

MINUTES OF THE REGULAR MEETING OF JANUARY 30, 1997

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 30, 1997, at 7:00 P.M., in the County Council Chambers, County Administration Building, Georgetown, Delaware, with the following members present: Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Mr. Lank noted that the special meeting was announced at the regular meeting of the Planning and Zoning Commission on January 23, 1997 and that the meeting agenda was posted on the bulletin board in the permit office in the County Administration Building.

The purpose of this meeting was to review a final report prepared by the staff and a letter from Mr. Schrader relating to the Sussex County Comprehensive Plan.

The Comprehensive Plan, Draft - Revision 1, dated October 24, 1996, the final report prepared by the staff, Mr. Schrader's letter, dated January 30, 1997, and the Future Land Use Map, were discussed. It was noted that the record was left open from September 19, 1996, the night of the Planning and Zoning Commission public hearing, through October 11, 1996 for written comments. It was also noted that the Commission reviewed all written comments received up to and including October 11, 1996.

Mr. Schrader advised the Commission that the next step will be adoption of the Sussex County Comprehensive Plan Draft, dated September 3, 1996, with the amendments in Revision 1, dated October 24, 1996 as prepared by Whitman-Requardt and Associates, and with the Final Report, addendum of amendments prepared by the Director, and the letter prepared by Mr. Schrader, dated January 30, 1997, in reference to Growth Area Definitions and Intergovernmental Coordination.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward the Sussex County Comprehensive Plan Draft, dated September 3, 1996, with the amendments in Revision 1, dated October 24, 1996, as prepared by Whitman-Requardt and Associates, and with the Final Report, an addendum of amendments prepared by the Director, and the letter prepared by Mr. Schrader, dated January 30, 1997, in reference to Growth Area Definitions and Intergovernmental Coordination, to the Sussex County Council with the recommendation that it be approved as amended. The Final Report and Mr. Schrader's letter are attached as a part of the record of the minutes for this meeting.

Meeting adjourned at 9:00 P.M.

## SUSSEX COUNTY COMPREHENSIVE PLAN

The following is a final report on the Sussex County Planning and Zoning Commission's review of the 1996 Sussex County Comprehensive Plan Draft, Revision 1, dated October 24, 1996.

The Sussex County Planning and Zoning Commission has considered all public comments made during numerous public workshops and a public hearing, reviewed all written comments received up to October 11, 1996, and considered the revised text and Future Land Use Map in the above referenced Draft.

In reviewing the Future Land Use Map, Figure 3, the Commission recommends the following changes and/or amendments which include revisions recommended by Whitman-Requardt and Associates and the following:

1. The Development District around Selbyville shall be extended easterly along Route 54 to Road 390A, thence northerly to Road 388, thence westerly along Road 388 to Bear Hole Branch, thence westerly along Bear Hole Branch to the Railroad, thence westerly with a line extending to the intersection of Road 400 and Road 380, thence southerly along Road 380 to Route 54, and thence with a line parallel to U.S. Route 113 to the Maryland Line.
2. The Development District, Town Center, and Agricultural Residential District around Millsboro shall be accepted as revised by Whitman-Requardt and Associates.
3. The Town Center revision near Ocean View shall be accepted as revised by Whitman-Requardt and Associates.
4. The Development District near Greenwood and Bridgeville shall be expanded by extending easterly from U.S. Route 13, at the Kent County Line, to the Nanticoke Prong, thence southerly along the Nanticoke Prong, crossing Route 16, to the existing Commercial area approximately 2,400 feet north of Road 584, thence westerly to U.S. Route 13, thence northerly along U.S. Route 13 to the Town Limits of Greenwood, thence around the easterly Town Limits of Greenwood to U.S. Route 13, thence northerly along U.S. Route 13 to the Kent County Line.
5. The Development District south of Bridgeville shall be expanded by extending westerly along Road 544 to Road 561, thence northerly along Road 561 to the Town Limits of Bridgeville, thence easterly and southerly along the Town Limits of Bridgeville to the Railroad, thence southerly along the Railroad to Road 544.

