



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 23, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 23, 2004 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 and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz – Land Use Planner, and Ms. Mowbray – Zoning Inspector.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended by deletion of Item #3 under Other Business.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of September 9, 2004 as corrected.

OLD BUSINESS

C/U #1553 – application of **CLINT PHILLIPS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a paper recycling center to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 6.35 acres, more or less, lying north of Route 589A, 50 feet west of Railroad and 2,200 feet west of U.S. Route 13.

The Commission discussed this application which has been deferred since September 9, 2004.

Mr. Wheatley stated that he does not feel that the use is in keeping with the adjacent subdivision and that the use is not part of the plan for the area.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated.

Motion carried 4 – 0.

C/U #1556 – application of **STANLEY AND LINDA PARK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.2 acres, more or less, lying on the southeast side of Road 265A (Old Mill Road), ¼ mile northeast of Route One.

The Commission discussed this application which has been deferred since September 9, 2004.

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Mr. Johnson stated that he would move that the Commission recommend denial of C/U #1556 for Stanley and Linda Park for a 2 unit multi-family dwelling structure based on the testimony and for the following reasons:

- 1) I do not believe that the application is consistent with the character of the surrounding property. I am not satisfied that there are other multi-family structures in this neighborhood similar to the Applicant's proposal.
- 2) I do not believe that the existing structure, that was not constructed as a multi-family building, is suitable for what the Applicants have proposed.
- 3) The location, at the end of a long road without a cul-de-sac or turnaround, is not suitable for multi-family and the additional traffic that could be generated by a two-family dwelling. There are only single family dwellings along this road.
- 4) This Application is not of a public or semi-public character, and it is not essential for the general convenience and welfare of the community.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated.

Motion carried 4 – 0.

PUBLIC HEARINGS

Subdivision #2004-2 – application of **BROOKS-PALMER CUSTOM HOMES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 86.25 acres into 41 lots, located east of Road 290 (Coolspring Road), 360 feet southeast of Road 292.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 17, 2004 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

The Commission found that Robert Brooks of Brooks-Palmer Custom Homes, Inc. and Roger Gross of Merestone Consultants, Inc. were present and stated in their presentations

and in response to questions raised by the Commission that they propose to develop 41 single family dwelling lots in accordance with the Subdivision Code; that the Technical Advisory Committee did not express any significant concerns about the project; that individual septic systems are proposed; that a feasibility study has been prepared and submitted to DNREC by Atlantic Resources, Inc.; that individual wells are proposed; that stormwater management will be provided on the site and will focus on standard detention and best management practices; that no wetlands have been found on the site; that if the Commission requires street lighting and sidewalks the Applicants will provide them; that the Applicants will probably build 25 homes in the project; that the Homeowners

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Association will include an Architectural Review Committee; that the minimum size for a dwelling is proposed to be between 2,200 and 2,500 square feet; that the density of the project should have no impact on traffic; that the Applicants built a similar subdivision in the area; that the street and lot layout was driven by soil conditions; that the septic systems will include a mix of standard gravity systems and LPP systems; that the land/home packages will be prices from \$300,000 to \$350,000; that Lot 14 may be retained by the present landowners for future development; and that it is not economically feasible to provide amenities for 41 lots.

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.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action on this Subdivision pending receipt of a septic feasibility.

Motion carried 4 – 0.

Subdivision #2004-3 – application of **THOMAS L. MARKLE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 8.31 acres into 5 lots, located north of Road 88 (Cave Neck Road), 791 feet west of Road 257.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 17, 2004 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

The Commission found that Thomas and Sharon Markle were present with Jessica Nichols of Meridian Consulting Engineers, Inc. and stated in their presentations and in response to questions raised by the Commission that they propose to develop 8 acres with 5 lots; that the Subdivision application complies with the Subdivision Code; that the application conforms with the AR-1 lot sizes; that the land is suitable for development;

that the soils are well drained and suitable for gravity septic systems; that no wetlands exists on the site; that there should be no impact on farm lands; that tree removal will be maintained at a minimum; that the number of entrances will be reduced by creation of the street; that stormwater management will meet or exceed State and County requirements; that the site is adjacent to residential lands; that the street will be maintained by the Homeowners Association; and that manufactured homes will not be permitted.

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

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action on this Subdivision pending receipt of a septic feasibility.

Motion carried 4 – 0.

