

MINUTES OF THE REGULAR MEETING OF DECEMBER 14, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 14, 2000 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 approve the agenda and addendum as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of November 30, 2000 as corrected.

Mr. Schrader described how the agenda and hearings would be conducted.

PUBLIC HEARINGS

C/U #1372 -- application of SYNAGRO-WWT, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of sludge (pickle processing waste) to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 220 acres, more or less, lying northeast of Route 48, northeast of Penn Central Railroad, southwest of Route 318 and on both sides of Route 432.

The Commission found that the application included copies of the Tax Map for the area, vicinity maps, and site plans.

The Commission found that Sharon Hogan, Senior Technical Services Coordinator for Synagro-WWT, Inc., was present on behalf of the application and submitted photocopies of photographs of the trucks, trailers, and equipment used to inject and/or spread the waste materials, a Sludge/Residuals Land Application Operational Plan for Delaware, and a copy of the permit from the Delaware Department of Natural Resources and Environmental Control for authorization to operate a land treatment system for the agricultural utilization of sludge. It was noted that the permit effective date was January 1, 2000 and expiration date was December 31, 2005.

The Commission found that Ms. Hogan stated in her presentation and in response to questions raised by the Commission that the use provides a recycling service for agricultural uses; that they have been working with Baxter Farms since 1991 by applying liquid pickle waste; that the DNREC permit references quality control practices and testing; that they request that the County require compliance with DNREC; that other food producers may request to use the system if approved by DNREC and that they

would like to provide the service to other food producers; that the waste is hauled in sealed tanker trucks, spread and knifed into the ground by a Terragator tractor, and then disked into the ground; that they have been using the Baxter Farm field #5 since 1994 and field #7 since 1991; that they spread the waste materials over 50 acres per year and then rotate the area each year; that other food producers or sources could be community wastewater facilities, Kraft Food processing waste, and poultry processing waste; that the present DNREC permit is only for injection of the waste materials; that if DNREC would approve another method of application they would like that authority; that another method would be application of caked sludge which would be spread by a manure spreader and then disked and covered; that the Baxter Farm produces approximately 200 bushels per acre; and that the Baxter's have also applied potash on the farm.

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

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

Mr. Lank advised the Commission of the stipulations imposed on this site by approval of Conditional Use #1086 in 1994.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the same stipulations as Conditional Use #1086 which provide:

- 1) Application of sludge shall be subject to State DNREC approval.
- 2) Sludge applied shall be limited to sludge from the Vlastic Foods Plant site near Millsboro.
- 3) Maximum number of applications of sludge on this site shall be once per year; subject to the approval of the State DNREC.
- 4) Hours of application of sludge shall be limited as follows: 6:00 a.m. to 8:00 p.m., Monday through Saturday.
- 5) There shall be no stockpiling of sludge materials on site.
- 6) The Conditional Use will be valid for five years; concurrent with the State DNREC permit.

Motion Carried 5 - 0.

C/U #1373 -- application of SYNAGRO-WWT, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of sludge (pickle processing waste) to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 88.0 acres, more or less, lying southeast of Route 321, south of Route 324 and west of railroad.

Mr. Lank advised the Commission that this application includes the same information as Conditional Use #1372 and that the record of the public hearings for Conditional Use #1372 should be made a part of the record for this application.

The Commission found that Sharon Hogan was present on behalf of the application and agreed that her presentation made with Conditional Use #1372 should be made a part of the record for this application and added that the State DNREC permit is the same permit for this site as the previously discussed site.

The Commission found that Ms. Hogan presented a copy of the Findings for approval of Conditional Use #970 for this site and that the conditions of approval were the same as those imposed by County Council on Conditional Use #1086 on the previously discussed site.

The Commission found that no parties appeared in support of or in opposition to the 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 forward this application to the Sussex County Council with the recommendation that it be approved with the same stipulations as Conditional Use #1372 which provide:

- 1) Application of sludge shall be subject to State DNREC approval.
- 2) Sludge applied shall be limited to sludge from the Vlasic Foods Plant site near Millsboro.
- 3) Maximum number of applications of sludge on this site shall be once per year; subject to the approval of the State DNREC.
- 4) Hours of application of sludge shall be limited as follows: 6:00 a.m. to 8:00 p.m., Monday through Saturday.
- 5) There shall be no stockpiling of sludge materials on site.
- 6) The Conditional Use will be valid for five years; concurrent with the State DNREC permit.

