

MINUTES OF THE REGULAR MEETING OF OCTOBER 10, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 10, 2002 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, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of September 19, 2002 as amended.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of September 26, 2002 as amended.

Mr. Schrader described how the public hearings would be conducted.

PUBLIC HEARINGS

1. C/Z #1481 – application of **ROBERT HARRIS** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District-Residential Planned Community to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the northwest intersection of Road 361 and Road 368 and east of Road 362, to be located on 64.28 acres, more or less.

Mr. Lank advised the Commission that the proposed site is the same site as originally reviewed as C/Z #1361; that the County Council approved the application for MR-RPC with ten (10) stipulations on January 5, 1999; and that the applicant intends to replace an area approved for mini-storage with residential units.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that a traffic impact study was not recommended and that the level of service of Road 368 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Bethany Beach Sanitary Sewer District; that the pipeline infrastructure currently in place allocated 202 EDU's to the Southampton subdivision based on the previous approved site plan; that a planning study undertaken by the developer to identify excess capacity for the additional EDU's requested will be required before sewer service is approved; that Ordinance No. 38

construction shall be required; that the current System Connection Charge Rate is \$2,159.00 per EDU; that the location and size of laterals or connection points shall be determined by the Engineering Department during the Ordinance No. 38 process; and that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington sandy loam, and Pocomoke sandy loam; that the Evesboro soils have slight limitations for development; that the Fallsington and Pocomoke soils have severe limitations for development; that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that the Evesboro soils are considered of Statewide Importance; that the Fallsington and Pocomoke soils are considered of Statewide Importance, Prime Farmland, and Hydric soils; that there are no storm flood hazard areas or tax ditches affected by this application; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a letter was received from Robert Lattanzi of Ryan Homes in support of the application referencing that the change in use intended is a positive improvement for the area and the Southampton Community, that town homes are more desirable than public storage units and overall more beneficial to the community.

The Commission found that a letter was received from Richard F. and Marie L. Nye which expressed a concern that the additional homes will place a strain on the existing recreational facilities (swimming pool and tennis court), and that they believe that the developer should be obligated to provide additional recreational facilities before any approval is granted to construct additional homes over and above the original plan.

The Commission found that Robert Harris was present and stated in his presentation and in response to questions raised by the Commission that he is requesting a change from the plan approved in 1999; that the 1999 plan included 64.5 acres with 202 residential units and 132 storage units; that the residential units included 154 single family homes and 48 condominiums; that the 48 condominium units were changed to 44 town house units; that when the original plan was proposed they thought that the mini-storage warehouses would be appropriate since the condominium units had minimal storage; that Ryan Homes purchased the project and built larger units which included more storage; that the proposed revision to the project will increase the number of units to 213; that central water will be provided; that public sewer will connect to the County infrastructure; that the first entrance has been completed; that the second entrance has been bonded; that almost all of the stormwater management facilities have been installed; that they will be submitting new stormwater management plans for the revised section of the project; that they have

eliminated the entrance to Road 361; and that approximately 150 homes have been sold, including all of the town homes.

Mr. Lank advised the Commission that the total number of units should be 217, rather than 213.

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

At the conclusion of the public hearings, the Commission discussed this application.

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

Motion carried 5 - 0.

2. Subdivision #2002-19 – application of **WELLINGTON HICKS** to consider the Subdivision of land in a GR General Residential District in Cedar Creek Hundred, Sussex County, by dividing 2.24 acres into 2 lots, located north of Road 635, 593.70 feet west of Road 621.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the proposed lot is a strip lot off of a numbered road.

Mr. Abbott read a letter in support of this application received from the Affordable Housing Alliance, Inc.

The Commission found that Wellington Hicks was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he wants to create a new lot for one of his daughters; that he does not reside in the area; that he also owns lot 4; that DelDOT approved the entrance location for the new lot in April 2002; that the lots are wooded; that the site is zoned GR, General Residential; that there are manufactured homes in the area; and that the Affordable Housing Alliance is developing the lots to the rear of this site.

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

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the application as a preliminary and as a final.

Motion carried 5 – 0.

3. Subdivision #2002-20 – application of **ROBERT W. AND SHARON L. WALLS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 2.57 acres into 2 lots, and a waiver from the street construction requirements, located west of Road 317, 1,535 feet south of Road 47.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed this application on August 14, 2002 and that the report will be made a part of the record for this application.

Mr. Abbott read a letter in opposition to this application received from Larry and Lisa Stoeckel.

