

MINUTES OF THE REGULAR MEETING OF AUGUST 25, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 25, 1994, at 7:30 PM, in Room 115 of the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mrs. Monaco, Mr. Phillips, Mr. Ralph, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner II.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the minutes of August 11, 1994 as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1086 - Wheelabrator Clean Water Systems, Inc.
Bio Gro Division

Sharon Hogan was present on behalf of the applicants to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Dagsboro Hundred for Land Application of Sludge (pickle processing waste) lying on the northeast side of Route 48, northeast of Penn Central Railroad, southwest of Route 318, and on both sides of Route 432 to be located on a parcel containing 220 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District and the Indian River School District.

Ms. Hogan advised the Commission that the sludge will be applied as agricultural fertilizer at nitrogen rates necessary for corn growth, that approximately 3.5 dry tons of sludge will be applied per acre, that approximately 318 truck loads will be necessary to haul the sludge, that no unfavorable comments have been received from neighbors, that the sludge is delivered to the site in sealed tanker trucks, that the sludge application is performed by use of a terragator type tractor which chisels a run into the soil approximately 12 inches below grade, then injects the sludge into the run below the soil surface to minimize odors, and then disc the soil over the run.

No parties appeared 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 the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Kalmia sandy loam, Kenansville

loamy sand, Rumford loamy sand, and Woodstown sandy loam, that all of the soils types are relatively free of limitations or that the limitations are easily overcome, that some of the Woodstown soils have limitations that need to be recognized and can be overcome by careful design or special construction measures, that the owner will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil types vary from Prime Farmland to land of Statewide Importance, that some of the soils are hydric in depressions, that the soils are sandy and very permeable, that application rates of sludge should be monitored to avoid leaching of material into the ground water, that application of sludge should be far enough away from ditch on northeast corner of property to prevent runoff, and recommend that a grass or wooded buffer strip, a minimum width of 25 feet, be provided.

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

The Commission found that a company representative was present and advised them that the sludge will be applied as agricultural fertilizer at nitrogen rates necessary for corn growth, that approximately 3.5 dry tons of sludge will be applied per acre, that approximately 318 truck loads will be necessary to haul the sludge, that no unfavorable comments have been received from neighbors, that the sludge is delivered to the site in sealed tanker trucks, that the sludge application is performed by use of a terragator type tractor which chisels a run into the soil approximately 12 inches below grade, then injects the sludge into the run below the soil surface to minimize odors, and then disc the soil over the run.

The Commission found that no parties appeared in opposition.

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

1. Application of sludge shall be subject to State DNREC approval.
2. Sludge applied shall be limited to sludge from the Vlasic Foods Plant site near Millsboro.

3. Maximum number of applications of sludge on this site shall be once per year; subject to the approval of the State DNREC.
4. Hours for application of sludge shall be limited as follows: 6:00 a.m. to 8:00 p.m., Monday through Saturday.
5. There shall be no stockpiling of sludge materials on site.
6. The Conditional Use will be valid for five years; concurrent with the State DNREC permit.

2. RE: C/U #1087 - David L. Wilson

David L. Wilson, David Rutt, Attorney, and Karen Brittingham and Robert Nash of Charles D. Murphy and Associates, 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 an Indoor/Outdoor Auction, Farm Equipment Sales, New and Uses Indoor/Outdoor Auction Items, Farmers Market and Auction, Wholesale and Retail, Restaurant and Snack Bars, Assembly Hall, Storage and Warehousing, Tent Sales and Parking Area, lying on the west side of Route 113, approximately 910 feet north of Route 623 to be located on a parcel containing 32.39 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District and the State Department of Transportation, DelDOT.

Mr. Rutt advised the Commission of the uses intended, that the use meets the purpose of the Zoning Ordinance for a Conditional Use type application, that the use will provide a service along one of the major corridor roads through Sussex County, that the use is of a semi-public character and benefits the residents of Sussex County and the surrounding areas.

