

## MINUTES OF THE REGULAR MEETING OF JULY 28, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 28, 2005 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Vice-Chairman Wheatley presiding. The following members of the Commission were present: Mr. Gordy, Mr. Johnson, Mr. Smith and Mr. Wheatley with Mr. Robertson, Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the agenda as amended by removal of Items 3 and 4 from Old Business and Item 9 from Other Business.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of July 14, 2005 as circulated.

### OLD BUSINESS

Subdivision #2003-44 – application of **MICHAEL AND KATHY MIXON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 13.51 acres into 10 lots, located west of Road 258, 1,790 feet south of Road 257.

Mr. Abbott advised the Commission that this is the final record plan for a 10-lot subdivision application; that the Commission granted preliminary approval on July 8, 2004; that the final record plan meets the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried 3 votes to none, with Mr. Johnson absent, to approve this application as a final.

Motion carried 3 – 0.

Subdivision #2003-46 – application of **GEORGELAS GROUP** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 210.342 acres into 272 lots, located north of Route 9, 1,860 feet east of Route 5 and east of Route 5, 1,700 feet north of Route 9.

Mr. Abbott advised the Commission that this is the final record plan for a 168-lot subdivision application; that the Commission granted preliminary approval on July 8, 2004 for 272 lots and revised preliminary approval on October 28, 2004; that the 272 lots was for 3 phases; that this final record plan is for phases 1 and 2; that the final record plan meets the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried 3 votes to none, with Mr. Johnson absent, to approve this application as a final.

Motion carried 3 – 0.

Subdivision #2004-4 – application of **WILMA HOWETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 41.90 acres into 44 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east and west of Road 258, 1,650 feet south of Delaware Route One.

This Subdivision was removed from the agenda since all agency approvals had not been received.

Subdivision #2004-26 – application of **LAWRENCE A. BIASOTTO** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 12.73 acres into 37 lots, located south of Hickman Road (Road 359), 1,800 feet east of Cedar Neck Road (Road 357).

This Subdivision was removed from the agenda since all agency approvals had not been received.

Subdivision #2004-8 – application of **SPRING BREEZE ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 139.62 acres into 235 lots, located north of Road 48 (Hollymount Road), 1,380 feet east of Road 285.

Mr. Abbott advised the Commission that this is an application for a 235-lot (Cluster Development) subdivision application that has been deferred since June 23, 2005; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for a large on-site wastewater treatment and disposal system.

Mr. Smith stated that he would move that the Commission deny preliminary approval of Subdivision #2004 – 8 for Spring Breeze Associates because he does not believe that Cluster Development is appropriate for this property, for the following reasons:

1. The subdivision is in an area where there are currently large lots. The proposed cluster development with 7,500 square foot lots would be out of character with the surrounding development.
2. The property currently is heavily wooded. With the smaller clustered lots and the areas set aside for wastewater treatment, nearly all of the existing trees would have to

be removed. Under a standard subdivision with larger lots, this would not be necessary.

3. Mr. Smith does not believe that the clustered design is innovative or creates a total environment for the residents that is superior to a standard subdivision. There is not a great deal of active open space for the residents, and the amenities that have been provided are not superior to those typically included in a standard subdivision.
4. The original standard subdivision application that was filed called for 169 lots, compared with 235 as currently proposed. The cluster design only created more potential lots, without substantial design improvements over a standard subdivision.
5. Mr. Smith believes that the items in 99-9C would be adversely affected by the clustering. For example, smaller lots would negatively affect the existing landscape and natural features. Clustering wouldn't minimize tree and vegetation removal. It would also potentially increase runoff and flooding. Also, it's not compatible with other land uses, which are larger residential lots. With clustered lots and the concentrated removal of trees, there would be significant grade changes and alteration of the existing terrain and landscape caused by clearing and grubbing the trees and vegetation.
6. Taking this into consideration, Mr. Smith believes that a standard subdivision for this parcel, with fewer lots that are larger in size, would be more appropriate than 235 clustered lots.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried 3 votes to none, with Mr. Johnson absent, to deny this application for the reasons stated.

