

## MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 12, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following members present:

Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of January 22, 1998 as corrected.

Mr. Schrader explained how the meeting will be conducted.

### II. Public Hearings

The following comments, relating to public hearings, are findings of the Planning and Zoning Commission based on a summary of comments read into the record, and comments stated by interested parties in support of or in opposition to an application. Also referenced are exhibits that may have been presented in support of or in opposition to an application.

C/U #1225--application of DAVID L. WILSON to consider the conditional use of land in an AR-1 Agricultural Residential District for an auction (indoor/outdoor) with additional uses listed on the enclosed sheet to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 35.99 acres, more or less, on the west side of U.S. Route 113, southbound lane, approximately two miles north of U.S. Route 16 (Ellendale) and two miles south of Lincoln.

The Commission found, based on comments made by Mr. Lank, that a similar application, C/U #1087, was applied for on July 19, 1994; that the application included an Indoor/Outdoor Auction, Farm Equipment Sales, New and Used Indoor/Outdoor Auction Items, Farmers Market and Auction, Wholesale and Retail, Restaurant and Snack Bars, Assembly Hall, Storage and Warehousing, Tent Sales and Parking Area; that public hearings were held by both the Commission and County Council; and that the County Council granted approval on December 20, 1994 with the following ten (10) conditions:

1. The use shall be restricted to automotive sales, and the sale of farm equipment, construction equipment, boats and boat trailers, and farm related items.
2. Warehousing shall be permitted.
3. No outdoor storage shall be permitted, except for items offered for sale. Items offered for sale shall be removed within 72 hours of their first offering.
4. A minimum building setback of 100 feet shall be provided



- from any residential lot.
5. A minimum building setback of 200 feet shall be provided from any residential use.
6. Appropriate fencing and/or screening shall be provided where deemed necessary by the Planning and Zoning Commission during the site plan review process.
7. Auction hours shall be no earlier than 7:00 a.m. and no later than 11:00 p.m., Monday through Saturday, with no Sunday auctions.
8. Security lighting shall be located so as not to impact adjoining residential uses or motorists traveling along U.S. Route 113.
9. Site plans, including location and design of any outdoor sound systems, shall be subject to review and approval of the Planning and Zoning Commission.
10. Final site plans shall not be considered until all appropriate agency permits and/or approvals have been received by the Office of the Planning and Zoning Commission.

Mr. Lank also advised the Commission that Conditional Use #1087 was now void due to lack of being substantially underway, and that time extensions were not requested in the prescribed manner referenced in the Zoning Ordinance.

The Commission found, based on comments received from the Delaware Office of State Planning Coordination, that while the State acknowledges the applicant's hopes of relocating his business to a larger site, it must relay significant transportation concerns expressed by DelDOT; that DelDOT recommends denial of this application since the proposed action would be inconsistent with its Long-Range Transportation Plan; that the property falls in a Preservation Investment Area where DelDOT tries to preserve its transportation investments, especially a newly expanded and surfaced highway like Route 113; that because DelDOT does not plan to add highway capacity in Preservation Investment Areas, DelDOT wants to be sure the land in those areas remains in relatively passive uses such as agriculture; that DelDOT has also identified this section of Route 113 as where it wants to implement the Corridor Preservation Program, a program which tries to preserve highway capacity along certain principal arterial roads by minimizing the number of intersections and entrances created along them; that State Planning suggests that the County revisit its Comprehensive Plan which labels this area an Agricultural Residential District where agriculture, low-density residential development, convenience shopping, and industries and services related to agriculture are the uses considered appropriate for such a district; that structural plans should be submitted to the Office



of the State Fire Marshal; that the Department of Natural Resources and Environmental Control (DNREC) recommends that due to the projects size and the area's loamy soils, the site should be evaluated by a soil scientist to determine the best location for the required commercial on-site septic disposal system; and that DNREC reminds the County that if this application is approved, a public use well would be required.

