

MINUTES OF THE REGULAR MEETING OF MARCH 22, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 22, 2001 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley, with Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of March 8, 2001 as amended.

Mr. Schrader explained how the Public Hearings and Old Business and Other Business items would be conducted.

IV. PUBLIC HEARINGS

SUBDIVISION #2001-2 - application of **SUSSEX VENTURES, c/o DONALD WARD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, by dividing 82.61 acres into 71 lots, located south of Road 297, 2,930 feet west of Route 30.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 14, 2001 and the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a revised plan was submitted on March 20, 2001 reflecting revisions that were recommended by the Technical Advisory Committee; that revised restrictive covenants have been submitted and reviewed by Mr. Schrader; that a fax letter was received this evening in reference to Governor Minner's Executive Order No. 14; and that one letter in support and eight letters in opposition have been received.

The Commission found that Donald Ward and Drew Ward of Sussex Ventures were present on behalf of this application and advised the Commission in their presentation and in response to questions raised by the Commission that Country Meadows is proposed as a low density subdivision with restrictive covenants for single family stick built and modular homes; that the site is zoned AR-1 Agricultural Residential and is currently farmland; that the plan has been reduced to 67 lots on 76.43 acres; that the site is located on Morris Mill Road; that the soils on the property are sandy and well drained; that all lots should be approved for on site gravity septic systems; that on site wells are proposed; that the roads in the subdivision will be built to County specifications; that

traffic circles have been incorporated into the road design since the main road is greater than 1,000 feet in length; that area stormwater runoff passes through the site and nothing is proposed or anticipated that will adversely affect the flow; that a tree buffer is planned that will buffer adjacent farmland; that additional tree buffers are planned near the front of the subdivision that will provide trees around the entire perimeter; that the seventeen items listed in Ordinance No. 1152 have been addressed and added that there are woods located on both sides of the property providing natural landscape and buffers; that the Subdivision fits nicely between the woods; that there are no wetlands located on the site; that an existing swale is part of the natural drainage for the area and will be preserved as a conduit as it is now to transfer area stormwater to Cow Bridge Branch; that there are no known natural or historic features on the site; that open space is designated on the preliminary plan; that the view from all lots will be of trees; that the proposed plan will minimize soil removal and grade changes; that buffers are proposed along the front and rear of the site for landscaping and wind blocks; that a septic feasibility statement has been received from DNREC; that a erosion and stormwater management plan will be followed and enforced by the Sussex Conservation District; that there will not be any adverse impacts to erosion and sedimentation, changes in groundwater levels, increased rates of runoff, flooding and groundwater recharge; that there will be safe vehicular and pedestrian movement within the development; that the entrance will be built to State of Delaware specifications; that property values will increase in the area since land/home packages will be from \$119,000 and up; that there is a demand for affordable lots in the area; that attendance changes will be the primary change on the effects to local schools; that a gradual traffic increase will follow projected population growth; that the single family homes will be compatible to the other homes in the area; that the subdivision will improve the quality of water in Cow Bridge Branch, Millsboro Pond and Indian River since there will be a stormwater management plan to prohibit the escape of silt and other contaminants generated on the property; and that there is currently nothing that prevents runoff; that there is a need for lots in the Georgetown and Millsboro area; that they sold 19 lots in Meadow Drive last year and had more than 200 calls for lots; that the proposed high school about two miles away will increase the demand for lots in the area; that the closest comparable lots to this subdivision are three miles away at Hickory Haven; that the next closest would be four miles away at Meadow Drive west of Millsboro; that a large portion of available lots in the County are located in the resort area and command resort prices; that these type of lots were not developed with Sussex Countians in mind; that Sussex Countians want large lots located in a country setting ; that the proposed lots average about 0.90 acre, 20% larger than the county minimum lot size; that there is a demand for lots located near towns; that the Georgetown and Millsboro areas will grow by two to four percent annually for the next ten years; that it is difficult to develop building lots which are needed without using farmland or woodlands; that if the subdivision is approved, it will take some of the development pressure off other farmland in the area by making more lots available; that the State of Delaware is unaware of any

