

## MINUTES OF THE REGULAR MEETING OF MAY 13, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 13, 1999 at 7:30 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present;

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

Mr. Allen, Chairman, called the meeting to order.

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

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of April 22, 1999 as amended.

Mr. Schrader explained how the meeting will be conducted.

### IV. PUBLIC HEARINGS

C/U #1282—application of WOODLAWN MEMORIAL PARK to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a cemetery to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 22.16 acres, more or less, lying on the west side of Route 113, ½ mile south of Road 329.

The Commission found, that based on comments received from the Sussex Conservation District that no storm flood hazard area is affected; that it would not be necessary for any off-site or on-site drainage improvements; that no tax ditch is affected; that the soils mapped on-site are Evesboro loamy sand; that the suitability of the soil for the intended use is slight; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; and that the farmland rating of the soil is of Statewide Importance.

The Commission found, that based on comments received from Mr. Bayard, County Attorney, that the draft Perpetual Care Agreement is acceptable.

The Commission found, based on a letter received from J.G. Townsend Jr. & Co., that they are an adjoining property owner, and have no objections to the proposed use.

The Commission found that C. Kenneth Carter, surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the

Commission that this application is for a cemetery; that the entrance has been approved by DelDOT and is designed for pavement; that there is a need for this use in the area since most cemeteries have few vacancies; and that there would be approximately 800 to 1,000 plots per acre.

The Commission found that there were no parties present with interest to this application.

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

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

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

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all required agency approvals.

C/U #1283—application of DEBORAH S. APPLEBY to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an art and craft studio and gallery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.599 acres, more or less, lying southeast of Route 24, 0.5 miles northeast of Love Creek.

The Commission found, based on comments received from the Sussex County Engineering Department, that this application is located in the area west of the West Rehoboth Expansion Area where the Sussex County Council agreed to restrict zoning changes and conditional uses. This agreement is outlined in the Memorandum of Understanding signed between the State of Delaware Department of Natural Resources and Environmental Control and the Sussex County Council.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected; that it will not be necessary for any off-site or on-site drainage improvements; that no tax ditch is affected; that the soil mapped on site is Sassafras sandy loam; that the suitability of the soil for the intended use is slight and relatively free of limitations or limitations are easily overcome; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; and that the farmland rating of the soil is Prime Farmland.

The Commission found, based on comments received from DelDOT, that they have no objections to the entrance location.

The Commission found that a letter was received from Elinor W. Hughes, a resident of Briarwood Estates Subdivision, voicing no objections to the application.

The Commission found that Deborah Appleby and James Fuqua, Attorney, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that her dwelling will be located on lot 1 and the proposed business on lot 2; that the entrance is located to the west of lot 2 and that it will also serve as access to lot 1 with a cross access easement as required by DelDOT; that there will be on-site septic and well; that the proposed use will not cause any negative impacts to the environment; that the architecture style of the proposed building will be a barn type structure to fit in with the agricultural community; that a rezoning for B-1 Neighborhood Business was initially filed but was withdrawn due to the opposition; that the applicant manufactures glass objects and wood items; that the art studio and gallery includes the design, creation, display and sales of handmade art and craft objects such as paintings, sculptures, glass, metal, wood, paper, ceramic, fiber, and jewelry items; that the normal business hours are from 10:00 AM to 6:00 PM with occasional events or classes in the evening until 9:00 PM; that the use is limited to the items requested; that the use is an enhanced home occupation but needs a conditional use since there will be employees who are not family members; that the employees will be two apprentices with one from the United States and the other from Europe; that the glass blowing shop will not operate in January or August; that the glass blowing hours will begin at 6:00 AM; that a sign, either wood or forged iron with glass is proposed; that the sign will be lighted; and that the use would be a benefit to the community.

David Greenhall was present and spoke in support of this application and advised the Commission that the use would be aesthetically pleasing to the community.

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

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

1. Business hours shall be from 6:00 AM until 9:00 PM.

2. One (1) illuminated sign, not exceeding 4' x 4' may be permitted.
3. The site plan shall be subject to review and approval by the Commission upon receipt of all required agency approvals and permits.

C/U #1284—application of DONALD CLIFTON to consider the Conditional Use of land in an AR-1 Agricultural Residential District for landscaping and irrigation business with vehicle and equipment storage, office and warehousing to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 8.92 acres, more or less, lying south of Road 38, 2,240 feet northeast of Route One.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected; that it may not be necessary for any off-site or on-site drainage improvements; that no tax ditch is affected; that the soils mapped on site are Evesboro loamy sand and Sassafras sandy loam; that the suitability of the soils for the intended use are slight and relatively free of limitations or limitations are easily overcome; that with respect to erosion and sediment control practices, the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; and that the farmland rating of the Evesboro soil is of Statewide Importance and the Sassafras soil is Prime Farmland.

