

MINUTES OF THE REGULAR MEETING OF APRIL 9, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 9, 1992, at 7:30 PM in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the minutes of March 26, 1992, as revised. The revision corrected comments by Bake Timmons in reference to Subdiv. #92-3, Dogwood Estates Joint Venture.

Public Hearings

1. RE: C/Z #1157 -- Hugh & Tina McBride

Hugh and Tina McBride, and James Fuqua, Esquire, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the south side of Route 54, 220 feet east of Salty Way Drive of Keenwik West Subdivision to be located on a parcel containing 2.93 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Indian River School District, and the Sussex Conservation District.

Mr. Fuqua advised the Commission that the applicants intend to purchase the property, and that the present owner will continue to reside in the dwelling.

Mr. Fuqua submitted photographs of business and commercial sites in the area and referenced the locations on a tax map.

Mr. Fuqua exhibited a preliminary site plan for the intended showroom, work shop and storage area with related parking and driveway.

Mr. McBride advised the Commission that he and his wife and son create artwork out of crab pot floats, that they make the crafts at home and presently sell them at craftshows and by mail orders, that they would like to operate out of one central location, that they need a showroom to exhibit their craft and crafts (possibly handcrafted decoys and model ships) made by others, that they propose a sign on the building and at the entrance, that the site is located in the Fenwick Island Sanitary Sewer District, that a private well exist on site, that they have met with representatives of DelDOT and will provide whatever DelDOT requires, that the entrance will be similar to Keenwik West, that a 24 foot driveway

is proposed to serve the parking area, that the building proposed is 32 feet by 40 feet with a 32 feet by 28 feet garage storage area, that other sites were considered in the Fenwick Island area and along Route 54 but they could not provide adequate parking, that summer hours will be 9:00 AM to 8:00 PM 6 or 7 days per week, that off-season hours will be 9:00 AM to 5:00 PM 5 days per week, that presently 60 to 70 percent of their business is at craft shows, that no adverse impact is anticipated on property values, that a positive impact is anticipated on traffic once the entrance improvements are made, and that they would like to place living quarters over the shop once completed.

Mr. Fuqua advised the Commission that the site is located in the proposed Development District of the Coastal Sussex Land Use Plan, that the B-1 rezoning was chosen because B-1 zoning has more value in financing than a Conditional Use for one use, that the rezoning is appropriate since B-1 zoning exist on the adjacent parcel, and that the applicants started the craft as a hobby which has since grown into a business.

Reverend Briener, Lewis Reeves, John Mack of Cape Windsor Association, Gordon Willey, and Jeanette Williams of KeenWick West spoke in opposition to the rezoning, not to the intended use, and expressed concerns in reference to other uses permitted in the B-1 Neighborhood Business District, questioning the intent of building a business and another residence on the same parcel, that a precedent may be established by rezoning additional lands, that a Conditional Use with restrictions would be acceptable to the Church, that a Conditional Use was preferred by DelDOT over rezoning, and questioning traffic considerations and drainage.

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

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

The Commission found, based on comments received from DelDOT, that originally DelDOT had requested a traffic impact study because this segment of Route 54 operates below the minimum acceptable level of Service D during peak periods, that currently DelDOT has no plans to make construction improvements to the segment, that DelDOT agrees to waive the Traffic Impact Study requirement if certain improvements are made which include: Establishment of a left turn lane on Route 54 for vehicles entering the site from the westbound direction, Establishment of a right turn lane on Route 54 for vehicles entering the site from the eastbound direction; that the referenced improvements may require a substantial widening of the pavement of Route 54, that this project will quantitatively diminish traffic service in this area, that this project will not

qualitatively decrease the level of service of Route 54 once the improvements are completed, and that DelDOT reserves the right to require a traffic impact study during the plan review process.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the district.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped to be Woodstown sandy loam and Fallsington sandy loam, that the suitability of the soils for the intended use vary from slight to moderate limitations in the Woodstown soils and severe limitations in the Fallsington soils if not adequately drained, that the evaluation of the soils with respect to erosion and sediment control may require the developer to follow an Erosion and Sediment Plan during construction and to provide and maintain a vegetative cover after completion of any construction, that the farmland rating of the soil are mapped as prime, that no storm flood hazard area is affected, that it may not be necessary for any off-site drainage improvements, that it may be necessary for some on-site drainage improvements, and that no tax ditches are affected.

