

## MINUTES OF THE REGULAR MEETING OF FEBRUARY 10, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 10, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:30 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Mr. Allen noted that C/Z #1395 - Robino Sea Chase, L.L.C. had been withdrawn from the agenda.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as amended with the withdrawal noted.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of January 27, 2000 as corrected.

Mr. Schrader explained how the meeting would be conducted.

### IV. PUBLIC HEARINGS

C/U #1325 -- application of MARK WOLFE 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 28,393 square feet, more or less, lying south of Road 275A, 1/4 mile east of Road 274.

When the Chairman opened the public hearing, no one was present on behalf of the applicant. There was a consensus of the Commission to delay action on the application until the end of the public hearing schedule in case the applicant or a representative was delayed.

At the end of the public hearings, the Chairman reopened the public hearing.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex County Engineering Department, that the proposed use will result in a net increase of one unit; that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the site was connected to the sanitary sewer system on April 10, 1997; that a single 6-inch lateral has been provided; that both units can be connected to

this lateral; that capacity is not a concern; that system connection charges will be due for the increase in units at a charge rate of \$2,954.00 for the period July 1, 1999 to June 30, 2000.

The Commission found that the applicant was present and stated in his presentation and in response to questions raised by the Commission that he resides on the premise; that he proposes to convert the existing garage into an apartment for his mother; that the apartment will contain one bedroom, one bath, a kitchen, and a living room; that the proposed one-room efficiency apartment noted on the site plan is an error and is not proposed; that a six-unit apartment building exists on the adjacent lot to the east; that a dwelling exists on the adjacent lot to the west; that commercial zoning exists across Road 275A; and that the driveway exists and will have to be improved and widened.

The Commission found that no parties appeared in support of or in opposition to the application.

At the conclusion of the agenda items, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The garage may be converted to an apartment for the mother only.
2. The apartment shall not be a rental unit.
3. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Carried 5 - 0.

C/Z #1395 -- application of ROUTE 24 AUTO SALES to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, lying west of Route 24, approximately 300 feet south of Route 5, to be located on 2.41 acres, more or less.

The Commission found, based on comments received from DelDOT, that the Department has reviewed a Traffic Impact Study prepared by Traffic Concepts, Inc. for the project; that the project will be in a Multimodal Investment Area with respect to the Statewide Long Range Transportation Plan; that the Department would not be opposed to the project; that the Department's review of the Traffic Impact Study indicates that acceptable levels of service would exist at the study intersection for the 2001 future traffic, with the



exception of left turns exiting the site, therefore, if the County is inclined to approve the development plan for the site similar to what is addressed in the Traffic Impact Study, the Department recommends that the following items should be incorporated into the site design, reflected on the record plan, and completed prior to the issuance of any certificates of occupancy: 1) as part of the plan review process, the developer shall submit to the Department's Subdivision Section entrance plans showing the proposed construction with re-striping and other improvements deemed necessary by the Subdivision Section and the Traffic Engineering and Management Section; 2) the record plan should include a sidewalk along the frontage of the property if a used car lot is built or a sidewalk along the frontage of the property and extending to the intersection of Route 24 and Route 5 if a shopping center or other retail use with a significant potential for pedestrian traffic is built; and that the Department reserves the right to comment further as revisions are made to the land development plan, and intersection and entrance improvements are submitted for review.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State objects to the proposal since the project is located in a Rural area and borders the Environmentally Sensitive areas of the Strategies for State Policies and Spending document, adopted in December 1999, where state policies will be to encourage the preservation of a rural lifestyle and discourage new development; that these strategies support the idea of businesses being located closer to incorporated areas; that if the County approves the rezoning, the State suggests that the County consider requiring a dry sewer to be installed for future connection to a central system or dual septic systems if central sewer is not planned for this side of Route 24; that the project will add to the accumulation of unsewered development in this sensitive natural resource area and that the State is concerned for the protection of the water resources; that the adopted nutrient Total Maximum Daily Loads regulations call for significant reductions in nitrogen and phosphorous loads from point and non-point sources; that if this parcel is developed, adequate pollution control measures, such as buffers along watercourses and stormwater management that addresses nutrients along with sediments, should be installed; that if the project is approved the applicant shall be required to contact the Office of the State Fire Marshal to submit site plans and building plans; and that the State agrees with the comments provided the DelDOT.