The Commission found that William Turner of Shoreline Construction and David Rutt, Attorney, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that when the application was filed, Donald Clifton was the property owner; that now Shoreline Properties owns the property and submitted a copy of a recorded deed; that Shoreline Construction is a company owned by Shore Properties Partnership; that Shoreline Construction contracts with Delaware Electric Cooperative and Bell Atlantic; that they perform installation, troubleshooting, drainage, irrigation, directional drilling for drainage for DelDOT, underground wiring, and restore downed electric poles and line services; that the existing buildings will be utilized as an administration office, equipment storage, pole bin, and piping storage; that parking will be done on the stone and aggregate areas; that there will be indoor parking of service vehicles for the protection of the vehicles; that the warehousing would be for dry storage and be limited to one leasee so that there would not be mini storage; that the greenhouse and nursery will be for the landscaping products; that the existing lagoon is proposed to be removed; that there will be no disturbance of the pond on the rear of the site; that the existing buildings are in need of repairs; that a fence would be erected in line with the existing buildings and landscaping will be done; that there would be minimal outside storage; that they presently have fifty service vehicles; that their equipment consist of tractors, trailers, trenchers, and backhoes; that the hours of operation would be from 7:00 AM to 6:00 PM Monday through Friday

Unless an emergency arose; that there are approximately fifty employees at this time; that they currently lease a building at Route 30 and Route 16 near Milton; that security lighting exist at the proposed site; that there would not be any noises or odors associated with the use; that they would like to have a sign whatever is permitted by the Code; that the use would have a positive impact to property values in the area; that poles, pipes, and wire will be stored behind the existing buildings; that the dry storage would be packaged dry goods; that most of the employees report to the office; that they do all of the maintenance to their vehicles; that an environmental study has been conducted and they are in the process of cleaning up the site; that no transformers will be stored at the site; that new transformers may be at the site for small periods of time; that the front of the site will be landscaped; and that a six-foot chainlink fence will be installed.

The Commission found that no parties appeared with any interest to this application.

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. Wheatley, 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 stipulation:

1. All outside storage shall be located to the rear of the existing buildings.
2. Six (6) foot high fencing, as described by the applicants, shall be installed.
3. No transformers shall be stored on site.
4. All indoor leased warehousing shall be for packaged dry materials, and shall exclude chemicals and other hazardous materials.
5. No boat storage shall be maintained on site.
6. The site plan shall be subject to review and approval by the Commission upon receipt of all required agency approvals and permits.

C/U #1285—application of MID-SUSSEX RESCUE SQUAD, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for ambulance/rescue station to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.21 acres, more or less, lying southwest of Route 5, approximately 900 feet northwest of Route 24.

The Commission found that comments were not requested from DelDOT since the proposed use is the same as the existing use.

The Commission found, based on comments received from the Sussex Conservation District that no storm flood hazard area is affected, that it may not be necessary for any

off-site or on-site drainage improvements; that no tax ditch is affected; that the soils mapped on site are Evesboro loamy sand and Klej loamy sand; that the suitability of the Evesboro soils for the intended use are slight and relatively free of limitations or limitations are easily overcome; the Klej soils have slight and moderate limitations but can be overcome by careful design or special construction measures; that with respect to erosion and sediment control, the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; and that the farmland rating of both soils is of Statewide Importance.

The Commission found that letters from Patrick C. Miller, Edward and Chere Riordan, Carol Pinsky Blumenthal, and Staci Walls were received in opposition to this application.

The Commission found that Robert Nash, surveyor, John Hammond, Treasurer of Mid-Sussex Rescue, and Jerry Johnson, Rescue Captain, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they propose to demolish the existing facility and construct a new building; that the parking area will be expanded to the north and to the rear; that the parking area will be crusher run stone; that the propose to fill 1/3 acre of wetlands under the Nationwide permit from the Corps of Engineers; that the site is located above the headwaters of Guinea Creek; that this was verified by the U.S. Army Corps of Engineers; that the stormwater management facilities will meet the requirements of the Sussex Conservation District; that a new septic system will be installed; that landscaping is proposed; and that all other areas on the site will remain wooded; that the proposed building will have meeting rooms for training and community related meetings and functions; that the building will be two stories; that the only wetland disturbance will be the digging of the stormwater management area; that the station provides ambulance service to the Indian River of Oak Orchard fire district and also responds to calls in the Lewes, Millsboro and Rehoboth areas; that they cannot get the financing to relocate to another site; that the Long Neck area is growing; that the State of Delaware requires all ambulance services to be upgraded to federal regulations; that all new members are required to have six months of training; that there is a need for continuing education for members; that the existing building was built in 1972; that the existing building has been added on to three times; that the building is in disrepair; that if approved, the station would have to use temporary facilities for storage of vehicles; that a temporary manufactured home will be used while the new building is under construction; that the average number of calls in a month is about 100; that the station had approximately 1,200 calls in 1998; that they are the fifth most active company in the County; that it is difficult to obtain new members; and that the members are volunteers only.

