

## MINUTES OF THE REGULAR MEETING OF NOVEMBER 19, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 19, 1998, at 7:30 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to adopt the agenda as circulated.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of November 12, 1998, as amended.

Mr. Berl explained how the meeting would be conducted.

## PUBLIC HEARINGS

SUBDIVISION #98-8--application of RONALD HASTINGS to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 28.95 acres into twenty-eight (28) lots, located east of Greenleaf Lane within Rivers End Subdivision approximately 1,650 feet southeast of Road 530.

The Commission found that Mr. Abbott summarized the Technical Advisory Committee Report of November 9, 1998, comments received from the Natural Resources Conservation Service, and letters from Jerry L. Chapman and Rivers End Property Owners Association.

The Commission found that Robert Witsil, Attorney, and Ted Simpler, Surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the application is for twenty-eight (28) lots to be sold for single family dwellings; that amendments to the restrictive covenants have been submitted to the staff; that there are no tidal wetlands on the property; that the 404 Federal wetlands have been delineated on the site; that the only structures permitted to encroach into the wetlands buffer will be fences to designate property lines; that this phase will have a fifty (50) foot front yard setback; that the open area will have an easement for access on the final site plan; that Phases 1 and 2 have small lots; that Phase 3 has larger lots; that the minimum lot size for this Phase is 0.75 acre; that the open area will remain in a natural state for passive recreation; that the open area may be conveyed to a nature conservancy; and that a fee will be required in this Phase to pay for the maintenance of the streets in Phase 1 and 2.



The Commission found that James Burkett, President of Rivers End Property Owners Association, George Bramhall, and Lilbert Norton, residents of Rivers End Subdivision were present and spoke in opposition with concerns about maintenance fees, damage to streets by heavy equipment, sectional homes being permitted, damage to wetlands, lot sizes, access to open areas, setbacks being different than the other three (3) Phases, and submitted a petition and copies of Ordinance No. 1152.

The Commission found that seventeen (17) people were present in opposition to this application.

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

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

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

SUBDIVISION #98-9--application of GARY WATSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 41.86 acres into thirty-seven (37) lots, located north of Road 465, approximately 2,318 feet west of Road 479.

The Commission found that Mr. Abbott summarized the Technical Advisory Committee Report of November 9, 1998, and comments received from the Natural Resources Conservation Service.

The Commission found that Gary Watson was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that the property is presently a chicken farm operation; that the site is surrounded by Chipman's Chase Subdivision and nice homes; that the proposed dwellings will be 1,200 square feet or larger; that manufactured homes will not be permitted; that there will not be any negative impacts on the area; that Chipman's Chase Subdivision is almost built out; that when the streets are completed the chicken houses will be demolished; that no lots will be offered for sale until the chicken houses are removed; that he resides close to the site; and that he will comply with the recommendations of the agencies on the Technical Advisory Committee.

The Commission found that Lacy Lafferty, Brian Farrelly, and Richard Wells, all property owners in the area, spoke in opposition and expressed concerns about having a comprehensive development plan for the project, that the site drains poorly, that the area has nice homes valued in excess of \$100,000, concerns about the entrance location, increased traffic on Road 465, and the location of wells and drainfields.



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

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

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

C/Z #1359--application of BRYCE M. LINGO AND T. WILLIAM LINGO to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community in Lewes and Rehoboth Hundred, located northeast of Hebron Road, 1,800 feet northeast of Route One and west of the Lewes and Rehoboth Canal, to be located on a parcel containing 62.60 acres, more or less.

The Commission found that the Honorable George H. Bunting, Jr., State Senator, had written a letter to David S. Hugg, III, Director of the Office of State Planning Coordination to take into consideration this application and the impact it will have on existing traffic patterns; and suggesting that in fairness to all parties and future traffic flow, we need good engineering, traffic studies, and DelDOT public hearings before the Commission can make a decision on this application.

The Commission found, based on comments received from the Office of State Planning Coordination, dated November 12, 1998, that the State opposes this rezoning; that according to DelDOT, this project would conflict with two projects that they are currently developing under the Route One corridor study; one a bikeway and the other a two-lane local road; that exact alignments, and indeed typical sections, for these facilities have not been finalized; that the Office ask the County to not approve a plan for this project until that plan dedicates acceptable rights-of-way for them and shows the project entrance somewhere on the proposed road instead of on Church Street; that the DNREC has noted that portions of the property are included on the State's Natural Area inventory as a part of Cape Henlopen Natural Area, and that a somewhat larger portion of the property is a part of the Cape Henlopen State Resource Area; that efforts to reduce nutrient loads from the site should be considered; that the Delaware Natural Heritage Program has records of at least four State rare species being in this area, including two species of Butterfly, one species of bird, and one species of rare plant; that the site seems to lie in a forested area next to the canal; that the potential loss of forested habitat within the site is a concern; that the area from Rehoboth Beach north to Cape Henlopen and Delaware Bay is especially important to migratory songbirds; that any loss of forest or saltmarsh is significant because of the reduction of breeding, resting, and foraging areas for neotropical migratory songbirds; that maintenance of as much of the existing forest cover as possible is desirable; that the Division of Parks and Recreation is interested in the protection of important wetlands and upland buffer along the canal and at the northern



end of the parcel; and that the State urges the developer to work with the State agencies to help protect Delaware's natural resources.

