

MINUTES OF THE REGULAR MEETING OF JUNE 13, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 13, 1991, at 7:30 P.M. in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mrs. Monaco, Mr. Hickman, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planning Technician.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of May 23, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #970--Bio Gro Systems, Inc.

Sue Rogers was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Georgetown Hundred for Land Application of Sludge lying on the southeast side of Route 321, south of Route 324, and west of the railroad, and to be located on a parcel containing 88.0 acres more or less.

Mr. Lank summarized comments received from the Indian River School District and the Sussex Conservation District, and read into the record a letter in opposition received from the Sussex Country Club.

Ms. Rogers stated the sludge would be food processing sludge from the Vlastic Foods. Food sludge is low in odors. The sludge would be transported to the site in enclosed trucks and then injected into the ground through a piece of equipment. The soil will be tested and the exact amount needed for the crop to be grown would be used. There would be very little nitrate runoff. The job would take approximately one week to complete. If the sludge is applied annually, tests would be done to determine the amount needed each year. They have extensive monitoring systems. They will also be monitored by the state.

Ms. Rogers stated they anticipate 20 to 30 truck trips per day. They presently have five (5) trucks. The sludge would be injected six (6) to twelve (12) inches into the ground.

Don Anthony, Mrs. Anthony, Bob Snively, Thalya Fisher, Barbara Austin, and Liz Snively spoke in opposition due to problems with odor and damage to the water supply.

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.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the District.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped to be Evesboro loamy sand, Woodstown sandy loam, and Fallsington sandy loam; that the reference to suitability of the soils has been referred to the State DNREC; that the farmland rating of the soils referenced are prime and of State wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a representative of Bio Gro Systems, Inc. was present and plans to utilize the site for the agronomic land application of sludge generated at the Vlasic Foods Wastewater Treatment Plant near Millsboro; that the sludge is a food processing sludge which contains a minimal amount of human waste; that the sludge will be injected into the soils; that the sludge is transported by truck to the site and then transferred to terragator vehicles for injecting the sludge into the ground; that the sludge is applied at a rate of need for nitrogen for the intended crops; that the nitrogen in the sludge is organic, a slow release nitrogen; that very little nitrogen runoff is created by organic fertilizers; that it will take approximately one week to complete the land application of sludge; that the process may be performed once a year dependent on the amount of nitrogen needed for the intended crops; that the State DNREC permit request is for a term of 5 years; that Bio Gro Systems, Inc. monitors the sludge and the weight of the sludge; that the monitoring includes where the sludge is placed, the amount of sludge placed, and the contents of the sludge; that the State DNREC requires testing for organic compounds; and that the recycling of sludge has been researched for approximately 30 years.

The Commission found, based on comments by the Environmental Control Manager for Vlasic Foods, that sludge analysis is performed by independent labs; that two bathrooms in the Vlasic Plant also dispose into the wastewater system; that phosphorus and potassium are included in the sludge; that the depth of injection into the soils varies from 6 inches to 12 inches; and that the entire farm will be fertilized during the annual process.

The Commission found that six (6) people were present in support.

The Commission found that a letter had been received from the Sussex Country Club, Inc. opposing the application and expressing concerns in reference to odors and the impact on the existing high nitrate readings of the water at the club.

The Commission found that seven (7) people spoke in opposition to the application and expressed concerns in reference to water quality, nitrates, the number of trips per day necessary to complete the application, odors, and questioning the comparison of organic nitrogen and nitrogen fertilizers, and questioning what other chemicals or compounds exist in the sludge.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried 4 to 0 with Mr. Hickman not voting, to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions:

1. That the application of sludge shall be subject to State DNREC approval.
2. That the sludge applied shall be limited to sludge from the Vlastic Foods Plant site near Millsboro.
3. That the maximum number of applications of sludge on this site shall be once per year subject to the approval of the State DNREC.