C/U #1563 – application of **GEORGE AND EDITH WANDA CANAKIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a gift shop/art gallery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 36,109 square feet, more or less, lying northwest of Route 9 (Savannah Road), 327 feet southwest of Ritter Road.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion Area; that the planning study assumption for the parcel is 1.0 EDU reflecting a single family residential use on a parcel less than one acre in an AR-1 District; that if the proposed use is expected to exceed 3,000 square feet of retail space, additional information should be provided and a capacity review completed before approval; that the current system connection charge rate is \$3,537.00 per EDU; that one 6-inch lateral has been provided on State Route 9; that the existing single family dwelling was connected to the sewer system on May 15, 1996; that if the existing single dwelling is to be removed, a disconnection permit and inspection will be required prior to a building permit; and that conformity to the West Rehoboth Planning Study shall be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam and Sassafras loam which have slight limitations for development; that the Applicants will be required to comply with recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from DelDOT, that a traffic impact study will not be required; that the Department is concerned about this application since they see it as encouraging more traffic in an area that has been identified as operating at unacceptable levels of service (level of service "E" during peak summer hour).

The Commission found that George and Edith Canikis were present and stated in their presentations and in response to questions raised by the Commission that a beauty shop does exist on the right side of the dwelling and that the beauty shop had a private entrance

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and exit; that Mr. Canikis likes art and proposes to sell art and gifts; that the original beauty shop area will be the only area utilized for display of art and gifts; that they have no objection to a restriction that the original beauty shop area be the only display area; that they anticipate business hours from 10:00 a.m. to 5:00 p.m. six days per week with no Sunday hours; and that they would like to install a small unlighted sign.

The Commission found that Lee Jefferson, a resident of the area, was present in support of the application and stated that the Canikis' are good neighbors and that he has no objections to the proposal.

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

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

Motion carried 4 – 0.

C/U #1564 – application of **BEVERLY TRICE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for metal fabrication to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 1.78 acres, more or less, lying south of Route 20 (Stein Road), 1,300 feet east of Route 78 (Woodland Ferry Road).

The Commission found that there were no parties present on behalf of the application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to refer and continue the application to the end of the public hearings in case the Applicant is running late.

Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman reopened this application.

The Commission found that there were still no parties present on behalf of the application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the lack of a record since no one appeared on behalf of the application.

Motion carried 4 – 0.

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C/Z #1554 – application of **MARINE FARM, L.L.C.** 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 Lewes and Rehoboth Hundred, Sussex County, land lying southeast of Beaver Dam Road (Road 285) and southwest of Jim Town Road (Road 285A), to be located on 373.82 acres, more or less.

The Commission found that the Applicants submitted surveys and site plans, an Exhibit Booklet and two large binders of Appendices prior to the meeting and that the Exhibit Booklet and Appendices contained: an executive summary; references to boundary and wetlands surveys, prior development initiatives, and an overview of current site conditions; references to the proposed RPC concept which includes: development of the Marine Farm concept; compliance with the Comprehensive Plan; compliance with the MR-RPC requirements; and stormwater management; and that the submittals are considered a part of the record for this application.

Mr. Lank advised the Commission that rather than him reading the recent agency comments received on this application he is submitting the comments for review by the Commission and that the comments include: comments received from the Office of the State Planning Coordination, dated September 22, 2004 and January 7, 2004; the DNREC Division of Water Resources, dated September 15, 2004, with an attached letter from WWES Associates, dated August 27, 2004; the Sussex Conservation District, dated September 16, 2004; a letter from the Lewes Fire Department, Inc., dated September 19, 2004; and a letter from J. Kirk Beebe, dated April 12, 2004.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County operated and maintained sanitary sewer and/or water district; that central sewer is not available to the parcel at this time; that the proposed project does not adjoin a County operated Sewer District; that the parcel cannot be annexed into a District because it does not adjoin an existing sewer district, as required by Delaware Law; that the project is in the Inland Bays Planning Area, but is not in an area where the County expects to provide

sewer service in the near future; and that a conceptual plan of the project must be submitted to the Division for approval prior to construction plan review.

The Commission found that Frank Kea and Rich Polk of Marine Farm, LLC were present with James Fuqua, Attorney, Scott Aja of McCrone, Inc., Ed Launay of Environmental Resources, Inc., Lisa Wood of Atlantic Resources Management, and Derrick Kennedy of Orth-Rodgers Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop the site with 650 units with a gross density of 1.74 units per acre and a net density of 1.86 units per acre; that the maximum number of units allowed as a MR-RPC could be 1,522 units; that the