Ms. Brittingham discussed how the application was established, discussed the area, referenced permitted AR-1 Agricultural Residential uses, and advised the Commission that commercial uses are scattered along Route 113 from Lincoln to Ellendale, that the expansion area is needed since the present site is too small, that the use does not conflict with the land use plan, that DelDOT has approved the commercial entrance plans, that screening exist from adjoining property owners, that all buildings will exceed required setbacks, that a 100 foot wide residential lot is proposed to buffer the site from the adjoining subdivision, that all buildings are at least 200 feet from residential uses, that no improvements will impact wetlands, that the applicant is willing to establish fencing and planted buffers

where necessary, that no flood plains are impacted, that the applicant has been in business in the area since 1973, that the business has received no violations from DNREC, OSHA, or the County Planning and Zoning Department, that residential uses in the area have increased since the establishment of the present business site, that letters of support have been received from people in the area, that stormwater management plans will be followed, that the planned hours of business will be Monday through Saturday from 7:00 a.m. to 11:00 p.m. and Sundays from 12:00 p.m. to 6:00 p.m., that paving and clamshells are proposed for the driveways and parking areas, that fire protection will be from the Ellendale Fire Company, that the applicant shall follow all agency regulations, that the applicant proposes to participate in the adopt a highway program for maintenance of the right of way of Route 113 from Hudson Pond to Route 207 at Lincoln, that all clearing will be minimized, that the three area subdivisions have developed since the present business was started, and that all parking and loading requirements will be exceeded.

Mr. Nash, a surveyor, advised the Commission that the site will be graded for all water run-off to go to a stormwater management pond, that the design will meet or exceed all stormwater regulations, and that there should be no negative impact on wetlands or woodlands.

Mr. Wilson advised the Commission that he agrees with all comments made by representatives of his application, and that he anticipates no adverse impact on the neighborhood, property values, or traffic.

Mr. Rutt added that the application will meet all Codes, that the site is not located in the Delaware Coastal Zone, and submitted a petition with approximately 300 signatures in support of the application from area residents of Sussex and Kent Counties.

Mr. Wilson added that the proposed uses are the same as those listed in the 1983 application for the existing site, that the dualization of Route 113 reduces his usable area of the present site, that the present site is not adequate to serve all of his needs, that no outside storage areas are proposed, that the only vehicles to be stored on the site will be those vehicles parked pending an auction or vehicles to be picked up by purchasers after an auction, that tents would be for temporary use until all buildings are constructed, that tents were utilized last year for approximately 45 days total, that the petition was circulated at one of the auto auctions for support, that Sundays are used to display auction items, not auctions, that the lighting would be similar to the present site with approximately

8 dust to dawn security lights, that a six (6') foot high chain-link fence is planned to be placed between the site and Hudson Pond Acres, and that the trailers and buses used for storage at the present site are being removed to provide more area for parking.

Lynn Wright spoke in support of the application and stated that he utilizes the auto auction, that the auction benefits all auto dealers in the general area, that the present site does not provide adequate parking, and that a more modern facility would be beneficial to the uses intended.

Eighteen (18) people were present in support.

William E. Moore, Attorney on behalf of the Hudson Pond Preservation Society, Robert W. Green, William D. Bell, Charles Thompson, Louis A. Kish, Colin Batchlor, Jack Simon, Sr., Jack Simon, Jr., Joe Wiley, Karen Bell, spoke in opposition to this application and stated that the three subdivisions in the area are restricted, that the community has grown as a residential area, that the present auction was started prior to the development of the subdivision, that the appearance of the present site has deteriorated, that the applicant's homesite and the present auction site are cluttered with junk, that the applicant has been hauling horse manure from his farm to this site, that a concrete company is washing down cement trucks on the site which runs-off into Hudson Pond, that traffic is a major concern due to the proposed entrance location on Route 113, that septic systems are a concern, that property values will decrease, that environmental concerns cause the establishment of the Hudson Pond Preservation Society, that the County Board of Adjustment was advised of the residents concerns over a concrete batch plant proposed on the same site, that rare plants grow in the area, that some residents of the area have health problems, that wildlife in the area may be impacted, that a bald eagle nest in the area, that the Hudson Pond is in an eco-system that goes down into the Cedar Creek, that the Nature Conservancy has recently obtained lands along the Hudson Pond, that environmental violations have taken place on the site and referenced burning, that approval of the use will create a auction site on both sides of a residential development, that deed restrictions in the subdivisions do not permit commercial activities, storage of vehicles, boats or trailers in yards, that dust, exhaust fumes, noise and lighting will affect the area, that the use will be out of character with the area, that trash from the existing site is a major concern and would be multiplied by approval of this application, that adequate parking could be created at the present site if the site was cleared of junk and debris, that the hours of business are a major concern, that the present screening

from neighboring properties is actually on lands within Hudson Pond Acres, that screening and fencing should be required if approved, that concerns were expressed about the type of residential structure being placed for security on land in close proximity to Hudson Pond Acres, that the use of trailers and buses for storage should not be permitted, that tent sales should not be permitted, and that the proposed business hours were objectionable.

