

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 24, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 24, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with Mr. Allen, Chairman, presiding:

The following members were present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of September 10, 1998 as amended.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

Subdivision #98-6—application of WILLIAM , JR. AND AMY SMACK to consider the Subdivision of land in a GR General Residential Zoning District in Nanticoke Hundred by dividing 7.36 acres into 2 lots, and a waiver from the street design requirements, located east of Road 525, 1,187 feet south of Road 526.

Mr. Abbott summarized the Technical Advisory Committee Report of September 16, 1998, and comments received from the Natural Resources Conservation Service and the Sussex Conservation District.

The Commission found that William Smack, Jr. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he will follow the recommendations of the Technical Advisory Committee; that there is a Delmarva Power transmission line that crosses the site; that he and his wife propose to place a manufactured home on the new lot; that his driveway will be off of the proposed cul-de-sac; that the road will be private; that the site is wooded and that they will only clear enough trees to place the manufactured home, septic system, and well; that the private road is proposed to be stone or crusher-run; that they would like to tar and chip the road in the future; that relatives use the existing road to access their lots; and that his grandparents own the remaining acreage.

The Commission found that William Smack, Sr. was present in support of the application.

The Commission found that there were no parties present in opposition to the application.

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 made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to defer action pending receipt of proposed deed restrictions for the maintenance of the private street and how the street is to be improved.

C/U #1258—application of PARADEE GAS CO., INC. to consider a Conditional Use of land in an AR-1 Agricultural Residential District for storage of liquefied petroleum gas to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.38 acres, more or less, lying north of Route 26, 204.70 feet west of Road 402A.

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 26 may change to a level of service "C".

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may be necessary for some on-site and off-site drainage improvements since some of the soils have high water tables from November through April; that the soils are mapped as Pocomoke sandy loam and Rutledge loamy sand, which have severe limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Pocomoke soils are considered Prime Farmland (where drained), of Statewide Importance (where not drained), and Hydric soils; and that the Rutledge soils are considered of Statewide Importance and a Hydric soil.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the application; that the Division of Historical and Cultural Affairs has stated that the parcel is adjacent to a stream which has high prehistoric archaeological potential; that although there is a low potential for historic period archaeological resources on the site, they request that the tanks be placed as far from the stream edge as possible to avoid damaging any prehistoric resources that may exist; and that if the application is approved, the Office of the State Fire Marshal asked that the applicant submit site plans, tank plans, and any support facility plans to the Office.

The Commission found that Environmental Consulting Services, Inc. investigated the site and found that jurisdictional wetlands do not exist in the area of the proposed propane tanks.

The Commission found that W. Charles Paradee, III and W. Charles Paradee, Jr. were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that they propose a propane bulk storage facility; that a fire protection analysis has been performed by Donald J. Kohn Engineering; that two (2) 30,000 gallon storage tanks are proposed; that the site will include the tanks, a loading facility, a pond for fire protection, and a stone driveway; that they anticipate one (1) transport truck per day, and one (1) or two (2) delivery trucks per day utilizing the facility for refueling; that the number of delivery trucks per day may increase to three (3) or four (4) during the winter months; that they service residential, commercial and agricultural users; that propane has become the fuel of choice by many Sussex County residents; that the company has had an office and plant in the Lewes area for approximately 15 years without incident; that the company delivers 1.5 million gallons in Sussex County annually; that the location will minimize travel time for the company to serve customers; that hours of activity should be limited to 8:00 a.m. to 4:30 p.m. with no evening or night activities; that no trucks will be stored on the site; that there will be no storage of residential tanks or cylinders on the site; that propane storage facilities have improved recently due to changes in the Delaware State Fire Code, experience, and improved technology; that the design of the facility and the system will provide for total product containment; that the facility will be protected by flame and gas vapor detection systems with 24 hour monitoring and automatic alarm system signaling; that regulatory agencies include: the Accident Release Prevention Office of DNREC for inspections without notice; the Office of the State Fire Marshal for plan review, fire safety analysis, and training; OSHA for safety requirements; and DELDOT for trucks and loading facilities inspections; that the bermed fire pond will include a dry hydrant system for fire company; that the driveway will be improved with crusher-run; that the same entrance drive will be utilized as the drive for the existing manure shed; that a six (6) foot high chain-link type of fencing with barb-wire will be installed around the perimeter; that security lighting will be installed; that the company has facilities in Lewes, Harrington, Dover, Cheswold, Queenstown, and Chestertown; that no employees will be stationed on the site, except for loading and unloading of tank trucks; that natural gas is not available on U.S. Route 113 corridor; and that the tanks will be a minimum of 50' from any property lines.

