

MINUTES OF THE REGULAR MEETING OF OCTOBER 23, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 23, 1997, at 7:30 P.M. in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with the following members present:

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of September 25, 1997 and October 9, 1997 as corrected.

II. Public Hearings

1. C/U #1206--Broadkill Beach Water Co.

David Wilkerson was present on behalf of the Broadkill Beach Water Co. to consider the Conditional Use of land in a B-1 Neighborhood Business District and an MR Medium Density Residential District in Broadkill Hundred for Expansion to an Existing Potable Water Storage Facility on the southeast corner of Bay Shore Drive and Maryland Avenue at Broadkill Beach, located on 39,700 square feet more or less.

Mr. Lank advised the Commission that comments were not requested from DelDOT since the application was for expansion to an existing water storage facility.

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

Mr. Lank described a pamphlet submitted by the applicants.

Mr. Wilkerson stated that the use has been in existence since 1972; that the original portion of the site houses the water storage tank and the pumphouse; that they purchased additional lands in 1996; that they propose to add an additional tank for additional water storage and to continue service for the community; and that the water wells serving the site are north of Route 16 near the access to the Primehook Wildlife Area.

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 that comments were not requested from DelDOT since the application was for expansion to an existing water storage facility.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Coastal beach and dune land, and Tidal marsh, salty; that both soil types have severe limitations; that the applicants may be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that the soils are considered Hydric; 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 submitted a pamphlet describing the intended water storage structure.

The Commission found that Mr. David Wilkerson was present on behalf of the application and stated that the use has been in existence since 1972; that the original portion of the site houses the water storage tank and the pumphouse; that they purchased additional lands in 1996; that they propose to add an additional tank for additional water storage and to continue service for the community; and that the water wells serving the site are north of Route 16 near the access to the Primehook Wildlife Area.

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

Motion by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved without the need of stipulations.

2. C/U #1207--Delaware Electrical Cooperative

Terry Jaywork, Attorney, and Larry Burrige were present on behalf of the Delaware Electrical Cooperative to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broad Creek Hundred for an Electrical Substation on the northwest side of Route 9, 1,100 feet northeast of the intersection with Road 474, located on 6.69 acres more or less.

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

Mr. Jaywork presented a pamphlet on the application.

Mr. Jaywork stated that this application is for an Electrical Substation; presented a map of electrical line routings and problem areas; presented a map of alternate line routings; presented a picture of the existing switching station; stated that the site is heavily wooded; discussed the site plan; discussed the long range goals of the Cooperative; stated that the first phase of the site will be construction of a switching station that will change sometime in the future into a substation; and stated that the station will be fenced with eight (8) foot high chain-link fencing topped with barb-wire.

Mr. Burridge, in response to questions raised by the Commission, stated that the switching station should be completed within 12 to 18 months; that the load has grown approximately 2% per year; that the switching station may switch to a substation within 10 to 15 years; that the site for the switching station will be cleared at a minimum; that the Cooperative has no objection to stipulations being placed on fencing; that the entrance from Route 9 can be provided with a gate or cable to control access; and that no lighting is presently proposed.

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 level of service "D" of Route 9 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 Fallsington sandy loam and Kalmia sandy loam; that the Fallsington soils have severe limitations; that the Kalmia soils have slight limitations; that both soil types are considered Prime Farmland; that the Fallsington soils are also considered of Statewide Importance; that the applicants will be required to follow recommended erosion and sedimentation control practices and maintain vegetation; that no storm flood hazard area or tax ditch is affected; and that it may be necessary for some on-site and off-site drainage improvements due to the seasonal high water table on the Fallsington soils.

The Commission found that Terry Jaywork, attorney, and Larry Burridge were present on behalf of this application and presented a pamphlet on the site and intended use.

The Commission found that Mr. Jaywork stated that this application is for an Electrical Substation; presented a map of electrical line routings and problem areas; presented a map of alternate line routings; presented a picture of the existing switching station; stated that the site is heavily wooded; discussed the site plan; discussed the long range goals of the Cooperative; stated that the first phase of the site will be construction of a switching station that will change sometime in the future into a substation; and stated that the station will be fenced with eight (8) foot high chain-link fencing topped with barb-wire.