6. The Development District south of Bridgeville shall be expanded by extending easterly along Road 18 to Road 532, thence northerly along Road 532 to U.S. Route 13, thence southerly along U.S. Route 13 to Route 18.
7. The Town Center around the Town Limits of Blades shall be expanded by including the area south of the Nanticoke River, and west of the Railroad between the Town Limits of Blades and existing industrial zoning.
8. The Development District east of Road 474, south of Road 20, and north of Route 9 shall be deleted and included in the Agricultural Residential District.
9. The Development District west of the Town of Laurel and south of Broad Creek shall be deleted and included in the Agricultural Residential District due to its close proximity to an Agricultural Preservation District.
10. All Natural Resource Protection Areas, which include Public and Private Resource Districts and DNREC Proposed Resource Areas shall remain as mapped since some of the areas already exist as properties of the State, and since some of the areas are proposed for expansion to State lands.
11. The Agricultural Protection District shall be deleted and combined with the Agricultural Residential District, since a volunteer program already exists to protect agricultural lands with the Delaware Agricultural Lands Preservation Foundation, and since concerns have been expressed by the majority of the participants at all public workshops, in written comments and petitions, and at the public hearing that mandating protection may take away a landowner's equity in his land. The combined mapping of the districts shall be considered the Agricultural Residential District.

After reviewing the text of the Sussex County Comprehensive Plan, the Sussex County Planning and Zoning Commission recommends the following amendments, additions, and deletions:

The TABLE OF CONTENTS, Pages TC-1 and TC-2, shall be amended by deletion of references to the Agricultural Protection District and Figure 3A, 3B, 3C, and 3D. It must be noted that the page numbers within the Table of Contents may change upon completion of a final printing of an adopted Plan due to amendments, additions, and deletions of text.

The INTRODUCTION, Pages 1 and 2, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The LAND USE ELEMENT, Pages 3 through 17, is recommended as written in the Draft, Revision 1, dated October 24, 1996, with the following changes:

re: Growth Area

Municipality

Purpose - Page 5

The last paragraph shall be revised to read as follows:

"To further intergovernmental coordination within Sussex County, during the Zoning Ordinance update process, areas surrounding the County's Municipalities will be defined for the purpose of establishing an Intergovernmental Coordination Zone of mutual planning and development concern. The boundary of this Zone will be one (1) mile from existing municipal limits and will be utilized for the intergovernmental coordination of future planning, zoning, subdivision and related land development decisions including Municipal annexation. The final decision concerning all land development decisions within the Zone will rest with the County. The final decision concerning annexation will rest with the Municipality."

re: Town Center District

Guidelines for Density - Page 6

The paragraph shall be revised to read as follows:

"Without a public wastewater system - two dwelling units per acre for single-family detached homes, or up to four dwelling units per acre if they are planned to connect to a public wastewater system. With a public wastewater system - four dwelling units per acre for single-family detached homes, and twelve dwelling units per acre for townhouses or multi-family dwelling structures (apartments, condominiums, etc.). The potential for bonus density incentives for providing social and physical amenities, such as affordable housing, sidewalks, street lighting, street furniture, active recreation, passive open space, etc., should be studied. If feasible, the bonus density incentives should be applied to the appropriate Zoning Districts during the Zoning Ordinance update process."

re: Development District

Purpose - Page 6 and 7

The paragraph shall be revised to read as follows:

"The purpose of the Development District is to concentrate in areas where public water and wastewater systems are

available or planned and where past trends indicate that growth will occur. These areas are partially developed and contiguous to the existing Municipalities in western Sussex County, and to the developed areas around the Inland Bays in coastal Sussex County. The Development District will produce a mixed-use growth pattern supported by public and private investments to provide a variety of economic development and housing opportunities. By encouraging higher residential densities, and commercial and industrial uses in this District, the pressure for development in the Natural Resource Protection Areas and agricultural areas will be reduced."

re: Development District

Guidelines for Housing Types - Page 7

The paragraph shall be revised to read as follows:

"Housing types appropriate in the Development District include single-family detached homes, manufactured housing, except single-wide units, townhouses, and multi-family dwelling structures (apartments, condominiums, etc.)."

re: Development District

Guidelines for Density - Page 7

The paragraph shall be revised to read as follows:

"Without a public wastewater system - two dwelling units per acre for single-family detached homes, or up to four dwelling units per acre if they are planned to connect to a public wastewater system. With a public wastewater system - four dwelling units per acre for single-family detached homes, six dwelling units per acre for manufactured housing parks, and twelve dwelling units per acre for townhouses, and multi-family dwelling structures (apartments, condominiums, etc.). The potential for bonus density incentives for providing social and physical amenities, such as affordable housing, sidewalks, street lighting, street furniture, active recreation, passive open space, etc., should be studied. If feasible, the bonus density incentives should be applied to the appropriate Zoning Districts during the Zoning Ordinance update process."