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

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 made by Mr. Hastings, 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. Chain-link type fencing, a minimum of 6' high with barb-wire, shall be provided around the perimeter of the site.
2. Security lighting shall be provided.
3. No trucks or customer tanks or cylinders shall be stored on the site.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approval and/or permits.
5. The applicant shall maintain all licenses and approvals required by all agencies.

C/U #1259—application of WILLIAM L. AND BONNIE M. WARREN to consider the Conditional Use of land in an AR-1 Agricultural Residential District for sales of sheet metal, hardware, used machinery, and used equipment to farmers, fishermen, and related businesses, located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 6.75 acres, more or less, lying west of Route 16, 1,440 feet north of Road 587.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "C" of Route 16 at this location will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may be necessary for some on-site and off-site drainage improvements since some of the soils have severe limitations due to high water tables, and that these areas should be avoided; that the soils are mapped as Fallsington sandy loam, Fallsington loam, Sassafras sandy loam, and Woodstown sandy loam; that the Fallsington soils have severe limitations; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that all of the soil types are considered Prime Farmland; and that the Fallsington soils are also considered of Statewide Importance.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objection to this application; that the Division of Historical and Cultural Affairs has stated that the parcel contains a historic agricultural complex; that the house dates to the late nineteenth century with Colonial Revival porches and window detail; that when the property was surveyed in 1980, the house had excellent integrity and is potentially eligible for the National Registry of Historic Places; that the land has low archaeological potential; that the State requests that the applicants screen the commercial business from the house with landscaping, to protect the house's

setting; and that the Office of the State Fire Marshal asked that the applicants contact the Sussex County office to discuss site plans and building plans.

The Commission found that William L. and Bonnie Warren, and Mark Steiner, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that no adverse impact is anticipated on property values, since they propose to improve the site; that no adverse impact is anticipated on the neighborhood; that the area is predominantly agricultural; that they propose to utilize 6.75 acres of their 15.6 acre parcel for the Conditional Use; that the rear of the site is wooded; that they propose to fence both sides and the front of the site; that a tax ditch exists to the north; that the fencing will be a solid screen fencing; that landscaping will also be provided to screen the site; that they provide sheet metal, hardware, machinery and equipment to customers that include primarily farmers, watermen, contractors, and agricultural businesses; that there should be no adverse impact by noise; that they employ five (5) employees; that they foresee no need for any additional employees; that they serve approximately ten (10) customers per day; that they receive approximately three (3) tractor trailer deliveries per week; that they anticipate no adverse impact by odor or dust; that they anticipate no impact on water quality; that they realize that they have been in business since 1990 and need to conform to the Zoning Ordinance; that they have circulated a petition in support of their business and have signatures from agricultural users, farmers, electricians, machinist, etc...; that the Conditional Use will bring the site into conformity; that the remaining acreage will remain in farming; that a setback of 75' is proposed from Route 16; that building permits for all buildings on the site have been obtained; that the fencing will be constructed with salt-treated post and eight (8) foot perforated painted panels; that business hours will be from 7:00 a.m. to 5:00 p.m. weekdays, and 7:00 a.m. to 1:00 p.m. on weekends; that no waste oil or hazardous chemicals are on the site; that machinery hauled to the site does not contain any fluids; that they have no objection to stipulations; that security lighting is manually switched; that aluminum and stainless steel sales are 75% of the business; that the equipment purchased for resale may include machine shop equipment and processing equipment, large electric motors, etc...; that they would like to erect an unlighted sign, not exceeding 32 square feet; that when they started the business, it was part-time; that they were violated by the Zoning Inspector; that they have business licenses for Delaware and Maryland; waste oils are stored for removal by Safety Kleen, a waste oil handler; that they have five (5) trailer bodies on the site for storage; that everything will be stored inside the fenced area; and that no storage will be placed in the wooded area.