The Commission found that Jesse Hall, Julie Hall, James Griffin, Attorney, and Kevin Burdette from McCrone, Inc. were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that the applicants own and operate the Long Neck Car Care facility; that they have run out of space at the Long Neck site; that they have been at the current facility for 10 years; that they propose to move the automotive and truck sales facility to this site and retain the automotive repair facility at the Long Neck site; that the use meets the purpose of the C-1 General Commercial District; that the applicants agree to comply with the request of DelDOT;



that they disagree with the comments from the Office of State Planning Coordination since they do not feel that rezoning the parcel will impact a rural lifestyle since the area is not rural, and referenced the commercial activities on three corners of the intersection of Route 24 and Route 5 and the number of homes and mobile homes in the Long Neck Area; that central water is available from Tidewater Utilities; that they may connect to the Long Neck Sanitary Sewer District when available; that the traffic impact study was prepared with a small shopping center in mind for the purpose of traffic counts; that they propose a 4,400 square foot building for office and showroom and a 4,600 square foot building for future use; that adequate space is available for parking; that no wetlands have been found on the site; that the site is not in a flood plain; that the site is across Route 24 from the Development District according to the 1997 Comprehensive Plan; that the site is in close proximity to Long Neck, a developing unincorporated area; that stormwater management will be in the front portion of the site; that rezoning was requested, rather than Conditional Use, since used car sales are listed as a permitted use, and since a Conditional Use would require using the catch-all phrase, which may create legal problems, and since the applicants can get better financing with commercial zoning; that the vehicles will be washed on the site; that major repairs will be performed at the Long Neck facility; that 8 to 10 employees may be on the site upon completion of the project; that approximately 30 vehicles will be displayed for sale; that they plan to start construction upon receipt of all approvals and permits; that they have a customer base within a radius of 25 miles; that they have spoken to neighbors and heard no objections; that a steel building is proposed; that no warehousing and no manufacturing are proposed; that there should be no dust, odors, or noise associated with the business, that they are willing to impose private covenants to restrict the uses permitted on the site; and that fencing will be provided around the parking area as required by the Zoning Ordinance; and that business hours are proposed to be from 9:00 A.M. to 8:00 P.M. during summer months, 9:00 A.M. to 6:00 P.M. during the other seasons, with no Sunday hours.

The Commission found that the applicants submitted for the record, a copy of their Traffic Impact Study, five photographs of the Long Neck facility, petitions in support of the application containing 209 signatures, a letter from Baltimore Trust Company in reference to financing, a letter from the proposed contractor for the construction of the building, sketches of the proposed building, 3 letters in support from adjacent property owners, and a Declaration of Restrictive Covenants.

The Commission found that no parties appeared in support of or in opposition to the application.

At the conclusion of the agenda items, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried with 4 votes, with Mr. Hastings opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be approved since the site is in close proximity to other commercial uses in the area, and since the site is across from the Development District boundaries within the 1997 Comprehensive Plan.

#### V. OLD BUSINESS

Subdivision #99-12--application of JOSS HUDSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 30.62 acres into 26 lots, located north of Road 280, 1,850 feet southeast of Road 290.

Mr. Abbott advised the Commission that this application was deferred on August 26, 1999 pending a septic feasibility statement from DNREC; that preliminary approval was granted on October 14, 1999; that the final record plan meets the minimum requirements of the subdivision ordinance; that all agency approvals have been received; that Mr. Schrader has reviewed and approved the restrictive covenants; that Steve McCabe has written two letters to the construction company doing site work; that a representative from the construction company has responded to Mr. McCabe's letters; that the staff has received a letter from the Sussex Conservation District; and submitted photographs which were taken by the Sussex County Engineering Department referencing the site work which has taken place to date.

Darrin Lockwood of Meridian Engineering and Pinnacle Construction was present and advised the Commission in his presentation and in response to questions raised by the Commission that his construction company was doing site work; that he was not aware that he had to contact anyone prior to clearing; that no dirt has been moved on the site for construction of the roads; that they started to timber the site so that no employees would have to be laid off; that all work has been shut down on the site and that the repairs requested by the Sussex Conservation District has been completed; and that the developer should not be held responsible for the site work that has taken place.

Deborah Duocette, an adjoining property owner was present and advised the Commission that she has the same concerns made at the public hearing; that the drainage ditch has been filled; that the developers are not complying with the agencies; that Road 280 has been damaged; that trespassing has occurred; wants to make sure that her property rights are protected; that DelDOT has been out to the site and that additional paving will be required; that the sales brochure references the development as a gated community and that no gate is shown on the record plan; and that a diesel tank on site is leaking.



Deborah Pulli, an area resident was present and advised the Commission that damage has occurred to the right of way in front of her home; that her driveway has been damaged with ruts from large trucks; that the right of way is not fifty feet in width; concerns for the safety of children in the area; and concerns about large vehicles trying to enter the site.

Mr. Allen advised that the damage to the driveway would require civil action.

Mr. Schrader questioned where the gate is located on the site plan.

Roger Gross, engineer with Meridian Consulting Engineers advised the Commission that the gate was decided on at the last minute; questioned if the gate is required to be shown on the record plan; that only clearing has been done on site and not actual road construction; that all of the interior right of ways have been cleared; that he prepared the record plan and has met all obligations by obtaining all appropriate agency approvals and that all corrections deemed necessary will be completed.