2. RE: C/U #971--Homestead Associates, Inc.

John Sergovic, attorney, was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Dagsboro Hundred for an Extension to an Existing Mobile Home Park lying on the southeast corner of the intersection of Route 442 and Route 431, and to be located on a parcel containing 46.22 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Sussex Conservation District, the Department of Transportation, the Division of Water Resources Underground Discharge Branch, and the Division of Air and Waste Management.

Mr. Sergovic stated that the proposed sites have been relocated since the last application.

Mr. Leeds stated the proposed lots will be in the wooded area. They need the additional lots to make it economically feasible to develop the wooded sites.

Robert Mitchell, park manager, stated he has 7 or 8 calls per week asking for sites. All the existing lots are rented.

Mr. Sergovic stated the proposed lots will be 50 feet by 100 feet or larger. The surrounding buffer is wooded.

Donald Warrington, park resident, spoke in opposition stating the existing park should be upgraded before more lots are added.

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.

The Commission found, based on comments received from Del D.O.T., that the Division of Highways has no objection to the County proceeding with this application.

The Commission found, based on comments received from the State DNREC Office of Land Use Review and Coordination, that comments have been requested from the DNREC Division of Air and Waste Management, Waste Management Section Solid Waste Branch, CERCLA/Superfund Branch, Underground Storage Tank Branch; the Division of Parks and Recreation; the Division of Soil and Water Conservation; the Division of Water Resources Underground Discharges Branch; the Department of Agriculture; the Department of Transportation; the Division of Public Health; and the Sussex Conservation District.

The Commission found that the State DNREC Division of Water Resources Soil Evaluation Group of the Underground Discharges Branch reported that Fallsington soil mapped on-site is the only soil unit which is considered unsuitable for on-site disposal systems; that a soil feasibility study must be conducted by a Class D licensed soil scientist using a 300 foot grid; that a report must be submitted to the Branch accompanied with a \$230 review fee; and that the maximum siting density shall be one dwelling per half acre.

The Commission found that the State DNREC Division of Air and Waste Management Waste Management Section reported that both the Underground Storage Tank data base and the Leaking Underground Storage Tank data base were reviewed and show no documented contamination problems.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Evesboro sandy loam, Woodstown sandy loam, and Fallsington sandy loam; that the suitability of the soils for the intended use vary from slight to moderate limitations; that the evaluation of the soils in reference to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soil types may be prime and of state wide importance; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some on-site drainage improvements.

The Commission found that the application was represented by a company official and legal counsel, and that they plan to utilize the site for an additional 58 lease lots for manufactured homes.

The Commission found, based on comments by representatives of the application, that Conditional Use #942 granted 35 additional lease lots, and that the County Council required that the lease lots be placed in the rear portion of the site; that this application allows for expansion of the same area for the additional 58 lease lots; that private restrictions dictate that no new lots be created at the intersection of Routes 422 and 431; that the park has developed as the lease market demanded; that it is not economically feasible to develop the site any further with the 35 lot limitation, since a street system and central sewer are required; that a need exists for rental space for units; that used manufactured homes are permitted in the park; that lots are not leased to dealers; that approximately 7 inquiries are received each week requesting rental spaces; that the park expansion is in compliance with the Coastal Sussex Land Use Plan since it is providing expansion to an existing park and since it is placing manufactured homes in an area with existing manufactured homes; that buffers are to remain wooded in the expansion area; and that the developers desire to start as soon as possible and are dependent upon receipt of agency approvals and permits.

The Commission found that one person present requested that all improvements be completed in the existing park prior to expansion of the new sections.

Motion made by Mr. Smith, seconded by Mr. Hickman, 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 and with the following conditions:

1. All facilities in the existing park shall be connected to the new central wastewater system.

2. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.
  3. Existing streets are to be upgraded to County standards.
  4. Existing water system will be upgraded to the standard of the new section.
  5. Open space shall conform with the site plan dated December 17, 1990, in order to resolve concerns of area landowners for C/U #942. Additional open space shall be provided for the expansion as Ordinances require.
  6. The Project shall be substantially underway within one year.
3. RE: C/U #972--John F. Clark

Bill Chasanov, attorney, and John Clark were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for a Campground for 32 Campsites lying on the southeast side of Route 36, approximately 4,500 feet southwest of Route 203 and approximately 4,000 feet west of Cedar Creek, and to be located on a parcel containing 9.62 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Sussex Conservation District, the Department of Transportation, and the Division of Water Resources.