Indian remains on the site but if any are found that will cooperate with all state agencies to investigate this matter; that any runoff is currently unhindered and unimpeded as it flows to Cow Bridge Branch and despite farmers best intentions, nothing can stop this; that if the subdivision is approved, this could not happen since an approved erosion and sedimentation control plan would have to be followed; that the stormwater runoff would have to be collected in ponds where silt is deposited and water is allowed to leave in a controlled manner; that if the septic systems are installed properly, they don't pollute streams or underground aquifers; that the site is located in the Indian River Watershed and much of the rainwater percolates through the sandy soil recharging the aquifer and the excess runs into Cow Bridge Branch, that the branch is over 1,200 feet from the subdivision's closest point; that pollution should not be a concern; that the water flowing from this site into Cow Bridge Branch, Millsboro Pond and the Indian River will be cleaner than it currently is because the stormwater design will improve the drainage; that the Mount Joy area stormwater flows through this site 3 to 4 times per year; flooding cannot be caused by new subdivisions under current regulations; that no construction will impede the flow of area stormwater; that DelDOT's last traffic count in 1999 showed that 1,744 vehicles per day used the section of Road 297; that traffic will not adversely affect the area; and that DelDOT will study very carefully any entrance proposal and improvements to the roads; that they want to be good neighbors with the existing community and have a nice development; that the development will be an opportunity for first time home buyers; that a minimum home of 1,450 square feet either stick built are modular home with a one car garage are required; that no double wide or single wide manufactured will be permitted; that the development will not adversely impact the community of negatively affect the quality of life; that they are not aware of any tax ditch running through the property; that the developers will be responsible for maintenance of the development until half of the lots are sold at which time the project will be turned over to a homeowners association; that they will contribute to the homeowners association since they will still own lots in the development; that no community recreation areas are proposed; that they have owned the land since January 5, 2001; and submitted a booklet outlining their presentation including a portion of a tax map of the site, an aerial photograph of the site, four letters in support of this application, six photographs of homes located in Meadow Drive subdivision which is similar to the proposed subdivision; proposed restrictive covenants, a road map of the Georgetown and Millsboro areas, copies of letters from the Technical Advisory Committee meeting, and six photographs of existing homes in the area.

The Commission found that Paul Dulo of Millsboro was present in support of this application and advised the Commission that he supports private property rights; that the applicants should be able to develop their property; that the developers have built nice developments; and that property values will increase in the area if the development is approved.

The Commission found that David Weidman, Attorney representing the Mount Joy Citizens for Responsible Growth, was present in opposition to this application and stated in his presentation and in response to questions raised by the Commission that today, Governor Minner issued Executive Order No. 14 in reference to a "Livable Delaware" and submitted a copy of this order into the record; that the Mount Joy area is predominately open area and farmland; that his clients respect private property rights however no one has vested rights to subdivide their property; that the proposed subdivision plan violates the Sussex County Comprehensive Land Plan, the Subdivision Ordinance of Sussex County, and the principles of sound growth; that the Land Use Plan has the force of law; that growth areas should be located adjacent to existing municipalities with existing or planned infrastructure; that the proposed development is located in the middle of an agricultural district based on the land use map; that the development does not have much open space proposed; that 67 lots located on 82 acres is not low density development; that thousands of acres of farmland are lost each year due to development; that if the development is approved, there would be a large increase in traffic to the area; that the property is adjacent to the one-hundred year flood plain; that the Mount Joy Public Ditch encompasses 275 acres of watershed and submitted two aerial photographs and a copy of the watershed for the Mount Joy area; that the plan does not comply with the Subdivision Ordinance for Sussex County in that the land is unsuitable for development due to flooding, improper drainage, steep slopes and adverse earth formations; that the development is not designed to provide satisfactory building sites properly related to the character of the surrounding area; the preliminary plan does not reference the proposed locations and sizes for all utilities and drainage facilities; that the one-hundred year floodplain based on current Flood Insurance Rate Maps is not referenced on the plan; that the developers have not provided documented engineered evidence relating to on-site sanitary sewage disposal feasibility, water supply surveys, stormwater runoff computations of areas subject to flooding; that statement explaining how and when the developer proposes to provide and install the required water supply, sewers or other means of sewage disposal, street pavements and drainage structures have not been submitted; that adequate drainage and all drainage plans including a design for the internal collection system extending to the point of outfall has not been provided; that the ratio for lot depth to lot width is excessive; that a proposed grading plan for excavation, recontouring or similar work has not been submitted; that the Commission has not approved any construction plans since the plans have not been approved by a suburban street engineer; that adequate provisions for drainage have not been addressed; that the wetlands have not been delineated on the plan; that the plan does not adequately address the seventeen conditions found in Ordinance No. 1152; that the development is out of character with the area; submitted a soil plan showing poorly drained soils; referenced the amount of traffic accidents in the Route 30 and Road 297 and Road 48 corridor; submitted a letter from DelDOT in reference to no capital improvements being done to this area; submitted and discussed two video tapes of the property in reference to

