

## **THE MINUTES OF THE REGULAR MEETING OF DECEMBER 17, 2020**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 17, 2020 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, and Ms. Christin Scott – Planner I.

Mr. Whitehouse noted that the Agenda was amended on December 16 to remove CU 2238 Michael Parsons and to be rescheduled at a future date; that today, Staff received a request to withdraw the Application. Motion by Ms. Wingate seconded by Ms. Stevenson and carried unanimously to approve the revised Agenda. Motion carried 5-0.

### **OTHER BUSINESS**

#### **Chase Oaks (2019-05)**

##### **Final Subdivision Plan**

This is a Final Subdivision Plan for the creation of a two-hundred and fifty-three (253) lot cluster subdivision and cemetery easement for public access. At their meeting of Thursday, September 26, 2019, the Planning and Zoning Commission approved the Preliminary Subdivision Plan. The properties are located on Robinsonville Road (S.C.R. 277) at Webb Landing Road (S.C.R. 277B). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 234-6.00-96.00, 97.00 & 98.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Ms. Stevenson asked if the Applicant was going to provide some parking at the cemetery on the site. Mr. Wheatley asked if the Applicant was present and if so, could they respond to this question.

The Commission found that Mr. Jack Hayes was present. Mr. Hayes stated that two spaces could be provided next to the stormwater management area to provide parking at the cemetery.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the Final Subdivision Plan subject to two parking spaces being provided and staff to approve the Revised Final Subdivision Plan. Motion carried 5-0.

#### **Lands of Coroc/Rehoboth III, LLC (2019-32)**

##### **Final Subdivision Plan**

This is a Final Subdivision plan to divide a 10.00 acre +/- parcel of land into 3 proposed lots. Proposed Lot 1 will consist of 2.01 acres; Lot 2 will consist of 2.29 acres and Lot 3 will consist of 3.40 acres. At their meeting of Thursday, October 8, 2020, the Planning and Zoning Commission approved the Preliminary Subdivision Plan. The properties are located on the west side of Holland Glade Road (S.C.R. 271) approximately 0.11-mile northeast of Coastal Highway (Route 1). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 334-13.00-325.36. Zoning: C-3 (Heavy Commercial District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

**S-20-37 Lands of Hearn, LLC**

**Preliminary Site Plan**

This is a Preliminary Site Plan for a 4,800 square foot event venue hall, 96 parking spaces, and other site improvements to be located at 8275 Cannon Road (S.C.R. 18) in Bridgeville. This proposed use is an extension of Conditional Use No. 2226 which was approved by the Sussex County Council on September 29, 2020 and adopted through Ordinance No. 2742. This Preliminary Site Plan complies with the Sussex County Code and all five (5) of the conditions of approval. Tax Parcel: 131-18.00-33.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 5-0.

**OLD BUSINESS**

There was no old business to be heard.

**PUBLIC HEARINGS**

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

Chairman Wheatley read the mask policy.

Chairman Wheatley stated that the following two hearings regarding the same parcels of land would be consolidated for presentation purposes but voted on separately.

**Ord. 20-07 - Future Land Use Map**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 29.01 & 235-14.00-570.00**

**C/Z 1923 Reed Farms, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 67.31 acres, more or less.** The property is lying on the west side of Gravel Hill Rd. (Rt. 30) approximately 309 feet south of Milton-Ellendale Hwy. (Rt. 16). 911 Address: 14888, 14866 & 14742 Gravel Hill Rd., Milton. Tax Parcels: 235-13.00-29.00, 29.01 & 235-14.00-570.00

Mr. Whitehouse advised the Commission that submitted into the record for Ord. 20-07 is a copy of the submission to the State's PLUS review service, a copy of the ordinance and a copy of the exhibit map; that the written response has not yet been received from PLUS review but the State did not raise any objection to the Ordinance and noted that it is contained within Level 4 in terms of the States Spending Strategies; that written comments will be available over the next few weeks; and that in relation to C/Z 1923 submitted into the record is a copy of the Applicant's site plan, a copy of the Applicant's exhibit

book, comments from the Sussex County Engineering Department Utility Planning Division, a letter from Delmarva Central Railroad, a copy of the Applicant's DelDOT Service Level Evaluation response. Mr. Whitehouse noted that the Office of Planning and Zoning received three comments in opposition to the Application.

