

## MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 12, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as amended announcing that the site plan for The Resort at Massey's Landing has been removed from the Agenda. Motion carried 4 – 0.

Mr. Wheatley announced the passing of Mr. W. Layton Johnson, former Planning and Zoning Commissioner.

Mr. Smith described Mr. Johnson's history of community service referencing his military service, long term service as Mayor to the Town of Georgetown, and as a Sussex County Planning and Zoning Commissioner for six years.

There was a moment of silence in memory of Mr. W. Layton Johnson.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of January 22, 2015 as corrected. Motion carried 4 – 0.

## OLD BUSINESS

### **Subdivision #2013-4 – Jack Lingo Asset Management, LLC**

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, Sussex County, by dividing 108.75 acres into 69 lots, Environmentally Sensitive Developing District Overlay Zone, located northwesterly of Canary Creek Subdivision, approximately 400 feet northwest of Park Road (Tax Map I.D. #3-35-7.00-part of 1.00).

Mr. Lank advised the Commission that the record for this application has been open since December 11, 2014 and that the Commission was previously provided with copies of the following:

- 1) Letter from the Office of State Planning Coordination to Mr. Robertson advising that PLUS is not needed for a third time, dated January 2, 2015.
- 2) Letter from Davis, Bowen & Friedel, Inc. to the Office of State Planning Coordination, dated December 17, 2014.
- 3) Davis, Bowen & Friedel, Inc. response to PLUS comments, dated April 8, 2013.
- 4) Davis, Bowen & Friedel, Inc. response to PLUS comments, dated January 6, 2014.

- 5) Davis, Bowen & Friedel, Inc. response to PLUS comments, dated February 4, 2014.
- 6) Davis, Bowen & Friedel, Inc. response to PLUS comments, dated June 27, 2014.
- 7) E-mail from Gerald Lechlitter, dated December 18, 2014.
- 8) E-mail from Gerald Lechlitter, dated December 25, 2014.
- 9) E-mail from John Mateyko, dated December 28, 2014.
- 10) E-mail from John Mateyko, dated December 28, 2014.
- 11) E-mail from Gerald Lechlitter, dated January 2, 2015.
- 12) E-mail from Lea Troup, dated January 7, 2015.
- 13) Letter from Davis, Bowen & Friedel, Inc., dated January 21, 2015.

Mr. Lank reminded the Commission that on December 11, 2014, the Commission had left the record open for a copy of the Applicant's response to the June 2014 PLUS letter and clarification from the Office of State Planning Coordination whether the application is required to go through the PLUS process again (both also provided to the Commission previously); that since the Office of State Planning Coordination is not requiring the Applicant to go through the PLUS process again, the record for this application can be closed; and that the Delaware State Historic Preservation Office shall be allowed to submit any additional comments during that time period.

Mr. Lank provided the Commission with copies of a letter from the State Historic Preservation Office for consideration.

The Commission discussed the application.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to close the record for this application. Motion carried 4 – 0.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

## PUBLIC HEARINGS

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

### **Conditional Use #2007 – Delaware Electric Cooperative, Inc.**

Application of **DELAWARE ELECTRIC COOPERATIVE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an electrical substation to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 4.0 acres, more or less, land lying northwest of Providence Church Road (Road 504) and across from Pine Branch Road (Road 503) (911 Address: None Available) (Tax Map I.D. #532-11.00-25.00 (part of).

The Commission found that the Applicants submitted a survey/site plan with the application.

The Commission found that DelDOT provided comments on March 25, 2014 in the form of a Support Facilities Report which references that a Traffic Impact Study was not recommended

and that the current Level of Service “A” of Providence Church Road may change to a Level of Service “B” when the site is fully developed.

The Commission found that the Sussex Conservation District submitted comments on February 4, 2015 in the form of a memorandum referencing that there are two (2) soil types on the property; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it is not likely that off-site drainage improvements will be required; that it is possible that on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on February 9, 2015 in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #4; that use of an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that Terry Jaywork, Esquire of Hudson, Jones, Jaywork and Fisher, PA, was present on behalf of Delaware Electric Cooperative, Inc. with Jack Jester of Delaware Electric Cooperative, Inc. and Walter Hoey of Century Engineering, and that they stated in their presentation and in response to questions raised by the Commission that the proposed substation is needed due to projected development in the area; that the substation will aid the Cooperative with the routing of their electrical service; that the substation will be screened from adjacent properties; that the area of the substation will encompass approximately one (1) acre of the four (4) acre parcel; that the highest point of any structure or equipment will not exceed 35 feet; that security lighting will be provided and will be downward illuminated so that they do not shine onto neighboring properties; that the substation will be fenced with 8-foot chain-linked fencing with security wire across the top; that warning signage is proposed on all sides of the fencing; that typically the electrical hum cannot be heard within 100 feet of the transformer; that the transformers will be at least 150 feet from any property line; that once constructed the site will only have one or two monthly inspection visits; that there will not be any outside equipment or material storage on the site; that the use will have no negative impact on traffic in the area; that the four (4) acre parcel size allows space for the Cooperative to screen and buffer the facility and the possibility of future expansion, if needed; and that the local fire company is normally provided a means of access to the property, in case of an emergency.

