

MINUTES OF THE REGULAR MEETING OF OCTOBER 14, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 14, 1999 at 7:30 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware with the following members present;

Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, Mr. Berl – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to amend the agenda by deleting items #3 and #4 under Old Business since Mr. Schrader – Assistant County Attorney is not present.

Motion by Mr. Hastings, seconded by Mr. Lynch and carried unanimously to approve the minutes of September 23, 1999 as corrected.

Mr. Berl explained how the meeting would be conducted.

IV. PUBLIC HEARINGS

C/U #1308—application of JOSEPH C. O'NEAL, RANDALL E. O'NEAL and ANDREW J. O'NEAL to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auction building to be used to sell furniture, household items, farm machinery, cars, business equipment and estates sales to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 7.079 acres, more or less, lying east of U.S. Route 13, 250 feet south of Route 24 and 200 feet east of U.S. Route 13.

The Commission found, based on comments received from DelDOT, that originally a traffic impact study was recommended; that if a conditional use application is acceptable, DelDOT will waive the requirement of a traffic impact study; that traffic from the proposed use will be negligible, that they have concerns about potential traffic impacts associated with a shopping center which would be permitted under the proposed rezoning; that they feel that a conditional use approval, limiting the use of the property to exactly what is now proposed may be the best way for the County to address this project; that if the County feels that a rezoning is more appropriate, then they recommend that the County require deed restrictions limiting the use of the property to what is now proposed; that they are concerned about access to the proposed use which could conflict with the goals of the Corridor Capacity Preservation Program along U.S. Route 13 they would allow access to the proposed use only from Delaware Route 24; and that no access will be permitted from U.S. Route 13.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard areas are affected; that the Evesboro soils are well drained, in a stormevent runoff may collect on the south and west side (along Rt. 13) of

property without proper drainage or outlet for water, a safe and adequate discharge point for stormwater may be necessary; that no tax ditch is affected; that the soils mapped on site are Evesboro; that the suitability of the soils for the intended use are slight – relatively free of limitations or limitations are easily overcome and moderate – limitations need to be recognized but can be overcome by careful design or special construction measures; that with respect to erosion and sedimentation control, the applicant follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; and that the farmland ratings of the soils are Statewide Importance, Hydric Soil in Small Depressions, Statewide Importance, and Hydric Soil in Depressions.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the Town of Laurel's proposed service area, per the Western Sussex Water and Sewer Plan; and that the developer and/or property owner should contact the Town of Laurel for sewer and water availability.

The Commission found, based on comments received from the State of Delaware Cabinet Committee on State Planning Issues, that the State has no objections to this proposal; that the Department of Transportation has noted that this area of U.S. 13 is considered an "A" area on the Corridor Capacity Preservation Program; that "A" areas are those areas between developed areas, where preservation of open space, agricultural resources and environmental features will be emphasized; that DelDOT has no plans to provide alternative access, via a service road in this area; that because the property has frontage along Delaware Route 24, DelDOT would permit access there, but not on U.S. Route 13; that DNREC has determined that public water service is not available to this site; that the Well Permit Branch will consider an application for a water well permit; that the owner should contact a Delaware Licensed Well Contractor to draw up a well permit application if water well is needed; that an approved on-site septic disposal plan will be required before the well permit can be processed; that given the indicated property use (auction with probable public food/beverage preparation), the proposed well will have to meet "Public" Well Use criteria for approval by their office.

The Commission found that Joseph O'Neal and Steve Parsons, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that the applicant has been in the auctioneer business for 27 years; that the primary days of sales are Saturdays with some Sunday and Wednesday evening sales; that the proposed use will not have any negative impacts on property values since there are other commercial uses existing in the area; that the proposed entrance will be located in the center of the parcel; that a fire wall will be between the offices and the proposed auction building; that the entire site will be enclosed with a fence 6 feet in height; that security lighting will be on the building; that there will be sales every week; that the hours of

business are from 7 AM to midnight; that the sales begin at 9 AM on Saturdays, 12 PM on Sundays, and 6 PM on Wednesdays; that the closest residence to the proposed site is the applicant's mothers; that 2 signs are proposed with one being on Route 24 and the other on U.S. Route 13; that the signs are proposed to be 6' x 12'; that the parking area will be improved with crusher-run stone; that the overflow parking area will remain in grass; that vehicles and farm equipment will not be stored more than one week prior to a sale and two weeks after a sale; that the proposed building will be sound proof when constructed; that no livestock will be auctioned; and that the average attendance for a sale is about 300 to 500 people.