The Commission found that Robert and Sharon Walls were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they propose to place a double wide manufactured home on the proposed lot; that the adjoining property owner runs a daycare center; that there is a plumbing business on the site that has been in use for over 20 years; that the plumbing business is Mr. Walls' father; that he has 15 employees; that they propose a gravel road to the proposed lot; that they are not sure how wide the driveway will be; and that there are other double wides in the area.

The Commission found that Lisa Stoeckel was present and spoke in opposition to this application and advised the Commission that the applicants were evicted from another property just recently; raised concerns about who would live on the site if the lot were to ever be sold; and that property values will be depreciated if the application is approved.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 5 – 0.

4. Subdivision #2002-21 – application of **MCKINLEY EVANS** to consider the Subdivision of land in a GR General Residential District in Cedar Creek Hundred, Sussex County, by dividing 16.35 acres into 2 lots, and a waiver from the street construction requirements, located east of Road 213, 1,080 feet south of State Street.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 14, 2002 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that approvals have been received from DelDOT and the Office of the State Fire Marshal.

The Commission found that McKinley Evans and Harold Truxon were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicant is trying to improve the property; that the lot will be served with central sewer by the Ellendale Sanitary Sewer District; that the applicant's daughter is going to place a manufactured home on the site and live there; that DNREC has approved a holding tank until such time that the central sewer is available; and that the proposed road will be improved with crusher run stone.

The Commission found that Carlos Williams was present in opposition to this application and advised the Commission that he is an adjoining property owner; that the applicant wants to put in more than one manufactured home; that there have been problems with the applicant in the past; that property values will be depreciated; that the existing trees will be cut down; and that the proposed lot is not going to benefit the environment.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary and as a final and to grant the waiver in the street design requirement.

Motion carried 5 – 0.

5. Subdivision #2002-22 – application of **DERRICK MATTHEWS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 3.74 acres into 3 lots, and a waiver from the street construction requirements, located north of Road 524, 0.4 mile east of Road 516.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 14, 2002 and that the report will be made a part of the record for this application.

The Commission found that Harold Truxon was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the applicant had to work and cannot be present; that they were at the Technical Advisory Committee meeting; that he is not sure what type of road Mr. Matthews wants to put in; and that he is not sure who will maintain the street.

The Commission found that no parties appeared with any interest to this application.

Mr. Schrader suggested that the Commission leave the record open so that the staff can contact the applicant about the questions raised.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to leave the record open for one month so that the staff can contact the applicant and inquire about the type of street proposed; who will maintain the street; and to allow for proposed deed restrictions to be submitted.

Motion carried 5 – 0.

6. Subdivision #2002-23 – application of **JAMES D. PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 20.52 acres into 18 lots, located east of Parker Drive and south of Kinsley's Lane within Parker's Point Subdivision, southeast of Road 410 and northeast of Road 412.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 14, 2002 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that the applicant has submitted documentation that over 51% of the lot owners in Parker's Point Subdivision are aware of the proposed subdivision and have no objections.

The Commission found that Jim Parker was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that Parker's Point Subdivision is a 39 lot custom home development; that 29 lots have currently been sold; that 8 or 9 homes are currently under construction; that the new application is for 18 additional lots; that all of the lots are greater than $\frac{3}{4}$ acre in size; that the proposed subdivision will follow the same deed restrictions as the existing subdivision; that the new subdivision will be members of the existing homeowner's association; that out of the 39 lot owners, 38 agree with the application and that he was unable to contact one lot owner; that the site contains wooded and cleared land; that there are restrictions that as many trees as possible are required to remain; that lot 12 of the existing development is being deleted; that the total number of lots for both developments would be 56; and that the site does not adjoin agriculture land.

The Commission found that Wanda Lewis was present in support of this application and advised the Commission that the new lots will be as asset to the existing subdivision.

At the conclusion of the public hearings, the Commission discussed this application.

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

Motion carried 5 – 0.

OLD BUSINESS

1. C/U #1464 -- application of **WILSON AND ALBERTA CULLUM**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District to amend Conditional Use No. 1240 (Automotive repairs and automotive sales) to allow expansion of the number of vehicles displayed for sale to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.1758 acres, more or less, lying north of Route 9, 0.8 mile east of Route 5.

The Commission discussed this application, which has been deferred since September 12, 2002.

