

MINUTES OF THE REGULAR MEETING OF AUGUST 9, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 9, 2001 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

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

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of July 26, 2001 as circulated.

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

IV. PUBLIC HEARINGS

C/Z #1442 -- application of **ALLEN S. JESTER** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District to a GR General Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying east of Route 42, 184 feet south of Route 36, to be located on 1.0154 acres, more or less.

Mr. Lank advised the Commission that no agency comments were requested since this application was a down zoning.

The Commission found that Allen S. Jester was present and stated in his presentation and in response to questions raised by the Commission that the site was originally zoned GR General Residential; that the property was approved for B-1 Neighborhood Business, approximately 8 years ago, so that he could operate a business on the site; that he wants to down-zone the property so that a mobile home can be permitted on the site; that he has permission to store a mobile home on the site until a decision is rendered on this application; and that if the down-zoning is approved, he will acquire a permit for the mobile home.

The Commission found that Irvin Hall, an adjoining property owner, was present and stated that he is not opposed to the application, but questioned the amount of frontage on the lot.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved since it a downzoning back to the original zoning classification.

Vote carried 5 - 0.

C/Z #1443 - application of **MERRITT BURKE, III** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a M Marine District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying south of Route 36, across from Route 203 and west of Cedar Creek Canal, to be located on 68.2873 acres, more or less.

Mr. Lank submitted a packet of letters to the Commission that had been received to date. The packet included a letter from Merritt Burke, III describing his intent, a letter from Jane E. Bardon, voicing her opposition, with attached U.S. Fish and Wildlife Service reports on The Horseshoe Crab and Shorebirds, and letters in opposition from Janet S. Quinn, Frank and Donna Shavlik, Hilda H. Jaywork, Margaret T. Deerner, Edmund and Maryann Keiper, Winfred and Eleanor Malone, Elaine Morris, Adrian Morris, John and Cynthia Lyons, Wallace McFaul, and Jeff and Paula MacDonald. The letters are made a part of the record for this application.

Mr. Allen presented a letter of opposition to the application from Robert C. Clendaniel, Mayor of the Town of Slaughter Beach. The letter is made a part of the record of this application.

The Commission found based on comments received from the Delaware Department of Transportation (DelDOT), that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Delaware Office of State Planning Coordination, that the site is located in the Rural area of the Strategies for State Policies and Spending document where the State will encourage the preservation of a rural lifestyle and discourage new development; that a campground may be an appropriate use of a rural area; that DelDOT has noted that, because the site is in a Preservation Investment Area according to their long-range transportation plan, any road improvements needed to support the proposed uses would be the responsibility of the applicant; that according to the State Historic Preservation Office, the site contains Fort Saulsbury, built by the US Government during World War I for coastal defense, with two large batteries; that the use remained active after World War II; that the outer perimeter of the fort was still visible in the 1997 aerial photographs of the area, along with the batteries and gun emplacements; that there may be archaeological resources from the early days of the fort; that nearby is a late 19th century agricultural complex; that the State

