

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 21, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 21, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The Meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, 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 approve the agenda as circulated.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action on the Minutes of September 7, 2000.

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

IV. PUBLIC HEARINGS

C/U #1359 -- application of NORMAN C. JACKSON, JR. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automotive sales facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 5.17 acres, more or less, lying northeast of Route 88, 735 feet southeast of Road 257.

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 Road 88 will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Rural Area of the Strategies for State Policies and Spending Map approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas, State policy will be to encourage the preservation of a rural lifestyle and discourage new development; that the State objects to this proposal and feels that a used car dealer is an inappropriate use in a rural area, and that such uses are better suited for Community or Developing Areas; that the State Historic Preservation Office has noted that the parcel contains the Weigand Cemetery which when surveyed in 1983 had 12 stones; that at one time there were three historic properties across the road from the site, but appear to be gone from the 1997 aerials; that the D. Bloxom House, c.1860 is located to the northwest of the parcel fronting on Road 257; that if the County approves the proposal, the State asks that the County insure that the Cemetery is protected, both from direct damage such as parking or driving over the area and from adverse visual effect, through plantings; that the D. Bloxom House should also be protected from adverse visual effects; that the State Historic Preservation Office is

willing to work with the applicants to protect the referenced areas; and that if the County approves the application, the State asks that the County require the applicant to work with the State Historic Preservation Office.

The Commission found that a letter was received from Michael R. Tyler, President of the Citizens Coalition, Inc., in opposition to the application and referencing that the application is symptom of sprawl, placing a commercial use near a farm preservation district and outside of the development district as outlined in the Comprehensive Plan; that the area is neither intended nor suited for such use; that the property is close to the McCabe Preserve; that this natural recreational area demands that we maintain the area; and placing such unnecessary pressure on the land surrounded by agricultural use is inappropriate and could begin a domino effect giving rise to other commercial and residential uses.

The Commission found that Norman C. Jackson, Jr. was present and stated that he lives on the property; that his son lives in a mobile home on the property; that he is not licensed to sell vehicles commercially; that he proposes to offer 3 or 4 vehicles for sale; that his office will be within his home; that the location of parking for customers has not yet been determined; that he will be selling retail, not wholesale; that the garage on the site will be used for maintenance of the vehicles for sale; that he is willing to work with the Historic Preservation Office to protect the cemetery; that he actually cuts the grass in the cemetery for the Golden Rule Club; that the last burial at the cemetery was dated 1890; that the cemetery is located on an adjoining parcel, not this site; that no signs are proposed to be erected on the site; and that the only vehicles that have been sold on the site to date have been personal vehicles.

The Commission found that Norman C. Jackson, III was present in support and stated that he does the mechanical work on the vehicles; and that he operates a service garage approximately 7 minutes away in Lewes.

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. Wheatley, 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) there shall be no more than six (6) vehicles on display for sale at any one time as located on the site plan; 2) there shall be no signage erected on the site; 3) there shall be no lighting of the display area on the site; 4) the garage may be used for detailing and preparation of the vehicles for sale, not mechanical

work; 5) vehicles may be sold retail from the site, not wholesale; 6) the site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Carried 4 - 0.

C/U #1360 -- application of RAYMOND MICHITTI to consider the Conditional Use of land in a GR General Residential District and a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 6.34 acres, more or less, lying west of Road 357 (Cedar Neck Road), 1,200 feet north of Road 358.

The Commission found, based on comments received from DelDOT, that the Department recommends that a traffic impact study be done by the developer prior to any action on this application.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Cedar Neck Sanitary Sewer District; that central sewer service is scheduled to be available by the summer of 2002; and that the site is scheduled to receive an 8-inch diameter gravity connection.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located in an Environmentally Sensitive Area of the Strategies for State Policies and Spending Map approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas, State policy will be to seek a balance between resource protection and sustainable growth; that the State DNREC has stated that the soils are mapped as Evesboro, which are considered excessively drained sandy soils; that the Office agrees with the DelDOT comments; and that the Department of Education has noted that additional students from new developments will have an affect on the Indian River School District until major capital renovations have been completed.

