

MINUTES OF THE REGULAR MEETING OF JUNE 14, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 14, 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, Mr. Wheatley, with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the agenda as corrected with the deletion of Item #5 under Old Business, Subdivision #99-23, Robert Muncy.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 24, 2001 as amended.

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

IV. PUBLIC HEARINGS

C/Z #1435 - application of **GREAT SOUTH BEACH IMPROVEMENT CO.** 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 Lewes and Rehoboth Hundred, Sussex County, land lying southwest of Road 273, 200 feet west of Kingsbridge Road and 200 feet east of Buckingham Road within Rehoboth Beach Yacht and Country Club, to be located on 18.09 acres, more or less.

Mr. Lank submitted a letter from James Waehler, Attorney, on behalf of the applicants, with copies of a letter from Blanche J. Davis, President of Rehoboth Beach Yacht & Country Club Property Owners Association, voicing no objection from the Board of the property owners to a 42-lot single family subdivision, copies of an aerial photograph of the area highlighted with the site, copies of a letter from Tidewater Utilities, Inc. voicing that the company is willing and able to provide water service, copies of an entrance sign into Rehoboth Beach Yacht and Country Club, and copies of a color aerial photograph of the area.

Mr. Lank submitted copies of the site plan for the 42-lot Subdivision.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that in December of 2000 the Department recommended that a Traffic Impact Study be done because the Department was concerned about encouraging more traffic in an area that the Department has identified as operating at unacceptable levels of service during the summer peak hours; that the Department is still concerned; that the Department feels that they have enough information from Traffic Impact Studies

for other projects to offer the Departments recommendations now; that the Department has discussed this matter with the applicants, and that the applicants have indicated that they would like the Department to do so; that the Department recommends that the County deny this application; that it is incumbent on the Department, since the Departments role is advisory, to seek certain items even though the Department is opposed to the rezoning because the ultimate decision for land use changes lies with the County; that these items, while not providing the Level of Service standard required by our agreement, will help mitigate the impact on the roadway system should other than a denial be approved by the County; that the Department's recommendation of denial is based on factors beyond the applicant's control; that the Department's comments included references to a Background and Description of the subject site, Comprehensive Planning Documents, an Explanation of Change in Position, the SR 1 Grid Concept Study, Bicycle, Pedestrian, and Transit Considerations, and Recommendations and Conclusions; that should the County choose to approve this rezoning or some modification of this rezoning, this decision by County Council will impact a portion of the roadway system maintained by the Department; therefore, there are specific right-of-way, site access, bicycle and pedestrian items that the County should require as part of their approval; that the items include: 1) Prior to plan approval, the applicant should be required to provide a letter from the Delaware Transit Corporation indicating what improvements would be needed to provide adequate transit service to the proposed residential development. The applicant should then be required to show those improvements by note or illustration on the plan. A note on the plan should obligate the applicant to build them before building permits are issued; 2) The deceleration lane at the entrance to the proposed residential development should be designed to accommodate bicycle traffic; 3) Sidewalks should be provided in two locations: along the streets in the proposed residential development; and along the property's frontage on Country Club Road as well. Construction of the sidewalk along the frontage should be required as a precondition for any building permits. For the internal sidewalks, it may be appropriate to break the project into phases, and to require the sidewalk in each phase in advance of the building permits for that phase.

