



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF MAY 6, 2004

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 6, 2004 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00pm 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. Robertson – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the Agenda as circulated.

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

PUBLIC HEARINGS

Subdivision #2003-39 – application of **JAMES D. AND MARY BETH PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Indian River Hundred, Sussex County, by dividing 101.67 acres into 88 lots, located east of Route 30, approximately 2,984 feet north of Road 314.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on October 15, 2003 and will be made a part of the record for this application; that the applicant's engineer submitted a revised plan on January 22, 2004 that reflects the recommendations made by the Technical Advisory Committee and that each member has received a copy of the revised plan; that DNREC has issued a septic feasibility statement and that the site is suitable for individual on site septic systems; and that a letter from Mr. and Mrs. Tomlinson has been received in opposition to this application.

The Commission found that James Parker was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he developed Parker's Point about 3 years ago; that there are only 3 lots remaining in the Parker's Point subdivision; that this development will be similar to the Parker's Point subdivision; that 88 lots are proposed on 101 acres; that 134 lots could be permitted based on the zoning; that the dwellings will be stick built on site and must be a minimum

of 2,100 square feet; that brick or stone foundations will be required; that the driveways will be required to be asphalt; that professional landscaping will be required; that the development will have an architectural review and design committee; that the entrance to the site will be similar to the one at Parker's Point; that a berm with landscaping and a rolling fence will be erected along the frontage of Route 30; that there is a need for this type of housing in the Millsboro area; that the site will take standard septic systems; that the lots in Parker's Point were mostly sold to local residents; that forested buffers will surround the site; that 2 car attached garages will be required; that the proposed quality

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homes will improve property values in the area; that a homeowners' association will be formed when 35% of the lots have been sold; that no manufactured or modular homes will be permitted even though a majority of the land is zoned GR, General Residential which permits this type of housing; that a power company right of way adjoins the western boundary of the site; that 3 stormwater management ponds are proposed; that there will not be any construction under the power company right of way line; and that access to all lots will be from the interior streets.

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

The Commission found that Alan Anderson was present in opposition to this application and questioned if a deceleration lane will be required by DelDOT; and questioned if there is a pauper cemetery located on the site and what happens if human remains are found during any construction.

Mr. Robertson advised Mr. Anderson that DelDOT comments indicated that a deceleration lane is warranted.

Mr. Parker advised the Commission that he has been made aware of the possible pauper cemetery on the site and that he will work with the Delaware State Historic Preservation Office in this matter.

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.

C/U #1537 – application of **JEFF SPRINGFIELD COMPUTER SERVICES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a computer repair and training facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.033 acres, more or less, lying northeast of Route 326, 1,200 feet southeast of Route 432.

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 proposed action will have no significant impact on traffic

The Commission found, based on comments received from the Office of State Planning Coordination, that if this is a small operation to be conducted out of the existing dwelling, the State would not object; that if new construction is planned they would note that according to the Strategies for State Policies and Spending document, this parcel is located within a "Rural" area; that the site is located in the Low Density Area of the

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County Comprehensive Plan Update; that the State would prefer to see commercial establishments located within the "Community" or "Developing" areas of the Strategies document, therefore, the State would object to this proposal; that the soils on the site are mapped as moderately well to somewhat well drained which are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed; that no wetlands are mapped in the immediate vicinity; that the project is located adjacent to receiving waters of the Inland Bays designated as waters of Exceptional Recreational or Ecological Significance (ERES) which are recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that in considering Total Maximum Daily Loads (TMDL) this project is proposed within the high nutrient reduction zone; that in order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as nutrient mass budget should be prepared; that there is a potential historic property immediately adjacent to the site; that if new construction is proposed, it is recommended that the County require landscaping to provide or retain the northern edge of the site; and that any change in the use of the property will require an entrance approval from DelDOT.

The Commission found that Jeff Springfield was present and stated in his presentation and in response to questions raised by the Commission that he and his partner's business is primarily service oriented; that the majority of their work is performed off-site; that there are no retail sales; that they provide a computer repair service; that they no longer proposed to establish the training facility; that customers drop off and pick up computers at the site; that the proposed construction on the site plan has been completed; that if the Conditional Use is approved they will utilize the addition to the dwelling for their shop; that if the Conditional Use is rejected they will utilize the addition to the dwelling for living quarters; that they do not plan on hiring any employees; that business hours are from 10:00am to 5:30pm Monday through Saturday; that they have a 6 square foot sign on premise; that there is adequate space for parking on the site; that there is adequate lighting on the site; that he has been in the business for approximately 8 years of which 2 and ½ years have been at this site; that he had requested a home occupation letter and never received an answer; that the Zoning Inspector advised him that they had to apply for a Conditional Use; that the larger shed on the site is used for business and personal

storage; that they intend to move the business to a commercial site in the future; and that permits were issued for the signs on the site;

The Commission found that there were no parties present in support of or in opposition to this application.