Mr. Robertson asked for clarification regarding the PLUS response. Mr. Whitehouse stated that the PLUS response is only for the Ordinance because it is a Comprehensive Plan Amendment.

The Commission found that Mr. David Hutt was present on behalf of the Applicant, Reed Farms, LLC, that also present are Mr. Richard Reed, Mr. Jim Reed, and Ms. Beverly White, principals in the ownership of the subject properties, Mr. Mark Davidson, principal land planner with Pennoni Group; that many of the factors that apply to the change in the land use map also apply to the change of zone application; that an exhibit notebook was submitted as part of the record; that the properties are located between the Milton Ellendale Highway (Rt. 16) and Gravel Hill Road (Rt. 30); that the presentation is divided into two parts; that the first part will focus on the amendment to the Future Land Use Map and the second part on the rezoning request; that section 4.4 of the 2019 Comprehensive Plan states that Future Land Use Plan is the most influential part of this Comprehensive and goes on to describe the basis for the Future Land Use Plan with seven bullet points; that the fourth bullet point states "to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County."; that as the Future Land Use Plan seeks to encourage commercial and industrial jobs, it is important to look at other sections of the Plan that also speak to those aspects in Sussex County; that Chapter 9 speaks to the four industrial parks and states "while there are some vacancies in some of these business and industrial parks that should be markets to new employers, the County should also continue to look for new business and industrial sites attractive to businesses looking to locate to the County. Sites that will be most attractive to new businesses are those that have access to utilities (natural gas, fiber optic, etc.) as well as low electric rates."; that the subject property has access to utilities including natural gas which is to the south; that this site is in close proximity to the waste water treatment operated by Artesian; that Chapter 13 is the mobility element in the Comprehensive Plan and section 13.2 describes the County's freight network as being an important part of the County's transportation network as well as the County's economy; that the subject properties have extensive frontage onto roadways which are designated by DelDOT as major collectors; that there is room for an entrance on Route 16 and possibly two entrances on Route 30 in the future; that in addition to having frontage on two collector roads, the southern boundary of the property is adjacent to the Delmarva Central Railroad line; that is mentioned in section 13.2 of the Comprehensive Plan about reducing truck impacts by shifting freight to rail; that Delmarva Central Railroad has submitted a letter of support for the Application; that Ord.20-07 seeks to change the designation of these three properties on the Future Land Use Map from Low-Density to a Developing Area, which is one of the County's seven Growth Areas; that there are ten factors to consider when deciding if a property should be in a Growth Area; that these factors apply equally to Ord. 20-07 and to the Change of Zone application; that the first factor is proximity to an incorporated municipality; that these three properties are located within one mile of the Town of Milton; that this property is across the street from a Growth Area within the Town of Milton boundary; that properties to the north and to the south are currently designated as being in the growth area on the existing Future Land Use Map of Sussex County; that these properties are also located approximately one half mile from the Town Center Area on the Future Land Use Map and is consistent with properties set forth in the Comprehensive Plan for Developing Areas; that developing areas in the Plan are described as being adjacent to municipal areas; that in the developing area of the Comprehensive Plan it states that portions of the developing area with good road access and few nearby homes should allow for business and industrial parks; that the nearby homes are mostly located on the eastern side of