The Commission found that David L. Wilson and Harry Murphy of Charles D. Murphy and Associates were present on behalf of this application and stated, in their presentation and in response to questions raised by the Commission, that the intended uses are the same as Conditional Use #1087; that the use is an appropriate use in an area along a major arterial roadway; that the site could be used for any permitted agricultural activity and then summarized the permitted uses within the Zoning Ordinance; that there should be no conflicts with the Comprehensive Plan; that DelDOT approved the entrance in 1994; that some screening exist along Hudson Pond Acres; that a 100' wide lot is proposed along Hudson Pond Acres to separate the subdivision from the site; that no wetlands will be impacted; that no flood plain will be impacted; that business hours are proposed to be from 7:00 a.m. to 11:00 p.m. daily, except for Sundays; that Sunday hours are proposed to be from 12:00 p.m. to 6:00 p.m.; that clamshells are proposed for surfacing of the parking areas; that fire protection will be provided by the Ellendale Fire Company; that tree clearing will be held to a minimum; that parking and loading will exceed the County specifications; that the dualization of U.S. Route 113 has impacted the existing site; that no auctions will be held on Sundays; that security lighting will be provided; that a 6' high chain-link fencing is proposed along Hudson Pond Acres; that the site plan will meet or exceed County specifications; that the automotive, farm equipment, and construction equipment auctions are being relocated to this site; that the restaurant and snack bar will only be operated in conjunction with the auctions; that the warehousing is proposed to store small tools, construction equipment and farm equipment in preparation for an auction; that tents will be provided for auctions scheduled during bad weather; that a farmer's market is not proposed; that a building, existing on the site, is partially torn down; that some concrete from the U.S. Route 113 paving project still exist on the site; that the concrete is to be removed by the contractor; that the site was to be returned to its original condition after completion of the paving project; that typically, the auto auctions last until 9:00 p.m. or 9:30 p.m., and that the patrons have exited the site within one hour of completion of the auction; that it could be possible to have three or four auctions per week; that typically, the farm equipment and construction equipment auctions have been held twice per year; that the automotive auctions are held indoors; that the only outside



speakers are for paging people, not auctioneering; that automotive auction attendance may include 300 to 350 patrons; and that the buildings will be insulated pole building construction with metal siding, similar to buildings on the existing site.

The Commission found that Mr. Wilson would agree to the same conditions imposed on Conditional Use #1087, and that the uses should be noted as titled in the title to Conditional Use #1087, with the exception of a farmers market.

The Commission found that William David Bell, Robert Greene, and Louis Kish, residents of Hudson Pond Acres, were present in opposition and expressed concerns about the notification process; that the existing screening is not adequate for screening between a commercial venture and a residential subdivision; that some of the screening is actually on the residential lots and not on land owned by the applicant; that the applicant has been violated by the State DNREC for several violations; that they question how the dualization of U.S. Route 113 has affected the existing site; that they object to the site being used daily; that they question the need since another automobile auction exist's in Felton; that the Commission concluded on Conditional Use #1087 that the use was not justified, and that if the applicant would straighten up his existing site the expansion would not be needed; that three years have passed and activities at the existing site continue; that the Commission should be proud of their previous recommendation of denial; that the Hudson Pond area has had a reduction in property values as a result of the County Council approval of the previous application; that the applicant has continued to clean his stables and to transport the manure and saturated straw to the site for spreading; that the Hudson Pond could be impacted by the run-off from the manure; that most of the trees have already been removed from the site; that the unnecessary use of farm equipment on highways should be eliminated; that creation of another un-necessary high usage entrance off of U.S. Route 113 is unwarranted and adds to the potential for accidents; that the site would be more appropriate for a future recreation site with water access and/or nature preserve; that approval of this application would create an auction site on both sides of a residential subdivision; that the value of one home adjacent to the site is more valuable than the entire site; that interested buyers, looking at homes in the area, ask about the intent of the proposed auction site and that sellers are required, by law, to advise the interested buyers on the intended use; that there is no need for an additional auction site; that one auction site in the area is enough; that the use proposed can continue on the existing site; that the use impacts the quality of life of the residents in the area by the increased traffic, and increased noises, odors, and lighting; and that the only citizen of Sussex County that will benefit from this application



will be the applicant.

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

C/U #1226--application of DOUGLAS H. HITCHENS to consider a conditional use of land in an AR-2 Agricultural Residential District for used cars and parts sales to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.76 acres more or less, southeast of Road 448, 800 feet northeast of Road 62.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the present level of service "A" of Road 448 will not be impacted by this application.

The Commission found that the applicant was present and stated in his presentation and in response to questions raised by the Commission that he intends to sell reconditioned motors and transmissions that are ordered, not salvaged; that no outside storage of parts is proposed; that proposed hours of business are 9:00 a.m. to 9:00 p.m. with Sunday hours from 9:00 a.m. to 12:00 p.m.; that no auto body work or painting is proposed; that the used cars will be displayed behind the fenced area behind the house; that there will be no salvage of parts off of vehicles; that there will be no fuel stored on the site; that an outside shop light and pole light exist's on the site and that no additional lighting is proposed; and that a small identification sign is proposed at the front of the lot.

