

## MINUTES OF THE REGULAR MEETING OF APRIL 19, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 19, 2001 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley, with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of April 5, 2001 as corrected.

Mr. Schrader explained how the public hearings would be conducted.

### IV. PUBLIC HEARINGS

**C/U #1385** - application of **BAYSIDE DEVELOPMENT GROUP, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (34 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.11 acres, more or less, lying east of Road 273-A, 780 feet south of Route One.

The Commission found that the application included a site plan and a set of exhibits that included a tax map of the area, an aerial photograph exhibit of the Eagles Landing project, a copy of the Planning and Zoning Commission Minutes for March 9, 2000 for a previous application (C/Z #1398) for the site, excerpts from the 1997 Sussex County Comprehensive Plan, excerpts from the Delaware Code referencing the Legal Status of a Comprehensive Plan, a February 29, 2000 letter from the Office of State Planning Coordination, and some proposed conditions of approval.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that the annual average daily traffic of Road 273-A is 301 vehicles per day with a summer average of 493 vehicles per day; that the last traffic count was performed in 1997; that the level of service "B" of Road 273-A will not change as a result of this application; that the Route One Corridor Study recommends the construction of a pedestrian and bicycle path, in a twenty (20) foot right-of-way, through the property; that the Department recommends, if the County is inclined to approve this application, that it add a requirement pertaining to the path; that the County should require that the applicant dedicate the right-of-way for the length of the property and to build the path within that right-of-way in a manner acceptable to DelDOT; and that the Department would oppose the application if the path is not required.



The Commission found, based on comments received from the Office of State Planning Coordination, that this project is located in the Community Area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas, State policies will be to encourage redevelopment and reinvestment; that these areas can support a wide range of developments, including these proposed townhouses; that the Office concurs with DelDOT comments; that the State DNREC has noted that the Inland Bays Watershed has been designated to include Waters of Exceptional Recreational and Ecological Significance (ERES); that designated ERES waters shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State; that DNREC does not object to residential development in this area, however, in this case it is proposed in a highly developing part of the Inland Bays and very close to the Lewes and Rehoboth Canal that has added significant stresses to these designated ERES waters; that if this project is developed, it should use an ecological approach that maximizes the use of stormwater best management practices including vegetative buffers, where space allows, along all drainage discharge points to the ERES waters; that the proposed development will cluster the dwelling units and will be served by central sewer and water helps minimize the impacts to the environment; that, hopefully, the reduction in the number of dwelling units to 34 units will allow most if not all of the units to be placed outside of the 100-year floodplain; that DNREC also noted that there are two inactive and one active Leaking Underground Storage Tank sites located near the site; that should any petroleum-contaminated soils be discovered during construction, the Underground Storage Tank Branch must be notified as soon as possible; and that if the County approved this application, the applicant needs to contact the Sussex County Office of the State Fire Marshal to submit site plans and building plans.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that capacity is available; that the project exceeds the Planning Study assumption of 4.0 units per acre; that the proposed project does not create additional collection line deficiencies; that the developer must determine that there is adequate capacity in existing Pump Station 202 and Lift Station 1401; that pump station and lift station upgrades, at the developers expense, could be required; that the Sussex County Engineer will approve the final connection point; that Ordinance No. 38 construction shall be required; that the site has four System Connection Charge credits; that the current System Connection Charge Rate is \$2,954 per EDU; that Parcel 168 is served with a six-inch lateral from Road 273-A; that Parcels 38, 45, and 45.01 are each served with one six-inch lateral from Oyster House Road; that these laterals are not sufficient to serve the proposed project; and that conformity to the West Rehoboth Expansion Area Planning Study or undertaking an amendment will be required.



The Commission found that the application included a site plan, and that the applicant submitted a packet of information which included: a copy of a portion of the tax map of the area colored to show the site and the surrounding zonings; an aerial photograph promotion document of the Eagles Landing project and surrounding area; a copy of a portion of the Minutes of the Planning and Zoning Commission meeting for March 9, 2000 depicting C/Z #1398, a previous application for the site; excerpts from the 1997 Sussex County Comprehensive Plan, referencing Growth Management Districts; excerpts from the Delaware Code, referencing the Legal Status of Comprehensive Plans; a copy of the letter summarized by Mr. Lank from the Office of State Planning Coordination; and a list of proposed conditions acceptable to the applicant.

