

## MINUTES OF THE REGULAR MEETING OF NOVEMBER 29, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 29, 2001 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley, with Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

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

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the minutes of November 8, 2001 as amended.

Mr. Schrader explained how the public hearings would be conducted.

### PUBLIC HEARINGS

**SUBDIVISION #2001-28**—application of **ROBERT W. DURHAM** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 82.40 acres into 76 lots, located west of Road 493, 1,130.28 feet north of Road 494.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on November 21, 2001 and that the report will be made a part of the record for this application.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils mapped on site are Evesboro loamy sand and Evesboro sand; and that these soils have slight to moderate limitations for the intended use.

The Commission found that Robert Durham, Debbie Brittingham, and Donald Miller, Surveyor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the property was purchased five years ago; that strip lots have been developed along Road 493 and Road 494; that each lot has been approved for a standard septic system; that the minimum square footage for the dwellings will be 1,200 square feet with an attached one car garage; that a thirty-foot buffer is proposed between this development and the strip lots; that there will be a recreation area for the residents; that manufactured homes will not be permitted; that the lots will be marketed for young local buyers; and that there is a need for these type of lots in the area.

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

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the public hearing.

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

Vote carried 5 to 0.

**SUBDIVISION #2001-30**—application of **MULBERRY NO. 1, L.L.C.** to consider the Subdivision of land in an AR-2 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by redividing 52 lots into 8 lots, on 50.26 acres, located at the end of Road 284 within Mulberry Knoll Subdivision.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on November 21, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that four letters have been received in support of this application and that on November 26, 2001 the applicants submitted revised plans complying with the recommendations of the Technical Advisory Committee.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils mapped on site are Sassafras sandy loam and Tidal marsh; that the Sassafras soils have slight limitations for the intended use; and that the Tidal marsh soils have severe limitations for the intended use.

The Commission found that Bob Reed and Joe Reed were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they purchased the property in June of 2000; that they propose to reduce 52 existing lots into 7 lots and a residual parcel; that the average lot size is 4.80 acres; that the residual parcel is 16 acres and mostly wetlands; that there is no need for any additional road construction; that this application reduces negative impacts to the environment; that they will save as many trees as possible; and that they will have their surveyor locate the right of way as referenced in the Court Order.

The Commission found that Richard Scirora, Maureen Sutton and Major Bitter, all residents of Mulberry Knoll, were present in support of this application and stated in their presentations that the Homeowners Association supports this application; that this project



will be a benefit to the environment, area, and immediate community; and that 8 lots is better than the 52 lots that could be developed.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary with the stipulation that the 20-foot easement leading to the boat ramp be located on the final record plan. If the easement is not within the area of this application, it shall be noted on the final record plan.

Vote carried 5 to 0.

**SUBDIVISION #2001-31**—application of **TED LISZEWSKI** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 149.78 acres into 145 lots, located northeast of Road 46, 920.26 feet southeast of Road 517-A.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on November 21, 2001 and that the report will be made a part of the record for this application.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils mapped on site are Evesboro loamy sand, Klej loamy sand, Osier loamy sand, and Woodstown sandy loam; that the Evesboro, Klej and Woodstown soils have slight to moderate limitations for the intended use; and that the Osier soils have severe limitations for the intended use.

The Commission found that Ted Liszewski and R.B. Kemp, surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the entrance located on Road 484 has been rejected by DelDOT since it is located on a curve; that the two lots at the entrance on Road 484 could possibly obtain individual entrances or could be revised to have access from an interior street; that the entrance to the entire project will be off of Road 46; that they will have to cross the tax ditch three times and will need approvals from the Soil Conservation Service and the tax ditch company; that storm water areas and buffers will be used as open space; that if any additional open space is required, the applicant will create whatever is necessary; that 15-feet of additional right of way will be dedicated along Road 46; that the ditch crossings will be done with pipes; that the project would probably be completed within two years; that the entrance to this development will be landscaped; that the minimum square footage for single story homes will be 1,400 square feet; that two story homes must have a minimum of 2,000 square feet; that each home will be

required to have an attached garage with paved driveways; and that the project will be similar to Fox Glen subdivision.

The Commission found that no one was present in support of this application.

