

## MINUTES OF THE REGULAR MEETING OF SEPTEMBER 9, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 9, 2004 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. Johnson and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz – Land Use Planner, and Ms. Mowbray – Zoning Inspector II.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended by deletion of Item 3 from Other Business.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of August 19, 2004 as amended.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of August 26, 2004 as circulated.

### OLD BUSINESS

C/Z #1551 – application of **SHORTS MARINE** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying south of Route 306A, 100 feet west of Route 299, to be located on 10.7806 acres, more or less, of a 95.21 acre tract.

The Commission discussed this application which has been deferred since August 19, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1551 for Shorts Marine to amend the Comprehensive Zoning Map from GR General Residential to AR-1 Agricultural Residential based upon the record made at the public hearing and for the following reasons:

1. The Applicant has simultaneously applied for a Conditional Use to establish a boat storage yard on this property. This application was necessary since a boat storage Conditional Use is not permitted in a GR zone. Since I will be making a motion recommending approval of the boat storage Conditional Use, I believe this Change of Zone is appropriate.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated.

Motion carried 4 – 0.

C/U #1551 – application of **SHORTS MARINE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat storage yard to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 10.7806 acres, more or less, of a 95.21 acre tract, lying south of Route 306A, 100 feet west of Route 299.

The Commission discussed this application which has been deferred since August 19, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1551 for Shorts Marine for a Conditional Use to operate a boat storage facility based upon the record made at the public hearing and for the following reasons:

1. This application is for the relocation of an existing boat storage facility located in the vicinity. Because the facility is being relocated, there will not be a traffic increase.
2. The proposed use meets the purpose of the Conditional Use Ordinance since it will serve the existing needs and convenience of residents in the area by continuing to provide boat storage capacity for local communities.
3. This project, with the recommendations and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
4. This recommendation is subject to the following conditions:
  1. The site plan shall be subject to all appropriate agency approvals.
  2. The storage facility will be open during daylight hours only.
  3. The perimeter of the site shall be fenced with a 7-foot high chain-linked type of fencing with rolled wire across the top.
  4. No maintenance of boats or vehicles shall be performed on the site.
  5. Anyone visiting the site shall be accompanied by a Short's Marine employee.
  6. The only structure to be located on the site may be a 10-foot by 14-foot shed.
  7. Security lighting shall be provided on the site using lights that are directed away from neighboring properties.
  8. There shall be a screening landscape buffer along the entrance road and perimeter of the property adjacent to the cemetery of the Friendship United Methodist Church.

Motion by Mr. Johnson, seconded by Mr. Wheatley, 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.

C/U #1549 – application of **RAMON A. ROSA AND LOURDES APONTE DE ROSA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a medical office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 14,998 square feet, more or less, lying southeast of Savannah Road (Business Route 9), 1,200 feet southwest of Railroad and 1,100 feet northeast of Ebenezer Branch.

The Commission discussed this application which has been deferred since August 19, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1549 for Ramon Rosa and Lourdes Aponte De Rosa for a medical office on Savannah Road based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use is similar to other uses in the area. There are several other medical and professional offices located in this area of Savannah Road.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. This use, in the vicinity of Beebe Hospital, will benefit the safety, health and welfare of Sussex County residents by providing accessible medical services.
4. This recommendation for approval is subject to the following conditions and stipulations:
  1. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
  2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or toward Savannah Road.
  3. The hours of operation for the business on this site shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Friday. Emergency services can be provided at any time.
  4. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated.

Motion carried 4 – 0.

C/Z #1546 – application of **3 SEASONS, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-1/RPC High Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying west of Route 273 (Country Club Road), 200 feet north of the cul-de-sac at the entrance to Rehoboth Beach Yacht and Country Club Development, to be located on 26.76 acres, more or less.

The Commission discussed this application which has been deferred since August 12, 2004.

Mr. Johnson asked Mr. Robertson to read the recommendation that Mt. Johnson prepared.