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maximum number of units allowed as an AR-1-RPC could be 761; that an AR subdivision could be created with 841 lots; that the site is approximately 2 miles from Five Points on Roads 285 and 285A; that when they filed the application there was not a provision to file a cluster subdivision in the AR-1; that more recently the County Council adopted clustering regulations in the Environmentally Sensitive Developing Area; that the site is located in an Environmentally Sensitive Developing Area, a growth area, and that the project is intended to be a quality development with a lot of open space; that central water will be provided by Tidewater Utilities, Inc.; that a central community wastewater system is proposed with spray irrigation; that DNREC has advised by letter of September 15, 2004 that the proposed system is feasible; that the system will be constructed to County specifications for future connections to a County operated sewer system; that Cape Henlopen School District has gone on record that there has been no significant enrollment impacts on the district by the number of large scale projects in the area; that the Applicants will comply with the requests suggested by the Lewes Fire Department, Inc.; that the project will have a positive economic impact on the County, the School District, and the area; that a Traffic Impact Study was prepared by Orth-Rodgers Associates, Inc. and is being reviewed by DelDOT; that a response has not yet been received from DelDOT; that DelDOT advised the Office of State Planning Coordination that they would be asking the County to defer action pending environmental assessments and preliminary engineering to determine a road alignment and that during the LUPA review, DelDOT noted that, subject to several conditions worked out with the developer, DelDOT does not object to the project moving forward; that an extensive environmental assessment was performed; that a wetlands determination was performed; that soils reports were generated; that cultural resources were studied; that two cemeteries were found on the site and that the cemeteries will be enhanced and maintained and that access to the cemeteries will be established; that the development is being designed to protect nutrient runoff; that the project was submitted and received approval of the method of protecting the Bald Eagle nest site; that the area around the Bald Eagle nest site will remain permanently as a wildlife habitat area; that the project will reduce runoff compared to the existing agricultural practices; that no docks or piers are proposed; that they would like to erect some observations sites along the pond and on the outside edges of the Bald Eagle preserve; that they originally submitted plans to LUPA and the U.S.

Fish and Wildlife Service; that a second set of plans was submitted to LUPA; that the latest plan was generated from those meetings; that the plan contains small neighborhoods with parks and pedestrian access; that 42 acres are preserved around the Bald Eagles nest site; that the site abuts Goslings Mill Pond; that there will be no wetlands impacts; that they do propose to construct a bridge over an old farm road that crosses the wetlands; that they intend to maintain a minimum of 50-foot setback from all non-tidal wetlands; that a screen of trees will be planted around the perimeter of the Bald Eagle preserve; that ponds were established where low areas exists to allow for natural drainage; that sidewalks and trails will be provided throughout the project; that the

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primary entrance will be designed with double lanes for ingress and egress; that a secondary entrance is proposed along Jim Town Road; that recreational amenities will include tennis, swimming pool, gardens and educational display features; that the Bald Eagle preserve will remain in conservation; that they have been working with DNREC representatives to establish Best Management Practices; that a Nutrient Budget was performed and establishes that Nitrogen will be reduced by 71% and that Phosphorus will be reduced by 40.9%; that the stormwater management system will include filter strips, bio-swales, retention ponds, detention ponds and tiered stormwater management systems; that the western most area of the site south of Road 285 will include the sewer treatment facility, a water tower, and propane gas storage facilities; that in reference to the Kirk Beebe letter, the restrictions will include references about agricultural activities in the area and acknowledgement that there may be hunting in the area; that the developers are also proposing to erect fencing around the perimeter of the Bald Eagle preserve to restrict access into the area; that the applicants did refer and use the "Better Models for Development in Delaware" booklet in designing this project; that a Certified Construction Reviewer may be hired to oversee the completion of the project; that a 20 lot section along Jim Town Road is separated from the project by wetlands, but will be a part of the project; that the Office of State Planning Coordination stated that they would like to recognize that, because of State concerns voiced in 2002, the developers have worked with Federal and State agencies to completely rework the site plan to accommodate their concerns regarding the eagles nest; that the developers have no objections to a condition that the Bald Eagle preserve be permanently restricted to no development; and that a homeowners association will be established upon 75% of sales.

The Commission found that Mr. Fuqua submitted suggested conditions of approval for review.

The Commission found that Michael Tyler and Henry Glowiak of the Citizens Coalition, Inc., and Michael Miller, an area resident, were present in opposition to the application and expressed concerns about the size and scale of the project; that this site of fields, woodlands and wetlands, with an eagle's nest, is what makes living in Coastal Sussex so wonderful; that the pair of eagles have been sighted; that this project is an insult to our

natural heritage; that the land is being exploited; that the number of undeveloped home sites in the area may exceed 6,000; that the site is in close proximity to the location of a proposed limited access roadway from Route 9 to Route 24; that construction should not begin on this site until at least one third of the EDUs already under construction within a 5-mile radius are completed; that a minimum of 50% of this development (excluding the eagle's circle) should remain open space; that no more than 20% of the residences should be multi-family; that only 50% of the units should be built in any calendar year; that the 42 acres preserve around the eagles nest is not adequate; that townhouses and multi-family units are out of character in this area; that the record should be left open for at

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least 15 days until all agency reviews are received; that traffic increases have to be given consideration; that there is a present need for central water and sewer for the existing area residents along Jim Town Road; that there are approximately 70 residents living along Jim Town Road; and that the project should not have any direct access to Jim Town Road.

