

MINUTES OF THE REGULAR MEETING OF DECEMBER 28, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 28, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as revised with the withdrawal of C/U #1378.

No action was taken on the Minutes of December 14, 2000 since they had not been circulated.

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

IV. PUBLIC HEARINGS

Subdivision #2000-31 -- application of ANTONIO V. NERO to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred, by dividing 2.23 acres into 2 lots, located within Nero's Acres Subdivision, west of Road 70, 1,540 feet north of Road 64.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 20, 2000 and requested that the report be made a part of the record for this application and asked Mr. Abbott to summarize any additional comments received to date.

Mr. Abbott advised the Commission that the staff has received a letter from Richard and Annette Stellhorn, residents of Nero's Acres, in support of this application and distributed a revised copy of the proposed lot 50 deleting the cul-de-sac.

The Commission found that Antonio Nero was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the two proposed lots will be sold; that the proposed lot 12 is already occupied with a unit that has been leased and that the Chancery Court found that he had to sell this lot to the tenants who reside on the site; that the proposed lot 50 will be developed for a manufactured home or a stick built dwelling; that the home will setback approximately 100-feet from the front property line; and that he wishes to delete the cul-de-sac based on requirements of the State Fire Marshal Office.

The Commission found that there were no parties present with interest to this application.

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

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

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary.

Subdivision #2000-32 -- application of SEASHORE ENTERPRISE to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 4.40 acres into 3 lots, located south of Bay Reach and west of Back Bay within Country Manor/Pine Bay Subdivision.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 20, 2000 and requested that the report be made a part of the record for this application and asked Mr. Abbott to summarize any additional comments received to date.

Mr. Abbott advised the Commission that they have received approximately 45 letters in opposition to this application; distributed approximately 40 more letters in opposition and advised the Commission that a total of 83 letters have been received in opposition to the application; distributed the restrictive covenants submitted by the applicant's attorney; summarized Mr. Schrader's letter in reference to the review of the restrictive covenants; distributed a package submitted by Robert Witsil, Attorney for Seabreeze and Country Manor Subdivisions, in opposition to this application, and distributed a package submitted by David Weidman, Attorney for Pine Bay, in opposition to this application.

The Commission found that John Sergovic, Attorney, and J. Ross Harris, Engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are surprised at the amount of opposition that a 3-lot subdivision has caused; that the opposition's concerns deal with access questions and whether the site is a part of a previously subdivided project; that the proposed site is not part of a previously approved subdivision plan; that the deed for this property through a previous owner references a recorded easement for this site and that the easement is recorded in deed book 1671 pages 200 through 205 and in deed book 1672 pages 107 through 114; that his clients have made an offer to pay an equivalent assessment that three new homes would create to the Pine Bay Association for the maintenance of the streets in Pine Bay and would continue to pay in future years; that the proposed street width would be fifteen feet in width without having to fill any wetlands; that the street width would require a variance and that the Commission has the authority to grant variances in the Subdivision Code; that if the Commission were to grant a variance, there would be no need for the filling of wetlands; that if the Commission did not grant a variance, the street could still be built without impacting the wetlands by

building a causeway over the wetlands; that the applicants already have approval from the Army Corps of Engineers to fill 0.05 acres of wetlands to build one single family home on the site; that the applicants will seek re-approval from the Corps of Engineers to develop the three lot subdivision; that the wetland delineation was submitted by Dr. Evelyn Maurmeyer and submitted a copy of the Corps of Engineers' approval; that the upland areas on the site could support three dwellings; that the plan meets all requirements of the subdivision code with the exception of the roadway; that a 6-inch water line stub is provided to the site along with a 8-inch sewer line stub; that the applicants may build on the site; that the dwellings will be on pilings; that the applicants purchased the property in September of 2000; that the drive was created in 1989; that the applicants are Jay Stein and Fran Gonzon; that the property is zoned MR Medium Density Residential and that they are not trying to develop the maximum number of lots allowed; that the plot has been revised based on the suggestions of the Technical Advisory Committee; that the restrictive covenants limit the use of wetlands; that the proposed dwellings would not intensify flooding in the area; that the development would enhance the area since the homes would be larger than those in the Pine Bay Subdivision; that sewer and water would be provided by Sussex County; that no group rentals will be allowed and that this will be addressed in the revised restrictive covenants; and submitted aerial photographs of the area which were taken within the last year and a packet with seven exhibits into the record.