The Commission found that Mr. Burridge, in response to questions raised by the Commission, stated that the switching station should be completed within 12 to 18 months; that the load has grown approximately 2% per year; that the switching station may switch to a substation within 10 to 15 years; that the site for the switching station will be cleared at a minimum; that the Cooperative has no objection to stipulations being placed on fencing; that the entrance from Route 9 can be provided with a gate or cable to control access; and that no lighting is presently proposed.

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

Motion by Mr. Wheatley, 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. The entrance will be equipped with a lockable gate or cable.
2. Chain-link fencing, not less than eight (8) feet in height will be provided to secure the switching station.
3. No construction shall be within 50 feet of the right of way of Route 9.
4. A natural wooded buffer, at least 25 feet in width, shall be maintained along the side and rear of the site.
5. Any lighting shall be directed toward the switching station and away from neighboring properties and Route 9.
6. Landscaping shall be provided as indicated on the site plan submitted with the application.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approval and/or permits.

3. C/U #1208--Gene Wildonger

Gene Wildonger and Keith Wildonger were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Seaford Hundred for an Automotive Repair Shop on the south side of Burton Street, 100 feet east of Beech Lane within Indian Village Subdivision, 0.35 mile northwest of Road 535, located on 43,318 square feet more or less.

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

Gene Wildonger stated that he will be retiring soon and may need a supplemental income.

Keith Wildonger stated that the shop will be small and the business will be operated on a part-time basis.

Gene Wildonger, in response to questions raised by the Commission, stated that an existing building will be utilized for the business; that there will be no storage of vehicles outside; that there will be no junk cars or wrecked cars on the site; that the hours of business will be between 8:00 A.M. and 8:00 P.M. on a part-time basis; that no additional security lighting will be needed; that no signage is needed; that no wrecker service is proposed; that the majority of work performed on vehicles will be tune-ups and brake work; that changing oil will be performed at a minimum; that all waste oils will be stored in small containers and hauled to a local auto salvage yard that has a waste oil burner; that there are no other business uses in the subdivision; that there are no deed restrictions; that only a couple of customers are anticipated per day; that the only work performed to date has been on their personal vehicles; that the business will be open five (5) days per week with no Sunday hours; and that the three (3) bay garage was built this summer, 1997.

Don Gallimore and Betty Carey were present in opposition and expressed concerns relating to additional traffic; the safety of children playing in the streets; business uses and hours; that one area of the street has been filled with bottles and cans; and that some of the lots in the subdivision have deed restrictions.

Mr. Gallimore presented a petition containing signatures of approximately 90% of the area residents.

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

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

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service "C" of Road 535 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; that the Evesboro soils have slight to moderate limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that some of the Evesboro soils are of Statewide Importance and some are Hydric in 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 applicant was present with his son, and that the applicant stated that he will be retiring soon and may need a supplemental income.

The Commission found that the applicant's son stated that the shop will be small and the business will be operated on a part-time basis.

The Commission found that the applicant, in response to questions raised by the Commission, stated that an existing building will be utilized for the business; that there will be no storage of vehicles outside; that there will be no junk cars or wrecked cars on the site; that the hours of business will be between 8:00 A.M. and 8:00 P.M. on a part-time basis; that no additional security lighting will be needed; that no signage is needed; that no wrecker service is proposed; that the majority of work performed on vehicles will be tune-ups and brake work; that changing oil will be performed at a minimum; that all waste oils will be stored in small containers and hauled to a local auto salvage yard that has a waste oil burner; that there are no other business uses in the subdivision; that there are no deed restrictions; that only a couple of customers are anticipated per day; that the only work performed to date has been on their personal vehicles; that the business will be open five (5) days per week with no Sunday hours; and that the three (3) bay garage was built this summer, 1997.

The Commission found that two area residents were present in opposition and expressed concerns relating to additional traffic; the safety of children playing in the streets; business uses and hours; that one area of the street has been filled with bottles

and cans; and that some of the lots in the subdivision have deed restrictions.

The Commission found that one of the area residents submitted a petition containing signatures of approximately 90% of the area residents.

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

4. Subdivision #97-6--John J. Stryholuk, Sr.

John Stryholuk and Mary Norris of E.C.I. were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 10.20 acres into 5 lots, located on the east side of Road 340, 687 feet north of Road 382.