The people present in opposition submitted a petition of approximately 50 signatures of residents within the three subdivisions and lots along Hudson Pond, photographs of homes in the area, the present site, the applicant's farm and home site, concrete being dumped on the site, aerial photographs of the proposed site, the existing auction site, and the area, copies of complaints from DNREC officials, copies of deed restrictions, land value estimates for lots within Hudson Pond Acres and Hudson Mill, a copy of an article from LIFE Magazine, September 1994 Issue referencing Endangered Species, a photograph of the resident eagle that frequents Hudson Pond, a letter from The Nature Conservancy listing three parcels that the Conservancy protects or manages, a letter in opposition, and a letter to the Honorable J. Benjamin Ewing voicing objection to the use, and a copy of a news article from Sunday News Journal for August 14, 1994 which references the State's involvement in county planning.

Twenty-two (22) people were present in opposition.

Mr. Rutt responded to the opposition by stating that deed restrictions cannot be applied to neighboring properties, that the County has the right to restrict the property, that the recent violations referenced by the opposition were voided by the DNREC, that the present auction site was approved prior to the development of the subdivisions, that the site is on a major North/South corridor highway, that the highway is being improved creating more users, that the existing site is being upgraded and cleaned up, that the burning referenced did not include manure, that the burning was properly permitted, that the concrete truck pictured was not dumping on the applicant's property, but on Route 113 right-of-way, that the amount of septic for the auction will be less than septic if a subdivision were created on the site, that he questioned if this area contains a major concentration of wildlife due to the construction activities, that a major pollution of water quality is lawn fertilizers, that stormwater management is required and will be provided per specification, that one of the objectors has no problem with the existing site, objects to the proposed site, and will be buffered more from the proposed site, that DelDOT has approved the entrance plans, that the auction activity could be less intrusive

than some agricultural activities, that the present site is tested regularly by OSHA for exhaust fumes within buildings and has not been violated, that no other auto auctions exist in the area and that the use will provide a need, and that the concerns of the residents can be addressed by the creation of stipulations.

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 Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Kenansville loamy sand, that some of the Evesboro and the Kenansville soils are relatively free of limitations or the limitations are easily overcome, and some of the Evesboro soils have limitations that need to be recognized but can be overcome by careful design or special construction measures, that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation, that the farmland ratings of the soils, as mapped, varies from soils hydric in depressions, soils of Statewide Importance, hydric in small depressions, to Prime Farmland, 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, based on comments received from DelDOT, that the Division of Highways has approved the commercial entrance plans for the site.

The Commission found that the application was represented by the applicant, his attorney, and two representatives of a surveying firm, who advised the Commission of the uses intended, that the use meets the purpose of the Zoning Ordinance for a Conditional Use type application, that the use will provide a service along one of the major corridor roads through Sussex County, that the use is of a semi-public character and benefits the residents of Sussex County and the surrounding areas.

Ms. Brittingham discussed how the application was established, discussed the area, referenced permitted AR-1 Agricultural Residential uses, and advised the Commission that commercial uses are scattered along Route 113 from Lincoln to Ellendale, that the expansion area is needed since the present site is too small, that the use does not conflict with the land use plan, that DelDOT has approved the commercial entrance plans,

