

MINUTES OF THE REGULAR MEETING OF OCTOBER 24, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 24, 1996, at 7:30 P.M., in Room 115, the County Council Chambers, 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.

No action was taken on the Minutes of October 10, 1996.

Mr. Schrader explained how the public hearings and agenda items are to be conducted.

II. PUBLIC HEARINGS

1. RE: C/U #1169--Meekins Antenna Rentals, Inc.

Tinsley Meekins, Jr. and James Griffin, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred for a 500 foot Cellular Telephone Tower, Guy Wires and Equipment Building on the north side of Grace Lane, 620 feet east of U.S. Route 13, located on a parcel containing 16.18 acres more or less.

Mr. Lank summarized comments received from the Office of State Planning Coordination and the Federal Aviation Administration.

Mr. Griffin stated that there has been a tremendous growth within the communications industry, that a need exist for better communications, that Sussex County has a 530 foot high tower near Long Neck, made reference to and submitted a copy of a map depicting towers within and around Sussex County, noted that the State reportedly is planning eight (8) 400 foot high towers within Sussex County in the near future, noted that the application is in compliance with the purpose of the Conditional Use section of the Code since the use is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of the citizens of Sussex County, stated that the applicant has received approval from the Federal Aviation Administration, stated that in July 1996 the Delaware Code was amended for towers greater than 200 feet in height, stated that no public use airport exist within 20,000 feet of the tower site, stated that the tower will cause no hazard to navigation, and submitted a copy of the amended Delaware Code for the record.

Mr. Meekins stated that he resides in East New Market, Maryland, owns a commercial tower business, works with the State of Delaware, Sussex County, Fire Companies, and companies that

utilize cellular phones and pagers, that antenna space will be rented monthly, that the project will cost approximately \$225,000 to complete, that the Greenwood area is in need of two way communications, that the State of Delaware may utilize the tower, that the tower will be located geographically in the middle of the eastern shore, that two way communication has a limited power use, that the area is basically flat and a 500 foot high tower can provide a range of approximately 60 miles, that the tower will eliminate the need for other smaller towers since it can support approximately 45 small antennas, that the structure is constructed of galvanized steel and guy wires, that the site is undeveloped, that an auto body shop exist in the area, that he recently purchased a radio tower site in Roxana that can be utilized in conjunction with this tower, made reference to and submitted photographs of the site, the area, and a similar tower located in Maryland, stated that the tower will be erected in the middle of the site, that the tower will have a life expectancy of 50 years, that he will begin and complete all necessary construction within 1997, that the proposed twenty (20) foot by twenty (20) foot block building will house transmitters, that a six (6) foot to eight (8) foot high fencing will be provided around the building, the base of the tower, and the base of the guy wires, that the property will continue to be farmed, that personal communications will increase in the near future, that towers will be needed to meet the demand for the users, that towers are located near several area airports, i.e., towers at the Emergency Operations Center at the Sussex County Industrial Airpark, that the towers for the TV Stations for channels 16 and 47 are approximately 1,000 feet in height, that the use is compatible to the surrounding area and referenced the commercial uses and zonings in the area, that the site was chosen since it is located in a farming area, since the site can continue to be farmed, since a site needs to be well drained, and since wooded areas do not make good sites for towers, that the guy wires extend out approximately 400 feet from the tower in three (3) locations, that the nearest tower, owned by MCI, is approximately two (2) to three (3) miles away, that no interference is anticipated on televisions and radios, that service can be provided to more users with a taller tower, that access to the site will be across Sussex Avenue, a public road that is not maintained by the State, that approximately 20 tall towers exist in Sussex County of which 5 are rental towers, that a large tower is designed to collapse when it falls and that the guy wires control the fall of the tower, that the tower will have strobe lights and will be well lite, that the maximum number of weekly visits to the site upon completion of the project will be 1 or 2, that the main office will be in East New Market, that the FCC monitors and regulates transmissions, and that the drive may be surfaced with crusher-run from Sussex Avenue to the building, and

that he has no intent to maintain Sussex Avenue.

No parties appeared in support of the application.

