

MINUTES OF THE REGULAR MEETING OF AUGUST 10, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 10, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:30 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, Mr. Wheatley, with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to adopt the agenda as circulated.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of July 20, 2000 as corrected.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of July 27, 2000 as corrected.

Mr. Schrader described how the agenda and hearings would be conducted.

PUBLIC HEARINGS

C/U #1346 -- application of CENTERS FOR NEUROLOGY PROPERTIES, L.L.C. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a professional/medical office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 36,198 square feet, more or less, lying north of Route 9 (Savannah Road) 500 feet northeast of Ritter Road.

The Commission found, based on comments received from DelDOT, that the revised site plan is being reviewed and that some corrections are necessary.

The Commission found, based on comments received from the County Engineering Department, that the site is within Phase III of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that sewer became available to the site on December 13, 1999; that the parcel has been served by a grinder pump; that any upgrades to this service will be the responsibility of the developer or property owner; that the parcel has a capitalization fee credit of 1.0 EDU; that additional capitalization fees will be due for any increase in EDUs at the rate of \$250 per EDU, assuming a single business is assessed; that capitalization fees will remain in effect through December 12, 2000; that at that date, system connection charges will be due for any increase in EDUs; and that the system connection charge rate for the period July 1, 2000 through June 30, 2000 is \$2,954 per EDU.

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

The Commission found that a petition in opposition containing 50-signatures has been received, and that letters of opposition were received from Barbara Elaine Hearne, Zigmund Michael Mielnikiewicz, and John and Kathy Kersey. The petition and letters were presented to the Commission members for review.

The Commission found that Dr. Robert Varipapa and Rob Ament of Charles D. Murphy Associates, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the square footage of the building has been reduced from 6,000 to 3,850 square feet; that they have tried to create a professional building that looks residential to blend in with the neighborhood; that they propose to maintain approximately 45% pervious surface; that parking has been reduced to 19 spaces; that the building has been relocated to create a greater setback; that the MRI Mobile Scanner Trailer space has been relocated to the rear of the building; that the trailer can now be pulled into the parking lot and then backed behind the building, rather than parking in front of the building; that drainage concerns have been addressed; that the back of the lot is low and contains some wetlands; that they propose a dry pond for stormwater management ; that they are willing to erect a fence around the pond area to prevent trespassing; that a professional landscaper will provide the buffer landscaping; that no change in traffic is anticipated, since they are moving from one site on Savannah Road to this site; that the stormwater management pond depth is 2.5 feet from top to bottom; that less than 1-foot of water will be held for a 24 hour period; that the wetlands to be filled will be permitted under a Nationwide Permit from the Corps. of Engineers; that the stormwater management pond will discharge to Ebenezer Branch; that the MRI Mobile Scanner Trailer is new, and creates little noise; that a tractor delivers the trailer around 7:00 A.M. and will pick up the trailer and leave around 6:00 P.M.; that they purchased the site approximately 1 and 1/2 years ago; that several other professional/medical office exists along Savannah Road; that some of the offices are converted homes and some are new construction; that the building should improve the area; that an electrical substation exists across Savannah Road; that the building will be utilized by Neurologists and Podiatrists, who spend a lot of time with their patients; that the volume of patients is less due to the time spent with the patients; that two doctors will be present per day; that 30 patients could receive treatment per day per doctor; that the MRI Mobile Scanner Trailer will serve approximately 8 patients per day; that the MRI trailer will be on site one day a week; and that the business will be open 5-days per week from 8:30 A.M. to 4:00 P.M. with no weekend hours.

The Commission found that Mr. Varipapa submitted a rendering of the proposed office building.