The Commission found that Raymond Michitti and James Fuqua, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that 24 multi-family units are proposed; that the area is mixed with single-family residential, manufactured housing, multi-family, and some business and commercial activities; that the site has operated as Bethany Tennis Club since 1974; that the Club was permitted since it was operated with private membership; that the Club has eight (8) tennis courts, an office, and an apartment; that the club will remain on the site; that the entrance will be upgraded; that six (6) units are proposed at the front, twelve (12) units are proposed on the south side, and six (6) units are proposed at the rear; that stormwater management (an infiltration pond) will be located at the northwest corner of the site; that a wooded area to the rear of the site separates the site from a mobile home park to the

west; that the James Farm, a County owned parcel maintained by the Center for the Inland Bays, is adjoining to the north; that a subdivision adjoins the site to the south; that the tennis courts will not be lighted; that landscape buffers will be provided between the parking areas and the adjoining properties; that 94 parking spaces are proposed; that a traffic impact study was preformed by Davis, Bowen & Friedel, Inc. for the developer; that the developer has no objection if the Commission defers action until DelDOT responses to the study; that central water will be provided by Sussex Shores Water Company; that central sewer will be available to the site in 2002; that little to no impact on the school district is anticipated since it is anticipated that the units will be purchased for retirement or second homes; that the project is consistent with the Comprehensive Plan since the site is located in a Development District where public sewer and central water will be available; that the Comprehensive Plan would allow 10 units per acre for townhomes, and that the developer is proposing 4 units per acre; that the developer does not intend to develop the site with on-site septic systems, since public sewer will be available in 2002; that no occupancy of the units will be requested until the County sewer system is completed; and that the units will be one-story and will contain approximately 1,500 square feet of living space.

The Commission found that Mr. Fuqua submitted a copy of the County Tax Map of the area, the Executive Summary from the traffic impact study, a letter from Sussex Shores Water Company, a copy of a soils report for the stormwater pond, excerpts from the Comprehensive Plan referencing the Development District, a copy of the Traffic Impact Study prepared by Davis, Bowen & Friedel, Inc., and six (6) proposed conditions for approval.

The Commission found that Jay Foreman, Mildred Asterguard, and Barbara Parot, of the 10 people present in support, spoke in support of the application and stated that they are members of Bethany Tennis Club; that a committee was formed last year to try to save the site from being developed; that the Club contains approximately 75 member and that the majority of the membership supports the application; that approximately two-thirds of the members are residents of Delaware; that some of the members live in townhomes in the area; and that they do not anticipate any negative impact on the school district.

The Commission found that no parties appeared 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. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action pending receipt of a response from DelDOT on the traffic impact study.

Motion Carried 4 - 0.

C/Z #1415 -- application of JAMES AND MARTHA TURNER to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 2,300 feet east of Road 58B, to be located on 1.80 acres, more or less.

The Commission found, based on comments received from DelDOT, that in May of 2000 the Department recommended that the application be denied due to the size of the parcel and the uses that could be placed on the site; that they have been in contact with the owners and found that the majority of the parcel is wetlands and that approximately 0.03 acres is upland; that given the small amount of developable area, the Department is confident that any use of the parcel will generate negligible amounts of traffic; that it may be appropriate for the County to verify the limits of the developable area; that the decision to rezone the parcel should be based on something other than traffic; and that a traffic impact study for a development this size would not be meaningful.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Fenwick Island Sanitary Sewer District; that the dwelling was connected to the system in January 1983 by permit #1070; that there is currently a 6-inch lateral serving the property; that additional equivalent dwelling units may be assessed based on office space; that if there is an increase in equivalent dwelling units, service connection charges will be due; and that the system connection charge for the District is \$2,389 per equivalent dwelling unit through June 30, 2001.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within an Environmentally Sensitive Area of the Strategies for State Policies and Spending Map approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas State policy will be to seek a balance between resource protection and sustainable growth; that the wetlands around the parcel limit the developable area to the house and the existing parking area; that the State has no objection to this proposal, as the Office would rather see the reuse of an existing building than the development of a new building in these environmentally sensitive areas; that the State Historic Preservation Office could not determine if the house would be eligible for registry; that redevelopment of the parking area and landscaping could adversely affect archaeological sites on the parcel; and that the State asks that the developer work with the State Historic Preservation Office to avoid any potential effects.