The Commission found that a letter had been received from the Citizens Coalition, Inc., two letters from Robert A. McGowan and Barbara A. McGowan, and a letter from Lori Aubrey; that all four letters were in opposition to this application; and that the letters referenced that high density development in this area has already been determined to be unsuitable; that a previous application to build on this site was denied; that traffic conditions at Bald Eagle Road and Route One intersection are unsafe; that during the tourist season and on rainy days in the summer, it is virtually impossible to turn left onto Route One because of traffic backups; that the proposed development does nothing to improve the quality of life for the community; that it is inappropriate to recommend a development that jeopardizes the safety, health, and welfare of the neighborhood; that a Conditional Use is a form of a zoning change; that the 34 units do not represent nor do they fill any residential need for the area; that the 34 units will create more traffic and congestion; that the application does not fill a community need; that the application does not provide a service or improve community services; that recent construction in the area has caused a great strain on the area, especially for travel; that there are no alternative routes to enter or exit the area except via Route One; that the application should be denied until road construction options, environmental impact studies, and current construction has been completed; that rezoning should stop until the Comprehensive Plan is revised in 2002; that additional housing in the area will exacerbate the traffic problem; and that area residents are concerned that emergency vehicles will not be able to get to sites on Road 273-A in time due to the congestion.

The Commission found that James Fuqua, Attorney, Jeff Hamer, the applicant, and Ross Harris of Environmental Consulting International were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that the Citizens Coalition letter is their interpretation of the Comprehensive Plan, and may not be the County's intent for the Comprehensive Plan; that the site is located in a Development District; that on March 9, 2000 the applicant applied for HR High Density Residential zoning for 44 units on 4 acres; that the Commission recommended that the application be approved since the site is adjacent to C-1 General Commercial and is across from HR High Density Residential zonings which allow



similar densities, and since zoning creates a separation between commercial activities and residential single-family parcels; that the Sussex County Council denied the rezoning in April 2000; that the applicant has reviewed his concept and the comments made in opposition to determine ways to satisfy the opposition; that the site is located on Bay Vista Road adjoining a electrical power substation and office building, and across from Eagles Landing, a multi-family project (zoned HR High Density Residential); that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that the developer will build the sanitary sewer system at his cost; that central water will be provided by Tidewater Utilities, Inc.; that the site is located in the Rehoboth Beach Volunteer Fire Company service area; that medical facilities and shopping are located in close proximity; that additional lands have been purchased to provide interconnection from Bay Vista Road to Oyster House Road for an additional access to Route One; that they have applied for a Conditional Use for 34 units within 17 duplex buildings on 5.11 acres (6.6 units per acre), a ten (10) unit reduction from their original application for 44 units on 4 acres; that the Eagles Landing project has a density that exceeds 12 units per acre; that the 1997 Comprehensive Plan references: that the goal of the County is to have future growth occur around existing Towns and in designated Development Districts; that since central wastewater facilities exist or are planned, higher densities are appropriate, thus reducing the pressure for the conversion of farmland to residential use; that the intent of the Plan is to encourage higher residential densities in the Town Centers, with densities reducing as development moves further away from the Centers; that according to the Delaware Code, after a Comprehensive Plan has been adopted by the County, the Comprehensive Plan shall have the force of law; that comments from the Office of State Planning Coordination indicates that the site is in a Community Area where State policies will be to encourage redevelopment and reinvestment, and that these areas can support a wide range of developments, including these proposed townhouses; that based on the proposed site plan, residents can go out of the project via Oyster House Road to Route One; that DelDOT has been contacted to study ways to improve the intersection of Route One and Bay Vista Road; that DelDOT is now studying the intersection; that a utility pole at the intersection has been a major problem with making right turns; that the developer, through his engineers, is working with DelDOT, the Sussex Conservation District, and DNREC to try to remedy drainage problems that have been occurring over the years in the area; the stormwater management and erosion/sedimentation control will comply or exceed all regulations; that the new site plan allows for bike and pedestrian access through the project; that a pool and clubhouse are proposed; that the applicant purchased an eyesore and proposes to improve the area; that the applicant purchased additional lands near Oyster House Road to improve traffic flow; that the applicant has reduced density by 22 percent from his original application; that the large wetlands area will be left undisturbed; that less than a tenth of an acre of wetlands will be filled to improve access and building layout; that adequate space exists on the site for parking; that the Zoning Ordinance requires 102 parking spaces for the 34 units; that 105 parking spaces are proposed; that the use of the parcel on Oyster House



