impact study during the plan review process.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Review and Coordination within the Office of the Secretary, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management's Waste Management Section, Hazardous Waste Branch, Solid Waste Branch, Underground Storage Tank Branch, the Division of Fish and Wildlife, the Division of Parks and Recreation, the Division of Soil and Water Conservation, the Division of Water Resource's Watershed Assessment Branch, Wetland's and Aquatic Protection Branch, and Underground Discharge's Branch, the Office of the Secretary, the Department of Agriculture, the Bureau of Archaeology and Historic Preservation, the Division of Public Health, the Department of Transportation, the Office of the State Fire Marshal, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that the Soils on site are mapped to be Evesboro loamy sand, Klej loamy sand, Osier loamy sand, and Johnston silt loam; that the Evesboro and Klej soils have none to slight limitations in reference to suitability for the intended use; that the Osier soils may have severe limitations due to wetness if not adequately drained; and that the Johnston soils have severe limitations due to wetlands; that the evaluation of the

soils in respect to erosion and sediment control may have severe limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils are of state wide importance; that no storm flood hazard areas are affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements; and that no tax ditches are affected.

The Commission found that the applicants were represented by their Operations Manager, Legal Counsel, a Land Planner, and a Civil Engineer, who advised that the applicants plan to develop the site with 560 residential units, an 18 hole championship golf course and related facilities, a swimming pool, tennis and on-site recreation center, a three acre neighborhood business/convenience center, and river front access ramp.

The Commission found that the applicants provided a copy of an annual report of The Chesapeake Corporation, the parent company to Delmarva Properties, Inc., and a booklet titled "Woodland Crossing" which included an introduction, the Planning Process, a Property Description and Evaluation, a Market Analysis, references to Planning and Zoning, the Planning Concept and the Preliminary Site Plan, Public Facilities and Services, and included exhibits of the Location, an Existing Conditions Map, a Site Summary Analysis, and the Preliminary Site Plan.

The Commission found that the applicants representatives submitted letters from Delmarva Power, Diamond State Telephone, and Storer Cable Communications in reference to facilities and services that can be provided.

The Commission found, based on comments made by representatives of the application, that the developers utilized a lot of the D.N.R.E.C. Development Advisory Service comments in developing the site plan; that the site has been deeded to the applicants for approximately one year and owned by The Chesapeake Corporation for approximately 30 years; that the site is in close proximity to several residential developments and has easy access to shopping facilities and medical facilities; that the site is split between the Laurel and Seaford School Districts; that the site is served by the Blades Volunteer Fire Co.; that the site has the potential for 788 one-half acre lots; that the developers are requesting an MR-RPC Medium Density - Residential Planned Community to limit the site to 560 units with amenities; that the single family lots will vary from 7,500 square feet to 20,000 square feet; that the majority of the lots exceed 10,000 square feet; that the proposed championship golf course will be open to the public; that the other amenities will be private and controlled by a homeowners association; that the deed restrictions will include an

architectural review of structures; that the site is predominantly woodlands, except for 17 acres of tilled land and approximately 69 acres of wetlands; that the developers prefer to locate a new road crossing through Gum Branch where a minimal amount of wetlands disturbance is anticipated; that the project is oriented toward the golf course with neighborhood clusters, buffers along adjacent property lines and roads, and with no lots fronting along public roads; that the primary entrance will be on Route 490A; that no golf course fairways or greens are located in wetlands; that the only wetlands disturbance anticipated is for the road crossing at Gum Branch, approximately one acre of disturbance; that a double wide boat ramp with temporary mooring facilities is proposed on the Nanticoke River; that approximately 10 acres is reserved for dry boat and recreational vehicle storage in the area of the golf course maintenance facility off Route 490A; that no lots front along the Nanticoke River; that all lots are setback a minimum of 100 feet from the river; that the developers intend to comply with all agency regulations; that Route 490A will be improved to the standards required by Del.D.O.T.; that the streets within the project will be built to County specifications; that the site can be adequately drained for development and street construction; that the site will be served by a central sewer system designed and built to State specifications; that central water shall be provided for domestic water supply and fire protection capabilities; that in reference to drainage and stormwater management the golf course layout and ponds should provide adequate stormwater protection; that it is intended that all stormwater be retained on-site for irrigation; that the wetlands have been verified by the Army Corp. of Engineers; that no negative environmental impacts are anticipated; that the developers have developed 12 similar projects; that this project will be the first located in Delaware to be developed by the developers; that the golf course will be a part of the first phase; that the golf course will be the center of the project; that the project will be phased to develop approximately 50 to 100 units per year for anticipated completion of the project within 5 to 10 years; that 3 acres are proposed for neighborhood business rather than the permitted 5.6 acres; that the cart path for the golf course will cross Route 490A at grade at the street crossing per agreement with Del.D.O.T.; and that the golf course offers a recreational activity for Sussex County and will be new and unique to western Sussex County.

The Commission found that three members of the Blades Volunteer Fire Company were present in support on behalf of the Fire Company. Five other individuals spoke in support of the planned community.

The Commission found that a representative of the Delaware Audubon Society spoke in support of the project since the preliminary site plan and the list of restrictions to be imposed by the developers address all major concerns in a manner that meets or exceeds the Society's expectations for responsible development.