Allen Chorman, Robert Hunsberger, Merle Embleton, and Dr. Donald Pfeifer spoke in opposition and expressed concerns relating to air traffic concerns, that the Chorman airport, which is located approximately 20,040 feet north of the site, has recently been declared a public airport, that the approach area to the airport lines up approximately 100 feet off of the tower, that a concern exist for the safety of the users of the airport, aerial spraying operations, that guy wires cannot be seen when flying, that two 460 foot high towers exist within 3 to 4 miles of the site on Townsend lands, that the tower is approximately 4,000 feet from the Sugar Maple Farms Airstrip, that the airport and the airstrip have existed for at least 30 years, that when a flyer is heading west from the Sugar Maple Farms airstrip the flight line may line up with the tower, that the site is not an appropriate location for a tower due to the approach and departure of aircraft, that the airport and the airstrip have been basically obstruction free since they were established, and that a better choice for a tower would be a large wooded area cleared to locate the tower and the guy wires.

Mr. Griffin advised the Commission that the site is 21,000 feet from a public airport, and that the State Department of Transportation and the Federal Aviation Administration have determined that the tower will not be a hazard to navigation.

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 the Office of State Planning Coordination, that the office chose not to put the application through the Land Use Planning Act review and commenting system.

The Commission found, based on a notice received from the Federal Aviation Administration, that a study has been conducted to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen, that the proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation, that the

structure should be obstruction marked and lighted, and that supplemental notice is required at least 10 days before the start of construction and within 5 days after construction reaches its greatest height.

The Commission found that the application was represented by the applicant and an attorney who stated that there has been a tremendous growth within the communications industry, that a need exist for better communications, that Sussex County has a 530 foot high tower near Long Neck, made reference to and submitted a copy of a map depicting towers within and around Sussex County, noted that the State reportedly is planning eight (8) 400 foot high towers within Sussex County in the near future, noted that the application is in compliance with the purpose of the Conditional Use section of the Code since the use is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of the citizens of Sussex County, stated that the applicant has received approval from the Federal Aviation Administration, stated that in July 1996 the Delaware Code was amended for towers greater than 200 feet in height, stated that no public use airport exist within 20,000 feet of the tower site, stated that the tower will cause no hazard to navigation, submitted a copy of the amended Delaware Code for the record, stated that the applicant resides in East New Market, Maryland, that he owns a commercial tower business, that he works with the State of Delaware, Sussex County, Fire Companies, and companies that utilize cellular phones and pagers, that antenna space will be rented monthly, that the project will cost approximately \$225,000 to complete, that the Greenwood area is in need of two way communications, that the State of Delaware may utilize the tower, that the tower will be located geographically in the middle of the eastern shore, that two way communication has a limited power use, that the area is basically flat and a 500 foot high tower can provide a range of approximately 60 miles, that the tower will eliminate the need for other smaller towers since it can support approximately 45 small antennas, that the structure is constructed of galvanized steel and guy wires, that the site is undeveloped, that an auto body shop exist in the area, that the applicant recently purchased a radio tower site in Roxana that can be utilized in conjunction with this tower, made reference to and submitted photographs of the site, the area, and a similar tower located in Maryland, stated that the tower will be erected in the middle of the site, that the tower will have a life expectancy of 50 years, that the applicant will begin and complete all necessary construction within 1997, that the proposed twenty (20) foot by twenty (20) foot block building will house transmitters, that a six (6) foot to eight (8) foot high fencing will be provided around the building, the base of the tower, and the base of the guy wires, that the property will continue to be farmed, that

personal communications will increase in the near future, that towers will be needed to meet the demand for the users, that towers are located near several area airports, i.e. towers at the Emergency Operations Center at the Sussex County Industrial Airpark, that the towers for the TV Stations for channels 16 and 47 are approximately 1,000 feet in height, that the use is compatible to the surrounding area and referenced the commercial uses and zonings in the area, that the site was chosen since it is located in a farming area, since the site can continue to be farmed, since a site needs to be well drained, and since wooded areas do not make good sites for towers, that the guy wires extend out approximately 400 feet from the tower in three (3) locations, that the nearest tower, owned by MCI, is approximately two (2) to three (3) miles away, that no interference is anticipated on televisions and radios, that service can be provided to more users with a taller tower, that access to the site will be across Sussex Avenue, a public road that is not maintained by the State, that approximately 20 tall towers exist in Sussex County of which 5 are rental towers, that a large tower is designed to collapse when it falls and that the guy wires control the fall of the tower, that the tower will have strobe lights and will be well lite, that the maximum number of weekly visits to the site upon completion of the project will be 1 or 2, that the main office will be in East New Market, that the FCC monitors and regulates transmissions, and that the drive may be surfaced with crusher-run from Sussex Avenue to the building, and that he has no intent to maintain Sussex Avenue.

