

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 28, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 28, 1995, at 7:30 P.M., in Room 115 of 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 - Planner II. Joel Leidy, Ex-Officio member, was also present on behalf of the Secretary of the Department of Transportation.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the minutes of September 14, 1995, as circulated.

II. PUBLIC HEARINGS

1. C/U #1133--David L. & Carolyn Wilson

David L. Wilson, 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 an Expansion to Conditional Use No. 687 to Permit the Sale of Carriages, Sleighs, Wagons, Horses and Ponies, and to Establish a location to start and finish trail rides and carriage parades and drives lying on the west side of U.S. Route 113, 2,300 feet south of Road 625 on a parcel containing 12.29 acres more or less.

Mr. Lank advised the Commission that no agency comments have been received to date and that comments were not requested from DelDOT since the use intended utilizes an existing auction facility.

Mr. Rutt stated that he believes that the auction of carriages, sleighs, and wagons is already permitted by the existing conditional use, and that the reference to trail rides and carriage parades and drives is not necessary since the use is not operated commercially and since the use is a private activity.

Mr. Schrader agreed with Mr. Rutt that the sale of carriages, sleighs, and wagons is permitted by the existing C/U #166(1973), C/U #296(1975), C/U #517(1979), and C/U #687(1982), that the reference to trail rides is not a commercial activity, and that the application may be limited to sale of horses and ponies.

Mr. Wilson stated that no fees are charges for the trail ride activities.

Mr. Rutt submitted copies of all reference Conditional Use application for the site.

Mr. Wilson stated that the auction activity started in 1975, that the proposed activities include two functions, a Spring and Fall Plow Festival on Saturdays, with a Carriage Parade and Drive on Sundays, and an auction of tack and related farm items and antiques, horse auction, and carriage auction on Mondays, that past horse auctions have sold as few as 5 or 6 horses to as many as 20 or 25 horses, that horses arrive at the site the day of the sale in horse trailers and are removed from the trailers and hitched to the trailer until the time of the auction, that approximately 200 to 250 people attend the auction from Delaware, Maryland, Virginia, and Pennsylvania, that the majority of the people offering their horses for sale are local residents, that the auction is held approximately 350 feet from U.S. Route 113 and a minimum of 200 feet from all property lines, that the auction is held in the same area as the auto auction, that no permanent stock pens exist on the site, that a mare and foal may be kept in a temporary holding pen, that approximately 150 feet of snowfencing is utilized to separate the horses from the people, that horses are paraded for the auction by the present owner, that no horses stay overnight, that all horses are veterinarian inspected and must be free of any blood disorders, that a veterinarian is on site during the auction, that all manure is cleaned up after the sale, that no adverse impact is anticipated on traffic, the neighborhood, or property values, that the use is beneficial to Sussex County residents desiring to sell their horses, that the carriage drives are advertised, that the smallest number of carriages to date has been 13 and the largest number of carriages to date has been 32, that he may choose to request 3 functions per year to permit a carriage parade during summer months, that a standard auctioneering license is the only license required, that adequate parking space is available on the site, and that a tent is installed on the site Monday morning before the auction and removed Tuesday morning to clear the area for the auto auction.

Charles Thompson, William Bell, Robert W. Green, and Lewis Kisk, area residents, spoke in opposition to this application and expressed concerns that the existing uses are in violation of the Conditional Use approvals and should be voided, that the use should meet all livestock auction requirements, that the trail rides should not be permitted along U.S. Route 113, that horses are unpredictable, that the area proposed is too small for the proposed auction activity, that stock pens exist on the site in violation of the Conditional Uses, that a horse has remained on the site for approximately one week, that the applicant has a poor record of compliance with his Conditional Use stipulations,

that the carriage rides would be more appropriately located in a rural area, that highway safety should be a major part in the consideration for the carriage rides, and that the livestock auction setbacks should be removed from the Ordinance if they are not going to be enforced.

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 that comments were not requested from DelDOT since the use intended utilizes an existing auction facility.