Motion Carried 5 - 0.

C/U #1374 -- application of LUCY MILLAWAY to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an ice cream and cold sandwich shop to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.51 acres, more or less, lying north of Route 16, 700 feet east of Nanticoke Branch.

The Commission found that letters in opposition to the application have been received from Keith and Carol Carlisle, and David and Jeanne Sapp referencing concerns relating to added traffic problems; that the use is not appropriate in an agricultural residential community; that it is known that two families reside in the premises; that there are two renters at the premises; that raw sewage on the ground has been an ongoing problem at the site; that the use would incur more traffic on Route 16, which is already congested and highly used by travelers to our beaches; that the use could create a large amount of trash which could attract undesirables such as mice and rats; and that they purchased their property since the area was residential where they believed that this was and would remain a nice, quiet, residential area.

The Commission found, based on comments received from the County Engineering Department, that the site is within the Western Sussex Water and Sewer Plan Area; that the site is within the Bridgeville Service Area Greenwood Development District; and that the applicants should contact the Town of Greenwood concerning the availability of sewer and water service.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 16 at this road segment would not change as a result of this application.

The Commission found that Glen and Lucy Millaway were present and stated in their presentations and in response to questions raised by the Commission that the site is across from National Concrete; that they spoke to some of their neighbors and did not know that there were some objections; that one of the objectors farms property behind the site, but live 1.5 miles away from the site on Route 36; that there are no other business uses in the immediate area; that they do not intend to use the westerly driveway; that the raw sewerage problem has been corrected with new pipes; that the property includes 2 lots; that the easterly driveway will be utilized for the business; that heavier traffic is seasonal (summer) for approximately 8 months; that the home was built approximately 2 years ago; that the home includes a room 40-feet by 25-feet that will be utilized for the ice cream and sandwich shop; that they will provide carry-out services and an area for customers to sit down; that they propose to be open six days per week from 7:00 A.M. to 8:00 P.M.; that they rent one room of the home to a tenant; that the rental room does not

have a kitchen; that they do not have a day-care center on the site; that they propose one unlighted sign; that they hope to create an old fashioned ice cream parlor atmosphere; and that access to the ice cream parlor will be from double doors to the rear of the home.

The Commission found that Max and Caroline Edwards, and Ben Gray were present in opposition to the application and stated that they have traffic concerns, especially during summer months and work hours; that the site has sometimes has 10 to 12 vehicles parked on it; that police have been to the site on numerous occasions; that the site appears to be a hangout for teenagers; and that they support residential use of the area, not commercial or business uses.

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

Mr. Allen stated that he did not feel that this site is an appropriate location for a business; that it is located in subdivision intended for residential uses; and that he agrees with the record of opposition.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried with four votes, with Mr. Johnson opposed to the motion, to forward a recommendation to the Sussex County Council that the application be denied.

Motion carried 4 - 1.

C/U #1375 -- application of HERRING CHIROPRACTIC to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a chiropractic office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 23, 877 square feet, more or less, lying southeast of Route 24, and 800 feet northeast of Love Creek.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the County Engineering Department, that the project is not located in a County operated and maintained sanitary sewer and/or water district; and that the project is located in the West Rehoboth Moratorium Area where the County Council agreed to restrict zoning changes and conditional use applications based on an agreement outlined in a Memorandum of Understanding between the State DNREC and County Council.

The Commission found that a note was attached to a public notice by Eugene Bookhammer voicing no objection.

The Commission found that Dr. Christopher Herring was present and stated in his presentation and in response to questions raised by the Commission that he anticipates minimal impact of the neighborhood; that he will be residing on the premises; that he anticipates no more than 20 to 30 patients per week; that he proposes a small lighted sign and will not exceed 32 square feet per side or facing; that there are 5 home business uses in the area; that no other doctors will work from the site; that he plans to have business hours 3 days per week on Monday, Wednesday, and Friday from 7:00 A.M. to 1:00 P.M. and from 3:00 P.M. to 7:00 P.M.; that he may be open on Saturdays from 8:00 A.M. to Noon; that he is self employed and may hire one staff person in the future; that parking is proposed to the rear of the home; that the property is fenced and will screen the parking area; and that he spoke to some of the neighbors and heard no objections.

