

## MINUTES OF THE REGULAR MEETING OF DECEMBER 19, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 19, 1996, at 7:30 P.M., in the Court of Common Pleas, the Sussex County Courthouse, Georgetown, Delaware, with the following members present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of November 14, 1996, as amended.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the minutes of November 21, 1996, as amended.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of December 5, 1996, as amended.

Mr. Schrader explained how the Public Hearings and agenda items are conducted.

## II. PUBLIC HEARINGS

### 1. C/U #1174--Thetavest, Inc.

Craig Hudson was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for a 39 Lot Expansion to a Manufactured Home Park on the east side of "G" Street, 700 feet north of Marina Drive within Rehoboth Bay Mobile Home Community, located on a parcel containing 9.29 acres more or less.

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

Mr. Lank read a letter of opposition from a resident of the Community.

Mr. Hudson stated that they started the process in February 1996 and were halted by DelDOT's request for a traffic impact study, that 486 lots have been developed of the original approval for 545 lots, that 55 lots had been revised due to redesign of the park and wetlands, that the 39 lot expansion area replaces the sewer treatment area which had been used for 15 years for spray irrigation, that the spray irrigation area had been planted with grasses that were harvested each year, that monitoring wells have been located all around the site to monitor the spray



irrigation, that the proposed expansion should have no impact on the surrounding area or the community, that some of the lots contain some wetlands, that no homes will be located in wetlands, and that the entire park (486 lots) has been tied into the West Rehoboth Sanitary Sewer District since June 1996.

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

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

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

The Commission found, based on comments received from DelDOT, that the Department recommends that the County consider the application without further regard to traffic impact.

The Commission found, based on comments received from the Sussex County Engineering Department, that sanitary sewer capacity is available for the 39 lot expansion, that the property owner will be responsible for connection charges (impact fees) at a rate of \$2,808.00 per EDU, and that the connection charge rate is for the period July 1, 1996 to June 30, 1997.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains 10 different soil types, of which 6 types have slight limitations, 1 has moderate limitations, and 3 have severe limitations, that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission also found that the Sussex Conservation District has issued a Detailed Sediment and Stormwater Management Plan approval for the expansion.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objection to the application, that the State hopes that Sussex County is addressing mitigation of damage to new and existing mobile homes due to tidal increases and flood possibilities, that the Division of Historical and Cultural Affairs is extremely interested in meeting with the project manager in trying to protect the site as much as possible, and that the Department of Agriculture supports the applicant's desire to move present lots away from wetlands to an upland location, that the Department of



Agriculture cannot support the request in the absence of chemical analysis of the soils demonstrating that it's safe for the use, and recommends total metals analysis to ensure protection of human health and the environment.

The Commission found that a resident of the community wrote a letter of opposition to this application and requesting an Environmental Impact Statement.

The Commission found that the application was represented by Mr. Craig Hudson, who stated that they started the process in February 1996 and were halted by DelDOT's request for a traffic impact study, that 486 lots have been developed of the original approval for 545 lots, that 55 lots had been revised due to redesign of the park and wetlands, that the 39 lot expansion area replaces the sewer treatment area which had been used for 15 years for spray irrigation, that the spray irrigation area had been planted with grasses that were harvested each year, that monitoring wells have been located all around the site to monitor the spray irrigation, that the proposed expansion should have no impact on the surrounding area or the community, that some of the lots contain some wetlands, that no homes will be located in wetlands, and that the entire park (486 lots) has been tied into the West Rehoboth Sanitary Sewer District since June 1996.

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

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

## 2. Subdivision #96-27--Gordon Berl

Gordon Berl, applicant, and James Fuqua, Attorney, were present on behalf of this application to consider the Subdivision of land in an MR Medium Density Residential Zoning District in Indian River Hundred by dividing 96.20 acres into 142 lots, located on the east side of Road 285, 300 feet north of Road 286.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.