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

The Commission found that Joseph Schollenberger, Vice President and Manager of Great South Beach Improvement Company, Larry Walker of U.R.S., and James F. Waehler, Attorney, were present on behalf of the applicants and stated in their presentations and in response to questions raised by the Commission that they propose to develop the site into 42 single family lots similar to the lots within the Rehoboth Beach Yacht and Country Club; that the site was previously utilized as a drainage area for a community septic area for portions of the Rehoboth Beach Yacht and Country Club; that the developer has long planned for development of this site once central sewer becomes available; that the property owners within the Rehoboth Beach Yacht and Country Club have voiced no objections; that central water is available from Tidewater Utilities; that public sewer is available through Sussex County; that the Subdivision should create little impact on the road system; that the residents can access the Park and Ride facility for access to Rehoboth Beach and other locations so that they do not have to drive; that the site is located in a prime resort area; that deed restrictions will be similar to the private deed restrictions within Rehoboth Beach Yacht and Country Club; that a need exists for additional lots in the area; that Route 273 and the Rehoboth Beach Yacht and Country Club surrounds the site; that the proposed lots will contain a minimum of 12,000 square feet with a 100-foot minimum width; that the lots along Route 273 will have a depth of 140-feet; that side and rear setbacks will be consistent with Rehoboth Beach Yacht and Country Club; that the streets will be constructed to State specifications; that they propose an entrance with a width of 80-feet; that approximately 750 lots were proposed within Rehoboth Beach Yacht and Country Club; that 160 lots are left to be developed; and that the corporation purchased the site in 1995.

The Commission found that Maggie Evans, a resident of Surrey Road within Rehoboth Beach Yacht and Country Club, stated that police protection and schools need to be considered.

The Commission found that Lawrence Donnelly of Rehoboth Beach Yacht and Country Club objected to the proposed lot sizes since his lot is at least twice the size of the proposed lots.

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 since it is surrounded by a MR Medium Density Residential District and single family residential development, and since the application is a continuation of a prior plan of development by the same developer.

Vote carried 5 - 0.

C/Z #1436 - application of **MARSH HARBOR, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for certain parcels of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the southwest corner of Route 273 and Route 273-A and northwest of Route 273 across from Route 273-A, to be located on 30.6 acres, more or less.

Mr. Lank submitted a set of plots, which included a cover sheet, a key plan for the entire project, a preliminary site plan for the multi-family dwelling portion of the site, and a preliminary site plan for the proposed 31-lot Subdivision.

Mr. Lank referenced a packet of information that was submitted by the applicants, which referenced information on C/Z #1436, C/U #1407, and Subdivision #2001-9, and included a listing of the Consulting Group for the project, a profile of the application, the Marsh Harbor development and the nature of the area, applicable land use legal requirements and policies, utilities, storm water management, traffic evaluation and impact mitigation, community organization and management, architectural examples, regulatory and ability to service letters, proposed conditions, and an area photograph.

The Commission found, based on comments received from DelDOT, that the Department had reviewed a submittal for 324 dwelling units on both sides of Country Club Road; that because of the existing and projected congestion on Country Club Road approaching Route One during summer Saturday peak hours, the Department recommends that the County deny the proposed rezoning; that if the County chooses to approve this rezoning despite the Department's recommendation to the contrary, the Department has certain recommendations to offer regarding the plan for development; that the comments referenced the project description and background; the Statewide Long Range Transportation Plan; Shaping Delaware's Future; Trip Generation; an Overview of the Traffic Impact Study; Route One / Country Club Road / Service Road (Road 15A); Route One / Shuttle Road; Country Club Road / Shuttle Road / Site Entrance for the north side of Road 273; Shuttle Road / Site Entrance for the south side of Road 273-D; the Route One Grid Study; Transit, Bicycle and Pedestrian Facilities; and Conclusions and Recommendations; that the Department's review of the Traffic Impact Study has found that the intersection of Route One and Country Club Road operates unacceptably today during summer Saturday peak hours; that both that intersection and the right turn from Shuttle Road onto Route One would operate unacceptably in 2005, and the traffic from the proposed development would make them both worse; that during summer Saturday peak hours, the Department is able to keep traffic flowing on Route One by allowing traffic to back up on Country Club Road and the service road across from it; that based on the Traffic Impact Study, that approach should continue to serve the Department through 2005; that the primary traffic impact of the proposed development would be to increase backup on Country Club Road; that given that the Country Club Road approach