Mr. Robertson read that Mr. Johnson recommends that the Commission recommend approval of C/Z #1546 for 3 Seasons, LLC based upon the information contained in the record and for the following reasons:

1. The proposed HR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County.
2. HR zoning is appropriate for the site because central water and sewer are available. In this case, sewer service will be provided by Sussex County and water service will be provided by Tidewater Utilities, Inc.
3. The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
4. The subject property is in an area that has developed with a mixture of residential projects in the immediate area.
5. This project will replace a large seasonal campground. Because the campground is an intensive use during the summer season, this application should not cause significantly more traffic than currently exists.
6. The Applicant has proposed to create a homeowners association to enforce deed restrictions and maintenance upon completion of the proposed project.
7. With the restrictions place upon it, this project will not adversely affect neighboring or adjacent properties. These restrictions are compatible with others placed on projects along Country Club Road, including Kinsale Glen.
8. The restrictions limit the project to single family homes only, making the project compatible with the neighboring properties. The only multi-family units permitted on Country Club Road were in a transitional area adjacent to Jungle Jim's, an amusement park.
9. This recommendation is subject to the following conditions:
  1. The final site plan shall be limited to single-family detached units on separate lots. No multi-family units shall be allowed within the RPC. The maximum number of lots shall be 118.



2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
3. Recreational facilities and amenities, including a swimming pool, bathhouse and community center shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit.
4. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
5. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
7. Site plan review shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
11. No structure shall exceed 42 feet in height.
12. A system of street lighting shall be provided by the Applicant and the location shall be shown on the final site plan.
13. There shall be sidewalks on at least one side of each street within the development.

Motion by Mr. Johnson, seconded by Mr. Wheatley, 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.

Subdivision #2003-50 – application of **KAPLAN, GALLO & HOWETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 57.00 acres into 53 lots, located on both sides of Road 257, approximately 2,465 feet southwest of Route One.

The Commission discussed this application which has been deferred since August 19, 2004.

Mr. Wheatley stated that he would move that the Commission deny preliminary approval of Subdivision #2003-50 for Kaplan, Gallo & Howett for the following reasons:

1. I am not satisfied that the subdivision complies with the requirements of the Subdivision Ordinance.
2. Nearly all of the other land in the area of this project is used for agricultural purposes, and much of the land is in an Agricultural Preservation District. This proposal would not be in character with the surrounding uses.
3. The project is along a part of Road 257 that is not suitable for a development such as this. Road 257 is a road with many curves and is narrow. In addition, the road is used frequently by farm equipment. The proposed subdivision is not compatible with this road.
4. I believe that the project would adversely affect the adjacent natural areas including wetlands and Beaverdam Creek if approved. It is also not integrated into the existing terrain.
5. The project, with its main entrance onto Road 257 and several individual lots with direct access onto Road 257 do not allow for safe vehicular movement as required by the Subdivision Ordinance.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny this application for the reasons stated.

Motion carried 4 – 0.

Subdivision #2003-51 – application of **MORRIS MILL POND, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 156.39 acres into 150 lots, located on both sides of Road 48, 700 feet west of Road 297.

The Commission discussed this application which has been deferred since August 19, 2004.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2003-51 for Morris Mill Pond, LLC based upon the record and for the following reasons:

1. The proposed subdivision meets the purposes of the Subdivision Ordinance.
2. The land is zoned AR-1 which permits low-density single family residential development at a density of approximately 2 lots per acre. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.

3. The proposed subdivision is generally in character with the area and is in close proximity to Georgetown and the new High School.
4. The proposed subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
6. The proposed subdivision is integrated into the existing terrain and surrounding landscape, and preserves natural features.
7. This recommendation is subject to the following conditions:
  1. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.
  2. The stormwater management system shall meet or exceed the requirements of the State and County.
  3. No wetlands shall be included within any lot lines.
  4. All entrances shall comply with all of DelDOT's requirements.
  5. A system of street lighting shall be provided by the Applicant, and the location of the streetlights shall be shown on the final site plan.
  6. There shall be sidewalks on at least one side of each street within the subdivision.
  7. The Developer shall construct a pool and clubhouse for use by the residents of the subdivision. These amenities shall be constructed and open to use by the residents within 2 years of issuance of the first building permit.
  8. All lots shall be at least  $\frac{3}{4}$  acre in size.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried with three votes to grant preliminary approval of Subdivision #2003-51 for the reasons and with the conditions stated.

Motion carried 3 – 1, with Mr. Gordy opposed to the motion.

Subdivision #1003-53 – application of **SUNLAND PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 36.77 acres into 35 lots, located at the northwest corner of the intersection of Road 231 and Route 5.

The Commission discussed this application which has been deferred since August 26, 2004.

