

MINUTES OF THE REGULAR MEETING OF NOVEMBER 13, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 13, 2014 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. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Marty Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence B. Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of October 23, 2014 as corrected. Motion carried 5 – 0.

OLD BUSINESS

Conditional Use #1998 – Todd Fisher

Application of **TODD FISHER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a self-storage facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.74 acres, more or less, land lying northwest of Old Mill Road (Road 265-A) 300 feet northeast of Route One (911 Address: 116542 Old Mill Road, Lewes, DE) (Tax Map I.D. #3-34-1.00-115.02/15.04).

The Commission discussed this application which has been deferred since October 23, 2014.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

PUBLIC HEARINGS

Conditional Use #2000 – Jovid Venture, LLC

Application of **JOVID VENTURES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a facility for wedding ceremonies and receptions to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.683 acres, more or less, land lying at the southwest corner of Warrington Road (Road 275) and Old Landing Road (Road 274) 911 Address: 35060 Warrington Road, Rehoboth Beach, DE) (Tax Map I.D. #3-34-12.00-121.01).

The Commission found that the applicants provided a survey/site plan with the application on July 31, 2014, and an Exhibit Packet on November 3, 2014. The Exhibit Packet contains

references to the description of a Conditional Use; references to the Comprehensive Plan; a copy of an aerial of the area; a copy of the tax map of the area; a copy of the survey/site plan; a copy of the Support Facilities Report from DelDOT; and suggested proposed Conditions of Approval for consideration.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on April 24, 2014 which reference that a Traffic Impact Study is not recommended; and that the Level of Service “D” of Warrington Road and the Level of Service “C” of Old Landing Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on November 5, 2014 referencing that there are two soil types on the property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm hazard areas affected; that no off-site drainage improvements are necessary; that it is not likely that any on-site drainage improvements will be necessary; and that there are no tax ditches affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments on November 10, 2014 referencing that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available, if the equivalent dwelling unit (EDU) sewer assessment for the parcel does not exceed 6.73 EDU; that the EDU assessment for the proposed use is not known at this time; that the system design assumption for the AR-1 zoned parcel is 4.0 EDU per acre; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$5,500.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel’s frontage on Old Landing Road; that installation of an 8-inch lateral may be required; that the installation of an additional lateral would be at the owner’s expense; that conformity to the North Coastal Planning Study will be required; and that a concept plan is not required.

The Commission found that Joe Brinton and David Sterner of Jovid Ventures, LLC were present with Tim Willard, Esquire of Fuqua, Yori and Willard, P.A. and that they stated in their presentations and in response to questions raised by the Commission that the site is at the corner of Warrington Road and Old Landing Road and is improved with a bed and breakfast approved by the Board of Adjustment; that they would like to have wedding ceremonies and receptions on the grounds of the property; that the use should be considered as a semi-public use; that they are submitting seven (7) letters in support and photographs of the property; that the use meets the purpose of a Conditional Use in that it is a business/commercial activity with a public or semi-public character and is intended for the general convenience of the residents of the County; that the use conforms to the Comprehensive Development Plan since it a light use and provides convenient services to the residents; that the site is located in the Environmentally Sensitive Developing District and in a Level 2 or 3 in the State Strategies; that the site plan depicts temporary tent locations and ceremony areas with landscaping features; that the site contains 1.68 acres, which is adequate for the use intended; that the area contains a mix of residential zonings; that DelDOT did not require a Traffic Impact Study; that 12 parking spaces are available on site with 10 overflow parking spaces partially in the grass; that the bed and breakfast recently had a rating change from being No. 6 to No. 1 in the Rehoboth Beach area for bed and

breakfast inns; that the entrance is approximately 60 feet from the intersection; that there will not be any parking permitted along public roadways; that the closest fire house is approximately 1 mile away on Route One; that a fire hydrant exist across from the site; that they are planning on providing a shuttle service contract with certain hotels/motels for the guests to make arrangements to be dropped off and picked up for receptions, etc. on the site; that the plan on limiting the number of guest at a ceremony or reception to 125 persons; that the do not anticipate more than 15 events per year; that they do not object to a prohibition on noise makers being a restriction; that the bed and breakfast has 5 rental rooms; that adequate space is available for the shuttle vehicles to turn around in the driveway; and that they have submitted suggested conditions of approval for consideration.

