

MINUTES OF THE REGULAR MEETING OF DECEMBER 5, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 5, 1996, at 7:30 P.M., in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following members present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

The Commission took no action on the minutes of November 14, 1996, and November 21, 1996.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of November 26, 1996 as amended.

Mr. Schrader explained how the public hearings and agenda items will be conducted.

II. PUBLIC HEARINGS

1. RE: Subdiv. #96-21--Harold Johnson

Harold Johnson, developer, and Don Miller, surveyor, were present on behalf of this application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred by dividing 68.95 acres into 61 lots, located on the east side of Road 317, 3,077 feet south of Road 315.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996 and comments received from the Natural Resources Conservation Service.

Mr. Johnson and Mr. Miller advised the Commission that he is aware of the requirements and recommendations of the Technical Advisory Committee, that he owns the parcel with the poultry houses on it, that the wetlands have been delineated and that there will be a twenty foot setback from the wetlands, that the streets in the development will be public streets and the Department of Transportation only maintains the paved areas, that the wetlands are included in the total square footage for each lot, that the site is not feasible for agricultural uses including livestock, that the surrounding area is being developed, and that this is the most logical use of the land.

There were no parties present in support of this application.

Michael Mason spoke in opposition to this application and referenced concerns about negative impacts to the environment, increased traffic concerns, and that Blue Heron Estates and the

Anderson subdivision are restricted building lots.

Mark Calvert an area resident spoke in opposition to this application and referenced concerns about the proposed lot sizes, and the type of dwellings that will be permitted.

Mr. Schrader advised the Commission that the proposed deed restrictions reference 1,500 square foot dwellings and thirty five feet in height.

Bruce Powell an adjacent property owner questioned if the hedgerow will serve as a buffer.

Mr. Johnson advised the Commission that the hedgerow will remain.

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. Phillips, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

2. RE: Subdiv. #96-22--Norris L. Niblett

Mr. Ralph abstained from participating in this public hearing.

Don Miller, surveyor, was present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 53.33 acres into 77 lots, located on the south side of Road 515, 2,065 feet west of Road 13A.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996, and comments received from the Natural Resources Conservation Service, the State DNREC Ground Water Discharges Section, and a letter expressing concerns about the proposed subdivision from the Bacon Switch Preservation Society.

Mr. Miller advised the Commission that the proposed subdivision will have a central sewer and water system, that these systems will be franchised and that the Homeowners Association will not be responsible for the maintenance of the systems, that the Association will be required to pay a maintenance fee, that the lot sizes average 12,000 square feet, that Stormwater Management Ponds are proposed, that the streets

will be private and hot mix surface, that there is only one entrance and that the entrance plan has not been submitted to DelDOT yet, that the lots will be offered for sale, that the site has been zoned General Residential since 1971, that there is a desire for GR zoned land, that the owner bought the property to develop, that the development would be done in phases, that no street lighting is proposed, that a fence would be erected around the stormwater management areas, that an entrance permit has been obtained for the Bacon Grove I subdivision and that improvements have to be made to Road 13A, that the lot sizes are the same as Bacon Grove I, that Bacon Grove I would be started before this project begins, that the project would be sold out within ten to fifteen years, and that the wetland delineation has to be approved by the United States Army Corps of Engineers.

There were no parties present in support of this application.

Richard Lundy spoke in opposition to this application and expressed concerns about who will occupy the dwellings, sewage concerns and where it will go, that the soils in the area have clay, who will maintain the infrastructure, that nitrate levels are high in the area, questioned where the manufactured homes will come from and questioned the need for additional lots in the area.

Jim DiRocco, an area resident spoke in opposition and raised questions about access for emergency vehicles, and stated that there is no need for additional lots since Bacon Grove I has not been developed yet.

Shirley Prettyman an area resident spoke in opposition and expressed concerns about the safety of children in the area, that the lots will be for manufactured homes, that there would be negative impacts to the environment, that crime would increase in the area, that dwellings should be put in rural areas, that Road 515 has no shoulders and that there is a curve where the entrance will be located.

There were 13 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. Phillips, seconded by Mr. Lynch, and carried 4 to 0, with Mr. Ralph abstaining, to deny this

application since the subdivision would be out of character with the area, and that there is no need for additional lots in the area.

3. RE: Subdiv. #96-23--Dirickson Landing Associates

Steve Parsons and Robert Kauffman, developers, and Elton Murray, surveyor from Land Tech Inc., were 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 48.23 acres into 7 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, and a waiver from the street construction requirements, located on the south side of Road 381, 2,200 feet southeast of Road 384.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996, and comments received from the Natural Resources Conservation Service.