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

Subdivision #99-13--application of CHARLES H. GUY to consider the Subdivision of land in an AR-1, Agricultural Residential Zoning District and a GR General Residential Zoning District in Indian River Hundred, by dividing 26.14 acres into 23 lots, located at the intersection of Road 290 and Road 292.

Mr. Abbott advised the Commission that this application was deferred on August 26, 1999 pending receipt of a septic feasibility statement from DNREC; that preliminary approval was granted on October 14, 1999 for 23 lots; that the final record plan meets the minimum requirements of the subdivision ordinance; that all agency approvals have been obtained; and that Mr. Schrader has reviewed and approved the restrictive covenants.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

Subdivision #99-17--application of ROBERT W. DURHAM to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred, by dividing 35.61 acres into 35 lots, located east of Road 463, 1,760 feet south of Road 74.

Mr. Abbott advised the Commission that this application was deferred on September 23, 1999 pending a septic feasibility statement from DNREC; that the septic feasibility statement has been received and that the lots are suitable for individual on site septic systems; and that George Shaw advised the staff that DelDOT will permit the two entrances as shown on the preliminary plan.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

## VI. OTHER BUSINESS

### Rehoboth Mall Redevelopment Revised Commercial Site Plan - Route One

John Sergovic, Attorney, and Randy Duplechain, Engineer with Davis, Bowen and Friedel were present as the Commission reviewed a revised site plan for the Rehoboth Mall located off of Route One.

Mr. Abbott advised the Commission that the staff has received a legal opinion from Rick Berl, Assistant County Attorney, in reference to what could be considered gross leaseable area

Mr. Sergovic advised the Commission that the owners of the mall are willing to close off approximately 30,300 square feet so that the revised plan will meet the parking requirements of the ordinance; that the area will be similar to a covered sidewalk; that the owners of the mall are in the process of obtaining additional land that will be subject to a rezoning application being filed; and that the owners of the mall will record a covenant restricting the use of the area in question.

Mr. Schrader advised the Commission that if they are receptive to this proposal that he would like to have thirty days to work out the wording of the agreement between the mall and the County.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised plan as submitted with the stipulation that the wording of the agreement is done within thirty days.

### Bayville RPC Revised Preliminary Site Plan - Route 54

Jeff Clark of Land Tech Inc. was present as the Commission reviewed a revised site plan for the Bayville Shores residential planned community off of Route 54.

Mr. Clark advised the Commission that the plan is a revised master record plan from the one approved on May 13, 1999; that the proposed entrance to the site has been relocated further west and that DelDOT supports the revised entrance location; that the site plan has been revised to maximize the views of the wetlands; that the same number of units is



still proposed; that there is no commercial activity proposed; that they are in the process of developing a phasing plan; and that the property is in the process of being sold.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the revised plan as a revised master plan.

Century - Mears, L.L.C.  
Preliminary Commercial Site Plan - Route One

The Commission reviewed a commercial site plan for an office complex located off of a private road south of Route One near Rehoboth.

Mr. Abbott advised the Commission that the proposed office space is 10,800 square feet; that the setbacks meet the requirements of the zoning code; that 54 parking spaces are required and that 55 are proposed; that 1 loading space is required and provided; and that the plan is acceptable for preliminary approval.

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

Kenneth and Dona Troyer  
Agricultural Setback Variance - Road 633

The Commission reviewed a variance request from the fifty-foot agricultural setback for a dwelling next to active agricultural farmland.

Mr. Abbott advised the Commission that the owners propose to build a dwelling and would like to have the regular AR-1 Agricultural Residential setbacks of 40 feet from the front property line, 15 feet from the side property lines, and 20 feet from the rear property line; and that the adjoining property owners have submitted letters of no objections.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the variance request.

Subdivision #96-17 - - Dale Wheatley  
Revised Preliminary

The Commission reviewed a revised record plan for Morningside Village II subdivision.

Mr. Abbott advised the Commission that this application received preliminary approval on October 9, 1997 for 88 lots located on 80.27 acres; that a time extension was granted



February 11, 1999 and that the preliminary approval is now valid until February 11, 2000; that the final plan has been revised to 85 lots on 63.92 acres including an area that was not a portion of the plan that received preliminary approval and questioned if another application would be required to be filed.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the revised record plan as a preliminary and to approve a six- (6) month time extension.

Subdivision #98-2 - - Blue Ribbon Properties, L.L.C.  
Revised Preliminary

Mr. Abbott advised the Commission that the staff has received a request to be able to place a 20 foot drainage swale inside the 30 foot forested buffer strip adjacent to agricultural lands; that the proposed plantings will be staggered along the top of each side of the swale; and that the minutes of the February 26, 1998 meeting make no reference to any improvements being located within the buffer.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to deny this request.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve a one-year time extension.

Meeting adjourned at 10:15 PM.