re: Development District

Guidelines for Non-Residential Uses - Page 7 and 8

A SEPARATE LETTER WILL BE PROVIDED BY THE ASSISTANT COUNTY ATTORNEY RELATING TO THIS SECTION.

re: Industrial District  
Guidelines for Non-Residential Uses - Page 9  
This paragraph shall be revised to read as follows:

"Commercial uses in the Industrial District are those allowed by the Sussex County Zoning Ordinance."

re: Commercial District  
Location - Page 10  
This paragraph shall be revised to read as follows:

"The Commercial District includes zoned land for Neighborhood Business, General Commercial and Urban Business. The zoned land is separated into many parcels dispersed throughout the County. The majority of the District's parcels are located along State Route 1 north of Rehoboth Beach, and along U.S. Routes 13 and 113, within the Town Center or Development Districts. In addition, there are numerous individual Commercial District parcels throughout the County. The majority of the commercially zoned land along State Route 1, and U.S. Route 13, and the individual parcels throughout the County are developed. The majority of the commercially zoned land along U.S. Route 113 is not developed."

re: Commercial District  
Guidelines for Housing Types - Page 10  
This paragraph shall be revised to read as follows:

"Housing types appropriate for the Commercial District are those allowed by the Sussex County Zoning Ordinance."

re: Commercial District  
Guidelines for Density - Page 10  
This paragraph shall be revised to read as follows:

"The residential density for the Commercial District is that allowed by the Sussex County Zoning Ordinance."

re: Commercial District  
Guidelines for Non-Residential Uses - Page 10  
This paragraph shall be revised to read as follows:

"Industrial uses in the Commercial District are those allowed by the Sussex County Zoning Ordinance."

re: Agricultural Residential District  
Purpose - Page 10  
This paragraph shall be revised to read as follows:

"The purpose of the Agricultural Residential District is to provide for a full range of agricultural activities and to protect agricultural lands, as one of County's most valuable natural resources, from the depreciating effect of objectional, hazardous and unsightly uses. They should also protect established agricultural operations and activities. These Districts are also intended for protection of watersheds, water resources, forest areas and scenic values and, at the same time, provide for low-density single-family residential development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings. The District seeks to prevent untimely scattering of dense urban uses, which should be confined to areas planned for efficient extension of public services. Soils in this District are generally suitable for on-site septic systems."

re: Agricultural Residential District

Location - Page 10

This paragraph shall be revised to read as follows:

"The Agricultural Residential District includes the majority of Sussex County's acreage and generally consists of those land masses which are not under the influence of medium to high density development pressures."

re: Agricultural Residential District

Guidelines for Housing Types - Page 10

This paragraph shall be revised to read as follows:

"Housing types appropriate for the Agricultural Residential District are generally limited to single-family detached homes. A double-wide manufactured home may be permitted on a lot of one acre if approved by the Sussex County Board of Adjustment. Zoning Ordinance amendments shall be necessary to delete a manufactured home as a permitted use on a parcel containing five acres or more."

re: Natural Resource Protection Area

Conservation Overlay Zone

Guidelines for Density - Page 11

This paragraph shall be revised to read as follows:

"Guidelines for Residential Density within the Conservation Overlay Zone shall be determined by the underlying zone except that the minimum lot size shall be one acre for on-site septic systems."

re: Public and Private Resource District

Purpose - Page 12

This paragraph shall be revised to read as follows:

"The Public and Private Resource District identifies, on the Future Land Use Map, the Protected Resource Areas of Sussex County which are under public or private ownership for specified uses and not likely to be converted to nonrelated uses in the future. The primary purpose of this District is to preserve and maintain open space for recreational use and environmental conservation. In addition, the District includes major holdings of land for institutional and solid waste disposal uses. The majority of this District's acreage, which is in the Agricultural Residential District, is being preserved to maintain its natural character for environmental and open space purposes, and is not planned for intense recreation or other uses. A much smaller portion of the District's acreage, contiguous with the County's Growth Area, provides active recreational facilities."

re: Public and Private Resource District

Guidelines for Infrastructure - Page 12

This paragraph shall be revised to read as follows:

