

MINUTES OF THE REGULAR MEETING OF OCTOBER 10, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 10, 1996, at 7:30 P.M. in the Court of Common Pleas Courtroom, 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. Phillips read a list a corrections in the minutes of September 19, 1996.

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve the minutes for September 19, 1996 as corrected.

Mr. Phillips referenced two corrections in the minutes of September 26, 1996.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes for September 26, 1996 as corrected.

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

Mr. Lank advised the Commission that the six (6) Agricultural Preservation Districts, scheduled for this evening, have already been recommended by the Sussex County Agricultural Lands Preservation Advisory Board and the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank asked all parties present if there was anyone in support of or in opposition to the referenced six (6) Agricultural Preservation Districts. Several people raised their hands showing interest.

The Commission decided to proceed with the agenda as written.

II. PUBLIC HEARINGS

1. RE: C/U #1167--Delaware Electric Cooperative

Ron Phillips, Attorney, and Wayne Johnson, Assistant General Manager for the Cooperative were present on behalf of the application of Delaware Electric Cooperative to consider the Conditional Use of land in a GR General Residential District in Cedar Creek Hundred for Expansion of an Existing Electrical Substation on the north side of Road 38, 254 feet southwest of Route 30, located on a parcel containing 2.00 acres more or less.

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

Mr. Phillips advised the Commission that the intent of the application is to expand the existing sub-station at Jefferson Crossroads, that the existing facility is at its maximum, that larger transformers are proposed to be placed at the site, that a need is anticipated for higher voltage transmission to serve the area, and that no interference is anticipated on radio or television reception.

No parties were present 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.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Sassafras sandy loam, which have slight limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction, that the farmland rating of the Evesboro soils is of Statewide Importance, that the farmland rating of the Sassafras soils is Prime Farmland, 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 attorney present on behalf of Cooperative advised the Commission that the intent of the application is to expand the existing sub-station at Jefferson Crossroads, that the existing facility is at its maximum, that larger transformers are proposed to be placed at the site, that a need is anticipated for higher voltage transmission to serve the area, and that no interference is anticipated on radio or television reception.

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

Motion by Mr. Ralph, seconded by Mr. Phillips, 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 site plan shall have a landscaped buffer along Road 30, Road 38, and along the adjoining farmland.
2. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

2. RE: C/U #1168--Delaware Electric Cooperative

Ron Phillips, Attorney, and Wayne Johnson, Assistant General Manager for the Cooperative, were present on behalf of the application of Delaware Electric Cooperative to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for an Electrical Substation on the east side of Road 346, 200 feet north of Route 26, located on a parcel containing 5.55 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Sussex County Engineering Department.

Mr. Phillips advised the Commission that there is a need for additional electrical transmission in the area, that the Cooperative has an option to purchase the site until December 31, 1996, that a previously approved site northeasterly on Road 346 does not have adequate access for transmission lines, that this site is proposed to be improved with a low level structure, fenced, and screened with landscaping.

Mr. Johnson advised the Commission that a low level structure is typically 12 to 16 feet in height with a possible 20 foot height on a part of the structure, that this site's location is easily accessed by transmission lines, that the transmission lines may carry 69,000 to 138,000 volts, that the lines will be coming from the Bayard Substation, that the lines will be located on the same poles presently utilized by Delmarva Power, that national studies are actively being performed to investigate radiation under transmission lines, that some reports indicate that an individual can get more radiation from their television sets, that no radio or television interference is anticipated, that the initial phase will include running transmission lines over the site, fencing and landscaping, that the Cooperative has been working with the owner of this site for approximately six years, that this site is the only site available in the area that is for sale and meets the criteria for a substation site, and that the Cooperative will have no objection if the Commission requires a larger buffer area.

Jeff Marvel, Ralph Marvel, Gary Marvel, Gordon Schaffer, Dollie Davis, Duncan Cornell, Helen Schaffer, and Barb Marvel, of the twenty-five people present in opposition, spoke in opposition to this application and expressed concerns relating to safety and health concerns, children health and safety concerns, traffic safety at the intersection of Route 26 and Road 346, noise concerns, signage, depreciation of property values, that the area is predominantly residential in character, that the use would change the character of the area by placing an industrial use in a residential area, questioning where the power lines would be located, questioning the detail of the site plan, landscaping, and maintenance, questioning future expansion to the substation, stating that a site should be large enough to serve the entire area rather than creation of several small substations, stating that, until recently, the existing site has not been maintained.

Jeff Marvel submitted a petition containing 89 signatures 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.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic, and that once in operation, electrical substations generate virtually no traffic.

