

MINUTES OF THE REGULAR MEETING OF OCTOBER 8, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 8, 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 for September 24, 1998 as amended.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

C/U #1260—application of DR. BRUCE M. AND BRENDA C. TOPOL to consider a Conditional Use of land in an AR-1 Agricultural Residential District for Medical Facilities and Appurtenances to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.14 acres, more or less, lying east of Road 18 (Savannah Road) approximately 355 feet northeast of Woodland Avenue.

The Commission found, based on comments received from DelDOT, that the application will have no significant impact on traffic.

The Commission found, based on comments received from the County Engineering Department, that the site is proposed to be served in Phase III of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District with a 6-inch lateral from the rear of the site through an easement; that construction is scheduled to be completed by December 1999; that capacity is not considered a concern; that connection to the new sewer system will be mandatory; and that the property will be responsible for capitalization fees, based on \$500.00 for the first EDU and \$250.00 for each additional EDU.

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

The Commission found that Dr. Bruce Topol was present and stated in his presentation and in response to questions raised by the Commission that he is a cosmetic surgeon and has practices in Milford and Lewes; that approximately half of his time is spent in Lewes; that the office may be open full-time in the future; that he does not plan to have evening hours, unless called out for an emergency; that he and his wife have spoken to all of the neighbors and received no known objections to his proposal; that the entrance to the office shall be from the rear of the building; that parking shall be maintained at the rear of the building; that normal office hours will be from 8:00 a.m. to 5:00 p.m., five (5) days per week, excepting for emergencies; that he has no plans for the stable building on the rear of the lot at present; that he may convert the building for storage use in the future; that he may propose additions to the office in the future; and that he may modernize the front of the office building, rather than retain it's residential character.

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. Phillips, 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. Business hours shall be from 8:00 a.m. to 5:00 p.m. weekdays, except for an emergency.
2. The primary business access shall be from the rear of the building.
3. Parking shall be located to the rear of the building.
4. One (1) unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/U #1261—application of FRANK E. APPEL AND DICK APPEL to consider a Conditional Use of land in an AR-1 Agricultural Residential District for Boat Storage and Boat Motor Repair to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.64 acres, more or less, lying east of Road 626, 2,460 feet south of Route 36.

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 626 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 areas or tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements due to a high water table; that an increase impervious area may require an improved drainage outlet; that the soils are mapped as Johnston loam, Rumford loamy sand, and Sassafras sandy loam; that the Rumford and Sassafras soils have slight limitations; that the Johnston soils have severe limitations; that the applicants may be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Rumford soils are considered of Statewide Importance; that the Sassafras soils are considered Prime Farmland; and that the Johnston soils are considered Hydric soils.

The Commission found that Frank Appel, Dick Appel, and John Sergovic, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that a Conditional Use is an appropriate application method in an AR-1 Agricultural Residential District; that the property has been in the family since 1955; that the property was conveyed to Frank Appel in 1962; that Frank Appel divided the property in 1982; that Frank Appel has a dwelling on his parcel, and that Dick Appel has a manufactured home on his parcel; that both parcels have large metal buildings to the rear of the residences; that one metal building was built in 1993 and the other in 1996; that their current business is located in Little Heaven; that the State plans to improve U.S. Route 113 to a limited access road, therefore they would like to relocate their boat storage and boat motor repair to their property; that they propose to store boats on trailers in the large building on Frank Appel's property; that rack storage may be provided in the future; that boat repairs will be performed in the large building behind Dick Appel's property; that they normally average repairs on 12 boats per week; that a precedent may have been established for approval of boat storage and repairs in AR-1 Agricultural Residential Districts by the County Council's approval of a boat storage and repair facility off of Route 54, near Williamsville; that dry boat storage improves the overall environment; that the applicants were cited for violations of storage of junk vehicles, and that an appeal has been filed with the County Board of Adjustment since the applicants believe that they have stored vehicles on the site since prior to 1968; that the Conditional Use could benefit the neighbors since stipulations can be imposed; and that a stipulation could be imposed that the vehicles be removed from the site within a certain time period.

The Commission found that Ronald Wilkins and Robert C. Booth were present as witnesses in support and stated that they have known Dick Appel since they were 12 or 13 years old and that they started working on vehicles approximately 30 years ago at the site and have continued working on vehicles, and that there were dozens, or more, vehicles stored on the site.

The Commission found that Dick Appel added that the only vehicle recently added to the storage is Frank Appel's personal truck; that no repair work is performed on vehicles owned by others; that no body or paint work is performed on the site; that presently there are twenty or more unlicensed or inoperable vehicles stored on the site for parts; that business hours are proposed to be from 8:00 a.m. to 5:00 p.m. weekdays and a half of a day on Saturday.