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

The Commission found that four parties spoke in opposition and expressed concerns relating to air traffic concerns, that the Chorman airport, which is located approximately 20,040 feet north of the site, has recently been declared a public airport, that the approach area to the airport lines up approximately 100 feet off of the tower, that a concern exist for the safety of the users of the airport and aerial spraying operations, that guy wires cannot be seen when flying, that two 460 foot high towers exist within 3 to 4 miles of the site on Townsend lands, that the tower is approximately 4,000 feet from the Sugar Maple Farms Airstrip, that the airport and the airstrip have existed for at least 30 years, that when a flyer is heading west from the Sugar Maple Farms airstrip the flight line may line up with the tower, that the site is not an appropriate location for a tower due to the approach and departure of aircraft from the airport or the airstrip, that the airport and the airstrip have been basically obstruction free since they were established, and that a better choice for a tower would be a large wooded area cleared to locate the tower and the guy wires.

The Chairman stated that the site is prime ag - land, that some towers are located in wooded area after adequate space is cleared to provide space for the tower and the guy wires, expressed a concern relating to the close proximity to existing airstrips and approaches, and that the site is not an appropriate location for a tower.

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 denied based on the record of opposition and the comments referenced by the Chairman.

2. RE: C/U #1170--Joel & Nancy Kroeger

Joel Kroeger and Vincent Robertson, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for Recycling Metals on the west side of a fifty foot private road, 578.72 feet south of Road 40, 800 feet northwest of Road 593, located on a parcel containing 1.82 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Office of State Planning Coordination, and the Sussex Conservation District.

Mr. Robertson read and submitted letters from eight (8) area residents voicing no opposition to the application.

Mr. Kroeger stated that he buys metals, brings the metals to the site for recycling and then hauls the recyclable metals to Baltimore for sale, that the business is an asset to the County, that he will be handling aluminum, copper, brass, and stainless steel, that no cranes are presently on the site or proposed, that there are no incinerators, that no advertising signs are proposed, that no oils, antifreeze, or Freon is stored on the site, that he anticipates no more than one employee, that the 55 gallon drums on the site are brought in from Baltimore to store scrap materials, that no automobiles or motors are stored on the site for recycling, that he does handle cleaned and dried radiators, that his hours are 8:00 A.M. to 5:00 P.M. weekdays and 8:00 A.M. to 12:00 noon on Saturdays, that areas are set aside for dismantling, containers, boxing, and scales, that the site is more organized now than when he made his last application, that materials on site will be removed as soon as possible, that a DNREC Environmental Protection Officer has inspected the site twice, once about 5 years ago and once in August, that the entire site was searched, that there were no problems found, no toxic drums on site, no hazardous materials on site, and that no homes are visible from the site.

Mr. Robertson stated that the use complies with the intent of the Conditional Use purpose since it will serve the community, helpful to others by providing a service to dispose of used materials, rather than taking the materials to the landfill, that the use should have no impact on the area, and since the use is buffered from other properties by trees.

Mr. Kroeger stated that his new application is more definitive and clear, that he defines recycling of metals as buying, tearing down, shipping, and selling of the metals, that he has a State license to operate under a retail sales permit which has a very broad description, that he is not aware of any requirements or studies required by the State DNREC, that he started the business in February 1988, that he wasn't aware of permits required by the County, that he was later informed by a friend that he may be in violation and may need approval, that he had concerns about applying since he did not know if he could conform to regulations, that he is now willing to abide by any and all regulations that may be imposed, that the public does not bring materials to the site, that some materials are on the site for possibly 90 days or more, depending on the market.

Mrs. John Butler, a neighboring farm owner, was present in support of the application and stated that she has lived in the area for 3 years, and has observed no noise, no smoke, no large vehicles other than the applicant's, and that she has no objection to the use.

Thomas Johnson, Virginia Ingram, Barry Ingram, Otis Webb, and Jana Hood spoke in opposition and expressed concerns relating to the negative impact on surrounding properties, that the site appears to be a salvage yard, that the use will negatively impact property values, that some burning has taken place on the site, that the right of way may be encroaching onto the adjoining property by as much as 12 feet, and that since the use is similar to an industrial activity it may cause financial impacts on the neighbors.

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 present level of service "A" of Route 40 will not be impacted as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Office chose not to put this application through the Land Use Planning Act review and commenting system.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Kenansville loamy sand which have slight limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation, that the farmland rating of the Evesboro soils is of Statewide Importance, that the farmland rating of the Kenansville soils is Prime Farmland, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements if vehicle traffic is high and the potential for soil compaction increases.