The Commission found that the applicants were present with legal counsel and that they plan to utilize the site for a showroom, workshop and storage area for their craftwork.

The Commission found, based on comments made by representatives of the application, that the applicants intend to purchase the property, that the present owner will continue to reside on the premises, that the applicants create artwork from crab pot floats by painting them, that the crafts are presently made at home, that the crafts are sold at craftshows and by mail order, that they need a showroom to exhibit their crafts and the crafts of others, that they propose a sign on the building and at the entrance, that the site is located in the Fenwick Island Sanitary Sewer District, that a private well exist on the site, that they have met with DelDOT representatives and that the applicants will provide whatever improvements DelDOT requires, that the entrance will be similiar to the entrance at Keenwik West, that a 24 foot wide driveway is proposed to serve the parking area, that the building proposed is 32 feet by 40 feet with a 32 feet by 28 feet garage storage area, that other sites were considered in the Fenwick Island area and along Route 54 but could not provide adequate parking, that summer hours will be 9:00 AM to 8:00 PM 7 days per week, that off season hours will be 9:00 AM to 5:00 PM 5 days per week, that presently 60 to 70 percent of their business is at craft shows, that no adverse impact is anticipated

on property values, that a positive impact is anticipated on traffic when the entrance improvements are made, that they would like to place living quarters over the shop once completed, that the site is located in the proposed development District of the Coastal Sussex Land Use Plan, that the B-1 rezoning was chosen because B-1 zoning has more value in financing than a conditional Use for one purpose, that the rezoning is appropriate since B-1 zoning exist on the adjacent parcel, and that the applicants started the craft as a hobby which has since grown into a business.

The Commission found that five people spoke in opposition to the rezoning, not to the intended use, and expressed concerns in reference to other uses permitted in the B-1 Neighborhood Business District, questioning the intent of building a business and another residence on the same parcel, that a precedent may be established by rezoning additional lands, that a Conditional Use with restrictions would be acceptable, that a Conditional Use was preferred by DelDOT over rezoning, and questioning traffic considerations and drainage.

Mr. Magee questioned the multi-use of the property with a business and two residences, questioned if B-1 would impact the Church due to the many uses, and that the uses in B-1 may not be appropriate zoning use of the area.

Motion by Mr. Magee to forward the application to the Sussex County Council with the recommendation that it be denied based on the above. The motion died for the lack of a second.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to defer action.

2. RE: C/Z #1158 -- Bayville Shore Development Corp.

Goodwin Taylor, Developer, John Sergovic, Esquire, John Plummer, an Engineer, Jerry Freidel, an Engineer, and Lawrence Moynihan, a Real Estate Appraiser, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HR-2/RPC High Density Residential/Residential Planned Community in Baltimore Hundred, located on the north side of Route 58B, south of the Assowoman Bay to be located on a parcel containing 91.88 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Office of the Secretary of the State DNREC, the Sussex Conservation District, the Indian River School District, the DNREC Underground Discharges Branch, the DNREC Water Supply Branch, County Engineering, And the Department of Agriculture.

Mr. Sergovic submitted a booklet for the Commission's review during the process of the public hearing.

Mr. Sergovic advised the Commission that this application is similiar to a recent application (C/Z #1114 and C/Z #1115) that was withdrawn by the applicant.

Mr. Sergovic stated that the land should be developed and zoned as requested based on some comments of agencies received to-date, that neither he nor the applicant influenced the agencies for support, and that the comments were made by the agencies.