The Commission found that Mr. Sergovic suggested that if the application is approved the stipulations could include a time limit on storage of boats outside and suggested three (3) weeks; that a stipulation could be included that the Conditional Use will be revoked if the vehicles are not removed within a certain time period.

The Commission found that Dick Appel and Frank Appel agreed that they would like at least 6 months to remove all of the vehicles stored outside.

The Commission found that Mr. Sergovic added that an application for entrance permit would be filed.

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

The Commission found that James Wengard was present with some concerns and stated that he has lived in the area since 1960; that Dick Appel has worked on vehicles for years; that the normal number of vehicles stored would be closer to 5 or 6; that more vehicles have been hauled in over the past summer; and that if the applicants say that they will remove the vehicles, they intend to remove the vehicles.

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. Hastings, and carried unanimously to forward a recommendation to the County Council that action be deferred until a decision is made by the County Board of Adjustment on the appeal.

C/Z #1350—application of DYER MCCREA VENTURES, L.L.C. to amend the Comprehensive Zoning Map for a GR/RPC General Residential District/Residential Planned Community to a GR/RPC General Residential District/Residential Planned Community by amending Ordinance No. 1123, Change of Zone No. 1291 in Lewes and Rehoboth Hundred, located southeast of the intersection of Route One and Road 270A, to be located on a parcel containing 45.54 acres, more or less.

The Commission found, based on comments received from the Sussex Conservation District, that there is a stream which may be adversely impacted by the project; that no tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements since some of the soils are Johnston loam which may have a high water table; that building in and/or near these soils should be avoided; that the soils are mapped as Evesboro loamy sand and Johnston loam; that the Evesboro soils have slight to moderate limitations and that the Johnston soils have severe limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and a Hydric soil in depressions; and that the Johnston soils are considered a Hydric soil.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that capacity is available to serve the project; that service has been extended into the parcel; that connection can be made at Manhole No. 1102B; that all additional infrastructure should be constructed by the developer in accordance with Ordinance No. 39 procedures; that the parcel currently has a system connection charge credit of 81.0 EDU's; that if the final assessment exceeds this total, system connection charges may be due; and that the current system connection charge rate for the period July 1, 1998 to June 30, 1999 is \$2,954.00 per EDU.

Mr. Lank read the stipulations adopted by County Council on December 17, 1996 as Ordinance No. 1123 for Change of Zone No. 1291.

The Commission found that Preston Dyer of Dyer McCrea Venture was present and stated in his presentation and in response to questions raised by the Commission that they propose to change the project from 80 single-family detached dwellings to 80 multi-family units within 4 buildings; that they propose 24 luxury condominium apartments within three 3-story buildings and 8 luxury condominium apartments within one 1-story building for a total of 80 units; that Phase One would include the three 3-story buildings; that Phase Two would include the one 1-story building; that they have proposed the change based on contacts with some of the neighbors and interested clients that desire something different than small cottage style units; that the three 3-story buildings will contain eight 1,200 square foot two bedroom luxury units on each floor; that elevators will be provided; that two-car garages will be provided in separate garage buildings for each unit; that the 1997 Comprehensive Plan placed the site in a Development District; that this type of housing is needed for retirees who desire cluster housing; that there is a need to accommodate the elderly moving into the area; that Brandywine Senior Services are building the assisted living facility on the front of the parcel; that the site has enough area for 330 units, but they only plan to build 80 units; that the structures are proposed to

be located as far away from Beachfield Subdivision as possible; that there are no encroachments into wetlands or floodplains; that the closest Beachfield property line is 183 feet from the nearest unit; that four (4) condominium buildings have less aggregate of land than eighty (80) small senior homes; that clustering of the four (4) buildings provides more open space, scenic ways and better overall use of the land with less infrastructure than eighty (80) small homes; that the revised site plan provides 14.7 acres less in land disturbance; that they propose the same density as that already approved, less infrastructure, and more open space over the approved project; that there should be no negative impact on property values or the neighborhood; that the original proposal would have disturbed 19.5 acres; that this proposal will disturb 4.39 acres; that a maintenance association will be created to maintain all open areas, landscaping, and buildings; that additional landscaping will be provided in the wooded areas entering the site; that only enough trees will be removed for construction; and that this proposal will require a smaller lift station than the original proposal.