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 not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Evesboro loamy sand and Rumford loamy sand which has slight limitations, that the applicants will be required to follow recommended erosion and sediment control practices during any construction, and to maintain vegetation after completion of any construction, and that the Farmland Rating of the soil types is considered of Statewide Importance.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in a Priority IV service area per the "South Coastal Area Planning Study" and that sewer service is not expected to be available in the near future.

The Commission found that an Attorney and the Assistant General Manager of the Cooperative were present and that the attorney advised the Commission that there is a need for additional electrical transmission in the area, that the Cooperative has an option to purchase the site until December 31, 1996, that a previously approved site northeasterly on Road 346 does not have adequate access for transmission lines, that this site is proposed to be improved with a low level structure, fenced, and screened with landscaping.

The Commission found that the Assistant General Manager for the Cooperative advised the Commission that a low level structure is typically 12 to 16 feet in height with a possible 20 foot height on a part of the structure, that this site's location is easily accessed by transmission lines, that the transmission lines may carry 69,000 to 138,000 volts, that the lines will be coming from the Bayard Substation, that the lines will be located on the same poles presently utilized by Delmarva Power, that national studies are actively being performed to investigate radiation under transmission lines, that some reports indicate that an individual can get more radiation from their television set, that no radio or television interference is anticipated, that the initial phase will include running transmission lines over the site, fencing and landscaping, that the Cooperative has been working with the owner of this site for approximately six years, that this site is the only site available in the area that is for sale and meets the criteria for a substation site, and that the Cooperative will have no objection if the Commission requires a larger buffer area.

The Commission found that eight (8) of the twenty-five (25) people present in opposition, spoke in opposition to this application and expressed concerns relating to safety and health concerns, children health and safety concerns, traffic safety at the intersection of Route 26 and Road 346, noise concerns, signage, depreciation of property values, that the area is predominantly residential in character, that the use would change the character of the area by placing an industrial use in a residential area, questioning where the power lines would be located, questioning the detail of the site plan, landscaping, and maintenance, questioning future expansion to the substation, stating that a site should be large enough to serve the entire area rather than creation of several small substations, stating that, until recently, the existing site has not been maintained.

The Commission found that one of the opponents to the application submitted a petition containing 89 signatures in opposition to this application.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, since the area is predominantly residential and since the site is an inappropriate location for the intended use.

3. RE: C/Z #1287--Alan and Karen Bradley

Alan and Karen Bradley were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located on the west side of Route 13A, 0.42 mile north of Road 488, to be located on a parcel containing 40,569 square feet more or less.

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

Mr. and Mrs. Bradley stated that the parcel is immediately adjacent to the site of her existing day school, that the site is intended for expansion to the existing day school, that the day school employees 15 ladies and serves 100+ families, that the classes are for children ages 3 to second grade, that the expansion will allow for the school to increase it's grades to the fourth grade, that the expansion will provide for an additional 10 employees, that all but one of the employees are certified teachers, that the existing school has been operational for approximately 7 years, that they thought that the appropriate zoning classification is C-1 General Commercial, that they proposed to build a building containing approximately 5,000 square feet, and that the playground will be fenced.

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.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service of Route 13A will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations, that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil type is of Statewide Importance and a Hydric Soil in small depressions, 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 applicants were present and stated that the parcel is immediately adjacent to the site of their existing day school, that the site is intended for expansion to the existing day school, that the day school employees 15 ladies and serves 100+ families, that the classes are for children ages 3 to second grade, that the expansion will allow for the school to increase it's grades to the fourth grade, that the expansion will provide for an additional 10 employees, that all but one of the employees are certified teachers, that the existing school has been operational for approximately 7 years, that they thought that the appropriate zoning classification is C-1 General Commercial, that they proposed to build a building containing approximately 5,000 square feet, and that the playground will be fenced.

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

Motion by Mr. Wheatley, seconded by Mr. Ralph, 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.

4. RE: C/Z #1288--Alan and Karen Bradley

Alan and Karen Bradley were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located on west side of Route 13A, 185.62 feet north of a dirt road to be located on a parcel containing 10,857 square feet more or less.

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

Mr. and Mrs. Bradley stated that they purchased the bungalow adjoining their school property to create a book and school supply store for sale of items to students, parents, and

teachers, that the store hours are anticipated to be 2:00 P.M. to 6:00 or 7:00 P.M. with some Saturday hours, that the closest store providing teacher needs is in Salisbury, that the Bungalow and carport will be utilized, and that the existing sheds have been relocated to the rear of the bungalow.

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.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service of Route 13A will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations, that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil type is of Statewide Importance and a Hydric Soil in small depressions, 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 applicants were present and stated that they purchased the bungalow adjoining their school property to create a book and school supply store for sale of items to students, parents, and teachers, that the store hours are anticipated to be 2:00 P.M. to 6:00 or 7:00 P.M. with some Saturday hours, that the closest store providing teacher needs is in Salisbury, that the Bungalow and carport will be utilized, and that the existing sheds have been relocated to the rear of the bungalow.