Mr. Murray submitted a revised preliminary subdivision plan complying with all requirements of the Technical Advisory Committee, and advised the Commission that lots 13 and 14 have an approved entrance location from the Department of Transportation, that Country Lane will be built as per the requirements of the subdivision code, and that the ditches on the site are private and should not have any effect on the subdivision.

Mr. Parsons submitted the proposed deed restrictions to Mr. Schrader, and advised the Commission that there will be no future subdivision of the property.

There were no parties present in support of this application.

Lawrence Long an area resident on Road 384 advised the Commission that he and his parents have concerns about farmland being destroyed, that a buffer should be provided adjacent to his parents farm, and that there should be a stipulation that no future subdivision be permitted.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

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

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

4. RE: Subdiv. #96-24--Timothy Ramey

Timothy Ramey, developer, and Don Miller, surveyor, 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 22.28 acres into 31 lots, located on the west side of an unnamed road, 175 feet west of Johnson's Drive within Patty Cannon Estates Subdivision, on the south side of Road 78, 1,260 feet southeast of Road 490A.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996, and comments received from the Natural Resources Conservation Service.

Mr. Miller advised the Commission that the proposed lots are one half acre with individual septic systems and wells, that the streets will be public and maintained by DelDOT, that the existing entrance to Patty Cannon Estates will be required to be upgraded, that a buffer zone is not required since there are no agricultural lands adjacent to this site, and that the dwellings will be stick built.

Mr. Ramey advised the Commission that he has a sales contract to purchase the property, that the deed restrictions will be the same as Patty Cannon Estates, that there are three vacant lots in the existing Patty Cannon Estates, and that he has not talked to the residents of the existing subdivision.

There were no parties present in support of this application.

John Griffith a resident of Patty Cannon Estates spoke in opposition to this application with concerns about increased traffic congestion, that one entrance to the subdivision is less than adequate, density concerns, and safety concerns for area children around the stormwater management ponds, and that Road 78 has no shoulders.

Gene Taylor a resident of Road 78 spoke in opposition to this application due to the location of the stormwater management pond and questioned if a fence will be required, stated that the lots should be one acre in size, traffic and children's safety, and advised the Commission that there are approximately ten vacant lots in the existing subdivision.

There were twelve parties 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 Mr. Wheatley, and carried unanimously to defer action.

5. RE: Subdiv. #96-25--Robert Kitchens

Robert Kitchens, applicant, Joe Conaway, consultant, and Don Miller, surveyor, were present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 102.37 acres into 156 lots, located on the south side of Road 508, 1,560 feet northeast of Road 509.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996, and comments received from the Natural Resources Conservation Service, and a letter in opposition to this application from William and Etta Duncan.

Mr. Conaway advised the Commission that this application is for 252 less lots than would be permitted, that the proposed homes will be HUD Code approved homes, that within the last year, over fifty percent of permits issued have been for manufactured homes, that the project would start in 1998, that the development will be phased, that a central sewer and water system is proposed, and that the land has been zoned General Residential since 1971.

Mr. Miller advised the Commission that a central sewer and water system will be used, that there will be a thirty foot forested buffer from agricultural lands, that there will be stormwater management ponds on site, and that the streets will be private and hot mix surfaced.

Mr. Kitchens advised the Commission that he is acting as an agent for the owner who is Larry McKinley, that the development will be a manufactured home community, and that the units will be HUD approved homes,

There were no parties present in support of this application.

Robert Mollock, a resident of Road 508, spoke in opposition and advised the Commission that he was told that the land would remain as agriculture, that crime in the area would increase, and that property values would depreciate.

Lois Ryan, a resident of Road 508 spoke in opposition and questioned whether an environmental impact study has been done,

expressed concerns about increases in traffic, questioned the type of housing that is proposed, and questioned the deed restrictions.

Warren Ryan spoke in opposition to this application and expressed concerns about the number of manufactured homes in the area and amount of permits issued for manufactured homes.

Kenneth Bennett spoke in opposition to this application and advised the Commission that prime agricultural land is being destroyed, and that there was a cemetery on this site and that the State should investigate this matter.

Mr. Conaway advised the Commission that the developers will contact the State to ascertain the status of the cemetery.

There were eight parties 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 Mr. Wheatley, and carried unanimously to defer action.

6. RE: Subdiv. #96-26--Robert Kitchens

Robert Kitchens, applicant, Joe Conaway, consultant, and Don Miller, surveyor, were present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Broad Creek Hundred by dividing 67.84 acres into 153 lots, located on the north side of Road 488, 1,600 feet west of Road 479.