The Commission found that Dr. Nicholas DelCampo was present in support of this application and stated that he had provided a letter of support, but wanted to add that the applicants are great neighbors; that they have improved the property; that they have added landscaping; and that he supports the suggested conditions of approval submitted.

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. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Conditional Use #2001 – Christina Abramowicz

Application of **CHRISTINA ABRAMOWICZ** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a veterinary practice to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 32,671 square feet, more or less, land lying southeast of Old Mill Road (Road 265-A), 1,900 feet northeast of Route One (Coastal Highway) (911 Address: 16403 Old Mill Road, Lewes, DE) (Tax Map I.D. #3-34-1.00-23.00).

The Commission found that the applicant provided a survey/site plan with her application.

The Commission found that The Commission found that DelDOT provided comments in the form of a Support Facilities Report on May 15, 2014 which reference that a Traffic Impact Study is not recommended; and that the Level of Service “A” of Old Mill Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on November 5, 2014 referencing that there is one soil type on the property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm hazard areas affected; that it is not likely that off-site drainage improvements are necessary; that it is possible that any on-site drainage improvements will be necessary; and that there are no tax ditches affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments on November 10, 2014 referencing that the site is located in the North Planning Area for the West Rehoboth Expansion; that central sewer service is not available at this time; that an on-site septic is proposed; that conformity to the North Coastal Area Planning Study will be required; that the parcel is located within a sewer planning area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the County does not have a schedule to provide central sewer service to the parcel at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

Mr. Lank advised the Commission that the Department has received 10 letters/emails in support and 36 letters/emails in opposition to this application; that there is some duplication since some writers have sent letters, emails and fax copies. Mr. Lank advised the Commission that he would make copies of the letters/emails available for the Commission to review.

The Commission found that Dr. Christina Abramowicz was present on behalf of her application for a veterinary practice; that she provides veterinary alternative care for dogs, cats, horses and some exotic animals; that her practice will serve a need for the community; that she treats the animals by appointment; that some visits last from one hour (1) to three (3) hours; that her practice is hands on, with no surgery, x-rays or medications; that her practice is considered holistic since she performs acupuncture, posture rehabilitation, some chiropractic, and uses Chinese and herbal medicines, medical massage and food therapy; that her current practice is considered mobile with services for acute illnesses, allergies, arthritis or hip dysplasia, behavior issues, cancer, chronic conditions, metabolic syndromes, musculoskeletal problems, and neurological issues; that pet owners have advised her that cost is a concern when she has to travel to the site of the pet owner; that she is proposing to serve a need for eastern Sussex County; that the closest veterinarian that performs acupuncture is in Seaford or Salisbury; that she has a website that provides details on her practice; that she would like approval for a small practice at her home; that her normal appointments take approximately 60 minutes; that there is adequate parking; that no additional buildings are proposed; that she does not perform any surgeries; that she has support from some of her neighbors and area community members; that she would not object to a restriction limiting the use to her practice only so that the conditional use could not transfer to another user; that currently she is exclusively mobile; that her primary intent is to remain mobile, but is requesting permission to allow pets to be brought to her home for treatment; that her typical hours are from 10:00 a.m. to 6:00 p.m. for mobile services six (6) days per week; that she would like to maintain the same hours from her home on certain days; that the pets that she would treat at home would be dogs, cats, and exotic pets; that she will not treat wild animals or large animals at the home; that he normally treats horses on Saturdays off-site and by appointment only; that all of her sessions are by appointment only; that she sees one client per hour; that she has no employees; that she does have a high school intern that studies under her; that emergencies are referred to other veterinary clinics; that she currently has 200 clients; that she would like to be able to erect a small marker type sign to label her location; that her back yard is partially fenced; that she has no plans for any kennels or any overnight housing of animals; that the living room would be converted to a waiting room and that she would have an examination room and a treatment room; that bio-hazardous waste will be placed in trash containers and properly disposed of as needed; that she does not treat aggressive dogs; that she

does deal with some dogs with anxiety and abnormal behaviors; and that she will have some retail sales of vitamins, herbs.

