

## MINUTES OF THE REGULAR MEETING OF MAY 10, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, May 10, 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, and Mr. Lynch, Mr. Wheatley with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector III.

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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of April 19, 2001 as corrected.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried 4 - 0 to approve the Minutes of April 26, 2001 as corrected. Mr. Wheatley was not present at the Public Hearings.

Mr. Schrader explained how the Public Hearings would be conducted.

### IV. PUBLIC HEARINGS

**C/U #1397 -- application of DELAWARE GUIDANCE SERVICES FOR CHILDREN AND YOUTH, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for counseling and guidance services for children and their families to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.74 acres, more or less, lying southwest of Route One, 300 feet northwest of Best Lane.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State initially commented on the development in June 2000 and had no objections; that according to DelDOT there shall be no direct access to Route One; that all access shall be from Best Lane, using an easement that will be shared with a day care facility; that the parcel is located entirely in a 100-year floodplain which can be cut off from evacuation routes by flooding during severe coastal storms; and that the June 2000 comments included the need for the developers to work with the State Historic Preservation Office to avoid possible prehistoric and historic period archaeological sites on or near the site.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations; that the developer shall be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the Sassafras soils are considered Prime

Farmland; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that the site is several hundred feet from a flood hazard area based on the FEMA Maps.

The Commission found that the applicant had submitted a set of exhibits that included a tax map of the area showing the zoning in the area; a letter from Deborah A. Toner, owner of Beach Babies Child Care, voicing no objection; a copy of the June 2000 letter from the Office of State Planning Coordination; a copy of a letter from William E. Wright, Attorney, referencing that Best Lane is a public road; a copy of a deed from Howard E. Millman and Una C. Millman to the State of Delaware for Best Lane; a copy of a letter from Frederick H. Schranck, Deputy Attorney General, representing DelDOT, and referencing Best Lane as a public road; two brochures from Delaware Guidance Services for Children and Youth, Inc.; a copy of a letter from the Longwood Foundation, Inc. referencing funding for Delaware Guidance Services for Children and Youth, Inc.; a copy of a letter from Delaware Department of Services for Children, Youth and Their Families referencing support for funding for Delaware Guidance Services for Children and Youth, Inc.; a copy of a memorandum from the County Engineering Department in reference to sufficient sewer capacity for the use; and a copy of a letter from DelDOT referencing no objection to the Conditional Use.

The Commission found that Bruce Kelcy, Executive Director of Delaware Guidance Services for Children and Youth, Inc., Nichole Keller, Director of Out-Patient Services, and James Fuqua, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that they would like the submitted Exhibits to be made a part of the record for this Public Hearing; that they propose to construct an 11,700 square foot building; that the site has adequate space for parking; that numerous commercial uses exists in the area across Route One and north of the site, i.e. a motel, antique shops, sales offices, an auto and bike repair, retail sales, offices and the present location of the applicants; that the current construction on the site is for the Beach Babies Child Care Center which was approved by the County Board of Adjustment; that Deborah Toner, owner of Beach Babies, has no objection to the application and looks forward to working with the staff of the facility; that the use will be served with central water from Tidewater Utilities; that the use will be served with public sewer service from Sussex County through the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that stormwater management facilities will be developed in cooperation with the Beach Babies Child Care Center; that the entrance and drives serving the two projects will be jointly maintained; that the letters from William E. Wright and Frederick Schranck provide that Best Lane is a public road; that Best Lane will be paved to State specification by the developers from Route One to the entrance; that the driveways and parking areas will be paved; that the site is located in a Development District @ the 1997