Road has not yet been determined; that the applicants have no objection to a condition being imposed that provides for traffic calming; and that the street will be open to public use for access, but will retain its private street status.

Mr. Fuqua presented proposed conditions that the applicant would support. The conditions included: 1) The maximum number of residential units shall be 34; 2) The development shall be served by the Dewey Beach Sanitary Sewer District; 3) The development shall be served by a central water system; 4) All entrance improvements shall be constructed as required by DelDOT and the development will provide access to both Road 273-A and Oyster House Road; 5) Site Plans shall be reviewed and approved by the Sussex County Planning and Zoning Commission.

The Commission found that Carol Jones, Bruce Powell, Jean Norton, and Timothy Smith of the 13 parties present in opposition to the application expressing concerns that further high density residential development on Bay Vista Road; questioned the definition of community need; expressed concerns about a single entrance and single exit; questioned the use of the streets in the project for public traffic; questioned the location of leaking underground storage tanks; stated that growth is at the cost of the residents already living in the area; that the project impacts the quality of life for the existing residents in the area; stated that there are so many new homes being built in the area, the residents in the area have not had a summer to see just how bad the traffic on Bay Vista Road will be; that stormwater management problems already exists; that grid lock is already occurring in the area; that they have concerns about emergency response time getting to emergencies in the area; that the density in this area has already exceeded the maximum that should be allowed; that Bay Vista Road cannot handle the traffic now, then how will it be able to handle the additional traffic; that there are no grocery or drug stores in the immediate area to serve the residents in the area, therefore making it necessary for residents to drive; that the present infrastructure cannot meet the growth that is occurring; and that they do not feel that the Comprehensive Plan is being enforced.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is adjacent to C-1 General Commercial and is across from HR High Density Residential zonings which allow similar densities; since the rezoning creates a separation between the commercial activities and residential single family parcels; and with the following stipulations: 1) The maximum number of residential units shall not exceed 34 units; 2) The project shall be served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; 3) The project will be served by a central water system; 4)

All entrance improvements shall be constructed as required by DelDOT and the project will provide access to both Road 273-A and Oyster House Road; and 5) The site plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

Vote carried 5 - 0.

**C/Z #1423** - application of **PRESTON L. DYER** to amend the Comprehensive Zoning Map from a HR/RPC High Density Residential District - Residential Planned Community to a HR/RPC High Density Residential District - Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying on the northeasterly side of Road 299, 850 feet more or less southeast of Road 298, to be located on 76.69 acres, more or less.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available; that Ordinance No. 38 construction shall be required; that the current System Connection Charge Rate is \$2,101 per EDU; that there is no service to the property at this time; and that the developer shall be required to conform to the Long Neck Planning Study.

The Commission found, based on comments received from the Office of State Planning Coordination, that the project is located in the Environmentally Sensitive Developing Area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas State policies will be to seek a balance between resource protection and sustainable growth; that the State's main concern with regard to this project is the road system; that the traffic impact study generally indicated that most of the study area intersections will operate at an acceptable level of service; and that a possible exception is the intersection of Bay Farm Road and Route 24.

Mr. Lank advised the Commission that the original Residential Planned Community (C/Z #1379) was approved by Sussex County Council on June 29, 1999 subject to four conditions of approval, which included: 1) The use must comply with all appropriate agency regulations; 2) Parking requirements are subject to review and approval by the Planning and Zoning Commission; 3) Number of units and site amenities shall conform to conceptual site plan submitted; and 4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

The Commission found that Preston Dyer, Gary McCrea, and Mark Davidson of DC Group were present on behalf of the application and submitted a reduced color site plan deleting all multi-family units and proposing a single-family subdivision.