The Commission found, based on comments received from the Office of State Planning Coordination, dated November 19, 1998, that subsequent to the review referenced in the November 12, 1998 letter, DelDOT and the developers met; that DelDOT's concerns have been adequately addressed and that a letter to that effect is being submitted to the Commission; that discussions are ongoing between the DNREC and the developers and that it is anticipated that an agreement addressing the open space and natural resources issues is forthcoming; that a letter to that effect is being submitted by the Division of Parks and Recreation; that the State remains very concerned that the development of the site reflect sensitivity to the natural resources issues initially raised by the DNREC; and that with the understanding that the property owners/developers are committed to the agreements developed with DelDOT and DNREC, the State withdraws its objections to the proposed rezoning.

The Commission found that originally on July 10, 1998, DelDOT recommended a traffic impact study; that on August 7, 1998 DelDOT commented that now that they know what the applicants propose to build, the Department no longer recommends a traffic impact study, but that this project could conflict with two projects that the Department is developing under the Route One Corridor Study, and for that reason the Department objects to the project being developed as planned; that on November 19, 1998 DelDOT commented that the Department's concerns in the August 7, 1998 letter have been adequately addressed and that the Department does not object to the County's approval of the project; and that the Department's Subdivision Section will address the location of the project's entrance in a separate letter.

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 be necessary for some on-site and off-site drainage improvements; that the soils are mapped as Sassafras sandy loam and Pocomoke sandy loam; that the Sassafras soils have slight limitations; that the Pocomoke soils have severe limitations; that the developers will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the farmland rating of the three soil types is Prime Farmland; and that the Pocomoke soils are also considered of Statewide Importance.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that service can be extended to the parcel; that all additional infrastructure needed to serve the project should be constructed by the developer in accordance with Ordinance No. 38 procedures.



The Commission found, based on comments received from the Division of Parks and Recreation, that over the last several months the Division has had very productive discussions with the developers; that the Division believes that they are close to an agreement whereby State-owned open space would be incorporated within the acreage of this project; that this open space would be a part of an expansion corridor of protected lands between the cities of Lewes and Rehoboth west of the Lewes-Rehoboth Canal; that the Division also believes that the much discussed multi-use path between the two cities could be constructed within this open space corridor.

The Commission found that a letter has been received from Debbie Heaton, Conservation Chair of the Delaware Chapter Sierra Club which advised that the Sierra Club is looking into their concerns about this proposal and are unprepared to make comments, and that they reserve the right to extend comments until such time as this proposal is presented to the Sussex County Council.

The Commission found that Noel E. Primos, Attorney from Schmittinger & Rodriguez, P.A., has submitted to the Department a letter and a copy of a complaint and related documents that have been filed with the Court of Chancery relating to a property line dispute between the landowners, the developers, and Mr. John Burton, adjoining property owner.

The Commission found that Bryce M. Lingo, T. William Lingo, Scott Bradley, Attorney, and Ross Harris of E.C.I. Corporation were present and stated in their presentations and in response to questions raised by the Commission that 4.99 acres of the site is zoned C-1 General Commercial and will remain commercial; that 62.60 acres is proposed to be changed from AR-1 Agricultural Residential to a MR Medium Density Residential Planned Community; that the site has never been utilized for farming; that a portion of the site has been use for an unauthorized dump with vehicles, appliances and trash; that the area surrounding the site is a mix of agriculture, residential and commercial uses; that approximately 100 feet of wooded buffer exist within the Lewes/Rehoboth canal right-of-way; that the proposed 195 units includes 105 single family lots, 38 duplex units, and 52 townhomes; that tennis courts, a swimming pool, and community facilities will be available on the site; that the existing zoning could accommodate 185 units in the AR-1 Agricultural Residential District and a large motel in the C-1 General Commercial District; that water service is available from the City of Rehoboth Beach; that sewer service is available from Sussex County; that fire protection will be provided by the Rehoboth Beach Volunteer Fire Department; that traffic impact will be minimal based on DelDOT comments; that traffic counts indicate that in the morning hours 108 vehicles per hour would be generated under current zoning, that 115 vehicles per hour would be generated under proposed zoning; that traffic counts during evening hours would not change; that DelDOT has conceptually approved the entrance onto Church Street; that the project would be a economic benefit to the County due to transfer taxes, property taxes,



and sewer fees; that concerns originally established by DelDOT, DNREC, and the Office of State Planning Coordination have been addressed; that no wetlands will be disturbed; that a buffer exist from the Lewes/Rehoboth Canal; that no salt marshes exists on the site; that rare plant species have not been found on the site; that referenced migratory bird habitat has not been found on the site; that the rezoning will comply with the Comprehensive Plan which directs development around the Towns with infrastructure; that the site is mapped in a Development District; that mixed housing types are proposed as recommended in the Comprehensive Plan; that traffic impact is minimal; that the density is modest; that the application puts density where it will be appropriate and not into agricultural areas; that an 80' wide strip is being dedicated to DelDOT for a multi-modal corridor which may include a bikepath, sidewalks, and a roadway; that stormwater management will be maintained on-site; that 85% of the developer lots in the area have been purchased; that a need exists for units and/or lots in the area; that they propose to sell units and/or lots to senior citizens, investors, and young couples; that the developers will provide the infrastructure; that lots will be sold to individuals and/or contractors; that the project will be phased; that the project should be completed within 5 to 7 years.