Gravel Hill Road (Rt. 30); that the second factor to consider to designate a property as being in a Growth Area is the presence of public water and public sewer nearby, that the subject properties are in close proximity to the regional sewer treatment plant; that Artesian has an easement across the subject property so connection would be a simple process; that the third factor for consideration is that public sewer will be available within five years, and this is not applicable as Artesian is already providing public sewer in the area; that the fourth factor is location near a major road or intersection which has been previously addressed; that the fifth factor is the character and intensity of surrounding development including proposed development; that there are a number of commercial businesses in the area; that the sixth factor is location relative to major preserved lands; that adjacent to the north of these properties is a tract of land of more than 500 acres which is in an agricultural easement and serves as part of the waste water disposal for Artesian and homes will not be built on this site in the future; that the seventh factor for consideration for a growth area is the location of water bodies and these properties are not adjacent to water bodies; that the eighth factor for consideration is the location of Agricultural and other protected easements which is similar to the sixth factor which has been addressed; that the ninth factor is the area's environmental character and on these properties there are no wetlands, it is not in an excellent recharge area and it is not in a flood plain; that the tenth factor is how the area ranks according to the Delaware's Strategies for State Policies and Spending Document, Level I, II, III, or IV; that the property is identified as being in Investment IV and the Applicant would submit that because the County designated it as being a Low-Density Area; that adjacent to these properties are areas designated as being in Investment Level II and III; that the consideration of these ten factors supports the placement of these properties in a Growth Area; that it also makes sense because immediately to the south is an Industrial Area and to the north and east is also in a Growth Area as is proposed for this property; that the characteristics that apply to the properties in the Growth Area also apply to the subject properties; that many of the same characteristics will apply to the requested change in zone for the property; that the parcels comprise of 67.31 acres and are currently zoned AR-1 and that the application seeks to change the zone to HI-1; that two of the parcels are unimproved and currently used for agricultural purposes and the third parcel is improved with a residence which would be repurposed or removed from the site depending on the future uses; that these properties can comply with the County Code requirements for the HI-1 zoning district; that the property to the south is zoned LI-2 and to the north properties are zoned C-1; that the properties are surrounded by various zoning categories; that close to these properties the Town of Milton has designated some areas as being in the light industrial area which further demonstrates the nature of this area; that another element for consideration for any change of zone is traffic and when a Service Level Evaluation request is sent to DelDOT for a rezoning, DelDOT will often indicate that a Traffic Impact Study (TIS) is not required until a subdivision or land development plan is proposed; that many of the letters in opposition stated traffic concerns and Mr. Mark Davidson, Principal Land Planner will address those issues.

Mr. Davidson stated DelDOT will require a TIS when the site plan is submitted for the uses within the property; that DelDOT will require additional right-of-way dedication, 15-foot permanent easement and shared use path on both road frontages; that because these roads are major collector roads, the Applicant will have to bring the roads up to major collector standards; that additional expansion of the roads to include right turn lanes and left turn lanes would be required; that some of the letters of opposition had concerns about the entrance being directly opposite to the entrance to the Pemberton Development: that Section 5.2.2 (D) of the DelDOT Coordination Manual it states that all entrances should be located directly across from an entrance on the opposite side of the roadways; that it goes on to mention sight distances and that entrances are at the discretion of DelDOT and distance from adjacent streets; that there were some concerns about the curve in the road which is close to the proposed entrance; and that DelDOT will require that sight distance is maintained so the shrubbery will have to be cleared and possible some additional right-of-way dedication.

Mr. Hutt stated that there is the opportunity for interconnectivity with other properties; that the purpose statement for HI-1 in the Sussex County Code states that the “purpose of this district is to provide for a variety of industrial operations but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district”; that this is significant because a concern raised was about the nature of commercial and industrial uses but the purpose specifically states to restrict or prohibit those industries likely to produce serious adverse effects and provides a list of approximately 45 uses or categories of uses that are potentially hazardous and these would require a public hearing before the Board of Adjustment prior to a person getting a site plan approved by the Commission; that one of the benefits of changes to the Future Land Use Map and the change of zone is job creation and specifically jobs beyond the tourism that Sussex County is renowned for located along the Eastern Side of the County; that the tourism jobs are seasonal in nature; that the nature of jobs related to industry are full-time year round jobs; that it is expected that the use created on these properties will require a workforce; that the proximity to the Town of Milton should supply the workforce and create a short commute for workers on this site in the future; that the County has a continual demand to build more homes and workspaces and as development occurs there is less vacant land and less industrial area for that land; that development needs to occur in a way that the County grows in a sustainable manner which is the purpose of the Comprehensive Land Use Plan; that often the word industrial makes people think of a low value area, dirty area, noisy area or some other nuisance type factor, however, there are many new innovations that have created industry that can help grow an area in an economical and green manner; that one example would be distribution warehousing which can be done in green and clean environments; that based upon the Application’s consistency with the properties proximity to industrial and commercial areas both existing and proposed, along with the location along two major roadways and adjacent to a rail line and the other features and characteristics set forth in the presentation, the Applicants asks that the Commission recommend approval of the amendment to the Future Land Use Map as well as the change of zone designation from AR-1 to HI-1; and that the Applicant has proposed Findings of Fact which will be submitted to Staff.