The Commission found that Mr. Dyer stated in his presentation and in response to questions raised by the Commission that they propose 280 lots at a density of 1.34 units per acre; that deed restrictions are proposed to limit the number of lots to 280; that 20-foot wide buffers are proposed along Woodlyn Estates; that existing trees will remain in the buffer; that no buildings will be erected in the buffers; that deed restrictions are proposed to create age limitations to 55-years or older @ Fair Housing Standards rules and regulations; that the minimum dwelling square footage will be restricted to 1,200 square feet; that the dwellings will be site constructed; that they have an on-going discussion with DelDOT in reference to necessary road improvements; that they will not be doing any construction in wetlands; that all stormwater management will remain on the site; that building setbacks will be 30-feet from the front property line, 10-feet from the side property lines, and 10-feet from the rear property lines; that they propose bike paths, walking trails, 8-acres of common area, nature areas, a community center and pool, and that the community will be considered a gated community; that the proposed amenities relate to an active adult community; that the dwellings will be built based on a set of design models; that they have changed their design for the project since assisted living projects are no longer as popular as they were in the past; that due to financing changes, the industry has changed; that the project will be phased, but definite phasing plans have not yet been developed; and that if this project is approved, they will provide a phasing plan between preliminary site plan review and final site plan review.

The Commission found that Mr. Dyer submitted proposed deed restrictions to Mr. Schrader for his review and a summary of a comparison of the original project to the current proposal.

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

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved.

Motion carried 5 - 0.

**C/Z #1424** - application of **TWIN CEDAR APTS., L.L.C.** to amend the Comprehensive Zoning Map from a GR General 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 approximately 150 feet south of Road 382 and 800 feet east of Road 388, to be located on 45,625 square feet, more or less.



The Commission found that a letter of opposition was received from Charles and Judi Townsend expressing concerns that the complex has caused serious concerns to neighboring residents due to nuisance and sometimes criminal activity; that some of the activities have extended beyond the properties boundaries; that the proposed activities could be a source of additional disruptive conduct; that the rezoning would allow the landowners to expand the number of residential units; and that unless some enforceable restrictions to the expansion of residential rental or commercial activities on or associated with the site can be put into place, the application should be denied.

The Commission found that William Mills and John Sergovic, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that Mr. Mills purchased the site in 1986; that he relocated three (3) apartment buildings to the site from Ocean City in 1986; that the apartments are used as residences for new immigrants in the area; that he proposes to build an office/shop/community center, and in the future, a laundromat and vending area; that the laundromat is subject to the availability of central sewer; that the residents are low income agricultural workers; that the change of zoning relates to the existing C-1 General Commercial zoning; that the change of zoning is proposed to serve the existing community; that the proposed office and community center can be used by the State to work with the tenants; that access to the expansion area will be through the existing site; that the existing site has no space for the proposed expansion due to the location of the existing units, related parking, and septic system; that a need exists on the site for storage of equipment, tools, etc...due to vandalism that has occurred; that he presently uses an apartment for an office; that he needs for all of the units to be rented to meet his debt loads; that there is no intent to increase the density; and that they would like to amend their application from C-1 General Commercial to B-1 Neighborhood Business since B-1 zoning does not permit multi-family residential uses.

The Commission found that Thea Becton of the Community Action Agency was present in support of the application and stated that the rezoning will allow for the creation of a community center for the use of agencies that are dealing with the tenants for educational programs; that community police reported no calls recently to the site; that the original education programs were terminated in December due to the lack of space for programs; that a need exists for rooms for programs; that the tenants do not like to travel to other areas for educational programs; that the agencies are willing to come to the complex to assist the tenants; and that employment services are offered to the tenants.