Historic Preservation Office feels that development of a campground and marina could have an adverse effect on Fort Saulsbury and that removal of the treed perimeter could cause adverse effects on the nearby agricultural complex; that the State Historic Preservation Office would be happy to discuss ways to minimize this adverse effect with the applicant; that the property has had several uses in the past years and that the State sees this as an opportunity to make good use of this land while using its historic assets to enhance the campground's appeal; that the State recommends that the County require that the perimeter be maintained as is and that the applicant work with the State Historic Preservation Office on ways to minimize the effects on the historic areas of the site; that the State DNREC questioned if any wetlands will be altered by this project, where will the water supply originate, and where will the campground wastewater go and what treatment system will be used; that the site contains tidal wetlands and some upland buffer within the Cedar Creek Natural Area; that the site is within the Prime Hook State Resource Area; that wetland areas and buffers should be protected in any future development of the site; that the DNREC Watershed Assessment Section and the Wetlands and Subaqueous Lands Section believe that the site could be developed if appropriate and applicable pollution control strategies are employed to mitigate nutrient runoff into any adjoining streams or watercourses; that since much of the site is overlain by fill material of variable composition and/or hydraulic properties, site suitability will be contingent upon the results of an on-site evaluation to determine its limitations for siting an on-site septic disposal system; that fill material is generally considered unsuitable for septic waste disposal; that the close proximity of the tidal marsh area to the proposed construction site suggest that the site may actually be wetter than originally mapped; that the applicant should be reminded that they must avoid construction and other ancillary activities in those areas containing wetlands associated with hydric soils since they are subject to provisions under the Federal 404 Program of the Clean Water Act governing jurisdictional wetlands; that if the use is approved, the applicant shall be required to submit plans, building plans, fire protection system plans and aboveground flammable/combustible liquid storage tank plans to the State Fire Marshal's Office; that the State has no objections to this rezoning and conditional use proposal, provided that the applicant works with DNREC to address their concerns regarding wetlands and wastewater disposal, and that the State urges the County to require the developer to work with the State Historic Preservation Office to address their concerns and possibly work out a plan that will enhance the campground by focusing on and preserving the historic aspects of Fort Saulsbury.

The Commission found that Merrill Burke, III was present and stated in his presentation and in response to questions raised by the Commission that his son plans to live on the premises; that his son is studying environmental law enforcement; that he is active in historic preservation in the Town of Georgetown and in the County; that he is active in the preservation of buildings; that he has been active in the conservation and preservation of marshlands; that he is active in the Friends of Back Creeks program; that he plans on

being active in the preservation of the Mispillion Lighthouse and Marina; that DNREC had granted approval for 17 boat slips on the Cedar Creek Canal; that he does not intend to expand the boat slips, only repair and maintain them; that other projects in the area would relate to this rezoning; that the site has been utilized in the past for boat storage; that the battery bunkers have been utilized for boat storage and industrial bulk storage; that some area residents support his intent to improve the site; that his proposal would provide a facility for Eco-tourism, i.e. kayaking; that the Delaware Nature Society would welcome additional facilities that provide services for Eco-tourism; that there are no other facilities in the area that rent kayaks; that he proposes to create a ferry service to take campers to and from the beach across the Mispillion River; that he proposes to create a camp store in one of the battery bunkers; that he needs some income to be able to restore Fort Saulsbury, and that he wants to maintain, historically, part of the site; that the Mispillion Lighthouse will become a tourist attraction again, once restored; that he is looking forward to working with the Office of State Planning Coordination and the State Historic Preservation Office; that the site will not support a lot of the uses listed as permitted uses in the M Marine District; that he only intends uses that are compatible to the water; and that there have been boat slips in existence on the site for at least 40 years.

The Commission found that Dave Kenton, Realtor, and Anna Marie Hanson, daughter of the owner, were present in support of the application and stated that this application is an issue of fairness because the U.S. Government took the property for the creation of the Fort; that the U.S. Government sold the property to the present owner in 1948; that a scrap metal business was placed on the site in 1955; that the boat slips were built in 1962, that a pickle factory was placed on the site in 1962; that the County zoned the property as AR-1 Agricultural Residential in 1971, even though the property was being used for industrial activities; that the site has always been used for commercial, business, or industrial activities; that the property was down-zoned without the owners permission; that the campground would be an appropriate use of the site; and that the existing buffer berms will screen the activities.