The Commission found that Dr. Herring submitted 2 letters in support of his application from Mr. and Mrs. Everett Millman, and Mr. and Mrs. Charles Gathers.

The Commission found that Patricia Mead Wier was present in opposition to the application and stated that since she purchased her parcel a used furniture business and restoration business have started; that traffic should be a concern; that traffic congestion should be a concern; and that she feels that the use could depreciate property values.

The Commission found that Ms. Wier submitted a letter in opposition to the application from Rachael Weaving and Adil Kanaan referencing substantial erosion of the residential and agricultural character of the area; and that surrounding residential property values and traffic safety are both at considerable risk.

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. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

- 1) Business hours shall be those submitted by the applicant: 7:00 A.M. to 1:00 P.M. and 3:00 P.M. to 7:00 P.M. on Monday, Wednesday, and Friday, and 8:00 A.M. to Noon on Saturday.
- 2) One (1) lighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.
- 3) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Carried 5 - 0.

C/U #1376 -- application of DAVID S. ELECHKO to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwellings (2 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.89 acres, more or less, lying northeast of Route 26, 800 feet southwest of Road 346.

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 26 at this location will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department, that the project is not located in a County operated and maintained sanitary sewer or water district; that the project is not within the West Rehoboth Moratorium Area; that the project is not located adjacent to a County operated Sanitary Sewer District; that the project is within the South Coastal Planning Study Area in the proposed Vines Creek Sanitary Sewer District; that this is a priority No. 4 area; and that the office does not expect to provide service in the area in the near future.

The Commission found that David S. Elechko was present and stated in his presentation and in response to questions raised by the Commission that he presently has an apartment over a garage; that the apartment is rented; that his permits were questionable and have been corrected; that the Building Code Department has issued a Certificate of Occupancy; that he proposes to build a second home on the site approximately 600 feet to the rear; that his driveway to the rear is close to the garage apartment; that the garage apartment is intended to be rented so that he can supplement in mortgage; and that the garage will not be rented.

The Commission found that no parties 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. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion Carried 5 - 0.

OLD BUSINESS

C/U #1366 -- application of MELVIN L. JOSEPH CONSTRUCTION CO. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 118.90 acres, more or less, lying west of Route 113, 1.2 mile north of Route 20.

Mr. Wheatley stated that he would abstain from participating in a decision.

The Commission discussed the points and issues raised during the public hearing on November 2, 2000.

Mr. Lank summarized the stipulations on the David Horsey borrow pit application for reference purposes.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 3 votes to 1, with Mr. Lynch opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be denied.

Motion Carried 3 - 1, with Mr. Lynch opposed to the motion.

C/U #1371 -- application of PHILADELPHIA PENTECOSTAL HOLINESS CHURCH, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (14 units) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 19.82 acres, more or less, lying east of U.S. Route 113 and 1,000 feet west of Road 213 and 1/2 mile south of Road 641.

The Commission discussed the points and issues raised during the public hearing on November 30, 2000.

Motion by Mr. Wheatley, seconded by Mr. Johnson, 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 site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
- 2) No occupancy of the units shall be permitted until central water and central sewer is provided to the units.

Motion Carried 5 - 0.

C/Z #1406 -- application of DANIEL E. FINK, SR. to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, land lying east of U.S. Route 113, 700 feet north of Road 213 and 1,700 feet south of Route 40, to be located on 14,976 square feet, more or less.

The Commission discussed the points and issues raised during the public hearing on July 20, 2000.

Mr. Lank summarized a letter received from DelDOT changing their position on the entrance to the site and referencing joint use of the entrance with K & L Sales to the north of the site.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since DelDOT will allow access to the site by joint access from the adjoining property; since the adjacent parcel to the north is zoned C-1 General Commercial; and since adjacent parcels and parcels in close proximity are improved with commercial activities.

Motion Carried 5 - 0.

Ordinance Amendment -- an Ordinance amending Chapter 99, Section 13, of the Subdivision Code of Sussex County, relating to notice requirements to be given to owners within subdivisions prior to alteration, resubdivision or addition.

The Commission discussed the points and issues raised during the public hearing and the Ordinance reviewed on July 21, 2000 referencing 3/4 approval.