Mr. Abbott summarized the Technical Advisory Committee Report of October 15, 1997 and additional comments received from the Sussex County Engineering Public Works Division.

Ms. Norris advised the Commission that approvals have been received from the County Engineering Department, Sussex Conservation District, DelDOT, and the Office of the State Fire Marshal, that all comments from the Technical Advisory Committee meeting have been addressed and submitted a revised plan showing the revisions, that the road will be improved to tar and chip per Sussex County specifications, and that a "T" turn around will be provided at the end of the street.

Mr. Stryholuk advised the Commission that there is an existing dwelling on the site that his son occupies, that he is going to build a dwelling on the remaining acreage tract, that one lot will be for another son and another lot will be for his grandson, and that there are no plans for any future subdivision.

Harold Wallach an adjoining property owner advised the Commission that his property is in an Agricultural Preservation District for long term farming and questioned what guarantees he will have that his family will be able to continue farming their property and questioned the long term maintenance of any proposed buffer strips.

Mr. Schrader advised Mr. Wallach that supporting statements about maintenance of open areas, streets, buffer zones and stormwater management area are required before final approval can be considered.

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. Wheatley, and carried unanimously to approve this application as a preliminary.

5. APD #97-29--H & V Farms, Inc.- Vernon, Harriet & Vernon Baker, Jr.

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred for one (1) parcel of land totalling 497.40 acres more or less, located on both sides of Road 448, between Road 62 and Road 434, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Agricultural Preservation District Report prepared by the Foundation's staff.

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

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be approved.

III. Other Business

1. Rehoboth Bay Manufactured Home Park

The Commission reviewed the final site plan for Conditional Use No. 1174 for a 39 lot expansion to an existing manufactured home park off of Road 274.

Mr. Abbott advised the Commission that the site plan meets the minimum requirements of the Code of Sussex County and that all required agency approvals have been obtained.

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

2. John J. Marsh

The Commission reviewed a concept to create four lots off of Road 289.

Mr. Abbott advised the Commission that the four lots meet the minimum requirements for a minor subdivision and that there is fifty feet remaining between two lots and questioned if the fifty feet could be considered as a secondary access to the remaining acreage since there is over one hundred fifty feet of road frontage on Road 289 and Route 24.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the four lots and fifty foot as a secondary access with the stipulation that twenty feet be dedicated to public use to widen the right of way of Road 289.

3. Nero's Acres

Tony Nero was present as the Commission reviewed four lots off of Danny Drive within Nero's Acres Subdivision.

Mr. Abbott advised the Commission that these four lots went through the public hearing process in May 1997 and received preliminary approval, that the street, where lots 40, 41 42, and 43 are located, is already constructed and questioned if the Commission would consider these lots as Phase 1 for Subdivision #97-1.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the four lots as a final for Phase 1 of Subdivision #97-1.

Mr. Nero questioned if lot 34 could also be considered as a part of Phase 1.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve lot 34 as a final for Phase 1 of Subdivision #97-1.

4. Thomas M. Hollingsworth

The Commission reviewed a concept to create a parcel with access from a fifty foot easement off of Road 336.

Mr. Abbott advised the Commission that there is an existing dirt road that serves as access to the lot, that it will be dedicated as a fifty foot easement, and that the remaining acreage is being conveyed to the State of Delaware DNREC Parks

and Recreation.

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Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the lot and fifty foot easement as a concept.

5. C/U #1087--David L. Wilson

The Commission reviewed a request for a time extension.

Mr. Abbott advised the Commission that this application was approved on December 20, 1994, that this application was settled by the Court of Chancery on September 20, 1996, and questioned if a time extension can be considered.

The Commission discussed whether it is legal to grant a time extension.

It was the consensus of the Commission that the site be inspected by the staff.

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

Additional Business

Mr. Schrader discussed a response that he received from the Attorney for the Department of Agriculture in reference to the fifty foot setbacks for Agricultural Preservation Districts.

Mr. Lank advised the Commission that the County Council adopted the Comprehensive Plan and amended the Map to expand the Development District near Five Points.

Meeting adjourned at 9:30 P.M.