flooding, existing swales holding water, and the condition of Road 297; submitted still photographs of the site and surrounding community; that the restrictive covenants do not provide for required membership into a homeowners association; that an architectural review committee is not established; that 67 homes in a small area would negatively impact the community; and that this type of development is causing a loss of farmland; and submitted a booklet with 25 Exhibits in opposition to this application.

The Commission found that Allen Anderson was present and discussed the videos presented by Mr. Weidman and presented a copy of the Delaware Handbook for Nutrient Management; that the handbook requires controlled application of fertilizer which would be less impacting than the septic systems for 67 homes; that there would be more runoff from streets, homes and shed roofs; raised questions if the stormwater ponds can handle the runoff; and that replacing farmland with homes will negatively impact the Indian River.

The Commission found that Michael Tyler of Lewes and Charlotte Jones, John Hall, Jim Johnson, Gail Carmean, Lisa Workman, and Lou Ann Riley, all area residents, were present in opposition to this application and stated in their presentations and in response to questions raised by the Commission that there are floods and that drainage is inadequate; that the development should be located closer to a town; that the area is predominately rural; that the traffic counts do not include the cumulative impacts to the area; that there are traffic problems and accidents at the intersection of Route 30 and Road 297 and Route 30 and Road 48; that the roads in the area need to be improved to handle additional traffic; that the site will not be able to handle septic systems; that there would be a loss of farmland, scenic views and wildlife habitat; that the community is farming and that new residents often complain about farming practices; and submitted area photographs.

The Commission found by a show of hands, that there were 4 people present in support of this application and 79 people present in opposition.

At the conclusion of the public hearings, 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. Wheatley, and carried 4 votes to none, with Mr. Lynch abstaining, to defer action.

SUBDIVISION #2001-3—application of **C. LARRY McKINLEY** to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred, by dividing 97.27 acres into 42 lots, located west of Road 504, 215 feet south of Road 508.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 14, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a revised plan was received on March 20, 2001 reflecting the revisions recommended by the Technical Advisory Committee and that a letter opposed to this application has been received from Martha Horsey.

The Commission found that Donald Miller, Surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this site was previously considered for a 156 lot subdivision in 1996 and was denied by the Commission; that the plan has been redesigned for 42 lots with individual on-site septic systems; that the proposed development should not generate much traffic to the area; that there is a need for manufactured home lots in the area; that the stormwater management design has not been completed; that drainage will not be a problem to the area; that lots 1 and 42 will have access from the interior subdivision street; that DelDOT recommends stub streets to adjoining properties but the developer does not wish to have stub streets; that a homeowners association will be established; that deed restrictions were submitted with the application; that stick built, modular, and manufactured homes will be permitted since the land is zoned General Residential and these type of homes are permitted by the county; that the graveyard located on lot 36 will remain and that there is an easement to the graveyard; that the property could not be subdivided unless central sewer is made available to the area; that an environmental impact study is not required; and that the wetlands have been delineated.

The Commission found that Frank Gum, an adjoining property owner, was present in opposition to this application and stated in his presentation and in response to questions raised by the Commission that the land is agricultural; questioned if the septic design has been approved for the development; that the plan does not show any buffers from his property; questioned who will maintain all improvements; that there is no need for development in the area; that the area is rural; that property values will be negatively impacted; and that the quality of life will be adversely impacted.

At the conclusion of the public hearings, the Chairman referred back to this application.

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

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

SUBDIVISION #2001-4—application of **TONYA BUCKLEY AND SCOTT SCHAEFFER** to consider the Subdivision of land in an AR-1 Agricultural Residential

Zoning District in Indian River Hundred, by dividing 10.89 acres into 2 lots, a variance from the maximum allowed cul-de-sac length of 1,000 feet, and a waiver from the street construction requirements, located east of Route 5, 3,185 feet northwest of Road 292.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 14, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that two letters have been received in opposition to this application.

The Commission found that no one was present on behalf of this application.