The Commission found that a representative of the Nanticoke Watershed Preservation Committee spoke in support of the project with conditions which referenced sewer, and binding conditions on any subsequent or assigned owners within the project.

The Commission found that 9 individuals, not specifically opposed but concerned, expressed concerns in reference to the poultry operation on an adjoining farm and questioning the ownership of a portion of the application site; the size of the development; the anticipated number of residents; the split between two school districts; that Mount Zion Tax Ditch crosses the property; traffic; loss of the rural character of the area; impacts on water supply by creation of a central water system; the type of wastewater treatment; and piers into the Nanticoke River.

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

#### OTHER BUSINESS

1. RE: Sea Colony

Withdrawn from the agenda.

2. RE: Pot Nets West

The Commission reviewed a site plan requesting permission to construct a driveway and mailbox area in the fifty (50) foot buffer zone of Pot Nets West Mobile Home Park.

Mr. Abbott advised the Commission that the driveway would be twenty (20) feet wide and paved. There is one entrance and one exit.

Mr. Abbott advised the Commission that a letter from Samuel Showell of Oak Forest Mobile Home Park has no objections to the driveway and mailboxes in the buffer zone. Oak Forest is an adjacent property owner.

Mr. Lank advised the Commission that they would have to approve this since the Code does not allow for construction on the buffer zone.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve this request as submitted.

3. RE: Allen Redden

The Commission reviewed a site plan requesting a fifty foot right of way to a 2.70 acre tract.

Mr. Lank advised the Commission that Mr. Redden's neighbor wishes to convey one hundred feet of his one hundred fifty foot frontage to Mr. Redden and retain fifty (50) feet as access to his remaining property since there is a dwelling on the property.

Mr. Lank advised the Commission that Mr. Redden has no intent to develop the property and this would be an extension to the other lands of Mr. Redden.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve this request as submitted.

4. RE: Salt Pond Recreation Area

The Commission reviewed a site plan for the recreation area and golf maintenance area of the Salt Pond MR-RPC project.

Mr. Abbott advised the Commission that the site plans comply with the Zoning Code.

Mr. Lank advised the Commission that there is a question about the height of the community center building which needs to be verified.

Mr. Abbott advised the Commission that no agency approvals have been received.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plans as a concept. Final approval is subject to the Planning and Zoning office receiving all agency approvals and the height concern being verified.

5. RE: Charles Williams

The Commission reviewed a commercial site plan for an office and ware house on Route 269.

Mr. Lank advised the Commission that since the project is over 2,400 square feet, the Commission should review this.

Mr. Lank advised the Commission that the plan complies with the required setbacks, and that the Commission needs to approve the parking concept since it is in the front yard.

Mr. Lank advised the Commission that the applicant wishes to have a gravel parking area due to the small number of spaces required. The entrance will be paved as per the Department of Transportation's approval.

Mr. Abbott advised the Commission that all agency approvals have been received.

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

6. RE: Fred Adams

Mr. Lank advised the Commission that Mr. Adams wishes to construct a 50 foot by 64 foot storage shed on a vacant 3.10 acre tract for storage of farm machinery.

The Commission discussed allowing the office staff to approve these requests using there discretion.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the request and allowing the staff to approve future permits.

7. RE: Norman Short

The Commission reviewed a site plan requesting to create a fifty (50) foot right of way off an existing twenty (20) foot private road to create a one (1) acre parcel.

Mr. Abbott advised the Commission that the applicant cannot obtain an additional thirty (30) feet from an adjacent property owner.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to approve the fifty (50) foot right of way off of the existing twenty (20) foot road and the one (1) acre parcel.

OLD BUSINESS

1. RE: C/Z #1144--V & L Partnership

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR-RPC General Residential-Residential Planned Community in Indian River Hundred,

located on the southeast side of Route 24, 600 feet north of Route 5 and Route 22, to be located on a parcel containing 59.05 acres more or less.

The Chairman referred to this application deferred on November 7, 1991.

The Commission discussed the application site.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied.

2. RE: Bethany Bay  
Phase I Section 2.3

Mr. Lank summarized the minutes of the November 7, 1991, meeting in which this was deferred.

Mr. Schrader advised the Commission of an interview with a former staff member and explained what was discussed.

David Rutt discussed letters from Karins and Associates.

Verino Pettinaro proposed to move two foundations, he also advised the Commission he is under time restraints but would move the dwelling if required.

The Commission took no action.

3. RE: Subdiv. #90-17--Garland Saville  
Rustic Acres

No one was present on behalf of this application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 12.8 acres into 21 lots, located on the north side of Route 26, 700 feet east of Route 327, and an application for a variance from the maximum 600 foot cul-de-sac length.

Mr. Abbott advised the Commission that all necessary approvals or permits have been obtained.

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

4. RE: Subdiv. #91-9--Back Bay Cove  
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No one was present on behalf of this application to consider the subdivision of land in an MR Medium Density Residential Zoning District in Cedar Creek Hundred by dividing 18.7 acre into 13 lots, located as an extension to Bay Shore Drive (Broadkill Beach), 1.5 miles north of Route 16.

Mr. Abbott advised the Commission that all necessary approvals or permits have been obtained.

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

Meeting Adjourned at 11:20 P.M.

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Lawrence B. Lank, Secretary