The Commission found that Robert Clendaniel, Mayor of Slaughter Beach, Trisha Ann Saunders, Town Councilwoman of Slaughter Beach, Frank Draper, Pete Glitz, Kathleen Loch, and Marilyn Draper were present and spoke in opposition to the application and expressed concerns that the site is 1/4 mile from the Town of Slaughter Beach; that the Slaughter Beach Town Council voted unanimously to oppose this application to rezone the property and the Conditional Use application for the campground; that the Town Council is concerned about the development of a seasonal campground, and the wide range of development that a M - Marine District allows; that the uses could put a great burden on the Town's public facilities, and could be detrimental to the town's quiet residential character; that the uses could result in public safety and environmental problems arising from the resultant development and could overwhelm the Town's limited resources; that central sewer may be available in the near future; that the M -

Marine District also permits multi-family uses and could increase from 68 units on septic to more than 200 on central sewer; that increased traffic is a concern; that Route 36 cannot handle any additional traffic; that Route 36 has no shoulders; that Route 36 is an evacuation route during emergencies; that the Town has no police force to handle trespassing or other crimes; that the speed limit on Route 36 should be lowered; that the rezoning is not in the best interest of the community; that the creek cannot handle any more traffic from boats, wave runners, and jet skis; and that a very fragile Eco-system exist in the areas of marsh and beaches.

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

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

Vote carried 5 - 0.

C/U #1414 -- application of **MERRITT BURKE, III** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a seasonal campground to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 43.78 acres, more or less, lying south of Route 36, 1,700 feet west of Cedar Creek Canal.

Mr. Lank advised the Commission that all of the agency letters and correspondence received and referenced in the Public Hearing for C/Z #1443 also referenced this application and that they shall be made a part of the record of this Public Hearing.

The Commission found that Merrill Burke, III was present and stated in his presentation and in response to questions raised by the Commission that the site is surrounded by a six to seven foot high berm built to protect the Fort from flooding; that the access road crosses over the berm; that the berm screens the site from Route 36, the Town of Slaughter Beach, and Cedar Creek Canal; that the site included two World War I battery bunkers that have been used for several industrial and commercial uses over the years, i.e. boat storage; that some of the original prison cells still exists in the bunkers; that the site is appropriate for a campground; that he and the State Historic Preservation Office want to preserve the berms; that there will be no wetlands impacts or alteration; that he proposes 207 campsites for recreational vehicles and 75 primitive campsites for tents; that a parking area will be provided for the primitive camping area; that the campground would be open from approximately March to November; that he proposes to restore one of the bunkers; that he proposes to operate a camp store in the second bunker and that the camp store will be in place as a part of the first phase; that septic will be located in the AR Agricultural Residential portion of the site just west of the campground; that a

wastewater pump-out facility will be provided; that restrooms and shower facilities will be provided; and that he has no intent to disturb the Marvil Tract Nature Area.

The Commission found that Geraldine Mayer, Robert Clendaniel, Mayor of the Town of Slaughter Beach, Linda Brey, Tricia Ann Saunders, Town Councilwoman of the Town of Slaughter Beach, and Frank Draper were present and spoke in opposition to the application for the same reasons as stated in the Pubic Hearing for C/Z #1443 and additional concerns relating to recreational vehicles traveling along Route 36; that there are blind curves along Route 36; that Route 36 has some areas that flood during storm events; additional lights; increased noise, increased traffic; trespassing; hunting; the impact on the areas wildlife, including Bald Eagles, other birds, and foxes; questioning the Kayak sales location; questioning the use of jet skis by campers not knowing the area; concerns about the campers coming to the Town of Slaughter Beach to use the beach; and that the campground would have a greater population than the Town of Slaughter Beach, when fully occupied.

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. Johnson, and carried unanimously to defer action.

Vote carried 5 - 0.

C/U #1413 - application of **EDWARD J. KAYE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of an existing borrow pit (Conditional Use No. 954 and No. 1079) to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 200.5 acres, more or less, lying at the northeast corner of Route 531 and Route 533.

Mr. Lank provided the Commission with copies of the site plan.

Mr. Lank provided the Commission with copies of all correspondence received by the Office, either in the mail or by FAX, which included letters of opposition from John M. Hassman, Charles and Carolyn Jackson, Shelly and Mary Lou Spicer, John W. King, a petition in opposition from area residents and landowners containing 150 signatures, Elizabeth E. Zucker for The Nature Conservancy, Judith Stribling for the Friends of the Nanticoke River, Carolyn Turner for the Nanticoke Watershed Alliance, and Joseph Karnish.