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

The Commission found that Ed Hersher, Ed Riordan, and Ann Rosati were present in opposition to this application due to concerns about negative impacts to the wetlands and wildlife habitat in the area; drainage concerns to the area; poor design of the property; and submitted a petition with 135 signatures opposed to this application.

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

C/Z #1377—application of SEA DEL ESTATES HOMEOWNERS ASSOCIATION, INC. to amend the comprehensive zoning map from MR-RPC Medium Density Residential District – Residential Planned Community to a MR-RPC Medium Density Residential District - Residential Planned Community and to delete stipulation No. 1 of Change of Zone No. 315 which reads “all streets in development be dedicated to public use” to permit private streets and maintenance for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, located east of Route One and being all of Sea Del Drive and Sugar Hill Road within Sea Del Estates, to be located on 2.047 acres, more or less.

The Commission found, that comments were received from the Sussex Conservation District for reference purposes only and that no new construction is proposed.

The Commission found, based on comments received from the Sussex County Engineering Department that this project is located within the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that if the application is approved, the Homeowners Association must provide a blanket easement for all streets/roads within the subdivision to the Sussex County Council; that the easement is needed to allow access to the County-owned sewer lines and manholes for maintenance purposes; that the Homeowners Association also be required to place a perpetual maintenance statement on their record plat providing who will be responsible for maintaining the private roadway; that this may require re-recording the subdivision record plat, changing the notes and adding text on the right-of-ways “Privately Maintained” in the place of “Dedicated to Public Use” and adding the perpetual maintenance statement.

The Commission found, based on comments received from the Deputy Attorney General for DelDOT that at this time, they see no opposition from DelDOT for their intentions to request Superior Court Abandonment and vacation of the Streets in Sea Del Estates; and that the Department’s official response will be prepared after notification to the Secretary of the filing in Court of the vacation petition.

The Commission found that Harold Dukes, Attorney, and Bob Eustace, Director of Sea Del Estates, were present and stated in their presentation and in response to questions raised by the Commission that the property owners propose to maintain the streets; that letters from all homeowners in support of the vacation of the roads have been received; that the subdivision was the first subdivision created after Ocean Village Subdivision ; that the primary reason for the request is that the streets are in poor condition and in need of repair and that they have spent over three years requesting help from DelDOT and submitted a letter in support of this application.

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

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

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

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support.

#### V. OLD BUSINESS

Subdivision #98-8—application of RONALD HASTINGS to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 28.95 acres into twenty-eight (28) lots, located east of Greenleaf Lane within Rivers End Subdivision approximately 1,650 feet southeast of Road 530.

The Chairman referred back to this application which was deferred November 19, 1998 pending receipt of a septic feasibility statement from DNREC.

Mr. Abbott advised the Commission that the septic feasibility statement has been received and that the site is suitable for individual on-site septic systems.

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

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve this application as a preliminary with the stipulation that the developer be required to install street signs for the names of each street.

Subdivision #99-4—application of FARMHOUSE, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred, by dividing 38.43 acres into twenty-eight (28) lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northern end of Falls Road



within Creek Falls Farm Subdivision, 850 feet north of Road 258, 1,060 feet northeast of Road 261.

J. Ross Harris of ECI , Corporation was present as the Commission reviewed the final record plat for this application.

Mr. Abbott advised the Commission that the record plan meets the technical requirements of the subdivision and zoning code with the exception that the metal building on lot 28 would require a variance from the Board of Adjustment since it is located within the side yard setback on a corner lot; and that all required agency approvals and permits have been obtained.

Mr. Harris advised the Commission that the metal building located on lot 28 is to be removed and those new plots will be presented to the staff referencing this notation.

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

#### VI. OTHER BUSINESS

- Lowe's  
Revised Commercial Site Plan - Road 275  
A. Water Tank Relocation  
B. Parking/Display Areas

Mr. Schrader advised the Commission that Lowe's attorney has made a motion pursuant to Commission Rule 18; that this rule permits Lowe's to request a rehearing or reconsideration based upon one or all of the three reasons set out in the rule; that Old Meadow Properties, L.L.C. and Robert Wright, through their attorney, have filed a response in opposition to the application for rehearing/reconsideration for the reasons stated in their letter; that at this time, the Commission must decide, based upon the written motion, the response and the affidavits or exhibits, whether or not to grant a rehearing/reconsideration to Lowe's; that if the decision is in the affirmative, the rehearing/reconsideration may be scheduled at a later date; that if the decision is in the negative, the earlier decision of the Commission stands and Lowe's may pursue such other course of action that it deems appropriate; and that the Commission should review both documents presented to them.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to defer action until the June 10, 1999 meeting.