Comprehensive Plan where growth should occur; that this application is in conformance with the purpose of a Conditional Use since it is of a public or semi-public character and is essential and desirable for the general welfare and convenience of the citizens of Sussex County; that the use provides a health service for the children of the County; that this site serves the eastern portion of the County; that they also have a facility in Seaford for the western portion of the County; that the main headquarters for the Delaware Guidance Services for Children and Youth, Inc. is proposed be located at this site; that Delaware Guidance Services for Children and Youth, Inc. is a not for profit State wide mental health service; that the service has been in operation since 1953; that the service serves children with emotional and mental health needs such as depression and Attention Deficit Disorder; that they provide a mobile crisis service; that a 24-hour hot-line is available for emergency callers; that they work with schools, police, hospitals, and families; that the site will have an on-site facility for housing two children with supervision for up to 72 hours, if needed; that they employ 35 people in Sussex County; that they work with 1,300 to 2,000 clients per year; that they have outgrown their present 8,500 square foot building; that 200 children stayed overnight at their facility in the year 2000; that children are always accompanied by a staff or family member; that a portion of the rear yard will be fenced with a 6-foot high fence; that clients are referred to the facility by doctors, clergy, school districts, police and other clients; that the day treatment facilities works with no more than 10 children at any one time; that the day treatment program is operational from 8:00 A.M. to 3:30 P.M.; that out-patient services work with a maximum of 11 children per hour; that out-patient services is operational from 8:00 A.M. to 8:00 P.M.; that they anticipate 30 to 40 vehicles on the site at any one time; that the site is a good location with good access; that the staff has gotten used to the site since the present location is only a few hundred yards north of the site; that the present site shares an entrance with an antique shop; that children staying overnight could be of the ages of 5 years to 18 years; that the facility is open 7 days per week; that it is very rare for the police to bring a client to the facility or a hospital; that typically traffic is staggered to and from the facility and that there should be no more than two or three vehicles trying to leave the site at any one time; that the Seaford facility is located on Middleford Road near the Nanticoke Hospital; that the access to this site is much less congested than other areas along Route One from Nassau to Rehoboth; that the service being provided is necessary; that children at the facility may have behavior problems or emotional problems; that these children are being treated, not forgotten; that the children are probably safer at the facility than in a school; and that the service is a benefit to the children and to the County.

The Commission found that Mr. Fuqua presented some photographs of the existing facility and some suggested conditions for approval if the use is approved. The conditions included: 1) The use shall be for counseling and guidance services for Children and their Families. 2) The Facility shall have staff present 24 hours per day 7 days per week. 3) The site shall be served as part of the Sussex County Central Sewer

System. 4) There shall be no direct ingress or egress to or from the site directly to Delaware Route One. 5) Site plan shall be reviewed and approved by Sussex County Planning and Zoning Commission.

The Commission found that Mr. Fuqua added that his clients have no objections to additional conditions being placed on the application referencing that no more than 2 children may stay overnight in emergency situations not exceeding 72 hours per stay, or that no more than 10 children may present at the day treatment facilities at any one time.

The Commission found that David Weidman, an Attorney, spoke in support of the application and stated that he handles a lot of domestic law cases; that the Delaware Guidance Services for Children and Youth, Inc. is a positive professionally run facility for the children and youth of the State of Delaware; that there is a severe shortage of qualified professionals that can treat children; that he knows that Deborah Toner run an outstanding day care facility; that he would have no objection to placing his child at the day care facility if it is next door to the Delaware Guidance Services for Children and Youth, Inc. facility; that the service is a positive for Sussex County; and that he is speaking on his own, without any request from the applicants, because he believes in the services being proposed.

The Commission found that Gary Timmons and Doug Sentman were present in opposition to the application and spoke on behalf of the residents that live along Best Lane and expressed concerns that the use is not appropriate for a predominantly residential area; that the Services present facility was built for doctors office prior to the Services occupancy; that they question the letters received in reference to Best Lane; that Best Lane is only a 30-foot wide road, not a 50-foot wide road as stated on the site plan; that expansion of the road width would be blocked by the County pump station; that they are concerned about children safety and their safety due to the Services clientele; that the day care center and the Services facility will create more traffic than the residents from Best Lane; that the Delaware State Police have informed them that the State Police do not have jurisdiction on traffic on Best Lane; that the residents acknowledge that the Services do an excellent job with children; that the residents feel that the Services should not be located next to a day care center; that the residents are concerned about security; that Best Lane has never been maintained by the State; that Best Lane was never accepted into the DelDOT maintenance system; and that action should be deferred until a final decision is made in reference to the status of Best Lane.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the Public Hearing.