that screening exist from adjoining property owners, that all buildings will exceed required setbacks, that a 100 foot wide residential lot is proposed to buffer the site from the adjoining subdivision, that all buildings are at least 200 feet from residential uses, that no improvements will impact wetlands, that the applicant is willing to establish fencing and planted buffers where necessary, that no flood plains are impacted, that the applicant has been in business in the area since 1973, that the business has received no violations from DNREC, OSHA, or the County Planning and Zoning Department, that residential uses in the area have increased since the establishment of the present business site, that letters of support have been received from people in the area, that stormwater management plans will be followed, that the planned hours of business will be Monday through Saturday from 7:00 a.m. to 11:00 p.m. and Sundays from 12:00 p.m. to 6:00 p.m., that paving and clamshells are proposed for the driveways and parking areas, that fire protection will be from the Ellendale Fire Company, that the applicant shall follow all agency regulations, that the applicant proposes to participate in the adopt a highway program for maintenance of the right of way of Route 113 from Hudson Pond to Route 207 at Lincoln, that all clearing will be minimized, that the three area subdivisions have developed since the present business was started, that all parking and loading requirements will be exceeded, that the site will be graded for all water run-off to go to a stormwater management pond, that the design will met or exceed all stormwater regulations, and that there should be no negative impact on wetlands or woodlands, that the applicant agrees with all comments made by representatives of his application, that the applicant anticipates no adverse impact on the neighborhood, property values, or traffic, that the application will meet all Codes, that the site is not located in the Delaware Coastal Zone, submitted a petition with approximately 300 signatures in support of the application from area residents of Sussex and Kent Counties, and the applicant added that the proposed uses are the same as those listed in the 1983 application for the existing site, that the dualization of Route 113 reduces his usable area of the present site, that the present site is not adequate to serve all of his needs, that no outside storage areas are proposed, that the only vehicles to be stored on the site will be those vehicles parked pending an auction or vehicles to be picked up by purchasers after an auction, that tents would be for temporary use until all buildings are constructed, that tents were utilized last year for approximately 45 days total, that the petition was circulated at one of the auto auctions for support, that Sundays are used to display auction items, not auctions, that the lighting would be similar to the present site with approximately eight (8) dust to dawn security lights, that a six (6') foot high chain-link fence

is planned to be placed between the site and Hudson Pond Acres, and that the trailers and buses used for storage at the present site are being removed to provide more area for parking.

The Commission found that one person, of the eighteen (18) people present in support of the application, spoke and stated that he utilizes the auto auction, that the auction benefits all auto dealers in the general area, that the present site does not provide adequate parking, and that a more modern facility would be beneficial to the uses intended.

The Commission found that ten (10) of the twenty-two (22) people present in opposition, spoke and stated that the three subdivisions in the area are restricted, that the community has grown as a residential area, that the present auction was started prior to the development of the subdivision, that the appearance of the present site has deteriorated, that the applicant's homesite and the present auction site are cluttered with junk, that the applicant has been hauling horse manure from his farm to this site, that a concrete company is washing down cement trucks on the site which runs-off into Hudson Pond, that traffic is a major concern due to the proposed entrance location on Route 113, that septic systems are a concern, that property values will decrease, that environmental concerns cause the establishment of the Hudson Pond Preservation Society, that the County Board of Adjustment was advised of the residents concerns over a concrete batch plant proposed on the same site, that rare plants grow in the area, that some residents of the area have health problems, that wildlife in the area may be impacted, that a bald eagle nest in the area, that the Hudson Pond is in an eco-system that goes down into the Cedar Creek, that the Nature Conservancy has recently obtained lands along the Hudson Pond, that environmental violations have taken place on the site and referenced burning, that approval of the use will create a auction site on both sides of a residential development, that deed restrictions in the subdivisions do not permit commercial activities, storage of vehicles, boats or trailers in yards, that dust, exhaust fumes, noise and lighting will affect the area, that the use will be out of character with the area, that trash from the existing site is a major concern and would be multiplied by approval of this application, that adequate parking could be created at the present site if the site was cleared of junk and debris, that the hours of business are a major concern, that the present screening from neighboring properties is actually on lands within Hudson Pond Acres, that screening and fencing should be required if approved, that concerns were expressed about the type of residential structure being placed for security on land in close proximity to Hudson Pond Acres, that the use of trailers and buses for storage should not be permitted, that tent sales should

not be permitted, and that the proposed business hours were objectionable.

The Commission found that the people present in opposition submitted a petition of approximately 50 signatures of residents within the three subdivisions and lots along Hudson Pond, photographs of homes in the area, the present site, the applicant's farm and home site, concrete being dumped on the site, aerial photographs of the proposed site, the existing auction site, and the area, copies of complaints from DNREC officials, copies of deed restrictions, land value estimates for lots within Hudson Pond Acres and Hudson Mill, a copy of an article from LIFE Magazine, September 1994 Issue referencing Endangered Species, a photograph of the resident eagle that frequents Hudson Pond, a letter from The Nature Conservancy listing three parcels that the Conservancy protects or manages, a letter in opposition, and a letter to the Honorable J. Benjamin Ewing voicing objection to the use, and a copy of a news article from Sunday News Journal for August 14, 1994 which references the State's involvement in county planning.