Mr. Fuqua advised the Commission that this proposal is for a 142 lot subdivision, that individual on site septic systems are proposed, that a central water supply system is proposed, that



the streets within the subdivision will be private and built to Sussex County specifications, that there will be a Homeowners Association responsible for the maintenance of the streets, stormwater management areas and buffers, that improvements will be made at DelDOT's request, that the site is close to shopping areas, that the property was zoned MR Medium Density in 1972, that it was rezoned to be developed, that the applicant has a sales contract to purchase the property, that there would be changes to the plan to provide for a better design, that half of the site is wooded and the other half cleared, that there are no wetlands on this site, that there is a high ridge running through the site, that the preliminary plan meets the requirements of the Subdivision Code and that they are requesting preliminary approval, that the applicant understands that he needs to obtain agency approvals prior to final approval, that this property was conceptually designed by Randall Arendt, that the Memorandum of Understanding between the Sussex County Council and DNREC does not apply to this application, that the proposed type of dwellings are single family, that the project will be done in phases of twenty five lots for each phase, and that a septic feasibility statement has not been obtained from the DNREC.

There were no parties present in support of this application.

Gene Batchelor, a Riverdale resident and adjacent property owner, spoke in opposition and expressed concerns about buffer zones being adjacent to agricultural lands, increased traffic on Road 285, that the immediate area is farmland, complaints from lot owners about farming operations, and trespassing.

Mr. Fuqua advised the Commission that all lot owners would have a deed restriction referencing agricultural operations in the area and that they would be aware of this prior to purchasing lots.

John Souder, an area resident, spoke in opposition and expressed concerns about over development, that the soils on the property are poorly drained, that there would be a loss of wildlife habitat, that the septic systems will fail and contaminate individual wells, and advised the Commission that this site was denied a development approximately 7 to 8 years ago.

Mr. Souder also advised the Commission that Mr. Alden



Henry Glowiak, an area resident, spoke in opposition and advised the Commission that the soils are poorly drained, that there is no need for additional lots in the area since other existing subdivisions are not fully developed, raised concerns about who will maintain the central water system, and that the site is far away from any infrastructure.

Michael Brown, an area resident, spoke in opposition due to increased traffic on Road 285, that the area is predominantly agriculture, and the proposed density being sought.

Michael Tyler, President of the Citizens Coalition of Lewes, spoke in opposition stating that this proposal is a classic example of sprawl development, that farmland needs to be protected, and that the proposal does not comply with Shaping Delaware's Future.

Mr. Fuqua advised the Commission that twenty years ago, the County felt that this area was appropriate for development, that the plan meets the requirements of the Ordinance, and that this application should be approved.

There were twenty three persons present in opposition to this application.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

This Commission discussed the points and issues raised during the Public Hearing.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to deny this application based on the record of opposition and since the use would be out of character with the area.

### 3. Subdivision #96-28--Nolan E. & Milton Banks

Nolan Banks, applicant, and Walt Bryan were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred by dividing 31.90 acres into 39 lots, located on the north side of Road 238, 3,658 feet east of Road 240.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.



Mr. Bryan advised the Commission that this application is for 39 lots, that the site is approximately two miles west of the Town of Milton, that there is a need for affordable housing in the area, that Road 238 has a low traffic count, that the wetlands on site will be delineated, that the type of housing will be stick built dwellings, that the dwellings will conform to Fannie Mae mortgage procedures, that the streets, stormwater management areas, and buffer strips will be maintained by a Homeowners Association, and that representatives of Greenwood Trust have visited the site and will provide the financing to develop the property.

Donald Leah, President of Milton Housing Corporation, spoke in support of this application and advised the Commission that the development is an opportunity for the residents and would be affordable for first time home buyers.

Thomas and Rita Morris, adjacent property owners, spoke in opposition due to the entrance being located on a curve on Road 238, increased traffic would occur, that there are drainage problems on this property, that this would be a loss of farmland and wooded areas for hunting, who will maintain the infrastructure, increased density, that one half acre lots are too small for septic systems, and concerns about manufactured homes being permitted, and submitted two photographs of the area.