There was a consensus of the Commission that the record should be left open for DelDOT comments and that the speakers in opposition should be notified when the comments are received so that they can review the comments.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action, to leave the record open for DelDOT comments, and then to allow for 15 days for public review of the comments received.

Motion carried 4 – 0.

OTHER BUSINESS

Mills Chase

C/U #1466 – Site Plan – Route 9 and Road 265

Mr. Lank advised the Commission that this site plan is for 38 multi-family units within 19 duplex buildings; that the setbacks and building separations meet the requirements of the Zoning Code; that the 8 conditions of approval are referenced on the site plan; that central sewer will be provided by Sussex County; that central water will be provided by Tidewater Utilities, Inc.; that ingress/egress is proposed from Road 265; that there is no direct access to Route 9; that there are no wetlands on the site; that the Conditional Use was approved by County Council on December 16, 2003; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

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Lane Builders

C/U #1566 – Site Plan – Kings Highway

Mr. Lank advised the Commission that this site plan is for a contractor's office and storage warehouse; that Phase I will be remodeling of the dwelling into an office; that Phase II will be the future storage building; that the 8 conditions of approval are referenced on the site plan; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

Sports at the Beach

C/U #1421 – Revised Site Plan – Route 9

Mr. Lank advised the Commission during the review of the agenda that this site plan was removed from the agenda pending receipt of comments from County Engineering in reference to comments from the FAA.

Camelot Meadows

Revised Site Plan – Route One

Mr. Lank advised the Commission that this revised site plan is for a proposed 24' by 40' swimming pool, a proposed 64' by 30' clubhouse, 13 parking spaces, and the relocation of Lot 303; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

Subdivision #2003-52 – Norris L. Niblett
Request for Reconsideration – Route 46

Mr. Lank advised the Commission that this Subdivision application was denied on August 26, 2004; that the Applicant is requesting that the Commission reconsider the application since the necessary revisions were made in February after the TAC meeting

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and conform to the language of the Subdivision Code; that this request for reconsideration is similar to the Route 30, L.L.C. application; that the Commission voted to rehear that application with the application being heard as soon as possible once the Applicant has paid the appropriate application fee again.

The Commission discussed the request.

Mr. Robertson advised the Commission that the request for reconsideration could be granted or that the Commission could consider granting preliminary approval since the necessary revisions were provided.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant the reconsideration and to grant preliminary approval of the Subdivision based on the record of the public hearing and the revised site plan. Final Plans shall be required to be submitted to the Commission for review and approval upon receipt of all appropriate agency approvals.

Motion carried 4 – 0.

Rehoboth Bay Conservancy, L.L.C.
C/U #1501 – Time Extension

Mr. Lank advised the Commission that the Applicants have requested a one-year time extension; that the application was approved by County Council on October 7, 2003; and that this is the first request for a time extension.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant a one-year time extension.

Motion carried 4 – 0.

Inland Bays, L.L.C.

C/U #1519 – Time Extension

Mr. Lank advised the Commission that the Applicants have requested a one-year time extension; that the application was approved by County Council on January 27, 2004; and that this is the first request for a time extension.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to grant a one-year time extension.

Motion carried 4 – 0.

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Bay Crossing MR/RPC

Recreational Area Site Plan – Bay Crossing Boulevard

Mr. Lank advised the Commission that this site plan is for the recreational amenity area with a proposed pool, clubhouse, game courts and tank farm; that 22 parking spaces are proposed; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan for the recreational amenity area as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

Charles Hudson

Parcel and 50' Right-of-Way – Route 529

Mr. Lank advised the Commission that Mr. Hudson proposes to subdivide a 20.72 acre tract into 2 parcels; that one parcel is proposed to have 561 feet of road frontage and that the other parcel is proposed to have 50 feet of road frontage; and that the Applicant should be required to apply for a major subdivision, comply with the frontage requirements, or apply for a variance in lot width before the Board of Adjustment.

There was a consensus of the Commission that the Applicant could prepare the 2 lot Subdivision in compliance with the Zoning Ordinance by providing the minimum lot width of 150-feet.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny the request as submitted.

Motion carried 4 – 0.

Meeting adjourned at 9:58 p.m.