Mr. Lank submitted copies of a booklet, prepared on behalf of the application, to the Commission, which included a zoning history, an outline of the property with a route map and map of existing borrow pits located in the area, letters in support of the application, a four year history of materials sold and recycled at the present site, a reference to a complaint history of the borrow pit area, and compliance with the Comprehensive Land Use Plan.

Mr. Lank read a letter from Richard H. Anthony for the Sierra Club - Delaware Chapter - Southern Delaware Group which referenced that the Group believes that the application is premature in the order of administrative; that the application fails to comport with the spirit, intent and letter of the Comprehensive Plan, the Zoning Ordinance, and the Code of Sussex County; that the Delaware Supreme Court has held that Conditional Use zoning is not a right-by-law issue and must be treated the same as a rezoning; that the burden of proof and the degree of evidence rest with the applicant; that the Group submits that potential direct collateral, future foreseeable and cumulative impacts associated with the application pose adverse impacts on/to public lands of the State of Delaware, public safety issues and the quality of life of both neighboring and area property owners including, but not limited to, a potential decline in air and water quality, compromises to marine and terrestrial habitat and species dependent thereon, compromises to riparian areas, the general area's hydrology, site specific drainage impacts, potential compromises to or loss of forested areas, noise, dust, and dirt the increased level of commercial vehicular traffic and potential losses of historic importance; that the Group directs the Commissions attention to the equities elaborated in Article XXVIII Section 115-219-D of the Code, which references that the Commission shall review a site plan in compliance with the Code; that it is the Group's belief that any assessment of the application in the absence of all specifications and approvals for both the site's drainage/stormwater management plan and the proposed bridge renders an informed decision an impossibility; that it is the Group's belief that such an action is a compromise of due process rights and constitutes an impermissible denial of a right to address these issues in an informed manner; that the Group supports the commentary and recommendation of the Office of State Planning Coordination and request denial of the application.

The Commission found, based on comments received from DelDOT, that the Department does not recommend that the County require a traffic impact study for this application; that the Department is concerned about the maintenance of roads in the vicinity of the project; that the Statewide Long Range Transportation Plan depicts the area in a Preservation Investment Area, where the Department seeks to maintain the existing transportation infrastructure with few, if any, capital investments; that the Department tries to hold anyone developing lands in such areas responsible for all transportation improvements necessary to support their projects; that the Strategies for State Policies and Spending document depicts the property in an Rural Area, where emphasis is on

