

## MINUTES OF THE SPECIAL MEETING OF FEBRUARY 20, 2003

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 20, 2003 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. Lynch, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Planner.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the revised agenda as circulated.

Mr. Robertson described how the public hearings would be conducted.

### PUBLIC HEARINGS

C/U #1479 – application of **JEREMY AND ANASTASIA M. DAY**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for restoration and resale of motorcycles, and retail sales of parts, to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 1.0149 acres, more or less, of a 78.92 acre tract, lying south of Road 419 and 1,800 feet north of Road 413.

The Commission found, based on comments received from the 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 there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils on the site are mapped as Evesboro loamy sand, Fallsington sandy loam, and Pocomoke sandy loam; that the Evesboro soils have slight limitations for development; that the Fallsington and Pocomoke soils have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation upon completion of construction; that the Evesboro, Fallsington and Pocomoke soils are considered of Statewide Importance; and that the Fallsington and Pocomoke soils are considered Prime Farmland.

The Commission found that a petition was received in opposition to the application and the size of the proposed construction of an 1,800 square foot structure. The petition was signed by 33 area residents.

The Commission found that Jeremy Day was present and stated in his presentation and in response to questions raised by the Commission that he intends to restore European motorcycles; that most of the motorcycles will be sold over the internet and at swap meets; that he does not plan on performing any repair work for the public; that some customers will pick up parts or motorcycles; that there will be no outside display or storage; that there may be some display indoors; that business hours will be from 11:00 a.m. to 7:00 p.m. Monday through Friday; that Saturday business hours will be from 10:00 a.m. to 1:00 p.m.; that there will be no Sunday hours; that there will be no employees; that all work will be performed indoors so there will be minimal noise; that it takes approximately 1 week to repair a motorcycle; that no test driving will be permitted on public roads; that this type of motorcycle is not licensed for road use, they are enduro bikes, a.k.a. dirt bikes; and that he and his wife own approximately 79 acres surrounding the site.

The Commission found that Jason Burnette, Elizabeth Landy, Steven Hurd, and Darrell Fisher, of the nine parties present in opposition, stated that the neighbors were concerned about motorcycles being test driven on the public roads in the area; that the motorcycles are unlicensed; motorcycle noise; questioning how the applicant will enforce a restriction that no one be permitted to test drive a motorcycle on the public roads; that the DelDOT comments are questionable since they relate to a 1998 traffic count and do not reflect the number of homes built in the area since 1998; additional traffic; children safety; that motorcycles may disturb horses that pasture along the public road east of the site; and questions why someone would buy a motorcycle without trying it out.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to defer action for further consideration.

Motion carried 4 – 0.

C/U #1480 – application of **WILGUS ASSOCIATES, INC.**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office building, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,944 square feet, more or less, lying southeast of Savannah Road (Route 18) and 380 feet southwest of Quaker Road.

The Commission found, based on comments received from DelDOT, that the Department does not recommend a traffic impact study for this application; that the Department does have concerns about this application since they see it as encouraging more traffic in an area that the Department has identified as operating at unacceptable levels of service; that according to the Statewide Long Range Transportation Plan this project is in a



Multimodal Investment Area, as is most of the Lewes/Rehoboth area; that in these areas the Department intends to support development with a more comprehensive menu of transportation facilities and services; that the Department plans to make investments to diversify the transportation system by adding capacity and supporting development that is consistent with that goal; that investments in transit, bicycling, and walking facilities are the focus so that the Department can support those alternative modes as supplements to the automobile; that this segment of Savannah Road operates at level of service E during the summer peak hour; that the subject parcel is only 0.57 acre and the proposed real estate and insurance office would not be considered an intense use, therefore, a traffic impact study is not necessary; and that the Department is concerned that the proposed use would add more traffic to an area with existing poor levels of service (E) during the summer peak hour.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Sassafras loam which has slight limitations for development; that the applicants shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; and that the Sassafras soils are considered Prime Farmland.

The Commission found that letter were received from Katharine M. Nicodemus and Groome and Rosann D'Addurno Mears in support of the application.

The Commission found that a letter was received from James L. Short requesting that if the application is approved it should contain stipulations of approval similar to the stipulations imposed on Conditional Use No. 1046 and No. 1162 for Andrew Malinowski.