Motion carried 3 – 0.

C/Z #1576 – application of **REYNOLDS POND, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying at the intersection of Road 277 and Route 30, and southwest of Road 212, to be located on 826.84 acres, more or less.

The Commission discussed this application which has been deferred since May 12, 2005.

Mr. Gordy stated that he would move that the Commission recommend denial of C/Z #1576 for Reynolds Pond, L.L.C. based upon the record and for the following reasons:

1. The proposed project does not meet the purpose of the Zoning Ordinance, since it does not promote the orderly growth of the County because the project is not in a Development District as established by the 2002 Sussex County Comprehensive Plan Update.

2. The proposed project is not in compliance with the 2002 Sussex County Comprehensive Plan Update, as follows:
  - A. It does not represent growth in an area where public infrastructure and services are available.
  - B. The Location of the proposed development is in an area where farmland preservation exists through Agricultural Preservation Districts, and one of the goals of the Plan Update is to reduce pressure for development in agricultural areas and to promote the preservation of farmland.
  - C. The project is in a Low Density Area according to the Plan Update. In that Area, appropriate housing types are limited to single family detached homes or manufactured homes, not townhouses or assisted living facilities.
  - D. The proposed MR zoning is not one of the applicable zoning districts for the Low Density Area.
  - E. The proposal is not consistent with the purpose of the Low Density Area, which is designed to protect agricultural lands while allowing low density single family residential housing and commercial uses that are normally compatible with residential uses. Townhouses, 158,874 square feet of retail space and an assisted living facility all within a project of this size are not consistent with this.
  - F. The Low Density Area also seeks to prevent untimely scattering of dense urban uses such as what is proposed. Instead, the Plan directs these types of uses to areas planned for efficient extension of public services. Public services are not planned to be extended to this area.
3. The P.L.U.S. process does not transfer zoning authority from the County to the State, and the County makes the final decision on this application. But, the Commission must still consider the comments from the P.L.U.S. process, which is part of the record. These comments include the following:
  - A. The proposed project is located in an Investment Level 4 area according to the Strategies for State Policies and Spending. Because the project is outside of an area where the State and local governments have planned for growth, the State opposes the proposal.
  - B. The State estimates that the project would bring more than 4,000 new residents to the area, and the State has no plans to invest in infrastructure upgrades or additional services such as schools, police and transportation in the area.
  - C. The State Department of Agriculture opposes the project because it is contrary to Liveable Delaware and would act as a catalyst for other residential and commercial development in the area. Within 3 miles of the site, 5,681 acres of agricultural lands have been preserved at a cost of 7.3 million dollars to taxpayers, and farmers have donated land to preservation with about the same value.



- D. DNREC has stated that the proposed development will have negative impacts on the streams and waterbodies adjoining the project and downstream from it.
- E. The Office of State Planning Coordination is opposed to the project and is generally concerned that the project is out of character with the surrounding area.
- 4. The project is in an area that has not developed with similar projects or residential density. There are no other developments in the area that are similar in size or character to what has been proposed.
- 5. The proposed project surrounds Route 30, Hummingbird Road and Beideman Road. Route 30 is a Truck Route and all three roads are used regularly by large farm equipment. The project, with 1592 residential units and commercial and office space and its proposal to alter Hummingbird Road and Beideman Road, is inconsistent with the existing traffic and agricultural use of these roads. The project would also lead to increased congestion on the adjacent and surrounding roads.
- 6. Although the purpose of the RPC designation is to allow large-scale development as a means to create superior living environments and design ingenuity, the proposed RPC must still be in an area that is suitable for it. The proposed RPC, with 1592 residential units, 158,874 square feet of retail space, 71,800 square feet of office space, a 6,000 square foot library and 220 assisted living units, is not suitable or compatible with the area.
- 7. The project would include many townhouse units and an assisted living facility, which would be inconsistent with the current zoning of this property and the character, zoning and uses of the surrounding properties.
- 8. MR zoning is designed to provide for medium-density residential development in areas which are or which are expected to become generally urban in character. This area, surrounded by lands used for agricultural purposes and including Agricultural Preservation Districts, is not urban and is not expected to become urban in character. Therefore, a change in zone to MR is not appropriate for the land.