The Commission found that James and Martha Turner were present and stated in their presentations and in response to questions raised by the Commission that their records indicate that the house was built on the site in 1952 as a fishing cottage; that the home contains approximately 1,000 square feet; that they would like to see the home converted into an office; that they purchased the property in 1992; that they raised the home 12-feet

above grade; that they spent 4-years dealing with the State DNREC and Army Corps. of Engineers trying to renovate the home; that the DNREC Board of Appeals granted approval to raise the home and renovate; that the home and parking area are surrounded by wetlands; that commercial and business activities exists to the east and to the west; and that they propose to sell the property for a possible attorney or real estate office.

The Commission found that there were no parties present 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. Lynch, seconded by Mr. Gordy , and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since there was not adequate space on the site for any business or commercial activities.

Motion Carried 4 - 0.

SUBDIVISION #2000-26 -- application of A.P. LAND, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District on Indian River Hundred, by dividing 47.03 acres into 45 lots, located east of Road 305, 3,973.05 feet north of Route 24.

Mr. Lank advised the Commission that they have received a copy of the Technical Advisory Committee Report of September 13, 2000; that the applicant and engineer have received a copy of the report; and recommended that the Technical Advisory Committee Report of September 13, 2000 be made a part of the record for this application.

Mr. Abbott summarized comments received from the Natural Resources Conservation Service in reference to this application.

The Commission found that Philip Wemlinger, developer, and Ken Christenbury, engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application was previously the subject of a public hearing on July 27, 2000; that the existing tax ditch is no longer subject to relocation; that the number of lots proposed has been reduced from 47 to 45; that the proposed entrance has been relocated further north than the existing entrance to the site; that the existing conditions of the site are overgrown weeds; that this site was sprayed in 1999; that the site is very dry; that water is not retained on the site; that the tax ditch contains water during rain events; and that the tax ditch will act as a buffer from the pistol shooting range.

The Commission found that Mike Tigue, a real estate agent, was present and advised the Commission that this site has been in the development planning process for a few years.

The Commission found that Pat Tolson, an area resident, was present in support of this application and stated in her presentation that she resides across the road from the proposed entrance; that she has no concerns about this project; that the area is developing rapidly; and that the developer should be able to develop the site.

The Commission found that Sharon Cook, James Pusey, and Harry Cook, area residents, were present in opposition to this application and stated in their presentations that 45 homes would impact the existing homes in the area with lights shinning in windows; that the area is mainly agricultural and should remain that way; that the existing lots in the area are large parcels; that there would be a large increase in traffic to the area; that there are many accidents at the intersection of Road 305 and Route 24; that there would be negative impacts to the local schools since there is already overcrowding; that the area floods when it rains; concerns about stormwater run-off; and that there should be a buffer along the entire southern boundary line.

At the conclusion of the public hearings, the Chairman referred back to this application.

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action.

OLD BUSINESS

C/U #1351 -- application of DAVID M. SHEPHERD to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a contractor's office, parking, and storage of equipment and materials to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 6.160 acres, more or less, lying north of a 20-foot wide easement, 1,000 feet north of Road 306-A and 1/4 mile west of Road 299.

The Commission discussed this application, which was deferred on September 7, 2000, and reviewed the stipulations from Conditional Use #1209, the application of Jeffrey A. and Suzanne M. Balthaser.

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 approved with the following stipulations: 1) there will be no signs on site or at the entrance on Route 306-A, 2) there shall be no outside storage of materials, 3) only dusk

to dawn security lighting shall be on the site, 4) no employees to report or trucks leaving the site before 7:00 A.M. or trucks returning to the site after 5:00 P.M. except in emergency situations, 5) there shall be no retail sales from the site, and 6) the site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

Motion Carried 4 - 0.

C/U #1352 -- application of REHOBOTH OUTLETS CENTER 3 to consider the Conditional Use of land in a C-1 General Commercial District for a sales cart program for the sale of soft and hard goods off of carts to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 34.41 acres, more or less, lying at the northeast corner of Route 1 and Road 271.

The Commission discussed this application, which was deferred on September 7, 2000.

Mr. Wheatley stated that he was concerned about the cart location near the Waterford store and that there may be another location in the complex that would be suitable.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion Carried 4 - 0.