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

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Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to defer action. Motion carried 5 – 0.

C/U #1538 – application of **KEVIN'S TRAILER SALES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for storage of camping trailers and boats to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 16.55 acres, more or less, lying north of Route 26 and 2,100 feet east of Route 20.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that with the development of the site with the intended use traffic will coincide with Highway Peak Hours requirements.

The Commission found, based on comments received from the Office of State Planning Coordination, that they State has no objections to this Conditional Use; that there are some wetlands on the site and that impacts to these wetlands should be avoided and a vegetated buffer of 100 feet should be provided from the storage areas; that the Applicant is encouraged to preserve and enhance as much upland forest habitat on site as possible; that this upland forest is part of an extensive wooded and wetland corridor that continues to Pepper Creek; that Conservation and enhancement of wooded areas on this parcel will help sustain this corridor and provide wildlife habitat, and water and air quality benefits; that portions of the site are within the 100 year floodplain; that Federal and local floodplain regulations may restrict the storage of camping trailers and boats within the floodplain; that there appears to be ample room outside of the floodplain on this parcel for the use; that there is a medium probability for prehistoric archaeological sites, especially in the wooded area and near the creek; that it is recommended that the Applicant retain the wooded areas and not place or build anything near the creek; and that any change in use of this property will require an entrance approval from DelDOT.

The Commission found that letters were received from Lori Pier and Cindy Kovaloski in support of the use and the need for spaces to store campers during the off season.

The Commission found that Kevin Sagers was present with Heidi Balliet, Attorney, and Jeff Clark of Land Tech, LLC and that they stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to operate a storage facility for recreational vehicles; that the 2002 Comprehensive Plan Update places the site in the Environmentally Sensitive Developing Area; that there has been a long term trend in the immediate area towards other than strictly agricultural and residential uses, such as the adjacent uses by Ocean View Plumbing and a veterinarian clinic, the junk yard facility across Route 26 and another storage facility within one-half mile of the site; that the land use and development trends in the area allow this land to be an appropriate site for a recreational vehicle storage facility, since the development will satisfy a

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community focused on recreational use for needed storage of recreational vehicles and trailers and based on the Applicant's prior facility being closed in the general vicinity; that the location of the project does not add to traffic problems, since it will generate little traffic to the site during high summer seasons, and minimal or no traffic to the site during off-peak season; that the proposed location has access to Route 26 in a section of roadway will good visibility and is not at a crossroads; that this access will not detract from other businesses or homeowners along Route 26; that the proposed location will be as secure and as unobtrusive as possible due to the fact that the applicant will add a vegetative buffer on the easterly and westerly boundaries to the property; that no lighting is planned to be located on the site since no utilities are currently planned to be connected to the site; that the proposed location and use will not constitute a safety hazard for nearby wetlands, businesses or residences nor to traffic; that the proposed location and use will not have an adverse affect on surrounding property values, since a number of businesses currently exist and new businesses have been approved by the County, one such business being the Ocean View Plumbing location just to the west of the site; that the granting of this Conditional Use is on accordance with the 2002 Comprehensive Plan Update, promotes health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the County, and the adoption of the Conditional Use is for the general convenience and welfare of the inhabitants of the County; that the Applicant will construct a vegetative buffer along the westerly and easterly boundary lines in rows of three of a type similar to Leyland Cypress or any other type as recommended by the Delaware Department of Agriculture; that the Applicant will construct a fence around the entire lot with a fence of at least 6 feet in height; that the Applicant will limit the height of storage vehicles, boats and trailers to those 14 feet in height or less as agreed to between the Applicant and the power company; that the Applicant will not place temporary toilets on the premises; that the Applicant has no plans currently for lighting the property; that any such future lighting installed by the Applicant will be limited to 12 feet in height and shall be downward illuminated; that the Applicant will limit hours of operation to 6:00am to 10:00pm; that the Applicant will have a key controlled entrance or such electronic device to regulate entrance to the hours of operation; that the Applicant will have the entrance stone covered; that the storage area shall be well-maintained grass; that the woods line on the site plan is as existing in 2003;

that the wetlands have been delineated; that the site elevation at the creek is approximately 5-feet; that the site elevation at the storage area is approximately 20-feet; that the storage area is not likely to flood; that 105 storage spaces are proposed on an area of approximately 3 acres; that there shall be no storage spaces within 80 feet of Route 26; that they have an agreement with Conectiv for access and other limitations; that there will be no impact on wetlands or woodlands; that stormwater management will be minimal; that site distances are adequate to the east and west; that the entrance is proposed to be centered on the site and is approximately 400 feet minimum from adjacent driveways; that one unlighted sign not exceeding 32 square feet on both sides or facing will be erected on the site; that there will be no service work performed on site; that the proposed

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buffers will be at least 25 feet wide; and that trees planted in the buffer areas shall be at least 5 feet tall.

