



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 13, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 13, 2010 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0. Mr. Ross was absent.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of April 22, 2010 as amended. Motion carried 4 – 0. Mr. Ross was absent.

OLD BUSINESS

C/U #1827 – application of **DRY DOCK, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a non-profit facility (meeting place) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.436 acres, more or less, lying southwest of Road 277 (Angola Road), 450 feet southeast of Route 24.

The Commission discussed this application which has been deferred since April 22, 2010.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1827 for Dry Dock, Inc. for a non-profit facility (meeting place) based upon the record and for the following reasons:

- 1) This application is for the renovation and limited expansion of a use that has been in existence for many years. The Applicant is seeking to replace an existing building that is no longer suitable for meetings with one that is specifically designed for that use.
- 2) The use, as a non-profit facility used as a meeting place is of a public character that is a benefit to all residents of Sussex County, particularly those in the eastern part of the County.
- 3) The approval of this Conditional Use will result in a more suitable building for meetings, and traffic and parking will be improved over what currently exists.
- 4) The project will be served as part of the County's Angola Neck Sanitary Sewer District and adequate sewer capacity is available for it.
- 5) This recommendation is subject to the following conditions:

- a) The use shall be limited to meetings for charitable non-profit organizations only.
- b) One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- c) Any security lighting shall be downward screened so that it does not shine on neighboring properties or Angola Road.
- d) The project shall be connected to County Sewer. The Applicant shall comply with all Sussex County Engineering Department requirements for connection to the District.
- e) Stormwater management on the site shall comply with all DNREC and Sussex Conservation District requirements.
- f) The site plan and use shall comply with all Sussex County parking requirements as set forth in the County Zoning Code. The Final Site Plan shall clearly delineate all parking areas.
- g) The Final Site Plan shall contain a landscape plan for the site.
- h) The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1829 – application of **M.L. JOSEPH SAND & GRAVEL, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to expand excavation of borrow pit to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 40.85 acres, more or less, lying north of Road 322 (Bunting Road) approximately 2,400 feet west of Governor Stockley Road (Road 432).

The Commission found that the Applicant provided an Exhibit Booklet on April 30, 2010 which contains a cover letter, a color rendering of the proposed pit, a photograph of the existing entrance, a property map depicting the site and properties of neighbors in support with appropriate support letters, a Hydrogeologic Evaluation prepared by Duffield Associates, a letter for entrance location approval from DelDOT, a promo sheet on self-adjusting white sound reversing alarm, a report from Mineral Information Institute, suggested proposed Findings of Fact, and suggested proposed Conditions of Approval.

The Commission found that four additional letters of support have been received from Sinath Sam, Wayne A. Pepper, Stephen Hudson, and Gary Hughes.