Mr. Schrader stated that the best proposal was the original version (short version) of the Ordinance written approximately 2 years ago,

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as revised. The referenced revision is to Section 1 of the Ordinance which is recommended to be corrected to read, "If the Director determines that the proposed resubdivision or alteration will not increase the density of the subdivision, the approvals described in Subsection A, above, shall not be required, however, owners of lots within the subdivision shall be entitled to receive notice of the application and public hearing, as described in Subsection D, above".

Motion Carried 5 - 0.

OTHER BUSINESS

- 1) Albert J. Bierman
150' Tower Site Plan - Road 431

Mr. Abbott advised the Commission that the site plan is for a 150-foot telecommunications tower; that the tower will be a monopole; that towers 150-feet or less are permitted in all zoning districts; that the site is zoned AR-1; that the setbacks meet the minimum requirements of the zoning code; that the access to the tower will be from the existing driveway; that a letter of no impact has been received from the Federal Aviation Administration; that approvals are needed from DelDOT and the Sussex Conservation District; and that three letters and a petition with 32 signatures opposed to the site plan have been received.

Francis Silverholtz from American Tower Corporation was present and advised the Commission that the site plan meets the requirements of the zoning code; that the ingress/egress has been relocated further to the east of the property; that the design and layout of the site will be as low profile as possible; that there will not be any increases in traffic; that American Tower does not have any other towers in the area; that at this time they do not have any letters of intent from other companies to locate equipment on the tower; that they hope to have three to four companies use the tower; that the tower cannot be located in the wooded area; and that the owner does not want to locate the tower to the rear of the site off of Road 469.

Mr. Johnson stated that there were five cars parked in the driveway recently and questioned if the Commission could stipulate that no vehicles be parked in the driveway; and questioned if the owner would install the tower off of Road 469.

Wayne Robinson an adjoining property owner was present in opposition to the site plan and advised the Commission that he has done research on the availability of towers in the area; that there are numerous towers already erected in the area that have available space for antennas; that there is no need for this tower in the area; that the property owner and tower company have not been honest with the residents in the area; and spoke about the overall appearance of the property.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried two votes to three votes with Mr. Allen, Mr. Lynch, and Mr. Wheatley opposed, to approve the site plan. The motion was defeated.

- 2) Myron L. Jackson
3 lots on 50' Right of Way - Route 24

The Commission reviewed a concept to create three lots with access from a fifty-foot right of way off of Route 24 east of Millsboro.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the three lots and right of way as a concept with the stipulation that any further subdivision will require a public hearing.

3) Saddlebrook Subdivision
Easement/Right of Way - Road 533

Mr. Abbott advised the Commission that this application received preliminary approval on October 26, 2000; that lots 52 and 53 front on Road 533 and DelDOT will not allow access off of this Road; that at the hearing Roger Gross, engineer, advised the Commission that access to these lots will be from an easement across lots 14 and 15; that there was no further discussion concerning the easement; and that the easement is proposed to be thirty feet and questioned if this proposal is acceptable.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to deny the thirty-foot easement.

4) Southampton RPC
Preliminary Site Plan - Phases 3 through 7 - Road 368

Mr. Abbott advised the Commission that Phase 3 is for 12 single family lots; that Phase 4 is for 16 single family lots; that Phase 5 is for 28 multi family units; that Phase 6 is for 30 single family lots; that Phase 7 is for 37 single family lots; that the single family lots are a minimum of 7,500 square feet; that the developers are requesting ten-foot setbacks from all lot lines; that the Ordinance allows for lesser setbacks if approved by the Commission since the development is a residential planned community; that the multi family buildings are less than 165-feet and have a 40-foot separation between units; that the phases are similar to the approved master site plan; that these phases are suitable for preliminary approval since all agency approvals are required; that the total number of units permitted is 202 and that 197 units are proposed.

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

5) The Villages of Five Points
2 parcels, B-1 Area - Route 9

The Commission reviewed a concept to subdivide a ten-acre parcel into 2 lots located in the B-1 area of the Villages at Five Points.

Mr. Abbott advised the Commission that access to the lots will be from the development street and that no construction will take place until the street is built or bonded.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the subdivision as a concept.

Meeting adjourned at 10:07 P.M.