already operates at Level of Service "F", and that the delays there and on the service road would be so large as to make the average Level of Service for the entire intersection "F", the Department recommends denial of the rezoning; that if the County chooses to approve the application, the Department recommends that the County require the following items: 1) Prior to plan approval, the applicant should be required to provide a letter from the Delaware Transit Corporation indicating what improvements would be needed to provide adequate transit service to the proposed residential development. The applicant should then be required to show those improvements by note or illustration on the plan. A note on the plan should obligate the applicant to build them before building permits are issued; 2) The deceleration lanes at the entrances to both developments should be designed to accommodate bicycle lanes through the intersections; 3) Sidewalks should be provided in three locations: along the streets in the proposed development; along the property's frontage on Shuttle Road; and along the property's frontage on Country Club Road as well. Construction of the sidewalk along the frontage should be required as a precondition for any building permits. For the internal sidewalks, it may be appropriate to break the project into phases, and to require the sidewalk in each phase in advance of the building permits for that phase.

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 wastewater capacity is available for the project at the proposed density of 4 units or less per acre; that construction shall be required to comply with Ordinance No. 38 specifications; that the current System Connection Charge Rate is \$2,954.00 per EDU; and that conformity to the West Rehoboth Expansion Area Planning Study or undertaking an amendment will be required.

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 applicants will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a letter was received from Michael Tyler, President of the Citizens Coalition, Inc. in opposition to the application and expressing several reasons and concerns, which included that DelDOT has recommended denial of the application because of unacceptable Level of Service on Shuttle Road which without development will deteriorate from Level of Service "D" to Level of Service "E", and with development to Level of Service "F"; that neither scenario is acceptable to maintain quality of life and safety for residents and visitors to the area; that increasing density is an abuse of the zoning and the Comprehensive Plan; that the project should be developed as AR-1 zoned;

that the plan appears to gain density for the sake of gaining density; that such a rezoning is inappropriate at this site; that the cumulative impact of this proposal must take into consideration the proposed visitor's center complex being considered for the adjacent property; that although many community leaders favor locating such a facility elsewhere, the intent of such a use and how it could further impact the community needs to be known; that the concerns recently raised by the mayors of the coastal towns and many citizens because of the unfettered growth along Route One should be considered; and that a recommendation of denial will reflect the will of the people and will fulfill the Commissioners role to communicate these serious concerns to the County Council.

The Commission found that a letter was received from R.O. Taylor and Mary Taylor in opposition to the application and expressing concerns about noise, traffic, and increased density; and that the feel that a concentration of not more than 4-units per acre would be more appropriate with height limits and consideration of existing home owners in as far as noise and lighting.

The Commission found that James Fuqua, Attorney, present on behalf of the applicants and the land owner, with Paul Robino and Ross Harris of E.C.I., and requested that the Public Hearings for this application, C/U #1407, and Subdivision #2001-9 be combined into one Public Hearing so as not to be repetitious in testimony and to shorten the presentation time.

The Commission agreed to combine the Public Hearings.

Mr. Schrader asked Mr. Lank to introduce C/U #1407 and Subdivision #2001-9 and any comments relating to those applications.

C/U #1407 - application of **MARSH HARBOR, L.L.C.** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (180 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 20.3 acres, more or less, lying at the southeast corner of the intersection of Road 273 and Road 273-A.

The Commission found, based on comments received from DelDOT, that a Traffic Study for the referenced project had been submitted to the Department by the applicant; that the Department's review is currently underway and is anticipated to be completed; and that the Department does not object to the developer filing an application for the Conditional Use in advance of the completion of the Department's review of the Traffic Study.

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 the

proposed project exceeds planning study assumptions of 4.0 EDU's per acre; that a pipeline segment along Route One near Road 275A will be deficient at ultimate development if this project is approved as proposed; that upgrades could be required at the developer's expense; that the developer's engineer must determine the impact on the system before approval is given; that the project, if approved, will be required to be built to Ordinance No. 38 specifications; that the current system connection charge rate is \$2,954.00 per EDU; and that conformity to the West Rehoboth Expansion Area Planning Study or undertaking an amendment will be required.