The Commission found that Mr. Jaywork presented photographs of the area.

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

The record was closed on this application.

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

Mr. Ross stated that he would move that the Commission recommend approval of C/U #2007 for Delaware Electric Cooperative, Inc. based on the record and for the following reasons:

- 1) The Conditional Use for an electrical substation is of a public nature, and it promotes the health, safety and welfare of the residents of Sussex County.
- 2) It is located on a large tract in a rural area where it will have a minimal impact on neighboring or adjacent properties.
- 3) The Co-op has stated that the substation is necessary to maintain and improve its electrical service to the current and future residents of Sussex County.
- 4) This Conditional Use is subject to the following conditions:
  - A. The perimeter of the substation shall be fenced.
  - B. Four signs shall be permitted on the fencing around the property to identify the site and emergency contact information.
  - C. Any security lighting shall be screened away from neighboring properties and County roads.
  - D. Landscaping shall be provided to screen the facility from adjacent properties and roadways. Use of existing vegetation is acceptable.
  - E. Storage of materials or equipment is permitted, but not to exceed a period of 30 days.
  - F. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

### **Conditional Use #2008 – John Martin**

Application of **JOHN MARTIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a trucking business and parking of vehicles to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 35,011 square feet, more or less, land lying northwest of Millsboro Highway (Route 24) 300 feet northeast of Lewis Road (Road 409) (911 Address: 30102 Millsboro Highway, Millsboro, DE) (Tax Map I.D. 133-20.00-17.17).

The Commission found that DelDOT provided comments on July 10, 2013 in the form of a Support Facilities Report which references that a Traffic Impact Study was not recommended and that the current Level of Service “E” of Millsboro Highway will not change as a result of this application.

The Commission found that the Sussex Conservation District submitted comments on February 4, 2015 in the form of a memorandum referencing that there is one (1) soil type on the property; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it is not likely that off-site drainage improvements will be required; that it is possible that on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on February 9, 2015 in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #5; that use of an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that three (3) letters of opposition were received from Brenda Shockley Cantrell, Robert B. Truitt, Sr., and Joseph and Joyce Lofland. It was noted that Ms. Cantrell's letter had photographs of the site attached.

The Commission found that Ellouise Martin was present with Donald Brown, tenant, and that they stated in their presentation and in response to questions raised by the Commission that John Martin was in the hospital and could not attend; that Mr. Brown lives on the property and operates a trucking business on the site; that he has had as many as three (3) trucks on the site; that he now has one (1) truck; that he no longer parks trailers on the site; that he parks the trailers at another location; that most of his haul loads are within Delaware for Coastal Materials; that he has talked to some of his neighbors and heard no complaints; that he is aware that he cannot park his tractor and trailer on Route 24; that on occasion he starts his truck at 5:00 a.m.; that he does some minor maintenance on his truck periodically; that he has his own service pickup truck; that he does tinker with cars and has a race vehicle in a box trailer on site; that no signage is necessary; that he is not sure if the neighbor to the west is still operating an auto repair business; that Parker Block is just west of the intersection on the south side of Route 24; that he does not now cross the property line with his vehicles; that the driveway is stoned; that he realizes that the area is primarily residential with small lots; and that he has been selling vehicles, but they were his personal vehicles.

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

The record was closed on this application.

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

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

### **Conditional Use #2009 – Josh Grapski**

Application of **JOSH GRAPSKI** to consider the Conditional Use of land in a C-1 General Commercial District for a food truck (vendor) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 20,271 square feet, more or less, land lying southwest of Coastal Highway (Route One) and southeast of Airport Road (Road 275A) (911 Address: 19406 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. #334-13.00-325.02).

Mr. Robertson stated that he would not be participating on this application and left the Chambers.

The Commission found that DelDOT provided comments on October 7, 2014 in the form of a Support Facilities Report which references that a Traffic Impact Study was not recommended and that the current Level of Service “F” of Coastal Highway will not change as a result of this application.