The Commission found that Dan Lynch of Delaware Equine was present in support of the application and stated that Dr. Abramowicz assisted him in caring for his horses; that he trains horses and that she has helped his rehabilitate several horses; that there is a need for this type of treatment in Sussex County; that he would have to travel to get holistic treatment for the horses; that there is a void in this area for this type of treatment; and that the use is an asset to the equine community.

The Commission found that Denise Dumont was present in support of the application and stated that the applicant has treated her dog; that she supports holistic veterinary treatment of animals; and that a need exists in the area for this type of service.

The Commission found that Vince Brady, Kathanna Billups, George Dellinger, Jim Wright, and Anita Hart were present in opposition expressing concerns that they oppose a veterinary practice in this residential neighborhood; that they are concerned about changes in the description of the proposed practice; that if the use is approved, there should be conditions of approval limiting hours and retail sales; that there is no upside for the business in this community; that approval would create a mixed use community with business, commercial and residential uses; that the use may impact and lower property values; that the majority of the residents along Old Mill Road are opposed to this application, and opposed to any type of commercial use in the area; that there are multiple veterinary practices in the general area; that no kennels or overnight housing of animals should be permitted; that the business could be expanded if approved; that the residents have no objection to the applicants mobile off-site activities; that the use is not appropriate in a residential area; that the application to DelDOT referenced a veterinary animal hospital; that the application for conditional use references a veterinary practice; that the Sussex Conservation District references that on site drainage improvements may possibly necessary; that the applicants website references care for all types of animals, including dogs, cats, horses, exotics, and livestock; that the facility is proposed in the middle of a residential area and questioning what is a healthy separation between a clinic and living quarters; expressing concerns about the disposal of needles and swabs, used testing supplies, infected dressings, biological samples of infected animals; cadavers; questioning what the risks of contamination; that the majority of the residents of four (4) residential subdivisions along Old Mill Road are opposed to this application; that the use is not consistent with the Zoning Code, the Comprehensive Plan, or the community; that the use should not be considered a home occupation; that some types of diseases in animals may cause health hazards for the residents of the area; that animals may get loose causing concerns for the residents safety; that there is a concern that there is a lack of enforcement of conditions of approval, if granted, and referencing an example that landscaping for the boat yard to the north not having any landscaping; that Old Mill Road is a cul-de-sac road and that the residents of the communities oppose any business activity along Old Mill Road; and that the area residents requests that the application be denied.

By a show of hands, the Commission found that there were four (4) parties present in support and 17 parties present in opposition.

The Commission found that Dr. Abramowicz responded to questions raised by the Commission that she has attempted to locate office space in the area and that due to the size of her business she could not afford such rentals; that she did oppose the proposed self-storage facility on the north side of Old Mill Road due to traffic; and that the self-storage facility would create more traffic than her proposal; and that she is only maintaining her property, not clearing it.

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

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

OTHER BUSINESS

Hockers BBQ

C/U #1983 Site Plan – Routes 17 and 26

Mr. Abbott advised the Commission that this is a site plan for a food vendor trailer and picnic tables located on a 9.60 acre parcel that is zoned C-1; that this Conditional Use was approved on May 20, 2014 with 5 conditions of approval; that the conditions of approval are noted and depicted on the site plan; that 2 picnic tables are proposed and 3 are permitted; that the trailer occupies 3 parking spaces; that 325 parking spaces are required and 344 spaces are provided; that the Board of Adjustment granted a special use exception for a period of 5 years and a front yard setback variance of 49.1 feet on July 21, 2014; that the site plan meets the requirements of the approved conditional use and Board of Adjustment case; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

The Peninsula MR/RPC

C/Z #1751 Clubhouse

Mr. Abbott advised the Commission that this is a sketch/concept plan for the proposed clubhouse at The Peninsula residential planned community; that on August 19, 2014 the County Council approved an application to amend Condition 10 (c) of CZ #1697 in Ordinance No. 2180 modifying the time period for constructing the clubhouse until December 1, 2016 with the following conditions:

1. Within 60 days of the approval of this Ordinance Amendment, the developer shall submit to the Sussex County Planning and Zoning Commission a sketch or concept plan of the proposed clubhouse with the estimate square footage of the structure. The developer shall consult with and obtain the approval of the homeowners' association regarding the design in the sketch plan and the proposed square footage of the clubhouse. In no event shall the clubhouse be less than 25,000 finished square feet (32,000 total square feet) with a value of \$11,470,800.00 without first obtaining approval from the homeowners' association.