Mr. Wheatley stated that he would move that the Commission deny preliminary approval of Subdivision #2003-53 for Sunland Properties, LLC for the following reasons:

1. I am not satisfied that the subdivision complies with the requirements of the Subdivision Ordinance.
2. I believe that the project would adversely affect the adjacent natural areas included wetlands if approved. I am not satisfied that the project, as presented, adequately protects the wetlands areas.
3. The project, as presented, does not have all of the Agricultural buffers that are required along boundaries bordering other lands used for agricultural purposes.
4. The project, as presented, does not provide for safe vehicular and pedestrian movement in the area where the property narrows.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny Subdivision #2003-53 for the reasons stated.

Motion carried 4 – 0.

#### PUBLIC HEARINGS

C/U #1553 – application of **CLINT PHILLIPS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a paper recycling center to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 6.35 acres, more or less, lying north of Route 589A, 50 feet west of Railroad and 2,200 feet west of U.S. Route 13.

The Commission found that the Applicant submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a description of paper recycling operations, the recycling process, a letter from the Seaford School District, newspaper articles, a site plan, a description of the proposed building, a copy of the deed to the property and deed restrictions, technical reports from Atlantic Resource Management, Inc., Delmarva Soil Services, a DelDOT Support Facilities Report, a letter from the Office of State Planning Coordination in reference to the PLUS review, a response to the Office of State Planning Coordination from Design Consultants Group, L.L.C. in reference to the PLUS comments, and a letter from the Office of State Planning Coordination commending the Developer for working to address the PLUS issues.

Mr. Lank advised the Commission that since the DelDOT and Office of State Planning Coordination comments are included in the Exhibit Booklet he will not summarize the comments and that the comments are a part of the record for this application.



The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that according to the Western Sussex Water and Sewer Plan Area Study the site is located within the Bridgeville Service Area and within the Greenwood Development District, and that the Applicant should contact the Town of Greenwood concerning the availability of water and sanitary sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington loam, Pocomoke sandy loam, Sassafras sandy loam, and Woodstown sandy loam; that the Fallsington and Pocomoke soils have severe limitations for development; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that the Fallsington and Pocomoke soils are considered of Statewide Importance; that the Sassafras and Woodstown soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; and that it may be necessary for some on-site and off-site drainage improvements because of the increased impervious areas and the presence of poorly drained soils.

The Commission found that Clint Phillips was present with Paul Westhelle and Mark Davidson of Design Consultants Group, L.L.C. (DC Group) and that they stated in their presentations and in response to questions raised by the Commission that a 80-foot by 120-foot building is proposed with loading and unloading facing the railroad; that stormwater management facilities will be located to the rear of the building and that best management practices will be provided; that an on-site well and an on-site septic system will be located on the site; that septic feasibility has been granted for the site; that the building design should be compatible with other buildings in the area; that the building is similar to some equestrian buildings in the area; that the site will be landscaped; that a 6-foot high screening fence will be installed to the right of the building to help screen the loading and unloading area; that evergreen hedging is proposed along the front of the parking lot; that a one-sided sign not exceeding 32 square feet is proposed; that a forested buffer will be planted along the westerly edge of the site; that there are no wetlands on the site; that DelDOT did not require a traffic impact study; that they are the only paper recycler between Salisbury, Maryland and New Castle, Delaware; that they recycle paper, paper products and cardboard; that they pick up paper at schools, banks, etc. and that paper is delivered to the facility; that they compact, press, and bale paper for shipment to paper mills; that they are currently operating in a leased portion of the old Nanticoke Homes Facility across the railroad from this site; that business hours are from 7:00 a.m. to 9:00 p.m. Monday through Friday; that they do some maintenance work on equipment on weekends; that there is some noise from Bobcats and the hydraulic baler; that 75 to 80 percent of the paper is loose; that 70 percent of the material is actually cardboard; that there is no unloading outside; that trucks back into the building and unload; that there

will be no storage of materials outside; that they receive an average of 6 truck loads per day; that they ship out an average of 2 truck loads per day; that they hope that the numbers of loads increases in the future; that there are no odors created by the process; that there is no dust; that there are no fumes from the equipment; that the building will be a steel frame construction with fabric roofing and ends to allow for natural lighting; that a small office will be erected on the front of the building; that the company has two roll-back trucks, one tractor-trailer, one box truck; that the building will be fire alarmed; that they have not had a rodent (pest) problem; that railroad access is not necessary; that the site was chosen due to the close proximity to the present location of the business; that almost all of their clients will access the site from U.S. Route 13; and that New Process Fiber of Greenwood, a client, will access the site from Road 589.