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

The Commission found that Robert Witsil, Attorney, representing Seabreeze and Country Manor Homeowners Association was present in opposition to this application and advised the Commission that he would call on three witnesses - Charles Miller, Kenny Simpler, and Bruce Wright to speak in opposition to this application; and submitted a packet with eight exhibits including 1) outline of opposition with an introduction, the subdivision proposal is not in compliance with the Sussex County Subdivision Code Requirements, the proposed subdivision plan is not in compliance with the Sussex County Comprehensive Development Plan and the proposal is a resubdivision and or alteration of a previously platted and recorded subdivision plans which require 100% consent of Country Manor property owners; 2) Proposed finding of facts for denial of subdivision application, 3) Photographs of site, 4) information provided by Charles Miller, Soil Scientist, 5) Copy of deed to Seashore Enterprises, Inc. with photocopies of a portion of a plot plan with Mr. Miller's notations, 6) Previous application for United States Army Corps of Engineers Nationwide permit and plan, 7) relevant Sussex County Subdivision and Zoning Code and Comprehensive Development Plan Sections, and 8) Photocopies of correspondence submitted in opposition to the application; summarized his comments based on the packet; and submitted copies of recorded subdivision plans of Country Manor and Pine Bay.

The Commission found that Charles Miller was present and summarized comments in reference to the wetlands that were submitted in Mr. Witsil's packet.

The Commission found that Kenneth Simpler was present and summarized comments in reference to the photographs of flooding in the area that were submitted in Mr. Witsil's packet.

The Commission found that Bruce Wright was present and summarized comments in reference to the photographs of flooding in the area that were submitted in Mr. Witsil's packet.

The Commission found that Paul Roessel was present in opposition to this application and advised the Commission that the Army Corps of Engineers' approval is for one single family home only; that there is 40,000 square feet of uplands at the maximum; that a new permit will be required from the Army Corps of Engineers if changed to three homes; and that he did not like the applicant's statements of may, might, and could.

Mr. Witsil advised the Commission that a variance should only be considered when the issue is not self imposed; that the applicants purchased the property with knowledge of the existing conditions; and that the hardship is self imposed.

The Commission found that David Weidman, Attorney, representing Pine Bay Homeowners Association in opposition to this application was present and submitted and discussed a packet with 22 exhibits including 1) a letter from Bobby B. Brown, B.S.C.E. regarding the impact of the proposed subdivision upon Pine Bay's private roads; 2) a letter from Bobby B. Brown, B.S.C.E. regarding the condition of Pine Bay's private roads; 3) a letter from the Sussex County Engineering Department; 4) a letter from Wilson, Halbrook and Bayard; 5) comments from DNREC; 6) Department of Agriculture comments; 7) Division of Parks and Recreation comments; 8) Sussex Conservation District comments; 9) affidavits regarding the use of the parcel of land for the proposed subdivision by local residents for access to Rehoboth Bay; 10) letter from Douglas Macnab in opposition; 11) letter from Lawrence A. Brown regarding his personal use of the parcel of land for access to Rehoboth Bay; 12) deed from Rehoboth Bay Land Company conveying land to the applicant; 13) deed from Smethurst to BCK Associates (developer of Pine Bay); 14) Plat of Pine Bay; 15) Copy of Taylor v. Council of South Bethany, Del. Chan. Ct., C.A. No.: 1203-S, Steele, V.C. (February 28, 1996); 16) U.S. Fish and Wildlife Service comments; 17) preconstruction notification to Corps of Engineers; 18) Pine Bay's restrictive covenants; 19) petition signed by the Pine Bay residents; 20) Pine Bay resolution restricting the scope of the easement across Pine Bay's private roads to the subject parcel to one single family home; 21) photographs; and 22) excerpts from the Sussex County Comprehensive Plan; submitted three letters in opposition; submitted a topographic map of the area; advised the Commission that

Thompson Island is a critical area; that wildlife habitats the area; and that this application should be denied since it does not meet the requirements of the subdivision code.