preserving infrastructure investments and limiting growth to relatively passive uses such as cropland and forestry; that the level of service in the area is acceptable; that the subject use is not considered an intense use; that it is the Department's understanding that the project would generate no more than 100 trucks per day during its busiest season; and that an agreement between the Department and the applicant will be necessary whereby the applicant will maintain a designated truck route between each site entrance and U.S. Route 13.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State strongly urges the County to deny this application because of potential negative impacts on adjacent rare or endangered plant communities; because increased sediment loading into Gravelly Branch and Nanticoke River is likely to threaten existing threatened native mussel communities; because development on this parcel would destroy a recorded prehistoric site; and because of concerns about potential increased truck traffic on area roads; that according to DNREC the site adjoins lands owned by The Nature Conservancy, known as the Middleford North Nature Preserve; that The Nature Conservancy conveyed a conservation easement to DNREC in 1998; that the Division of Fish and Wildlife owns an additional property to the south of that parcel that is managed by The Nature Conservancy; that the site is in an environmentally sensitive, unchannelized stretch of the Nanticoke River that supports one of Delaware's best examples of Atlantic white cedar swamp and a number of rare plant species; that as an adjoining landowner who acquired property to protect that nature communities and species, the State is concerned about the impacts the proposed sand and gravel extraction and other activities will have on the property; that the upper Nanticoke River is described as a pristine, unchannelized stream and floodplain system that supports a high diversity of plant and animal species; that it is recognized as an area with high biodiversity significance for the State and the region; that while the site is located in an agricultural field where there are no species or natural communities of conservation concern DNREC is concerned that impacts to the hydrology and increased sedimentation will have detrimental effects on the stream and wetland system; that DNREC is concerned that the Atlantic white cedar swamp found along the stream and its tributaries will be degraded and will no longer support the numerous rare plant species that grow in this habitat and on the exposed sand and gravel stream shoreline; that a globally rare butterfly has been documented in the cedar swamp near this site; that the species larvae feed exclusively on the Atlantic white cedar and the adult butterflies depend on nectaring sources found in the forest; that without its cedar swamp habitat, the species would probably disappear; that the Seaside alder, a globally rare shrub found growing along the banks of the stream, could be impacted by changes in hydrology; that other rare species may be impacted by alterations in hydrology and increased sedimentation; that potential sedimentation resulting from expanded borrow pit operations can degrade habitat for freshwater mussels that have been found living in the stream; that freshwater mussels are one of the nation's most imperiled animal groups, with 70% threatened or already extirpated; that noise from

increased operations of heavy equipment at the borrow pit is a concern; that bird species, including the Red-Shouldered Hawk and the Barred Owl, both of which have been documented in the forests near the site, are sensitive to disturbance during nesting periods; that the entire forested portion of the site is within the Nanticoke River State Resource Area; that the site is located along one of the most important riverine wetland systems and one of the few unchannelized streams left in Delaware; that the Gravelly Branch, one of the most important high quality tributaries of the Nanticoke River, joins the Nanticoke River opposite the site; that the upper Nanticoke river has maintained a concentration of rare species and exceptional riparian habitat despite the ever-increasing development pressure; that projects that invade the adjacent forested uplands and destroy riparian buffers leave the immediate future of these habitats and the rare species that live along the Nanticoke River very much in doubt; that our troubling water quality indices note the need for increasing our riparian buffers, not decreasing them; that the State of Delaware has entered into a joint agreement with the State of Maryland to cooperatively preserve and protect the Nanticoke River watershed; that if the use is approved, the expansion borrow pit area will require a Sediment and Stormwater Plan approval from the Sussex Conservation District; that previous and proposed tree clearing operations on the site will require a Forest Harvesting Permit from the State Department of Agriculture; that future development of the borrow pit may require permits and approvals from the Army Corps. of Engineers, DNREC Division of Water Resources and DelDOT; that the State may require a 401 Water Quality Certification for any proposed wetlands fill; that the Nanticoke River is designated as Waters of Exceptional Recreational and Ecological Significance (ERES Waters); that designated ERES waters shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State; that both non-point and point nutrient sources of these waters may be subject to control through Best Management Practices which may include establishment of vegetated buffers adjacent to watercourses, or preserving existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment; that potential impacts of the project are alteration to the hydrology of the wetlands and river, increased sediment flows to the river, introduction of invasive species, alteration of wildlife habitat from construction activities in close proximity to the wetlands, and increased sediment loading expected from this project in likely to increase phosphorus concentrations into waters of the Chesapeake Basin Watershed; that the State strongly opposes a pipeline or bridge crossing the river because of the negative impacts that would be caused to the wetlands including total destruction of some areas to support a bridge; that according to the State Historic Preservation Office, a late 19th century agricultural complex may be located on the site or on one of the out parcels along the road; that the site plan should be designed to avoid the site if the use is approved; that DelDOT has stated that it appears that the applicant will have to cross approximately 1,000 feet of wetlands to connect the pits; that DelDOT reviewers expressed doubt that the applicant will be able to obtain a Corps. of Engineers permit to fill a significant portion of that distance; that given the cost of building a bridge across those wetlands, it

is logical to expect that the applicant might find it less expensive to either buy duplicate equipment and operate two pits separately, or to finish mining the existing pit and then to shift operations to the proposed pit; that in either case, trucks to and from the pit would use local roads that are not suitable for such traffic; that the roads were not built to support heavy truck traffic; that the roads would have to be improved to be able to handle the truck traffic; that the applicant should be required to use his existing pit entrance as sole truck access to the pit; and that the State objects to this application and strongly urges the County to deny the application. The comments included a list of species and communities of conservation concern found at or near the site.