The Commission found that Mr. Sergovic and Mr. Mills added that the application was applied for to address an existing need of the tenants; that the tenants need services; that to supply the services it is necessary to expand the site; that the laundromat was proposed since tenants now travel to Selbyville to do laundry; that the present septic is not adequate for the laundromat expansion; that the recently installed new septic mound



system is working properly; that no new housing is proposed on the site; that Mr. Mills will not operate his plumbing and heating business from the site; and that according to Steve Mills, there are 150 adults and 35 children living at the 47 unit apartment complex.

The Commission found that William Magee was present in opposition to the application, submitted copies of petitions in opposition to the application containing approximately 150 signatures, and stated that the neighbors have to put up with constant parties, noise, vehicles in their yards, and traffic; that any expansion will increase the problems; that they have to call the police on a normal basis; that they have never had any satisfaction from the owners; that if a laundromat is built, the septic system will not be able to handle the increases; that the complex should have been improved years ago; and that every neighbor has a different story to tell from their experiences with the site.

The Commission found that Crystal Magee was present in opposition to the application, submitted a copy of police responses at the Twin Cedars Complex for the year 2000, and stated that the residents of the area have concerns for their safety; that shootings and stabbings have occurred on the site; that dangerous conditions exist in and around the site; that the owner has not done anything about problems with the tenants; and that nuisance activities are constant at the site.

The Commission found that Ruby Evans was present in opposition to the application and stated that there is a lot of noise in the area; that police are always responding to the site; that the applicant has stated the neighbors' concerns for them since he cannot leave equipment or tools outside without loss or vandalism; that there is always trash on the site; that there has been raw sewerage on the site; that the project should not be considered unless there is central water and central sewer provided to the site; that management of the project is unacceptable; that the project is already overcrowded; that more people will create more noise and more vandalism; and that a community center will only add to the problems.

The Commission found that there were 9 parties present in opposition to the application.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

Mr. Schrader advised the Commission that the Ordinance references C-1 General Commercial, and that they cannot consider this as a B-1 Neighborhood Business application since B-1 is not a part of the title of the Ordinance.

There was a consensus of the Commission that they were not specifically concerned about the intended use, but were concerned about some of the other uses permitted in a C-1 General Commercial District; and that the applicant could withdraw this application



and apply for downzoning to AR-1 Agricultural Residential and then a Conditional Use to be specific about the intended uses.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied.

Vote carried 5 - 0.

**C/Z #1432** - application of **DAVID A. RITTER** 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 Indian River Hundred, Sussex County, land lying at the southwest corner of Route 22 (Long Neck Road) and Julia's Lane within Julia's Place Subdivision, to be located on 2.291 acres, more or less.

The Commission found, based on comments received from DelDOT, that the Department is concerned about this application; that the Department sees it as encouraging more traffic in an area that has been identified as operating at unacceptable levels of service during the summer peak hours; that the Department feels that it is in the public interest to avoid the types of development that would increase turning traffic there; that some more traffic-intensive commercial uses would warrant that a traffic impact study be done; that the Department may still require a traffic impact study later in the development process; and that knowing that a marine sales and service use are proposed, the Department does not recommend that a traffic impact study be done at this time; that according to a traffic count performed in 1997, the annual average daily traffic of Long Neck Road is 6,995 vehicles per day with a summer average of 11,467 vehicles per day; and that the present level of service "E" of Long Neck Road will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the project is located in the Long Neck Sanitary Sewer District; that capacity is available for the project; that the System Connection Charge Rate for the District is \$2,101 per EDU; that the parcel is served with one six-inch lateral from Julia's Lane; that the six-inch lateral will have to be upgraded to an eight-inch lateral unless a Sussex County Licensed Plumber provides a letter stating that a six-inch lateral is sufficient; and that conformity to the Long Neck Feasibility Planning Study, or undertaking an amendment will be required.

The Commission found that letters of support were received from Robert W. Tunnell, Jr. of Tunnel Companies, L.P., and Jesse and Julie Hall of Long Neck Car Care and Sales.

The Commission found that the applicant had submitted a packet of information, which included: a cover letter explaining his interpretation of the zoning process and some of his activities on the site; a copy of a Service Level Evaluation Request form, dated



October 23, 2000; a copy of a survey of the parcel; and copies of letters of support from Robert W. Tunnell, Jr., Neal and Alice Hadsell, Edna King, Delores Goertz, and Rick and Debra Willman. It was noted that the Hadsell, King, Goertz, and Millman letters referenced the applicant's willingness to maintain Julia's Lane.