Motion by Mr. Gordy, seconded by Mr. Smith and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated.

Motion carried 3 – 0. Mr. Allen and Mr. Johnson were absent.

C/U #1614 – application of **BEAU MARR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for welding and fabrication to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 41,915 square feet, more or less, lying east of Route 30, 550 feet south of Route 9 at Gravel Hill.

The Commission discussed this application which has been deferred since July 14, 2005.

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

Motion carried 3 – 0.

C/U #1616 – application of **PAUL KASE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for professional offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 41,611 square feet, more or less, lying at the southeast corner of Route 275 (Plantation Road) and Road 276 (Shady Road).

The Commission discussed this application which has been deferred since July 14, 2005.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1616 for Paul Kase for medical offices based on the record and for the following reasons:

1. The site is within a developing area according to the 2002 Comprehensive Plan Update.
2. This application is for professional offices including doctor's offices. This location is appropriate for such a use, given the close proximity to Beebe Hospital and the Beebe Health Campus on Route 24.
3. This site is in close proximity to other commercial and business uses on Shady Road, and is directly across from commercially zoned property on the other side of Shady Road.
4. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
5. The use has a public or semi-public character and is desirable for the general convenience and welfare of the area and the County.
6. This recommendation for approval is subject to the following conditions and stipulations:
  1. The offices shall be limited to professional medical care or other services incidental to or related to such a use.
  2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
  3. The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Shady Road, as approved by DelDOT.
  4. The site shall be served as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
  5. All parking shall be screened from view with landscaping from any neighboring residential properties.

6. Hours of operation shall be limited to 7:00 am until 8:00 pm Monday through Friday and 8:00 am until 5:00 pm on Saturdays.
7. Signage shall be limited to one ground sign not to exceed 32 square feet per side with directional lighting.
8. All trash containers shall be placed at the rear of the building and shall be screened from view. The location of the containers shall be shown on the site plan.
9. The site plan shall be designed to accommodate all necessary parking spaces, right-of-ways, setbacks and landscaping.
10. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy 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 and stipulations stated.

Motion carried 4 – 0.

C/U #1617- application of **GLEN R. JONES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of an existing RV campground (C/U No. 827) to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 56.7103 acres, more or less, lying south of Route 78A (Old Sailor Path), 0.4 mile south of Route 78 and north of Broad Creek.

The Commission discussed this application which has been deferred since July 14, 2005.

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

Motion carried 4 – 0.

#### PUBLIC HEARINGS

APD #2005-1 – application of **GARY L. O'DAY** to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for three (3) parcels of land totaling 205.1 acres, more or less, located on both sides of Route 42 (Chaplains Chapel), both sides of Route 40 (Redden Road) and north of Road 565 (Deer Forest Road) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that the site contains 126.10 acres of cropland, 76.00 acres of woodlands, 1.0 acre set aside for a dwelling, and scored 208 points out of 300 in the Land Evaluation and Site Assessment scoring by the Department of Agriculture.

The Commission found that Gary L. O'Day was present and stated in his presentation and in response to questions raised by the Commission that he has farmed the site for approximately 30 years, and that he grows corn, soybeans, and some grains.

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

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

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved.

Motion carried 4 – 0.

Subdivision #2004-38 – application of **RIVER BASIN ENGINEERING** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 65.00 acres into 126 lots, located south of Road 302, 0.4 mile east of Road 305 and Route 48 intersection.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on November 17, 2004 and that the report will be made a part of the record for this application; and that the applicants submitted an Exhibit Booklet and a revised plan incorporating the recommendations of the Technical Advisory Committee.