The Commission found that the applicants submitted a petition with eleven (11) signatures, and six (6) letters or memorandums in support.

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

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. Hastings, 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 entire perimeter of the Conditional Use shall be fenced with an eight (8) foot high solid fencing. The fencing shall setback a minimum of 75' from the front property line.
2. No storage shall be permitted in the wooded area.
3. The front and southerly perimeter of the Conditional Use shall be landscaped with a single row of large trees along the south, and a double row of large trees on the front.
4. Business hours shall be limited to 7:00 a.m. to 5:00 p.m. weekdays, and 7:00 a.m. to 1:00 p.m. on Saturday and Sunday.
5. No storage shall be permitted outside of the fencing.
6. No parking shall be permitted within the 50' wide right of way on the north boundary.
7. All trucks and moving equipment, when not in use, shall be stored behind the fence.
8. One unlighted sign, not exceeding 32 square feet, may be permitted.
9. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all agency approvals.

C/Z #1348—application of WILLIAM K. MCMAHON to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District in Lewes and Rehoboth Hundred, located southeast of Route 24, 1,000 feet northeast of Love Creek, to be located on a parcel containing 4.14 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "D" of Route 24 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for an on-site or off-site drainage improvements; that the soils are mapped as Sassafras sandy loam and Woodstown sandy loam; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; and that the soil types are considered Prime Farmland.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is in the area west of the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District where the Council agreed to restrict zoning changes and conditional uses as outlined in a memorandum signed between the Council and DNREC.

The Commission found that William McMahon, Sr. and William McMahon, Jr. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they have a Conditional Use for an office; that they also have a model home on the easterly lot; that both lots are part of this application; that the Mulhern parcel was an out conveyance to friends of the family; that south and west of the parcel is a mobile home park; that east of the parcel is a farm and a 50' wide easement serving a Conditional Use for a lawnmower repair business; that the model home was permitted as a spec. house for display only and cannot be utilized as a office unless the zoning is changed; that the site is located in a Development District in the Comprehensive Plan; that the nearest business/commercial zonings are Peddler's Village and the Boat Hole across Love Creek; that the depth of the pond is approximately 7' in the middle; and that the pond has ramped slopes so that an animal or person can walk out.

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

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 made 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 since other business and commercial uses exist in the area, and since the site is located in a Development District in the Comprehensive Plan.

C/Z #1349—application of BILLY C. JONES, JR. to amend the Comprehensive Zoning Map from a GR General Residential District to a C-1 General Commercial District in Little Creek Hundred, located west of Road 510, 1,050 feet south of Road 503, to be located on a parcel containing 1.23 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "B" will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District that no storm flood hazard area or tax ditch is affected; that it may be necessary for some on-site and off-site drainage improvements due to a high water table from November through April; that the soils are mapped as Fallsington sandy loam and Pocomoke sandy loam which have severe limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; and that the soil types are considered both Prime Farmland and of Statewide Importance.

The Commission found that the applicant received a letter in May 1998 advising him that the unattached garage was issued a certificate of compliance for "Private Use" only and that the unattached garage could not be used for any type of commercial business; and that the applicant received a Violation Notice in July 1998 for operating a auto repair business.

