

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 26, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 26, 1996, at 7:30 PM, in the County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Mr. Schrader explained how the public hearings and agenda items will be conducted.

II. PUBLIC HEARINGS

1. RE: C/U #1165--John J. Reed

John J. Reed and Donna Reed were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Little Creek Hundred for a Private Runway on the north side of Road 447, approximately 1,040 feet west of Road 449A, located on a parcel containing 4.66 acres more or less.

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

Mr. Lank read a letter received in support of this application from Martin C. Johnson.

Mr. Reed stated that he grew up on an airport, that he is a commercially rated pilot, that his single engine aircraft is a pleasure craft and not intended for business purposes, that the runway will be private, that a hedgerow exist along the easterly side, that no additional fuel storage is proposed, that the farm presently has a 100 gallon gasoline fuel tank, that the runway does exist and is approximately 2,033 feet in length, and that he has tested the runway by taking off and landing.

Mrs. Reed stated that the plane is a two seater 1939 Piper Cub that her husband spent four years restoring, that both their children love to fly, and that they would like to obtain a four seater in the future so that the whole family can fly together.

No one appeared in support of or in opposition to this application.

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 the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam, Pocomoke sandy loam, Woodstown sandy loam, and Evesboro loamy sand, that the Woodstown and Evesboro soils have slight limitations, that the Fallsington and Pocomoke soils have severe limitations, that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the Farmland Rating of the Fallsington soils is considered Prime Farmland, of Statewide Importance, and a Hydric soil, that the Farmland Rating of the Pocomoke soils is considered Prime Farmland (where drained), of Statewide Importance (when not drained), and a Hydric soil, that the Farmland Rating of the Woodstown soils is considered Prime Farmland and a Hydric soil in depressions, and that the Farmland Rating of the Evesboro soils is considered of Statewide Importance and a Hydric soil in small depressions, that no storm flood hazard area or tax ditch is affected, that off-site and on-site drainage improvements may be necessary due to some wet soils on the site, that the Fallsington and Pocomoke soils are poorly drained, may have a seasonal high water table between November and April, and that water may be near the surface or ponded on the surface during winter months.

The Commission found that a letter was received in support of this application and stated that due to the location of the runway there should be no risk to any of the neighbors.

The Commission found that the applicant was present and stated that he grew up on an airport, that he is a commercially rated pilot, that his single engine aircraft is a pleasure craft and not intended for business purposes, that the runway will be private, that a hedgerow exist along the easterly side, that no additional fuel storage is proposed, that the farm presently has a 100 gallon gasoline fuel tank, that the runway does exist and is approximately 2,033 feet in length, and that he has tested the runway by taking off and landing.

The Commission found that the applicant's wife was in attendance and supports her husbands application and stated that the plane is a two seater 1939 Piper Cub that her husband spent four years restoring, that both of their children love to fly, and that they would like to obtain a four seater aircraft in the future so that the whole family can fly together.

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

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support.

2. RE: C/U #1166--Milford Moose Lodge No. 2316

Herman Sharp, William Taylor, Ron Parsons, lodgemembers, and David Rutt, Attorney, 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 Social Organization Meeting Facility and Recreational Fields on the northwest side of Road 209A, 362 feet southwest of Road 209, and on the south side of Road 209, 245 feet northwest of Road 209A, located on a parcel containing 25.58 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the State Planning Coordination Office.

Mr. Rutt stated that the site is zoned AR-1 Agricultural Residential and that the Conditional Use application filed is permitted to be applied for in the district, that lodge activities are dedicated to family and community activities, that the lodge has a contract to purchase the site from Glen W. Eskridge, and that the use is beneficial to the Milford area.

Mr. Sharp stated that the lodge intends to erect a 72' by 100' building for a meeting place and banquet hall for wedding receptions, etc..., that Milford needs additional facilities for such functions, that the lodge may also serve meals, that all monies raised are spent on charities, that the Red Men of Sakimas Tribe #10 has a small clubhouse on adjoining lands, that a horse farm exist to the west of the site, that the area is mixed agriculture and residential, that an intersection of Route One and Road 209 is approximately 100 feet to the east, that the building will contain a kitchen, meeting room, a small bar and grille for members only, and an area for storage, that adequate space exist for parking on the site, that the site is suitable for septic, that the State DNREC has approved the septic design, that the lodge officers meet once a week, that the membership meets once a month, that approximately 20 of the 200 members of the lodge actively attend meetings, and that the existing facility in Milford is not adequate to serve the lodge and additional functions.