Mr. Chasanov stated the applicants plan to have 32 campsites, a camp store, lodge building, office and caretaker's residence. Their existing boat storage facility will remain. Fifty to sixty boats are stored at present.

Mr. Clark stated each site would have sewer and water hook ups. No tents would be allowed. There would be a camp store and restaurant. The restaurant would serve sandwiches and possibly hot meals. The site would be fenced with a wooded buffer area. The surrounding land is leased and tilled.

Five (5) persons were present in favor of this application.

Gerald Kendzierski and Steve Billings spoke in opposition due to increased traffic, trash, septic problems, and the condition of the applicants existing mobile home park.

Fourteen (14) persons were 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.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped to be Sassafras loam; that the suitability of the soils for the intended use vary from none to slight limitations; that in reference to erosion and sediment control, moderate limitations may be anticipated during construction and slight limitations after completion of any construction; that the farmland rating of the soil type is prime; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the State DNREC Office of Land Use Review and Coordination has requested comments from the DNREC Division of Fish and Wildlife, the Division of Parks and Recreation, the Division of Water Resources Underground Discharges Branch and Wetlands and Aquatic Protection Branch, the Department of Agriculture, the Department of Transportation, the Division of Public Health, and the Sussex Conservation District.

The Commission found that the DNREC Division of Water Resources Underground Discharges Branch advise that, based on three test pits performed in February 1991, an approval for an elevated sand mound or an alternative design low pressure pipe system was issued; that a designer must submit plans for review; and that a construction permit may be issued which will remain effective for one year.

The Commission found that the applicant was present with legal counsel and that the applicant plans to utilize the site for 32 campsites, a camp store with food service, a camp lodge building, a public bathhouse and restrooms, an office and caretakers residence, and the existing boat storage yard.

The Commission found, based on comments made by representatives of the application, that the site is presently occupied by 60 to 70 boats; that as many as 215 boats have been stored on the site at one time; that the intent is to provide lodging for people with boats stored on site; that approximately 26 requests have been received this year for lodging; that the

camp store is intended to provide items of convenience and would be available for use by the public; that the use of the site for campsites may reduce the frequency of traffic; that the site will be fenced and landscaped with trees; that water, sewer and electrical services will be provided to the 32 lots; that the camp store with food service will seat 24; that no tent camping is proposed; that the existing entrance will serve all uses on site; and that the remaining acreage will continue to be tilled.

The Commission found that five (5) people were present in support.

The Commission found that two (2) people were present in opposition and expressed concerns in reference to the management and care of a manufactured home park owned by the applicant in the Greenwood area and fear for the same type of care and management; that the existing area is a quiet farming and residential neighborhood; that no one is on-site for 24 hours a day; that the site as it exists needs on-site management; traffic; trash; trespassing; and that water has been seen on the road and in the fields at high tides; and questioning the control of limiting the use to boat owner tenants only.

The Commission found that fourteen (14) people were present in opposition.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried 4 to 1 with Mr. Ralph opposed, to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition and since the use may not be compatible to the residential agricultural neighborhood.

4. RE: C/Z #1125--Charles Daisey

Todd Griffin, attorney, and Charles Daisey were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Georgetown Hundred, located on the northeast side of Route 213, 170 feet north of Route 565, and to be located on a parcel containing 1.37 acres more or less.

Mr. Lank summarized comments received from the Indian River School District, the Sussex Conservation District, and the Department of Transportation.