The Commission found that Billy C. Jones, Jr. and Billy C. Jones, Sr. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that he was working full-time when he originally applied for his building permit; that the building is an improvement to the neighborhood; that he lost his job and went into the auto repair business full-time; that his business hours are from 8:00 a.m. to 5:00 p.m.; that he does auto repair, transmissions, brakes and service work; that he obtained his State business license on June 30, 1998; that vehicles stored outside have been repaired and waiting to be picked up by the owners; that 7 to 8 business activities exists within one (1) mile of the site; that no auto body work is performed at the site; that he maintains drums for oils and anti-freeze on site; that the drums are picked up by a waste oil company and hauled away; that he makes no more noise than the irrigation system across the road; that the area around the site is wooded; and that he was not aware that he needed permits to operate the business.

The Commission found that Will McGinnis was present in support of the application and stated that a mechanic is needed in the area for the neighbors and farmers; that the applicant is a good mechanic, and that he is a friend of the applicant.

The Commission found that Wayne Elliott and John Tasher were present in opposition to the application and stated that rezoning is not needed in the area; that there are a lot of cars around the site; that the applicant acknowledges the violation; that the site is unsightly; that rezoning of the site may establish a precedent; that the rezoning causes a loss of farmland; that the rezoning and use may have a negative impact on property values; that the area is predominantly farmland; that they understood the zoning classification when they obtained permits for their homes; that rezoning would change the character of the area; and that the business appeared to be in operation on Saturday night at 8:00 p.m.

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 made by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the site is not an appropriate location for C-1 General Commercial, since rezoning of the site would establish a spot zoning, and since the site is located in an Agricultural District in the Comprehensive Plan.

III. OTHER BUSINESS

Sussex West – C/U #1198
Site Plan – Road 265

Steve Class, Developer, and Greg Moore of Becker, Moore, Morgan, Olds, and Richter, Inc. were present as the Commission reviewed the preliminary site plan for Conditional Use #1198, a 108 lot manufactured home park known as Sussex West.

Mr. Abbott advised the Commission that the site plan was reviewed by the Technical Advisory Committee on September 16, 1998; that the report has the standard agency comments; that the phasing plan calls for five (5) phases; that phase one will need to be reduced by one lot since each phase cannot exceed thirty-five (35) lots in any given year, that phase two contains thirty-five (35) lots, that phase three contains seventeen (17) lots, that phase four contains sixteen (16) lots, and that phase five contains five (5) lots; that a proposed bus stop is located along Route 9 in front of the proposed community recreational area; that the minimum lot size is five thousand (5,000) square feet; that the average lot size is six thousand nine hundred fifty (6,950) square feet; that buffers are proposed for the northerly, southerly, and westerly boundaries; that the total area of the project is 55.29 acres; that the developed area will be 34.38 acres and the remaining undeveloped area is 20.91 acres; that the proposed community recreational center will be three thousand (3,000) square feet for phase one and five thousand (5,000) square feet when the entire project is completed; that the recreation area is 7.83 acres; that the existing dwelling is to be converted into administrative offices; that forty (40) parking spaces are proposed for the community recreational center; that the spaces need to be labeled ten (10) feet by twenty (20) feet typical with twenty-five (25) foot wide interior drives; that a note needs to be added to the site plan that the streets will be built to Sussex County specifications; that comment number two made by DelDOT at the Technical Advisory Committee meeting has been rescinded per a telephone conversation with George Shaw of DelDOT and that a letter will be forthcoming; and that if the Commission is favorable to the site plan, only preliminary approval be considered since the staff has not received any agency approvals.

Mr. Class advised the Commission that there are currently no plans for the undeveloped area at this time; that in the future it could possibly be an expansion to the manufactured home park or a subdivision depending on the real estate market; and that the site plan meets the requirements of the Code.

The Commission raised questions about the undeveloped area and questioned why the 108 lots were all located to the southerly portion of the site.

Mr. Moore advised the Commission that it is their interpretation that the 108 lots are located on the 55.29 acre parcel; that by placing the lots at the southerly portion of the site makes for a better design since less infrastructure will be required; and that they are not exceeding the allowed 108 lots.