Mr. Johnson stated that based on the record made at the public hearing on September 12, 2002, he would move that the application be recommended for approval for the following reasons:

- 1) The application is for an amendment to the conditions contained in Conditional Use No. 1240 (automotive repairs and sales) to allow for a greater number of motor vehicles to be displayed for sale. The current conditions limit the applicant to "No more than six (6) vehicles may be displayed at any one time".
- 2) The proposed amendment to Conditional Use No. 1240 is a use on the north side of Route 9 adjacent to existing and approved residential communities. Commercial development is generally limited to the south side of Route 9. This Commission is aware of the prior application, the representations made by the applicant at that time, and the history of the use of the property since then. This business enterprise is difficult to adjust to its environment and provide protection to surrounding properties without the imposition of further conditions. The impact of the application requires the exercise of planning judgment on location and site plan.

This recommendation is subject to the following conditions:

- 1) No more than twelve (12) vehicles may be displayed for sale at any one time. Such display shall be of no more than two (2) rows of no more than six (6) vehicles per row. The twelve (12) vehicles will be displayed on the asphalt paving area.
- 2) All employee vehicles and all vehicles on site for service, repair, storage, or pick up and delivery shall be stored or parked within the fenced-in area on the site.

- 3) The solid wood fence or chain-link type fence with privacy strip shall be extended from its present location behind the garage and storage area in an easterly direction to the corner of the lands of Pasquale Remedio and then in a southerly direction to the point of intersection with the "proposed fence" shown on the applicant's survey. This fence shall be setback a minimum of ten feet (10') from the property lines. Trees shall be planted between the fence and the adjacent property lines. Fencing and tree planting shall be completed within ninety (90) days.
- 4) This Conditional Use is subject to site plan review by the Commission.
- 5) Except as modified herein, the conditions imposed by Conditional Use No. 1240 shall remain in full force and effect.

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 based on the reasons and conditions referenced above.

Motion carried 5 - 0.

2. C/U #1465 -- application of **CHARLES H. HAYES, JR.**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for go-karts, parts and repairs, and building material storage for a contractor to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39,610 square feet, more or less, lying north of Route 9 and 850 feet east of Route 319 (Sand Hill Road) and east of Georgetown.

The Commission discussed this application which has been deferred since September 26, 2002.

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

Motion carried 5 - 0.

3. C/Z #1479 -- application of **PEPPER CREEK JOINT VENTURE** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR/RPC Medium Density Residential District/Residential Planned Community for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying south of Piney Neck Road (Road 336) and across from Adams Road (Road 335A), to be located on 148.13 acres, more or less.

The Commission discussed this application which has been deferred since September 26, 2002.

Mr. Lynch stated that he would move to approve this application with reasons and conditions: passed out his suggested reasons and conditions; and asked Mr. Schrader to read his recommendations. Mr. Schrader read that the proposed reasons included the following:

- 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because it is adjacent to a Development District as established by the 1997 Sussex County Land Use Plan.
- 2) MR zoning is appropriate for the proposed project site because the project is adjacent to and surrounded by other development and central sewer may be available upon expansion application and water are available.
- 3) The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large-scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
- 4) The subject property is in the Piney Neck area where other residential or strip lot subdivisions have developed with densities similar to or greater than the proposed project. The proposed project is in character with the nature of the area.
- 5) The recommendation of approval of this project is subject to the following conditions:
 - The maximum number of dwelling units shall not exceed 282.
 - Residential building permits shall not exceed 80 per year commencing the date of final approval of this application by Sussex County Council.
 - Site plan review is required for the master plan and each phase of the proposed development, including the location of curbs, sidewalks, and streetlights.
 - All entrances, intersections, roadway, and multimodal improvements shall be constructed as required by DelDOT in accordance with its letter of November 2, 2001, and any further modifications required by DelDOT.
 - Interior street design shall be in accordance with or exceed Sussex County street design requirements.
 - Recreational facilities, e.g., tennis courts, swimming pool and community buildings shall be constructed and open to use by the residents not later than the time of the issuance of the 100th Certificate of Occupancy.
 - The RPC shall be served by central wastewater treatment plant a collection system built in accordance with the standards of Sussex County Ordinance No. 38 and the requirements of DNREC.
 - In the event that the Developer shall choose to use spray irrigation as a means of waste disposal and wells of adjacent property owners are affected by this means of disposal, the Developer shall provide connection to its central water system at no cost to the adjacent property owners.

