

## MINUTES OF THE REGULAR MEETING OF DECEMBER 27, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 27, 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 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. Johnson, and carried unanimously to adopt the agenda as amended by removal of item #3 of Old Business.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of December 13, 2001 as amended.

## PUBLIC HEARINGS

**C/U #1431** -- application of **RANDY D. WILSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a masonry contractor's home office and storage of equipment in storage buildings to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.3782 acres, more or less, lying at the northeast corner of Route 36 and Route 224, and south of Route 629.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam and Woodstown sandy loam; that the Fallsington soils have severe limitations; that the Woodstown soils have slight to moderate limitations; that the applicant shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Fallsington soils are considered of Statewide Importance, Prime Farmland, and a Hydric soil; that the Woodstown soils are considered Prime Farmland and a Hydric soil in depressions; that no storm flood hazard areas are affected; that no tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Bonnie Wilson and Randy Wilson were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that they had applied for a variance for the block fence and received approval by the Board of Adjustment; that they submitted a packet of information to the Board of Adjustment at the time of the public hearing in reference to no objection to the business and the block wall from the majority of the neighbors; that they take pride in the

maintenance of their yard; that there are no chemicals stored on the site; that they have been operating as a home business since July 1999; that they did receive a violation for operating the business and then immediately started the application process; that they did not know that they were in violation for the home business; that they obtained a permit for the floor of the garage; that they propose to store two mixers and materials in the utility building on the site; that the office is located in the dwelling; that they have two pickups; that employees do come to the site; that they want to install two 27" by 32" signs on the site with one on Route 36 and one on Route 629; that their normal business hours are from 7:00 a.m. to 4:30 p.m. Monday through Friday, with no weekend hours; and that all heavy equipment work is performed by sub-contractors.

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. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved with the following conditions: 1) There shall be no outside storage. 2) Business hours shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday. There shall be no weekend business hours. 3) Signage shall be limited to two 27" by 32" signs, with one sign on Route 36 and one on Route 629. 4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 - 0.

**SUBDIVISION #2001-33** -- application of **DR. LAWRENCE A, AND BONNIE KAPLAN** to consider the Subdivision of land in a GR General Residential District in Broadkill Hundred, Sussex County, by dividing 3.00 acres into 4 lots, located southeast of Best Lane, 480 feet southwest of Route One.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 19, 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 Sassafras sandy loam and that these soils have slight limitations for the intended use.



The Commission found that Dr. Lawrence Kaplan and Joe Conaway were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is zoned General Residential; that four single family lots are proposed; that there are three lots that will be 0.6 acre and one lot will be 1.0 acres; that the applicants will build a home on the 1.0 acre lot; that sewer will be provided by Sussex County and that water will now be provided by Tidewater Utilities; that the cul-de-sac will be private and built to Sussex County specifications and be maintained by the homeowners; that Best Lane will be paved down to the tree line; that the restrictive covenants have been submitted with the application; that the site is not adjacent to any agricultural lands and a buffer is not required; that the applicants will preserve as many trees as possible; that the wetlands have been delineated and will not be impacted; that even though the site is zoned General Residential, manufactured homes will not be permitted on any of the lots; that the square footage of the proposed homes will be from 1,800 to 2,400 square feet; that the homes will be upscale; that the deed restrictions prohibit any further subdivision of the property; that the lots will be used for residential purposes only; that the applicants will comply with the recommendations of the Technical Advisory Committee; that there are no natural areas on site; that Best Lane is a public road; that the driveways to the lots will be off of the cul-de-sac and not off of Best Lane; that the applicants will permit the County and State to inspect the site for any possible burial plots; that if grave sites are found on the site, an easement will be provided for relatives to visit if they so choose; that if there are grave sites, they will not be disturbed; that the final plan will be submitted to all agencies for review and approval; that a common driveway is proposed for lots B and C and it will be shown on the final record plan; that there are other single family homes in the area; that there will not be any negative impacts to the wetlands; that there are no objectionable features proposed; that there will not be any negative impacts to surrounding property values; that no farmland is being destroyed; that there will not be any negative impacts to the local school district; that the four lots will not impact traffic; and that if the application were for multi-family units, twelve units would be permitted.

