

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 9, 1993

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 9, 1993, at 7:30 PM, in Room 115 of the Sussex County Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mr. Magee, Mrs. Monaco, 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 26, 1993, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1055--Francis & Gale Morris

Francis and Gale Morris 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 Auto Repair Shop lying on the west side of Route 209, 600 feet south of Route 36, and east of Deep Branch, to be located on a parcel containing 4.01 acres more or less.

Mr. Lank summarized comments received from the Department of Natural Resources and Environmental Control Land Use Review and Coordination, Office of the Secretary, Sussex Conservation District, and the Delaware Department of Transportation.

Mr. Morris advised the Commission that he intends to work on cars, pick-ups and trucks, that major engine repair and minor tune-ups will be done, that the maximum number of vehicles on site would be two to three, that he has no objection to erecting a fence for storage of the vehicles, that presently there is a 28' x 32' building on site and that he would like to add a 28' x 14' addition, that he presently does not have any employees, and that this application would not have any adverse impacts on the neighborhood or property values.

No one 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 Department of Natural Resources and Environmental Control, Land Use Review and Coordination, Office of the Secretary, that comments have been requested from the DNREC Division of Air and Waste Management, Air Quality Management Branch and Waste

Management Section, Underground Storage Tank Branch, DNREC  
Division of Water Resources, Pollution Control Branch, the Office  
of the State Fire Marshal, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Rumford loamy sand and Evesboro loamy sand, that the suitability of the soils for the intended use will have none to slight limitations, that it may be necessary to follow an Erosion and Sedimentation plan during construction and to maintain a vegetative cover after completion of construction, that the farmland rating of the soils are 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 Department of Transportation that the proposed action will have no significant impact on traffic.

The Commission found, based on comments made by the applicant, that he intends to do major engine repairs and minor tune-ups on cars, pick-ups, and trucks, that the maximum number of vehicles that would be stored on site would be 2 to 3, that he has no objection to erecting a fence to shield cars stored on the property, that presently there is an existing 28' x 32' building on site, that a 28' x 14' addition is proposed, that presently there are not any employees, and that the proposed application will not have any adverse impacts on the neighborhood or property values.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved, since this is not inimicable to the area, and since there is a similar operation across Route 36 that was recently closed with the following stipulations:

1. The final site plan shall be reviewed and approved by the Planning and Zoning Commission.
2. Any overnight storage of vehicles will be within a fenced in area.

2. RE: C/Z #1204--Clearwater Land, Ltd.

Bob Harris, Clearwater Land, Ltd.; James Fuqua, Attorney; Jeff Clark, Land Tech Inc.; and Charles Miller, Environmental Consultants, were present on behalf of the application of Clearwater Land Ltd. to amend the zoning map from AR-1 Agricultural Residential to MR-RPC Medium Density Residential - Residential Planned Community in Baltimore Hundred, located on

the southwest side of Route 361, 1/4 mile southeast of Road 368 and northwest of Route 363, 1/4 mile southwest of Route 361 to be located on a parcel containing 65.58 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, DNREC Delaware Advisory Service, Indian River School District, Department of Agriculture, DNREC Land Use Review and Coordination Office of the Secretary, Sussex Conservation District, Division of Public Health, DNREC Water Supply Branch, DNREC Underground Discharges Branch, DNREC Wetlands and Aquatic Protection Branch, and Taylor Construction, Ltd.

Mr. Fuqua advised the Commission that this application adjoins two developments and that there are other developments in the area, that 211 units are proposed, that the applicant is not requesting any commercial areas, that the site is located in a development district based on the Coastal Sussex Land Use Plan, that there would be no negative impact on adjoining agricultural lands based on comments received from the Department of Agriculture, that the project would be served by a central water supply and County sewer, that the density would be 4 units per acre, that considerable open space has been created, that the developers have met with Delaware Advisory Service for preliminary comments, that none of these comments were negative, that the developer has contacted the County Engineer for sewer information, that the developer has contacted the Department of Transportation concerning road improvements, and that there are approximately 12 acres of 404 wetlands.