The Commission found that Bobbi Daye, Stella Daye, Dan Taylor, and Herbert Kester, area residents, were present in opposition and expressed concerns about the loss of privacy, depreciation of property values, and traffic safety; that the site would become an eyesore; that the customers would be unfamiliar with the fact that children exist in the area; that the hours of business stated do not reflect the activities already taking place on the site; that fencing does not block views; that Sunday hours should not be permitted; that the applicant is leasing the site and is not the landowner; that vehicles are being worked on and driven at all hours of the day and night; that radio noises can be heard inside of homes at night; that the area is a nice quiet residential neighborhood, with the exception of this site; and that evenings should be a time of relaxation in a residential neighborhood, not a time to run a business that creates noises, odors, and traffic.



Motion by Mr. Hastings, seconded by Mr. Phillips, and carried 4-1 with Mr. Wheatley opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions:

1. Business hours shall be limited to 8:00 a.m. to 8:00 p.m. with Sunday hours limited to 9:00 a.m. to 12:00 p.m.
2. No auto body work or painting shall be permitted.
3. All automobile displays shall be behind the fenced area.
4. No auto salvage or storage of junk vehicles shall be permitted.
5. Security lighting shall be directed away from adjoining residential properties.
6. One un-lighted sign, not exceeding 32 square feet per side or facing, may be permitted.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/U #1228--application of DIANA F. TUNIS to consider the conditional use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 2.0 acres, more or less, lying northeast of County Road 518, 520 feet southwest of Route 9.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "D" of Route 9 and the level of service "A" of Road 518 will not change as a result of this application.

The Commission found that Diana F. Tunis and Herbert Tunis were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they are proposing to utilize a shop recently built on their parcel as an auto repair shop; that they are proposing to build a fence behind the shop for a car corral to store no more than 20 vehicles; that they would like to have a 4' by 8' sign on the front of the building; that a commercial entrance permit has been obtained from DelDOT; that no welding or painting is proposed; that the closest neighbor is approximately 800 feet away from the shop; that the proposed business hours are from 8:00 a.m. to 10:00 p.m.; and that the fencing proposed is 6' high chain-link with slats or webbing.

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

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



1. No welding shall be permitted.
2. No painting shall be permitted.
3. Business hours shall be from 8:00 a.m. to 10:00 p.m.
4. One sign shall be permitted to be placed on the shop building.
5. A 6' fencing shall be provided for storage of vehicles behind the shop building. The fencing shall be solid or chain-link with slats or webbing.
6. No more than 15 vehicles shall be stored within the fenced area behind the shop.

C/Z #1332--application of ELTON RAY BEAUCHAMP to consider a proposal to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial District in Little Creek Hundred, located on the west side of U.S. Route 13, 725 feet south of Road 30, to be located on a parcel containing 32,825.67 square feet, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the level of service "E" of U.S. Route 13 will not change as a result of this application; that the Department recommends that the County restrict the applicant to the proposed use of a parking lot; and that the Department will not allow any additional access on U.S. Route 13.

The Commission found that the applicant was present and stated in his presentation and in response to questions raised by the Commission that he owns the property and the adjoining property; that the adjoining parcel was rezoned for commercial; that the adjoining parcel has been improved with a commercial building and fencing along the rear property line; that the fencing will be continued along the rear of this parcel; that the fencing provides a buffer, screening and security for the neighbors and his property; that he proposed to utilize the site for parking relating to the business on the adjoining lot; that he may want to build another building on the site in the future; that the adjoining lot has a paved and curbed driveway entrance; that the site has been cleared of trees and stumps, but not graded; that a septic permit has been obtained for the lot; that a crusher run type of surface is proposed; that the parking lot may be paved in the future; and that the lot will drain to existing culverts under U.S. Route 13 once the lot is graded correctly.

The Commission found that Donald Cook, an adjoining landowner, spoke in opposition and expressed concerns relating to drainage, some of the past tenant activities in the existing building, outside storage, and abandoned vehicles.



Motion by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved, since the rezoning will be an extension to an existing C-1 General Commercial District owned by the applicant, and since the site is in close proximity to other commercial activities in the area.

### III. Other Business

#### 1. Lighthouse Plaza

Pret Dyer, developer, was present as the Commission reviewed a revised commercial site plan on Route One.

Mr. Abbott and Mr. Dyer advised the Commission that the revised site plan is for Parcel B, that two new buildings are proposed, that the buildings will be for retail use, that there is more parking spaces available than what is required, that the plan meets the requirements of the Zoning Code, that DelDOT has issued a letter of no objection, and that approvals will be required from the Sussex Conservation District and Fire Marshal Office.