- The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated State or Federal wetlands or open space.
- State and Federal wetlands shall not be included in individual lots. State and Federal wetlands shall be maintained as non-disturbance areas, except as may be authorized by a valid Federal or State permit.
- No community boat launching facilities for motorized boats or watercraft shall be permitted within the project.
- In order to protect the existing eagle's nest, the Developer shall prepare a Habitat Conservation Plan to be approved by the U.S. Fish and Wildlife Service (FWS) and shall otherwise comply with all laws and regulations applicable to endangered species.
- No site preparation, site disturbance, site excavation, or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the reasons and conditions referenced above.

Motion carried 5 – 0.

4. C/Z #1480 -- application of **RANDY W. AND KATHLEEN RADISH** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, land lying southeast of Route 466 (Delaware Avenue) and 180 feet west of U.S. Route 13, to be located on 24,366.12 square feet, more or less.

The Commission discussed this application which has been deferred since September 26, 2002.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is adjacent to a commercial use to the east, since the site is across from commercial uses, and since the site is within the Town Center of Laurel, according to the 1997 Sussex County Comprehensive Plan.

Motion carried 5 – 0.

OTHER BUSINESS

1. Sussex Irrigation

Commercial Site Plan – Route 462

Mr. Abbott advised the Commission that this is a preliminary site plan for a 17,500 square foot building; that the site is zoned C-1 General Commercial; that the proposed use is for retail sales of irrigation systems and related parts; that 3,000 square feet is for the office; 10,000 square feet is for parts storage; 2,500 square feet is for equipment storage and 2,000 square feet is for a shop; that 17 parking spaces are required and that 20 are proposed; that the setbacks meet the requirements of the zoning code; that a individual well and septic system are proposed; that the site is not located in a flood plain; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried 4 votes to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 4 – 0 – 1. Mr. Wheatley did not vote.

2. C.J. and Sherry Mears

Parcel and 50' right of way – Road 380

Mr. Abbott advised the Commission that this is a concept to create a 5 acre parcel with access from a 50-foot right of way; that the owner proposes to widen an existing clamshell driveway to a 50-foot right of way and create a 5 acre parcel; that a manufactured home is currently on the parcel and will be removed once the owners complete their new dwelling; that the clamshell driveway extends all the way back to

where the manufactured home is located; and that any further subdivision should require a public hearing.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the request as a concept.

Motion carried 5 – 0.

3. George Whaley

Lot on 50' right of way – Route 24

Mr. Abbott advised the Commission that this is a request to create a 0.89-acre lot with access off of an existing 50-foot right of way; and that under the old policy of 3 lots and a 50-foot right of way, this would be the third lot.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approved the request as a concept.

Motion carried 5 – 0.

4. Robert Waldecker

Parcel on 50' right of way – Route 17

Mr. Abbott advised the Commission that this is a request to create a 50-foot right of way to serve as access to a 3.60 acre tract; that the tract was recorded by a deed and not approved by the staff; and that the right of way will bring the parcel into compliance with the subdivision code.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the right of way as a concept.

Motion carried 5 – 0.

5. Subdivision #99-21 - - Wolfe Properties

Time Extension

Mr. Abbott advised the Commission that preliminary approval was granted on October 28, 1999 for 54-lots; that the Commission granted a one-year time extension on November 2, 2000 and another one-year time extension on October 23, 2002 and stipulated that this would be the last extension granted; that the staff has received a letter from the engineer requesting a six-month extension; that the letter stated that the plans

have been submitted to the agencies for comments and that there is no correspondence in the file from any of the agencies; and that the application and request should be voided.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to deny the time extension request. This application is now void.

Motion carried 5 – 0.

6. Lewes Banquet Hall
Commercial Site Plan – Route One

Mr. Abbott reviewed comments made at the September 26, 2002 meeting and advised the Commission that a representative from the engineering firm and the applicant are present.

Jessica Nichols and Fran Gonzon were present and advised the Commission that he proposes to build a banquet facility for conferences, weddings, sports dinners, etc., that the building will not be open all night or function as a restaurant; that there will be a kitchen; that parties will have to book the use of the facility; that no trees near Dove Knoll will be removed; that there will not be any outside entertainment; that the existing dwelling will be removed; that the building may be two stories; that areas not for use by patrons has been deducted for parking calculations; and that the patio will not be used for outside entertainment.

Francis Dugan, a resident from Dove Knoll, raised concerns about traffic on Route One and being able to get out in case of an emergency.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to deny the application as submitted.

Motion carried 5 – 0.

Meeting adjourned at 9:30 P.M.