Mr. Allen stated that a need does exist for this type of use, but expressed concerns about the location and traffic.

Mr. Gordy stated that the facility should be located in a professional area.

Mr. Johnson stated that he has concerns relating to safety factors.

Motion by Mr. Johnson, 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/U #1398** -- application of **NOMAD VILLAGE, INC.** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 41,001 square feet, more or less, lying on the east side of Route One between Cove Road and Dune Road within Tower Shores Development.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within the Environmentally Sensitive Developing Area surrounding the Inland Bays watershed according to the Strategies for State Policies and Spending Document approved by the Cabinet Committee on State Planning Issues where the State policy will seek a balance between resource protection and sustainable growth; that the Inland Bays watershed has been designated to contain waters of Exceptional Recreational or Ecological Significance (ERES); that designated ERES waters shall be accorded a level of protection and monitoring in excess of that required by most waters of the State; that both point and non-point nutrient sources of these waters should be controlled through Best Management Practices, such as establishment of vegetative buffers adjacent to watercourses or preservation of existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment; that the site is located in a 100-year floodplain and in an area which can be cut off from evacuation routes by flooding during severe coastal storms; that DelDOT has noted that no direct access will be allowed to Route One from the site; that the State would prefer to see densities proposed in Community or Developing areas, however, the site is surrounded by multi-family units; and that the State asks that the County consider the cumulative impacts that development over past years has had on the area.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project; that the current System Connection Charge Rate is \$2,159.00 per EDU; that six-inch laterals are existing for Lots 51, 53, 61, 62, and 63; and that conformity to the South Coastal Planning Study or undertaking an amendment will be required.

The Commission found, based on comments received from DelDOT, that the annual average daily traffic on Route One at this location is 18,768 vehicles per day with a summer average daily traffic of 30,767 vehicles per day based on a traffic count in 1999; that a traffic impact study was not recommended; that the present level of service of Route One at this location is level of service "C"; and that the Department will not allow any direct access to the property along Route One.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Coastal beach and dune land, which has severe limitations; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the soils are considered Hydric; that the site is located in a storm flood hazard area; that it may be necessary for some on-site and off-site drainage improvements; and that the developer should check with the Army Corps. of Engineers for possible jurisdictional wetlands on the site.

The Commission found that a letter had been received from Janet M. Fox, President of the Tower Shores Beach Association, voicing support of the application and referencing that the use of the property to construct duplexes would be consistent with buildings allowed to be constructed on similar lots in the development; and that the use is a great improvement over the previous commercial use of the land for a bar, liquor store and convenience store.

The Commission found that the applicant had submitted a set of exhibits that included a Copy of the agreement of purchase and sale for the site; a tax map showing the zoning in the area; a tax map showing some of the multi-family projects in the development; a copy of a letter from the Office of State Planning Coordination, dated July 2000, in reference to a similar project; a copy of the Commissions report to County Council for August 8, 2000 in reference to Conditional Use No. 1341, a similar project; a copy of the County Councils decision on Condition Use No. 1341; and a copy of the decision of the County Board of Adjustment on a variance for square footages for duplexes for Conditional Use No. 1341.

The Commission found that Bill Buchanan and James Fuqua, Attorney, were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that they propose to build six duplex buildings on six lots; that north of the site is Atlantic Watergate, a multi-family project built in the 1960's with no density limitations; that south of the site is a Conditional Use for duplexes and a B-1 Neighborhood Business District improved with a restaurant; that the applicants intend to build duplexes on the lots that will be similar to other projects within the development; that Tower Shores is mixed with single family dwellings, multi-family buildings, duplexes, and some businesses; that a variance will be needed to develop duplexes on

each lot; that no access will be requested to Route One; that the existing driveway crosses the entire frontage along Route One; that this area will be closed off and landscaped; that a 1993 Board of Adjustment appeal referenced that the Board of Adjustment had repeatedly created duplexes on 6,000 square foot lots in the development; that central sewer is available from Sussex County; that central water is available from Sussex Shores Water Company; that the conditions imposed on Conditional Use No. 1341 are acceptable to the applicants; that the bar, store and motel are to be destroyed; and that at least three parking spaces will be provided for each unit on each lot.