Mr. Griffin stated the applicant plans to operate a small used car facility on this site. There would be a small office with a maximum of 8 or 10 cars on display at a time. He would be open year round.

Mr. Griffin presented pictures of the surrounding area.

Mr. Daisey stated his proposed office would be approximately 12 feet by 12 feet. No car repairs would be done on the site. There would be security lighting. He would be open from 9:00 A.M. until 6:00 P.M., and a half day on Saturdays. There are other businesses in the area. The business would be operated by himself and his wife.

Diane Elliott, Jim Kelly, and Nelson Ward spoke in opposition due to the other uses permitted under C-1 General Commercial zoning, most businesses in the area are smaller or face Route 113, and rezoning this parcel would open the door to more rezonings in 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.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed action will have a significant impact on the district.

The Commission found, based on comments received from Del D.O.T., that a traffic impact study was not requested and that the present level of service "B" of Route 213 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped as Evesboro loamy sand and Klej loamy sand; that the suitability of the soils for the intended use may have slight limitations; that in reference to erosion and sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of any construction; that the farmland rating of the soil type is of state wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present with legal council, and that the applicant plans to utilize the site for a used car sales facility.

The Commission found, based on comments made by representatives of the application that the site is in close proximity to US Route 113, a major thoroughfare; that the site is in close proximity to other commercial and business activities; that similar uses exist in close proximity on US Route 113; that no warehousing is intended; that a maximum of 10 vehicles are intended to be displayed on the site; that the entrance location is subject to approval by the State Division of Highways; that no negative impacts are anticipated on the neighborhood, Route 213, or property values; that the business will operate five and one-half days per week with no Sunday hours; that security lighting will be provided; that no employees are intended; that no major auto repairs are intended; and that a 12 foot by 12 foot building is proposed for a sales office.

The Commission found that 3 people spoke in opposition and expressed concerns, not in reference to the use, but in reference to C-1 zoning and the many uses permitted in C-1 General Commercial; the fear that a precedent may be established if approved; that the area is a quiet peaceful neighborhood; that the majority of the area is either agricultural or residential; that the rezoning may change the character of the area; and that new homes just recently built in the area will be impacted.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be denied based on the record of opposition; and since the site is in close proximity to a church and a residential community; since C-1 General Commercial may not be compatible with the area; and since commercial uses should be located along a major thoroughfare.

5. RE: ORDINANCE AMENDING CHAPTER 115  
(Buffer Zone)

AN ORDINANCE AMENDING CHAPTER 115, ARTICLE XXV, OF THE CODE OF SUSSEX COUNTY, PROVIDING FOR AN AMENDED BUFFER ZONE, CLARIFYING A GRANDFATHERING PROVISION, AND CREATING A BUILDING SETBACK LINE AT FEDERAL WETLANDS.

Mr. Lank summarized the proposed Ordinance referencing setbacks from State designated wetlands, the establishment of a building restriction line at Federal wetlands, and grandfathering provisions.

John Sergovic, Esquire, was present representing Camanne, L.P., and submitted written comments which referenced opposition to the possible "taking" of property by the creation of a building restriction line at Federal wetlands and denial of construction

permits in Federal wetlands, and in support of the grandfathering provisions.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action, pending legal clarification of the proposed Section of the Ordinance.

#### OTHER BUSINESS

1. RE: W. Wayne Baker - Exxon Service Center

The Commission reviewed a site plan for a convenience store and service center at the intersection of Route 13 and Route 534.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action for more information on the proposed location of gas pumping islands.

2. RE: Bronberg, Inc.

The Commission reviewed a site plan for an 18 unit hotel on the west side of Route 272, and adjoining the overpass for Route One at the Lewes and Rehoboth Canal.

It was noted that no access was allowed on the Route One side due to the overpass. The proposed setback is five (5) feet from the right of way of Route One.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all agency approvals.

3. RE: Guest Cottages

The Commission reviewed a site plan for a 75 unit multi-family project on the north side of Route 361.