C/U #1354 -- application of SOFTBALL WORLD, L.L.C. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a softball complex, cabins, parent lodging, administrative buildings, bath houses, pool and dining hall to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 131.94 acres, more or less, lying on the southwest corner of the intersection of Road 48 and Route 5.

The Commission discussed this application, which was deferred on September 7, 2000.

There was a consensus of the Commission that since all of the Commission members were present for the public hearing, they should all be present for the decision.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action.

Motion Carried 4 - 0.

Subdivision #2000-1 -- application of WALLS FARM, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 56.25 acres into 56 lots, and a waiver from the forested buffer strip requirements, located northwest of Road 277, 865 feet southwest of Road 275.

Mr. Abbott advised the Commission that this application received preliminary approval for 56-lots on June 8, 2000; that the final plan complies with the Subdivision Code; and that all agency approvals have been received.

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

VI. OTHER BUSINESS

Nardo, Inc.
C/U #1290 - Site Plan - Route 9

The Commission reviewed the preliminary site plan for a contractor's office and warehousing located off of Route 9 east of Harbeson.

Mr. Abbott advised the Commission that the site is zoned B-1, Neighborhood Business; that a Conditional Use was approved for the site on June 29, 1999; that there is a proposed 9,000 square foot one story building and two 4,400 square foot one story buildings; that 39 parking spaces are required and proposed; that individual wells and septic systems are proposed; that the setbacks meet the requirements of the zoning code; and that the site is suitable for preliminary approval since the staff has not received any agency approvals.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried three votes to none, with Mr. Wheatley abstaining, to approve this project as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals.

Long Neck Car Sales, L.L.C.
Preliminary Commercial Site Plan - Route 24

The Commission reviewed a preliminary commercial site plan for a car sales facility located off of Route 24.

Mr. Abbott advised the Commission that a 4,835 square foot building is proposed; that the setbacks meet the requirements of the zoning code; and that the site plan is suitable for conceptual approval since there are items that need to be addressed on the final site

plan; and that the staff has not received any agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a concept with the stipulation that final site plan approval be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals.

Ronald W. and Linda R. Souder
2 Lots and 50' Right of Way - Road 319

The Commission reviewed a concept to create 2 lots with access from a 50-foot right of way located on the West Side of Road 319 near Georgetown.

Mr. Abbott advised the Commission that the owners propose two lots and residual lands with access from a proposed 50-foot right of way.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the 2 lots and 50-foot right of way as a concept with the stipulation that any further subdivision of the property will require a public hearing.

Henry and Beatrice Johnson
Lot - Washington Street

The Commission reviewed a concept to create a lot off of Washington Street north of Route 24 near Millsboro.

Mr. Abbott advised the Commission that Washington Street is a public road; that an additional twenty feet of right of way will need to be dedicated to make Washington Street a fifty-foot right of way; and that the Commission has approved other lots off of Washington Street.

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

Joseph R. Hudson
Parcel - 50' Easement - Road 236A

The Commission reviewed a concept to create a parcel with access from a 50-foot easement off of Road 236A.

Mr. Abbott advised the Commission that the proposed parcel is 31 acres and that access will be from an existing 50-foot easement; and that this would be the third parcel with

access from the easement.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the parcel as a concept with the stipulation that any further subdivision of the property will require a public hearing.

First State Community Action Agency
2 Lots - Public Road - Road 225

The Commission reviewed a concept to create two lots off of a public road off of Road 225 near Lincoln.

Mr. Abbott advised the Commission that the proposed lots would have access from a state maintained road; and that each lot is greater than 0.75 acre.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the two lots as a concept.

Robin Beard
3 Lots - 50' right of Way - Road 536

Geri Thomas was present as the Commission reviewed a concept to create three lots with access from a 50-foot right of way off of Road 536 near Woodland.

Mr. Abbott advised the Commission that there is currently a twelve foot road; that the owner proposes to widen the road to 50-feet and create three lots; that all of the lots are greater than one acre in size; and that the site was the subject of a public hearing for a major subdivision in 1997 and that the application has been voided.

Mrs. Thomas advised the Commission that the existing road is satisfactory for access; and that the lot owners in the area maintain the road.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the three lots as a concept with the stipulation that any further subdivision of the property will require a public hearing for a major subdivision.

Meeting adjourned at 9:20 P.M.