The Commission found that Jim Fuqua; Attorney, Evans Norwood; Applicant, and Drew Hayes; Engineer with River Basin Engineering were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the site is located on the south side of Road 302 approximately 1 mile west of Route 5 and a ½ mile east of Road 48; that the site contains 65 acres more or less; that the site is farmland with some wooded and wetlands areas; that 126 single family lots are proposed; that the site has been designed utilizing the AR-1 Cluster Ordinance; that the proposed density is 1.96 lots/acre; that the site plan has been revised addressing the concerns of the Technical Advisory Committee and comments received from PLUS; that the project is a low density single family residential development; that the minimum lot size is 7,500 square feet; that central water and sewer will be provided by Tidewater Utilities; that the site is located in a low density area as established by the Comprehensive Land Use Plan; that the design complies with all ordinances and codes; that the wastewater treatment



system will be designed to be able to tie into a County system when one becomes available; that Delaware Electric Cooperative will provide electric; that Verizon will provide phone service; that MediaCom will provide cable television; that Sharp Energy will provide gas; that preliminary restrictive covenants have been submitted; that a homeowners' association will be established for the maintenance of streets, buffers, storm water management facilities and common areas; that the site is located within the jurisdiction of the Delaware State Police; that the site is located in Millsboro Fire Company's fire district; that \$200.00 for the sale of each lot will be given to the Millsboro Fire Company; that the site is located in the Cape Henlopen School District; that the site contains 9.3 acres of right of way, 25.1 acres for lots and 30.50 acres of open space; that the average lot size will range from 8,000 to 10,000 square feet; that there is one entrance to the project; that future interconnection roads have been provided; that DelDOT did not require a traffic impact study; that the wooded areas on the site will be preserved; that buffers have been provided around the project; that the wetland areas will remain undisturbed; that open space walking trails are provided throughout the project; that a tot lot playground, pool and pool house are proposed; that the wastewater treatment area will be located on the south side of the project; that there is a cemetery located on the site and that it will be maintained by the homeowners' association; that access to the cemetery will be provided; that sidewalks on both sides of all streets and street lighting are proposed; that the design creates a superior living environment in that it is over 10 acres, that 47% of the site is open space, that the design meets the requirements of the community design standards referenced in the Land Use Plan; that buffers from existing residences are provided; that the lots have no direct access to the county road; that there are not any wetlands located on the individual lots; that the wastewater treatment system will be designed to meet the requirements of DNREC; that the project meets the requirements of Subsection 99-9C in that there will be minimal tree removal; that there will not be any negative impacts to groundwater; that there will not be any adverse impacts to existing dwellings in the area; that the site is not economically feasible to farm; that retail and professional services are located in the Route 24 and 5 area; that there will not be any negative impacts to traffic; that the development is in character with the area since other subdivisions have been approved and are being constructed; that the property to the east will probably never be developed; that the wastewater treatment disposal system will be spray irrigation on 7.8 acres; that the deed restrictions will be revised to include a restriction on tree removal; and submitted 4 letters in support of this application, and revised conditions of approval and possible findings of fact for the approval of this application.

The Commission found that Sam Schelegel, an area resident, was present in support of this application and stated that the proposed development will preserve trees as where other developments cut down trees; and that there aren't that many forested areas remaining.

The Commission found that Henry Glowiak and Michael Tyler, members of the Citizens Coalition, were present in opposition to this application and stated that the site is located in a Level 4 Area; that the State is not supporting infrastructure in these areas; that the use would be out of character with the area; that the site is an agricultural area; that the project will have negative impacts on the wetlands; that cumulative impacts need to be considered; raised concerns about the value of open space, the quality of open space; and that development is moving further west.

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

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

Motion carried 4 – 0.

C/Z #1577 – application of **PGS PROPERTIES** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the northeast corner of Route 54 and Road 381 (Old Mill Bridge Road), to be located on 6.49 acres, more or less.

C/Z #1578 – application of **PGS PROPERTIES** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-1 High Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 600 feet north of Route 54 and 190 feet east of Road 381 (Old Mill Bridge Road), to be located on 12.68 acres, more or less.

The Commission and Dennis Schrader, Attorney for the Applicants, that the public hearings for C/Z #1577 and C/Z #1578 be held during one public hearing and that individual decisions would be rendered for each application.