It was noted that the units are individual single family units connected by sheds.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary. Issuance of building permits shall be subject to receipt of all agency approvals or permits.

4. RE: Q-Tone Broadcasting - C/U #966

The Commission reviewed the site plan for the radio tower for Conditional Use No. 966 on Route 52-C.

Motion made by Mr. Hickman, seconded by Mr. Smith, carried unanimously to approve the site plan as submitted as a final.

OLD BUSINESS

1. RE: C/U #967--James H. Owens

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for a Private Airstrip on the south side of Route 16, across from Route 227, and to be located on a parcel containing 32.67 acres more or less.

The Chairman referred to this application which has been deferred since May 9, 1991.

The Commission discussed the application and established that concerns were expressed about the location of the site in such close proximity to the Town of Ellendale, and the concerns of the area residents.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried 4 to 1 with Mr. Ralph opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition and due to the close proximity to the Town of Ellendale.

2. RE: C/U #968--Gene H. Huey

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for a Private Airstrip on the southeast side of Route 594, 750 feet southwest of Route 565, and to be located on a parcel containing 35.939 acres more or less.

The Chairman referred to this application which has been deferred since May 9, 1991.

The Commission discussed the application and established that the site was located in a remote area; that the roadway near the site was not heavily travelled; and that the primary use of the site would be by the applicant for his private use.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, 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 and with the following conditions or stipulations:

1. The maximum number of aircraft on-site shall be three (3), and shall include the applicants personal aircraft.
2. The site shall not be used for crop dusting or aerial spraying.
3. The aircraft utilizing the site shall be limited to single engine aircraft.
4. No commercial activities shall be conducted on the site.
5. No fuel shall be stored on the site except for fuel to be utilized by the applicant.
6. The runways shall not be lighted.
7. No repair or maintenance of aircraft shall be conducted on the site, except for on the aircraft owned by the applicant.

3. RE: Evergreen Haven

The Commission discussed a concept reviewed and deferred on May 23, 1991 to create 4 - 3 lot subdivisions on existing plotted streets.

It was noted that the streets are only plotted, that the streets are wooded and that no clearing has taken place, and that the streets are being extended to create the subdivisions.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried 4 to 1 with Mr. Ralph opposed, to deny the request as submitted. A major subdivision application shall be required to consider this type of application with the appropriate public hearing.

4. RE: Subdiv. #88-34--Ocean Farm Limited Partnership

Application of OCEAN FARMS LIMITED PARTNERSHIP (Ocean Farm) to consider the Subdivision of land in an MR Medium Density Residential Zoning District in Baltimore Hundred by dividing 53 acres into 119 lots, located on the north side of Route 363, 2,800 feet southwest of Route 361.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the subdivision as a final.

5. RE: Subdiv. #89-10--Mary Handy

Application of MARY HANDY (Crestfield) to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred by dividing 37.4 acres into 42 lots, located on the east side of Route 552, 2,000 feet north of Route 20.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a final.

6. RE: Subdiv. #89-37--Ronald Hastings

Application of RONALD HASTINGS to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 52.2 acres into 29 lots, located on the east side of Route 530, 2 miles south of Route 20, and as an extension to Rivers End Subdivision.

Mr. Abbott advised the Commission that a feasibility approval has been received from the State DNREC.

Mr. Lank advised the Commission that the court case between the State DNREC and the developer in reference to solid waste has been dropped.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a preliminary. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.

7. RE: Subdiv. #91-5--Meadowbrook Associates

Application of MEADOW BROOK ASSOC. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 28.9 acres into 33 lots, located on the southeast side of Route 206, 1,800 feet northeast of Route One.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a final.

8. RE: Subdiv. #91-7--Wheatley Marvel Corp.

Application of WHEATLEY MARVEL CORP. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 46.05 acres into 24 lots, located on the east side of Route 113, 2,000 feet north of Route 623.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a final.

Meeting adjourned at 10:30 P.M.

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Lawrence B. Lank, Secretary