The Commission found that Mr. Fuqua presented photographs of the existing improvements on the site and a picture of a duplex building similar to the ones proposed to be constructed on the site.

The Commission found that no parties appeared 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 with the following stipulations:

- 1) The density of the project shall be subject to review and approval by the Sussex County Board of Adjustment.
- 2) Once the Sussex County Board of Adjustment makes a decision, the site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
- 3) No site preparations, site disturbance, excavation, or other construction shall be commenced until all other permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded.
- 4) There shall be no direct access to Route One from the site.
- 5) The developers shall provide a landscaped barrier between Route One and the project.
- 6) There shall be no connecting driveways between Cove Road and Dune Road.

Vote carried 5 - 0.

**C/U #1399** -- application of **SYNAGRO-WWT, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of Laurel, Delaware, wastewater treatment plant biosolids as an amendment to Conditional Use No. 1373 to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 88.0 acres, more or less, lying southeast of Route 321, south of Route 324 and west of Railroad.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on this site are mapped as Evesboro loamy sand which has slight limitations, Fallsington sandy loam which has severe limitations, and Woodstown sandy loam which has slight to moderate limitations; that the applicants should follow recommended erosion and sediment control practices and maintain vegetation; that the Evesboro soils are considered of Statewide Importance; that the Fallsington soils are considered of Statewide Importance and Prime Farmland; that the Woodstown soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may be necessary for some off-site and on-site drainage improvements because of the moderately well drained and poorly drained soils on the site.

The Commission found that the applicants submitted a packet of information which included a vicinity map; a soil map; a copy of the tax map for the site; a report on Sludge/Residuals Land Application Operation Plan for Delaware, which included types of equipment, types of seals on biosolids transportation vehicles, transportation routes, days and hours of operation, truck cleaning facilities, procedures for spreading and incorporation, adverse weather conditions/winter operations procedures, spill control and reporting, and record keeping; a letter in reference to two supplemental packets and the packets, which included an EPA brochure on Biosolids Recycling, an information sheet on the Laurel Wastewater Treatment Facility Biosolids, a copy of a letter for Permit AGU0024/94B from DNREC, a design manual for municipal wastewater stabilization ponds for EPA, a copy of the authorization to operate a land treatment system for the agricultural utilization of sludge, and a brochure on SYNAGRO.

The Commission found that Sharon Hogan, Public Affairs Manager for SYNAGRO, was present and stated in her presentation and in response to questions raised by the Commission that the application is for a one-time application of liquid biosolids from the Laurel Wastewater Treatment Plant; that Laurel needs a one-time cleanout of their holding ponds; that the State DNREC has approved removal of the biosolids and the site for the location of the application; that the biosolids are mostly water with approximately 6% solids; that the Baxter Farms are operated under a Farm Conservation Plan; that they have missed the window for Spring application of the biosolids; that a Fall application is now proposed; that it takes approximately 2 weeks to apply the biosolids; that there are very few sites in Delaware acceptable for biosolid application; that the material is injected into the soils approximately 10 to 12 inches below grade; that the odor potential

is very low; that there are no known problems with mixing the biosolids with the Vlasic sludge; that the materials are compatible; that the material is similar to any other fertilizer; that the sludge has a value to the farmer and the landowner; that the Vlasic material is an industrial material; that the Laurel biosolids are a treated wastewater; that the standards for the final biosolids are the same for each material; that soil tests are taken prior to land application; that all monitoring will be preformed by SYNAGRO subject to review by DNREC; that approximately 82 acres will be utilized for the application; that the biosolids are injected into the soil; that there may be some odor for one day; that they do not expect any difference between the Vlasic or Laurel applications; that the material may be applied to sites for food crops; that the majority of sites utilizing sludge are applied to animal food crops, i.e. corn or soybeans; and that it should take two weeks to complete the application on the site, if weather is favorable.