"The preservation parcels of this District will utilize on-site water and wastewater systems for any administrative, visitor and maintenance facilities. Limited recreation and other uses will be adequately served by the existing roadway network. However, the provision for a multimodal transportation system to interconnect the preservation parcels with each other, and with the County's Growth Area, could be an asset to the natural environment and open space purposes of these parcels. The active recreation and other use parcels primarily contiguous with the Growth Area will often require public or centralized on-site water and wastewater systems. This is especially true for beachfront recreational facilities. The planning of any major expansion of these facilities should be coordinated with the expansion of adjacent Municipal or County water and wastewater systems. Likewise, transportation planning should be coordinated with that of the County's Growth Area as described for the Development District."

re: Public and Private Resource District

Guidelines for Housing Types - Page 12

This paragraph shall be revised to read as follows:

"Housing types appropriate for this District are recreational, employee or caretaker dwellings compatible with the activity and purpose of the resource parcel."

re: Public and Private Resource District  
Guidelines for Density - Page 12

This paragraph shall be revised to read as follows:

"Low, medium or high density appropriate for the activity and purpose of the resource parcel."

re: Public and Private Resource District  
Guidelines for Non-Residential Uses - Page 12

This paragraph shall be revised to read as follows:

"Commercial and agricultural uses appropriate to support the activity and purpose of the resource parcel."

re: DNREC Proposed Resource Area  
Guidelines for Density - Page 13

This paragraph shall be revised to read as follows:

"One dwelling unit per acre. Within the Development District or Agricultural Residential District, property may be rezoned to a higher density if DNREC elects not to purchase the land within a reasonable time period. A reasonable time period is twenty working days from the date of notification."

re: AGRICULTURAL LAND PROTECTION AREA

Agricultural Protection District - Page 14 and 15

This section shall be deleted in its entirety. Portions of the original section have been rewritten and combined with the Agricultural Residential District descriptions.

re: Figures 3A, 3B, 3C, and 3D on Page 17 shall be deleted in their entirety since the Agricultural Protection District is being deleted.

The MOBILITY ELEMENT, Pages 18 through 22, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The WATER AND WASTEWATER ELEMENT, Pages 23 through 25, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The CONSERVATION ELEMENT, Pages 26 through 30, is recommended as written in the Draft, Revision 1, dated October 24, 1996, with the following changes:

re: Conservation Growth Management Strategies  
Page 29 - last paragraph

This paragraph shall be revised to read as follows:

"Because the 1997 Sussex County Comprehensive Plan proposes a one acre minimum lot size for on-site septic systems which encompasses the majority of the existing non-tidal Conservation Overlay Zone, the Plan has deleted this portion of the Zone. The above described existing Zoning Ordinance Buffer Zone requirements will remain as adopted."

The RECREATION AND OPEN SPACE ELEMENT, Pages 31 through 33, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The HOUSING ELEMENT, Pages 34 through 36, is recommended as written in the Draft, Revision 1, dated October 24, 1996, with the following changes:

re: Housing Growth Management Strategies  
Page 35 - Second paragraph

This paragraph shall be revised to read as follows:

"Historically, upper-income and retirement communities have developed in the coastal area while other-income housing is located in the Municipalities and dispersed throughout the County. The major housing challenges are to develop a viable multi-family production program to create low-income rental housing units, create more home ownership opportunities for first-time buyers by expanding the availability of below-median priced homes, and increase housing rehabilitation activity. Approximately one-half of all building permits issued in the County are for manufactured housing meeting the HUD Code. This type of housing could play a significant role in meeting the demand for affordable housing. Specific Housing Growth Management Strategies include:

\*Utilize intergovernmental coordination to develop consistent public investment and taxation policies, and land use growth management strategies which provide the greatest range of housing opportunities for all resident income levels. These housing opportunities should not be located on isolated sites, rather, they should be located within the areas of the County which offer the greatest visual and cultural character.

\*Promote mixed-use cluster developments where public water and wastewater systems are provided. These developments permit variation in lot size, shape and orientation, without increasing the development's overall density; and provides a

flexible, but unitary plan, which integrates conservation of open space and natural features with a mix of single-family, townhouse, and multi-family housing types. The developments shall be conducive to travel by transit, ride sharing, bicycles, and walking; and provide on-site services such as stores, restaurants, banks, child care facilities, recreational opportunities, etc., which reduces the need for auto access to, and within, the development. Mixed-use cluster development will preserve open space, tree cover, scenery, natural drainageways; and facilitate attractive and economical site design, and better overall use of land.

\*Encourage rehabilitation and reuse of historically significant housing units or adaptive reuse of other historic structures for housing through tax incentives or grants.

\*Encourage the Federal Government to increase funding for rehabilitating homes owned or rented by low income families to meet the State Housing Code.