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

#### 2. Claudio T. Smarrelli

Mr. Abbott advised the Commission that this item has been deleted from the agenda.

#### 3. Antonio Nero

The Commission reviewed a concept to create a lot off of Nero Lane within Nero Acres Subdivision off of Road 70.

Mr. Abbott advised the Commission that other lots in this subdivision have been approved through a major subdivision process.

Motion made by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to deny the request as submitted.

#### 4. Subdivision #95-12--Joseph Moore and Daniel Moore

The Commission reviewed a request for a one year time extension in order to obtain all necessary agency approvals for final approval.



Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to approve a one year time extension.

5. Subdivision #96-2--Springfield Enterprises

The Commission reviewed a request for a one year time extension in order to obtain all necessary agency approvals for final approval.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to approve a one year time extension.

6. Subdivision #96-19--Sussex Ventures, Inc.

The Commission reviewed a request for a one year time extension in order to obtain all necessary agency approvals for final approval.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried four votes to none, with Mr. Hastings abstaining, to approve a one year time extension.

7. Subdivision #96-22--Norris Niblett

The Commission reviewed a request for a one year time extension in order to obtain all necessary agency approvals for final approval.

There was a discussion about whether the time extension needs to be granted by the Commission or County Council since the County Council granted preliminary approval.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to defer action.

8. Subdivision #96-24--Timothy Ramey

The Commission reviewed a request for a one year time extension in order to obtain all necessary agency approvals for final approval.

There was a discussion about whether the time extension needs to be granted by the Commission or County Council since the County Council granted preliminary approval.



Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to defer action.

9. C/U #1173--Raab/Ford Partnership

The Commission reviewed a request to reconsider denying a time extension at the January 22, 1998 meeting.

Sally Ford was present and advised the Commission that they have done a lot of work for this project and that plans should be ready to be submitted to the Commission in the near future.

Mr. Abbott summarized written comments received from Tom Ford in reference to this request.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried two votes to two votes, with Mr. Hastings abstaining, to approve a one year time extension. Mr. Allen and Mr. Phillips voted against granting a time extension. The motion failed.

10. Ronald E. & Carolyn Jernigan

The Commission reviewed a concept to create two parcels with access from a fifty foot right of way off of Road 490.

Mr. Abbott advised the Commission that the subdivision is requested due to obtaining a loan from a bank, that the parcel with the manufactured home has to be a minimum of ten acres if the manufactured home is to remain, and that the dwelling will remain on the smaller parcel.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the request as a concept.

11. Atlantic Liquors

The Commission reviewed the final site plan for retail sales at the intersection of Route One and Road 274.

Mr. Abbott advised the Commission that the staff has received all required agency approvals and that the site plan complies with the requirements of the Zoning Code.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a final. The landscaping plan can be approved by the staff once it is submitted.



#### IV. Old Business

##### 1. Subdivision #96-1--Asa Peugh

Mr. Abbott advised the Commission that this application received preliminary approval February 22, 1996 for four lots, that a time extension was granted February 13, 1997, that the developer has obtained all required agency approvals and that the final record plan meets the requirements of the Subdivision Code.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to approve this application as a final.

##### 2. Subdivision #96-25--Robert Kitchens

Mr. Abbott advised the Commission that this application has been deferred since December 5, 1996, that the staff has received the septic feasibility statement from DNREC and that the site is not suitable for individual septic systems, and that no additional information has been received.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to deny this application due to the lack of any supporting statements from any agencies.

##### 3. Subdivision #96-26--Robert Kitchens

Mr. Abbott advised the Commission that this application has been deferred since December 5, 1996, that the staff has written letters requesting the status of the application, and that the staff has not received any comments from any agencies.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried four votes to none, with Mr. Hastings abstaining, to deny this application due to the lack of any supporting statements from any agencies.

##### 4. Subdivision #96-29--First State Storage Company

Mr. Abbott advised the Commission that this application has been deferred since December 19, 1996, that the staff has written letters requesting the status of this application, and that the staff has not received any comments from any agencies.



Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried four votes to none, with Mr. Hastings abstaining, to deny this application due to the lack of any supporting statements from any agencies.

5. Subdivision #97-6--John J. Stryholuk, Sr.

Mr. Abbott advised the Commission that this application received preliminary approval October 23, 1997 for five lots, that all agency approvals have been received, and that the final record plan meets the requirements of the Subdivision Code.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried four votes to none, with Mr. Hastings abstaining, to approve this application as a final.

Meeting adjourned at 10:25 P.M.