The Commission found that the County Engineering Department Utility Planning Division provided comments on May 10, 2010 and advised that the project is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the Western Sussex Planning Area #5; that an individual on-site septic system may be proposed; that conformity to the Western Sussex Planning Study will be required; that the project is not in an area where the County plans to provide sewer service; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on May 11, 2010 and advised that the site contains five soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; 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 that Ken Adams, President of Stockley Sand and Gravel was present on behalf of the Applicants with Mark Dunkle, Attorney, of Parkowski, Guerke & Swayze, P.A., James Willey, Professional Engineer, of George, Miles & Buhr, LLC, and Steven M. Smailer, Professional Geologist, of Duffield Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the color map showing the properties in the area indicates property owners color coded in support of the application, and that 44 letters in support have been received to date; that the Applicants are an experienced company in the business proposed; that the site plan shows the proposed borrow pit, seeded stabilization banking, the 30-foot landscaped buffer, and the existing entrance; that the site contains approximately 40.85 acres with 36 acres proposed for borrow; that DelDOT voices no objections; that they are dedicating 30-feet from the centerline of Bunting Road for rights-of-way and will be providing a 15-foot easement for a future multi-modal path; that the borrow pit area will be at least 100-feet from the right-of-way of Bunting Road, at least 50-feet from any property line, and at least 200-feet from any dwelling on adjacent properties; that the landscaping will utilize native species; that the site plan and use will comply with the Zoning Code; that Tab 7 of the Exhibit Booklet relates to the necessity of minerals used in daily life and the use will serve the needs of the area; that the use is an extension of an existing sand and gravel operation that started in 1991 on the adjacent site which has been utilized for borrow pit activities since the 1950s; that the material is primarily used for DelDOT projects; that 90% of the material is used in Sussex County; that they already have an above ground fuel storage facility on the adjacent site; that as part of their evaluation Duffield Associates performed an initial screening to identify specific water resources (e.g. wells, streams, ponds, etc.) in the vicinity of the site that may be sensitive to potential groundwater impacts; that in the immediate vicinity of the proposed expansion, these potential sensitive receptors appear to be the Stockley Branch stream system and the neighboring potable supply wells; that based on visual observations made during the field reconnaissance there did not appear to be any significant discharge of either surface water or sediments from the existing borrow pit into the Horse Pond Swamp Ditch stream channel; that from a groundwater perspective, it is assumed that the domestic wells serving the single-family homes in the area likely withdraw water from the regional unconfined aquifer; that since the proposed expansion can be viewed as a simple continuance of the existing operation, it is fully expected that the current condition of the groundwater resources in the area will be maintained; that by its very nature, an extractive use facility disturbs the property on which it operates; that this does not mean that a properly designed and operated facility should have significant negative environmental impact on the surrounding properties; that this is particularly true from a groundwater resource perspective when the operation does not involve substantial dewatering, properly directs stormwater from adjacent land uses away from the excavation, properly stores petroleum products on site, properly maintains and inspects equipment to prevent leaks and operationally manages spills, nuisance species and unauthorized entry; that provided that the proposed facility expansion is designed and operated with the information detailed, the potential negative impact to the groundwater resources will be reduced or eliminated; that sand washing

water on site will be recycled in the sand/gravel washing process; that there should be no water quality concerns; that based on DelDOT requirements, the hot-mix truck traffic will continue to utilize to access to U.S. Route 113; and that the sand/gravel plant truck traffic will continue to utilize Bunting Road; that approximately two years ago DelDOT improved Bunting Road and the Applicants improved the entrance geometrics on Bunting Road anticipating that a future application would be applied for to expand the facility; that noise levels should remain the same; that they are not sure of the decibel levels of the dredge; that business hours depend on the demand for the materials; that normally hours run from 6:00 a.m. to 6:00 p.m. Monday through Friday with some Saturday hours when needed; that they are proposing to seed and plant loblolly pines in the buffer area; that the safety berm will have seeded slopes for stabilization; that the landscaping berms will have a height of 3 to 3.5 feet; that the proposed stockpile for soil is only temporary; and that the pit will be dredged.

The Commission found that C.R. Robinson was present in support of the application and stated that he lives on Bunting Road directly across from the entrance location and has no objection to the noise or the appearance of the site, and that cars and motorcycles traveling Bunting Road make more noise than the activities on the site.

The Commission found that Phil Daisey, a resident living down Bunting Road from the entrance, was present, not in opposition to the application, but with questions, and expressed concerns about the depth of the pit, the impact on potable wells if contaminated or dried out, the location of deceleration and acceleration lanes, and that hours of operation should be posted.

The Commission found that Mr. Adams responded that the depth of the pit would not exceed 70-feet, the same depth as the existing pits; that they acquired a new dredge in 2005 that does not require dewatering; that any wells impacted will be improved by the Applicant; that they have converted the hydraulic fluids to a bio-degradable peanut oil which should eliminate the fear of any contaminants; and that the deceleration and acceleration lanes already exists; that it may take one or two years to complete the existing borrow activity and another eight to ten years to complete this site; that the sand/gravel operation will remain in the current location; that the entrances are gated; that 16 employees are directly involved in the sand/gravel operation; and that the company has 65 employees that are indirectly involved in the project.