The Commission found that Frank Perdue, Mark Isaacs, Blackie Nygood, Sam Harold, Ralph Greenword, Nancy Jester, Wayne Naylor, Ken Rementer, and George Howard, were present in opposition to this application and advised the Commission that they have concerns about increases in traffic to the area; that the development will only have one entrance serving 145 lots; that the proposed density is too high; that the project does not provide any open space; that sprawl creates air pollution; that the projects affects public safety and emergency response times; that taxpayers and the State of Delaware will bear the costs of improving infrastructure such as roads and schools; that all of the traffic on Road 46 comes from or goes to Route 9; that the site is located in a rural area; that the site is not located in a development district as based on the Comprehensive Land Use Plan; that the development would cause environmental impacts to agriculture, water quality and quantity in the area; that the project impacts the Nanticoke River Watershed; that on site septic systems will cause problems with nitrogen; that all new subdivisions shall be equipped with septic systems that meet the Total Maximum Daily Loads regulations established by DNREC; that street lights would have an affect on the wildlife habitat; that the development would cause the loss of prime farmland in the area; that there are existing developments in the area that have vacant lots; that there is no need for any additional lots; that the proposed subdivision is a major alteration to an existing community; who enforces the restrictive covenants; that there are Agricultural Preservation Districts in the area; that the existing roads in the area are narrow; that there are numerous blind curves on these roads; that the existing roads cannot handle additional traffic; that the State of Delaware recently purchased 14,000 acres in the area; that new residents would have problems with the agricultural uses in the area; and that many of the existing septic systems in the area have had problems.

The Commission found, by a show of hands, that 2 people were present in support of this application; and that 59 people were present in opposition to this application.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

Vote carried 5 to 0.



**SUBDIVISION #2001-32**—application of **SUSSEX VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 76.44 acres into 56 lots, located south of Road 297, 2,930 feet west of Route 30.

Mr. Lynch advised the Commission that he would not be participating in this public hearing.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on November 21, 2001 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that letters have been received from O'Connor, Piper and Flynn, Keith Doughty, Re/Max Realty Group, Beach Homes, Rehoboth Bay Realty Company, Janice Timmons, Kersey Homes, Inc., McGinnis Construction Services, Inc., Layton Associates, Paul and Janet Oliva, Carmean Appraisal Group, and Paul Oliva in support of this application; and that the letters will be made a part of the record.

Mr. Abbott advised the Commission that letters have been received from Charlotte Jones, Leon Anderson, Vivian Littleton, Philip and Carol Bawel, Mrs. Herman Carmean, Gerald and Ella McCabe, Kenny Carmean, John and Mary Ryan, Janie Quay, David and Gay Moore, Kasie Bennett, Edward and Louise Dorey, Diana Layfield, W. Arnold and Ruth Steele, and Robert and Mary Johnson in opposition to this application; and that the letters will be made a part of the record.

Mr. Abbott advised the Commission that letters have been received from Meridian Consulting Engineers and Coastal and Estuarine Research, Inc. in reference to technical data in support of this application; and that the letters will be made a part of the record.

Mr. Abbott advised the Commission that the attorney for the opposition submitted a booklet on Monday, November 26, 2001 and that each of the members have been provided a copy.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils mapped on site are Evesboro loamy sand; and that these soils have slight limitations for the intended use.

The Commission found that John Sergovic, Attorney, was present on behalf of this application and advised the Commission that this application was denied by the Commission; that the applicants appealed that decision to the County Council; that the

County Council remanded the application back to the Commission; that the application complies with the Subdivision Ordinance; and that the application is a permitted use.

The Commission found that Don and Drew Ward were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this application is a revised plan from the public hearing held in March of this year; that a booklet was prepared and that they were not aware of the 72-hour rule that the Commission has for submitting information; and requested that they be able to submit the booklet to the Commission; Mr. Allen advised the applicants that the Commission will not accept the booklet; that the plan meets the requirements of the Subdivision Code; that the restrictive covenants have been submitted; that larger homes are proposed; that the total number of lots has been reduced from the previous application; that the lot sizes have increased from the previous application; that the street length has been reduced from the previous application; that the proposed subdivision is a low density project; that they have addressed the 17 items referenced in Subsection 99-9 of the Subdivision Code; that there is a proposed recreation area for the lot owners and that this area will be maintained by a homeowners association; that buffers will be planted; that individual wells and septic systems are proposed; that the beginning price for land and home packages will start at \$129,000.00; that there will not be any negative effects on the local schools; that the Mount Joy area is a residential area with homes, farmland and woodlands; that there is a demand for lots in this area; that one entrance to the development is proposed and that the proposed entrance is visible up to 1,200 feet in each direction; that the subdivision streets will be private; that 15 mile per hour speed signs will be erected; that this application addresses concerns about the prevention and pollution of surface water and groundwater; that the erosion and sediment control plan will prevent runoff from entering Cow Bridge Branch; that they never intended to upset the community; that this application addresses all concerns from the previous application; that property values in the area will increase; that it may be necessary for a buffer adjacent to the Glatfelter Pulpwood Company lands; that they purchased the property over a year ago; that the project will be developed as a low density single family development; that the application meets the requirements of the subdivision code for obtaining preliminary approval; that none of the comments from the Technical Advisory Committee raise any concerns; that the development will surround a natural swale; that the plan includes more information that what is required for preliminary approval; that the Commission needs to look at if this project is technically feasible to move forward; and that at preliminary approval, you do not need agency approvals.