The Commission found that David Ritter and Steve Parsons, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that they have applied for the rezoning for boat sales and service; that the site is located in a Development District per the Sussex County Comprehensive Plan; that central sewer and central water are available to the site; that the applicant purchased the site in October 2000; that the applicant applied for a Traffic Summary Report on October 23, 2000; that the applicant was told that the process takes 3 to 4 months to get a decision; that the applicant was unaware of any violations since the violation was sent to the previous owner of the property; that the previous owner lives in Las Vegas, Nevada; that the applicant has been in the boat service business for approximately 11 years at other locations; that the applicant apologizes for proceeding with his business without the appropriate approvals; that the applicant started the business at this site due to pressures from customers waiting for boat services; that the site is surrounded by other commercial and business uses; that the immediate neighbors support his application; that the rezoning will conform to the commercial uses in the area; that there should be no adverse impact on property values; that the applicant will maintain Julia's Lane; that the applicant has an established customer base; that the applicant has a financial need to support his family; that the Indian River Fire Company is approximately 0.5 mile from the site; that the Long Neck area has a large population of boaters in need of services and repairs; that the applicant previously leased a site for storage and repair of boats; that some of the boats stored in the yard are waiting repairs; that the applicant purchased the property knowing that it was zoned AR-1 Agricultural Residential; that the applicant started moving boats on the site in March of 2001; that the applicant obtained permits for the fence and the addition to the garage; that the applicant sells, stores, and repairs boats; that the applicant sells boat trailers on occasion; that the boat lift was installed on the site; that the boat business is a seasonal business and the applicant felt that he had to proceed with his business to retain his customer base; and that the applicant only spoke to the Zoning Inspector one time, when the inspector was taking pictures of the activities and signs on the site.

The Commission found, based on Mr. Lank's review of the violation notice and the building permits issued, that a violation notice was issued on February 26, 2001 by Don Hastings, Zoning Inspector I, referencing the illegal placement of the fence, the boat lift, and the construction of the garage addition; that the violations had to be corrected by March 26, 2001; that the applicant obtained a building permit for an addition to an existing detached garage, accessory use to the dwelling, on February 8, 2001; that the applicant obtained a building permit, accessory use to the dwelling, for the fence on



March 30, 2001; that the applicant obtained a building permit for a tenant fit-up to renovate the garage on April 4, 2001. Mr. Lank also submitted photographs of the site taken by the Zoning Inspector on March 15, 2001 and March 28, 2001. The March 28, 2001 photographs were taken since signage has been installed on the garage and erected along Long Neck Road without permits.

The Commission members expressed their concerns that the applicant would unlawfully utilize the property without any regard to the zoning regulations and regulations of other agencies, and without any respect to the zoning process that has existed in Sussex County for 30 years.

The Commission found that Mr. Ritter and Mr. Parsons continued their presentation by stating that the applicant stores approximately 30 gallons of waste petroleum on the site for pickup by a waste handler; that there are no restrictive covenants referencing the prohibition of any commercial activities; that approximately 100 boats are presently stored on the site; that approximately half of the boats are waiting for repairs; that the application should be given positive consideration due to the close proximity to commercial activities in the area, since the site is surrounded by commercial activities and zonings, since the site is in a Development District, and should not receive a negative consideration because the applicant started the business without the proper approvals.

The Commission found that Kelly Racz, Charles Goepel, Pat Scanlon, Rick Willman, Dwight Lord, and Delores Goertz spoke in support of the application with reasons referencing that the applicant is a hard working man; that the applicant's actions are not a part of the reason for the public hearing; that commercial uses surround the site; that the applicant has been an excellent tenant; that the business will be a benefit to the community; that good mechanics are needed; that the applicant is attempting to improve the property; and that the boat businesses in the area need competition.

The Commission found that there were no parties present that spoke in opposition to the application.