Mr. Abbott summarized the Technical Advisory Committee Report of November 13, 1996, and comments received from the Natural Resources Conservation Service, the State DNREC Division of Parks and Recreation, Lands Preservation Office, the State DNREC Division of Parks and Recreation, Greenways, the State DNREC Wetlands and Subaqueous Lands section, the Utility Construction Division of the Sussex County Engineering Office, the State DNREC Wetlands/Soil Assessment Branch, the State DNREC Small Systems Branch, and the State DNREC Water Supply Section.

Mr. Conaway advised the Commission that this application is for 153 less lots than what would be permitted under the zoning classification, that if approved the subdivision would be started

in 1998, that the subdivision would be built in phases, that the lots will be sold for manufactured homes, that HUD Code approved homes would be permitted, that this is only the second time that the Department of Transportation has required a traffic impact study for a subdivision that does not involve a change of zone and that this is discrimination, that there is a desire for GR General Residential lands, that the site has been zoned GR General Residential since 1971, and that the central sewer system would be a benefit to the environment.

Mr. Miller advised the Commission that 12,000 square foot lots are proposed, that the streets will be private with a hot mixed surface, that there would be several stormwater management ponds, that the entrance to the site is from Sweet Briar Drive and that this will be required to be upgraded, that there is enough capacity available from the existing Cool Branch MHP sewer and water system to serve this site, and that approximately five of the proposed lots will be deleted upon the design of the stormwater management ponds.

Mr. Kitchens advised the Commission that this project will tie into the Cool Branch MHP, that the sewer will serve both projects, that the site will be developed as a manufactured home community, and that it will be developed in two or three phases.

There were no parties present in support of this application.

William Grayson an area resident spoke in opposition to this application and expressed concerns of having 750 new lots in the area, that the population would be greater than the Town of Blades, that this subdivision would be an expansion of the Cool Branch MHP, that the area does not drain well, that there should be a buffer zone from all agricultural and residential lands, that there is a possibility of wells being contaminated, that there would be congestion of traffic in the area, that a traffic impact study should be performed, that the quality of life concerns are being disrupted, and read and submitted a petition with 64 signatures in opposition to this application.

Robert Anger, a resident of Wooded Acres, spoke in opposition to this application and referenced that there was never any talk of expansion to Cool Branch MHP, expressed concerns about the proposed density in the area, expressed concerns about the type of wastewater disposal system proposed, and wondered why the owner is not the applicant of this application.

Aubrey Dillard, an adjacent land owner, spoke in opposition to this application and advised the Commission that he

operates a horse farm, and is surrounded by development, questioned the location of the Public Notice sign, advised the Commission that this site was denied a development years back, that children and dogs harass his horses, that crime in the area would increase, the amount of density proposed, and traffic on Road 488.

Roland Tice, a resident of Road 488, spoke in opposition due to increase traffic, accidents on Road 488, and the density being proposed.

Ruth Goehring, an adjacent property owner, spoke in opposition due to the density, that there is no need at this time for additional lots, that farmland is being destroyed, and questioned if there would be adequate fire and police protection.

Kenny West, a resident of Road 488, spoke in opposition due to the possible widening of Sweet Briar Drive since his dwelling is fifteen feet from the right of way, and expressed concerns about the safety of the children in the area.

There were twenty-six parties 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. Wheatley, seconded by Mr. Phillips, and carried unanimously to defer action.

III. OTHER BUSINESS

1. RE: Clearwater MR / RPC

The Commission reviewed a site plan for Phase 4 of the Clearwater Development located on Road 361.

Mr. Abbott advised the Commission that Phase 4 consists of 18 single family cluster dwelling units, that the plan is in compliance with the zoning code, and that if the Commission is favorable to the site plan, only preliminary approval be considered since the staff has not received any agency approvals yet.

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

approvals and permits.

2. RE: Sea Colony West HR / RPC

The Commission reviewed a site plan for Phase 18 of the Sea Colony West development.

Mr. Abbott advised the Commission that this phase is for 68 multi family units, that the site plan is in compliance with the zoning code, and that if the Commission is favorable to the site plan, only preliminary approval be considered since the staff has not received any agency approvals yet.

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

3. RE: Delmarva Aggregates, Inc.

Don Pogwist of McCrone Inc. was present as the Commission reviewed an industrial site plan for a material transfer facility on Road 490 near the Town of Blades.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the proposed use is a permitted use, and that if the Commission is favorable to the site plan, only preliminary approval be considered since the staff has not received any agency approvals yet.

Mr. Pogwist advised the Commission that the plan has been submitted to the required agencies for comment, and that stone will be transported in and sand will be shipped out, and that the United States Army Corps of Engineers has jurisdiction over the Nanticoke River.