Mr. Clark advised the Commission that the site is 65.5 acres, that there are adjoining developments to the west and northwest, that the land to the east of this site is presently tilled, that 42% of the site is wooded, that the property drains in two directions, that there is a DP & L easement running through the site, that the developer proposes multi-family attached, single family clustered, and single family dwellings on 7,500 square foot lots, that the recreational facilities will include a pool, that the multi-family dwellings would be located in the wooded area, that the single family clusters will be located on greens and open space will be to the rear of the units and that these units will not face any public roads, that the single family lots will face water or open space, that 277 units would be permitted and 225 units would be permitted if all wetlands were deducted, that the developer is requesting 211 units, that 37% of open space is proposed, that there will not be any construction in the 404 wetlands, that any fill will be covered by Nationwide Permit, that all ponds are located in uplands, that there is one entrance on Route 361 and one on Route 363, that an additional 40 feet of right of way on Route 363 will be dedicated to Deldot, and that there will not be any

encroachments into the 16.5' maintenance easement for the tax ditch.

Bob Harris advised the Commission that they have developed five subdivisions in Sussex County, that the site is marketed primarily for vacation homes, that there would be few primary home users, that there will be a minimal impact on the school district, that there is shopping available in the area, that there are medical services available, that electric will be supplied by Delmarva Power and Light or Delaware Electric Cooperative, that cable and telephone lines are already at the property line, that this project would help the economy of the County, that if approved this would create employment opportunities, that the project would be built in three phases with a total of 70 units for each phase, that the multi-family dwellings will be built on pilings, and that as few trees as possible will be removed.

Mr. Fuqua submitted letters from the Millville Fire Company and DAS, and submitted five suggested stipulations.

A.M. Lyons expressed concerns about the type of housing and sizes.

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 a traffic impact study was not recommended and that the existing level of service "A" of Route 361 may change to a level of service "B" and the existing level of service "B" of Route 363 may change to a level of service "C" if the site is fully developed as proposed.

The Commission found, based on a summary report of a Development Advisory Service, D.A.S., that in reference to Groundwater/Wastewater the DNREC Underground Discharges Branch had no comment since wastewater disposal is proposed via a Sussex County Regional Sewer District; that the developer will be required to submit an application for a construction permit to the DNREC Pollution Control Branch; that the DNREC Water Supply Branch has no objection to the proposal; that the DNREC Wetlands and Aquatic Protection Branch advise that wetlands regulated by the State and the U.S. Army Corps. of Engineers appear to be on or adjacent to the site and that any activity, such as filling, dredging, crossing with a road, or placement of a structure may require a permit, that the Little Bay Ditch is regulated by both

referenced agencies, that the Branch encourages the installation of a stormwater management facility to prevent surface water runoff from directly entering adjacent wetlands or waterways, that the facility should be designed to manage both water quality and quantity, and should not be located in wetlands or waterways, that the source of wetland delineation should be indicated, that deed restrictions or covenants should be adopted to limit activities in wetlands, and that the developer should schedule an appointment with the Joint Permit Processing Committee to discuss the proposal; that the DNREC Solid Waste Management Branch advise that Delaware regulations prohibit the burial of construction and demolition debris, including trees and stumps, except at solid waste disposal facilities approved to accept that type of waste, and that the Branch encourages recycling of these materials; that the DNREC Superfund Branch has determined that the referenced parcel is not located on or near a potential or existing Superfund site; that the DNREC Division of Fish and Wildlife expressed a concern about degradation of water quality in the inland bays since the Little Bay Ditch runs through the property and then to Jefferson Creek and since developments create potential sources of pollution associated with street runoff, lawn and garden runoff, and septic effluent runoff; that the DNREC Division of Parks and Recreation Land Preservation Office advise that this project does not involve a state-recognized natural area or any open space resource area; that the DNREC Division of Parks and Recreation advise for the purpose of Outdoor Recreation and Open Space that this project does not negatively affect current or proposed greenways nor does it negatively affect the provision of outdoor recreation opportunities or facilities; that the DNREC Division of Parks and Recreation Delaware Natural Heritage Inventory has reviewed its database of Species of Special Concern and as of this date are unaware of any rare plants, animals, or unique natural communities within the project boundaries, that their Office is concerned with potential indirect impacts to Little Bay Ditch and those species which utilize the Assawoman Wildlife Area, that contamination from runoff, pesticides, herbicides, and septic discharge should be addressed; that the DNREC Division of Soil and Water Conservation advise that the Sussex Conservation District Office should be contacted for sediment and stormwater management plan requirements, and that stormwater management facilities should be located outside of delineated wetland; that the Department of Agriculture advise that their Office has analyzed the project using the Sussex County Land Evaluation (LESA) system, that the project scored 145 points out of 300, that the score is below average for Sussex County and suggest that farming and agriculture is one of several land uses in the area, that they do not anticipate any adverse impacts to agriculture in the area and that it would be appropriate to take