At the conclusion of the public hearings the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action. Mr. Allen asked Mr. Lank to provide a resume of the actions taken by staff and for copies of any permits and violation notices.

Vote carried 5 - 0.



V. OLD BUSINESS

**C/Z #1427** - application of **BALSAMO NORINO PROPERTIES, LLC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 300 feet west of Keen-Wik Road, to be located on 19.61 acres, more or less, of a 22.02 acre tract.

The Commission discussed this application which was deferred on March 29, 2001.

There was a consensus of the Commission that they had no objection to the rezoning to MR Medium Density Residential since the adjoining subdivisions of Keen-Wik and Fenwick Farms are zoned MR Medium Density Residential.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously that the application be forwarded to the Sussex County Council with the recommendation that it be approved.

Vote carried 5 - 0.

**C/U #1391** - application of **BALSAMO NORINO PROPERTIES, LLC.** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (85 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 19.61 acres, more or less, of a 22.02 acre tract, lying south of Route 54, 300 feet west of Keen-Wik Road.

The Commission discussed this application which was deferred on March 29, 2001.

Mr. Wheatley stated that he supported the previous application for MR Medium Density Residential, but could not support this application since it is not consistent with the developments along the south side of Route 54 and that the use is not consistent with the MR Medium Density Residential zoning in the area.

Mr. Gordy stated that an eighty-five unit multi-family project is out of character with the area on the south side of Route 54.

Mr. Allen stated that he is concerned about the amount of wetlands on the site and that the site is not appropriate for multi-family development.

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



Vote carried 5 -0.

**C/Z #1430** - application of **REHOBOTH HOME BUILDERS, INC.** 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 Lewes and Rehoboth Hundred, Sussex County, land lying east of Route 274 (Old Landing Road), 400 feet south of Route 275, to be located on 24.45 acres, more or less.

The Commission discussed this application which had been deferred on April 5, 2001.

Mr. Wheatley stated that he might be receptive to the application if the number of units is reduced.

Mr. Gordy stated that he feels that the project is out of character with the adjoining subdivisions.

Mr. Lynch stated that the recorded subdivision contains 33 lots; that the applicants propose 64 lots; that the applicants have proposed to provide a portion of the Grid Study road; and that he would have no objection to a reduction in the number of lots.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried with three votes that the application be approved with the following stipulations: 1) There shall be no more than 50 lots; and 2) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Vote carried 3 - 2, with Mr. Gordy and Mr. Johnson opposed to the motion.

**ORDINANCE AMENDMENT - AN ORDINANCE TO AMEND THE ZONING ORDINANCE FOR SUSSEX COUNTY, DELAWARE, AS IT RELATES TO COMMERCIAL COMMUNICATIONS TOWERS AND ANTENNAS.**

The Commission discussed the Ordinance, which had been deferred on April 5, 2001.

Mr. Schrader explained that he revised the Ordinance per the recommendations of the Commission by amending the proposed Section 194.2 H to read "All towers, antennas, or monopoles shall have warning lights. Such lights shall be placed every fifty feet (50') of elevation. The tower, antenna or monopole shall meet all applicable requirements of the Federal Communications Commission and the Federal Aviation Administration."

Recommended that the Ordinance be approved as amended.



Vote carried 5 - 0.

**SUBDIVISION #2000-31** - application of **ANTONIO V. NERO** to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred, by dividing 2.23 acres into 2 lots, located within Nero's Acres Subdivision, west of Road 70, 1,540 feet north of Road 64.

Mr. Abbott advised the Commission that this application received preliminary approval on December 28, 2000; that the final record plan is the same as the preliminary and complies with the requirements of the subdivision ordinance; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried to approve this application as a final.

Vote carried 5 - 0.

**SUBDIVISION #2000-6** - application of **THE CONCORD GROUP** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred, by dividing 44.64 acres into 28 lots, located north and south of Road 483, 350 feet east of Road 20-A.

Mr. Abbott advised the Commission that this application received preliminary approval on March 23, 2000; that a one-year time extension was granted on March 22, 2001; that the final record plan is the same as the preliminary and complies with the requirements of the subdivision ordinance; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried to approve this application as a final.