The Commission found that Robert Benko a resident of Pine Bay was present in opposition to this application and advised the Commission that he supports individual property rights; that the record indicates negative consequences of the site; that the site is primarily dredge fill material; that the roadway would have to be elevated to attempt to eliminate the flooding problems; that there is no method for mitigation of the site; that there is no benefit to the public to subdivide the property; that the citizens of Pine Bay would be financially impacted by use of the streets in Pine Bay; and that it should not be difficult to deny this application.

The Commission found that Connie Benko, President of Pine Bay Homeowners Association, was present in opposition to this application and advised the Commission that the site and area are habituated by Blue Heron, as many as 14 at any one time; that Bald Eagles have been seen on the site; and that over development of the site would negatively impact the wildlife in the area.

The Commission found that Angelo Caputo was present in opposition to this application and advised the Commission that there is flooding in Seabreeze due to poor drainage from other streets in the area.

The Commission found that Ed Regan was present in opposition to this application and advised the Commission that the site should be left alone.

The Commission found that Mabel Granke of the Citizens Coalition was present in opposition to this application and advised the Commission that utmost care should be taken in terms of any development to this site because of the sensitive nature of this land including it's relation to Rehoboth Bay, extensive wetlands and the constant presence of Osprey, Blue Heron, and Bald Eagles; and that permit granted by the Army Corps of Engineers needs more information.

The Commission found that there were 4 persons present in support of this application and 62 persons 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 by Mr. Johnson, seconded by Mr. Gordy, and carried 4 votes to none, with Mr. Lynch not participating, to defer action so that the Commission can review the information submitted by the applicant and the opposition.

The Commission took a recess.

Chairman Allen reconvened the meeting at 9:44 P.M.

Subdivision #2000-33 -- application of UNITY DEVELOPMENT COMPANY, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 42.81 acres into 59 lots, located at the southeast corner of the intersection of Road 283 and Road 275.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 20, 2000 and requested that the report be made a part of the record for this application and asked Mr. Abbott to summarize any additional comments received to date.

Mr. Abbott advised the Commission that a letter has been received from Samuel C. Warrington, II with concerns about this application due to the possibility of an old borrow pit being located on the site; and that this site received preliminary approval for 55 lots on May 25, 2000.

The Commission found that Robert Witsil, Attorney, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the entrance near Plantation Road on the previous application has been deleted; that the developers were able to add 4 more lots by the deletion; that the property owned by Ruby Aydelotte is not a part of this application since the developers were no able to purchase the property; that the project is located in the West Rehoboth Expansion of the Dewey Beach Sewer district; that there are no wetlands on the site; that the project is not located within a flood zone; that the site is zoned Agricultural Residential and located within the Development District in the Comprehensive Land Use Plan; that the proposed density is less than what is permitted by zoning; and that there is no record of an old borrow pit or landfill on the property.

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

The Commission found that Joan Deaver, a resident of the area, was present in opposition to this application and advised the Commission that the number of lots should not be increased from the previous approval; and that there is a need for a traffic light and widening of Postal Lane.

The Commission found that Mabel Granke was present and advised the Commission that the Citizens Coalition has concerns about increasing traffic onto Road 275; and that the intersection of Road 275 and Road 283 needs improvements.

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

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

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

C/U #1377 -- application of WILLIAM A. THOMAS to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a doctor's office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 16,000 square feet, more or less, lying southeast of Savannah Road, a.k.a. Business Route 9, 170 feet northeast of Quaker Road.

The Commission found that the application included a survey of the site and the existing improvements, a site plan showing the parking to the rear of the existing improvements, and a floor plan for conversion of the existing improvements into offices.

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

The Commission found, based on comments received from the County Engineering Department, that the site is in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that capacity has been assumed at 4 units per acre; that capacity is available for the proposed doctors offices; that the site has one system connection charge credit; that the assessment will be based on square footage of the building; that the system connection charge rate is \$2,954.00 per EDU; that one six (6) inch lateral has been provided for the parcel from First Street; that there is currently a single family dwelling on the site connected to the sewer system; and that improvements shall be required to conform to the West Rehoboth Planning study.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the proposal; that if there will be the construction of an enlarged parking area, they suggest that the County require the applicant to work with the State Historic Preservation Office about ways to avoid adverse effects on the historic properties in the area; and that the State would like to note that there are groundwater management zones in place within 1 mile of the project and that if the applicant will need to place a well on the site they will need to contact the Division of Water Resources of the State DNREC.