The Commission found that no parties appeared in support of or 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. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with a recommendation that it be approved with the following stipulations:

- 1) The application of sludge shall be subject to State DNREC approval.
- 2) The sludge applied shall be limited to biosolids from the Laurel Wastewater Treatment Plant.
- 3) The maximum number of applications of the biosolids on this site shall be one time and subject to the approval of the State DNREC.
- 4) There shall be no stockpiling of sludge materials on site.
- 5) The application of the biosolids shall be after Baxter Farms has harvested crops in the Fall of 2001.

Vote carried 5 - 0.

**C/U #1400** -- application of **SYNAGRO-WWT, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of Laurel, Delaware, wastewater treatment plant biosolids as an amendment to Conditional Use No. 1372 to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 220 acres, more or less, lying northeast of Route 48, northeast of Railroad, southwest of Route 318 and on both sides of Route 432.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight to moderate limitations, Fallsington sandy loam which has severe limitations, Kenansville sandy loam which has slight limitations, Klej loamy sand which has slight to moderate limitations, Pocomoke sandy loam which has severe limitations, Rumford loamy sand which has slight limitations, and Woodstown sandy loam which has slight to moderate limitations; that the applicant should follow recommended erosion and sediment control practices and to maintain vegetation; that the Evesboro soils are of Statewide Importance; that the Fallsington soils are of Statewide Importance and Prime Farmland; that the Kenansville soils are Prime Farmland; that the Klej soils are of Statewide Importance; that the Pocomoke soils are of Statewide Importance and Prime Farmland; that the Rumford soils are of Statewide Importance; that the Woodstown soils are Prime Farmland; and that no storm flood hazard areas are affected.

The Commission found that the applicants submitted a packet of information which included a vicinity map; a soil map; a copy of the tax map for the site; a report on Sludge/Residuals Land Application Operation Plan for Delaware, which included types of equipment, types of seals on biosolids transportation vehicles, transportation routes, days and hours of operation, truck cleaning facilities, procedures for spreading and incorporation, adverse weather conditions/winter operations procedures, spill control and reporting, and record keeping; a letter in reference to two supplemental packets and the packets, which included an EPA brochure on Biosolids Recycling, an information sheet on the Laurel Wastewater Treatment Facility Biosolids, a copy of a letter for Permit AGU0024/94B from DNREC, a design manual for municipal wastewater stabilization ponds for EPA, a copy of the authorization to operate a land treatment system for the agricultural utilization of sludge, and a brochure on SYNAGRO.

Mr. Lank advised the Commission that since this application is similar to Conditional Use No. 1399 and since the only difference in the applications is the site, the record of the Conditional Use No. 1399 should be made a part of this Public Hearing.

The Commission found that Sharon Hogan was present on behalf of this application and asked that her presentation on Conditional Use No. 1399 be made a part of the record for this Public Hearing.

Ms. Hogan added that the Gills Neck Ditch should not be impacted since the Baxter Farms has a Farm Conservation Plan; that 3,530,000 gallons of biosolids will be applied on 82 acres; and that the exact location of the farms for the application has not yet been determined; and that no more than a total of 82 acres of the combined sites will be used for the application.

The Commission found that no parties appeared in support of or 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. Johnson, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with a recommendation that it be approved with the following stipulations:

- 1) The application of sludge shall be subject to State DNREC approval.
- 2) The sludge applied shall be limited to biosolids from the Laurel Wastewater Treatment Plant.
- 3) The maximum number of applications of the biosolids on this site shall be one time and subject to the approval of the State DNREC.
- 4) There shall be no stockpiling of sludge materials on site.
- 5) The application of the biosolids shall be after Baxter Farms has harvested crops in the Fall of 2001.

Vote carried 5 - 0.