Mr. Sergovic stated that this application proposes high density zoning with a residential planned community overlay, that the marina concept has been deleted, that 340 units are proposed in clusters, that the density has been calculated as 5.18 units per acre after deletion of all State wetlands and roads, that the overall density of the entire tract has been calculated as 3.7 units per acre with no deletions, that the site plans were revised by deletion of the dry boat storage and marina, that multi-family development of the site make the project more feasible due to cost involved in connection to the County Sewer System, that approximately 1200 units could be allowed with HR High Density Zoning, that the RPC Residential Planned Community overlay was chosen to allow for conditions of approval by the County, that rezoning should be performed based on a Comprehensive Land Use Plan, that the State Quality of Life legislation advises that zoning should conform to adopted land use plans, that this application conforms to the Coastal Sussex Land Use Plan, that the Coastal Sussex Land Use Plan map depicts multi-family use in this area, that a residential planned community can create a superior living environment while still protecting the environment, that the school district does not anticipate a significant impact, that the State Police have commented that they are capable of sufficient police coverage for the area, that the Roxana Fire Company has recently built a substation within one mile of the site, and that appropriate fire hydrants will be installed as requested by the Office of the State Fire Marshal.

Mr. Taylor added that dry hydrants will be supplied as requested, and that the roads will be constructed to accomodate all fire apparatus.

Mr. Plummer advised the Commission that sight distance at the intersection of Route 54 and Route 58B is adequate by calculation and that DelDOT has agreed, that the capacity of Route 54 at this intersection is accepted to be at Level of Service "D" and that improvements required for this project will allow the level of service to remain, that DelDOT has recommended the widening of Route 58B, the creation of a left turn lane, the creation of a

right turn lane, and the creation of a third lane from Mallard Lakes, rather than traffic signalization, and that the improvements will create a safer intersection.

Mr. Taylor stated that he has agreed to make the necessary road improvements per the requirements of DelDOT.

Mr. Friedel advised the Commission that based on comments from the Sussex County Engineering Department sewer capacity is available for this project, that the project will create approximately \$611,000 in connection fees, that the developer will be required to fund the construction of all sewer lines and connections out to Route 54, that central water will be provided on site with a similiar water system to Mallard Lakes, and that the water system will meet all State DNREC and Fire Marshal requirements.

Mr. Moynihan advised the Commission that the site has been reviewed with three different development schemes - AR-1 Agricultural Residential, MR Medium Density Residential, and HR High Density, that the most appropriate economic use of the property is multi-family due to the cost of creation of the amenities.

Mr. Freidel advised the Commission that buffers are proposed from wetlands, that no buildings will encroach wetlands, that additional wetlands will be created within the project by interconnection of existing dead end canals, that no negative impact is anticipated on the existing wetlands, that the project will conform to State stormwater management regulations, that runoff will not exceed existing conditions, that all drainage is proposed to be contained on the site, and that the setback from wetlands appears to be approximately 30 feet.

Mr. Taylor stated that he has no objection to a 30 foot setback from wetlands, that the only negative to the project is traffic on Route 54, that the proposed improvements to Route 54 should improve conditions on Route 54, that residential planned communities create more open space and clustering of housing, that recreation areas will provide facilities for swimming, tennis, community centers, walking trails and open space, and that clustering provides a better living environment for buyers by improved views over typical single family lots.

Tom Delaney and Ray McCabe spoke in support of the application.

Pat Ficken of the Coalition of Coastal Communities, Warren Allen of Keenwik Sound, Grace Fazio of Mallard Lakes, George Daniels of East of the Sun, Lee Ford of Keenwik West, Betty Bozi of Swann Keys, Bill Wolfe of the Keenwik Association, John Mack of Cape Windsor, Chuck Phillips of Edgewater Acres, George Marvel, Jeanette Pomroy, Walneada Sharon, and Louis Becker spoke in opposition to the project and expressed concerns in reference to traffic, the number of units already approved in the area, the need for improvements on Route 54, sight visibility at intersections, evacuation routes during emergencies, the need for evacuation procedures, the impact on the existing sewer system, the use of water cutback procedures, that the existing sewer can't handle the existing load during peak days, the impact on the existing wildlife in the area, the impact on the water supply by the creation of another central water system, police protection, police response time, the lack of enough troopers, that increase in density increases crime, the need for adequate water pressure for fire protection, the need for roads capable of handling fire apparatus, that a precedent may be established if this project is approved, drainage from the access to the development and from the development, stormwater runoff, and that the project does not benefit the residents who utilize Route 54 everyday.