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

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

Mr. Lank advised the Commission that all of the applications for Agricultural Preservation Districts have already been approved by the Sussex County Advisory Board and the Delaware Agricultural Lands Preservation Foundation and questioned if any action was necessary.

Mr. Schrader stated that it appears that no one is present with any interest in some of the applications and since it has been established that the Sussex County Advisory Board and the Delaware Agricultural Lands Preservation Foundation have already approved this application, then no action is necessary by the Commission.

There was a consensus of the Commission to determine if anyone present was interested in any of the applications.

5. RE: APD #96-21--L. Emerson & Ruth Ann Isaacs

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Northwest Fork Hundred for four (4) parcels of land totalling 296.08 acres more or less, located on the northeast side of Route 589 and west of Penn Central Railroad for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

6. RE: APD #96-22--William McColley, Lynn & Karen McColley & C. Rodney Sharp

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for nine (9) parcels of land totalling 616.39 acres more or less, located east of the Mispillion River, on both sides of Road 201, 900 feet northeast of Road 36 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Charles O. Reed and Iva Reed, adjoining landowners to one of the farms listed, questioned what impact a district may have on their property.

Mr. Allen described the district and some of the benefits.

Mr. Reed stated that they oppose the fifty (50) foot setback from their property line which is imposed by creation of the district on the adjoining property.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

7. RE: APD #96-23--C. Rodney Sharp

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for four (4) parcels of land totalling 578.92 acres more or less, located on the east side of Route 200 and both sides of Route 205 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

8. RE: APD #96-24--Robert Clifton & W. Donald Clifton

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for two (2) parcels of land totalling 232 acres more or less, located south of Route 222 and on both sides of Road 38 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

9. RE: APD #96-25--W. Donald & Ethel Clifton, Clifton Farms, Inc., Nancy Rhue & Robert & Phyllis Clifton

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for seven (7) parcels of land totalling 525.80 acres more or

less, located north of Route 212, west of Route One, and south of Route 215 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

10. RE: APD #96-26--Mary Vinyard West and Nancy Jane Aydelotte

No parties were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for one (1) parcel of land totalling 214.00 acres more or less, located south of Route 16, 1/2 mile east of Route One for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with 4 votes in support, and 1 vote in opposition to the motion by Mr. Ralph, to take no action since the district has already been approved by the Advisory Board and the Foundation.

III. OTHER BUSINESS

1. RE: Jimmy's Grill

The Commission reviewed a revised commercial site plan for a restaurant located on the east side of Route 13A and the west side of Route 13, south of Road 545.

Mr. Abbott advised the Commission that the site has been violated for not conforming to the site plan, that the agent for the owner/developer has been taken to court, that the site plan submitted conforms to the requirements of the zoning code, that approvals have been obtained from DelDOT, the Sussex Conservation District, and the Office of the State Fire Marshal, and questioned if the parking area needs to be paved as per the requirements of the zoning code.

The Commission discussed the parking pavement requirements.

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve the revised site plan with the following stipulations:

1. The parking area shall be paved with a minimum of two courses bituminous all weathered surface.

2. All parking spaces, loading spaces, and fire lanes shall be stripped.

3. The southern most 19 parking spaces shall have concrete curb bumpers to separate the parking area and the stormwater management pond.

4. The tractor trailer body with signage shall be removed from the site immediately.

2. RE: Marvil Glass Company, Inc.

The Commission reviewed a revised site plan for an addition to an existing building on Road 470.

Mr. Abbott advised the Commission that the glass company was approved by Conditional Use No. 667, that a future building shown on the site plan was never built, and that the owner proposes to build a 21' x 71' storage area and questioned if the proposed addition would require the owner to apply for another Conditional Use application.

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve the request as a concept. It was stated that the owner submit a revised site plan prepared by a surveyor showing the actual setbacks and other improvements on the site.

IV. OLD BUSINESS

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

No parties were present on behalf of the application of Milford Moose Lodge No. 2316 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.

The Commission discussed the points and issues raised during the public hearing on September 26, 1996.

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 with the following stipulations:

1. Entrance to the site shall be from Route 209 only.
2. No firearms shall be discharged at anytime.
3. Athletic fields shall be unlighted.
4. Signage shall not exceed 32 square feet per side or facing, shall remain unlighted, shall not exceed a height of five (5) feet, and shall be limited to placement on Route 209 only.
5. All functions and activities shall cease at 12:00 Midnight.
6. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Meeting adjourned at 10:00 P.M.