The Commission found that William A. Thomas, M.D. was present and stated in his presentation and in response to questions raised by the Commission that he proposes a office with parking to the rear of the improvements; that access to the office will be in the

front; that a ramp will be built for handicap access; that he proposes a 3' by 4' lighted sign; that business hours will be from 9:00 A.M. to 4:00 P.M. Monday through Friday; that he does not propose to have any evening, Saturday or Sunday hours; that he is on the staff for the Beebe Medical Center; that he intends to maintain the residential character of the building; that he proposes to add a portico on the front of the building, new siding, and new landscaping; and that the driveway runs from Savannah Road to First Street.

The Commission found that the driveway was not wide enough for through traffic, and stated that the driveway should be one way with possible speed bumps.

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

Motion by Mr. Johnson, 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 stipulations:

- 1) One lighted ground sign, not exceeding 3' by 4', may be permitted.
- 2) Business hours may be from 9:00 A.M. to 5:00 P.M. Monday through Friday. Saturday hours may be permitted if needed. There shall be no Sunday hours.
- 3) Parking shall be to the rear of the building only.
- 4) The residential character of the building shall be maintained.
- 5) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Carried 5 - 0.

C/U #1378 -- application of ROBERT L. O'DAY, SR. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a used car sales facility to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 2.16 acres, more or less, lying north of Route 404 (Route 18) and 2,134 feet east of Road 594.

The Commission found that the application was withdrawn earlier today due to a death in the family.

V. OLD BUSINESS

C/U #1376 -- application of DAVID S. ELECHKO to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwellings (2 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.89 acres, more or less, lying northeast of Route 26, 800 feet southeast of Road 346.

The Commission discussed the points and issues raised during the public hearing on December 14, 2000.

There was a consensus of the Commission that they were surprised that the owner/contractor could build a second home on a parcel without knowledge of the rules and regulations and that the hardship was created by the owner/contractor.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward a recommendation to the Sussex County Council that the application should be denied.

Motion Carried 5 - 0.

Subdivision #99-23 -- application of ROBERT MUNCY to consider the Subdivision of land in a GR General Residential Zoning District in Cedar Creek Hundred, by dividing 7.02 acres into 7 lots, located south of Road 14, 755 feet east of Road 224-A.

The Commission reviewed a request for a time extension for obtaining final record plan approval.

Mr. Abbott advised the Commission that this application received preliminary approval for 7 lots on December 16, 1999; that a request for a one year time extension was received on December 12, 2000; that the developer is still waiting on all agency approvals; and that a new engineer will be taking this project over.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant a one-year time extension retroactive to the preliminary approval date.

Subdivision #2000-23 -- application of JAMES D. PARKER to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred, by dividing 36.48 acres into 39 lots, located east of Road 410, 1,160 feet north of Road 412.

The Commission reviewed a record plan for 39 lots for final approval.

Mr. Abbott advised the Commission that this application received preliminary approval on August 24, 2000 for 39 lots; that the final record plan is the same as the preliminary plan and complies with the subdivision code; that all agency approvals have been received; that manufactured homes will not be permitted by deed restrictions; and that the record plan is suitable for final approval.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve this application as a final.

VI. OTHER BUSINESS

- 1) Long Neck Car Sales, L.L.C.
Final Commercial Site Plan - Route 24

The Commission reviewed a final commercial site plan for an automobile dealership located near Route 24 and Route 5.

Mr. Abbott advised the Commission that this project received preliminary approval on September 21, 2000; that all agency approvals have been received; and that the final site plan complies with the zoning code.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a final.

- 2) Wolfe Pointe Subdivision
Amenity Area Site Plan - Road 267

The Commission reviewed a site plan for the recreation area for Wolfe Point Subdivision located off of Road 267 near Lewes.

Mr. Abbott advised the Commission that the site is 4.29 acres; that 2 tennis courts, a basketball court, putting green, 2 swimming pools, bathhouse, walking/biking path are proposed; that 54 parking spaces are proposed; that the site plan meets the setbacks required by the zoning code; and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals.

Meeting Adjourned at 10:39 P.M.