**ORDINANCE AMENDMENT -- AN ORDINANCE AMENDING CHAPTER 99, SECTION 13 OF THE SUBDIVISION CODE OF SUSSEX COUNTY, RELATING TO NOTICE AND CONSENT REQUIREMENTS FOR PROPOSED ALTERATIONS, RESUBDIVISIONS OR ADDITIONS OF PREVIOUSLY SUBDIVIDED AND RECORDED PLATS; CREATING A PROCEDURE FOR THE APPROVAL OF MINOR SUBDIVISIONS; AND PROVIDING FOR THE PAYMENT OF FEES AND COSTS TO THE SUSSEX COUNTY.**

Mr. Lank summarized the Ordinance and the Synopsis.

David Weidman, Attorney was present on behalf of some of the residents of Ocean Farms Development, and stated that the State Department of Justice has filed an action against the developer of Ocean Farms; that his clients suggest that notice of any alterations or resubdivisions be provided through Registered or Certified Mail; that 51% leaves a lot of room for a developer to make changes; that there is a need to protect the lot owners, not the developers; that his clients would prefer a percentage of agreement from no less than 75% of the lot owners; and that his clients request that current developments be grandfathered under the current 100% clause.

Ross Harris of ECI was present, submitted a letter for the record, and stated that there is no flexibility in the present Ordinance; that the 51% should be the lot owners; and that he feels that the amendment will help simplify sound land use planning in subdivisions.

Richard Osbourne, a resident of Deep Pines Subdivision near Middleford, was present in opposition to the Ordinance and stated that his Subdivision was altered without a Public Hearing process from lots with 9-acres average to 0.75 acre lots; and that he now has a 45 acre tract of land that may be subdivided into 0.75 acre lots that will adjoin his lot.

Ralph Jordan, a resident of Ocean Farms Development, was present in opposition to the Ordinance and stated that they would like to be grandfathered so that 100% approval was required from the residents in the development prior to any alterations or resubdivision; that 35 homes existed in the development prior to the project being sold; and that now there are 64 homes in the development.

Debbie Brittingham Magee was present in support of the Ordinance and stated that she has been involved with this Ordinance for over two years; that she believes that the proposal guarantees equal rights to people for and against a proposal; that everyone will get an opportunity to speak their opinion; and that one property owner may impact a proposal if the Ordinance remains at 100%.

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 mailing process should be a part of the Rules of the Planning and Zoning Commission, not a part of an Ordinance.

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

Vote carried 5 - 0.

**ORDINANCE AMENDMENT -- AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY IN ORDER TO LIMIT THE NUMBER OF RESIDENTIAL DWELLINGS PER UNIT IN B-1 NEIGHBORHOOD BUSINESS DISTRICTS, C-1 GENERAL COMMERCIAL DISTRICTS, AND M MARINE DISTRICTS.**

Mr. Lank summarized the Ordinance and the Synopsis.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the Ordinance, but expressed a concern raised by the Delaware State Housing Authority that approval of the Ordinance could result in even fewer lands available to multi-family affordable housing sites; that multi-family sites over commercial properties often provide a resident with an affordable

housing alternative while keeping them close to the amenities that they need; and that the State asks that the County consider the State Housing Authority comments.

Ross Harris was present, submitted a letter for the record, and stated that he is in opposition to the Ordinance; that his firm has produced many designs over the years for both commercial and residential sites; that there are numerous parcels of land within these zoning categories that are existing that do not serve themselves uniquely for high traffic commercial sites either due to size or off main road locations; that many times a high density town home community or apartment complex is ideally suited in these zoning areas; that it is good planning to graduate from commercial to high density residential to medium density residential to rural residential; that reduction from 12 units to 4 units per acre creates a down zoning; that existing parcels in some of the B-1, C-1 and M Districts are not economically suitable for development at 4 units per acre, either due to cost of the land or the mixed neighborhood of properties that are adjacent; and that if this concept is to be considered, it should be considered as a part of the update of the Comprehensive Plan, since piece meal approaches to land use are not sound planning.

Sonya Ware, a member of the Positive Growth Alliance, was present and stated that she is opposed to the Ordinance; that it reduces the number of residential units per acre in commercial areas; that it will prohibit affordable housing; and that it should be considered as a part of the Comprehensive Plan.