Marguerite Duffy, an area resident, spoke in opposition referencing low income housing, that the property does not drain well, that there is no need for additional lots and if approved, drugs will become a problem in the neighborhood.

Vernice Duffy, an area resident, spoke in opposition referencing health reasons and that the additional homes will impact the groundwater.

Francis Herbert spoke in opposition referencing that the area is agricultural, that there is no need for additional traffic on Road 238, and that the use will not be in character with the neighborhood.

Gerald Webb, Jr. spoke in opposition referencing septic concerns.

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. Ralph, seconded by Mr. Lynch, and carried unanimously to deny this application since the site is poorly drained, that it is a loss of agricultural land, and that it would be out of character with the neighborhood.

4. Subdivision #96-29--1st State Storage Company

Mark Vugrinec was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 10.66 acres into 16 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located on the north side of Route 18, 1,200 feet east of Road 527.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.

Mr. Vugrinec advised the Commission that the subdivision would provide affordable housing in the area, that the surveyor will address all requirements of the Technical Advisory Committee, that the proposed homes will be modular homes with a block foundation, that there is no fencing proposed around the mini storage area, and that he was not aware of the Agricultural Preservation Districts in the area.

There were no parties present in support of or in opposition to this application.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the Public Hearing.

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

5. Subdivision #96-30--Mike Mock

Mike Mock was present on behalf of this application to consider the Subdivision of land in a C-1 General Commercial and AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 5.28 acres into 11 lots, located on the northeast side of Road 268, 500 feet north of Delaware Route One.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.



Mr. Mock advised the Commission that this site has been for sale for over five years, that it has been difficult to obtain access to the site from DelDOT, that there is a need for small commercial lots in the area, that since there is a funeral home next to the site, the site is not good for residential uses, that the entrance to the funeral home will be a shared access to this site, that the site was originally part of the Carpenter Farm and has been farmed in the past, that there are not any wetlands on the site, and that this use is preventing sprawl.

Mr. Lank advised the Commission that Mabel Granke stated that she has no concerns with this proposal since no additional entrances are proposed.

There were no parties present in support of this application.

Keith Parsells, an adjacent property owner, spoke in opposition to this application and advised the Commission that he was made aware of this application by the notice that was sent by the office, that he made an offer to purchase this site but could not obtain an entrance approval from DelDOT, that he is not aware of an agreement with DelDOT that the applicant may use his entrance for access to this site, that he invested alot of money in developing his site, questioned the amount of business that is being proposed, questioned if there are any buffer requirements, and expressed concerns about additional traffic.

Mike Tyler, President of the Citizens Coalition, spoke in opposition to this application based on the way that it is being presented, referenced the number of lots being squeezed into a small area, and the traffic congestion in this area.

Peter Beamon, an adjacent owner, spoke in opposition to this application and referenced the traffic on this road, stated that the site is in a dangerous location because of the exit off of Route One, questioned the number of proposed lots, and the setback requirements.

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 deny this application because of the traffic concerns in the Road 268 and Delaware Route One corridor.



6. Subdivision #96-31--Dale C. & Sandra M. Cohee

Dale Cohee, developer, and Karen Brittingham and Harry Murphy of Charles Murphy Associates, were present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Cedar Creek Hundred by dividing 17.32 acres into 21 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located on the east side of Road 2216-A, 900 feet northeast of Road 224.

Mr. Abbott summarized the Technical Advisory Committee Meeting of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.

Mrs. Brittingham advised the Commission that this application is 21 lots which will be leased, that the site is adjacent to Pine Haven Campground, and surrounded by strip lots, that lots 1,2, and 3 will be buffered from adjacent farmland, that the minimum lot size is one half acre, that the manufactured homes will comply with the zoning code, that the entrance to the site is existing but not constructed, that the site has not been farmed for over two years, that the developer is requesting a variance from the cul-de-sac length, and that they do not agree with the State of Delaware Department of Agriculture's comments.