2. At the same time the concept or sketch plan and square footage are submitted, the developer shall submit an estimated cost per square foot to construct the proposed clubhouse.
3. Within 30 days of the approval of the concept or sketch plan and square footage by the Sussex County Planning and Zoning Commission, the developer shall submit a Bond or Letter of Credit acceptable in form by the Sussex County Attorney in the amount of 125% of the estimated cost to construct the proposed clubhouse.
4. If the developer does not submit a new Bond or Letter of Credit as required, Sussex County shall prohibit the issuance of any further residential building permits within The Peninsula until the new Bond or Letter of Credit is submitted to Sussex County, and
5. No further extensions shall be granted.

that the Commission has been provided a rendering of the proposed clubhouse, an aerial photograph depicting the location of the proposed clubhouse, the proposed clubhouse site plan, the main and lower level floor plans, a resolution of the Peninsula Homeowners' Action Committee and a letter indicating that the proposed clubhouse will contain 33,720 gross square feet and 27,920 finished square feet; that they estimate that the total cost will be between \$300 and \$340 per square foot; and that a bond will be placed with the County in an amount of \$14,338,500.00 should the sketch plan be approved.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the concept/sketch plan submitted with the letter of October 17, 2014 as a concept for the purpose of establishing the bond amount for the clubhouse. Motion carried 5 – 0.

Heirs of Frances E. Rogers
Topography Waiver Request

Mr. Abbott advised the Commission that this is a request to waive the topography requirement for the submittal of a major subdivision application; that a previous application (Subdivision #2011 – 6) for 4 lots, was not required to provide topography; that Walt Carmean Lane is a private road located on the north side of Route 24 just east of the Millsboro Pond; that the proposed lots will be accessed by Walt Carmean Lane; and that owner will be requesting a waiver from the street design requirements when the application is filed.

Mr. Johnson advised the Commission that he had concerns about the topography being waived in the previous application; that lots keep being added to the street; and that it does not appear that there is any maintenance of Walt Carmean Lane.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to deny the waiver request. Motion carried 5 – 0.

Lloyd M. Tyndall, III, Joan L. Tyndall & Gregg A. Tyndall
2 Lots & 50' Right-of-Way – Road 249

Mr. Abbott advised the Commission that this is a request to subdivide a 10.0 acre into 5.0 acre parcels with access from an existing 50-foot right of way; that the request may be approved as

submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would make a total of 3 parcels having access from this right of way; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Don Wagner

2 – 3 Lots & 50' Right-of-Way Request – Road 290

Mr. Abbott advised the Commission that this item was deferred at the October 23, 2014 meeting for further consideration; that this is a request to create 2, 3 lot subdivisions with access from a 50-foot right of way; that for Site #1, this is a request to subdivide a 4.16 acre parcel into 3 lots with access from a 50-foot right of way; that the owner is proposing to create the right of way over an existing entrance; that all of the lots will be a minimum of 0.75 acre; that for Site #2, this is a request to subdivide a 3.10 acre parcel into 3 lots with access from a 50-foot right of way; that the owner is proposing to create the right of way over an existing entrance; that all of the lots will be a minimum of 0.75 acre; that the requests may be approved as submitted, or an application for major subdivisions can be required; that if the requests are approved as submitted, it should be stipulated that any further subdivision of the sites will require applications for major subdivision; that the Commission was previously provided a sketch drawing of the requests; and that the applicant also owns the 3.26 acre site that is located between these 2 sites.

Mr. Johnson advised the Commission that he has concerns about the possibility of creating three subdivisions in the area without the benefit of a public hearing.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to deny the request as submitted and require an application for a major subdivision. Motion carried 5 – 0.

Meeting adjourned at 8:21 p.m.