Mr. Rutt exhibited 5 recent awards received by the lodge for community services.

Mr. Sharp continued by stating that Milford Parks and Recreation will be permitted to utilize any ballfields built on the site, that a picnic area is proposed near the north side of the site, that they have no present plans for turkey shoots, that the ballfields will not be lighted, that the majority of the site will be open space, that no negative impact is anticipated on the neighbors, that a tall lighted sign may be requested, that the lodge's fundraiser trailer will be stored on the site, that dances may be held at the building, and that the building may be open from 9:00 A.M. to 12:00 Midnight.

Ron Parsons, Administrator for the lodge, stated that dances are presently scheduled from 8:00 P.M. to 12:00 Midnight.

Mr. Allen stated that two neighboring residents have voiced objections due to possible disturbance of their horses.

Kathy Kunkle, an area resident, spoke in opposition and expressed concerns to rumors that the intersection of Route One and Road 209 is reported to be closed, that all traffic to and from the site will be utilizing Road 209, that the site is not served by central sewer and water, questioned any expansion of the facilities, that the area is predominantly residential, that traffic impacts should be a concern, that normal traffic is not unreasonable, but wedding party and banquet traffic could be in mass, and requested screening and all lighting to be directed away from residential areas if the use is approved.

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 action will have no significant impact on traffic, and that while it is not listed in the Capital Improvement Plan, a project now under design will soon close Sussex Road 209 at State Route One and pave Sussex Road 209A, which is now a dirt road.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Rumford loamy sand, which has slight limitations, that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the

Farmland Rating of the soil type 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 the Office of State Planning Coordination has sent the application through the Land Use Planning Act review process, that the Office supports the application since this land use proposal seems proper for the Milford area, that the Office strongly encourage the Milford Moose to allow the public to use the athletic fields for well organized outdoor recreation by local sports teams and leagues, and that an agency planners list was made available for any questions.

The Commission found that three lodge members and an attorney were present and that the attorney stated that the site is zoned AR-1 Agricultural Residential and that the Conditional Use application filed is permitted to be applied for in the district, that lodge activities are dedicated to family and community activities, that the lodge has a contract to purchase the site from Glen W. Eskridge, and that the use is beneficial to the Milford area.

The Commission found that Herman Sharp, one of the lodge members, stated that the lodge intends to erect a 72' by 100' building for a meeting place and banquet hall for wedding receptions, etc..., that Milford needs additional facilities for such functions, that the lodge may also serve meals, that all monies raised are spent on charities, that the Red Men of Sakimas Tribe #10 has a small clubhouse on adjoining lands, that a horse farm exist to the west of the site, that the area is mixed agriculture and residential, that an intersection of Route One and Road 209 is approximately 100 feet to the east, that the building will contain a kitchen, meeting room, a small bar and grille for members only, and an area for storage, that adequate space exist for parking on the site, that the site is suitable for septic, that the State DNREC has approved the septic design, that the lodge officers meet once a week, that the membership meets once a month, that approximately 20 of the 200 members of the lodge actively attend meetings, and that the existing facility in Milford is not adequate to serve the lodge and additional functions.

The Commission found that the attorney exhibited 5 recent awards received by the lodge for community services.

The Commission found that Mr. Sharp continued by stating that the Milford Parks and Recreation will be permitted to utilize any ballfields built on the site, that a picnic area is

proposed near the north side of the site, that they have no present plans for turkey shoots, that the ballfields will not be lighted, that the majority of the site will be open space, that no negative impact is anticipated on the neighbors, that a tall lighted sign may be requested, that the lodge's fundraiser trailer will be stored on the site, that dances may be held at the building, and that the building may be open from 9:00 A.M. to 12:00 Midnight.

The Commission found that the Administrator for the lodge stated that dances are presently scheduled from 8:00 P.M. to 12:00 Midnight.

The Commission found, based on information stated by the Chairman, Mr. Allen, that two neighboring residents have voiced objections to this application due to possible disturbance of their horses.

The Commission found that an area resident spoke in opposition and expressed concerns to rumors that the intersection of Route One and Road 209 is reported to be closed, that all traffic to and from the site will be utilizing Road 209, that the site is not served by central sewer and water, questioned any expansion of the facilities, that the area is predominantly residential, that traffic impacts are a major concern, that normal traffic is not unreasonable, but wedding party and banquet traffic could be in mass, and requested screening and all lighting to be directed away from residential areas if the use is approved.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to defer action so that the Chairman can try to get more information about the complaints that he has received.