The Commission found that Mr. Bradley submitted a copy of a letter from the City of Rehoboth Beach relating to their ability to provide water to the site.

The Commission found that Mr. Bradley submitted a written summary of information relating to the applicants, the application, the property, the surrounding area, the project, utilities, traffic impacts and road improvements, the economic impact, the bikepath and roadway, soil conservation, butterflies and sparrows, trees and migratory songbirds, wetlands, litigation, and the change of zoning.

The Commission found that Evelyn M. Maurmeyer of Coastal & Estuarine Research, Inc. was present on behalf of the applicants and submitted written comments and stated comments in reference to the site, the site's wetlands habitats, the sites upland habitats, soils, the proximity to the Cape Henlopen State Park, vegetation and rare plants, salt marshes, migratory songbirds, and in summary that the site is separated from the Lewes/Rehoboth Canal by a 100' wide strip of land owned by the United States Government; that this area is forested and includes some small tidal wetland fringes directly along the Canal which will not be disturbed by the project; that the site consists predominantly of forested uplands, with a small area of non-tidal Federal 404 wetlands, and that this wetlands area will remain undisturbed.

The Commission found that Noel E. Primos, Attorney, was present in opposition and referenced that the lawsuit filed is to quiet title of encroachments of some mobile homes onto the site from the mobile home park on the adjoining lands of John Burton, and that the rezoning could be an administrative taking of that portion of the lands where the encroachments exist until the lawsuit is resolved in the Court of Chancery.



The Commission found that Til Purnell read a letter in opposition on behalf of the Members of Henlopen Grange which referenced that the parcel in its natural stage helps protect the environment; that the large number of units proposed in such a small area will overtax the sewer system that is discharged into the Canal; that the additional discharge may cause more serious problems for water ways and the quality of the water; and that the members do not think that agriculture is the only culprit for water quality problems.

The Commission found that Til Purnell read a letter in opposition on behalf of the League of Women Voters of Delaware which referenced that the League has a very strong position on environmental protection for the sake of future generations; that this area along the Canal contains many rare and endangered species, is a valuable recharge area, provides buffering for the Canal waters which discharge into the Rehoboth Bay, and help to clean the air; that the League is opposed to further urban sprawl; that the League questions if the application meets the requirements for a change of zone; that the League questions if the application benefits the citizens of Sussex County; and that the League urges the Commission to deny the application.

The Commission found that Til Purnell submitted and read written comments and expressed her concerns that the project will destroy a valuable natural area and replace it will residential housing; that this wooded acreage provides a valuable recharge area for groundwater supply; that wooded areas are important for clean air and cooling; that the need is questions due to the number of vacant and unsold lots in the area; that the site is full of rare and endangered plants and animals; that the site provides habitat, food, and shelter for many local species of animals and birds; that traffic, traffic safety, and traffic congestion is a major concern; that harmful run-off will be created by road and driveway pavements, roofs, and fertilizers and pesticides; and that the site would be better suited as a wildlife refuge or sanctuary in the name of the developers.

The Commission found that Mike Tyler, President of the Citizens Coalition, spoke in opposition and expressed concerns that there is no demand or need for this type of housing in the area; that he disputes DelDOT comments; that the plan does not meet the purpose of a Residential Planned Community since more open space is needed; that the plan should be reduced in size and density; that Church Street is not adequate for public safety or emergencies; and that a second entrance should be provided if the application is approved.

The Commission found that Minnie Smith of West Side New Beginnings, spoke in opposition since Hebron Road is a part of the neighborhood; that access should be provided from Church Street to Hebron Road; that West Rehoboth residents need another access; that the only access to West Rehoboth is from Hebron Road; and questioned if a wall or fence will be erected around the project.

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

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

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

### III. OTHER BUSINESS

Susabar, L.P.  
Lot on existing easement  
Route One

The Commission reviewed a concept to create a lot with access from an existing easement off of Delaware Route One across from Road 88.

Mr. Abbott advised the Commission that the existing easement is twelve (12) feet wide; that if the concept is favorable, the easement should be a minimum of fifty (50) feet in width; that the proposed lot is in an agricultural preservation district and that the Department of Agriculture has sent a letter of no objection to the proposed subdivision.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the request as a concept with the stipulation that the easement be a minimum width of fifty (50) feet.

Meeting Adjourned at 10:30 P.M.