The Commission found that no parties appeared with any interest to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Hastings, 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 conditions:

1. The use of the property shall be for auction sales for furniture, household items, farm machinery, cars, business equipment and all other items that can be legally sold at a public sale.
2. The property shall be fenced in with six (6') foot high fencing with entrance gates on Delaware Route 24 and U.S. Route 13.
3. Two (2) lighted on-premise ground signs may be permitted. The signs shall not exceed seventy-two (72) square feet per side or facing. Only one (1) sign shall be permitted along each road frontage.
4. Business hours may be conducted seven (7) days a week from 9:00 AM until 11:00 PM Monday through Saturday, with Sunday hours from 12:00 Noon until 11:00 PM.
5. Development of the property shall conform to all County and State erosion and sedimentation control and stormwater management regulations.
6. The final site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
7. No animals shall be sold.
8. No outside storage of any items for more than two (2) weeks shall be permitted.
9. No outside loud speakers shall be permitted on the building.
10. Security lighting shall be provided. Lighting shall be arranged and installed to minimize glare on neighboring properties and Route 13 and Route 24.
11. The required parking area shall be improved with a two (2) inch crusher run surface as a minimum.

C/U #1309—application of JOHN and MICHELE MINTZER to consider the Conditional Use of land in an AR-1 Agricultural Residential District for radio/TV service and future sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 43,506 square feet, more or less, lying north of Route 9, 990 feet west of Road 282.

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 no storm flood hazard areas are affected; that it may be necessary for on-site and off-site drainage improvements since the land slopes toward the northwest corner of the lot, a large stormevent may cause runoff to pocket or pool in the northwest corner, an adequate runoff outlet may be necessary; that no tax ditch is affected; that the soils mapped on site are Rumford loamy sand; that the suitability of the soils for the intended use is slight, relatively free of limitations or limitations are easily overcome; that with respect to erosion and sedimentation control, the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; and that the farmland rating of the soil is of Statewide Importance.

The Commission found that John Mintzer was present and stated in his presentation and in response to questions raised by the Commission that a 2,000 square foot building for radio and television repairs is proposed; that he primarily does service work to these appliances; that he currently has a business on Savannah Road in Lewes and would like to relocate the business; that the proposed parking area will be a gravel lot; that he anticipates that a majority of future work will be done in homes off-site; that there would be an area for storage of small parts; that the hours of business are from 9:00 AM until 5:00 PM Monday through Friday and from 9:00 AM until 1:00 PM on Saturdays with no Sunday hours; that there would not be any noise associated with the proposed use; that there would be no outside storage unless in a fenced in area; that the proposed building will have slab flooring with wood frame construction; that there would be a entrance door on the front of the building and a garage door on the side of the building; that the maximum number of employees would be three (3) people; that he sometimes sells reconditioned television sets; that if service vehicles are left at the site they will be parked in the building; and that a 4' x 8' sign is proposed with lighting from a spot light.

The Commission found that Mr. Lank questioned if there are deed restrictions prohibiting commercial uses on the lot.

The Commission found that Mr. Mintzer advised them that he is not aware of any restrictions and that the real estate agent has not mentioned any deed restrictions.

The Commission found that no parties appeared with interest 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 hearing.

Motion by Mr. Johnson, seconded by Mr. Lynch and carried unanimously to defer action so that the County Attorney or the applicant's attorney can verify if there are any deed restrictions prohibiting the use.