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 applicants will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a letter of opposition was received from John P. Gaul, President of the Kings Creek Residential Community Homeowners Association, and had an attached petition with 75 signatures in opposition, and expressed concerns that the proposal creates a community with a density that will have a very negative effect on the surrounding area; that the proposal includes townhomes, duplexes and condominiums, which is out of character with the surrounding neighborhood; that the proposal will set a very bad precedent for the future; that the proposal must be evaluated in consideration of all that is going on around it; that County Club Road is the only major access to the site; that the only other access to the site is Shuttle Road, which is best described as a short service road which is not built to handle the traffic that would be generated in this area; that the Association request that consideration be given to the overall impact on the development of Black Pool within Rehoboth Beach Yacht and Country Club, Jungle Jim's Water Park, the undeveloped 12 acre parcel on Route One proposed for a tourist center and museum, the undeveloped 18 acre parcel south of Country Club Road west of Kingsbridge Road, the two undeveloped parcels at the entrance to Kings Creek, the Golf Park, and the DelDOT Park and Ride; that development of these parcels will overwhelm the infrastructure of the area; that County Club Road was never designed to handle the enormous traffic load that these projects will create; that traffic congestion at the intersection of Country Club Road and Route One is already severe and projects with excessive density will only make the problem much worse; that the Association recognizes that residential construction is appropriate for this area, but they strongly encourage a density that will minimize potential impacts; that the Association proposes that the density for project being developed in the area be limited to two units per acre, the same density as Kings Creek, which allows for substantial green space and minimum impact on the environment.

The Commission found that a letter of opposition was received from Norma Lee Burton Derrickson expressing concerns about water quality, air quality, that County Club Road is over capacity now; that the intersection of Route One and County Club Road is a high traffic accident area; and that the entire road system is over capacity in the area.

The Commission found that a letter of opposition was received from Charles and Kathy Maier expressing concerns about the density proposed; that the present road capacity cannot handle the additional traffic; that there are no known plans to improve County Club Road at Route One to accommodate the additional traffic load; requesting that the developers be required to install a buffer between the Rehoboth Beach Yacht and Country Club and the proposed new homes; and requesting that a substantial row of evergreens and/or a privacy fence be established between the projects.

SUBDIVISION #2001-9 - application of **MARSH HARBOR, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 10.30 acres into 31 lots, located northwest of Road 273, across from Road 273-A.

Mr. Lank advised the Commission that this Subdivision was reviewed by the Technical Advisory Committee on May 16, 2001 and that the Minutes of the Technical Advisory Committee meeting are to be made a part of the record for this application.

The Commission found that Mr. Fuqua stated that the applicants propose three (3) applications, a rezoning to MR Medium Density Residential, a Conditional Use for multi-family residential structures, and a Subdivision containing 31 single-family lots. Mr. Fuqua requested that his packet submitted with Change of Zone 1436, which contained information on all three (3) applications, a copy of the Traffic Impact Study prepared by Tetra Tech, Inc., and the site plans be made a part of the record for the applications.

The Commission found that Mr. Fuqua and Mr. Harris stated in their presentations and in response to questions raised by the Commission that the applicants are requesting land use decisions on the applications; that the Comprehensive Plan was adopted in 1997; that the Comprehensive Plan has the force of law; that zoning applications are required to be processed and reviewed based on the Comprehensive Plan; that the Comprehensive Plan has been operating effectively; that the Comprehensive Plan determined that the majority of Sussex County citizens favored directing growth to existing municipalities and developing areas where central wastewater systems exist; that the Comprehensive Plan declares that its goal is to have future growth occur around existing towns and in the designated Development District; that since central sewer is available, the Comprehensive Plan states that higher densities are appropriate; that another intent of the Comprehensive Plan is to encourage higher residential densities in Town Centers with