The Commission found that Susan Moore, Carol Jenkins, John Wynn, and Brian Conway were present and expressed concerns about the impact on residential property values, pests, traffic, noise, trash, business hours, that residential lots were purchased with deed restrictions, that the deed restrictions are not the same as their deed restrictions, and that the public notice sign location is misleading as to the location of the business.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to allow the Commission time to consider the evidence submitted.

Motion carried 4 – 0.

C/U #1554 – application of **FULMER ENTERPRISES, INC.** to consider the Conditional Use of land in a C-1 General Commercial District for a miniature golf course to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 6.7684 acres, more or less, lying south of Route 22 (Long Neck Road), 2,957 feet east of Route 298.

The Commission found that the Applicant submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains references to the Zoning Code, a tax map of the area depicting zonings, photographs of business and commercial uses in the area and the site, a site plan, photographs of a miniature golf course similar to the one proposed for the site, portions of the Comprehensive Plan Update, a copy of the DelDOT support facilities report, and some proposed conditions of approval if the use gets approved.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 22 will not change as a result of this application.

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

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Long Neck Sanitary Sewer District; that wastewater capacity is available; that Ordinance No. 38 construction will not be required; that the System Connection Charge Rate is \$2,718.00 per EDU; that the location and size of lateral or connection points shall be subject to the approval of the County Engineer; that a 6-inch lateral has been provided to the parcel; that the Crab Barn, an existing restaurant on the site, is currently connected to the lateral; that the addition of the proposed use will require the property owner to certify in writing that the 6-inch lateral is adequate for the additional use; that installation of additional laterals to serve the golf course may be required; and that any additions or upgrades will be at the owners expense.

Mr. Wheatley stated that he will be abstaining from participating in this public hearing.

The Commission found that Frank Fulmer was present with Harry Caswell, Bob Laskie, a miniature golf course designer, and Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that Mr. Fulmer operates the Crab Barn Restaurant; that Mr. Caswell operates a neighboring ice cream parlor; that Mr. Fulmer and Mr. Caswell are partners in the proposed miniature golf course; that the site is zoned C-1 General Commercial; that the area is predominantly business and commercial oriented; that the use is consistent and compatible with the uses in the area; that the Applicants intend to modify the existing Crab Barn sign to include advertising for the miniature golf course; that there are no proposed changes in the entrance to the Crab Barn and miniature golf course; that adequate space is available on the site for the additional parking; that natural materials and water features will be utilized in the design of the miniature golf course, rather than animation characters; that the site will be lighted for night play; that the site is located in the Environmentally Sensitive Developing Area which supports recreational uses for the growing population; that restroom facilities will be available at both the ice cream parlor and the restaurant; that the miniature golf course will be designed with waterfalls and artificial rocks with a maximum height of 12-feet; that business hours are seasonally planned from 9:00 a.m. to 12:00 Midnight; and that an attendant will be present at the ticket booth planned to be erected on the site.



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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 3-votes to forward this application to the Sussex County Council with the recommendation that the application be approved since the site and area are developed with other commercial and business uses; since the site is in close proximity to a mixture of business and commercial uses; since the use is an extension of the use of an existing commercial property; and with the following conditions:

1. The Applicant shall adhere to all government regulations including soil conservation.
2. The Applicant shall construct and operate a quality 18-hole miniature golf course.
3. The Applicant's project shall proceed according to the site plan approved by the Planning and Zoning Commission.
4. The parking lot and golf course shall be appropriately lighted for safety and security with downward illumination for screening from neighboring properties.
5. The project shall be landscaped based on the approved site plan.
6. The signage for the miniature golf course shall be incorporated into the restaurant sign at the entrance.
7. The miniature golf course shall be fenced.
8. The hours of operation shall be from 9:00 a.m. until 12:00 Midnight, seven days per week from May 1 through September 30, and shall close at 6:00 p.m. during all other periods.

Motion carried 3 – 0. Mr. Wheatley abstained from participating in the vote.

C/U #1556 – application of **STANLEY AND LINDA PARK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.2 acres, more or less, lying on the southeast side of Road 265A (Old Mill Road), ¼ mile northeast of Route One.

The Commission found that prior to the meeting the Applicants provided a copy of a survey of the property and photographs of the site and dwelling.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County operated or maintained sanitary sewer district; that central sewer is not available to the parcel at this time; that the parcel cannot be annexed into a sewer district because it does not adjoin an existing sewer district, as required by State law; and that the parcel is in the North Coastal Planning Area but is not in an area where the County expects to provide sewer service in the foreseeable future.