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. Johnson, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary with the stipulations that the shared driveway for lots Band C be shown on the final plan and if there are any burial sites on the property, they be shown and the easement to the burial sites be shown on the final plan.

Motion carried 5 to 0.



**SUBDIVISION #2001-34** -- application of **RICHARD AYDELOTTE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 25.94 acres into 15 lots, located southeast of Route 16, 1,708.61 feet northeast of Road 234-A.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 19, 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 Sassafras sandy loam and Woodstown loam; that the Sassafras soils have slight limitations for the intended use and that the Woodstown soils have slight to moderate limitations for the intended use.

The Commission found that Rich Aydelotte, James Griffin, Attorney, and Mark Davidson of DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 15 lots are proposed on 26 acres; that the minimum lot size is 0.75 acres; that the applicant will comply with the recommendations of the Technical Advisory Committee; that the applicant has owned the property since 1985; that a manufactured home community is located across Route 16 from this site; that the minimum home will be 2,400 square feet; that manufactured housing will not be permitted in the subdivision; that approximately fifty percent of the site will be open space because of the proposed buffer and the seven acres that will be conveyed to the Rookery Golf Course; that there are no wetlands located on the site; that as many trees as possible will be preserved; that it will be mandatory for lot owners to join the homeowners association; that two stormwater management areas are anticipated; that the streets will be private and built to County specifications; that the forested buffer is about five acres and will remain undisturbed; that the turn around in the middle of the subdivision will be helpful for emergency vehicles and act as a speed deterrent; that no objectionable features are anticipated; that there are no grave sites on the property; that individual wells and septic systems are proposed; that the entrance will be built to DelDOT specifications; that there will not be any negative impacts to surrounding property values; that the lots bordering the golf course will sell for \$120,000 and the remaining lots will sell for \$85,000; that the deed restrictions have been submitted for review; that no one from the Division of Fish and Wildlife has approached the applicant since the Technical Advisory Committee meeting; that the Division's attorneys have not been able to answer any questions about the Delmarva Fox Squirrel for the past two and one half years; that the Fox Squirrel was transplanted to the area and no one is sure if they are on this site; that the applicant owned the land for two years prior to the release of the Fox Squirrel; that the Fish and Wildlife never sent notices or posted the sites about the release of the animal and never held any hearings; that the applicant received

preliminary approval for 28 lots in 1993 but never built the project due to problems with the previous engineering firm; that a golf course is located to the west of the site and a buffer is not required; that the applicant's home is adjacent to this property; that the entire site is wooded; that the applicant has voluntarily established a buffer for the Fox Squirrel and it will remain as a natural buffer; and that only stick built homes will be permitted.

The Commission found that Nancy Aydelotte and Stephanie Aydelotte were present in support of this application and advised the Commission that the subdivision will be a buffer from the golf course and Nancy Aydelotte's property.

The Commission found that no parties appeared 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. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary.

Motion carried 5 to 0.

**SUBDIVISION #2001-35** -- application of **BEVERLY T. THAWLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 70.289 acres into 64 lots, located west of Road 206, 1,470 feet northeast of Route One.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on December 19, 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, Sassafras sandy loam, and Woodstown sandy loam; that the Evesboro and Sassafras soils have slight limitations for the intended use and that the Woodstown soils have slight to moderate limitations for the intended use.

Mr. Schrader advised the Commission that the restrictive covenants have been submitted and have been found to be acceptable.

The Commission found that Beverly Thawley and Bob Nash, Surveyor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed subdivision is surrounded by a strip lot



development created by the applicant; that the minimum square footage for the homes will range from 1,800 to 2,400 square feet; that the storm water management areas will comply with the regulations of the Sussex Conservation District; that any necessary buffers will be provided; that the applicant will comply with the recommendations of the Technical Advisory Committee; that lots 17 and 18 have existing entrances approved by DelDOT; that no inter-connection to the McColley lands are proposed; and that the strip lot owners may become a part of the Homeowners Association if they desire to.

The Commission found that Collette Haycraft and Gary Licsko were present and questioned the square footage required for the homes; if the streets will be paved; entrance locations, and types of water and sewer proposed.