densities reducing as development moves further away from the Centers; that in the Development District, the Comprehensive Plan recommends densities of four (4) units per acre for single family homes, ten (10) units per acre for townhomes, and twelve (12) units per acre for multi-family units; that the Comprehensive Plan Map designates a Development District where growth is directed; that the Comprehensive Plan also encourages the use of travel alternatives through a multi-modal transportation network in order to preserve and enhance the existing transportation system; that the proposed Marsh Harbor Development is in full accordance with the Comprehensive Plan; that the site is located in a Development District where development is directed; that the site is in close proximity to the Town Center of Rehoboth Beach where higher density is appropriate; that the site is served by County sewer and a public utility water system; that the requested single family density on the westerly parcel, the 31-lot Subdivision, is three (3) units per acre; that the requested multi-family density on the easterly parcel, containing 180 units, is 8.8 units per acre; that the overall density of the development is 6.9 units per acre; that the requested density is significantly less than the density deemed appropriate by the Comprehensive Plan; that due to the site's proximity to Rehoboth Beach, the major destination for recreation, entertainment and dining, non-motorized vehicle access is realistically available for pedestrians and bicyclists; that the site is immediately adjacent to the Resort Transit/DelDOT Park & Ride which in the summer seasons provides bus service to Rehoboth Beach and Dewey Beach; that the development is also consistent with the State Strategies Map which designates the site as a community area; that community areas are locations characterized by a lively pace, a core commercial area, several modes of transportation, and a variety of housing options including single-family and multi-family; that the State's intent is to promote well designed and efficient new growth in the community areas; that the development is also consistent with the Governor's Livable Delaware Initiative which is a comprehensive strategy to get sprawl under control and direct intelligent growth to areas where the State, the County, and local governments are most prepared for new development in terms of infrastructure, services, and thoughtful planning; that commercial zoning borders the site to the east with an active recreational amusement; that another commercial activity, the State Park and Ride, exists immediately across Shuttle Road; that the commercial areas can be developed at 12-units per acre; that they have proposed the multi-family portion of the site to create a transition between the commercial amusement area and the single-family homes in the adjoining Subdivisions; that the developers of the Rehoboth Golf Properties project were required to place Restrictive Covenants on their property to maintain the property as a single-family residential community consistent with the general zoning patterns which have been established for lands lying along County Club Road, west of the eastern boundary of the lands currently devoted for use as the Golf Park at Rehoboth; that the multi-family site is east of the Golf Park at Rehoboth and adjoining commercial activities and should be permitted to be developed at an appropriate density compatible to the commercial areas; that the area is predominantly plotted out in lots and is substantially developed; that there are only three (3) in-fill parcels remaining in the area; that the

Marsh property existed before any of the development in the area; that originally both parcels were proposed for multi-family development for 324 units; that the plans were revised after the County Council decision on the Rehoboth Golf Properties application which limited the use to single-family residential use; that the easterly parcel seems appropriate for multi-family use due to the close proximity to the Eagles Landing multi-family project to the south, the Jungle Jim's commercial amusement area to the east, and the transition of density; that they propose a transition of multi-family dwelling structures to the east nest to the commercial area to duplexes to the west adjoining Rehoboth Beach Yacht and Country Club; that central water is available from Tidewater Utilities, Inc.; that public sewer is available from the County at the applicants expense; that there are no unique environmental aspects to the application; that the area is served by the Delaware State Police; that the site is located in the Rehoboth Beach Volunteer Fire Company service area; that the site is located in an urban area; that in a Memorandum of Agreement between DelDOT and the Sussex County Council relating to State Route One it is noted that the State Cabinet Committee on Statewide Planning Issues has recently determined that the area including the SR-1 Grid will become an urban environment and that the County sewerage treatment plants for the districts in the SR-1 Grid area are currently designed and built to accommodate the projected growth as established in the Comprehensive Plan; that the density is fully supported by the Comprehensive Plan; that David Hugg, the State Planning Coordinator, stated during a public forum sponsored by the South Coastal Chapter of AARP, that density has been given a bad rap in Sussex County, and was quoted as saying that "Density is not a four-letter word" and that "Density is not the problem. Design is the problem"; that they propose to design a project that reflects the Traffic Impact Study; that the design will include mitigation of traffic, including 1) The Site will be accessible by bicycles and pedestrians; 2) Private Restrictions will contain a restriction against Saturday to Saturday rentals; 3) DelDOT's Park and Ride is immediately adjacent and bus routes and schedules will be provided to buyers; that during the first two (2) years of sales, the developer will provide two (2) Dart cards to buyers for rides on the DART buses; that the Traffic Impact Study was prepared based on Saturday Peak Hours; that the Traffic Impact Study was preformed on a worse case scenario; that traffic levels of service will not change as a result of this application; that DART is willing to install a gate so that residents in the multi-family area can get to the Park and Ride site; that single-family homes are not appropriate next to go-cart tracks; that the duplex building have the appearance of single-family homes; that a clubhouse, swimming pool, and tennis courts are proposed as amenities to the development; that the Subdivision plan has been altered to conform to the Technical Advisory Committee comments; that the rezoning is in conformity to the area's zoning; that the proposed Subdivision is in character with the surrounding area; that the multi-family creates a transition from the commercial area to the residential area; that the units are proposed at a higher density next to the commercial area and lower density next to the residential area; that the site is adjacent to mass transit; that single family lots are not appropriate next to an amusement complex or a mass transit site; that there is a natural