C/U #1311—application of S & J VILLARI LIVESTOCK to consider the Conditional Use of land in an AR-1 Agricultural Residential District for stockyard and slaughter house and processing of livestock to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 17.70 acres, more or less, lying at the northeast corner of the intersection of Road 419 and Road 415.

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

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard areas are affected; that it would not be necessary for any on-site or off-site drainage improvements; that no tax ditch is affected; that the present buildings will be utilized; that the soils mapped on site are Berry loamy sand, Evesboro loamy sand, loamy substratum, and Pocomoke sandy loam; that the suitability of the soils for the intended use for the Berry and Pocomoke soils are severe, that limitations are severe enough to make use questionable, careful planning and design and/or very special construction measures are needed; that the suitability of the soils for the Evesboro soils are slight, relatively free of limitations or limitations are easily overcome; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after any construction; that the farmland rating of the Berry soils are Hydric Soil; Evesboro Statewide Importance; and Pocomoke Prime Farmland (where drained), State Importance (not drained), Hydric Soil.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located in the rural area on the Strategies for State Policies and Spending Map; that in these rural areas the State strategies encourages a rural lifestyle and discourage new development; that normally they would not support industrial uses in these rural areas; however, this is an agribusiness and they feel it is best suited for these agricultural areas; that the State supports this application; that the

DNREC has determined that public water service is not available to this site; that the Well Permits Branch will consider an application for a water well permit; that an approved on-site septic disposal plan will be required before the well permit can be processed; given the indicated use (food/meat processing), the proposed well will have to meet "Public" Well Use criteria for approval by their office; and that site plans and building plans will be required to be submitted to the Office of the State Fire Marshal Office.

The Commission found that Sam Villari and George Smith, Attorney, were present on behalf of this application and advised the Commission in their presentations and in response to questions raised by the Commission that the processing will be for sheep, goats, swine and deer; that the processing could be done custom and commercially; that the business currently has six drivers, one secretary, and one yardman; that two additional employees may be added; that the existing building will be utilized; that if the use is approved, two to four pens will be enclosed for the processing; that the enclosures will reduce odors, flies, and rodents; that the slaughter house will be a benefit to area farmers; that the closest slaughter house is located in Dover; that if the use is approved, it will increase competition in the area; that customers could pick an animal of their choice for slaughtering; that a petition with the signatures of twenty-seven farmers in the area was submitted in support of this application; that a letter from the Delaware Pork Producer's Association was submitted in support of the application; that the existing use has not received any violations; that the stockyard has been in operation since 1986; that the surrounding field is kept in hay and cut twice a year; that the blood and waste will be stored in containers and trucked away two times a week; that this will not be a rendering facility; that many agencies regulate the proposed use; that there would be a shorter holding time for the animals on site; that they request no more than 26,000 animals per year which would typically be 100 per day, five days per week; that cooling units will be installed; that custom slaughtering is subject to State inspection and commercial slaughtering is subject to Federal inspection with an inspector on-site full time; that the swine would be at the facility for one week; that the disposal facility would be required to be approved by DNREC, Department of Agriculture and Division of Health; and that they have been at the site for close to fifteen years and that homes have been added since the business started.

The Commission found that Flora Hudson spoke in support of this application and advised the Commission that she and her husband raise hogs; that there are no facilities in the immediate area for this type of use; and that a need exists for this use.

The Commission found that Wayne Cooper and Linda Timmons, area residents, were present and advised the Commission that they do not have any problems with the proposed use as long as the use is operated as it is now within the enclosed building; that the area is rural and growing; and that no truck traffic be allowed on Road 415A.

Mr. Villari advised the Commission that he has no objections to utilizing the existing buildings, restricting truck traffic on Road 415A, or on the number of animals.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the hearing.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions:

1. All construction relating to the slaughter house operations shall be within the existing building.
2. No truck traffic shall utilize Road 415A.
3. The maximum number of animals processed in the slaughterhouse shall not exceed 26,000 per year.
4. There shall be no Sunday business hours.