The Commission found that the Applicant had submitted a revised site plan and an exhibit booklet which contained a project overview, a site plan, an ortho-photo overlaid with the current zoning in the area, a copy of the application forms for both applications, a June 28, 2004 letter from DelDOT, a copy of County site location maps, legal descriptions of the area of the two applications, an Environmental Assessment Report which included an introduction, a summary, general characteristics of the site, historical information, an analysis of required information, a vicinity map and sketch site plan, a site context map, a site analysis map, and appendices which included a nutrient budget report and site photos, a copy of an application for P.L.U.S. review, and elevation views of proposed multi-family units prepared by Ryan Homes and NVHomes.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the System Design Assumption for the site was established as 4.0 units per acre; that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is not available for the project; that the total EDU allocation as stated in the South Coastal Area Planning Study Update 2004 is 73.27 EDUs; that this allocation is based on the current zoning of AR-1; that recent upgrades at Pump Station 30 are complete; that increased allocation was not provided for during the upgrades; that it is unknown if Ordinance No. 38 construction will be required; that wastewater capacity needs are not specified; that the current System Connection Charge Rate is \$3,640.00 per EDU; that there is currently no service to these parcels; that the County Engineer will identify a connection point; that the Swann Cove Development will provide the connection point for Parcel 76.00; that conformity to the South Coastal Area Planning Study Update 2004 will be required; and that a concept plan will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam, Klej loamy sand and Pocomoke sandy loam; that the Fallsington and Pocomoke soils have severe limitations for development; that the Klej soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the three soil types are considered of Statewide Importance; that the Fallsington and Pocomoke soils are considered Prime Farmland; that all three soil types are considered either Hydric or Hydric in depressions; that no storm flood hazard areas or tax ditches are affected; that it will be necessary for some on-site and off-site drainage improvements; and that there may be regulated wetlands on the site and that the Applicant should check with Federal and State agencies for required permits.

The Commission found that Dennis Schrader, Attorney, Preston Dyer of PGS Properties, and Mark Davidson of Design Consultants Group were present and stated in their presentations and in response to questions raised by the Commission that they propose to develop the site with commercial pad site and multi-family structures; that the site is located in the Environmentally Sensitive Developing Area north of Route 54; that the site is in close proximity to Americana Bayside RPC, Keenwik Sound RPC, Swann Cove RPC, the Refuge at Dirickson Creek RPC, Swann Keys GR Subdivision and other residential communities; that the site is also adjacent and in close proximity to other B-1 and C-1 zones and sites; that the property is proposed to be divided into two sites, a 6.4 acre site for commercial use and a 12.6 acre site for multi-family use; that they propose to provide interconnectivity with other projects in the area; that the commercial area is planned to be developed with 5 pad sites; that they have had a contract to purchase the site since 2002; that numerous studies have been prepared by different developers for submittal to DelDOT and that DelDOT has done several studies for the area; that because



of DelDOT requirements the project has been redesigned several times and the number of units has been reduced each time; that they propose to record voluntary deed restrictions to limit the uses in the C-1 portion of the site to B-1 type uses, and to limit the number of units in the multi-family portion of the site to not exceed 100 units, a density of 7.99 units per acre; that this site is one of the last sites that can be developed in the area; that the site is adjacent to a utility company parking area and other commercial sites; that the site could be considered a transitory site between other projects; that the HR site contains 12.52 acres of which 3.97 acres are open space (32%); that 0.68 acre of wooded wetlands exists on the site; that 88% of the woodlands will remain undisturbed; that they will provide sidewalks and trails throughout the project; that a community building and swimming pool will be provided; that a nutrient budget has been designed for the project and that they anticipate a 67% reduction in Nitrogen and a 40% reduction in Phosphorus; that central water will be provided; that public sewer will be provided by the County; that the primary entrance will be from Route 54; that they propose an interconnection to Road 381; that all ingress/egress to the commercial pad site will be from internal streets; that drainage may be piped underground to a tidal ditch across Route 54; that at least 200 additional trees and shrubs will be planted throughout the site; that streetlights will be provided; that the Applicants will construct all sewer utility lines and will upgrade the pump station if required; that the Applicants had not seen the comments from County Engineering until today and could not contact the County Engineer or Assistant County Engineer due to their absence; that they anticipate that the predominant resident in the project will be second home buyers, retirees and some year-round active adults, 55 or older; that they have a scheduled P.L.U.S. review for August 24, 2005; that the higher density is consistent with the area due to rezoning that the County has approved over time in the area; and that they do not believe that there will be a problem with the units being converted to rental units.