Forty-seven (47) people were present in opposition.

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

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

The Commission found, based on comments received from DelDOT, that the department has performed a preliminary assessment of the traffic impact and possible traffic mitigation efforts, that the developers have committed to construction of improvements to Route 54 per the recommendations of the department to be able to maintain adequate levels of safety and mitigate its traffic impact, that the department agrees to waive the requirement for a Traffic Impact Study once plans are approved, that the department recommends that the developer upgrade Route 58B pavement to 24 feet width of hot mix surface from the entrance to Route 54, that a left turn lane and a right turn lane be provided at the intersection of Route 54 and Route 58B, that these improvements will provide for adequate traffic flow at this location, that this project will quantitatively diminish traffic service in the area, that this project will not qualitatively decrease the level of service of Route 54 once improvements are made, that motorists will probably experience delays in exiting from Route 58B during peak volume periods, and that the department does not forecast a sufficient increase in traffic to warrant installation of a traffic signal.

The Commission found, based on comments received from the Office of the Secretary of the State DNREC, that comments have been requested from the DNREC Division of Air and Waste Management - Waste Management Section Residuals Management Branch, and Underground Storage Tank Branch, the DNREC Division of Fish and Wildlife, the DNREC Division of Parks and Recreation, the DNREC Division of Soil and Water Conservation, the DNREC Division of Water Resources - Watershed Assessment Branch, Water Supply Branch, Wetlands and Aquatic Protection Branch, Underground Discharges Branch, the Department of Agriculture, the Bureau of Archaeology & Historic Preservation, the Department of Transportation, the Office of the State Fire Marshal, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped to be Woodstown sandy loam, Evesboro loamy sand, Rumford loamy sand, Fallsington sandy loam, Fallsington loam, and Tidal Marsh, that the suitability of the soils for the intended use vary from none to slight limitations for the Evesboro and Rumford soils, moderate limitations for the Woodstown soils, severe limitations due to wetness for the Fallsington soils, and severe limitations for the Tidal Marsh, that the evaluation of the soils with respect to erosion and sedimentation control may require the developer to follow an Erosion and Sediment Plan during construction and to maintain a vegetative cover after completion of any construction, that the farmland rating of the soils are prime and of statewide importance, that a storm flood hazard area may be affected, that no tax ditches are affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the change will have a significant impact on the district.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that since wastewater disposal is proposed to be via the central sewer facility the Branch has no comment.

The Commission found, based on comments received from the DNREC Water Supply Branch, central water is requires under the Regulations Governing the Allocation of Water due to the proposed density, that the site is not located within a water utility service area, and that the party providing public water service must obtain a Certificate of Public Convenience and Necessity.

The Commission found, based on comments received from the DNREC Wetlands and Aquatic Protection Branch, that any activity, such as filling, dredging, crossing with a road, or placement of a structure in tidal wetlands or a water body requires a State permit, and that most activities in a tidal wetland, freshwater wetland, or a water body requires a permit from the US Army Corp. of Engineers, that State Wetlands and National Wetland Inventory maps are available to assist in determining the presence or extent of wetlands, and that if wetlands are within the area, all necessary permits must be obtained prior to initiating construction.

The Commission found, based on comments received from the Sussex County Engineering Department, that the department has compared the proposed 340 units to the wastewater capacity of the Fenwick Island Sanitary Sewer District and found that adequate capacity is available to serve the project, that the South Coastal Area Planning Study has identified points within the Route 54 interceptor where capacity may be exceeded under current conditions and will be exceeded under future development conditions, that the project is in an area not currently served by sanitary sewer pipelines, that it will be necessary for the developer to provide the necessary facilities to serve the project and the remaining undeveloped properties in the area, that the design of the facilities and its connection point to the existing pipeline must be coordinated with the Department, and that the project will be responsible for the connection charge per equivalent dwelling unit.