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

The Commission found, based on comments received from the DNREC Division of Water Resources, that the Division issued an authorization to use the existing septic system, issued for a single wide mobile home, for connection of a two bedroom dwelling in 1989; that the original septic permit was issued in 1980; that the mobile home was to be removed and the dwelling connected; and that no other permits from DNREC have been found.

The Commission found, based on letters from Willis Groome with attached petitions with approximately 50 signatures in opposition, that concerns were expressed about the structure, electric meters, that the use is out of character with the single family uses in the area; that central sewer is not available; that the use is not of a public or semi-public character and not essential and desirable for the general convenience of the residents of the area; that the impact on the neighborhood is adverse and has no benefit except to the Applicant; and that residents of the area purchased knowing that the area was AR-1 and single family residential, not intended for multi-family.

The Commission found that Stanley and Linda Park were present with Robert V. Witsil, Jr., Attorney, and stated in their presentations and in response to questions raised by the Commission that the applicants propose to convert this dwelling into two units only; that no additional driveways or development is proposed; that the home appears to have three different types of construction; that the parcel has a history of multi-family use since a 1987 survey indicates a dwelling and a double wide mobile home on the site; that the dwelling contains approximately 5,000 square feet with one kitchen; that there may be other sites along Old Mill Road that are being utilized for multi-family use referencing an Alfred Mitchell property with a possible 3 living units, a Julia Bowden property with a possible 2 cottages, and a William Landon property with a possible 2 living units; that they have no objections to a condition of approval that would include approval from the DNREC; that they do not intend to create a condominium, only to be able to utilize the home for family and friends to use the second unit; that there are 3 electric meters, one for each end of the dwelling and one for a ceramic kiln; that they are presently utilizing one meter; and that the barn shaped stucco portion of the dwelling was originally a dwelling with a kitchen.

The Commission found that Mr. Witsil submitted a copy of a 1987 survey prepared by J.J. McCann showing the referenced stucco dwelling and a doublewide mobile home and two driveways.

The Commission found that Willis Groome, Larry McGlauglin, Jacqueline Duffy, Harriett Groome, John Gregor, and Rafeal Iminez of the 20 people present in opposition to this application expressed concerns about the lack of permits, continued construction for 15 years, the lack of compatibility with other single family homes in the area, the fear of a precedent being established for additional multi-family uses; that the Mitchell and Bowden properties were not used for multi-family use; and agreeing with the statements made in the petition submitted in opposition.

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

Mr. Johnson stated that he is concerned about the possibility of a precedent being established.

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

Motion carried 4 – 0.

Subdivision #2003-55 – application of **DIRICKSON LANDING ASSOCIATES** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 20.04 acres into 19 lots, located north of Route 54, 450 feet east of Road 346.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on February 18, 2004 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

The Commission found that the Applicant submitted a revised site plan for the project in response to Technical Advisory Committee comments. The revised site plan depicts an entrance on Route 54 only, revised lot lines and relocation of common areas.

The Commission found that Robert Kauffman was present with Paul Westhelle and Mark Davidson of the DC Group and that they stated in their presentations and in response to questions raised by the Commission that the proposed lots contain a minimum of  $\frac{3}{4}$  acre each; that no wetlands exists on the site; that stormwater management will be maintained on site; that individual on-site wells and septic are proposed; that septic feasibility has not yet been received from DNREC; that lots along public roads were previously stripped off of the site; that one story and two story site constructed single-family detached

dwelling are proposed; that they met with DelDOT about the revised entrance design and have submitted revised entrance plans for consideration; that common areas will include recreational areas, landscaping, and stormwater management facilities; and that a minimal amount of woodlands will be disturbed.

The Commission found that William McKinley and Robert Wheeler were present with questions about the loss of woodlands, the number of lots, and the number of wells and septic systems, and the type of homes proposed.

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

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of septic feasibility.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY TO REQUIRE THE PROVISION OF OPEN SPACE IN NEW DEVELOPMENTS.

Mr. Lank summarized the proposed Ordinance Amendment and the synopsis.

Tom Shafer of Shafer Consulting, Consultant to the County for the preparation of Ordinance relating to the Comprehensive Plan Update, was present and stated that the Comprehensive Plan referenced the need for required open space in developments; that the Cluster Ordinance references open space; that the present Ordinance only suggest and does not mandate open space requirements; and that golf courses are considered open space by some jurisdictions.