The Commission found that Carletta Lankford and Wilma Jones, present land owners, were present in support of the applications and stated that the nature of the adjacent properties is commercial and residential; that a convenience store with gasoline sales is adjacent to the west; that a furniture outlet and boat repair and sales facility is adjacent to the east; that there should be no adverse negative affect on property values; that their family has owned the property for over 100 years; that the land is too small for profitable farming; that the site is in a growth area; and that the site is within a resort area where growth is going to continue.

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. It was noted that the P.L.U.S. review has not yet taken place and that the Applicant and County Engineering have not established the number of acceptable EDUs.



Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action on C/Z #1577 and C/Z #1578 pending receipt of the P.L.U.S. report, to leave the record open for County Engineering comments in reference to EDUs, and to leave the record open for 15 days for written comments after receipt of the P.L.U.S. report.

Motion carried 4 – 0.

C/Z #1579 – application of **SUSSEX LUMBER LAND COMPANY, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying 325 feet northeast of Road 83 and 600 feet northeast of U.S. Route 113, to be located on 2.0 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “C” of Route 83 will not change as a result of this application.

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

The Commission found that Jeff Revell of Sussex Lumber Land Company was present and stated in his presentation and in response to questions raised by the Commission that they operate a lumber company and hardware on the adjacent site; that they have a need for additional area for expansion of their lumber storage; that they have purchased this 2.0 acre site for open storage of lumber; that the existing facility sits on 4.199 acres; and that they have access from Route 83 at two locations.

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

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

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since a need exists for expansion of the existing lumber facility and since the site is adjacent to and in close proximity to other commercial zones and uses.

Motion carried 4 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ENTITLED “ZONING”, TO AMEND THE PROVISIONS RELATING TO THE PLACEMENT OF MULTISECTIONAL MOBILE HOMES ON FIVE (5) ACRES OR LESS IN AN AR-1 DISTRICT.

Mr. Lank summarized the Ordinance Amendment.

Mr. Kautz suggested that it may be appropriate to amend the text of the Ordinance Amendment in Section 1 by adding the words “multi-sectional” before manufactured home in the amendment to clarify that the intent of the amendment is for multi-sectional homes, not single-wide homes, to add a “A” behind the reference to 115.20 to clarify the subsection, and to add the word “Council” after the reference to Sussex County in Section 2.

The Commission found that the corrected text would read “(19) A multi-sectional mobile home or *multi-sectional* manufactured home uses as a single-family dwelling may be permitted on a property of less than  $\frac{3}{4}$  acres, pursuant to Article IV, 115.20 A (1) (a) through (g) and (i)”.

The Commission discussed the Ordinance Amendment.

The Commission found that Michael Tyler was present and expressed some concerns about the possible impact on subdivision and homeowners associations.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with a recommendation that the Amendment be denied due to concerns expressed about the possible impact on private deed restrictions, the possible impacts on existing subdivisions, and the concern that units will be placed in a hap-hazard manner causing unwanted problems for some homeowners associations.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE A GARAGE/STUDIO APARTMENT AND TO PERMIT SUCH APARTMENTS WITH PARKING AS SPECIAL USE EXCEPTIONS IN AR-1, AR-2 AND MR DISTRICTS.

Mr. Lank summarized the Ordinance Amendment.

The Commission discussed the Ordinance Amendment.

Mr. Wheatley noted that it was never contemplated in older subdivisions that garage apartment could be established; that there could be a real enforcement issue created by the establishment of this use; that it sounds like we are creating and encouraging more development; and questioned the number of people that could live in an 800 square foot apartment.

Mr. Gordy noted that there could be parking problems and that he could see both pros and cons to the proposed amendment.

Mr. Smith questioned enforcement issues and added that the use could affect the entire County, not just the resort areas.