Vote carried 5 - 0.

**SUBDIVISION #2000-26** - application of **A. P. Land, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 47.03 acres into 45 lots, located east of Road 305, 3,973.05 feet north of Route 24.

Mr. Abbott advised the Commission that this application received preliminary approval on October 12, 2000; that the final record plan is the same as the preliminary and complies with the requirements of the subdivision ordinance; and that all agency approvals have been received.



Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried to approve this application as a final.

Vote carried 5 - 0.

**SUBDIVISION #2000-8** - application of **COLLINS ACRES GENERAL PARTNERSHIP** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred, by dividing 31.14 acres into 19 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 421, 1,110 feet west of Route 24.

Mr. Abbott advised the Commission that this application received preliminary approval on April 27, 2000; that the final record plan is the same as the preliminary and complies with the requirements of the subdivision ordinance; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried to approve this application as a final.

Vote carried 5 - 0.

## VI. OTHER BUSINESS

### **P.G.S. Properties, L.L.C. - Parcel D**

Preliminary Multi Family Site Plan Route 24

Mr. Abbott advised the Commission that the site plan is for 60 apartment units located on 5 acres; that 5, 2-story buildings are proposed; that each building has 12 units; that each building is 46-feet by 121.25-feet; that 120 parking spaces are required and 122 are proposed; that the site plan meets the requirements of the zoning code; and that the site plan is suitable for preliminary approval.

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

### **P.M.S. Properties, L.L.C.**

Preliminary Multi Family Site Plan Road 357

Mr. Abbott advised the Commission that this site plan is for 29 condominium units in a 160-foot by 128-foot building; two 102-foot by 260-foot buildings with 40 apartment units each; a 48-foot by 100-foot Cheer Center; that 247 parking spaces are required and

that 392 spaces are proposed; that the setbacks meet the requirements of the zoning code; and that the site plan is suitable for preliminary approval.

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

**Doug Clark**

Preliminary Commercial Site Plan Route 54

Mr. Abbott advised the Commission that the site plan is for mini storage; that 6 buildings are proposed; that the largest building is 4,800 square feet and the smallest building is 2,000 square feet; that the buildings will be metal on concrete slabs; that the maximum building height is 30-feet; that individual sewer and water is proposed; and that the site plan meets the requirements of the zoning ordinance.

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

**Cracker Barrel Old Country Store**

Preliminary Commercial Site Plan Route One

Mr. Abbott advised the Commission that the site plan is for a 11,407 square foot building with a restaurant and gift shop; that a letter of no objection has been received from DelDOT in reference to the entrance location; that 73 parking spaces are required and that 147 are proposed; that the site plan meets the requirements of the zoning ordinance; that the building will be one-story; and that the existing JR's restaurant will be demolished.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the review and approval by the Commission upon receipt of all required agency approvals.

**Carl Niblitt**

Lot and 50' Easement Route 18

The Commission reviewed a request to create a 2.00-acre parcel with access from a 50-foot easement off of Route 18.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the request as a concept.



**Robert B. Fitzgerald**

Parcel and 50' Right of Way Road 633

The Commission reviewed a request to create a 2.51-acre parcel with access from a 50-foot right of way off of Road 633.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the request as a concept.

**William B. Warrington**

Lot and 50' Right of Way Route 26

The Commission reviewed a request to create a lot with access from a 50-foot right of way off of Route 26.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the request as a concept.

**Beebe Medical Center**

C/U #1236 Reconsideration/Site Plan Route 24

Mr. Abbott advised the Commission that the site plan is for an outpatient and care center facility; that 186 parking spaces are required and 267 are proposed; that the setbacks meet the requirements of the zoning ordinance; that all agency approvals have been received; that on-site work has begun; and that the time extension expires on April 21, 2001.

Jeffrey Fried, President and CEO of Beebe Medical Center, advised the Commission that the number of revisions in the design process have lead to delays in beginning construction; that substantial progress has been made and that actual building construction should begin within sixty to ninety days.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a final and to consider the project under way since site work has commenced.

Meeting adjourned at 10:55 P.M.