The Commission found that Bob Larsen, Jim Adkins, Barbara Hearne, Zigmund Mielnikiewicz, Brian Jeffrey's, Pierce Russell, and Ann Shaffer, of the 13 people present in opposition, expressed concerns that the use will be out of character with the neighborhood; that the building is too large; that the stormwater management pond will contain water at all times; the number of patients per day; the amount of additional traffic; that the site may not accommodate the necessary parking; that Quakertown is a quiet residential community; that Quakertown is separated by the Branch and a wooded area from the commercial uses near Lewes; noise; that there is no need for additional medical offices in the area; that 90% of the improvements in Quakertown are residential and 10% may be offices; that MRI Mobile Scanner Trailers make noise and can impact pacemakers; that the building will block sunlight to neighboring properties; that children's safety should be a concern when creating a parking lot and pond in a residential areas; that wetlands and trees will be removed; that 38 school buses travel Savannah Road twice a day; and that almost all of the EMS and Fire apparatus uses Savannah Road.

The Commission found that a Delaware State News Article and photographs of the area were submitted into the record.

At the conclusion of the public hearings, the Commission discussed the points and issued raised during the public hearing.

There was a consensus of the Commission that they were concerned about the size of the building, the way the building faces Savannah Road, drainage, and that the building does not reflect the appearance of a home in an area where homes are the predominant use.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 4-votes to 1, with Mr. Wheatley opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be denied.

Motion Carried 4 - 1.

C/U #1347 -- application of KLASIK KARTS to consider the Conditional Use of land in a C-1 General Commercial District for a hot dog cart for retail sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.56 acres, more or less, lying at the southwest corner of the intersection of Delaware Route One and Road 274.

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

The Commission found, based on comments received from the County Engineering Department, that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that the parcel is served by two 6-inch laterals; that the site currently has a credit of 2.38 EDUs; that there will be system connection charges due for any improvements constructed in excess of 2.38 EDUs; and that the system connection charge is \$2,954 per EDU through June 30, 2001.

The Commission found that the applicant had submitted with the application copies of an insurance binder, a Internal Revenue Service Employer Certification, a Food Service Establishment Inspector Certification, an approved entrance site plan, and a temporary permit to operate from the Division of Public Health.

The Commission found that Dale Lomas and Bill Reed, partners in Klasik Karts, were present and stated in their presentations and in response to questions raised by the Commission that they propose to sell hot dogs, sausage, sodas, chips, and bottled water; that the cart is located in front of the building and not in the parking lot; that they proposed to try the cart at the request of some of the customers at Atlantic Liquors; that they have operated the cart business at the site and the average gross sales has been \$68 per day; that the cart is stored in a shed at night; that they plan to operate the cart from 10:00 A.M. to 5:00 P.M. Monday through Saturday during the Summer season and occasionally on Saturdays during the rest of the year; that there will be no on-premise consumption; that they miss understood that they could operate until a decision is rendered with a temporary permit; that there are no tables provided for customers to eat; that they are not sure if the ABC has any jurisdiction; and that they apologize for being in operation without the appropriate approvals.

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

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

The Commission questioned if the sheds to the rear of the store had permits.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried 4 - 0, with Mr. Wheatley abstaining, to defer action.

C/U #1348 -- application of C-SW CELLULAR PARTNERSHIP to consider the Conditional Use of land in a GR General Residential District for a 180-foot high lattice communication tower to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, on a 3,600 square foot leased portion of a 57 acre tract, more or less, lying with access east of Road 627 (Herring Branch Road) and north of Road 636.

The Commission found that no agency comments had been received.

The Commission found that one letter was received which expressed concerns about magnetic fields and radiation waves.

The Commission found that Lisa Goodman, Attorney, Mark Rubin, Dan Jacobs, and Shawn Shinkin, present on behalf of Cellular One and Comcast, stated in their presentations and in response to questions raised by the Commission that a 180-foot high lattice tower is proposed; that the Code allows a 150-foot high tower as a right; that the additional 30-foot of height will provide a better coverage for communications in the area; that the site is zoned GR General Residential; that the site is part of a farm presently planted in soybeans; that a drive is proposed behind 4-lots and a cemetery; that the tower will be placed within a 60-foot by 60-foot fenced enclosure; that 4 whip antennas are proposed on top of the tower and that additional space is available for up to 12 additional antennas; that the tower is approximately 60-feet from the cemetery and closer to the residences; that the tower is designed to collapse on itself, rather than fall over; that the additional height will allow cellular users to receive better coverage and fill gaps where poor communications now exists; that an electromagnetic study report required by the Telecommunications Act provides for standards for electromagnetic radio radiation waves and that the tower will emit 580 times less than the allowable rate allowed by the FCC; that the site was chosen by the landowner, and is less impacting the on farming operation since located in a small stand of trees; that the tower will allow for co-location of antennas with other users; and that Kent County recently amended their regulations on towers.