C/Z #1387—application of DAVID C. BLACKWELL to consider a proposal to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, lying north of Road 462, 3,255.38 feet southeast of Road 461, to be located on 36,035 square feet, more or less.

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

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected; that it may not be necessary for any on-site or off-site drainage improvements; that no tax ditch is affected; that the soils mapped on-site are Evesboro Loamy sand, loamy substratum; that the suitability of the soil for the intended use is slight, relatively free of limitations or limitations are easily overcome; that with respect to erosion and sedimentation control, 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; and that the farmland rating of the soil is Statewide Importance, Hydric Soil in Small Depressions.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located within the Town of Laurel's proposed service area per the Western Sussex Water and Sewer Plan; and that the owner should contact the Town of Laurel for the availability of sewer and water.

The Commission found that David and Cindy Blackwell and David Rutt, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for a down zoning; that they had an application to rezone the property from GR General Residential to B-1 Neighborhood Business and withdrew that application; that they currently have a business located in the Town of Laurel and they are losing their lease; that they propose to convert on existing building on the site in an antique shop after applying for a conditional use permit; that the GR General Residential District does not allow for a conditional use application; that they reside on the site; that the site is surrounded by farmland; that the AR-1 zoning would be in keeping with the area; that the surrounding owner has no objections to this application; that there is a private well and septic on site; that there would not be any adverse affects on property values in the area; that there would not be any negative impacts to traffic; and that they would like to have the property down zoned so that a conditional use application for an antique shop can be filed.

The Commission found that no parties appeared with interest to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Hastings, seconded by Mr. Lynch and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since this is a down zoning.

V. OLD BUSINESS

C/Z #1370—application of HENRY T. WARING to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, Sussex County, located southeast of Route 24, 870 feet southwest of Route One, to be located on 3.10 acres, more or less.

The Commission discussed the public hearing deferred since March 25, 1999.

The Commission found, based on comments received from the County Engineering Department, that the Department reviewed the application as part of the West Rehoboth Capacity Evaluation and Planning Study, which reviewed the wastewater needs of the West Rehoboth Expansion Area, including the adjacent Development District; that the study concludes that adequate wastewater collection and transmission capacity is

currently available for this project; that improvements are needed to provide for ultimate capacity; that the project will have to participate in the improvements; that this should be included as a requirement for approval; that in addition to any costs for upgrading the sanitary sewer system, the project will be responsible for system connection charges; that the current system connection charge rate for the period July 1, 1999 to June 30, 2000 is \$2,954.00/EDU; and that it will also be the responsibility of the developer to install all wastewater facilities for the project in accordance with County standards and procedures.

Motion by Mr. Lynch, seconded by Mr. Hastings and carried with four votes, with Mr. Johnson abstaining, to forward this application to the Sussex County Council with the recommendation that it be approved.

C/Z #1373—application of CRAIG HUDSON and JOSEPH HUDSON to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, Sussex County, located northwest of Route 24, 900 feet northeast of Road 275, to be located on 6.94 acres, more or less.

The Commission discussed the public hearing deferred since April 8, 1999.

The Commission found, based on comments received from the County Engineering Department, that the Department has no objection to the use of an on-site septic system for up to 3.0 EDU's; that the sales lot does not necessitate central sewer service at this time; that the Department agrees to recommend annexation of the parcel should a significant change occur in the parcel's use; and that annexation into the district boundaries will require the owner to connect to the sanitary sewer system at their expense.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried with four votes, with Mr. Johnson abstaining, to forward a recommendation to the Sussex County Council that this application be denied. There was a consensus of the Commission that the proposed use, a manufactured and modular home sales lot, would be more appropriate as a conditional use. The Commission also recommended that if the applicant chooses to apply for a conditional use, the application fee should be waived.

ORDINANCE AMENDMENT – CONSERVATION ZONE

This item was removed from the agenda at the beginning of the meeting.

ORDINANCE AMENDMENT – NOTICE TO OWNERS FOR ALTERATION TO A SUBDIVISION

This item was removed from the agenda at the beginning of the meeting

SUBDIVISION #96-19—application of SUSSEX VENTURES, INC. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred by dividing 20.96 acres into 21 lots, located on the south side of Road 433, 1,369.25 feet northeast of Road 410.