The Commission found that the Sussex Conservation District submitted comments on February 4, 2015 in the form of a memorandum referencing that there is one (1) soil type on the property; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that no off-site drainage improvements or on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments on February 9, 2015 in the form of a memorandum referencing that that site is located in the West Rehoboth Expansion Area; that wastewater capacity is unknown at this time; that the sewer design assumption is 12.0 EDU per acre for lands with commercial zoning; that Ordinance 38 construction is not required; that if a wastewater connection is required, additional System Connection Charges are required; that the current System Connection Charge Rate is \$5,500.00 per EDU; that the parcel has been provided with a sanitary sewer lateral located in the utility easement running along the parcels southern property line; that conformity to the North Coastal Area Planning Study will be required; that the proposed conditional use is on a parcel where central sewer service has been provided; that a wastewater connection permit and inspection by County personnel is required prior to the food truck connecting to central sewer service; that the appropriate System Connection Charge must be paid prior to issuance of a hookup permit; that installation of a grease trap is required prior to connection to sewer; that if the food truck will discharge wastewater to a self-contained holding tank, a holding tank permit is required; and that a concept plan is not required.

The Commission found that Josh Grapski, Billy Lucas, and Mitch Rosenfeld were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they are submitting a revised concept plan with a revised location for the food truck on the site and landscaping; that the truck is presently parked just off of Route One and is intended to be relocated closer to Airport Road next to the Liquid Surf Shop; that they have been in business (Big Chill Restaurant) on the site for approximately three (3) years; that parking is a concern, so they have two (2) leases for parking on adjacent properties for shared parking to the rear of the Food Lion store; that a holding tank/grease trap is not required by the State Health Department; that they are already discharging wastewater into the sewer lines; that they are proposing to improve the site by improving parking, drainage, and food service; that the Big Chill Restaurant has a liquor license for the site to serve indoors and on the patio; that the business is open seven (7) days per week with hours from 5:00 p.m. to 1:00 a.m. weekdays and noon to 1:00 a.m. on weekends; that no additional signage is necessary; that they may have some seating on the paver patio; that the truck is completely licensed and mobile; that they may use the truck at other sites for temporary functions and events; that there are no environmental concerns;

that they are proposing to use the truck as a vendor vehicle for the long term; that the truck is a fun concept and something different in the area to attract patrons; that the site currently complies with parking and the shared parking is for overflow; that they are relocating the area to park the truck for safety purposes; and that they are a hospitality business, operating as “Big Chill” and “Taco Reho”.

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

The record was closed on this application.

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

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

**Subdivision #2014-8 Dozer, LLC, c/o Hal Dukes, Jr.**

Application of **DOZER, LLC, C/O HAL DUKES, JR.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 10.04 acres into 14 lots, located north of Road 363 (Double Bridges Road) approximately 1,450 feet easterly of Road 362 (Parker House Road) (Tax Map I.D. #134-19.00 part of 19.00).

Mr. Lank reminded the Commission that a copy of the Technical Advisory Committee comments and an Exhibit Booklet, received January 30, 2015, were provided previously.

The Commission found that Craig Aleman, Esquire of Tunnel and Raysor, P.A. was present on behalf of the application with Ken Christenbury, Professional Engineer with Axiom Engineering, and that they stated in their presentation and in response to questions raised by the Commission that approximately one (1) year ago they were denied a Cluster Subdivision application since they did not have central water serving the site; that recently the County Council approved the site for rezoning to MR Medium Density Residential; that they are now applying for a MR Medium Density Residential Subdivision with 10,000 square foot lots; that they meet the standards of Section 99-9C of the Subdivision Ordinance; that the site is primarily wooded, and that they are planning on maintaining the existing trees in the buffer areas; that no wetland buffers are required since the wetlands on the site are wooded, and not tidal; that they are proposing a small recreational area with a gazebo; that the turn-about complies with State Fire Marshal and County Public Works regulations; that Lot 11 does not have access to a public road; and that no sidewalks are proposed due to the small size of the subdivision.

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

The record was closed on this application.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

## OTHER BUSINESS

### **Americana Bayside MR/RPC**

C/Z #1748 Knox Property – Final Record Plan – Road 394

Mr. Lank advised the Commission that this is a final record plan for Change of Zone No. 1748; that this Phase contains 45 single family lots and 48 duplex units; that the Commission granted preliminary site plan approval on September 11, 2014; that the final record plan is the same as the preliminary site plan and complies with the Subdivision and Zoning Ordinances and the Conditions of Approval; that all agency approvals have been received; and that the Commission was previously provided with a copy of the final record plan.