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

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1830 – application of **J & T PROPERTIES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an outpatient physical therapy clinic to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,553 square feet, more or less, lying north of Savannah Road (Route 9) across from Route 12 at Wescoats Corner.

The Commission found that the Applicant provided an Exhibit Booklet on May 3, 2010 which contains a project description, an illustrative site plan, a data summary, a copy of the application

form, a deed, a list of property owners within 200-feet, a series of maps of the area, DelDOT comments in the form of a Support Facilities Report, dated July 29, 2008, a Willing and Able to Serve letter from Tidewater Utilities, Inc., another series of maps and aerials, and a series of photographs of the site and area.

The Commission found that the County Engineering Department Utility Planning Division provided comments on May 11, 2010 and advised that the project is located in the West Rehoboth Expansion Area; that wastewater capacity is not available for the project since there are downstream line segments that are deficient at buildout conditions; that the Planning Study and capacity assumption for the parcel is 1.0 EDU based on a residential use on a residentially zoned parcel of less than 1.0 acre; that based on the design assumption, capacity can be assumed for an office building of 1,000 square feet; that the proposed physical therapy clinic of 6,506 square feet will exceed capacity assumptions; that approving projects that exceed system design assumptions increases pipeline deficiencies and accelerates the need for upgrades; that the current System Connection Charge Rate is \$4,336.00 per EDU for the period July 1, 2009 through June 30, 2010; that the parcel was provided with a 6-inch sanitary sewer lateral during original construction; that a 6-inch lateral may not be adequate for the proposed use and a lateral upgrade may be required; that the developer is responsible for costs associated with lateral upgrades; that before the existing structure is removed, it must be properly disconnected by a County licensed plumber, which includes a disconnection permit and inspection by the County; that conformity to the West Rehoboth Expansion Area Planning Study will be required; that if the proposed project is approved, downstream sewer line and pump station upgrades may be required; that the developer could be required to complete or participate in upgrades at the developers expense; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on May 11, 2010 and advised that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it is not likely that on-site drainage improvements will be required.

The Commission found that Lester Moyer and Art Abbott were present on behalf of Southern Delaware Physical Therapy with James Fuqua, Jr., Attorney with Fuqua, Yori & Willard, P.A. and that they stated in their presentation and in response to questions raised by the Commission that J & T Properties, LLC will build the building and lease it to Southern Delaware Physical Therapy; that Southern Delaware Physical Therapy has been in business for 20-years and has six locations in Delaware; that five locations are in Sussex County and one location is in Kent County; that there are a total of 52 employees overall; that the site is improved with a dwelling and garage that will be removed; that there are no wetlands or floodplains on the site; that they are proposing to build a two-story 6,500 square foot building with a residential appearance; that the first floor will be utilized for patient treatment facilities, consultation, offices and bathrooms; that the second floor will be utilized for an employee break room and storage; that there will be seven employees at this facility; that business hours are normally from 7:30 a.m. to 7:30 p.m. Monday through Friday; that they are proposing hours of 7:00 a.m. to 8:00 p.m. for flexibility; that the entrance will be located near the rear of the site on the DelDOT easement for the future

relocation of Old Orchard Road; that a traffic impact study was not required; that the peak a.m. hour increase in traffic is calculated as 16 additional vehicles, and the peak p.m. hour increase in traffic is calculated as 24 additional vehicles; that Tidewater Utilities are willing and able to serve the project with potable water; that the County will be providing sewer service; that the Applicants are aware that they may be required to participate in upgrades to the sewer system; that the proposed stormwater management facilities will include underground infiltration subject to the approval of the Sussex Conservation District; that parking is proposed in the front and rear yards and is similar to the adjacent Happy Harry's site; that they are planning on landscaping and fencing the north and east property lines; that the site is located in an Investment Level 2 according to the State Strategies; that the site is located in the Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that the Conditional Use will be consistent with the development taking place in the area where C-1 and B-1 zoning already existing along with many Conditional Use site for offices; that the adjoining land owners have voiced no objections to the use; and that the building has not yet been designed, but will maintain a residential appearance.