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

The Commission found that Jim Orth, a Board member for the Beachfield Civic Association, submitted written comments and read them into the record, and added that the County should reject this proposal; that the applicant should be required to build the previously approved plan; that he has reviewed the floor plans and based on the scale of the drawings they indicate that frame construction is proposed; that the elevations look like standard apartments with vinyl siding; that the change in the plan is detrimental to the Beachfield residents; that the applicants may be planning to rent the units; that the frame construction will deteriorate faster than single family homes since individual home owners maintain their properties better; that no sense of community is normally established in an apartment complex; and that the change will create a visual affect on the residents in Beachfield because of the change from single-family to apartments..

The Commission found that Mr. Dyer, in response to a question raised by the Commission, stated that the units could be sold or leased.

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 County Council with the recommendation that it be approved based on the record of support presented by the applicant..

C/Z #1351—application of HOPKINS CONSTRUCTION to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Northwest Fork Hundred, located east of U.S. Route 13, 1.48 miles north of Road 584, to be located on a parcel containing 6.88 acres, more or less.

The Commission found, based on comments received from DelDOT, that originally a traffic impact study was recommended; that the site is in a Corridor Preservation area and that access will be at issue; that revised comments were received from DelDOT dated July 31, 1998 which referenced the project description, an overview and background for the traffic impact study, the Statewide Long Range Transportation Plan, the Sussex County Comprehensive Plan, the Corridor Capacity Preservation Program, the intersections evaluated in the traffic impact study, the improvements recommended in the traffic impact study, transit, bicycle, and pedestrian facilities, and conclusions and recommendations; that the Department recommends that the Subdivision Section require the applicant to provide a rights-in/rights-out only entrance located a sufficient distance between the north and south crossovers, and that the applicant provide an acceleration lane as well as a deceleration lane at the above proposed site entrance; and that if the County is otherwise inclined to approve the rezoning, the Department recommends that the County first require deed restrictions to guarantee that the applicant will dedicate rights-of-way along the front of the property to allow for future frontage roads consistent with DelDOT's Corridor Capacity Preservation Program.

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

The Commission found that Keller Hopkins and Kevin Pritchett of Hopkins Construction, and Joseph Conaway of Consultants Unlimited were present and stated in their presentations and in response to questions raised by the Commission that they propose to use the site for a construction business; that the chance of expansion is minimal; that the applicants had a traffic impact study prepared per DelDOT recommendations; that no negative impact is anticipated on traffic; that no impact is anticipated on property values; that the building was built in 1986; that the home to the rear of the site was built in 1987; that the horse training facility was closed in 1993; that the 600' depth of the site is proposed to be the same as most of the commercial depths along U.S. Route 13; that the business is presently operated from the Bridgeville Commercial Park off of U.S. Route 13 near Bridgeville; that the business performs some metal fabrications; that a portion of the building may be leased for storage; that an office exists in the building that should be adequate for the business; that all construction material will be stored in the building; that

all maintenance of equipment shall be performed in the building; that storage of vehicles will be located between the building and the day care facility to the north; that the business started approximately 10 years ago and specializes in construction of wastewater and water treatment facilities; that parts for the business sometimes takes months to acquire; that no noise is associated with the equipment; that shop hours will be from 7:00 a.m. to 5:00 or 6:00 p.m.; that 5 or 6 trucks will travel into or out of the site per day; that the number of employees may expand; that the employees on the site include the office staff and two (2) shop workers; that 8 to 10 company vehicles visit the site per day; that all other employees go to job sites; that most equipment repair is performed on job sites; that over the road trucks will be repaired on the site; that the entrance will be constructed to the specifications required by DelDOT; that gas and diesel fuel will be stored on the site in above ground tanks; that the work performed on site may include some fabrication of valves and pipes for preparation for job sites; that some welding may be performed on the site; that approximately 1,000 square feet of office space exist in the building; that trees will be planted along the Hunsberger driveway; that the existing building contains 20,000 square feet; that the fence along U.S. Route 13 may be removed; and that landscaping may be placed in front of the truck parking area.

The Commission found that Mr. Conaway, a licensed real estate agent, anticipates no negative impact on property values; that the use is an appropriate use along U.S. Route 13; that the site is located in a Development District in the Comprehensive Plan and is within one mile of the Town of Greenwood; that other commercial uses exist in the area; that some recent rezonings have been approved in the area; that the building is not of a residential character; and submitted a list of findings of fact in support of the application.

The Commission found that Jerry Friedel of Davis, Bowen & Friedel, a consulting firm, spoke in support of the applicant's integrity and stated that his firm represents 25 municipal communities and that they have relied on Hopkins Construction for their quality of work and bids, and that the business is a credit to Sussex County.

The Commission found that Bill Washington, the owner of the day care facility north of the site, stated that he has no objection, and that occupancy of the building will improve the facility.