The Commission found that the applicant and an attorney were present and that the attorney read a letter written by the applicant to some of the neighbors describing the application and requesting their support. Eight neighbors responded by signing the letter that they do not oppose the application.

The Commission found that the applicant stated that he buys metals, brings the metals to the site for recycling and then hauls the recyclable metals to Baltimore for sale, that the business is an asset to the County, that he will be handling aluminum, copper, brass, and stainless steel, that no cranes are presently on the site or proposed, that there are no incinerators, that no advertising signs are proposed, that no oil, antifreeze, or Freon is stored on the site, that he anticipates no more than one employee, that the 55 gallon drums on the site are brought in from Baltimore to store scrap metals, that no automobiles or motors are stored on the site for recycling, that he does handle cleaned and dried radiators, that his hours are 8:00 A.M. to 5:00 P.M. weekdays and 8:00 A.M. to 12:00 noon on Saturdays, that areas are set aside for dismantling, containers, boxing, and scales, that the site is more organized now than when he made his last application, that materials on site will be removed as soon as possible, that a DNREC Environmental Protection Officer has inspected the site twice, once about 5 years ago and once in August, that the entire site was searched, that there were no problems found, no toxic drums on site, no hazardous materials on site, and that no homes are visible from the site.

The Commission found that the attorney also stated that the use complies with the intent of the Conditional Use purpose since

it will serve the community, helpful to others by providing a service to dispose of used materials, rather than taking the materials to the landfill, that the use should have no impact on the area, and since the use is buffered from other properties by trees.

The Commission found that the applicant also stated that his new application is more definitive and clear, that he defines recycling of metals as buying, tearing down, shipping, and selling of the metals, that he has a State license to operate under a retail sales permit which has a very broad description, that he is not aware of any requirements or studies required by the State DNREC, that he started the business in February 1988, that he wasn't aware of permits required by the County, that he was later informed by a friend that he may be in violation and may need approval, that he had concerns about applying since he did not know if he could conform to regulations, that he is now willing to abide by any and all regulations that may be imposed, that the public does not bring materials to the site, that some materials are on the site for possible 90 days or more, depending on the market.

The Commission found that a neighboring farm owner, present in support of the application, stated that she has lived in the area for 3 years, and has observed no noise, no smoke, no large vehicles other than the applicant's, and that she has no objection to the use.

The Commission found that five (5) area residents spoke in opposition and expressed concerns relating to the negative impact on surrounding properties, that the site appears to be a salvage yard, that the use will negatively impact property values, that some burning has taken place on the site, that the right of way may be encroaching onto the adjoining property by as much as 12 feet, and that since the use is similar to an industrial activity it may cause financial impacts on the neighbors.

Motion 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 denied based on the record of opposition, the type of work being performed, and since the use is out of character with the area.

3. RE: C/Z #1289-- Eldred W. Cress, Katherine E. Cress,
Andrew J. Cress & Donna Lee Cress

Andrew J. Cress was present on behalf of this application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Baltimore Hundred, located on the southwest side of Road 92, northeast of Road 376 and southeast of

Vines Creek Branch and the Town of Frankford to be located on a parcel containing 151 acres more or less.

Mr. Lank read a letter from the Office of State Planning Coordination which stated that the Office chose not to put this application through the Land Use Planning Act review and commenting system, that the Office has shared the public notice with the Department of Agriculture since it is a down-zoning.

Mr. Cress stated that they have requested the rezoning to establish agricultural zoning to permit them to apply to the Delaware Agricultural Lands Preservation Foundation for an extension to the Gum Preservation District, which is located within 1/4 mile of the farm, that they cannot apply for an extension to the district unless the land is agricultural zoned, that they were not aware or informed that the farm had been rezoned in 1971 with the adoption of the zoning ordinance, and that the Vine's Creek Branch separates the farm from the Town of Frankford.

No parties appeared in opposition.

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 the Office of State Planning Coordination, that the Office chose not to put this application through the Land Use Planning Act review and commenting system, that the Office has shared the public notice with the Department of Agriculture since it is a down-zoning.

The Commission found that one of the applicants was present and stated that they have requested the rezoning to establish agricultural zoning to permit them to apply to the Delaware Agricultural Lands Preservation Foundation for an extension to the Gum Preservation District, which is located within 1/4 mile of the farm, that they cannot apply for an extension to the district unless the land is agricultural zoned, that they were not aware or informed that the farm had been rezoned in 1971 with the adoption of the zoning ordinance, and that the Vine's Creek Branch separates the farm from the Town of Frankford.