The Commission found that Laura Price, Jim McIlreavy, Gladys Huey, and Margie Turcol were present in opposition to this application and stated in their presentations and in response to questions raised by the Commission that the area is a small quiet neighborhood; that since the applicants purchased the property they have not been good neighbors; that the street is not adequate now and a waiver should not be granted; that the neighbors have paid to keep up the maintenance of the street and that the applicants have not; that the area floods during heavy rains; that the street is not passable for two vehicles at the same time; that emergency vehicles would have a hard time utilizing the street; that there is a lack of drainage in the area; that there is a lot of traffic on Route 5; that the street should be improved to the required specifications; and submitted photographs of the area.

At the conclusion of the public hearings, 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 unanimously to deny this application on the basis of a lack of record of support and due to the record of opposition.

SUBDIVISION #2001-5—application of **VIRGINIA M. STEELE** to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Baltimore Hundred, by dividing 56.6 acres into 103 lots, located at the northeast corner of the intersection of Road 360 and Road 357.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 14, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a revised plat was submitted to the office on March 20, 2001 reflecting the revisions recommended by the Technical Advisory Committee and that revised comments have been received from the Department of Agriculture advising that a 30' landscaped buffer is not required for this project.

Mr. Schrader advised the Commission that supporting statements have been received addressing his letter dated March 5, 2001.

The Commission found that Ross Harris, engineer, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the average density is one unit per 1.82 acres; that access to the site will be from Road 357 and Road 360; that cross access easements will be installed; that water will be provided by Sussex Shores Water Company; that 8.0 acres are wetlands; that there are no wetlands on the individual lots; that all concerns of the Technical Advisory Committee have been addressed on the revised plats; that the soils are suitable for stormwater management; and that the recreation area is located in the wooded area.

The Commission found that Lauren Alberti was present and stated in her presentation that she has no objections to the proposed development; and that she would like to see more homes in the area.

The Commission found that Gordon Martin and Scott Clinesman of Murray's Estates were present in opposition and stated in their presentation and in response to questions raised by the Commission that the lagoon that adjoins this site and Murray's Estates is private; that the residents of the proposed development would be trespassing if they used the lagoon; that there should be a buffer between the two developments; questioned when central sewer will be available; questioned why a traffic impact study was not requested; that the traffic is greater in the summer than the winter; that the lagoon is five to ten feet deep; that the lagoon is not big enough for motorized boats; and that Murray's Estates owns the lagoon.

At the conclusion of the public hearings, 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. Johnson, and carried unanimously to approve this application as a preliminary.

SUBDIVISION #2001-6—application of **SUSSEX SHORES WATER CO.** to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Baltimore Hundred, by dividing 10.57 acres into 23 lots, and a variance from the

maximum allowed cul-de-sac length of 1,000 feet, located west of Delaware Route One, 3,050 feet north of Road 360.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on March 14, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a revised plat was submitted on March 20, 2001 reflecting the revisions recommended by the Technical Advisory Committee; that a wetlands delineation report was received on March 19, 2001; that the restrictive covenants were submitted and reviewed by Mr. Schrader.

Mr. Schrader advised the Commission that his letter of March 5, 2001 has been addressed.

The Commission found that Sam Frabizzio, Attorney, and Steve Soule, Engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed density is 2.18 lots per acre; that the minimum lot size is 10,000 square feet; that water will be provided by Sussex Shores Water Company and submitted a letter; that sewer will be provided by Sussex County; that the streets will be private and built to county specifications; that the concerns and recommendations of the Technical Advisory Committee have been addressed; that the proposed entrance will be combined with the entrance to Sussex Shores Water Company; that the cul-de-sac length is 1,150 feet and that they are asking for a variance of 150 feet; that the streets and open areas will be maintained by a Homeowners Association; and that the pond is not a part of this application.

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

The Commission found that Don Stein of Bayberry Dunes Subdivision was present in opposition to this application and read and submitted written comments into the record.

At the conclusion of the public hearings, 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. Wheatley, and carried unanimously to defer action.

V. OLD BUSINESS

C/U #1390—application of **STEPHEN L. WALLO** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sap and pool retail store to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18,109 square feet, more or less, lying west of Road 268 (Kings Highway), 900 feet northeast of Route One.

The Chairman referred back to this application, which was deferred at the March 8, 2001 meeting.