3. RE: C/Z #1286--I.P.M. Equities, Inc.

Preston Dyer and Robert Derrickson were present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Baltimore Hundred, located at the southwest corner of the intersection of Delaware Route One and Road 361-A, to be located on a parcel containing 21,344 square feet more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, the Sussex County Engineering Department, and the Office of State Planning Coordination.

Mr. Dyer stated that the site contains approximately 0.49 acres of a 4.29 acre parcel, that 2.0 acres of the parcel is zoned C-1 General Commercial, that the 0.49 acres is proposed to

be an expansion to the 2.0 acre commercial portion of the parcel, that the adjoining lands to the west are MR Medium Density, that the front portion of the MR portion will be utilized for mitigation of wetlands and stormwater management, that 3,074 square feet of the existing C-1 commercial portion contains upland wetlands, that no entrance will be permitted from Road 361-A, that rezoning of the site would be consistent to C-1 General Commercial parcels across Road 361-A, an office complex, across Route One, mixed commercial uses, and south of the parcel, mixed commercial, that MR zoning along Route One in this area is inconsistent, that no adverse impact is anticipated on the health, safety, welfare, or property values of the citizens in the area, that they propose to proceed with development of the site with or without the additional site, that they propose to develop a two story commercial building with approximately 9,000 square feet of footprint, that they propose to apply to the County Board of Adjustment for a miniature golf course, that a landscaped buffer and/or fencing is proposed to provide screening for the neighbors, that all lighting will be directed away from the neighbors, that the proposed stormwater management area will be designed to handle more runoff than the site will require, that the U.S. Army Corps. of Engineers has approved the mitigation design for the relocation of the wetlands, that the southwest portion of the site will be retained by the present owners and will have access through cross easements across the commercial lands.

Barbara Gale, one of the landowners of the site and adjoining lands, spoke in support of the application and advised the Commission that they are the only permanent residents immediately adjacent to the site, and supported the proposed berm to screen the site and the need for mitigation of the wetlands in the area and drainage.

George Conrad, an adjoining landowner, questioned if the rezoning will impact the sale of his lot, and drainage in the southwest corner of the site.

Mr. Dyer advised the Commission that the stormwater design is required to be designed so that runoff will be no greater than runoff already existing from the site.

Mr. Conrad stated that he has no objection to the application.

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 correspondence was mailed on June 6, 1994 and July 17, 1996 in reference to this project, and that the Department has withdrawn it's request for a traffic impact study, that the subject of the application is a wedge-shaped piece of the property with frontage on Road 361-A, that the applicants propose a commercial building near the center of the site, parking to the south and a miniature golf course to the north, that access will be available only to and from Route One, and that there is ample frontage on Route One for access.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam and Pocomoke sandy loam which have severe limitations, that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil types is considered Prime Farmland, of Statewide Importance, and Hydric Soils, that no storm flood hazard area or tax ditch is affected, that off-site and on-site drainage improvements may be necessary since the soil types are poorly drained to very poorly drained, that a seasonal high water table may exist between November and April, and that water may be close to the surface or ponded on the surface during winter months.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the South Bethany Sanitary Sewer District, that wastewater capacity is limited to four (4) equivalent dwelling units (EDU's) per acre or 1,200 gallons per day (gpd) per acre, that there will be connection charges (impact fees) due for any improvements constructed, and that any improvements needed for connecting to the sanitary sewer system (i.e. laterals, etc...) are the responsibility of the property owner or developer.

The Commission found, based on comments received from the Office of State Planning Coordination, that the application has been forwarded for Land Use Planning Act (LUPA) review and comments, that the Office has no objection to the rezoning, and adding that the State DNREC has advised that there is an inactive leaking underground storage tank site on the opposite side of Route One, and that if any unknown underground storage tanks or any petroleum contamination is encountered during construction the State DNREC Underground Storage Tank Branch should be notified immediately.