The Commission found, based on comments received from the Department of Agriculture Division of Resource Management, that a Land Evaluation and Site Assessment (LESA) analysis has been performed based on Sussex County criteria, that the site scored 132 points out of 300 points indicating that this is a poor site for economical long-term agricultural production, that the Department does not oppose the request, that this zoning category permits development densities that are sufficiently high so as to reduce some of the residential sprawl that is occurring throughout rural Sussex County, that the Land Evaluation score of 53 out of 100 is well below average and reflects that the tillable land is comprised of Evesboro, Rumford, and Fallsington soils, and that the Site Assessment score is 79 out of 200 points, that the Site Assessment factors indicated local conditions more favorable towards development of the parcel, and that the Department feels that the proposed rezoning may be appropriate for the area.

The Commission found that the application was represented by the developer, legal counsel, two engineers, and an appraiser, and that the developers propose to utilize the site for 340 multi-family units and appropriate amenities.

The Commission found, based on comments made by representatives of the application, that this application is similiar to a previous application (C/Z #1114 and C/Z #1115) that was withdrawn by the applicants, that the units have been increased to 340 from the original 332, that the additional 6 units replaces a dry boat storage area eliminated from the proposal, that the boat basin originally proposed has been deleted from the application, that the application should be approved as requested based on the supportive comments received from some of the agencies, that multi-family is proposed in clusters, that the density has been calculated as 5.18 units per acre after deletion of all State wetlands and roads, that the overall density of the entire tract has been calculated as 3.7 units per acre with no deletions, that multi-family development of the site makes the project more feasible due to cost involved in connection to the County Sewer facilities, that approximately 1200 units could be allowed with HR High Density zoning, that the RPC Residential Planned Community overlay provides a means for the County to place restrictions on the project, that rezoning should be performed based on a Comprehensive Land Use Plan, that the Quality of Life legislation advises that zoning should conform to an adopted land use plan, that the application conforms to the Coastal Sussex Land Use Plan, that the Coastal Sussex Land Use Plan map depicts multi-family use in the area, that a residential planned community can create a superior living environment while still protecting the environment, that the school district does not anticipate a significant impact, that the State Police have commented that they are capable of sufficient police coverage for the area, that the Roxana Fire Company has recently built a substation within one mile of the site, that appropriate fire hydrants will be installed as requested by the Office of the State Fire Marshal, that the roads will be constructed to accomodate all fire fighting apparatus, that the sight distance at the intersection of Route 54 and Route 58B is adequate by calculation and that DelDOT agrees, that capacity of Route 54 at this intersection is accepted to be at Level of Service "D" and that improvements required for this project will allow the level of service to remain, that DelDOT has recommended the widening of Route 58B, the creation of a left turn lane and a right turn lane, the creation of a third land from Mallard Lakes, that the improvements will create a safer intersection, that whatever improvements that are required by DelDOT will be installed by the developers, that sewer capacity is available for this project, that the project will generate approximately \$611,000 in connection fees, that the developer will be required to fund the connection of all sewer lines and connections out to Route 54, that the central water system will be similiar to the system at Mallard Lakes, that the water syste, will meet all DNREC an Fire Marshal requirements, that buffers are proposed from wetlands, that no buildings will encroach wetlands,

that additional wetlands will be created within the project by interconnection of the existing dead end canals, that no negative impact is anticipated on the existing wetlands, that the project will conform to all State stormwater management regulations, that runoff will not exceed existing conditions, that all drainage is proposed to be contained on the site, that the developer has no objection to a 30 foot setback from wetlands, that the only negative to the project is traffic on Route 54, that the proposed improvements on Route 54 should improve conditions on Route 54, that residential planned communities create more open space and clustering of housing, that recreation areas will provide facilities for swimming, tennis, community centers, walking trails and open space, and that clustering provides a better living environment for residents by improved views over open space rather than a typical single family lot subdivision.

The Commission found that two parties spoke in support of this type of application.