The Commission found that the attorney present on behalf of the application stated that he believes that the auction of carriages, sleighs, and wagons is already permitted by the existing conditional use, and that the reference to trail rides and carriage parades and drives is not necessary since the use is not operated commercially and since the use is a private activity.

Mr. Schrader agreed with Mr. Rutt that the sale of carriages, sleighs, and wagons is permitted by the existing C/U #166(1973), C/U #296(1975), C/U #517(1979), and C/U #687(1982), that the reference to trail rides is not a commercial activity, and that the application may be limited to sale of horses and ponies.

The Commission found that the applicant stated that no fees are charges for the trail ride activities.

The Commission found that the attorney present on behalf of the application submitted copies of all reference Conditional Use applications for the site.

The Commission found that the applicant stated that the auction activity started in 1975, that the proposed activities include two functions, a Spring and Fall Plow Festival on Saturdays, with a Carriage Parade and Drive on Sundays, and an auction of tack and related farm items and antiques, horse auction, and carriage auction on Mondays, that past horse auctions have sold as few as 5 or 6 horses to as many as 20 or 25 horses, that horses arrive at the site the day of the sale in horse trailers and are removed from the trailers and hitched to the trailer until the time of the auction, that approximately 200 to 250 people attend the auction from Delaware, Maryland, Virginia, and Pennsylvania, that the majority of the people

offering their horses for sale are local residents, that the auction is held approximately 350 feet from U.S. Route 113 and a minimum of 200 feet from all property lines, that the auction is held in the same area as the auto auction, that no permanent stock pens exist on the site, that a mare and foal may be kept in a temporary holding pen, that approximately 150 feet of snowfencing is utilized to separate the horses from the people, that horses are paraded for the auction by the present owner, that no horses stay overnight, that all horses are veterinarian inspected and must be free of any blood disorders, that a veterinarian is on site during the auction, that all manure is cleaned up after the sale, that no adverse impact is anticipated on traffic, the neighborhood, or property values, that the use is beneficial to Sussex County residents desiring to sell their horses, that the carriage drives are advertised, that the smallest number of carriages to date has been 13 and the largest number of carriages to date has been 32, that he may choose to request 3 functions per year to permit a carriage parade during summer months, that a standard auctioneering license is the only license required, that adequate parking space is available on the site, and that a tent is installed on the site Monday morning before the auction and removed Tuesday morning to clear the area for the auto auction.

The Commission found that four (4) area residents spoke in opposition to this application and expressed concerns that the existing uses are in violation of the Conditional Use approvals and should be voided, that the use should meet all livestock auction requirements, that the trail rides should not be permitted along U.S. Route 113, that horses are unpredictable, that the area proposed is too small for the proposed auction activity, that stock pens exist on the site in violation of the Conditional Uses, that a horse has remained on the site for approximately one week, that the applicant has a poor record of compliance with his Conditional Use stipulations, that the carriage rides would be more appropriately located in a rural area, that highway safety should be a major part in the consideration for the carriage rides, and that the livestock auction setbacks should be removed from the Ordinance if they are not going to be enforced.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to defer action so that the County Attorney can review and research the live stock pens.

2. Subd. #95-10--Fred P. Dukes, Sr.

Fred Dukes, Owner, Tim Conaway, Power of Attorney, and Michael Short, Contractor, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 18.80 acres into 6 lots, located on the northwest side of Road 487, 116 feet northeast of Road 490.

Mr. Abbott summarized the Technical Advisory Committee Report of September 20, 1995.

Mr. Short advised the Commission that they are aware of all of the request of the Technical Advisory Committee, that all of the request will be met, that there are federally regulated wetlands on the large remaining acreage tract, that the large area will not be developed, that there is not any wetlands on the five front lots, that the proposed road will not be located in any wetlands, that the road will be private and built to Sussex County specifications, and that the site has access from Road 487.

James Farmer, an adjoining property owner, advised the Commission that he has poultry houses on his property and that he does not want any future lot owners complaining about his farming uses.

Mr. Schrader advised the Commission and Mr. Farmer, that the developer will have to have a deed restriction about agricultural protection uses and that Mr. Farmer will be covered.