The Commission found that no parties appeared in opposition.

The Chairman stated that he was certain that the owners were not aware of the GR zoning when the Comprehensive Zoning Map was adopted.

Mr. Lynch stated that if the site is established as an extension to the Gum's Preservation District a 50 foot setback will be required on neighboring properties and questioned if the Delaware Agricultural Lands Preservation Foundation will consider the site due to the closeness to the Frankford town limits.

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

4. RE: Subdiv. #96-16--Dale Wheatley

Mr. Lank advised the Commission that this application has been removed from this agenda and rescheduled for November 21, 1996 due to an error in the advertisement.

5. RE: Subdiv. #96-17--Dale Wheatley

Mr. Lank advised the Commission that this application has been removed from this agenda and rescheduled for November 21, 1996 due to an error in the advertisement.

6. RE: Subdiv. #96-18--Donald M. Martin

Mr. Lank advised the Commission that this application has been removed from this agenda and rescheduled for November 21, 1996 due to an error in the advertisement.

7. RE: Subdiv. #96-19--Sussex Ventures, Inc.

Mr. Lank advised the Commission that this application has been removed from this agenda and rescheduled for November 21, 1996 due to an error in the advertisement.

8. RE: Subdiv. #96-20--Bryce M. Lingo

Mr. Lank advised the Commission that this application has been removed from this agenda and rescheduled for November 21, 1996 due to an error in the advertisement.

III. OTHER BUSINESS

1. John E. Spieker, MD

Robert Witsil, Attorney, and Kevin Minnich, Engineer, were present as the Commission reviewed the site plan for Conditional Use #1150 for medical offices on Road 269A, north of Route 9.

Mr. Abbott advised the Commission that the proposed stormwater management pond has been moved away from lands of Neal Boyle and Mary Irving, that the site plan meets the requirements of the zoning code and the stipulations imposed by the County Council, and that all required agency approvals relating to this project have been received.

Mr. Witsil advised the Commission that the stormwater management concerns have been addressed and approved by the Sussex Conservation District, and that the stormwater management facility will not correct the water runoff from Savannah Road onto the Boyle's property.

Vince Robertson, Attorney, was present representing the Boyle's and Mary Irving and advised the Commission that his clients have no problems with the revised site plan and look forward to being good neighbors with Doctor Spieker.

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

2. Shore Investments, Inc.

Ted Jones, developer, was present as the Commission reviewed a revised site plan for an office and retail complex on Delaware Route One across from Road 271.

Mr. Abbott advised the Commission that this project is the first site plan that has been submitted that is within the Highway Corridor Overlay Zone (HCOZ) which requires a sixty (60) foot setback from the front property line, that the HCOZ requires a twenty (20) foot landscaped buffer zone and questioned if the owner will have to put in landscaping since the twenty (20) foot area is presently paved with asphalt that was done by the County when public sewer was put in, and advised the Commission that all required agency approvals relating to this site have been received.

Mr. Jones advised the Commission that he is ready to begin construction on the project, and advised the Commission that the paving was recently put in by the County.

The Commission discussed the HCOZ and Mr. Schrader advised the Commission that he does not feel that the landscaped buffer requirements can be waived unless applied for through a variance process. It was the consensus of the Commission to advise the owner that he could apply to the Board of Adjustment for a variance from the landscaped buffer requirements.

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

3. Bonard B. Timmons, Jr.

The Commission reviewed a commercial site plan for an office at the intersection of Route 26 and Road 327 near Clarksville.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the access to the site will be from Road 327, and that as of this date, the staff has not received any agency approvals or comments.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals and permits.

IV. OLD BUSINESS

1. The Villages of Old Landing

Rick Woodin, developer, was present as the Commission reviewed the final record plan for the 140 lot Medium Density - Residential Planned Community (MR/RPC) on the west side of Road 274.

Mr. Abbott advised the Commission that the record plan is in compliance with the subdivision code, zoning code, and stipulations imposed by the County Council, that all required agency approvals and permits or letters of no objection to record have been received, and that the Assistant County Attorney has reviewed the proposed restrictive covenants and found them acceptable.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the record plan as a final as submitted.

Minutes
October 24, 1996
Page 14

ADDITIONAL BUSINESS

Mr. Lank submitted copies of the revised 1996 Sussex County Comprehensive Plan Draft to the Commission for their review and comments for the next workshop scheduled for October 30, 1996.

Meeting adjourned at 10:20 P.M..