The Commission found that 13 parties spoke on behalf of the 47 people present in opposition to this project and expressed concerns in reference to traffic, the number of units already approved in the area, the need for improvements on Route 54, sight visibility at intersections, evacuation routes during emergencies, the need for evacuation procedures, the impact on the existing sewer system, the use of water cutoff procedures, that the existing sewer can't handle the existing load during peak days, the impact on the existing wildlife in the area, the impact on the water supply by the creation of another central water system, police protection, police response time, the lack of enough troopers, that increase in density increases crime, the need for adequate water pressure for fire protection, the need for roads capable of handling fire apparatus, that a precedent may be established if this project is approved, drainage from the access road to the development and from the development, stormwater runoff, and that the project does not benefit the residents who utilize Route 54 everyday.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to defer action on this application for review of comments and the record.

### III. OTHER BUSINESS

1. Bethany Bay  
Phase Two Section 1 & 3.2

The Commission reviewed the site plan of Bethany Bay, Phase Two, Section 1 and 3.2.

Mr. Abbott advised the Commission that Phase Two contains 46.39 acres, and is a mix of multi-family dwellings, single family clusters, and single family residential lots.

Mr. Abbott advised the Commission that the breakdown is as follows: 72 multi-family units, 60 single family cluster dwellings, and 29 single family residential lots.

Mr. Abbott advised the Commission that agency approvals have been received from the Sussex Conservation District, DelDOT, and the Sussex County Engineering Department for street construction.

Mr. Abbott advised the Commission that other agency approvals or permits are required.

Mr. Abbott advised the Commission that at this time the site plan complies with the zoning code, and that the site plan is close to the approved and recorded master plan of Bethany Bay.

Mr. Allen questioned if any of these structures have been constructed.

Mr. Abbott advised the Commission that no construction for this phase has begun, and that this site plan is being prepared by a different engineering firm.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the site plan as a preliminary. Final approval is subject to all agency approvals being received and final site plan review by the Planning and Zoning Commission.

2. Brian Bearese  
C/U #980 Site Plan

The Commission reviewed a site plan for outdoor sales of crafts, collectibles, furniture and produce on Route 18.

Mr. Abbott advised the Commission that the site plan shows a 25'x 40' display area, a gravel parking area with 7 parking spaces, and a fence.

Mr. Allen questioned the height of the fence.

Mr. Abbott advised the Commission that the maximum height of the fence shall not exceed 3 1/2 feet as per Chapter 115 of the Code of Sussex County.

Mr. Abbott summarized the stipulations passed by the County Council and advised the Commission that DelDOT has issued an entrance permit for this site.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the site plan as submitted.

3. Charles Wolstenholme  
Commercial Site Plan

The Commission reviewed a commercial site plan for a canvas business and boat storage on Route 5.

Mr. Abbott advised the Commission that no new buildings are being constructed, that the setbacks of the existing structures comply with the zoning code, that adequate parking is provided, and that an entrance permit has been received from DelDOT.

Mr. Abbott advised the Commission that at this time the site will be used for the canvas business.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the site plan as submitted.

4. I. Lee West  
2 lots and 50' right of way

The Commission reviewed a request to create two acreage tracts with one having a frontage of 150' and a 50' right of way off of Route 458.

Mr. Lank advised the Commission that the two parcels would be for poultry houses and the right of way is needed for trucks to access the rear parcel.

Mr. Lank advised the Commission that the farm would be split if both parcels are required to have 150' road frontage.

Mr. Allen questioned the length of the right of way.

Mr. Abbott advised the Commission that the right of way is approximately 500 feet long and that the parcels are located behind a ditch and a hedgerow.

Mr. Lank advised the Commission that the parcels have to be seperated in order to obtain financing from the bank.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the two parcels and 50' right of way.

5. Salt Pond  
Rear setback discussion

Mr. Lank advised the Commission that the developer would like to know whether decks and structures can be cantilevered over the 404 wetlands.

Mr. Lank summarized the stipulations approved by the County Council referencing stipulation #6.