Anglican Parish of St. James Episcopal Church  
Site Plan – Road 321

A representative of Peninsula Survey and Site Design Inc. was present as the Commission reviewed a site plan for a church located on the west side of Road 321, south of Route 9.

Mr. Abbott advised the Commission that the proposed church is 1,600 square feet with block and wood frame construction; that the height of the church is twenty-five feet; that the property is zoned AR-1 and that the church is a permitted use; that seventy-five seats are proposed for the church and that nineteen parking spaces are required and provided; that the developer wishes to have a gravel parking area since this would reduce the amount of stormwater run-off; that the site plan meets the minimum technical requirements of the zoning code; that all required agency approvals and permits have been received; and that the original developer has a private deed restriction for the minimum front yard setback to be sixty feet and that a revised plan will have to be submitted meeting this requirement.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a final subject to the submission of a revised plan referencing the sixty foot front yard setback.

Robino Associates - Eagles Landing  
Revised Site Plan - Road 273-A

Mr. Abbott advised the Commission that this item was removed from the agenda on May 7, 1999.

Atlantic Agency - Eagles Landing  
Revised Site Plan - Road 273-A

Mr. Abbott advised the Commission that this site plan received preliminary approval on April 8, 1999; that the Commission recommended to the Board of Adjustment that a variance be granted to allow for the developers to develop the site at two parking spaces per units as approved on the original plan; that Mr. Berl, Assistant County Attorney, reviewed the code and advised the Commission that they could waive the parking requirement of three spaces per unit if they thought that this requirement clearly excessive and unreasonable; and that this item is on the agenda for reconsideration.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan to be developed at two parking spaces per unit since there is not an increase in the density from the original approved plan.

Bayville Shores  
Revised Preliminary Site Plan HR/RPC  
Route 58B

Goodie Taylor, developer, was present as the Commission reviewed a revised preliminary site plan for the Bayville Shores residential planned community on the north side of Road 58-B.

Mr. Abbott advised the Commission that the County Council 332 units; that the proposed recreation area has been relocated; that units have been relocated; and that storage bins have been added to the site plan.

Mr. Taylor advised the Commission that the proposed changes are necessary since they have applied to the U.S. Army Corps of Engineers to fill the existing lagoon.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the revised site plan as a preliminary.

David P. Hatfield  
2 lots - U.S. Route 13

The Commission reviewed a concept to create two parcels on the east side of U.S. Route 13, south of the Town of Greenwood limits.

Mr. Abbott advised the Commission that U.S. Route 13 is a major arterial roadway; that there will be one entrance serving as access for both parcels; and that a letter of no objection has been received from DelDOT.

Ted Liszewski  
Subdivision #99-1  
Revised Lots

The Commission reviewed a concept to revise the lots surrounding the cemetery located on Fox Glen subdivision.

Mr. Abbott advised the Commission that the cemetery will be a one hundred foot by one hundred foot non-buildable parcel and that the remaining area will be combined with the lots to each side.

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

Raymond Childs  
2 lots & 50' Easement  
Road 507

The Commission reviewed a concept to create two lots with access from a fifty-foot easement off of Road 507.

Mr. Abbott advised the Commission that there is currently a twenty-seven foot easement; that the owner proposes to add an additional twenty-three feet to make a fifty foot easement and to create a 1.90 acre lot.

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

Canal Corkran  
Preliminary Site Plan C/Z#1359 MR/RPC

Ross Harris of ECI Corporation was present as the Commission reviewed the preliminary site plan for the Canal Corkran residential planned community located off of Church Street near Rehoboth.

Mr. Abbott summarized the conditions of approval by the County Council and advised the Commission that the necessary revisions have been made.

Mr. Harris advised the Commission that the density has been reduced from the amount the County Council approved.

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

Beebe Medical Center  
C/U #1236 Time Extension

The Commission reviewed a request for a time extension for Conditional Use No. 1236.

Mr. Abbott summarized a letter from the Board of Directors of Beebe Medical Center explaining what has taken place in the development of this project.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve a one year time extension retroactive to the original approval date. The Conditional Use is now valid until April 21, 2000.

Chairman Allen read a letter addressed to Finley B. Jones, President of the County Council, from Mr. Phillips reminding him that he wishes to retire from the Commission at the end of his second term, which expires June 30, 1999.

Meeting adjourned at 10:30 PM.