

## MINUTES OF THE REGULAR MEETING OF MAY 27, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 27, 1999, at 7:30 PM, 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, and Mr. Abbott – Assistant Director.

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 May 13, 1999 as corrected.

Mr. Schrader explained how the meeting would be conducted.

### IV. PUBLIC HEARINGS

APD- #99-3—application of THE ESTATE OF DORIS M. SHORT to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for one (1) parcel of land totaling 250 acres, more or less, located northwest of Road 62, 1,800 feet northeast of Road 443-A, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

The Commission found that Mr. Abbott summarized the Agricultural Preservation District Report from the Delaware Agricultural Lands Preservation Foundation; and that the staff received a phone call from Vance Phillips advising that the majority of the Agricultural Preservation Committee is in support of this application.

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

The Commission found that no parties appeared in support of, or 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. Wheatley, seconded by Mr. Hastings, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.



C/U #1286—application of G. ANTHONY AND JACQUELINE R. KEEN to consider the Conditional Use of land in an AR-1 Agricultural Residential District for agricultural and turf consulting business and real estate office to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.00 acre, more or less, lying at the northwest corner of the intersection of Road 254 and Route 9.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service "D" will not change as a result of this application; and that access for the proposed use will be from Road 254 only.

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

The Commission found that G. Anthony and Jacqueline R. Keen were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they plan to renovate the existing three car garage and convert it into office space; that ninety percent of the business will be for agricultural and turf consulting for farmers and the public; that the real estate office will be for keeping files and listings for a broker to stop in and pick up; that there would be minimal traffic visiting the site; that the employees report directly to job sites; that there may be six vehicles at the site when they have staff meetings; that the applicants and their son are the main employees who will use the site; that the turf business is a consulting business for farmers and golf courses; that they do test for pest management; that there may be up to four employees at the site in the future; that the existing entrance off of Road 254 will be utilized; that the hours of business vary since there are times when they would have to leave around 4:30 AM and return around 10:00 PM; that a new septic system will be installed on the site; that the existing dwelling on the site will be renovated for a residence; and that they propose a 4 foot by 8 foot sign for advertising.

The Commission found that there were no parties present in support of or 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. 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 stipulations:

1. One unlighted sign, not to exceed thirty-two (32) square feet per side or facing, may be permitted.
2. The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all required agency approvals and permits.

C/U #1287—application of KEN SHAPTER to consider the Conditional Use of land in a B-1 Neighborhood Business District for four mini-storage buildings to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 2.18 acres, more or less, lying south of Route 9, 550 feet east of Road 319.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing level of service "D" will not change as a result of this application; and that the only access allowed for the proposed use will be from the private road off of Road 319.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Fallsington sandy loam and Pocomoke sandy loam; that the suitability of the soils for the intended use are severe, that the limitations are severe enough to make the use questionable, careful planning and design and/or very special construction measures are needed; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation after completion of construction; that the farmland rating of the soils is of Statewide Importance, Prime Farmland; that no storm flood hazard area is affected; that it may be necessary for off-site and on-site drainage improvements due to the poorly drained and very poorly drained soils on-site; and that no tax ditch is affected.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this proposal.

The Commission found that Ken Shapter was present on behalf of this application and advised the Commission in his presentation and in response to questions raised by the Commission that this application is for four mini-storage buildings; that he would like to have storage for boats and recreational vehicles; that a six-foot chainlink fence with computerized entry will be installed for security purposes; that they were approved in



April 1998 for the same use on the adjoining site and would agree to the same stipulations that were imposed by the County Council; that the site is all cleared; that there is a need for mini-storage and boat storage in the Georgetown area; that access to the site will be from the 50-foot private road that is being put in now; that there would be 98 storage units which would use about  $\frac{3}{4}$  of an acre; and that the rest of the site could be for the boat and recreational vehicle storage.

Mr. Schrader advised the Commission that the boat and recreational vehicle storage cannot be considered since the application never stated this use for the property; and that a new application would have to be filed.

The Commission found that Jerry Gray an adjoining property owner was present in opposition to this application and advised the Commission that the proposed buildings would be visible from his property since he is clearing the trees on his property; that the soils are not drained well in the area and that there is flooding on the site; that there would be negative impacts to property values in the area if this application were approved; that the site plan is not adequate and it does not conform to the requirements of the zoning code; that no on-site management or supervision is proposed; that traffic would increase on Road 319; that there are wells on the adjoining properties; that mini-storage is not permitted in the B-1 Neighborhood Business district; that this use is more industrial related; and that there is available land zoned C-1, General Commercial located east of this site on Route 9.