The Commission found that Robert Witsil, Attorney, was present for Gary Farmer and Richard Shaubach and advised that Commission that he and his clients have been negotiating with the Applicant for certain conditions and that if the conditions are agreed upon his clients will not object to the application; that the Conditional Use area should be limited to 3 acres per the site plan; that the future development area should be deleted and the Applicant should be required to reapply if he intends to expand the facility; that his clients have no objection to the use of the grass area for storage; that fencing should be around the entire perimeter of the storage area; that the chain link fencing should be interwoven with green vinyl on the westerly boundary; and that the entrance location should remain in the center of the site along Route 26.

The Commission found that Mr. Witsil submitted a packet of information which included photographs of the existing storage area at Cedar Neck Road and the adjacent properties, a Finding of Fact in opposition to this application, a copy of the Planning and Zoning Information Report, copies of portions of the Comprehensive Plan Update referencing the purpose of the Low Density Area, guidelines for Non-residential use and anticipated roadway problem areas, and copies of portions of the Zoning Ordinance referencing the purpose of the Agricultural Residential District, the list of Conditional Uses, and permitted uses in a C-1 General Commercial District.

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action. Motion carried 5 – 0.

C/Z #1538 – application of **REBAY, LLC** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying southeast of

Route 271 (Holland Glade Road), 3,150 feet northeast of Route One, to be located on 180.60 acres, more or less.

The Commission found that the Applicant had submitted an exhibit booklet prior to the meeting and that the exhibit booklet included a presentation outline, references to zoning, references to a land utilization plan, civil engineering, traffic, the environment, and economic impacts. The exhibit booklet is made a part of the record for these proceedings.

Mr. Lank provided the Commission with a copy of the site plan and a packet of correspondence from agencies and individuals to date. The packet includes comments

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from DelDOT, the Office of State Planning Coordination, the State Historic Preservation Office, 25 letters in opposition and a petition containing 95 signatures from residents in Canal Corkran Development requesting that consideration be given to the creation of a traffic signal to monitor and make possible a safe flow of traffic off and on Rehoboth Avenue Extended for Canal Corkran and this project. All of the comments are made a part of the record for these proceedings.

The Commission found that Hal Dukes, a partner in Rebay, was present with Chuck Howser and Zack Crouch of Davis, Bowen and Friedel, Inc., Steve Raign of Ramesh Batta Associates and Juanita Morch of the Rehoboth Beach Senior Citizen's Association, and that they stated in their presentations and in response to questions raised by the Commission that the use is in compliance with the Comprehensive Plan Update; that the majority of the site is zoned MR Medium Density Residential, which would allow for development of 4 units per acre; that the site was rezoned to MR prior to the creation of Sandalwood or The Glade; that there will be no impacts on wetlands; that the RPC would be permitted to have 6 acres of commercial use of which 24% is proposed to be dedicated to a senior center; that the project benefits the area by the creation of a connector road from Road 271 to Rehoboth Avenue Extended; that a lot of the people in the audience are in support of the project due to the proposed senior center, that petitions in support of the project have generated 1645 signatures; that they propose a town center type of development with mixed housing, amenities and commercial uses; that they propose to develop 283 single family lots, 82 townhouses, and 252 condominiums; that an area is proposed to be set aside for county services, i.e. emergency facilities; that the layout of the project attempts to preserve as many trees as possible; that walking trails will be provided; that there will be two swimming pools and community facilities, one in the single family subdivision area and one in the multi-family area; that they have worked with DelDOT, DNREC and the Sussex Conservation District in their design to provide as much open space as possible; that 72 acres of the site will remain in open space; that the connector road between Road 271 and Rehoboth Avenue Extended will be dedicated to public use and built to State specification; that subdivision streets in the project will be built to State specification with rolled curbs and sidewalks; that streets in the multi-family areas will be built to County specification; that the project will not exceed to

number of EDU permitted by sewer capacity; that the pump stations in the area have been designed to include to calculations for this project; that water will be provided by the City of Rehoboth Beach; that the Office of the State Fire Marshal has approved the design of the multi-family buildings; that the site has recently been reviewed through the Preliminary Land Use Service (PLUS) program with the Office of State Planning Coordination; that several wet ponds are designed in the project; that the multi-family buildings face existing and proposed water features; that some bio-swales will be utilized; that all wetlands have been delineated; that they propose a minimum setback of 150-feet from tidal wetlands; that the plan reduces Nitrogen by 64% and Phosphorus by 93%; that the Traffic Impact Study performed reviewed 13 intersections in the area and the