The Commission found that the attorney representing the applicant responded to the opposition by stating that deed restrictions cannot be applied to neighboring properties, that the County has the right to restrict the property, that the recent violations referenced by the opposition were voided by the DNREC, that the present auction site was approved prior to the development of the subdivisions, that the site is on a major North/South corridor highway, that the highway is being improved creating more users, that the existing site is being upgraded and cleaned up, that the burning referenced did not include manure, that the burning was properly permitted, that the concrete truck pictured was not dumping on the applicant's property, but on Route 113 right-of-way, that the amount of septic for the auction will be less than septic if a subdivision were created on the site, that he questioned if this area contains a major concentration of wildlife due to the construction activities, that a major pollution of water quality is lawn fertilizers, that stormwater management is required and will be provided per specification, that one of the objectors has no problem with the existing site, objects to the proposed site, and will be buffered more from the proposed site, that DelDOT has approved the entrance plans, that the auction activity could be less intrusive than some agricultural activities, that the present site is tested regularly by OSHA for exhaust fumes within buildings and has not been violated, that no other auto auctions exist in the area and that the use will provide a need, and that the concerns of the residents can be addressed by the creation of stipulations.

Motion by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action.

3. RE: C/U #1088 - Clyde Hull

Clyde Hull and Kenneth Clark, attorney, were present on behalf of this application to consider the Conditional Use of land in an MR Medium Density Residential District in Indian River Hundred for a Marina with Boat Rental, Boat Slip Rental, Bait and Tackle Sales, Sandwich Shop, Crabbing Pier, Office and Residence, lying on the west side of a twenty (20) foot private road, 140 feet south of Delaware Street (Route 297-A) to be located on a parcel containing 36,628 square feet (0.841 acre) more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, the Indian River School District.

Mr. Lank summarized a letter in support from Patrick C. Miller and a petition in support which contains 11 signatures.

Mr. Lank read a letter from Scott Walls in opposition.

Mr. Clark advised the Commission that the applicant purchased the site in 1993, that the site was originally the site of the old Oak Orchard Hotel, that the hotel had a 520' pier, that the hotel/restaurant was torn down in 1986 and lost its non-conforming status, that the applicant proposes a community oriented marina, that the community has historically utilized the pier, that fees may be charges to fish or crab from the pier, that applications have been filed with DNREC for marina use of the pier, that a two story building is proposed with a bait and tackle shop, office, and sandwich shop on the first floor, and a residence on the second floor, that historically a need has existed for this type of activity in the Oak Orchard area, that over the years most of the river frontage has been privatized, that the use will allow access to the river, that the pier has recently been renovated per approvals from DNREC, that the closest bait and tackle shop is approximately 2 miles away at the intersection of Route 24 and Route 5 (Route 297), that the use will meet the criteria for a marina in the Conditional Use section of the Code, that the use will comply with all laws and Codes, that no fuel sales or storage are proposed, and that there will be no additional impact on navigation since the pier already existed and was only renovated.

Mr. Hull advised the Commission that he has been a lifetime visitor of the area, that he proposes a maximum of twenty (20) boats, that off-season storage of boats will be limited to boats that he owns, that no boat motor repair is proposed, that no arcade area is proposed, that the public will have access

to the pier, that the primary commercial use of the pier will be permitting crabbing and fishing from the pier, that if the DNREC rejects the slip rentals the crabbing activity and the sandwich shop will still proceed, that his deed does not reference any dedication of any roads, that the roads cross his property and will remain open, that ten (10) boat slips exist on the pier, that additional moorings exist for the boat rental, that he will occupy the residence, that the proposed building will be utilized for all of the uses, that a boat ramp does not exist and is not proposed, that no additional moorings are proposed, that the pier may be lighted, that the business may be open from 6:00 am to 10:00 pm, and that dry boat storage of his rental boats will be in the open area.

Mr. Clark added that as a resident of the area he can see a need for the use, that children enjoy crabbing, that the area needs an area that permits crabbing, that over the years the community started to decline, and that recently the community has started to upgrade.