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. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1863 – application of **ANDREW AND CAROL WALTON** to consider the Conditional Use of land in a MR Medium Density Residential District for a marina with restaurant, retail and multi-family dwelling structures (5 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.84 acres, more or less, lying southwest of Oak Orchard Road, northeast of Pine Street and northeast of Bay Road in Oak Orchard.

The Commission found that the Applicant provided an Exhibit Booklet on May 3, 2010 which contains a presentation outline, a parcel map of the area showing zonings, a copy of the Findings for Conditional Use No. 1088 for Clyde Hull for the site permitting a marina with boat rental, boat slip rental, bait and tackle sales, sandwich shop, crabbing pier, an office and a residence; a series of photographs, a survey/site plan showing existing and proposed uses, a color rendering of the same, and a copy of a DelDOT Support Facilities Report, dated April 9, 2008.

The Commission found that the County Engineering Department Utility Planning Division provided comments on May 10, 2010 and advised that the site is located in the Oak Orchard Sanitary Sewer District; that wastewater capacity is available; that there are no deficient downstream lines at this time and the proposed project will not create a deficiency in the system; that the proposal exceeds design assumptions however; that the sewer capacity assumption for the parcel is 4.45 EDU, which reflects the current commercial use of this parcel; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,352.00 per EDU; that the parcel has been provided with one 6-inch lateral and one 8-inch lateral during

original construction; that prior to demolition or moving of the existing structure, or starting site work, the existing structure must be properly disconnected requiring a disconnection permit, disconnection by a County licensed plumber and inspection by the County; that conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on May 11, 2010 and advised that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that a letter was received on May 6, 2010 from Heath and Michelle Rinier in opposition to this application expressing concerns about the impact on the homes in the area which are predominantly one family and vacation homes, not multi-family dwellings; that retail places have tried to make it in this area and failed, leaving empty buildings and eye sores; and that the area is not marketable, due to the water front area.

The Commission found that Andy and Carol Walton were present with Zac Crouch, Professional Engineer with Davis, Bowen & Friedel, Inc. and that they stated in their presentation and in response to questions raised by the Commission that the site is located in the Environmentally Sensitive Developing District; that the site is subject to a previously approved application for Clyde Hull for the marina with boat rental, boat slip rental, bait and tackle sales, sandwich shop, crabbing pier, office and residence (C/U #1088); that the approval granted allowed for a maximum of 20 boat slips; that only 10 boat slips exists and no additional boat slips are proposed; that the marina updated their Operation and Maintenance Plan in 2009 and has been approved by DNREC as part of the Delaware Clean Marina Program; that they are proposing to relocate the existing building to the north of the site and to convert it into a single family dwelling; that they are proposing four multi-family units above a restaurant and retail area; that the proposed building is proposed to include a 3,200 restaurant facility with a 700 square foot patio, a 1,600 square foot retail store, and four apartments; that each apartment will contain 2,400 square feet and will be located on the second and third floors; that adequate space is available for parking on the site; that 29 spaces are required and 30 spaces are proposed; that they are proposing to use crusher run on the parking lot, rather than pavement, to abide by the Pollution Control Strategies; that they will provide parking bumpers to designate the parking spaces; that Tidewater Utilities will provide potable water; that the County will provide sewer; that the site is in close proximity to the Indian River Fire Company facility; that development of the site will not impact sewer capacity; that DelDOT did not require a traffic impact study; that there are no wetlands on the site; that all stormwater management requirements will be met; that they have no objection that a landscaping plan be required to be submitted with the Final Site Plan.