The Commission discussed this application.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the requested Final Record Plan. Motion carried 4 – 0.

### **The Resort at Massey's Landing**

C/U #19634 Site Plan – Long Neck Road

Mr. Lank advised the Commission that this site plan was removed from the Agenda per the request of the Applicants.

### **Skipjack, Inc.**

C/U #1997 Site Plan – U.S. Route 113

Mr. Lank advised the Commission that this is a preliminary site plan for a propane storage and CNG/Propane dispensing facility with offices and a warehouse located on a 15.00 acre parcel that is zoned AR-1 Agricultural Residential; that this Conditional Use was approved on October 14, 2014 with seven (7) Conditions of Approval; that the Conditions of Approval are noted on the site plan; that an 18,452 square foot office/warehouse building is proposed; that four (4) 30,000 gallon propane storage tanks are proposed along with a propane and CNG dispensing area; that the setbacks meet the minimum requirements of the Zoning Ordinance; that ingress/egress is off of Road 329 (East Piney Grove Road); that there is no direct access to U.S. Route 113; that there are not any wetlands on the site and the property is not located in a Flood Plain; that on-site septic and well are proposed; that the Applicants are requesting that Condition of Approval "D" be removed; that the Applicants state that there are utilities adjacent to the required 20-foot landscape buffer along U.S. Route 113 that could have an adverse impact on the electric line and underground gas main line; that the Applicants have provided two (2) Options for the landscape buffer: Option 1 provides a grass landscape buffer that would not have any plantings, and Option 2 provides the required Highway Corridor Overlay Zone buffer; that the Commission was previously provided with a copy of the two (2) Options; that since the Condition of Approval originated with the Commission, the Commission may amend the



Condition if you so choose to do so; and that the Commission was previously provided with copies of the preliminary site plan and a letter from the Applicant's Engineer.

The Commission discussed this application.

Mr. Ross stated that the nature of this use is nationwide; that the visibility of this location would be benefitted by not requiring the landscaping; that because these refueling stations are not common, customers typically must plan trips around the location of them. As a result, visibility is very important to the consumers of this fuel.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan with an amendment to Condition of Approval "D" allowing the requested Option #1, which allows a grass landscaping buffer. Motion carried 4 – 0.

**Perdue Agri-Recycle, LLC**

C/U #1314 Revised Site Plan – Route 13A

Mr. Lank advised the Commission that this is a revised site plan for a new storage building and a bag house building; that the proposed storage building is a 40-foot by 60-foot pole building that will be used for equipment storage and the proposed bag-house building is 24-foot by 65-foot; that the bag-house will collect fine particles during truck and rail load outs; that the setbacks meet the requirements of the Zoning Ordinance; that the Commission needs to determine if the proposed uses are accessory uses to the existing Conditional Use or if an amended Conditional Use application is required; and that a copy of the revised site plan was previously provided.

The Commission discussed this application.

Mr. Wheatley stated that this is a minor amendment for an accessory use.

Mr. Smith stated that he agrees that this is an accessory use and sees no need for a public hearing.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with three (3) votes to approve the revised Site Plan as a preliminary. Final Site Plan approval shall be subject to the Staff receiving all appropriate agency approvals/permits. Motion carried 3 – 0, with Mr. Ross not voting.

**Sara Harmon, Heirs**

2 – 2 lots & 50' Easements – Road 288

Mr. Lank advised the Commission that this is a request to create two (2) 50-foot easements to serve as access to four (4) proposed parcels; that one of the 50-foot easements will be created over an existing driveway to serve as access to two (2) 2.85 acre parcels; that the other 50-foot easement will be created over an existing roadway and will serve as access to a 2.85 acre parcel and a 4.49 acre parcel; that the request may be approved as submitted, or an application for a major subdivision can be required; and that a copy of a sketch drawing was previously provided.

The Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to grant conceptual approval of this request for two (2) two (2) lot minor subdivision request on 50' easements. Motion carried 4 – 0.

**Douglas J. & Lyle J. Neal**

Parcel & 50' Easement – Road 576

Mr. Lank advised the Commission that this is a request to create a 4.91 acre parcel with access from a 50-foot easement; that the owner is proposing to extend an existing 50-foot easement that was created by the Commission in 1990 to serve as access to the proposed parcel; that this would be the second parcel have access from the easement; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted or an application for a major subdivision can be required; and that a copy of a sketch drawing was previously provided.

The Commission discussed this application.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant conceptual approval of this request to create the proposed parcel on a 50' easement. Motion carried 4 – 0.

Meeting adjourned at 7:45 p.m.