The Commission found that Edward J. Kaye and John Sergovic, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that comments should be received from agencies and opposition 72 hours in advance of the Public Hearing, just like the applicant has to do; that the State is using all of their power to limit the use of this property; that additional borrow material is needed in the area; that they propose that same attributes as the existing borrow operation across the Branch; that the proposed site is not suitable for agricultural activities; that the use is conducive to expansion of the existing borrow operation; that according to the Materials Administrator for DelDOT, the Kaye pit has been a source of supply for borrow for DelDOT highway and bridge projects for many years, and that the Company has supplied DelDOT with quality common borrow, select borrow, topsoil and special fill on various State and Federal aid jobs in a timely manner, and that the Companies presence for DelDOT purposes has been a beneficial necessity; that DelDOT did not require a traffic impact study; that the application will serve the community; that Delaware and Sussex County needs this type of use; that borrow material is used primarily for road projects; that the site is adjacent to a Development District; that Sussex County is a growth area and needs the product for development; that the use is a non-residential use that supports the agricultural industry, especially in the site preparation of poultry houses; that the adjoining borrow pit area has been in operation for 14 years and includes the borrow operation, an asphalt plant, a sand plant, and a recycling operation; that they have estimated that the existing borrow operation will be completed within 5 to 7 years; that 90% of the Company business is done in Sussex County; that they have received 161 letters in support of the application; that the original borrow pit was approved for O. A. Newton and Son Company in 1987; that expansion of the existing borrow pit and placement and operation of a stump shredding device and a concrete crushing device were approved for Edward J. Kaye in 1990; that expansion of the borrow pit to permit excavation of borrow below the water table and to establish areas for recyclable building materials was approved for Edward J. Kaye in 1994; that approval was granted by the County Board of Adjustment to operate as asphalt batching recycling plant in 1995; that approval was granted by the County Board of Adjustment to continue the asphalt batching plant in 1999; that the Company exports sand out of the State and imports stone for the asphalt plant; that a letter in the file from Robert W. Durham of

R. W. Durham Associates references that they do not feel that the project will have any adverse affect to the area, and that they presently have 4 houses for sale across from the property and have had no objections from prospective buyers, that the buffer surrounding the property will be more than adequate to protect the view of other residents, and that they have no objections to the request; that a letter from Rick Clendaniel of Frank Clendaniel Incorporated, former owner and operator of the farm, referenced that they feel that a borrow pit would be the best use of the property since the farm drainage is too good for farming or developing the property, and that it is their understanding that most of the homes next to the farm have LPP Septic Systems which have an environmental effect on the area, and that they have no objections to the request; that a letter from Greg Cartwright, a landowner of property directly in front of the site, referenced that he has no objection to the request; that they have no written violations for activities on the existing site from DNREC or Planning and Zoning; that the existing site does have an existing outfall to the Branch; that vegetative berms surround the wetlands along the Branch; that there have been reported complaints about water quality from the site into the Branch, and that they have never been sited for a violation for the outfall; that it is necessary for trucks to move the material and that they pay fuel taxes to be able to utilize the roads; that the soils on the site are good borrow material; that approximately 147 acres of the site will be for borrow; that the remainder of the site will be buffers; that the bridge/pipeline on the site plan will be subject to review and approval by the Army Corps. of Engineers and DNREC; that permits have been acquired for the forestry work, relocation of the irrigation system, and the entrance on Road 531; that DelDOT has not done any road work on area roads recently; that they have met with some area residents to discuss the buffers/berms; that a 300-foot wide buffer is proposed from Road 533; that Leyland Cypress trees have been planted with a 10-foot stagger; that they have no intent or desire to encroach into wetlands; that no chemicals are added to the soils; and that no water is extracted from the Branch.