Chairman Allen advised Mr. Gray that if this application were approved, a site plan would be required to be reviewed and approved by the Commission; and that there cannot be any storage of boats or recreational vehicles since the application did not state those uses.

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 Phillips, seconded by Mr. Lynch, and carried four votes to none, with Mr. Wheatley not participating, to defer action.

C/U #1288-application of MILFORD SCHOOL DISTRICT to consider the Conditional Use of land in an AR-1 Agricultural Residential District to modify the land area and amend the conditions of Conditional Use No. 1205 (play and recreational area) for a public school to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 0.99 acres, more or less, lying south of Butler Avenue and 220 feet east of the intersection of Butler Avenue (Road 225-B) and Third Street (Road 225) in unincorporated Lincoln, Delaware.



The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on-site are Sassafras sandy loam; that the suitability of the soils for the intended use are slight, 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; that the farmland rating of the soil is Prime Farmland; that no storm flood hazard area is affected; that it may not be necessary for any off-site or on-site drainage improvements; and that no tax ditch is affected.

The Commission found, that James Griffin, Attorney, and Robert Smith, Superintendent of the Milford School District were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the amendments are to delete/remove condition that Milford School District block off or close Butler Avenue between Route 225B and the home of Mr. and Mrs. Keen; to delete/remove the condition that Milford School District create a private driveway to serve the Keen property via an easement across the right-of-way of the plotted but unopened Fourth Street to County Road 38; to delete/remove the condition that Milford School District block off Butler Avenue even with the rear of the former Doughten house lot; that as now proposed, Butler Avenue will remain open to serve as the right-of-way to the Keen's residence; and to revise the land area from 1.01 acres to 0.99 acres more or less; that the school bought a forty-foot strip of land from Doughten; that the master plan for the site shows that Butler Avenue will remain open; that they propose to add ten additional classrooms; that the Keens will still be able to use Butler Avenue; that the area will be fenced; that the area will not be used as a playground or recreation area; that it would be used for additional parking or a drain field; and that they have a contract to purchase the land but have been unable to settle due to legal problems.

The Commission found that Loretta Keen was present and stated that she is not one-hundred percent opposed to this application but had concerns about children crossing the easement for a playground; that she has no problem with the area being used for parking; and that the land dispute was between two surveyors.

Mr. Schrader advised the Commission that Conditional Use No. 1205 expired on October 14, 1998 since a time extension has not been requested or granted.

Chairman Allen questioned if the Commission could amend conditions to an application that has expired.

Mr. Griffin questioned if the approval has expired since the application has been involved in litigation.



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 defer action.

C/Z #1378-application of WALLS FARM, L.L.C. to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1/RPC Agricultural Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, lying northwest of Road 277, 875 feet southwest of Road 275, to be located on 57.45 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study is not recommended; that the Route 1 Corridor Study recommends the construction of a local road in a sixty (60) foot right-of way through the subject property; that if the County is otherwise inclined to approve this application, that it add a requirement pertaining to this road; that the County should require the applicant to dedicate the right-of-way for the length of the property to build the road in a manner acceptable to DelDOT, and to place the site entrance on the new road; that they would oppose this application if the road were not required; that the Statewide Long Range Transportation Plan divides the State into Multimodal, Management, and Preservation Areas; that these areas are still defined only conceptually but are currently drafted; that this site is located in a Multimodal Investment Area; that in these areas, DelDOT intends to support development with a more comprehensive menu of transportation facilities and services and to make investments to diversify the transportation system by adding capacity and supporting targeted growth; that investments in transit, bicycling, and walking facilities are the focus so that they can support these alternative modes as supplements to automobiles; that the Route One Corridor Study is intended to develop a plan for a network of local roads, bicycle and pedestrian paths, and improved transit facilities in the Lewes-Rehoboth Area; that the goal is to allow people to make local trips without driving on the State-maintained road system; that presently there is a conceptual plan for this network and they are working to define an initial set of DelDOT projects to design and build; that they have identified a project that they are developing under this study in the project area; that the project is a two-lane local road that would extend north from Delaware Route 24 to U.S. Route 9, running parallel to Sussex Road 275; that as businesses seek to develop land in the study area, DelDOT is asking them to build those parts of the network that would pass through their properties; that with regard to this property, the plans show a local road through the property; that they ask the County to not approve this application until the applicant agrees to dedicate a sixty (60) foot right –



of-way through the parcel for this local road and to place the project entrance somewhere on the proposed road instead of Sussex Road 277; that their intent with regard to the entrance placement is to establish the existence of the local road; and that to the extent that others propose to develop properties along the alignment of this facility, DelDOT intends to make similar requirements for right-of-way along this road.