Mr. Johnson stated that it might provide a means for young professionals just starting out.

Mr. Robertson questioned if the County Engineering and DelDOT had made any comments about the Amendment.

The Commission found that Michael Tyler was present and expressed concerns about the possible impact on the entire County; questioned if existing garage apartment have been a problem; added that young professional want larger units; and questioned the numbers of parking spaces required and the number of occupants.

The Commission found that Kevin Oldham was present and stated that the use could open a flood gate of problems with rentals with 2 or 3 families renting a site; enforcement problems; and added that the City of Rehoboth Beach has removed garage apartments from their regulations dues to enforcement problems, that existing garage apartments are considered grand-fathered, and that when a garage apartment is removed from a site it cannot be replaced.

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

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Amendment be denied based on the discussions on parking, use, and lack of need. There was a consensus of the Commission that the Conditional Use process for multi-family use is preferred.

Motion carried 4 – 0.

#### OTHER BUSINESS

Americana Bayside MR/RPC

Preliminary Site Plan – Phases 7a, 7b, 9a, 9b, 10a, and 10b – Route 54

Mr. Abbott advised the Commission that this is the preliminary site plan for the above referenced phases; that phase 7a contains 93 units which includes patio homes, a custom home, 33 townhouse units, and 30 multi-family units; that phase 9a contains 20 units which includes 5 patio homes, 14 village homes, and a custom home; that phase 7b contains 11 units which includes 10 patio homes and a custom home; that phase 9b contains 24 units which includes 6 village homes and 18 courtyard homes; that phase 10a contains 15 units which includes 2 village homes and 13 estate homes; that phase 10b contains 21 units which includes 1 patio home, 1 estate home, and 19 grand estate homes; that the preliminary site plan is the same as the approved master plan; that all parking requirements have been met; and that the site plan is suitable for preliminary approval.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary.

Motion carried 4 – 0.

Dr. Thomas Benz

Commercial Site Plan – U.S. Route 13 and Riverside Drive

Mr. Abbott advised the Commission that this is a preliminary site plan for a 1-story, 3,997 square foot medical building and a future 1-story, 3,290 square foot office building; that the setbacks meet the requirements of the zoning code; that the parking meets the requirements of the zoning code; that on-site septic and water are proposed; that ingress/egress to the site is from Riverside Drive; that there is no direct access to U.S. Route 13; and that approvals have been received from the Office of the State Fire Marshal and Sussex Conservation District.

It was brought up that the future building is located within the Highway Corridor Overlay Zone and would therefore require a setback of 60-feet; and that the parking spaces are located within the front yard setback.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action so that the Commission may visit the site.



Motion carried 4 – 0.

Beebe Medical Center  
CU #1559 Revised Site Plan – Route 24

Mr. Abbott advised the Commission that this is a revised site plan for an 89,094 square foot medical building addition; that the setbacks and parking meet the requirements of the zoning code; that central sewer is provided by Sussex County and central water is provided by Tidewater Utilities; that the building addition will be 3 stories; that there are not any wetlands located on the site; and that the site plan may be approved as revised, or the Commission may require another conditional use application.

Wally Hudson, Vice President of Beebe Medical Center advised the Commission that the hospital is combining it's radiation oncology and medical oncology on the first floor of the proposed addition with office space located on the second and third floors; that the plan has been phased; that the revised site plan will speed up the relocation of the second phase; that they do not want delays in patient care; and that at this time, there are no plans to build on the remaining lands.

Mr. Kautz questioned if there is going to be an interconnection to the Townsend's multi-family project located to the rear of this site.

Paul Westphal of Design Consultants Group advised the Commission that there are no plans to have an interconnection with the Townsend site.

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

Motion carried 4 – 0.

Environtech Storage Building  
Commercial Site Plan – Road 273 (Hebron Road)

Mr. Abbott advised the Commission that this is a site plan for a 2-story, 3,600 square foot office and warehouse building; that the setbacks meet the requirements of the zoning code; that the Board of Adjustment granted a ten foot variance for the front yard setback; that 4 parking spaces are located within the front yard setback and need a waiver from the Commission; that central sewer is provided by Sussex County and central water is provided by the City of Rehoboth; that there are not any wetlands located on the site; that all agency approvals have been received and the site plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a final.