precautionary measures to ensure that any adjacent farming operations are protected, that existing wooded areas or hedgerows at the perimeter of the project can and should be used as a part of the buffer, that construction disturbances to the wooded portion of this site can cause serious damage and result in hazardous conditions, that the Department recommends certain tree preservation practices, and that the protection of trees from mechanical injury will maintain the wooded character that enhances the residential appeal of this site; that the Delaware State Historic Preservation Office advise that if a U.S. Army Corps. of Engineers permit is required then compliance with the National Historic Preservation Act may also be required; that plans and specifications for potable water systems must be submitted to the Department of Health and Social Services Division of Public Health; that the Public Service Commission had no comment; that the Department of Transportation Division of Highways advise that additional information must be submitted in reference to streets, whether private or public, right of way widths, distances to nearest intersections, existing entrance locations, and that the general street layout of the site is satisfactory; that the Office of the State Fire Marshal advise that the project will need to be submitted for review by the Georgetown Office, and that the State Fire Prevention Regulation require a water distribution system with fire hydrants; that the Delaware Solid Waste Authority had no comment.

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

The Commission found that the Office of the Secretary for the State DNREC has requested comments be forwarded from the DNREC Division of Air and Waste Management - Waste Management Section and the Solid Waste Management Branch, the DNREC Division of Fish and Wildlife, the DNREC Division of Parks and Recreation, the DNREC Division of Soil and Water Conservation, the DNREC Division of Water Resources - Underground Discharges Branch, the Watershed Assessment Branch, the Water Supply Branch, and the Wetlands and Aquatic Protection Branch, the Department of Agriculture, the Division of Public Health, the Department of Transportation, and the Sussex Conservation District.

The Commission found that the Sussex Conservation District advise that the soils are mapped as Fallsington sandy loam, Fallsington loamy sand, Pocomoke sandy loam, and Woodstown sandy loam, that the Woodstown soils have moderate limitations, that the Fallsington and Pocomoke soils may have severe limitations due to wetness if not adequately drained, that the developer may

be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil types are considered both Prime and of Statewide Importance, that no storm flood hazard area is affected, that it may be necessary for some off-site and on-site drainage improvements, and that the Little Bay Tax Ditch runs through two areas of the site with a 16.5 foot wide maintenance right of way along the ditch.

The Commission found, based on a letter received from Taylor Construction, Ltd., that Cat Hill Water Company will consider extending water service to the site upon execution of a water service agreement and the extension of the service area.

The Commission found, based on comments made by representatives of the application, that the site adjoins two developments, that there are other developments in the area, that 211 units are proposed, that the application does not include any commercial areas, that the site is located in a Development District based on the Coastal Sussex Land Use Plan, that there would be no negative impact on adjoining agricultural lands based on comments received from the Department of Agriculture, that the project will be served by a central water system and County sewer, that the density would not exceed 4 units per acre, that considerable open space has been created, that the developers have met with the Development Advisory Service for preliminary comments and that none of the comments were negative, that the developer has contacted the County Engineering Department for sewer information, that the developer has contacted the Department of Transportation concerning road improvements, that there are approximately 12 acres of Federal Wetlands, that the lands to the east are presently tilled, that approximately 42 percent of the site is wooded, that the property drains in two directions, that Delmarva Power and Light Co. power line easements run through the site, that multi-family, single family clusters, and single family detached dwellings on 7,500 square foot lots, that recreational facilities include a pool, that the majority of the multi-family units will be located in the wooded area, that the single family clustered units will be located on greens, that the rear of the units will not face public roads, that the single family lots will adjoin open space or ponds, that 37 percent of open space is proposed, that there will be no construction in wetlands, that any fill will be covered by Nationwide permits, that all proposed ponds are to be located in upland areas, that one entrance is proposed on Route 361 and one on Route 363, that an additional 40 feet of right of way on Route 363 will be dedicated to DelDOT, that there will be no encroachments into the tax ditch maintenance easement, that the

developers have developed five projects in Sussex County, that the site is proposed to be marketed primarily for vacation homes, that a minimal impact is anticipated on the school district, that the site is in close proximity to shopping areas, that the site is in close proximity to medical facilities, that electrical supply will be provided by either Delmarva Power or Delaware Electric Cooperative, that cable and telephone lines already exist at the property line, that the project will help the economy of the County by creation of employment opportunities and additions to the tax base, that the project will be built in three phases with approximately 70 units in each phase, that the units in each phase will be a mix of the dwelling types, and that tree removal will be held to a minimum.