The Commission found that Rick Clendaniel was present and stated that his family owned and operated the farm for 36 years; that the ground is very sandy, that the site is good for borrow; and that a small borrow pit has existed on the site for 30 years.

The Commission found that Jim Huston of Huston Appraisal Company was present and stated that he sees no reason to anticipate any depreciation of property values if the site is bermed and landscaped; that land values are increasing in Sussex County, especially in this area; and that this project will not negatively effect property values.

The Commission found that Elizabeth Brown, a Geologist with Davis, Bowen and Friedel, was present and stated that there should be no impact on the availability or quality of water in the area; that no public water or sewer is available in the area; that water flows west to east on the site which helps recharge the acquifer; that impervious surfaces effect recharge; that a borrow excavation will not effect recharge; that

groundwater is approximately 10-feet below the surface and fluctuates annually; that excavation does not affect the water level; that no de-watering is proposed; that dredging is proposed; that the area has good recharge potential for recharging the groundwater; that nitrates should not be a problem; that some potential contaminates from the machinery may exist; that there should be no impact on potable water supplies; that the Eco-system of the area should not be affected; that most wells in the area are drilled to at least 60-feet below grade, due to nitrates in the area; that she has no record of any wells going dry because of a borrow pit; and that if they were de-watering, a well could go dry.

The Commission found that Greg Cartwright was present and stated that he has no objection to the application; that there is a great need for the materials for development in the area; and that if the material had to be hauled in from other areas the cost would be to high.

The Commission found that Mr. Sergovic, in summation, stated that the use is in compliance with the Comprehensive Plan; that the use supports the agricultural industry; that the use meets the Code of Sussex County for Conditional Uses; that a borrow pit use would be acceptable with conditions; that the applicant has proven by past practices that he will comply with conditions imposed on his application; that the applicant is leaving at least 50 acres undisturbed; and that a housing development would have more of an adverse impact on the site than a borrow pit.

The Commission found that Mr. Sergovic and Mr. Kaye stated in response to additional questions raised by the Commission that the Company has a average of 50 truck trips per day, and could have more than 150 trucks per day on a very busy day; that business hours are generally from 6:00 A.M. to 6:00 P.M. weekdays, 7:00 A.M. to Noon on Saturdays, with no Sunday hours; that the proposed pit operation should provide enough materials for 15 years; that earth berms should prevent any chance of run-off into wetlands; that the berms will be approximately 6-feet in height; that the proposed bridge across the Branch would be for truck traffic hauling from the site to the existing site; that if they could not get the bridge approval, a pipeline could be placed across the Branch to pump the borrow material; that other borrow pits in the general area are operated by Kaye and Earth Movers, Inc.; that they propose to dig approximately 20 to 25 feet below grade and to dredge an additional 30 feet; that side slopes would be maintained; that the pit would be converted to a recreational pond when all digging is completed; that reclamation plans will be submitted with the preliminary site plans, if approved; that the existing office and scales will remain on the existing site; that they are not aware of any historical preservation site on the property; and that they are not aware of any monitoring wells in the area.

The Commission found that Barbara Weir, an employee of Mr. Kaye, spoke in support of the management of the Company and it's employees.

The Commission found that Don D'Aquila, an area resident, spoke in support of the application, but expressed concerns about the location of the entrance on Road 531; that the bridge application should be resolved before the Conditional Use is approved; that since the developer has advised that it may take 5 to 7 years to complete the existing pit, then there should be adequate time to study the bridge application; that all trucking activities from the pit should access Road 525; that the entrance on Road 531 should be improved with a deceleration lane; that the DelDOT trip count does not conform to current projects; and that if the application is approved, it should have stipulations that include a lesser acreage, a limitation to the depth of the dredging, and no stump grinding or concrete crushing.