The Commission found that Michael Wilgus and David Wilgus were present with David Rutt, Attorney, on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this site is already subject to a Conditional Use of Office approved in 1991; that all of the improvements on the site have been removed; that the existing pavement from the former business still exists; that the site was also used for retail for videos and TV repairs; that they propose to build a building for a real estate and insurance office only; that the Wilgus family has been in business since 1945 with several offices around the County; that the existing office on Savannah Road in Lewes is not adequate in size; that the County has recognized that this area has been acceptable for office use (medical, accounting, tax, business, etc.); that the use will be in keeping with the other uses in the area; that the maximum number of employees shall be ten (10); that business hours are 8:30 a.m. to 5:00 p.m. Monday through Saturday with Sunday hours by appointment only; that the proposed building,

including the future expansion, will not exceed 4,200 square feet; that they intend to design the building so as to maintain a residential appearance; that the site will be landscaped; that the neighboring offices have nice fencing; that trash will be contained to the rear of the structure and properly screened; that a 32 square foot sign is proposed; that parking is proposed along the side property line; that parking for Dr. Nicodemus abuts their property line and that they proposed to create their parking facing that parking area; that traffic should be reduced from the original Conditional Use due to the nature of the business and the hours of business proposed; that the project will be served with central sewer from the County and a private water well; that the site is within a Development District according to the 1997 Comprehensive Plan; that the use meets the intent of the Conditional Use section of the Code; that the use is a public business in character; that the use is only intended for Wilgus Associates for real estate and insurance and not rental space; and that the second level will be used for storage only, not office space.

The Commission found that Mr. Rutt submitted a copy of the deed to the site, photographs of a similar building to the one proposed, and a copy of the survey of the site showing the previous improvements.

The Commission found that Mr. Rutt submitted and read the following proposed conditions:

- 1) The proposed structure shall not exceed 4,200 square feet as shown on the preliminary site plan.
- 2) The structure to be built shall be architecturally compatible with the existing residences and businesses in the neighborhood.
- 3) The hours of operations shall be limited to 8:30 a.m. to 5:00 p.m. Monday through Saturday and on Sunday by appointment only.
- 4) All parking shall be on the eastern boundary of the property and shall be landscaped adjacent to Savannah Road.
- 5) Signage shall be limited to one ground sign not to exceed 32 square feet with directional lighting.
- 6) The number of employees shall not exceed 10.
- 7) All trash containers shall be placed at the rear of the building and screened from view.
- 8) The use shall be limited to real estate and insurance offices.
- 9) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

The Commission found that Jim Burke was present in support of the application.

The Commission found that there were no parties present in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.



Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the use is compatible to the way the area is developing and to the uses in the area and with the following conditions:

- 1) The proposed structure shall not exceed 4,200 square feet as shown on the preliminary site plan.
- 2) The structure to be built shall be architecturally compatible with the existing residences and businesses in the neighborhood.
- 3) The hours of operations shall be limited to 8:30 a.m. to 5:00 p.m. Monday through Saturday and on Sunday by appointment only.
- 4) All parking shall be on the eastern boundary of the property and shall be landscaped adjacent to Savannah Road.
- 5) Signage shall be limited to one ground sign not to exceed 32 square feet with directional lighting.
- 6) The number of employees shall not exceed 10.
- 7) All trash containers shall be placed at the rear of the building and screened from view.
- 8) The use shall be limited to a single tenant real estate and insurance offices.
- 9) The site plan shall be subject to review and approval by the Planning and Zoning Commission.
- 10) There shall be a five (5') foot buffer adjacent to the parking along the easterly property line.
- 11) There shall be no parking adjacent to Savannah Road.
- 12) A landscape plan shall be submitted with the site plan for review and approval by the Planning and Zoning Commission.

Motion carried 4 – 0.

C/Z #1491 – application of **JESSE AND JULIE HALL, T/A BAYSIDE AUTO SALES**, 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 Indian River Hundred, Sussex County, land lying northwest of Route 24 and 300 feet southwest of Route 5, to be located on 19.0 acres, more or less.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within a Rural Area according to the Strategies for State Policies and Spending document and within a Low Density Area according to the County Comprehensive Plan; that the State objects to this proposal; that the State feels that residential development should be located within Community or Developing Areas as defined in the State Strategies maps and the County Plan; that a December 12, 2001 letter from DelDOT stated that the development of this site would have problems with site access; that visitors to the proposed project during summer peak hour would find it