The Commission found that a drawing of the existing coverage areas and gaps, a drawing of the existing coverage with the proposed 180-foot tower showing filling of the gap, a drawing of the existing coverage with a 150-foot tower at the same site showing partial filling of the gap, a drawing of the existing coverage with the Omni Point 120-foot tower showing greater gaps, and a letter from Millennium Engineering in reference to the RF Safety FCC compliance of the facility.

The Commission found that Claude McCrea, an area resident, expressed concerns relating to radiation; the closeness of the tower to residences; concerns for the safety of children; questioning the need; and stating that the site was not appropriate for the use.

The Commission found that Ms. Goodman added that if the site was not approved, another location or locations in the area may be necessary.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

There was a consensus of the Commission that they were concerned about the location of this tower, and that the applicant should consider relocating a tower further away from the cemetery and residences in the area.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied.

Motion Carried 5 - 0.

C/U #1349 -- application of RON AND DONEITA WITKE to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and warehouse for a heating and air conditioning business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 34,740 square feet, more or less, lying east of U.S. Route 113 across from Road 323.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the Department is opposed to rezoning of this parcel because it is inconsistent with the 1997 Comprehensive Plan and the Strategies for State Policies and Spending Map; that the rezoning would conflict with the goals of the Corridor Capacity Preservation Program; and that if the County finds it appropriate to approve this rezoning, the applicant should be advised that the Department will allow access to the proposed use only from the private road opposite Road 323.

The Commission found that the applicant chose to apply for a Conditional Use rather than a rezoning due to DelDOT's concerns.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located in a Rural Area of the Strategies for State Policies and Spending Map where State policies will be to encourage the preservation of rural lifestyle and discourage new development; and that the State objects to this proposal.

The Commission found that Ron Witke was present and stated in his presentation and in response to questions raised by the Commission that he had proposed several months ago to locate his heating and air-conditioning business at his residence and was rejected; that he presently rents a small space in the Town of Georgetown; that he has 10 employees with 6 vehicles; that he likes this location due to the exposure to the business on a major

highway; that he plans on purchasing the site; that he has no objection to being restricted to access from the private road; that he questions why anyone would want to live at the location; that a business office exists on the adjoining parcel; that other business uses exists across U.S. Route 113; that he receives deliveries twice a week; that he may have a few customers at the site; that company vehicles are driven home by the employees daily; that he proposes a Morton type of building with front windows and an awning, a garage door to the side; that outside storage will be within an enclosed solid fence; that the maximum number of employees on the site normally will be four; that on-site septic and water will be provided; and that he is not aware of any restrictive covenants.

The Commission found that Steve Rust, the landowner, spoke in support and stated that the adjoining property is a home and office for Mumford Seal-Cote, a driveway sealing company; that a construction company operates from a lot within the Subdivision; that the street to the south of the site is a public street not maintained by the State; and that the State recently paved the street utilizing discretionary funds.

The Commission found that no parties appeared in opposition.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Johnson, 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 stipulations: 1) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals; 2) One unlighted sign, not exceeding 32 square feet, may be permitted; 3) Outside storage shall be within an enclosed solid fence.

Motion Carried 5 - 0.

C/Z #1410 -- application of KAREN Z. BOWDEN to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, land lying east of Road 243 approximately 1/4 mile north of Road 244, to be located on 2.04 acres, more or less.

The Commission found that no agency comments had been received on this application.

The Commission found that Karen Bowden was present and stated in her presentation and in response to questions raised by the Commission that she would like to divide the property into two lots for the placement of manufactured homes; that she owns the land;

that she does not live on the site at this time; that she would like to provide a lot where her mother could live; that a mobile home exists on the adjacent parcel; and that the majority of the homes in the immediate area are single wide mobile homes.