Ms. Stevenson asked if there was a letter from Artesian confirming that they will supply water and sewer to the site.

Mr. Hutt stated that there is not a letter from Artesian.

Mr. Hopkins stated that he thinks it is an ideal location for an industrial site.

Ms. Wingate stated that one of the opposition letters asked about landscaping on Route 30 to eliminate some of the noise and lighting and asked if that is something the Applicant would be willing to accommodate.

Mr. Hutt that there would be room at accommodate screening and other types of landscaping devices to assist in that process and that the HI-1 zoning district has a large front yard setback.

Mr. Mears agreed with Mr. Hopkins that the subject properties is an ideal location for this type of use.

Ms. Stevenson asked if this could be done as a conditional use instead of change of zone.

Mr. Robertson stated that it is difficult to say that because it would depend on what the individual uses would be but it would not be the best way to go as you would have a number of conditional uses that are not related to each other on the property.

Chairman Wheatley stated that there are not many applications for HI-1 zoning; that the most hazardous use on the list is probably the asphalt plant; that it is on the list of things that could go there; that it is also on the list of things that would require Board of Adjustment approval; that HI-1 zoning is being requested for the entire parcel but portions of the site are being designated for light industrial and questioned why HI-1 is being selected for the entire parcel.

Mr. Hutt stated that HI-1 was being requested because of the features on the property and the proximity to the rail access; that the heavier uses would remain close to the rail line and as you get closer to Route 30 there would be the lighter uses.

Chairman Wheatley asked if the Applicant has had conversations with Artesian about the plans for the site.

Mr. Davidson stated that there are easements on the subject properties and the existing force main is already on the property; that access to that line is granted by Artesian and they will allow the future sewer to be connected to the force main.

Chairman Wheatley asked if LI-1 and LI-2 are permitted in the HI-1 district.

Mr. Robertson stated that both categories are permitted in the HI-1 district.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he is not opposed to the Applicant using the land; that heavy industry is not appropriate from a safety perspective or from a development perspective; that they should consider a medical facility, grocery store or other services; that jobs are needed in the area which would come with a medical facility; that an industrial operation is a particular concern due to the proximity to Bakers; that putting an industrial site is not consistent with the preserved lands in the area; and that it is not consistent with the long-term growth according to the Comprehensive Plan.

The Commission found that Helen Ralston spoke by teleconference in opposition to the Application. Ms. Ralston stated that it was not known about the change to the Future Land Use Map.

Chairman Wheatley explained that it was correctly advertised and that it is procedural that if the zone is changed it is necessary to also change the map as the two things work together.

Ms. Ralston stated that changing this parcel of land to Heavy Industrial would create a substantial change to the rural, agricultural and residential character of this area; that changes to the roadway would require major construction; that it would be extremely disruptive; that it may be a number of years before sewer service will be available; that she objects to the Railroad Spur unloading from Railroad lines as it is a noisy and messy process as it requires heavy equipment and more trucks; and ask the Commission to consider if this operation were to be placed across the street from their property.

The Commission found that Bob Valihura, Esq. spoke by teleconference in opposition to the Application. Mr. Valihura stated that he represents the Pemberton Property Owners Association; that he was prepared to present an argument for his client; that his client has not had the time to go back and speak with the homeowners to decide how they want to proceed; that the Department of Planning and Zoning recommendation changed on December 8 and did not allow him the time to prepare for tonight;

that he opposes the Application because he does not know what the position of the Community is; and that a letter was submitted outlining how the change impacts his clients.