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 in subdivision approval, unless they were served by a County operated wastewater system; that 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; that annexation into the West Rehoboth Expansion service area is possible if adjacency to the existing boundaries is established; that the Engineering Department is developing a planning study for the area; that answers on the wastewater capacity and oversizing requirements for this property are not available; that the Engineering Department anticipates that these issues will be resolved by July 1999; that the Engineering Department supports the provision of sanitary sewer service to this project, but feels the sewer planning study is crucial to providing for the long-term needs of the area; that the Engineering Department recommends that action on this request be deferred until the study is complete; that if the District boundary is extended to include this parcel, system connection charges will be due; that the current system connection charge rate for the period July 1, 19998 to June 30, 1999 is \$2,954 per EDU; and that it will also be the responsibility of the developer to install all wastewater facilities for the project in accordance with Sussex County's standards and procedures.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on-site are Sassafras sandy loam and Sassafras loam; that the suitability of the soils for the intended use are slight, 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; that the farmland rating of the soils are Prime Farmland; that no storm flood hazard area is affected; that it may not be necessary for any off-site or on-site drainage improvements; and that no tax ditch is affected.

The Commission found, based on comments received from the Office of State Planning Coordination, that DelDOT stated their Route 1 Corridor study recommends the construction of a local road in a sixty (60) foot right-of-way through the property; that if the County approves this application, it should add a requirement pertaining to this road;



that they ask that the County require the applicant to dedicate the right-of-way for the length of the property to build the road in a manner acceptable to DelDOT and to place the site entrance on the new road; that according to DNREC, because of the size of the size of the project, when considering the adopted nutrient Total Maximum Daily Loads Regulations for this watershed, a non point source pollution control strategy should be prepared that would reduce environmental impacts of this project to Rehoboth Bay; that the Department of Education has stated that the Cape Henlopen School District is putting together a package to go for referendum next year for new schools; that the State would like the owner to obtain certification that the district will have capacity for the new students this subdivision will bring before building permits are issued; and that if the County approves this application, the owner/developer should be aware of the following requirements from the Office of the State Fire Marshal, structures 10,000 square feet aggregate require automatic sprinkler protection, the nature of the occupancy will require smoke detection in each home, water distribution system capable of delivering 1,000 gallons per minute at twenty (20) PSI residual pressure for one (1) hour duration is required, and fire hydrants spaced 1,000 feet on center are required.

The Commission found, based on a letter received from Gosling Creek Purchase Homeowners Association, that they are opposed to this application since the proposed density is greater than the adopted Sussex County Land Use Plan allows for inland zoned AR-1 lands without a public sewer system; that due to the growth and development that is occurring in the coastal area, this larger lot size was adopted to minimize the impact of the large number of concentrated housing units on the ability of the land to handle wastewater; that Shaping Delaware's Future Law specifically addresses the need to discourage the extension of public water and sewer services which promote development in agricultural areas and to discourage the extension of public water and sewer services which promote development in open spaces and natural areas; that this law was adopted to preserve our farmland and protect the land from over-development in order to maintain the quality of life in Delaware; that the cumulative impact of this development along with Lowe's, Superfresh, Plantations East, Plantations West, Plantations South, Bridle Ridge Estates, other proposed development, and beach traffic on the local traffic congestion on Road 275 will be overwhelming; that even though DelDOT has proposed a grid system of roads in this area, the exact locations and designs of roads have not been decided; that without this information, the County cannot determine the impact of proposed developments on the traffic congestion in the area and the quality of life of the residents in the area cannot be determined; that they urge the County to deny this application; that the County discourage the extension of the public sewer until after studies have been conducted to determine the impact of such expansion; and that the County require DelDOT to finalize plans for the grid concept and conduct traffic impact studies on the cumulative effects of development in this area before considering any amendments or rezonings along Roads 275 and 277.