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

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

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

Motion Carried 5 - 0.

OLD BUSINESS

Subdivision #2000-20 -- application of CARLTON R. MOORE to consider the Subdivision of land in a GR General Residential Zoning District in Cedar Creek Hundred, by dividing 58.03 acres into 61 lots, and a waiver from the maximum allowed cul-de-sac length of 1,000 feet, located south of Route 30, 200 feet southeast of Road 228.

The Chairman referred back to this application which was deferred at the July 27, 2000 meeting.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Subdivision as a preliminary

Subdivision #99-9 -- application of RONALD RITTHALER to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 49.18 acres into 128 lots, located at the southwest corner of the intersection of Road 266 and Road 269-A.

Mr. Abbott advised the Commission that this application received preliminary approval for 128 lots on June 24, 1999; that the final record plan has been reduced to 125 lots; that all agency approvals have been obtained; and that the final plan meets the requirements of the Subdivision Code.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried with 3 votes, with Mr. Gordy and Mr. Johnson abstaining, to approve the Subdivision as a final.

OTHER BUSINESS

- 1) Perdue-Agriculture, L.L.C.
C/U #1314 - Final Site Plan - U.S. Route 13A

The Commission reviewed the final site plan for C/U #1314.

Mr. Abbott advised the Commission that preliminary approval was granted March 9, 2000; that on April 13, 2000 the Commission determined that the landscaped berm could be planted after September 15, 2000; that the final site plan is the same as the preliminary plan; that all agency approvals have been obtained except the air emissions permit from the State DNREC; that the air emissions permit cannot be obtained until the building is erected; that a certificate of compliance should not be issued until the air emissions permits is obtained; and that the plan meets the requirements of the Zoning Code.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried with 4 votes, with Mr. Gordy abstaining, to approve the project as a final with the stipulation that a certificate of compliance not be issued until receipt of an air emission approval from the State DNREC.

- 2) SBA Towers, Inc.
C/U #1259 - Amended Site Plan - Route 16

The Commission reviewed a revised site plan for C/U #1259.

Mr. Abbott advised the Commission that the revised plan is for a 150-foot telecommunications tower; that the tower will be within a 100-foot by 100-foot fenced area; and that approvals will be needed from the FCC and the FAA.

Mr. Allen questioned if the stipulations of C/U #1259 are being followed.

The Commission discussed the previous stipulations.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action so that the staff can inspect the site.

- 3) Kings Creek Associates, Inc.
C/U #1247 - Time Extension

The Commission reviewed a request for a one-year time extension for C/U #1247.

Mr. Abbott advised the Commission that the County Council approved this application on July 21, 1998; that an extension has never been requested for this project; and that the reason for the request is due to delays in the design of the project.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried with 4 votes, with Mr. Gordy abstaining, to deny the request since two-years have passed since the approval.

- 4) John Green
Lot and 50-foot right-of-way - Road 224

The Commission reviewed a concept to create a lot with access from a 50-foot right-of-way off of Road 224.

Mr. Abbott advised the Commission that the Commission approved this request on July 8, 1999 and that the plan was not recorded within one-year.

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

- 5) Donald Warrington
3-lots and 50-foot right-of-way - Road 70

The Commission reviewed a request to create 3-lots on an existing 50-foot right-of-way off of Road 70.

Mr. Abbott advised the Commission that this request would make a non-conforming parcel conform to zoning since there are two dwellings on the parcel.

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

- 6) Virgil G. and Nancy M. Townsend
Lot and 50-foot right-of-way - South Street

The Commission reviewed a request to create a one-acre lot with access off of an existing 50-foot right-of-way.

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

- 7) William and Betty Carr
Lot and 50-foot right-of-way - Road 74

The Commission reviewed a request to create a 50-foot easement to serve as access for an existing one-acre landlocked parcel.

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

Meeting Adjourned at 10:45 P.M.