tendency to locate single family units away from commercial uses and to establish multi-family units between commercial areas and single family areas; that the site is in close proximity to Eagles Landing, which was developed at 18 units per acre; and that the applicant has no objection to the following conditions on Conditional Use #1407: 1) The maximum number of residential units shall be 180 composed of 72 duplex units and 108 multi-family units; 2) A ten-foot wide landscaped buffer or 6' high fence shall be maintained along the westerly and southerly boundaries of the property and lots 25 and 24 of Bald Eagle Village adjacent to existing residential uses; 3) All easements, buffers, landscaping, storm water improvements and similar features shall be maintained by the Home Owners Association; 4) Applicant shall install sidewalk along County Road 273A and shall install such pedestrian cross walk designations as required by DelDOT; 5) The Development shall be served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; 6) The Development shall be served by a central water system providing water for consumption and fire protection per applicable regulations and approvals of the State Department of Natural Resources and Environmental Control (DNREC), the State Fire Marshal, The Public Service Commission, and Public Health; 7) Storm water management and erosion and sediment control shall equal or exceed all applicable State and County regulations; 8) The applicant shall be required to commence construction of the bathhouse, pool and tennis courts prior to entering into contracts to sell the last 50 percent of the units and to complete construction within one year of commencement; 9) No site preparation, site disturbance, excavation, or other construction shall be commenced until all other permits required by all other laws, ordinances, rules or regulations shall have been issued and the approved final site plan is recorded; 10) Property addressing of the units shall be submitted to the County Addressing Division for review and approval; 11) As represented by the applicant, the restrictive covenants shall provide that no weekly rental shall run Saturday to Saturday; 12) The applicant and Home Owners Association shall use all reasonable efforts to encourage owners and guests to utilize the Park and Ride Resorts Transit Service located adjacent to the development; 13) Preliminary and Final Site Plan shall be subject to approval by the Sussex County Planning and Zoning Commission.

The Commission found, by a show of hands, that 17 parties were present in support of the rezoning and 42 parties were present in opposition to the rezoning.

The Commission found that Marilyn Marsh, Mike Gonzalez, Bill Shields, Leslie Marsh, and Harry Marsh, Jr. spoke in support of the application and referenced that the Marsh Cemetery is located in Kings Creek Development and is the second oldest cemetery in Delaware; that the Marsh family has never stopped or objected to others project being developed in the area; that people do walk from this general area to the boardwalk at Rehoboth Beach; that very little affordable housing exist in the area; that this project offers affordable housing alternatives; that the proposed units are similar to units in "Sanibel Village" and "Captiva Sands" multi-family housing projects; that not everyone

can afford a single family home; that this is a resort area; that traffic is expected to be bad with or without this project; that people will utilize the bus service; that people do ride bikes to Rehoboth Beach; that the existing horse training facility has to be moved to another location away from the area; that race horses cannot be trained around go-cart and amusement places or residential housing projects; that the horses get scared by pet dogs and noises; that the Marsh family has owned this property for over 200 years; that the family should be allowed to sell their property for fair market value; that people complain about the odors of horse manure; that development has impacted the horse farm business more than the horse farm business has impacted development; and that the development activities have created stress on the environment of the horses.