Mr. Nash responded that the homeowners association could change the restrictions if 66 percent of the owners agree; that the streets will be paved to Sussex County specifications; that an entrance is proposed on Road 206 and Road 209 but DelDOT has not officially approved the entrance plans; that individual on site wells and septic are proposed and that they will have to conform to the requirements of the DNREC.

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

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

Motion carried 5 to 0.

**ORDINANCE AMENDMENT -- AN ORDINANCE AMENDING CHAPTER 99, SECTION 13 OF THE SUBDIVISION CODE OF SUSSEX COUNTY, RELATING TO SUBMISSION OF PRELIMINARY PLAT AND PRESENTATION TO COMMISSION.**

Mr. Lank summarized the proposed Ordinance and advised the Commission that the proposed amendment provides for the elimination of the requirement that the Commission, on the second meeting of each month, hear subdivisions so that all applications of any kind may be heard in chronological order, based upon filing date.

Mr. Lank added that the present Subdivision process provides that an applicant submit an application and Subdivision plans 45 days prior to the second meeting of each month for a public hearing, and that the process impacts applications for Change of Zones or Conditional Uses which now take approximately 3 to 4 months longer due to Subdivisions applications.

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

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.

Motion carried 5 - 0.

#### OLD BUSINESS

**C/U #1428** -- application of **KYLE W. WELSH** to consider the Conditional Use of land in a C-1 General Commercial District for a sales cart program for the sale of hot dogs/food items off of carts to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 17.48 acres, more or less, lying south of Route One and east of Route 275.

The Commission discussed this application which has been deferred since the public hearing on December 13, 2001.

Mr. Lank advised the Commission that he wrote a letter to the Office of the State Fire Marshal requesting comments on the location of the proposed parking space for the food service van next to the building and that he has not yet received a response to his letter.

Mr. Lank advised the Commission that the applicant had contacted the Office of the State Fire Marshal and returned with a form referencing that a plan assessment was conducted indicating that State fire regulations have no impact on this project and that no further action is required by the State Fire Marshal's Office.

Motion by Mr. Johnson, seconded by Mr. Wheatley to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions: 1) Business hours shall be from 10:00 a.m. to 3:00 p.m. seven days per week. 2) No less than two (2) waste containers shall be maintained in the vicinity of the van.

Motion denied 3 - 2.

**C/U #1430** -- application of **ROSE AILEEN CARTWRIGHT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to store construction equipment to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 4.8507 acres of a 23.597 acre tract, more or less, lying north of Route 46, 650 feet east of Route 516.



The Commission discussed this application which has been deferred since the public hearing on December 13, 2001.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 5 - 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 45 lots, located northeast of Road 46, 920.26 feet southeast of Road 517-A.

The Commission discussed this application which has been deferred since the public hearing on November 29, 2001.

Mr. Abbott advised the Commission that the applicant has submitted a revised plan for 12 less lots; that the revised plan is for 133 lots; that a septic feasibility statement has been received from DNREC and that the site is suitable for individual on site septic systems; and provided a map with agricultural preservation districts in the area.

Mr. Johnson questioned if the Commission could act on the 133 lot revised plan or the 145 lot plan.

Mr. Schrader advised the Commission that they have to consider the 145-lot application since the advertisement and notices referenced a 145-lot application.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to deny this application for the following reasons: 1) The 145 lot subdivision does not meet the purpose of the Subdivision Ordinance in that it does not protect the orderly growth of the County because the proposed site is not in a development district as established by the 1997 Sussex County Land Use Plan, 2) The proposed 145 lot subdivision does not meet the purpose of the Subdivision Ordinance in that it does not encourage the preservation and conservation of farmland because the land use in this vicinity is primarily agricultural, the application would remove 149.78 acres, more or less, from tillage, and there are no other similar residential real estate developments in this area along County Road 46, 3) This property adjoins a farm preservation district and other farm preservation districts are in the immediate area and a State Wildlife Area is adjacent to the site, 4) In considering the minimization of (a) soil removal and grade changes; (b) erosion and sedimentation; (c) increased rates of runoff; (d) potential for flooding; and (e) prevention of pollution of surface and groundwater, the application does not contain specific plans



showing that these areas of concerns have been addressed or that any preliminary designs for drainage have been recommended or considered, 5) The proposed 145 lot subdivision does not provide for safe vehicular traffic and pedestrian movement within the site, with access from only one roadway causing accessibility concerns for emergency vehicles, and 6) The proposed entrance is near a curve on County Road 46 and will create too much traffic on this road.