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

IV. OLD BUSINESS

1. RE: C/Z #1291--Dyer, McCrea Ventures, L.L.C.

The Chairman referred back to this application which was deferred at the November 14, 1996 meeting.

Mr. Wheatley abstained from participating in this application.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried 3 votes for, 1 vote against, and 1 not participating, to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The maximum number of lots shall not exceed 80.

2. An eight foot solid board fence (the appearance to be the same on both sides) will be installed by the developers, or its assigns along the property line (southerly) of lots 3-34-13 insert Sheet K, insert A Parcels #518, 513, 512, 511, 510, 509, and 508. As an alternative at the option of the owners of said lots in Beachfield, the developers, or its assigns will plant a single row of Leyland Cypress along said property line to act as a buffer. The fence or single row of Leyland Cypress will be installed at the sole cost and expense of the developers, or its assigns and such activity shall be initiated within fifteen (15) days of the date when construction of the utilities and roadway for the assisted living project adjoining said lots is completed. The installation of the trees or fence shall be pursued diligently once the work is begin.

3. The developers also agree to install a single row of Leyland Cypress from lots 507 to the lot where the woods line begins. The row of Leyland Cypress shall be located approximately ten (10) feet from the edge of the roadway paving.

4. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

2. RE: ORDINANCE TO AMEND CHAPTER 115
(Height in Mobile Home Parks)

The Chairman referred back to this application which was deferred at the November 14, 1996 meeting.

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

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved for manufactured home parks created after the adoption of this Ordinance.

3. RE: ORDINANCE TO AMEND CHAPTER 115
(Defining Authorized Structures in MHP)

The Chairman referred back to this application which was

deferred at the November 14, 1996 meeting.

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

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved for manufactured home parks created after the adoption of this Ordinance.

4. RE: C/U #1171--Hab Nab Transportation

The Chairman referred back to this application which was deferred at the November 21, 1996 meeting.

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried 3 votes to 2 votes, with Mr. Ralph and Mr. Wheatley voting against the motion, to forward this application to the Sussex County Council with the recommendation that it be denied since the use would not be in character with the area and that there are other zoned commercial properties in the area.

5. RE: C/U #1172--Charles G. & Patricia A. Wagner

The Chairman referred back to this application which was deferred at the November 21, 1996 meeting.

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulation:

1. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

6. RE: C/U #1173--Raab/Ford Partnership

The Chairman referred back to this application which was deferred at the November 21, 1996 meeting.

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

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 since the site is not conducive to be developed.

7. RE: Subdiv. #96-16--Dale Wheatley

The Chairman referred back to this application which was deferred at the November 21, 1996 meeting.

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

8. RE: Subdiv. #96-17--Dale Wheatley

The Chairman referred back to this application which was deferred at the November 21, 1996 meeting.

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

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

9. RE: Subdiv. #96-18--Donald M. Martin

The Chairman referred back to this application which was continued from the November 21, 1996 meeting and deferred at the November 26, 1996 meeting.

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

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to deny this application since the applicant is not in conformity with the zoning code. It was the consensus of the Commission that once the applicant is in conformity with the zoning code, he be allowed to re-apply.

10. RE: Subdiv. #96-19--Sussex Ventures, Inc.

The Chairman referred back to this application which was continued from the November 21, 1996 meeting and deferred at the November 26, 1996 meeting.

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

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve this application as a preliminary.

11. RE: Subdiv. #96-20--Bryce M. Lingo

Mr. Whealtey abstained from participating in this application.

The Chairman referred back to this application which was continued from the November 21, 1996 meeting and deferred at the November 26, 1996 meeting.

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

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried 4 votes to none, with Mr. Wheatley abstaining, to approve this application as a preliminary with the following stipulations:

1. Proposed fifty foot wide perpetual ingress and egress easement shall be located as identified on site plan dated 11/31/96 and shall not be moved to any location closer to Beachfield Subdivision.

2. An eight foot high wooden panel fence shall be provided by developer along the boundary adjacent to Beachfield subdivision lots 3-34-13 (insert sheet K insert A) parcels 508 through 513 and 518.

3. No additional access shall be provided to Route 270A or to any other parcel except for that access shown on the preliminary site plan dated 11/31/96. Specifically, there shall be no further connection roads through or across Lots C and/or D of the proposed subdivision.

12. RE: Subdiv. #96-12--H. Robert & Georgetta J. Hickman

Mr. Abbott advised the Commission that this application received preliminary approval on August 22, 1996, that the final plan is the same layout, that the plan meets the requirements of the subdivision and zoning codes, and that all required agency approvals and permits have been obtained.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final record plan.

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Meeting adjourned at 11:50 P.M.