Mr. Lank advised the Commission that the developers agreed to a ten foot setback from the 404 wetlands.

Mr. Lank advised the Commission that no structures would be located in the wetlands.

Mr. Allen had concerns about the building restriction line imposed by the developer.

Mr. Ralph questioned if there are any problems with wetlands and if they have been resolved.

Mr. Magee stated that the other members of the Commission are more familiar with the restrictions imposed by the developer.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to defer action.

IV. OLD BUSINESS

1. RE: C/Z #1156 -- John E. Schade, et ux. and  
William B. Warrington, et ux.

Mr. Lank introduced the application of John E. Schade, et ux. and William B. Warrington, et ux. to amend the zoning map from MR Medium Density Residential to HR-2 High Density Residential in Baltimore Hundred, located on the west side of Route One, one mile north of Fenwick Island, to be located on a parcel containing 6.35 acres more or less.

Mr. Lank noted that the finding for this application were a part of the packet of information provided. The findings are attached as Exhibit "A".

Mr. Lank noted that the public hearing for this application was held on March 26, 1992 and that action had been deferred.

Mr. Magee questioned the zoning atatus of the SummerTime Mobile Home Park.

Mr. Lank advised the Commission that the park is non-conforming since it was created prior to zoning jurisdiction.

Mr. Magee stated that he agreed with the opposition and expressed a major concern over the wetlands, that the property should not be developed as proposed, and that the zoning is not appropriate for the site.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried 3 votes to 1, with Mr. Ralph opposed to the motion, that this application be forwarded to the Sussex County Council with the recommendation that it be denied based on the referenced concerns above.

2. Subd. #90-36--Robert and John Furbush

No one was present on behalf of the application of Robert and John Furbush to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 34.30 acres into 24 lots, located on the west side of Route 345, 2,950 north of Route 26.

Mr. Abbott advised the Commission that the subdivision received preliminary approval on July 11, 1991, and that the final record plan is the same.

Mr. Abbott advised the Commission that the subdivision complies with the subdivision and zoning codes of Sussex County, and that all required agency approvals or permits have been received.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve as a final.

Meeting adjourned at 10:50 PM.

## FINDINGS FOR C/Z # 1156

The Commission found, based on comments received from the State DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the Soils on site are mapped as Tidal Marsh, that the suitability of the soils for the intended use are severe, that the evaluation of the soils in respect to erosion and sedimentation control shall require that the developer follow an erosion and sediment control plan during construction, that after completion of construction a vegetative cover must be maintained, that the farmland rating of the soils, as mapped, are of statewide importance, that the site is located in a storm flood hazard area, that no tax ditches are affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements.

The Commission found, based on comments received from the Secretary of the State DNREC for land use review and coordination, that comments have been requested from the DNREC Division of Air and Waste Management Solid Waste Branch, the Division of Parks and Recreation, the Division of Soil and Water Conservation, the Division of Water Resources Water Assessment Branch, Water Supply Branch, Wetlands and Aquatic Protection Branch, Underground Discharges Branch and Pollution Control Branch, the Department of Transportation, and the Sussex conservation District.

The Commission found, based on comments received from the DNREC Pollution Control Branch, that they are not really in a position to comment on individual request for zoning changes; that the Department's comments should be from a land use planner's perspective; and questioned if the zoning is consistent with the state/county/local vision for development of the area.

The Commission found, based on comments received from the DNREC Division of Water Resources Wetlands and Aquatic Protection Branch, that any activity, such as filling, dredging, crossing with a road, or placement of a structure in tidal wetlands or a water body requires a permit from the State; that most activities in a tidal wetland, freshwater wetland, or water body requires a permit from the Army Corp. of Engineers; and that State Wetland maps and National Wetland Inventory maps are available for review.

The Commission found, based on comments received from the DNREC Division of Parks and Recreation Natural Heritage Program, that the site is located within the Inland Bays State Resource Area; that the Division works with owners of indentified parcels to provide protection for these sites that the Division strongly encourages the owners to maintain the on site wetlands in an undisturbed state; and that the Division is available to work with the owners on the donation of lands or a conservation easement.