Rich Collins was present and stated that he is opposed to the Ordinance; that most of the commercial areas are in Development Districts; that higher density should be allowed in the Development Districts; and that it will cause more families to purchase lots in rural areas causing a loss of farmland.

Ken Christenbury of DC Group was present and stated that he is opposed to the Ordinance; that Development Districts are growth areas and should be allowed to develop with higher densities; and that the proposal is not in accordance with the Comprehensive Plan.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the Public Hearing.

There was a consensus of the Commission that this issue should be addressed with the review and update of the Comprehensive Plan.

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

Vote carried 5 - 0.

## V. OTHER BUSINESS

### **BAYSHORE SUBDIVISION - PARCEL A**

#### Preliminary Multi-Family Site Plan - Route 22

The Commission reviewed a preliminary site plan for 170 condominium units on 18.87 acres.

The Commission found that the site is zoned C-1 General Commercial; that the density calculates to 10.7 units per acre; that 17 - 3 story buildings are proposed with 10 units in each building; that the buildings measure 90' by 164'; that a pavilion is proposed; that setbacks, building separations, and building lengths meet the Code; that 510 parking spaces are required; that 524 parking spaces are proposed including 354 paved spaces and 170 garage spaces; that sewer is proposed to be provided by Sussex County; that water is proposed to be provided by Tidewater Utilities; and that the site plan meets the requirements for a preliminary plan.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approval provided that there are no major changes to the site plan.

### **HARBOUR TOWNE APARTMENTS - PARCEL B**

#### Preliminary Multi-Family Site Plan - Route One

The Commission reviewed a preliminary site plan for 80 senior apartments and a 3,600 square foot Cheer Center.

The Commission found that 2 - 102' by 260' buildings with 40 units in each building are proposed; that the Cheer Center building is 48' by 75'; that the setbacks and parking requirements meet the Code; that central sewer is proposed to be provided by Sussex County; that central water is proposed to be provided by Tidewater Utilities; that the site plan meets the requirements for a preliminary plan.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals provided that there are no major changes to the site plan.

### **BAYWOOD GREENS - DUNESIDE**

#### Site Plan - Golf Course - Route 24

Robert Tunnell, Jr. was present on behalf of this application.

The Commission reviewed a site plan for a 9-hole expansion to an existing 18-hole golf course.

The Commission found that the site is zoned AR-1 Agricultural Residential; that the site is located across Route 24 and west of the existing golf course; that on the east side of Route 24 there will be 2-holes, restrooms, and storm shelters; that on the west side of Route 24 there will be 7-holes, restrooms, and storm shelters; that the setbacks for the structures will meet the requirements of the Code; that a golf cart bridge is proposed to cross Route 24; and that the site plan meets the requirements for a preliminary plan.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals provided that there are no major changes to the site plan.

**EAGLE'S NEST FELLOWSHIP CHURCH**  
C/U #1266 Revised Site Plan - Route One

The Commission reviewed a revised site plan for Conditional Use No. 1266 for a school and church expansion.

The Commission found that Conditional Use No. 1266 was approved on February 2, 1999 for a private school; that a site plan for a 30,500 square foot church was approved by the Commission on March 12, 1998 and July 1, 1990; that the private school currently operates in the church building; that the revised site plan proposes a 26,710 square foot addition for school purposes and a 34,560 square foot addition for future church uses; that both additions meet the parking and setback requirements of the Code; and that the site plan meets the requirements for a preliminary plan.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals provided that there are no major changes to the site plan.

**WEDGEFIELD RPC**  
Request for Model Homes - Road 84 and Road 352

The Commission discussed a request for permission to construct 2 model homes while waiting for final approval.