Scott Walls spoke in support, after listening to the testimony, and stated that he was concerned about the area to be utilized for boat storage and access roads, that fencing should blend in with area fences, that the use will be good for the community, and that there are no known negative comments from the Oak Orchard/Riverdale Civic Association.

No parties appeared 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 DelDOT, that the proposed change 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 as Evesboro loamy sand, that the suitability of the soils for the intended use will have slight limitations that are easily overcome, that during any construction an erosion and sedimentation control plan should be followed and that after completion of any construction a vegetative cover should be maintained, that the farmland rating of the soil is of Statewide Importance, that no storm flood hazard area is affected, that it may not be necessary for any on-site or off-site drainage

improvements, and that no tax ditch is affected.

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 that a letter was received in support of the application.

The Commission found that a petition was received in support containing eleven (11) signatures of area residents.

The Commission found that the applicant and his attorney were present and advised the Commission that the applicant purchased the site in 1993, that the site was originally the site of the old Oak Orchard Hotel, that the hotel had a 520' pier, that the hotel/restaurant was torn down in 1986 and lost its non-conforming status, that the applicant proposes a community oriented marina, that the community has historically utilized the pier, that fees may be charges to fish or crab from the pier, that applications have been filed with DNREC for marina use of the pier, that a two story building is proposed with a bait and tackle shop, office, and sandwich shop on the first floor, and a residence on the second floor, that historically a need has existed for this type of activity in the Oak Orchard area, that over the years most of the river frontage has been privatized, that the use will allow access to the river, that the pier has recently been renovated per approvals from DNREC, that the closest bait and tackle shop is approximately 2 miles away at the intersection of Route 24 and Route 5 (Route 297), that the use will meet the criteria for a marina in the Conditional Use section of the Code, that the use will comply will all laws and Codes, that no fuel sales or storage are proposed, and that there will be no additional impact on navigation since the pier already existed and was only renovated, that the applicant has been a lifetime visitor of the area, that the applicant proposes a maximum of twenty (20) boats, that off-season storage of boats will be limited to boats that he owns, that no boat motor repair is proposed, that no arcade area is proposed, that the public will have access to the pier, that the primary commercial use of the pier will be permitting crabbing and fishing from the pier, that if the DNREC rejects the slip rentals the crabbing activity and the sandwich shop will still proceed, that the applicant deed does not reference any dedication of any roads, that the roads cross the applicant's property and will remain open, that ten (10) boat slips exist on the pier, that additional moorings exist for the boat rental, that the applicant will occupy the residence, that the proposed building will be utilized for all of

the uses, that a boat ramp does not exist and is not proposed, that no additional moorings are proposed, that the pier may be lighted, that the business may be open from 6:00 am to 10:00 pm, and that dry boat storage of the rental boats will be in the open area.

The Commission found that the attorney representing the applicant was also a resident of the area and advised them that as a resident of the area he can see a need for the use, that children enjoy crabbing, that the area needs an area that permits crabbing, that over the years the community started to decline, and that recently the community has started to upgrade.

The Commission found that the resident, who had written in opposition, spoke in support after listening to the testimony, and stated that he was concerned about the area to be utilized for boat storage and access roads, that fencing should blend in with area fences, that the use will be good for the community, and that there are no known negative comments from the Oak Orchard/Riverdale Civic Association.

The Commission found that no parties appeared in opposition.

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 with the following stipulations:

1. The maximum number of boats for rent shall be twenty (20).
2. No boat storage shall be permitted, except for boats belonging to the owner.
3. No boat motor repair shall be permitted.
4. No fuel sales shall be permitted.
5. The hours of operation shall be from 6:00 am to 10:00 pm for use of the pier and boat rental.

4. RE: C/Z #1237 - Hunter Mill estates Partnership

No parties appeared on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Broadkill Hundred, located on the east side of Hunters Mill Road, south of Circle Drive East, and north and west of Sawgrass Road within Hunters Mill Estates, 1,100 feet north of Route 9 and approximately one mile east of Route 5, lots 47, 48, and 50 through 61 of Hunters Mill Estates Subdivision to be located on a parcel containing 8.15 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District.

Mr. Lank read a letter from the applicants into the record.