The Commission found that Henry Glowiak was present on behalf of the Citizens Action Foundation of the Citizens Coalition, Inc. and read and submitted a memorandum from Mable Granke on behalf of the Board of Directors of the Citizens Action Foundation that referenced concerns about Sections 99-21A, 99-21B, and 99-21D, and suggested that it is their Board's recommendation that this Ordinance as written should go back to the drawing board.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that it be approved as circulated.

Motion carried 4 – 0.

#### OTHER BUSINESS

##### Route 24 Retail Center Commercial Site Plan – Route 24

Mr. Lank advised the Commission that this commercial site plan proposes a retail building and a mixed use building; that the retail building contains 6,576 square feet and that the mixed use building contains 5,242 square feet; that the parcel is zoned C-1 General Commercial and contains 1.28 acres; that the setbacks meet the requirements of the Code; that 59 parking spaces are required and that 65 spaces have been provided; that there are 15 spaces located in the front yard setback and that a waiver will be needed from the Commission to allow those spaces; that central sewer will be provided by the County and that central water will be provided by Tidewater Utilities, Inc.; that the site is not located in a flood zone; that there are no wetlands on the site; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

The Commission reviewed and discussed this site plan and referenced concerns about the 15 parking spaces in the front yard setback, the lack of screening along the rear, the lack of landscaping, and vehicle circulation. The Commission also questioned what mixed uses are proposed within the mixed-use building.

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

Motion carried 4 – 0.

##### Bethany Tennis Club Townhouses C/U #1360 – Site Plan – Road 357

Mr. Lank advised the Commission that this site plan is for 24 multi-family units; that the Conditional Use was approved by the County Council on October 17, 2000; that the Commission granted two – 1-year time extensions; that on October 7, 2003 the County Council granted a 1-year time extension; that 4 buildings with 6 units are proposed; that the maximum building length is proposed to be 159-feet; that the 40-foot separation between buildings is being maintained; that the setbacks meet the requirements of the Code; that 72 parking spaces are required and that 94 spaces have been provided; that there are 9 spaces located in the front yard setback and that a waiver will be needed from the Commission to allow those spaces; that the existing building and tennis courts will remain; that a 75' by 35' swimming pool is proposed; that the multi-family structures will



have 3-stories; that a required 10-foot wide landscape buffer is being provided along the southerly boundary line; that central sewer will be provided by the County; that central water will be provided by Sussex Shores Water Company; that the site is not located in a flood zone; that there are no wetlands on the site; and that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the site plan, with the requested waiver, as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

Sports at the Beach

C/U #1421 – Revised Site Plan – Route 9

Mr. Lank advised the Commission during the review of the agenda that this site plan was removed from the agenda by the Applicant on September 9, 2004.

Verizon Delaware, Inc.

C/U #1547 – Site Plan – Route 26

Mr. Lank advised the Commission that this site plan is for an equipment storage and warehouse near Gumboro; that the site plan is the same as the one presented at the public hearings for the Conditional Use; that a 3,478 square foot expansion to the existing building is proposed; that the setbacks meet the requirements of the Code; that 5 parking spaces have been provided; and that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Motion carried 4 – 0.

Subdivision #2002-45 – Frank Gonzon

Time Extension

Mr. Lank advised the Commission that Mr. Gonzon has requested a one-year time extension; that preliminary approval was granted on August 28, 2003; that this request for a time extension was received on August 17, 2004; and that this is the first request for a time extension for this project.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant a one-year time extension.

Motion carried 4 – 0.

Thomas and Hilda Best  
3 Lots and 50' Right-of-Way – Best Lane

Mr. Lank advised the Commission that the Best's are requesting permission to create a 50-foot right-of-way to serve as access to 3 lots; that Lot 1 contains 0.60-acre, Lot 2 contains 0.61 acre, and Lot 3 contains 0.95 acre; that Lot 2 is improved with a dwelling; that the property to the east of the site (Kaplan Cove) was required to go through the major subdivision process; and that this request should also be required to go through the major subdivision process.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to deny the requested subdivision as submitted and recommend that the Applicants apply for a Major Subdivision since a new road is being created.

Motion carried 4 – 0.

Warren Jackson  
2 Parcels and 50' Right-of-Way – Road 48

Mr. Lank advised the Commission that Mr. Jackson is requesting permission to create two 5.0 acre parcels with access from a proposed 50-foot right-of-way; and that since the right-of-way is being created this request should be required to go through the major subdivision process.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to deny the requested subdivision as submitted and recommend that the Applicant apply for a Major Subdivision since a new road is being created.

Motion carried 4 – 0.

Meeting adjourned at 10:48 p.m.