Mr. Johnson stated that he has reviewed this site several times since the public hearing; that he does not have a problem with the application; and that DelDOT has reduced the length of the median island so that the present owner could make left turns into the property.

Mr. Johnson made a motion to approve the application and then withdrew the motion prior to a second.

Motion by Mr. Johnson, seconded by Mr. Wheatley, to forward this application to the Sussex County Council with the recommendation that it be approved with the stipulation that no commercial deliveries be permitted by tractor-trailers.

Vote carried 2 to 3. Motion denied.

VI. OTHER BUSINESS

Greenwood Auto Parts
Site Plan Addition to a Non-Conforming Use Road 589

Mr. Abbott advised the Commission that the office has received a request to erect a 95' by 90' building to a non-conforming salvage yard; and raised questions as to whether the applicant should be required to apply for an expansion to a non-conforming use or a Conditional Use application.

The Commission discussed the request and felt it necessary that the applicant be required to apply for a Conditional Use application since the addition is greater than 25 percent to expand a non-conforming use.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to deny the site plan as submitted.

Marcella Smith
Lot on 50' Right of Way Route 17

The Commission reviewed a concept to create a 1.00-acre lot with access from a 50' right of way.

Mr. Abbott advised the Commission that there is currently a recorded 12' dirt road; and that the owner proposes to widen the right of way to 50' across her lands and create a 1.00-acre lot.

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

Beebe Medical Center
C/U #1236 Discussion Route 24

Mr. Abbott advised the Commission that this application was approved on April 21, 1998; that time extensions were granted on May 13, 1999 and May 4, 2000; that no more time extensions are permitted by the Zoning Code; that the approval expires on April 21, 2001; that the plans have been submitted to all agencies for approval; and raised the questions if the Commission would consider the project substantially underway.

The Commission discussed the request and questioned if other applications have been awarded the same consideration.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action so that the staff can contact the required agencies on the status of this project.

Subdivision #2000-6—The Concord Group
Time Extension Pond Haven

Mr. Abbott advised the Commission that this application received preliminary approval on March 23, 2000 for 28 lots; that the office has reviewed the plat for final approval; that DNREC, Sussex Conservation District, and Department of Agriculture have approved the plan; that the office is waiting for DelDOT and Fire Marshal approvals; that the office received a request for a one year time extension; and that this is the first request.

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

Rogers Haven
Street Realignment Bayview Drive

The Commission reviewed a request from Don Galbreath, lot owner, to realign the end of Bayview Drive and convey residue caused by the realignment to the adjacent lots.

Mr. Abbott advised the Commission that this concept was approved by the Commission on April 10, 1986 but never recorded; that the adjoining lot owners agreed to the concept in 1986; and that problems have since arisen with 99-13 of the Subdivision Code.

Motion by Mr. Lynch, seconded by Mr. Gorsy, and carried unanimously to deny this request and to advise the owner to follow the process referenced in 99-13 of the Subdivision Code.

Today's Kustoms
C/U #1267 Revised Site Plan Road 44

The Commission reviewed a revised site plan for Conditional Use No. 1267 approved on March 9, 1999 for auto body and repair.

Mr. Abbott advised the Commission that the site plan was approved by the Commission on August 12, 1999 for a 42' by 60' shop; that the owner would like to add a 16' by 42' addition for a framing machine; that the fence will be extended in front of the addition; that the setbacks meet the requirements of the zoning code; and that all agency approvals have been received.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the revised site plan as submitted.

Angola Estates Phase One
Final Site Plan

Mr. Abbott advised the Commission that the final site plan for Phase 1 of Angola Estates is for 41 single family lots; that the revised master plan was approved by the Commission on November 18, 1999; that Phase 1 is the same as the master plan; that the plan complies with the subdivision code; and that all agency approvals have been obtained.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a final.

Jay Beach
C/U #1370 Site Plan Route 24

Mr. Abbott advised the Commission that this site plan is for retail sales and a corn maze located off of Route 24; that the 11 stipulations imposed by the County Council are

referenced on the site plan; that the plan complies with the Zoning Code; and that agency approvals are required from DelDOT and Fire Marshal Office.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals.

VII. ADDITIONAL BUSINESS

Executive Session

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to go into an Executive Session.

The Commission discussed pending litigation.

Motion by Mr. Allen, seconded by Mr. Wheatley, and carried unanimously to come out of Executive Session.

Meeting adjourned at 11:30 P.M.