difficult to make left turns out onto Route 24; that if the site is developed as proposed, the existing entrance and possibly the proposed new entrance would not be acceptable; that the entrance design must be appropriate for the specific land uses that it serves, and it is likely that DelDOT would require a single entrance, at a new location, to serve all the land addressed in the November 2001 traffic impact study; that the December 13, 2001 letter also listed some general assurances pertaining to the proposed development which DelDOT would recommend the County require of the applicant before acting on the rezoning; that these issues are still relevant and the State asks that the County refer to the December letter when reviewing this application; that the Department of Natural Resources and Environmental Control (DNREC) has advised that the soils on the site have a mixture of well-drained upland soils with moderate limitations for development to very poorly drained wetland associated soils that have severe limitations; that the sandy soils have rapid permeability's with little or no phosphorus/nitrogen absorption capacity; that these soils are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed and are intensified in those soils containing shallow water tables; that the subject site contains wetlands; that the applicant should be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetlands associated soils; that all of the wetlands associated with this parcel are tidally influenced; that the site does contain an area of riparian forest along the headwaters of Beaverdam Branch; that the Staff recommends that any plan for the development of this site include protection of the existing forested buffer along Beaverdam Branch; and that the State objects to the rezoning of this parcel because they do not feel the intended use for this parcel is compatible with its designated planning area according to the County Plan.

The Commission found, based on comments received from the Sussex Conservation District, that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; and that the soil type is considered of Statewide Importance and a Hydric soil in small depressions.

The Commission found that the applicant had submitted a booklet of information for the record and that the booklet included a cover letter requesting to withdraw approximately 13 acres from the application and that the applicant request that the County only consider the parcels fronting Route 24, approximately 6 acres surrounding the applicant's commercial property; a highlighted map of the 6 acres; a conceptual plan for development of the 6 acres; a tax map highlighted with the other commercial zones in the immediate area; a series of photographs of commercial uses in the area; a copy of the Code to reference permitted uses in C-1; DelDOT planned improvements for the intersection of Routes 5 and 24; a petition in support of the application; personal letters in



support of the application; and copies of the Minutes of the Planning and Zoning Commission and the County Council referencing the rezoning application of the applicant's C-1 site that is surrounded by this application.

The Commission found that Jessie and Julie Hall were present with Tim Willard, Attorney, and Kevin Burdette of McCrone, Inc. and stated in their presentations and in response to questions raised by the Commission that they are requesting that the County consider the requested reduced parcel of 6 acres, and not the 19 acres originally applied for; that the applicants have been operating the Bayside Auto Sales facility since 2000 and are requesting to expand that facility; that the applicants sell quality used cars and trucks; that the use is appropriate in this area of commercial uses; that the Commission recommended approval of the existing use since the site is in close proximity to other commercial uses in the area and since the site is across from the Development District boundaries within the 1997 Comprehensive Plan; that the County Council approved the existing use since the applicant established by substantial evidence that the change of zone is consistent with the character of the neighborhood as it is presently developing and since it adjoins a Development District, since the applicant established by substantial evidence that the change of zone is consistent with the purposes and goals of the Comprehensive Plan, since the applicant's proposed business will serve the convenience of the Long Neck community, and based on the findings of the Commission; that the site is surrounded by commercial uses along Route 5 and Route 24; that the commercial uses in the area include mobile home sales, landscaping, retail, real estate, carpet sales, filling station, strip shopping center, funeral home, convenience stores, produce and meat market, bank, medical offices, apartments, and emergency facilities; that the proposed site plan will meet State and County Plans; that the entrance to the site will be directly across from the entrance across Route 24; that they have 10 employees and need additional employees; that the business has outgrown the existing site; that they display 35 to 70 vehicles for sale and need to display more vehicles; that Tidewater Utilities, Inc. will supply central water to the site; that the site is located within the Long Neck Sanitary Sewer District Phase 6 Study area; that the site has adequate space for stormwater management; that the propose to create greenways around the site for buffers; that there are no wetlands on the 6 acre site; that the rezoning will provide for expansion of the automotive sales and repair facility and two pad sites; that they recently move their Bay Side Repairs facility from Long Neck Road to this site to provide more convenience to their customers; that a recent design of the intersection of Routes 5 and 24 by DelDOT provides for turn lands to and from the site; that DelDOT stated in their December 13, 2001 letter that a review of the traffic impact study indicates that the proposed development of the site does not have a major impact on the external roadway network and that DelDOT's Capital Transportation Program Contract No. 91-003-01 will improve the intersection of Routes 5 and 24; that the site is located within the Indian River Volunteer Fire Company service area; that police protection is provided by State Police; that the use will have a positive impact on the economy by providing for business

expansion, additional business, and a service to the community; that the 2002 Comprehensive Plan references that the Environmentally Sensitive Developing Area will be 600-feet from Route 24; that the applicants will comply with all DelDOT and DNREC requirements; and that they have access to Route 5 through other properties owned by the applicants.