Exhibit "A"

(1)

The Commission found, based on comments received from the DNREC Division of Parks and Recreation Natural Heritage Inventory, that they have reviewed their database of Species of Special Concern for the site and are unaware of any rare plants, animals, or unique natural communities within the project; that this should not serve as an absolute determination of the presence or absence of rare species; that their response reflects a lack of biological assessment for the area; that due to the nature of the community--salt marsh, and dunal--this area is thought to be one of the most productive with respect to the discovery of rare species; that they are concerned with the proximity of the site to the Inland Bays as well as the building of any development on marshland; that the marsh islands of the Bays are host to a variety of rare colonial waterbirds; that these bird species are currently being tracked by the Natural Heritage Inventory as species of concern; and that they recommend that a comprehensive biological survey be undertaken prior to construction.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the information submitted indicates that a source of central water will be used for this project; that the project site is not located within the service area of a water utility; that whatever utility eventually provides water service to the site will be required to obtain a Certificate of Public Convenience and Necessity from the Division of Water Resources; and that in the event that any on-site public water wells are needed to supply the water source the developer is encouraged to locate the well in order that they will be in compliance with the State Wellhead Protection Plan.

The Commission found, based on comments made by representatives of the application, that the developers have owned the property for approximately 5 years, that the HR-2 High Density Residential rezoning has been requested to conform to the uses in the area, that County Engineering limits the site to 19 EDU for sewer capacity, that the project complies with the purpose of the HR-1 and HR-2 High Density Residential District, that the site is adjacent to a similar project with high density zoning, that the wetlands area is not being considered for rezoning, that all units proposed are upland of any Federal 404 wetlands or State wetlands, that the neighboring area consist of MR Medium Density Residential and High Density Residential areas, that a significant area of open space exist on State lands in the immediate area; that the predominant residential use in the area is multi-family; that electrical service will be provided by Delmarva Power and Light Company; that no negative impact is anticipated on traffic; that no negative impact is anticipated on the Indian River School District and that the project should create a positive impact on the district due to increases in the tax base; that the Bethany Beach Volunteer Fire Company has no objection to the rezoning; that an

appraisal of the property indicates that the rezoning will have no detrimental effect on property values; that the site is located within the proposed Fenwick Island Water District; that a private water supply will be necessary if the proposed district is rejected by referendum; that wetland areas have been determined and flagged, that they are waiting for the US Army Corp. of Engineers to verify the determination; that all buildings and parking areas are to be located on upland areas; that since the soils are slightly erodible, erosion and sediment control techniques can protect the site; that the buildings will be designed as townhomes with condominium type sales; that the project will not exceed the maximum 19 units allowed by the EDU's established by County Engineering; that the units will be built in similiar design as Kings Grant Condominiums on the adjoining parcel; that the developers have no intent to disturb wetlands; that townhomes are the most economically feasible use of the property; that the highest and best use of the property is multi-family due to the similiar construction adjoining; that the developers support the proposed water district; that dry hydrants will be installed if requested by the Bethany Beach Volunteer Fire Company; that the proposed density is 3 units per acre; that the wetlands may become a part of the common elements of a condominium restrictions; that the units will not exceed 35 feet in height; and that a variance may be necessary for the proposed length of a building.

The Commission found, based on comments made by two individuals present in opposition, that concerns were expressed in reference to entrances on Route One; salt water intrusion; building to close to wetlands; increases in cost for the proposed Fenwick Island Water District; the need for additional parking for guest; use of wetlands acreage; and questioning if docking facilities are proposed, and if a need exist for additional units in the area.

The Commission found that two letters had been received in opposition to any change that will increase density, bulk or height of development in this sensitive envirnmental area, that if the application is approved it should be limited to the allowable 19 EDUs and that all environmental stipulations made by the State DNREC be enforced, that wetlands should be preserved, entrances on Route One, and that buildings should be consistent with existing buildings in the immediate area in terms of height and general appearance.