Mr. Abbott advised the Commission that this application received preliminary approval on December 5, 1996; that one-year time extensions were granted by the Commission on February 12, 1998 and February 11, 1999; that the final record plan is for 21 – lots; that the record plan meets the requirements of the Subdivision Ordinance; and that all agency approvals have been obtained.

Motion by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

SUBDIVISION #99-7—application of SUN MARINE MAINTENANCE, INC. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District and a C-1 General Commercial Zoning District in Baltimore Hundred, by dividing 9.22 acres for one (1) lot, to revise and reassemble three (3) lots, and to extend Janus Court and a waiver from the street construction design requirements, located west of Road 384, 321 feet north of Road 370.

Mr. Abbott advised the Commission that this application received preliminary approval on March 25, 1999; that the Commission did not grant the waiver from the street design requirements; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the Subdivision Ordinance; and that all agency approvals have been obtained.

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

SUBDIVISION #99-12—application of JOSS HUDSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 30.32 acres into 26 lots, located north of Road 280, 1,850 feet southeast of Road 290.

The Chairman referred back to this application which was deferred at the August 26, 1999 meeting.

Mr. Abbott advised the Commission that a non-binding septic feasibility statement has been received from DNREC and that the site is suitable for individual on-site septic systems.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

SUBDIVISION #99-13—application of CHARLES H. GUY to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District and GR General Residential Zoning District in Indian River Hundred by dividing 26.14 acres into 23 lots, located at the intersection of Road 290 and Road 292.

The Chairman referred back to this application which was deferred at the August 25, 1999 meeting.

Mr. Abbott advised the Commission that a non-binding septic feasibility statement has been received from DNREC and that the site is suitable for individual on-site septic systems.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve this application as a preliminary.

VI. OTHER BUSINESS

ST. JOHN'S 2ND BAPTIST CHURCH SITE PLAN – ROAD 297

Sharon Densmore of Scott Engineering was present as the Commission reviewed a site plan for a church located on Road 297 near Mount Joy in Millsboro.

Mr. Abbott advised the Commission that the plan is for a 8,250 square foot church; that the site plan meets the requirements of the Zoning Ordinance; that 494 seats are proposed and that 124 parking spaces will be required; that the owners are requesting that at this time, only Phase 1 of the parking area be paved due to limited funds of the Church; that the remaining parking area will be paved within five years; that the overflow parking will be in the grassed area; and that no agency approvals have been received to date.

Ms. Densmore advised the Commission that the parking area could be crusher run stone and that the paving will be completed within five years.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary and to allow the parking area to be crusher run stone and that the area be paved within five years.

FENWICK FLOATERS
C/U #1293 – SITE PLAN
ROUTE 54

The Commission reviewed the final site plan for C/U #1293 for retail sales located on the south side of Route 54 west of Fenwick Island.

Mr. Abbott advised the Commission that the site plan is the same as what was submitted for the public hearing; that the setbacks meet the requirements of the Zoning Ordinance; that the proposed dumpster is located at the west end of the existing parking area; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a final.

SHORELINE CONSTRUCTION
C/U #1284 – SITE PLAN
ROAD 38

Mr. Abbott advised the Commission that the revised plan has not been received by the staff and recommended that the Commission action.

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

SUSSEX GASTROENTEROLOGY ASSOCIATES, L.L.C.
COMMERCIAL SITE PLAN
KING STREET RIGHT OF WAY

Mike Makowski, developer, was present as the Commission reviewed a commercial site plan for medical offices located on lot 4 within Old Towne Park Subdivision near Lewes.

Mr. Abbott advised the Commission that two buildings are proposed; that the setbacks meet the requirements of the Zoning Ordinance; that 21 parking spaces are required and that 35 are provided; and that all agency approvals have been obtained.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a final.

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Meeting adjourned at 10:30 PM.