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

Cedar Village – Mobile Home Park Expansion Road 224

Mr. Abbott advised the Commission that C/U #1131 was approved September 12, 1995 for a maximum 82 lot expansion to Cedar Village Mobile Home Park; that a one year time extension was granted September 12, 1996; that another one year time extension was granted September 11, 1997; that the developer sent a letter dated and received September 11, 1998 stating the amount of work and monies spent to date and asking the Commission to consider that the proposed use is substantially under construction.

There was a consensus of the Commission that the Conditional Use is substantially underway.

Mr. Abbott advised the Commission that the site plan needs to be reviewed for preliminary approval; that 81 lots are proposed; that the typical lot size is sixty (60) feet by one hundred (100) feet; that central sewer and water are proposed; that the site plan has been submitted to all agencies for approval; that the staff has received an approval plan from DelDOT; that the site plan meets the minimum requirements of the Zoning Code; that preliminary approval may be considered and that final approval shall be subject to receipt of all appropriate agency approvals.

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval be subject to the staff receiving all appropriate agency approvals.

Bethany Meadows – Revised Multi-Family Site Plan
Road 368

The Commission reviewed a revised multi-family site plan for Phase 4 of Bethany Meadows, formerly known as Foxfire Meadows.

Mr. Abbott advised the Commission that this section was originally approved for ten (10) buildings with four (4) units in each building; that the revised site plan is for three (3) buildings with eight (8) units and one (1) building with four (4) units for a total of twenty-eight (28) units; and that the setback and parking requirements meet the minimum requirements of the Zoning Code.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as revised.

Dewey Beach Hotel – Preliminary Commercial Site Plan
Delaware Route One

Ben Carr, Architect, was present as the Commission reviewed a preliminary site plan for a four (4) story forty-eight (48) unit hotel on Route One near Dewey Beach.

Mr. Abbott advised the Commission that this site plan was conceptually approved by the Commission on August 13, 1998; that the design is basically the same; that the setbacks and parking spaces meet the minimum requirements of the Zoning Code; that DelDOT has no objection to the proposed entrance location; and that only preliminary approval should be considered since agency approvals are required.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals and/or permits.

IV. OLD BUSINESS

C/Z #1313—application of MILDRED M. LONG to amend the Comprehensive Zoning Map from a C-1 General Commercial District to an AR-1 Agricultural Residential District in Dagsboro Hundred, located on the southwest side of U.S. Route 113, 0.5 mile northwest of Road 406, located on a parcel containing 6.4 acres, more or less.

Mr. Lank submitted a two and a half page memorandum to the Commission detailing the history of the site since the September 11, 1997 public hearing before the Commission, through the Board of Adjustment decision relating to the billboard on site.

Mr. Lank suggested that the Commission should review the memorandum and that the application be placed on the next agenda for consideration.

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

Subdivision # 96-16—application of DALE WHEATLEY to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred by dividing 47.66 acres into 48 lots, located on the north side of Road 483, 1,360 feet southeast of Road 484.

The Commission reviewed the final record plan for Fleetwood Estates Subdivision.

Mr. Abbott advised the Commission that this application received preliminary approval January 22, 1998 for 48 lots; that the final record plan is for 47 lots; that the plan meets the minimum requirements of the Subdivision Ordinance; that all agency approvals have been received; and that recordation should be withheld until the final restrictive covenants have been received, reviewed and approved by the Assistant County Attorney.

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

Ordinance – Produce Stands—an Ordinance to amend Chapter 115 of the Code of Sussex County, to include products raised on other lands owned by the owner of the premises on which the stand is located as items permitted to be sold in a temporary removable stand in the AR-1 Agricultural Residential District.

The Commission discussed the points and issues raised during the public hearing on August 27, 1998.

Mr. Schrader advised the Commission that the Ordinance has been revised per their instruction to reference other lands leased by the owner of the premises on which a stand is located.

Motion made by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as amended.

Rules and Procedures of the Commission

The Commission discussed the rules and procedures proposed several months ago.

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to defer action until the next regular meeting, October 9, 1998.

Meeting adjourned at 11:10 P.M.