Robert Woodland, Loya Pellagrino, Don Schneck, W. Drake Nichols, and Warren Wiley, residents of Hunters Mill Estates, spoke in opposition to the application and expressed concerns in reference to depreciation of property values, that the developers should have designed and developed the site along the zoning lines, that the developers have not marketed the site properly, that the developers should promote stick built homes rather than the modular they are promoting since the modulars are similar to double wide mobile homes, and that the site is not properly maintained.

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 Sussex Conservation District, that the soils on the site are mapped as Rumford loamy sand and Evesboro loamy sand which are relatively free of limitations or the limitations are easily overcome, that the developers shall be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil types is considered of Statewide 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 no parties appeared on behalf of the application.

The Commission found, based on a letter received from the applicants with the application, that the applicants feel that the rezoning would create a better transition from the GR to the AR-1 zones with the proposed alignment, that a need exist for GR lots in the area, that lots 51 through 60, which face Hunters Mill Road, have not had any interest from prospective buyers since they back up to GR lots, that the rezoning will enhance property sales which will be beneficial to the homeowners as well as the developer, that all homes will have to conform with present restrictions and a required 4/12 roof pitch, that the homes will have the appearance of a modular or stick built home, that the development could become stagnant if the AR lots remain unsold.

The Commission found that five (5) residents of Hunters Mill Estates, spoke in opposition to the application and expressed concerns in reference to depreciation of property values, that the developers should have designed and developed the site along the zoning lines, that the developers have not marketed the site properly, that the developers should promote stick built homes rather than the modular they are promoting since the modulars are similar to double wide mobile homes, and that the site is not properly maintained.

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 based on the lack of a record of support, since no one appeared on behalf of the applicants.

III. OTHER BUSINESS

1. RE: Jesus is Lord Church of Deliverance

The Commission reviewed a site plan for a church on the north side of Route 9, west of Route 30.

Mr. Abbott advised the Commission that the property is zoned C-1 General Commercial, that the proposed structure is 55' x 145', that the setbacks meet the zoning code requirements, that required parking and interior drives are provided, and that if the Commission is favorable toward the site plan only preliminary approval should be considered since the staff has not received any agency approvals.

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

2. RE: Gentle Winds Addition

The Commission reviewed a request to revise the streets in Gentle Winds Subdivision to be built to Sussex County specifications.

Mr. Abbott advised the Commission that the County Engineering Department has approved the street construction design.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the revised street design.

3. RE: Ted Simpler & Ed Kaye

The Commission reviewed a concept to create 3 parcels with access from a 60' easement off of an existing 12' road on the west side of Route 487A.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve as a concept with the stipulation that any further subdivision require a public hearing.

4. RE: Thomas B. & Patricia A. Derrick

The Commission reviewed a commercial site plan for a retail shop on Route One north of Route 275-A.

Mr. Abbott advised the Commission that a 46' x 96' building is proposed, that parking and interior drives are provided, that a wetlands delineation has been performed, and that only preliminary approval should be considered since the staff has not received any agency approvals.

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

5. RE: C/U #1083--Robert A. Willey

The Commission reviewed a site plan for Conditional Use #1083 for propane storage and sales and an office on the north side of Route 5, north of Route 9.

Mr. Abbott advised the Commission that the site plan is the same as submitted during the public hearing and that all agency approvals have been received.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve as a final.

6. RE: Frank Horn

The Commission reviewed a concept to create 3 lots with access from a fifty foot right of way west of Route 487A.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve as a concept with the stipulation that any further subdivision will require a public hearing.

7. RE: Dr. Curtis A. Smith & Dr. Susan Betts-Smith

The Commission reviewed a revised site plan for Conditional Use #431 on the west side of Route 30.

Mr. Abbott advised the Commission that the owners would like to enclose an existing carport for additional office space and questioned if another public hearing would be required.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the amended site plan.

IV. OLD BUSINESS

1. RE: Subd. #91-24--Sara M. Short

Karen Brittingham and Bob Nash of Charles Murphy Surveyors were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 32.46 acres into 46 lots, located on the northeastern side of Route One, 915 feet northwest of Route 200.

Mr. Abbott advised the Commission that preliminary approval was granted on March 10, 1994, that the final plat has been reduced to 41 lots, that the plan meets the requirements of the code, and that all required agency approvals have been received.

Mrs. Brittingham advised the Commission that a portion of the land is being conveyed to Robert Jackson and that the remaining lands will be extensions to other lots.

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

Meeting adjourned at 11:50 PM.