The Commission found that Costen Shockley stated that the DelDOT contract has been bid and that the intersection improvements for Routes 5 and 24 must be completed by Memorial Day.

The Commission found that there were no parties present in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved at the reduced size of 6-acres, since the rezoning will be consistent with the development pattern of the area, and since the rezoning will provide for expansion of an existing commercial use.

Motion carried 4 – 0.

C/Z #1492 – application of **DARLENE MILLER & OTHERS**, to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying 450 feet southwest of Road 262, northwest of Road 2991 and southwest of West Meadowview Drive, to be located on 13.40 acres, more or less.

The Commission found that DelDOT comments were not requested since the subdivision already exists.

The Commission found, based on comments from the Office of State Planning Coordination, that the State has no objections to this rezoning since the project already exists and only relates to uses.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any on-site or off-site drainage improvements; that soils in the area are mapped as Evesboro loamy sand, Rumford loamy sand, Sassafras sandy loam, and Woodstown sandy loam; that the Evesboro, Rumford, and Sassafras soils have slight limitations for development; that the Woodstown soils have slight to moderate



limitations; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro and Rumford soils are considered of Statewide Importance; and that the Sassafras and Woodstown soils are considered Prime Farmland.

The Commission found that the applicants had submitted a packet of information for the record that included a enlarged portion of the tax map, a reduced copy of the tax map for the subdivision with related photographs, a copy of a septic approval for one of the lots, and a real estate promotion for one of the lots.

The Commission found that Raymond and Darlene Miller Spruill were present with James Waehler, Attorney, and stated in their presentations and in response to questions raised by the Commission that they are requesting rezoning of 13 lots within Coolspring Farms; that this portion of Coolspring Farms is zoned AR-1 and that the rest of Coolspring Farms is zoned GR; that they propose to place a mobile home double wide on lot #6; that they had been informed by a realtor that a double wide was permitted on this lot; that rezoning of the 13 lots will confirm and legitimize mobile homes on these lots; and that the rezoning will conform to the rest of the subdivision.

The Commission found, based on statements made by Mr. Lank, that three of the lots are improved by manufactured homes approved by the Board of Adjustment; that three of the lots are vacant; that four lots are improved by manufactured homes permitted in error; that three lots are improved with single family dwellings; that the subdivision was created in the 1970's; that approval of this portion of the subdivision will establish the entire subdivision into one zoning category; and that all 13 lots owners signed the petition requesting the rezoning.

The Commission found that there were no parties present in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning is consistent with development in the area and since the rezoning will bring the entire subdivision into one zoning classification.

Motion carried 4 – 0.

Subdivision #2002 – 39 – application of **CHRISTINE REECE AND WILLIAM CUGNO**, to consider the Subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space parcel into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since no new infrastructure will be required; that the staff received 2 letters and a petition with 42 signatures in support of this application and a letter received in opposition to this application and that the letters and petition will be made a part of the record for this application.

The Commission found that Christine Reece was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that they propose to make an open space area a residential lot; that the site is currently overgrown weeds; that residents within the development are in support of the application; that the commercial area to the front of the site has been developed; and submitted two letters from residents of the development in support of the application.

The Commission found that Ted Nowakowski was present and stated in his presentation and in response to questions raised by the Commission that the deeds of the parcels do not reference any open space; that the open area was for the Nowakowski family only; that the family has paid the taxes on the parcel; that there is not a homeowner's association within Fox Hollow; and that the residents of Fox Hollow have never maintained the parcel.

The Commission found that John Gorecki was present and advised the Commission that he is the homeowner's association for Fox Hollow; that he has no objections to the application as long as the lot is for one single family dwelling only; and that a residential lot would buffer the existing commercial area.

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

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action so that Mr. Robertson can research deeds and restrictions.

Motion carried 4 – 0.



Subdivision #2002 – 40 – application of **JOHN MAST**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 30.66 acres into 22 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located northeasterly of Road 78, 375 feet northwest of Road 80.

WITHDRAWN FEBRUARY 14, 2003.

Meeting adjourned at 9:30 A.M.