Motion carried 4 – 0.

White Creek Landing MR/RPC  
CZ #1240 Final Record Plan – Road 351

Mr. Abbott advised the Commission that this is the final record plan for an 89-lot single family residential planned community; that the Commission granted revised preliminary approval on July 23, 2003; that the final record plan is the same and meets the requirements of the subdivision and zoning codes; and that all agency approvals have been obtained.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the record plan as a final.

Motion carried 4 – 0.

Subdivision #2003 – 25 - - Richard N. Moonblatt  
Time Extension – Road 233

Mr. Abbott advised the Commission that this is a request for a time extension; that the Commission granted preliminary approval on January 8, 2004; that the request is being made due to an illness suffered by the applicant; that this is the first request for an extension; and that if the request is granted, it should be retroactive to the anniversary date of preliminary approval.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to grant a one-year extension retroactive to the anniversary date of preliminary approval. The preliminary approval expires on January 8, 2006.

Motion carried 4 – 0.

Percy Frank Kelley, III  
2 Lots on a 50' Right of Way – Road 544

Mr. Abbott advised the Commission that this is a request to create 2, 0.75-acre lots with access from an existing 50-foot right of way; that if approved, it would be a total of 3 lots having access from the right of way; and that any further subdivision of the property would require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the request as submitted.

Motion carried 4 – 0.

Robert Marshall  
Lot – Old Landing Golf Course – Road 274

Mr. Abbott advised the Commission that this is a request to create a lot within Old Landing Golf Course for a new dwelling; that access to the lot will be from Old Landing Woods Subdivision; and that the owners within Old Landing Woods Subdivision have approved the request.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the request as submitted.

Motion carried 4 – 0.

Robert Muncy  
2 Lots – Clifton Shores Drive (Primehook Beach)

This item was removed from the Agenda on July 26, 2005.

The Five Fifty Group, L.L.C.  
Lot on 50' Right of Way – Route 9

Mr. Abbott advised the Commission that this is a request to create a 0.83-acre lot with access from an existing 50-foot right of way; that the owner proposes to extend an existing 50-foot right of way and create a cul-de-sac at the end; and that any further subdivision of the property would require an application for a major subdivision.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the request as submitted.

Motion carried 4 – 0.

Maria R. Huerta  
Lot on 50' Right of Way – Road 611

Mr. Abbott advised the Commission that this is a request to create a lot with access from a 50-foot right of way; and that the lot may be approved as submitted or that an application for a major subdivision may be required.

Patrick Huerta advised the Commission that the right of way is located where an existing farm lane is located; that the lane serves as access to the poultry houses on the site; and that the entrance is paved.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the request as submitted.

Motion carried 4 – 0.

South Woodland Subdivision  
Temporary Right of Way – Road 78

Mr. Abbott advised the Commission that this is a request for a temporary right of way to serve as access for 5 existing lots; that the right of way runs from Layton's Riveria MHP to the lots; and that the right of way will be abandoned when the interior streets within South Woodland are built.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the temporary right of way with the stipulation that it will be abandoned when the interior streets within South Woodland are built.

Motion carried 5 – 0.

Joseph Warnell  
4 Lots – Road 207 and 214

Mr. Abbott advised the Commission that this is a request to create 4 lots along Road 207 and 214; that there is a 60-foot easement located between lots 1 and 2 and 3 and 4; that DelDOT has issued entrance location approval from the 2 easements; and that the remaining lands is the subject of a pending subdivision application (#2005 – 16 – Cypress Creek Estates) that has not yet been scheduled for a public hearing; and that action was deferred on July 14, 2005.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the request as submitted.

Motion carried 4 – 0.

#### ADDITIONAL BUSINESS

There was a consensus of the Commission to wish Mr. Allen a speedy recovery from his surgery and a quick return to the Commission meetings.



Meeting Adjourned at 10:47 pm.