The Commission found that the applicant submitted a letter from the Millville Volunteer Fire Co., Inc. which advise that the Fire Company will be able to serve the project with fire and ambulance service.

The Commission found that the applicants submitted a list of suggested restrictions.

The Commission found that one area resident expressed concerns about the type of housing, the size of the units, and that he objected to the types of the units.

Motion by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the project would be a continuation of development in the general area, a growing area with mixed zoning and housing types, and with the following stipulations:

- A. Central sewer service shall be provided as part of the Sussex County South Coastal Regional Sanitary Sewer Facility and the design shall be subject to approval by the Sussex County Engineering Department.
- B. Central water service shall be provided in compliance with the regulations of DNREC, the Office of the State Fire Marshal, the Division of Public Health, and the Sussex County Engineering Department.
- C. Stormwater Management and Erosion and Sedimentation Control Plans shall be subject to all State and County regulations.
- D. Road improvements shall be completed by the developer per agreements and requirements of the Delaware Department of Transportation.

- E. The Federal Section 404 delineated wetland line shall be considered a building restriction line.
- F. The maximum number of units shall not exceed 211 units.
- G. No commercial or business activities shall be permitted as a part of this application.
- H. A 30' wide forested buffer shall be created along adjacent farmland only.

3. RE: C/Z #1208 -- Everett H. & Bonnie E. Messick  
T/A Messick Supply

*10/2/93*  
Everett and Bonnie Messick were present on behalf of their application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broad Creek Hundred, located on the southwest side of Route 20, northeast of Route 473, and 0.1 mile south of Route 9 at Hardscrabble, to be located on a parcel containing 2.75 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation district, the Office of the Secretary of the State DNREC, the Division of Public Health, and the Water Supply Branch of the State DNREC.

Mr. Messick advised the Commission that they intend to offer farming supplies, plumbing supplies, and fuel, and to have a small luncheonette, that the luncheonette would provide a small eat-in area, but would primarily be used for carry-out service, that the site is within 1/2 mile of their residence, that the business would be similar to the Oliver Jones Store which they have operated for approximately 8 years, that no adverse impact is anticipated on property values or the neighborhood, that a 60' by 80' building with related parking is proposed, that they purchased property when the another store in close proximity was closed, and that they purchased the property from the same land owner that owns the store.

Paul Messick, proprietor of the store at the southeast corner of Route 20 and Route 9 at Hardscrabble, spoke in opposition to the luncheonette, not the hardware supply, due to its close proximity to the existing store.

At the conclusion of the public hearing, 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 a traffic impact study was not recommended and that the level of service "B" of Route 20 may change to a level of service "C" if the site is developed at an equivalent use to Discount Shopping.

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 Woodstown sandy loam, that the Evesboro soils may have none to slight limitations, that the Woodstown soils may have moderate limitations, that the applicants may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil types are considered Prime and of Statewide Importance, that no storm flood hazard area is affected, that it may not be necessary for any off-site drainage improvements, that it may be necessary for some on-site drainage improvements, and that the Tyndall Branch Tax Ditch runs along the northwest property line with a 16.5' maintenance right of way.

The Commission found, based on comments received from the Division of Public Health, that the Division will require plans submittal for the water system and any treatment systems, as well as plans for the luncheonette.

The Commission found, based on comments received from the Office of the Secretary of the State DNREC, that comments have been requested from the DNREC Division of Air and Waste Management - Air Quality Control Section, and the Waste Management Section Underground Storage Tank Branch, the DNREC Division of Water Resources - Underground Discharges Branch and the Water Supply Branch, the Department of Agriculture, the Division of Public Health, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the DNREC Division of Water Resources Water Supply Branch, that the Branch has no objection to the proposal.