The Commission found that the applicant's representative stated that the site contains approximately 0.49 acres of a 4.29 acre parcel, that 2.0 acres of the parcel is zoned C-1 General Commercial, that the 0.49 acres is proposed to be an expansion to the 2.0 acre commercial portion of the parcel, that the adjoining lands to the west are MR Medium Density, that the front portion of the MR portion will be utilized for mitigation of wetlands and stormwater management, that 3,074 square feet of the existing C-1 commercial portion contains upland wetlands, that no entrance will be permitted from Road 361-A, that rezoning of the site would be consistent to C-1 General Commercial parcels across Road 361-A, an office complex, across Route One, mixed commercial uses, and south of the parcel, mixed commercial, that MR zoning along Route One in this area is inconsistent, that no adverse impact is anticipated on the health, safety, welfare, or property values of the citizens in the area, that they propose to proceed with development of the site with or without the additional site, that they propose to develop a two story commercial building with approximately 9,000 square feet of footprint, that they propose to apply to the County Board of Adjustment for a miniature golf course, that a landscaped buffer and/or fencing is proposed to provide screening for the neighbors, that all lighting will be directed away from the neighbors, that the proposed stormwater management area will be designed to handle more runoff than the site will require, that the U.S. Army Corps. of Engineers have approved the mitigation design for the relocation of the wetlands, that the southwest portion of the site will be retained by the present owners and will have access through cross easements across the commercial lands.

The Commission found that one of the landowners of the site and adjoining lands, spoke in support of the application and advised the Commission that they are the only permanent residents immediately adjacent to the site, and supported the proposed berm to screen the site and the need for mitigation of the wetlands in the area and drainage.

The Commission found that George Conrad, an adjoining landowner, questioned if the rezoning will impact the sale of his lot, and drainage in the southwest corner of the site.

The Commission found that the applicant's representative stated that the stormwater design is required to be designed so that runoff will be no greater than runoff already existing from the site.

The Commission found that Mr. Conrad stated that he has no objection to the application.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried with 4 votes, Mr. Wheatley abstaining, to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning will be an extension to an existing C-1 General Commercial District on the same parcel.

4. RE: Subdiv. #96-15--Kevin Borden

Kevin Borden was present on behalf of his application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 1.40 acres into 2 lots, located on the north side of Dove Knoll Drive, across from Turtle Dove Drive, within Dove Knoll Subdivision.

Mr. Abbott summarized comments received from the Delaware Health and Social Services Division of Public Health, the Sussex County Engineering Utility Construction Division, the Office of the State Fire Marshal, the Delaware Department of Transportation, and the Natural Resources Conservation Service.

Mr. Borden advised the Commission that when he bought the lot, he was not sure how the sewer would affect the lot, that his taxes are approximately \$140.00 per year without a dwelling on the property and that his sewer bill is \$1,300.00 per year without a dwelling, that the sewer cost will be \$1,500.00 with a dwelling on site, that he has a sales contract to purchase additional land from Edna Holston to gain additional land so that each lot will be a minimum of 20,000 square feet, as required, that if approved it would cut his sewer impact fees in half, that he will try to sell one lot or give it to his son, that there are wetlands to the rear of the property and that they will not be impacted.

Mr. Allen expressed concerns about the topography of the site.

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 Delaware Health and Social Services, Division of Public Health, that no agency concerns exist at this time.

The Commission found, based on comments received from the Sussex County Engineering Utility Construction Division, that the site is located within the West Rehoboth Sanitary Sewer District,

that the site is currently served with one (1) six (6) inch sanitary sewer lateral, and that if the property is subdivided, an additional sanitary sewer lateral will be required to be installed by Sussex County at the owners expense.

The Commission found, based on comments received from the Office of the State Fire Marshal, that they have no objections to the proposed subdivision.

The Commission found, based on comments received from DelDOT, that an entrance permit will be required from the Department.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils on site are Sassafras sandy loam, Fallsington sandy loam and Swamp, and that the Sassafras would have slight limitations, and that the Fallsington and Swamp soils would have severe limitations.

The Commission found, based on comments made by the applicant, that when he bought the land he was not sure how the sewer would affect the lot, that his taxes are presently \$140.00 without a dwelling on site, that his sewer bill is approximately, \$1,300.00 without a dwelling, that the sewer will cost approximately \$1,500.00 with a dwelling on site, that he has a sales contract to purchase additional land from Edna Holston to be able to have the minimum required square footage of 20,000 square feet, that if approved it would cut his sewer impact fees in half, and that he will try to sell one lot or give it to his son, and that there are wetlands to the rear of the site which will not be impacted.

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

5. RE: APD #96-16--Howard & Hazel Pepper

Howard W. Pepper was present on behalf of his application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred for four (4) parcels of land totalling 419.00 acres more or less, located on both sides of Road 376, south of Road 375, both sides of Railroad and northeast of Road 376A for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation. Mr. Lank also advised the Commission

that he had found that approximately 35 acres of the original application site on the north side of Road 375 is zoned GR General Residential and has been excluded from the area of the application.