Chairman Wheatley asked Mr. Valihura to detail the change that he is referencing.

Mr. Valihura stated that the original staff analysis stated that “it could be considered to be consistent with the land use area, zoning and surrounding uses” to “it could be considered to having a degree of consistency with the land use area, zoning and surrounding uses”.

Chairman Wheatley asked the Director of Planning and Zoning to respond to Mr. Vilihura’s statement.

Mr. Whitehouse responded that Staff do not make a recommendation but do include a helpful analysis; that different staff members use slightly different wording to convey the same meaning; that there was no intent to change any meaning or analysis to the Application.

Mr. Valihura stated that the language that was chosen alerted him and his clients that there was a change; that he will accept the representation of Mr. Whitehouse as he is the author of the staff analysis; that this does not change the fact that the clients believed that there was a change; and that he would request that the record be held open so he can present his clients position now that he understands that there is not a change in the Department’s position on this Application and would ask for 30 days.

Mr. Robertson stated that the underlying application has not changed; that it has always been HI-1; that it was introduced as an ordinance to HI-1; that it went through PLUS for the rezoning as HI-1; that it was advertised as HI-1; that the notices were mailed out as HI-1; that it was placed on the agenda as HI-1; that there was no fundamental change in circumstances; that just like Mr. Hutt has to make a case that HI-1 is appropriate anyone who has concerns about this must make their best case as to why HI-1 is inappropriate if they are in opposition; that a turn of phrase in a staff report does not affect the fundamental issue at hand; that the record will have to be kept open for the PLUS report for the Future Land Use Map; and that it will be up to the Commission if it is limited to just that or to the rezoning also.

Mr. Robertson reminded those present and those listening online that there will be another public hearing in front of County Council so there will be another opportunity for the public to speak regarding this Application.

Mr. Valihura stated that his client thought there was a change in the Application; that now he understands there was no change; and that he would like the opportunity to be able to submit their position in writing as they are a neighboring community.

The Commission found that Anthony Scarpa spoke by teleconference in opposition to the Application. Mr. Scarpa addressed the comment from Mr. Hutt regarding the utilities on the property; that neither well or sewer is available for this property at this time; that the Artesian wastewater system is not yet constructed; that there are a number of water contamination issues with wells in the area; that if the Applicant plans to use a well and septic system to service this property, that will increase the negative impact existing in the area; that he understands the need for jobs in Sussex County and supports

agriculture but the health and well-being of the Pemberton residents should take precedence over industrial development where it can impact the neighborhood; that there was a proposed high density development in the area but it was abandoned when the developer could not get a public water and sewer connection to the site; that he has concerns about the safety of children getting off the bus in proximity to the subject property; that this may cause a precedent and there may be others who will also ask for heavy industry; and that for all these reasons he opposes the rezoning.

The Commission found that Larry DiSabatino spoke by teleconference in support to the Application. Mr. DiSabatino stated that he owns the property zoned high-density that the previous caller referenced; that his development has languished; that jobs are very important to the community and believes that if this Application is approved it will bring jobs to the area; and that there will be restrictions on what can be placed at this site; and that it will bring opportunity to the area and mixed uses to the area.

Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed Ord. 20-07. Motion by Mr. Hopkins, second by Ms. Stevenson, to leave the record open to receive PLUS comments and to allow 15 days for the receipt of public comments relating to the PLUS comments following the announcement of receipt (Receipt of comments will be announced at a future meeting). Motion carried 5-0.

The Commission discussed C/Z 1923. Motion by Ms. Stevenson, seconded by Mr. Hopkins, to defer action for further consideration. Motion carried 5-0.

Mr. Robertson stated that C/Z 1923 will not appear on a future agenda until the record is completely closed for Ord. 20-07.

**ADDITIONAL BUSINESS**

There was no additional business.

**Meeting adjourned at 7:10 p.m.**

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