Mr. Cohee advised the Commission that the campground and mobile home park are fully developed, that he also owns six lots in the strip development, that the borrow pit on this site is about four feet deep, and that the vegetation in the borrow pit will remain.

There were no parties present in support of or in opposition to this application.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the Public Hearing.

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

7. Subdivision #96-32--Robert M. Bocek

Robert Bocek and Jeff Clark of Land Tech Inc., were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 9.58 acres into 11 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located on



the north side of Route 24, 291.41 feet southwest of Road 409.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC.

Mr. Clark advised the Commission that the street will be private and built to County specifications, that individual septic and wells are proposed, that the soils on site are suitable for the intended use, that the area is predominately large home sites, that they were not aware of any Agricultural Preservation Districts in the area, and that the applicant will reside at one of the lots.

There were no parties present in support of this application.

Kathleen Smith, an adjacent property owner, spoke in opposition to this application and referenced comments made by the Department of Agriculture, that no stormwater management area is shown on the plot, questioned if there will be any buffers required, that the site does not drain well, questioned the type of septic systems that will be used, questioned the type of deed restrictions and why they have not been submitted, and submitted photographs and deed restrictions from three area subdivisions.

Leslie Dick, an area resident, spoke in opposition to this application and expressed concerns about traffic congestion in the area.

There were twenty parties 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. Ralph, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

#### 8. Subdivision #96-33--William C. Bogart

William Bogart and Jeff Clark of Land Tech Inc., were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 4.12 acres into 3 lots, and a waiver of the street construction requirements, located southeast



of Pepper Creek, 407 feet northwest of the intersection of Road 341 and Road 342.

Mr. Abbott summarized the Technical Advisory Committee Report of December 11, 1996, and comments received from the Wetlands and Subaqueous Lands Section of the State DNREC, a letter from the Acting County Engineer not supporting the street requirement waiver, and a letter in opposition to this application from John W. Sappington.

Mr. Clark advised the Commission that this application is for three lots, that the site is presently occupied with a dwelling, that there will only be two additional building lots created, that the site will be served by individual septic and water systems, that the dirt driveways exist, that the waiver requirement is to allow for the same base as required by the Subdivision Code with slag or stone cover, and that the road leading to the Bluff's at Sandy Landing is tar and chip which serves nine homes.

There were no parties present in support of this application.

Greg White, developer of the Bluff's at Sandy Landing, spoke in opposition to this application and advised the Commission that he still owns four lots in the development, that he was required to build his streets to the requirements of the Subdivision Code, that the roads are not compacted, raised questions about the legality of the fifty foot easement, stated that the survey is not accurate since the road is paved and not dirt, and stated that the applicant should reimburse him the cost of paving the road leading to the applicants property.

Mr. White read a letter in opposition to this application signed by Nino D'Orazio who owns lot 2 of the Bluff's at Sandy Landing.

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 a septic feasibility statement from the State DNREC and legal research to be done by the Assistant County Attorney.



### III. OTHER BUSINESS

#### 1. The Marketplace

The Commission reviewed a commercial site plan for retail sales, office space and a restaurant at the intersection of West Way within Sea Colony Development and Delaware Route One.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the uses are permitted uses, that there is parking located within the forty foot front yard setback and that as of this date, the staff has not received any agency approvals or permits.

Jeff Clark of Land Tech Inc. advised the Commission that all approvals should be received after the holidays, and that the developer would like to have the parking remain as shown.

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.

#### 2. Glen & Sally Jones

The Commission reviewed a concept to create three parcels off of an existing fifty foot right of way north of Broad Creek.

Mr. Abbott advised the Commission that this concept was approved in December 1994, and that the owners did not have the plan recorded.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to re-approve the three parcels and fifty foot right of way.

### ADDITIONAL BUSINESS

It was the consensus of the Commission to have a workshop on the Comprehensive Land Use Plan at the next regularly scheduled meeting of January 9, 1997.

Meeting adjourned at 11:30 P.M.