Mr. Pepper advised the Commission that the C-1 General Commercial strip along Route 113 is not a part of the application, that he is requesting the Agricultural Preservation District since his children never wanted to part with the land, that Clifton Parker Farms, Inc. tills the property, and that his son has owned a manufactured home park adjoining the site since 1973.

Mr. Wheatley questioned if any pressure exist to sell the land for development.

Mr. Pepper stated that there has been no pressure and added that he did not want to pay to apply to downzone the C-1 General Commercial lands to AR-1 Agricultural Residential.

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. Lynch to recommend denial of this application, seconded by Mr. Wheatley, and carried with 3 votes in support of the motion and 2 votes opposing the motion. Mr. Phillips and Mr. Ralph opposed the motion. To expand upon the votes to deny Mr. Wheatley referenced concerns about property rights, stated that payment for property rights only makes sense if development rights exist, stated that the land use plan is up in the air, stated that an Agricultural Preservation District may be severely restrictive on adjoining property owners; Mr. Allen reminded the Commission that they requested representatives of the State Department of Agriculture to meet with the Commission and expressed a concern that Agricultural Preservation Districts, by law, require a 50 foot buffer for a residential structure on adjoining lands; Mr. Lynch added that people in his area are opposed to Agricultural Preservation Districts, added that small farmers are impacted, agreed that the 50 foot buffer impacts adjoining landowners, not the applicant applying for an Agricultural Preservation District, and is a taking of property rights, and added that the law is a possible repeal of Sussex County's right to home rule.

6. RE: APD #96-17--Jack & Barbara Hickman & Dempsey Hickman

No parties were present in support of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred for five (5) parcels of land totalling 268.00 acres more or less, located on both sides of Road 382, both sides of Road 372 and both sides of Road 369 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

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. Lynch to recommend denial of this application, seconded by Mr. Wheatley, and carried with 3 votes in support of the motion and 2 votes opposing the motion. Mr. Phillips and Mr. Ralph opposed the motion. Reasoning for the motion and negative votes are the same as those referenced in APD #96-16.

7. RE: APD #96-18--Collins Acres General Partnership

Donald Collins and Donald B. Collins were present on behalf of their application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred for one (1) parcel of land totalling 401.44 acres more or less, located on both sides of Road 421, southwest of Road 431, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Donald Collins stated that they want to keep their land in preservation, not development, that not to many children are getting into agriculture, and that his son desires to continue to farm.

Mr. Wheatley questioned why creation of an Agricultural Preservation District changes anything.

Mr. Collins referenced tax exemptions, the right to farm, protection against complaints, and added that they have been tilling the property for approximately 10 years.

Alden Hopkins stated that he is the appointed representative of the Delaware Farm Bureau on the Delaware Agricultural Lands Preservation Foundation, that the Collins' are large commercial farmers, that the creation of the Agricultural Preservation District guarantees and protects the farm from development for at least 10 years, and requested the Commission to approve 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 by Mr. Ralph to recommend approval of the application, seconded by Mr. Phillips, with Mr. Lynch, Mr. Wheatley, and Mr. Allen opposing the motion. Motion failed due to the lack of a majority. The reasoning for the negative votes on this application are the same as those referenced in APD #96-16.

RE: APD #96-19--Gilbert H. Joseph, Elva Short, Hopkins Brothers, Inc. & Bruce & Robin West

Elva Short, Ernest and Joy Hopkins of Hopkins Brothers, Inc., and Gilbert Joseph were present on behalf of their application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred and Indian River Hundred for six (6) parcels of land totalling 482 acres more or less, located on both sides of Road 262, both sides of Road 381, east of Road 290, and both sides of Road 286 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Mrs. Short advised the Commission that they decided to join together to create an Agricultural Preservation District, that she was born on the area, that she has raised children in the area, that the site is historical and a part of the 1,000 acre tract which William Penn gave to his secretary, and that she has approximately 98 acres.

Mrs. Hopkins stated that they have approximately 200 acres.

Mr. Joseph stated that he has the remaining acreage to complete the 482 acre district.