The Commission found that Blanche Davis, President of Rehoboth Beach Yacht And Country Club Property Owners Association, submitted a letter and a petition with 613 signatures in opposition to the application, not opposing single family lots, and stated that the 20 acre site should remain AR-1 and be developed as such; that traffic is bad in the area; and that they oppose multi-family units and duplexes.

The Commission found that Jacob Balister, James Truitt, Joe CoFrancisco, and Pete Schwartzkopf spoke in opposition and expressed concerns that the amount of development impacts traffic on Route One and Country Club Road; that they are concerned about emergency response time for doctors, police, fire and ambulance, and paramedics getting to and from the area; questioning how the applicants can say that there will be no impacts; stating that there is a need for service roads in the area; that the property should be developed as single family lots, not multi-family units or duplexes since the area is predominantly single family lots; that concerns were expressed about storm water management; that they oppose high density uses in this area; that the calculations prepared by the consultants for the applicant have been manipulated for the traffic impact study; that landscape buffers should be required; that vehicle trips to and from the area must be planned to get around the traffic on Route One; that society has not been considerate to the bus lanes; that people should not be allowed to walk across Route One; that people do not live on Route One, they live on the secondary roads; and that as the area grows, the problems will increase.

At the conclusion of the Public Hearings, the Commission discussed the points and issues raised during the Public Hearing on Change of Zone #1436, Conditional Use #1407, and Subdivision #2001-9.

In reference to **CHANGE OF ZONE #1436**, 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 since the site is adjacent to and in close proximity to other MR Medium Density Residential Districts and single family residential developments.

Vote carried 5 - 0.

In reference to **CONDITIONAL USE #1407**, motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action to review the documentation, letters and petitions submitted.

Vote carried 5 - 0.

In reference to **SUBDIVISION #2001-9**, motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval since the site is adjacent to and in close proximity to other single family residential developments.

Vote carried 5 - 0.

OLD BUSINESS

SUBDIVISION #2001-7 - application of **GARY WATSON** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred, by dividing 41.86 acres into 37 lots, located north of Road 465, 2,340 feet west of Road 479.

The Chairman referred back to this application which was deferred at the May 24, 2001 meeting.

Mr. Gordy advised the Commission that he has concerns about the poultry houses in the area; raised concerns about the project being built; and expressed concerns about the present up keep of the site at this time.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried four vote to one, with Mr. Wheatley opposed, to deny this application.

Vote carried 4 to 1.

SUBDIVISION #2001-8 - application of **DAVID B. WEBB, JR.** to consider the Subdivision of land in a GR General Residential Zoning District in Nanticoke Hundred, by dividing 18.37 acres into 19 lots, located at the southwest corner of the intersection of Road 46 and Road 516.

The Chairman referred back to this application which was deferred at the May 24, 2001 meeting.

Motion by Mr. Johnson to approve this application as a preliminary.

The motion died for a lack of a second.

Mr. Lank described the buffer requirements and the maintenance easement on the tax ditch.

Mr. Wheatley advised the Commission that he is not opposed to the development; that the site has been zoned GR, General Residential since the adoption of the zoning map; and that the developer intends to restrict the development.

Mr. Schrader made reference to the revised deed restrictions being submitted for his approval.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

Vote carried 5 to 0.

SUBDIVISION #2001-14 - application of **BAYVILLE CAPITAL III, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 19.70 acres into 16 lots, located north of Road 298, 214 feet southeast of Route 24.

The Chairman referred back to this application which was deferred at the May 24, 2001 meeting.

The Commission discussed concerns about the two out lots.

Jeff Clark of Land Tech, LLC was present and advised the Commission that he will ask Elton Murray, surveyor, to provide a written statement on the out lot issues.