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connector road; that the connector road helps reduce the amount of traffic going onto Route One; that the developer will be constructing the connector road for DelDOT; that the developer will be contributing to the erection of a traffic signal at Rehoboth Avenue Extended; that Holland Glade Road (Road 271) will be brought up to standards from Route One to the Connector Road by expanding the drive lanes to 11 feet width and adding 5-foot shoulders with bike lane markings; that no additional traffic signals are proposed on Route One; that representatives of the senior center contacted the developer with interest in obtaining a portion of the site for a new center; that the center in Rehoboth Beach is not adequate to serve the number of members and that parking is a problem; that the members are in support of the creation of a new center; that the members patronize businesses in the area and volunteer at the schools, hospitals and other functions; that the petition in support was signed by members of the senior center and others in support; that streets in the project will be turned over to a home owners association when 75% of the properties are sold; that the senior center will be built at the beginning of the project; that the center needs a commercial kitchen, area to seat 500 people; computer labs, and meeting rooms; that the center serves citizens within an area of 22 miles; that commercial uses intended are low volume uses, i.e. sandwich shop, doctors offices; that the commercial area could have been located centrally within the project, but the location was chosen due to the closeness to the collector road; that landscaping and berms along the Sandalwood subdivision would reduce the impact on Sandalwood; that the 5 acre parcel set aside for county services was anticipated to serve as space for possible fire, police, and emergency uses.

The Commission found, by a show of hands that there were approximately 70 people present in support and that there were approximately 21 people present in opposition.

The Commission found that William Lingo, one of the developers of Canal Corkran, was present in support of the project and stated that he does not oppose this application since the use is compatible with the Canal Corkran project, a residential planned community, that the project creates multi-family units across from multi-family units in Canal Corkran and single family units across from single family units; that units will face the existing pond in both projects; that residents in Sandalwood should be given

reconsideration in the design and location of the commercial area; that the collector road will benefit the area and creates interconnectivity; that a signal will be installed at Rehoboth Avenue and Church Street; and that if the application is approved it should be stipulated that the pond between the projects should serve both projects; that a traffic signal should be installed at Church Street and Rehoboth Avenue; that the Applicant should enter into a signal agreement with DelDOT for a traffic signal; and that the Applicant should offer to pay his fair portion of the signal now.

The Commission found that Jeffrey Smith, Charles Valenti, Ann Sier, Sally Danz, Tom Rush, Michael Tyler and Mable Granke, of the 21 present in opposition expressed

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concerns that the rezoning would create higher density multi-family uses in an area surrounded by single family lots and homes and that it would not be in keeping with the existing zoning; that the commercial area is not needed or desirable; that the rear of commercial establishments should not back up to residential lots; that there are sufficient commercial facilities in the immediate area; that the commercial area is situated immediately adjacent to a neighboring single family subdivision and, if approved, should be centralized within the project so as not to impact neighboring subdivisions; that the county service area is not described or uses explained; that traffic is already a problem; that the traffic impact summary referenced that 4 intersections in the area are currently failing; that this project will add to the traffic problems; that a cemetery may exist on the site and should be protected; that the Applicant should have been required to show a comparison site plan of a subdivision layout; that there are public safety and health concerns; that Road 271 is a narrow county road with no shoulders already serving approximately 329 homes, a church, and a little league park; that a senior center at this location could be hazardous for the members of the center due to the lack of response time for emergency personnel to get to the location; that Route One can get grid-locked; that the addition of another 617 units will make things worse; that there is no solution to the traffic problem; that the infrastructure and services are not there to support a connector road; that a building moratorium should be established until the traffic problems are resolved; that the wildlife in the area will be impacted; that the neighbors would probably not object to a single family residential subdivision; that the area is an environmentally sensitive area and should not be considered a developing area; that development in an environmentally sensitive area which includes wetlands and tidal waters should be protected; that the size of the project and the cumulative impacts it generates need to be addressed; that the infrastructure should be in place prior to approval of this size of project; that a senior center can be built in many other locations and have far less negative consequences; that if the Applicant would sincerely commit to create a conservation design, eliminate multi-family housing and commercial uses, provide permanent user-friendly open space and create a community that is compatible with the surrounding single family residences, the project may be supported by the people of Coastal Sussex; that concerns were expressed about the date and time of receipt of comments from DelDOT and the Office of State Planning Coordination; that forested

lands have been consistently shown to be far more effective agents for absorbing nutrients and other pollutants; that removal of forest cover will almost certainly increase pollutant loading into the Inland Bays and make it more difficult for Delaware to comply with TMDL nutrient load reduction requirements.

The Commission found that Jeffrey Smith and Michael Tyler submitted their comments in written form and that Mr. Smith submitted photographs of the rear of some commercial establishments in the area.

The Commission recessed for 5 minutes.

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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.

Meeting adjourned at 10:20pm.