Alden Hopkins, speaking as representative of the Delaware Farm Bureau and an adjoining land owner, stated that the site is adjacent to the Coverbridge Farm Agricultural Preservation District, that he is in support of additional lands being preserved in the area, that he supports the application, that an Agricultural Preservation District locks a property into preservation for a period of time or into perpetuity, by sale of development rights, that when permanent easements are purchased the Foundation compares agricultural land values with real estate values and then discount the site by a minimum of 23 percent to establish a fair value, and that tax benefits are also established.

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. Phillips to recommend approval of the application, seconded by Mr. Ralph, with Mr. Lynch, Mr. Wheatley, and Mr. Allen opposing the motion. Motion failed due to the lack of a majority. The reasoning for the negative votes on this application are the same as those referenced in APD #96-16.

9. RE: APD #96-20--Samuel Brenner, John David Vincent & Robert, Peter & Josiah Hopkins

No parties were present in support of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for three (3) parcels of land totalling 433.83 acres more or less, located south of Road 88, both sides of Road 258, southwest of Road 261, and northeast of Road 260 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips to recommend approval of the application, seconded by Mr. Ralph, with Mr. Lynch, Mr. Wheatley, and Mr. Allen opposing the motion. Motion failed due to the lack of a majority. The reasoning for the negative votes on this application are the same as those referenced in APD #96-16.

III. OTHER BUSINESS

1. RE: Dr. John Spieker, MD

The Commission reviewed a site plan for medical offices for Conditional Use #1150 on Road 269-A.

Mr. Abbott advised the Commission that this is the same site plan that was denied by the Commission on August 22, 1996, and advised them that the erosion and sediment control plan has been approved by the Sussex Conservation District.

Kevin Minnich of Minnich Engineering was present and advised the Commission that he prepared the plan, that the area referencing the stormwater area is the most suitable area on the property since this is the lowest spot on site, that a soil scientist has conducted soil borings and agrees, that the pond would be landscaped and possibly have a fence erected, and that they are working with an adjoining property owner about a possible outfall being installed.

Mr. Lank read a letter from Atlantic Hydrologic in support of the site plan.

Vince Robertson, Attorney, representing Neal and Tilda Boyle, and Elizabeth Irving advised the Commission of the stipulations that the County Council imposed upon the approval, made reference to the failing system on Bayside Health flooding the adjacent property owners, and stated that the pond needs to be relocated.

Dr. Spieker advised the Commission that he has put forth a lot of money trying to get the site plan approved, that he has two surgeons that have agreed to join his practice and that if the plan is not approved he may lose them and questioned how far away the pond has to be.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to defer action so that the Assistant County Attorney and staff can review the tapes and minutes of previous meetings.

2. RE: Lands of Reed, White, and Distler

The Commission reviewed a request to vacate a section of an approved fifty foot right of way off of Route 5.

Mr. Abbott advised the Commission that the fifty foot right of way was approved by the Commission but it has never been built and that the property owners use an existing twenty five foot easement to access their property, and stated that an agreement has been received from the law office of Schab and Barnett with all appropriate signatures.

Motion made by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to delete a portion of the fifty foot right of way.

IV. Additional Business

Mr. Lank provided the Commissioners with copies of a response from the Delaware Attorney General's Office relating to a freedom of information complaint.

Mr. Lank advised the Commission that Mr. John Tarburton, Secretary to the Delaware Department of Agriculture, would not be available to meet with the Commission on October 3, 1996 or October 17, 1996 to discuss Agricultural Preservation Districts, etc..., and that Mr. Tarburton will be out of the country until the first of November. A meeting date will be schedules upon Mr. Tarburton's return.

Mr. Lank advised the Commission that the special meeting for October 31, 1996 has been rescheduled for Wednesday, October 30, 1996.

Mr. Lank advised the Commission that a meeting is proposed for October 7, 1996 at 2:00 P.M. for two County Council members, two Commission members, staff, and Tom Shafer to discuss the Land Use Plan. Mr. Schrader added that this type of meeting is an ad-hoc meeting and that an agenda will be required to be posted.

Mr. Allen asked Mr. Schrader if it was possible to extend the amount of time available for the review and consideration of the Land Use Plan.

Mr. Schrader advised the Commission that the Land Use Plan must be submitted to the Cabinet Committee on State Planning Issues no later than December 31, 1996 and that if the County were to request an extension of the date, such request must be made before October 2, 1996.

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Mr. Allen asked Mr. Schrader to advise the County Council of the Commissions concerns and to suggest to the County Council that a time extension may be appropriate.

Meeting adjourned at 11:25 P.M.