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

The Commission found that David Weidman, Attorney, was present representing the Mount Joy Citizens for Responsible Growth and stated in his presentation and in response to questions raised by the Commission that the Commission made the right



decision in denying this first application; that the County Council sent the application back for the Commission to articulate their reasons for denying the application; that the area is a quiet rural farming community; that no one in Delaware has vested rights to subdivide their property; that the application violates the Comprehensive Land Use Plan in that the site is not located in a growth area; that the application does not protect agricultural lands; that 56 homes on 76 acres is not low density development; that the County is losing prime farmland; that individual septic systems will negatively impact Cow Bridge Branch; that the project is located in a 275 acre watershed that protects the Mount Joy area; that the development will cause pollution to the Indian River Bay; that the State dug a ditch on the property to reduce standing water on the site; that the development will cause additional flooding to the area; that all of the water will end up in the storm water retention ponds; that there a small fish and mussels located in Cow Bridge Branch that could be impacted; that the site has been farmland for 40 plus years; that the site is located near a Nature area; that the applicants have failed to discuss grading plans for the site; that the application violates Subsections 99-15A, 99-16 A, C, D, 99-18 C(5), and H(2), 99-19 C, 99-20B, 99-23 M and N, 99-24 A and C, and 99-29B(2) and C; that the site is located in a bad location; that there is inadequate infrastructure available; that the cumulative impact to the area needs to be considered; that the area needs to remain a rural community; and submitted 2 video tapes, 2 drawings of the plan and photographs into the record.

The Commission found that Gay Moore, Charlotte Jones, Bob Parks, Lisa Workman, and Alan Anderson were present in opposition to this application and advised the Commission that the site is not a proper location for a development; that drainage and flooding are concerns; that the project will create additional traffic to the area; that the development is out of character with the area; that there would be a loss of farmland; that they have concerns about septic systems in the area; that the existing natural swale holds water; that the site is usually wet; that there would be a loss of wildlife habitat to the area; concerns about trespassing; and that the project is not a benefit to the community.

The Commission found, by a show of hands that 2 people were present in support of this application and that 52 people were present in opposition to this application.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried 4 votes to none, with Mr. Lynch not participating, to defer action.

Vote carried 4 to 0 to 1.

OTHER BUSINESS

Kinsale Glen MR/RPC  
Final Site Plan – Road 273

Mr. Abbott advised the Commission that this is the final site plan for a 115-lot single family development; that the Commission granted preliminary approval on November 8, 2001; that the applicants have submitted the landscape plan for the buffers along Road 273 and along Silver View Farms and the recreation area; and that all required agency approvals have been received.

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

Vote carried 5 to 0.

The Reserves MR/RPC  
Preliminary Site Plan – Road 361

Mr. Abbott advised the Commission that this is a preliminary plan for 173 single family lots and 6 condominium units for a total of 179 units; that the maximum allowed units is 179; that the plan needs to show a phasing schedule, street lighting, bike paths and sidewalks as required by the conditions of approval; that a landscaping plan also needs to be submitted; and that the Commission must decide if they will accept the revised layout.

John Sergovic, Attorney, advised the Commission that the necessary items would be included on the final site plan.

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

Vote carried 5 to 0.

Pot – Nets Bayside  
Revised Site Plan – Route 22

Mr. Abbott advised the Commission that the revised site plan is for the relocation of 14 manufactured home lots that were deleted in other areas; that the smallest lot is 6,904 square feet and the largest lot is 10,821 square feet; and questioned if the Commission will approve the lots as submitted or require an amended conditional use application.



Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised plan as submitted.

Vote carried 5 to 0.

Edward and Margaret Holland  
Parcel and 50' Easement – Road 329

Mr. Abbott advised the Commission that this is a concept to create a 4.82-acre lot with access from a 50-foot easement over an existing driveway; that the proposed lot has a dwelling located on it; and questioned if the Commission will approve the lot as submitted or require a public hearing for a major subdivision.

Joe Conaway was present and advised the Commission that the owners propose to sell the dwelling; that the easement is needed since their son resides on the larger parcel; and that the setbacks meet the requirements of the zoning code.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the parcel and easement as a concept.

Vote carried 5 to 0.

Meeting adjourned at 10:45 P.M.