\*Provide housing opportunities in and adjacent to incorporated towns with existing public infrastructure to allow for multi-family developments.

\*Utilize various low and moderate income home loan and housing subsidy programs."

The INTERGOVERNMENTAL COORDINATION ELEMENT, Pages 37 and 38, is recommended as written in the Draft, Revision 1, dated October 24, 1996, with the following changes:

re: Intergovernmental Coordination Implementation Strategies  
Page 38 - First Bullet

This paragraph shall be revised to read as follows:

"Establish an Intergovernmental Coordination Zone for each Municipality which would be one mile from the existing Municipal Boundary."

A SEPARATE LETTER WILL BE PROVIDED BY THE ASSISTANT COUNTY ATTORNEY RELATING TO THIS ELEMENT.

The COMMUNITY DESIGN ELEMENT, Pages 39 through 41, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The HISTORIC PRESERVATION ELEMENT, Pages 42 through 44, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

The ECONOMIC DEVELOPMENT ELEMENT, Pages 45 through 47, is recommended as written in the Draft, Revision 1, dated October 24, 1996.

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January 30, 1997

John Allen  
Chairman  
Sussex County Planning & Zoning Commission  
County Administrative Building  
2 The Circle  
Georgetown DE 19947

RE: 1997 Proposed Sussex County Comprehensive Plan

Dear Chairman Allen:

Please accept this as the letter which I have prepared to attach to the County Comprehensive Plan as an expression of my concerns as to certain elements of the proposed Plan.

GROWTH AREA DEFINITIONS

In the draft Comprehensive Plan, the Development District, provides for the full range of the appropriate housing types and includes commercial uses, large shopping centers, and heavy industry along U.S. 13 and 113. Industrial Districts include no housing but do permit commercial uses as ". . .allowed by the Sussex County Zoning Ordinance.". Commercial Districts permit housing types as ". . .allowed by the Sussex County Zoning Ordinance" and Industrial Uses as ". . .allowed by the Sussex County Zoning Ordinance.". Thus, each of the three Districts would permit a large number of uses from the other two districts.

This intertwining of Development, Industrial and Commercial Uses in the Plan and reliance upon the County Zoning Ordinance for clarification, may have two results:

First, a wide range of flexibility and discretion is given the County Council and Planning Commission to grant uses through amendments to the zoning ordinance "in accordance with" the Plan. This is not necessarily a detrimental result.

Secondly, the Plan may be so ambiguous it encourages controversial applications for which no court can reasonably find that the zoning decision was made "in accordance with" the Plan. This may be a detrimental result.

It would seem that the County Council and Planning Commission each will have a greater burden of creating a record of substantial evidence to support their conclusions that goes beyond the normal procedures of being well informed in exercising judgment and setting forth grounds for decisions. Trying to balance between site specific zoning decisions and the land use plan may become more difficult for the Council and the Commission to the point that stricter standards may have to be imposed upon applicants to provide more substantial evidence to support applications.

#### INTERGOVERNMENTAL COORDINATION

Within the proposed Plan recognition is given to the necessity for land use planning decisions near municipalities to be coordinated between the County and the town. Clearly, the zoning decisions of one jurisdiction affects the other. For example, there has been a recent trend in Sussex County for municipalities to plan annexations outside of their traditional boundaries because of the perceived benefit to the town derived from growth which involve considerable expenditure of public funds for infrastructure. There also are areas in the County where the implementation of the ICOZ will be complicated by the existence of multiple contiguous municipalities which may have competing views on land use planning and annexation.

These problems cannot be solved by the Plan because the County lacks the ability to impose reciprocity or notice requirements on towns through County zoning ordinances. For example, the County typically gives notice to municipalities of adjacent land use applications which have been made so that the towns may comment. However, there is no such obligation upon the towns to reciprocate even though their land use planning and annexation decisions affect adjacent County areas. Until this is resolved, it will be difficult for any interjurisdictional coordination to occur.

The County should work with the Sussex County Association of Towns and the General Assembly to create legislation to bring about the coordination through notice and comment requirements between State, County and municipalities on matters of land use planning decisions and annexation which adequately protects the interests of the inhabitants of all three levels of government without the surrender of local autonomy.

Thank you for the opportunity to express my thoughts on  
these two issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis L. Schrader". The signature is fluid and cursive, with a large, stylized "S" at the end.

Dennis L. Schrader  
Assistant County Attorney  
Sussex County, Delaware

DLS/lkpr