The Commission found that the master plan for the project was approved by the Commission on October 12, 2000 for 90 single family lots; that the staff has received approvals from DelDOT and the Sussex Conservation District; that approvals have not been received from the Fire Marshal, the Department of Agriculture, County

Engineering, or DNREC; that the model homes will not be habitable and will not be hooked up to water or sewer; that no occupancy permits will be requested or granted until water and sewer connections are completed and until the final site plan is recorded; and that the Commission granted similar permission for Clearwater and Southampton, projects owned by the same developers, for model homes.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to grant permission for the developers to build 2 model homes on the site with the understanding that the units will not be habitable and will not be hooked up to water or sewer, and that no occupancy permits will be requested or granted until water and sewer connections are completed and until the final site plan is recorded.

**IPM EQUITIES BETHANY II, LLC**

Revised Preliminary Commercial/Multi-family Site Plan  
Route One

Preston Dyer and Gary McCrea were present on behalf of this application.

The Commission reviewed a revised commercial site plan for 28 multi-family units and a 10,000 square foot office building.

The Commission found that preliminary approval was granted by the Commission on July 22, 1999 for a 10,125 square foot retail building; that the revised site plan is for a 2-story office building with 6,000 square feet on the first floor and 4,000 square feet on the second floor; that the proposed building measures 40' by 150'; that the setback needs to be a minimum of 30-feet from the MR Medium Density Residential Zoning line that crossed the site or a variance will be needed; that 3 - 8 unit multi-family buildings and 1 - 4 unit building are proposed; that the multi-family buildings are proposed to be 160-feet in length; that 40-foot separations are proposed between buildings; that 134 parking spaces are required; that 136 parking spaces are proposed; that 26 parking spaces are located within the front 40-foot setback and need a waiver from the Commission to be permitted; that a 16-foot drive is proposed between the 4-unit building and a 8-unit building and that a 25-foot drive is required; and that the site plan could be approved as a conceptual plan subject to review and approval by the County Board of Adjustment for the referenced variances.

Motion by Mr. Lynch to defer action.

Motion died for the lack of a second.

Motion by Mr. Lynch to approve the site plan as a concept only.

Motion died for the lack of a second.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of the residential portion of the site plan with the appropriate corrections, and to grant conceptual approval of the commercial portion of the site plan subject to review and approval by the County Board of Adjustment in reference to the setback from the MR Medium Density Residential line. Final approval shall be subject to the staff receiving all required agency approvals.

**RICHARD C. CARMINE, JR.**

Parcel and 50' Right of Way - Route 68

The Commission reviewed a concept to create a 4.0 acre parcel off of an existing 50' right-of-way that crosses two farms belonging to Richard C. Carmine, Jr. between Route 68 (Old Stage Road) and Route 70 (Gordy Road).

The Commission found that the right-of-way already exists; that the right-of-way is owned by Mr. Carmine; and that the 4.0-acre parcel is located in a wooded portion of the farm between irrigated fields.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the parcel in concept. Final approval shall be subject to receipt of a record plat prepared by a licensed Delaware Surveyor.

**JUHN UMSCHLAG AND CORTLAND GUY**

Revised Subdivision Plan - Route 9

Walter Bryan was present on behalf of this application.

The Commission reviewed a concept to delete an approved road that was to serve two lots and to relocate the access to the two lots to an existing dirt road that serves three lots off of Route 9.

Mr. Bryan advised the Commission that DelDOT will not grant a entrance permit for the road originally intended to serve the two lots, that the buyer of the front lot is willing to improve the dirt road with pavement to the rear lot line, and that the owners of the remaining lots would prefer a crusher run road.

It was noted that the entrance should have to be improved to State specifications.

It was also noted that the street specifications should have to conform to County specifications.

It was also noted that the developers did not create this situation and that it was created by DelDOT's denial of an entrance permit for the road.

Mr. Schrader advised the Commission that Chapter 99 Article VII Section 99-33 references that where it can be shown that strict compliance with the regulations would result in extraordinary hardship to the subdivider because of conditions, which were not self-imposed, the Commission may vary, modify or waive the requirements.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the concept with the stipulation that the road be improved with pavement from the entrance back to the rear lot line of the front lot; that the remaining portion of the road be improved with crusher run; and that the specifications for the construction shall be subject to the Subdivision Ordinance.

Meeting adjourned at 11:15 P.M.