The Commission found that Frank Hunsberger was present in opposition and expressed concerns relating to depreciation of property values; that he purchased his residence behind a horse farm and that if the rezoning is approved he will be living behind a construction yard; that traffic congestion will increase on U.S. Route 13; that the use may be detrimental to the landscape; that noise will increase; and that he is concerned about the safety of the children at the day care facility and children at bus stops along U.S. Route 13.

The Commission found that Mr. Hunsberger submitted a letter of opposition from Verona L. Grant, a transcript of opposition to the Hab-Nab Transportation application, photographs of the present site of Hopkins Construction Co., and photographs of the horse training farm and surrounding area.

The Commission found that Dempsey Smith was present in opposition and expressed concerns relating to the 4 or 5 school buses that stop in the vicinity of the site in the morning and afternoon; that he does not want to see another junky yard near his residence; that the area has recently run down; that traffic is a concern; and that he feels sorry for Mr. Hunsberger, who purchased his home behind a horse farm that may be converted to a construction yard.

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, seconded by Mr. Lynch, and carried unanimously to forward this application to the County Council with the recommendation that it be approved based on the record of support presented by the applicant.

III. OTHER BUSINESS

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

Steve Class, developer, was present as the Commission reviewed the preliminary site plan for Sussex West Manufactured Home Community.

Mr. Abbott read a letter from James Fuqua, Attorney, in reference to the layout of the park, and advised the Commission that the staff has received numerous telephone calls voicing objections to the proposed layout.

Mr. Phillips questioned if the developer would object to the Commission reviewing the letter from Mr. Fuqua and a County Attorney reviewing the findings of fact for Ordinance No. 1187 in reference to the proposed lot layout.

Mr. Class advised the Commission that he has no objections.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to defer action pending receipt of a legal opinion from Richard Berl, Assistant County Attorney.

2. Lowe's Campground
 Lot Relocation
 Road 465

The Commission reviewed a revised site plan for Lowe's Campground.

Mr. Lank advised the Commission that the campground included five (5) rental lots for mobile homes; that the owner would like approval to relocate a lot across the street to another area that has a new replacement septic system approval; and that there will not be any more that a total of five (5) rental lots. One of the existing rental lots will be eliminated.

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

3. Lynn Lee Village
 3 Parcel Subdivision
 Road 357

The Commission reviewed a concept to subdivide Lynn Lee Village into three (3) parcels.

Mr. Abbott advised the Commission that Lynn Lee Village "A" would contain 32 lots; that Lynn Lee Village "B" would contain 29 lots; and that Moot Point would contain 26 lots.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the three (3) parcels as a concept.

4. Richard Piper
 C/U #1081 – Site Plan
 Road 240

The Commission reviewed the site plan for C/U #1081, a 23 lot mobile home park.

Mr. Abbott advised the Commission that the use was approved September 19, 1995; that McCann, Inc. has requested a time extension to obtain agency approvals; that there are presently 13 existing mobile homes on the site; and questioned if the Commission would consider the project as substantially underway.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan with the stipulation that all agency approvals be submitted to the staff by October 8, 1999.

5. Rehoboth Beach Associates
Preliminary Multi-Family Site Plan
Delaware Route 1A

Gordon Mead and Jerry Friedel of Davis, Bowen, and Friedel, Wayne Mitchell, and Hank Anderson were present as the Commission reviewed a preliminary multi-family site plan near Rehoboth Beach.

Mr. Abbott advised the Commission that the site is zoned C-1 General Commercial; that the proposed use is a permitted use; that 70 units are proposed; that the site plan complies with the minimum requirements of the zoning code; and that no agency approvals or comments have been received to date.

Mr. Abbott read a letter received from the Mayor of the City of Rehoboth Beach in opposition to the site plan.

Mr. Mead advised the Commission that the site will be served by the County sewer; that water will be requested from the City of Rehoboth Beach; that the existing access is the only available access; and that other permitted uses in the C-1 General Commercial District would generate more traffic than the proposed use.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried with four (4) votes, with Mr. Wheatley abstaining, to approve the site plan as a preliminary.

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.

The Commission discussed the application and a report prepared by Mr. Lank in reference to the status of the project with the Board of Adjustment.

There was a consensus of the Commission that no action should be taken until a decision is made by the Superior Court in reference to the appeal on the Board of Adjustment denial.

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

RULES OF PROCEDURE

The Commission discussed the proposed rules of procedure. There was a consensus of the Commission that site plans should be submitted to the staff no later than Mondays at noon the week before the agenda.

Mr. Schrader advised the Commission that he would amend the text of the Rules of Procedure.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to adopt the Rules of Procedure with the suggested amendment.

Meeting adjourned at 12:05 A.M.