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. Wheatley, seconded by Mr. Ralph, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

3. Subd. #95-11--Paul F. Hinson

Paul Hinson, developer and engineer, was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 9.00 acres into 7 lots, located 640 feet north of Route 18, 1,275 feet southeast of Road 42.

Mr. Hinson advised the Commission that a soil scientist has been contracted, that the street will be built to State standards from the existing pavement which is about 300 feet from Mr. Hinson's property, that all lots will be a minimum of one acre, that the wetlands will be delineated, that the plan will meet the requirements of the code, that three lots will have water frontage on Collins Pond, and that the existing Collins Street has been accepted by the State of Delaware.

Mr. Abbott advised the Commission that the lots located on Collins Pond will have to have a minimum lot width of 150 feet since the site is located in a Conservation Zone.

Mr. Schrader advised the Commission and the developer that deed restrictions will be required for the maintenance of the streets, the stormwater management area, the thirty foot forested buffer strip, and the agricultural use protection deed restrictions.

Deborah Rogers spoke in opposition due to the heavy amount of traffic on Route 404/18, additional traffic on Collins Road, and people would want to use the twenty foot easement adjacent to her property.

Howard Allen advised the Commission that he farms the adjoining lands and uses the 20' easement to get to the pump house for the irrigation, raised concerns about the size of the forested buffer strip, and questioned how the old chicken houses will be removed.

Janet Sivaz questioned where Collins Street is located, why the developer does not use another access for the entrance to the site, and questioned what price the lots would be sold for.

Jim Johnson advised the Commission that he contacted the Attorney of DelDOT and that the deed that states Mr. Hinson has access to his site is an error and will be corrected, that the road was built by State Senators, that the unpaved portion of the street is still in private ownership, and questioned who will have access to Collins Pond.

Joel Leidy advised the Commission that the street was built by funds from State Senators, and that the road has not been accepted by DelDOT, and that the State does not maintain Collins Street.

Robert Johnson advised the Commission that the existing street does not need any improvements done to it.

Perry Heberling advised the Commission that there is a problem with traffic on Route 404/18, that the traffic gets worse each year on this road, and that heavy equipment would tear up the existing Collins Street.

Jim Johnson stated that the deed restrictions should be reviewed prior to any approvals.

Marlene Mervine of the Nanticoke Watershed Preservation Society questioned why there is not any buffer strip along Collins Pond, that she would like to know what the restrictive covenants will include, and expressed concerns about run-off and erosion into Collins Pond.

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. Ralph, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC and information on the legality of the access to the site.

III. OTHER BUSINESS

1. Benjamin H. & Joan Wheatley

The Commission reviewed a concept to create a fifty foot easement to separate a poultry farm from the dwelling on the west side of Road 493.

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

2. Victor Little

The Commission reviewed a concept to create a fifty foot right of way and two parcels on the north side of Route 9.

Mr. Abbott advised the Commission that there is an existing entrance to the site, that the owner wants to create an entrance to the west side of the property to serve a lot in the rear for a dwelling.

Mr. Lank advised the Commission that there may not be enough room on the east side of the property to create the fifty foot right of way and suggested that the staff inspect the site to measure if there is enough room to create the right of way on the east side.

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

IV. OLD BUSINESS

1. Subd. #93-12--Dr. James Beebe, Jr.

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred by dividing 41.70 acres into 26 lots, located on the north side of Road 287, 1,470.79 feet southeast of Road 285, and the east side of Road 285, 272 feet north of Road 287.

Mr. Abbott advised the Commission that the final record plat has been reduced to 21 lots, that the final record plat is in compliance with the subdivision code, and that all required agency approvals and or permits have been received.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the record plat as a final.

2. Beaver Properties

Mr. Lank advised the Commission that a letter has been received from DelDOT explaining why the entrance was approved by their office, and questioned the specifications of how the service road would be required to be built.

After some discussion, it was the consensus of the Commission that the staff contact DelDOT on service road specifications, and that this item be placed on the next available agenda.

Meeting adjourned at 10:10 P.M.