The Commission found that Linda Walls, a 40 year resident of the area, was present in support of the application and stated that the use will be beneficial to the area; that the area needs improvements; that traffic is not a concern; that the use should bring livelihood to the area; and that the area needs some attractions.

The Commission found that Attilio Cafini, the restaurant operator, was present in support of the application and stated that the use will be a plus to the neighborhood.

The Commission found that David Harper, an adjacent landowner, was present in support of the application and stated that the area needs construction activities; that the use will be a benefit to the area; and that the use should improve property values.

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

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

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

AN ORDINANCE PROVIDING FOR A SIX MONTH MORATORIUM ON APPLICATIONS FOR CASINO AND/OR GAMBLING OR GAMING VENUES IN SUSSEX COUNTY.

Mr. Robertson stated that he would like to take the opportunity to explain to the Commission and the audience the purpose of tonight's hearing on the Moratorium on casinos and/or gaming venues, so that everyone understands what is relevant to tonight's hearing, and what is not relevant; that this hearing is in furtherance of the Moratorium imposed by County Council several weeks ago on casinos and gaming venues; that the purpose of the Moratorium is simply to give Council time to determine how it wants to address casino and/or gaming venues through a Zoning Ordinance Amendment regarding those uses; that the Moratorium, and therefore this hearing, does not concern casinos or gaming venues, or possible regulations of them; that the hearing only deals with whether or not it is appropriate to impose a Moratorium to allow the Council time to do its work considering how it wants to address casinos and/or gaming venues; therefore, that's what any testimony should be limited to, and not the substance of any ordinance regulating casinos or gaming venues; and that the audience should be aware that anyone wishing to address the potential regulation of casinos will have an opportunity to do so at the time Council introduces whatever regulations it drafts on the subject, but not tonight.

Mr. Lank advised the Commission that on March 30, 2010 the Sussex County Council introduced this Ordinance providing, if approved, for a six month moratorium on receipt of applications for casino and/or gambling or gaming venues. The Ordinance would allow the County to study, prepare, and introduce Ordinance amendments providing definitions and restrictions/regulations relating to the zoning districts where such uses could be permitted, the location of such uses, and related requirements for parking, loading, signage, etc.

Mr. Lank advised the Commission that he has received 17 E-mails from interested parties relating to the construction of a casino with related parking and activities. One (1) letter supports the use, two (2) letters oppose the use, ten (10) letters oppose the use at the Indian River Inlet, and four (4) letters oppose the use at the Indian River Inlet, but not somewhere inland in Sussex County.

The Commission discussed the proposed Ordinance: Mr. Burton questioned if six (6) months was long enough; Mr. Ross questioned the time it would take to draft an ordinance, and stated that an ordinance should be drafted and then be processed through the normal public hearing process, and also expressed some concerns that moratoriums set precedence causing bad governance.

Mr. Robertson advised the Commission that the Court of Chancery has established that the establishment of a moratorium that could relate to land use decisions is required to be considered by both the Planning and Zoning Commission and the County Council.

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

Mr. Ross stated that he would move that the Commission recommend that the County Council not establish an ordinance providing for a six (6) month moratorium on applications for casino and/or gambling or gaming venues in Sussex County since the County would have to go through a six (6) month moratorium which would cause panic regulations, and that an Ordinance should be drafted for consideration in the normal process of ordinances.

Mr. Smith stated that he would second the motion since he has concerns and opposes Section 3 of the proposed Ordinance which provides that the Ordinance can be extended, modified or terminated at any time by a majority vote of all members of the County Council without any involvement by the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, and carried 3 votes to 2 votes to forward this Ordinance to the Sussex County Council with the recommendation that the Ordinance be denied. Motion carried 3 – 2 with Mr. Johnson and Mr. Wheatley opposing the motion.

Meeting adjourned at 8:00 p.m.