The Commission found, based on comments made by the applicant, that they intend to offer farming supplies, plumbing supplies, and fuel, and to have a small luncheonette, that the luncheonette would provide a small eat-in area, but would primarily be used for carry-out service, that the site is within 1/2 miles of their residence, that the business would be similar to the Oliver Jones Store which they have operated for

approximately 8 years, that no adverse impact is anticipated on property values or the neighborhood, that a 60' by 80' building with related parking is proposed, that they purchased the property when another store in close proximity was not in operation, and that they purchased the property from the land owner who owns the other store.

The Commission found that the proprietor of the store at the southeast corner of Route 9 and Route 20 at Hardscrabble opposed the luncheonette, not the hardware supply, due to its close proximity to the existing store.

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

### III. OTHER BUSINESS

#### 1. RE: C/U #707--Paradee Gas Co.

The Commission reviewed an amended site plan for an additional 18,000 gallon propane storage tank.

Mr. Abbott advised the Commission that one 18,000 gallon tank was approved as a conditional use on November 30, 1982, and that the application was only for one tank.

Mr. Lank questioned if the other tank would require a public hearing since the original application was for only one tank.

Mr. Schrader advised the Commission that since the original application was advertised for one tank, that this amended site plan would require the owner to file an amended application for a Conditional Use.

#### 2. WAWA Food Market

The Commission reviewed a commercial site plan for a convenience store located on the south side of Route One and south of Dartmouth Road.

Mr. Abbott advised the Commission that the technical aspects of this site plan meets the requirements of the Zoning Code, and that of this date, the only agency that has approved the plan is the State Fire Marshal.

Mr. Allen questioned if there is an entrance on Route One and if it has been approved by DelDOT.

Mr. Abbott advised the Commission that there is an entrance on Route One, that the plan has been submitted to DelDOT but the staff has not received an approval, and that if the Commission is favorable, only preliminary approval should be considered.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve as a preliminary with the stipulation that the entrance on Route One is acceptable to and approved by DelDOT.

### 3. RE: Beacon Meadows Subdivision

The Commission reviewed a request to revise a recorded 58 lot subdivision plot.

Mr. Abbott advised the Commission that the developer wants to delete the entrance located on Route 472 and create a strip lot on Route 472 and to create one additional lot in the Subdivision.

Mr. Abbott advised the Commission that the subdivision was advertised for 58 lots and that is what was approved, and questioned if the additional interior lot would require another public hearing.

It was the consensus of the Commission and Assistant County Attorney that the developer be required to go through another public hearing.

## IV. OLD BUSINESS

### 1. RE: Ordinance to Amend Chapter 115 (Site Plan Requirements)

The Commission discussed the proposed Ordinance amendments referencing preliminary site plan requirements and final site plan requirements.

Mr. Schrader advised the Commission that he has reviewed the sections of the Delaware Code that were referenced by the opposition to the amendment referencing landscape architects, that the statutes require involvement of professional engineers and land surveyors where roads are involved, and that it may be necessary for action by the Delaware General Assembly to include landscape architects.

Motion by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to forward the amendments to the Sussex County Council with the recommendation that the amendments be approved with the recommendation that Chapter 115, Code of Sussex County, Article XXVIII, Section 115-220, Subsection B (1) be revised to read as follows:

B. The preliminary site plan shall show the following:

- (1) Plans shall show the seal and signature of a registered Delaware land surveyor or registered Delaware professional engineer, and all drawings shall be on sheets no larger than twenty-four by thirty-six (24 x36) inches and at a scale of not more than one hundred (100) feet to one (1) inch.

2. RE: Ordinance to Amend Chapter 99  
(Preliminary & Final Plat Requirements)

The Commission discussed the proposed Ordinance amendments referencing plat requirements.

Mr. Schrader advised the Commission that he has reviewed the sections of the Delaware Code that were referenced by the opposition to the amendments referencing landscape architects, that the statutes require involvement of professional engineers and land surveyors where roads are involved, and that it may be necessary for action by the Delaware general Assembly to include landscape architects.

Motion by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to forward the amendments to the Sussex County Council with the recommendation that the amendments be approved with the recommendation that Chapter 99, Code of Sussex County, Article IV, Section 99-22 Subsection A be revised to read the following:

A. Plans shall show the seal and signature of a registered Delaware land surveyor or registered Delaware professional engineer, and shall be prepared at a minimum scale of one (1) inch equals one hundred (100) feet.

Meeting adjourned at 10:00 P.M.