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

Vote carried 5 to 0.

SUBDIVISION #2000-24 - application of **RACE STREET, L.L.C.** to consider the Subdivision of land in a C-1 General Commercial Zoning District in Lewes and Rehoboth Hundred, by dividing 7.88 acres into 5 lots, located northeast of Route One, east of Road 268 and west of Road 268-A.

Mr. Abbott advised the Commission that this application received preliminary approval on October 12, 2000 for five lots; that the final record plan is the same as the preliminary

plan; that all agency approvals have been obtained; and that the record plan meets the requirements for final approval.

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

Vote carried 5 to 0.

SUBDIVISION #99-23 - application of **ROBERT MUNCY** to consider the Subdivision of land in a GR General Residential Zoning District in Cedar Creek Hundred, by dividing 7.02 acres into 7 lots, located south of Road 14, 755 feet east of Road 224-A.

The Commission was advised at the beginning of the meeting that this application had been removed from the agenda.

VI. OTHER BUSINESS

The Home Depot
Revised Commercial Site Plan - Route One

Mr. Abbott advised the Commission that the site plan received preliminary approval on October 12, 2000; that Grotto Pizza did not want their entrance closed and have a joint entrance with this site; that DelDOT will only allow one entrance to the site; that the entrance to the site is located to the south of the site; that a letter of no objection has been received from DelDOT; and that the entrance is the only revision to the site plan.

Randy Duplechain, engineer with Davis, Bowen and Friedel, was present and advised the Commission that all agency approvals have been obtained.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised site plan as a final upon receipt of all agency approvals at the staff.

Gulls Way Campground
C/U #1318 Site Plan - Route 26

Mr. Abbott advised the Commission that the site plan is for 398 camp sites; that the plan is the same as the one submitted for the public hearing; that approvals have been received from DelDOT, Office of the State Fire Marshal and DNREC; and that a letter has been received from the Division of Soil and Water stating that the erosion and sedimentation and stormwater management plan will be approved within the next two weeks.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a final upon receipt of all agency approvals at the staff.

Wyoming Concrete
Site Plan - Road 380

Mr. Abbott advised the Commission that the site plan is for a concrete batch plant with storage and a sales yard; that the setbacks meet the requirements of the zoning code; that a special use exception was approved by the Board of Adjustment Case Number 7156 on June 5, 2000; that approvals have been received from the Sussex Conservation District; and that approvals are needed from DelDOT, Office of the State Fire Marshal and DNREC.

William DeMondi of Wyoming Concrete was present and advised the Commission that they have received all agency approvals and will forward them to the staff.

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

The Horsey Family LLC
C/U #1271 Discussion - Road 446

Mr. Abbott advised the Commission that the borrow pit site plan received final approval on March 8, 2001; that the entrance has been installed; that berms are being installed and requested that the Commission determine the use to be substantially under way.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to determine the use to be substantially under way.

Subdivision #2000-5 - - Oak Crest Farms, Inc.
Time Extension

Mr. Abbott advised the Commission that this application received preliminary approval on June 8, 2000 for 175 lots; that a request for a one year time extension has been received; that an approval has been received from the Department of Agriculture; that the staff has reviewed the plan for conformity with Chapter 99 of the Code of Sussex County; and that the plan has been submitted to all agencies for approval.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve a one year time extension.

Creekwood
C/U #1278 Revised Site Plan - Route One

Mr. Abbott advised the Commission that this project received final approval on April 19, 2001 at all agency approvals being received; that the revision is for the layout of the duplexes; that 16 duplexes still exist; that the revision allows for more open space; that the site plan meets the requirements of the zoning code; and that all agency approvals have been received.

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

Georgetown Charter School
C/U #1402 Site Plan - Route 9

Mr. Abbott advised the Commission that the site plan is the same as the one submitted for the public hearing; that the Board of Adjustment approved the eleven modular classrooms for three years; and that the site plan meets the requirements of the zoning code.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all agency approvals at the staff.

Meeting adjourned at 11:10 P.M.