The Commission found that Craig Hudson, partner with Walls Farm, L.L.C., John Sergovic, Attorney, and Kevin Burdette, of McCrone, were present and stated in their presentation and in response to questions raised by the Commission, that the site is 57.45 acres; that new lots have been created to the east of the site; that Gosling Creek Purchase Subdivision is located to the west of the site and that Morningview Subdivision exists to the south of the site; that this application is for a residential planned community overlay; that there is no increase in density from what would be allowed if this were an Agricultural Residential subdivision; that the residential planned community concept is a more efficient use of the property since it will enhance the community with open space, recreation areas and buffer strips; that the site needs to be served by an expansion to the West Rehoboth sewer district; submitted a letter in response to DelDOT's recommendations; submitted a letter from the County Administrator referencing zoning being in place before expansion of sewer will be considered; submitted the proposed restrictive covenants for the project; that the proposed lots have been reduced from 20,000 square feet to 13,400 square feet; that the residential planned community allows for lots to be 2/3 of the required size; that sewer is necessary to utilize the proposed design; that the open space and community walking trails meets the objectives of the land use plan; that the project is located in a major center of employment; that there is a need for housing in the area; that this design is better than a regular subdivision since it provides community pedestrian greenway walkways, active and passive recreation and open space area; that the County can attach conditions of approval; that the street will either be private or public depending upon negotiations with DelDOT in reference to the proposed sixty (60) foot right-of-way; that no manufactured homes will be permitted; that there will be no adverse impacts to neighboring properties; that the total number of lots proposed is 102; that 154 lots could be permitted; that an AR-1 Agricultural Residential Subdivision could yield 103 lots; that there would not be any increases in traffic to the area; that public water is available from Tidewater Utilities; that the recreation area will have a pool, hardtop courts; that there will be a fifty (50) foot buffer along Road 277; that existing hedgerows surround the perimeter of the site; that each cul-de-sac street will have a different appearance to act as a separate community; that the sixty (60) foot road should not be a local road; that the State should contribute to building the road; that the design for this project started in 1997; that the developers have been working with the Engineering Department and DelDOT on the design; that prior to the grid system, the developer proposed 3/4 acre lots but also wanted to utilize open space; that smaller lots require less maintenance; that the lots will sell in the \$30,000 to \$35,000 range and a lot and home package will be in the \$130,000 to \$160,000 range; that the dwellings will be either modular or stick built and manufactured homes will not be permitted; that the minimum lot size will be 13,400 square feet; that the project will be built in phase of approximately thirty (30) lots per year; that 3.1 acres of open space is proposed; that at this time DelDOT has no specifications for the design of the grid road; that the greenway areas will be dedicated to the Homeowners Association and that the developers are not requesting any lands for commercial uses as allowed in a residential planned community.



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

The Commission found that Mike Tyler of the Citizens Coalition, William and Joan Deaver, residents of Road 275, Pat Trarelli of The Plantations, Barbara McGowen of Sandy Brae Development, and Don Roessler of Gosling Creek Subdivision spoke in opposition to this application and stated in their presentations that DelDOT and developers are making shambles out of the Land Use Plan; that the grid concept roadways may not be built for another five to ten years; that there is a premature rush to develop all properties in this area; that there are concerns about the proposed density of the project; that residential planned communities should allow for cluster housing; where the monies will come from to build the proposed grid system roads; that this application should be deferred until the sewer study is complete; that people have signed petitions stating they do not want any more development in this area; that there will be increases in traffic to already congested areas; that the existing communities will suffer; concerns about the grid road not being built; negative impacts to the quality of life for the residents in the area; that Road 275 is turning into a major highway; and that larger lots should be required.

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 denied since at this time, sewage disposal is not available, there is no provision for safe vehicular and pedestrian movement within the site and to adjacent sites, possible effects on the Cape Henlopen School District, negative effects on area roadways and public transportation, and that the site does not meet the goals of the residential planned community in that there are no clustered dwellings proposed.

#### V. OLD BUSINESS

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.

Chairman Allen referred back to this application which was deferred at the May 13, 1999 meeting.

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



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

## VI. OTHER BUSINESS

William Warren  
C/U #1259 - Site Plan - Route 16

The Commission reviewed the site plan for Conditional Use No. 1259 located west of Route 16, 1,440 feet north of Road 587.

Mr. Abbott summarized the conditions of Ordinance No. 1266, C/U #1259, and advised the Commission of an on-site inspection done recently by the Chief Zoning Inspector and Mr. Abbott; that the applicant has the materials to start construction on the required fence; and that the site will need to be monitored by the zoning inspector to make sure that all stipulations are being followed.

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

Bethany Marina Townhouses  
Recreation Area Site Plan - Road 357

The Commission reviewed a revised site plan for a swimming pool to be located in the Bethany Marina Townhouse project off of Road 357.

Mr. Abbott advised the Commission that the pool is setback twenty-five (25) feet from Marina Road, a private interior drive, and twenty (20) feet from the corner interior drive; and that the proposed pool is twenty (20) feet by fifty (50) feet.

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

George Hopkins, III  
Lot on 50' right-of-way - Route 9

The Commission reviewed a concept to create a new lot with access from an existing fifty-(50) foot right-of-way located north of Route 9 and west of Road 262.



Mr. Abbott advised the Commission that this would be the second lot with access from the fifty-(50) foot right of way.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the lot as a concept.

Meeting adjourned at 10:55 PM.