Motion carried 5 to 0.

#### OTHER BUSINESS

##### The Summerlyn Preliminary Multi-Family Site Plan Route One

Mr. Abbott advised the Commission that the proposed plan is for 66 units on a 7.84 acre tract; that a letter of no objection has been received from DelDOT; that 5.50 acres of the site is zoned commercial and permits 66 units; that 2.34 acres is zoned agricultural residential and will be used for storm water management; that 3 buildings are proposed with 18 units each and 1 building with 12 units is proposed; that there are 3 garages with 8 parking spaces each proposed; that 198 parking spaces are required and 200 are proposed; that a swimming pool is proposed; that the setbacks meet the requirements of the zoning code; that sewer will be provided by Sussex County and Tidewater Utilities will provide central water; that no development is located in the wetlands; and that the site plan meets the requirements for preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals.

Motion carried 5 to 0.

##### Rehoboth Beach Century 21 Office Revised Commercial Site Plan Route One

Mr. Abbott advised the Commission that the revised site plan is for a 50-foot by 75-foot two story office addition; that a letter of no objection has been received from DelDOT; that 43 parking spaces are required and provided; that a 20-foot landscaped buffer is proposed; that the setbacks meet the requirements of the zoning code; that sewer will be provided by Sussex County and central water will be provided by the City of Rehoboth Beach; that there are no wetlands on the site; and that the site plan meets the requirements for preliminary approval.

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

Motion carried 5 to 0.

Angola Estates GR/RPC  
Revised Site Plan Phase 1

Mr. Abbott advised the Commission that Phase 1 now includes 71 single family lots; that the last approved Phase 1 plan was for 41 lots; that the total number of lots for the entire project has not increased; that the plan meets the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised Phase 1 as a final.

Motion carried 5 to 0.

Dr. John Spieker  
C/U #1150 Revised Site Plan Road 269A

Mr. Abbott advised the Commission that on October 24, 1996, the Commission approved a site plan for a 7,500 square foot medical building with two 5,000 square foot buildings for future use; that the owner now proposes to build one 12,500 square foot building instead of the two 5,000 square foot buildings; that the conditions of approval did not stipulate any square footage requirements; and questioned if the Commission will allow a revised site plan to be submitted for review or require an amended conditional use application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to allow a revised site plan to be submitted for review and approval.

Motion carried 5 to 0.

Oak Forest Park  
Revised Site Plan Route 22

Mr. Abbott advised the Commission that a request has been received to allow for two additional recreational vehicle parking spaces within Oak Forest; that the two spaces would be where the pump house and well was located; and raised a questions as to whether an amended conditional use application would be required.



Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the 2 lots as a concept.

Motion carried 5 to 0.

Donnie Jefferson  
Lot and 50' right of way Road 233

The Commission reviewed a concept to create a lot with access from a 50' right of way off of Road 233.

Mr. Allen advised the Commission that he has visited the site two times; that the right of way would be over an existing farm lane; and that he has no problems with this request.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the lot and right of way as a concept.

Motion carried 5 to 0.

Mary Reed  
Lot and 50' right of way Route 404

The Commission reviewed a concept to create a parcel with access off of an existing 50' right of way.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the lot and right of way as a concept.

Motion carried 5 to 0.

Ricky Vickers  
3 lots on existing 50' right of way

The Commission reviewed a concept to create 3 lots off of an existing 50' right of way.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the 3 lots and right of way as a concept.

Motion carried 5 to 0.

Subdivision #2001-7 - - Gary Watson  
Discussion - Reasons for Denial

Mr. Abbott advised the Commission that the applicant appealed the Commission's decision in denying this subdivision application; that the County Council held an appeal hearing and has remanded this application back to the Commission so that the Commission can articulate their reasons for denying the application.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to defer action until the January 10, 2002 meeting.

Motion carried 5 to 0.

Meeting adjourned at 9:22 P.M.