The Commission found that Elizabeth Zucker of The Nature Conservancy, Michael McGroerty, Doug Layton, Joan Lankford, Jim Devone, Diane Williams, John Walker, David Saveikis of the Nanticoke River Watershed Conservancy, Don Perkins, Charles Jackson, and Robert Hathaway, of the 49 people present in opposition to the application, stated that the use would negatively effect property values; that the use represents potentially irreparable impacts on the property of The Nature Conservancy; that the use will negatively affect the Conservancy's investment in their 350 acres; that the use will greatly impair the Conservancy's future efforts to retain and restore high quality habitat for a diversity of species in and around the Middleford North Preserve system; that due to its ecological significance, the State DNREC has designated the area as a State Resource Area and that it will be added to the Delaware Natural Areas inventory as a part of the Nanticoke River Natural Area in the fall of 2001; that there are nearly 2 dozen occurrences of rare species of plants and animals and natural communities documented on or near the proposed site; that the Conservancy is very concerned that the permanent excavation of 147 acres may irreparably harm the existing habitat on their preserve as well as the surrounding habitat of the Nanticoke River; that the Conservancy is concerned that the significant alteration of the soils and topography of the site may result in considerable modification of the groundwater and surface water regimes that sustain the existing wetlands; that a shift in hydrology toward either a wetter or drier regime may result in the degradation or loss of the Atlantic White Cedar Swamp and other wetland plant habitat; that they are concerned that increased sedimentation from direct outflow from a pit and sediment pond, an increase in dust, and changes in surface runoff from the site may result in negative impacts to adjacent freshwater tidal habitat including mussel and other aquatic plant and animal species; that the noise and presence of heavy equipment will reduce the use of the preserve system by resident wildlife species, particularly nesting migratory songbirds, waterfowl and the state listed species found in the area; that construction of a bridge and pipeline across wetlands would destroy wetlands, river bottom and floodplains, fragment the existing wooded corridor along the shoreline, allow for the introduction of invasive, non-native plants, and change the flow dynamics of the River; that the use would result in significant impacts on the existing downstream habitat of the Conservancy's preserve; that the proposed project poses a

significant and permanent alteration of a unique landscape; that the Conservancy feels that an alternative site, away from close proximity of the River, should and could be found for this land use; that the Commission needs to consider the comments submitted by the Office of State Planning Coordination; that the roads in the area are not designed or built to handle the volume of heavy truck traffic proposed; that children live in the area and their safety should be considered; that the use is not compatible with the residential and agricultural character of the area; that additional runoff will occur if the use is approved; that the entrance on Road 531 is located on a severely high banked curve on a poorly maintained section of the road; that the area is developing into a more residential area based on the number of lots created in the immediate area recently, i.e. Fox Glen Subdivision with 51 lots and Saddlebrook Subdivision with 53 lots; that the applicant is the only one to benefit by this application; that the site is located in a Preservation Investment Area where DelDOT is seeking to maintain the existing transportation infrastructure with few, if any, capital improvements; that the traffic impact summary referenced 1990 counts, not current counts on traffic on the roadways; that since children live in the area, school buses must travel the roads to pickup the children, causing a safety concern relating to buses and heavy truck traffic; that the industrial-like activity may be incompatible with the immediate area's established agricultural, residential and conservation lands, potentially compromising property values and established land uses; that they are concerned about the probability of high sediment discharges into the River similar to those that have periodically resulted from the existing borrow operation; that they are concerned about the potential impacts from the physical footprint of the bridge and the risks of a pipeline break that could result in catastrophic impacts to the River; that they are concerned that the imposition of a bridge or pipeline and associated vehicular traffic could degrade the aesthetic values that attract increasing numbers of residents and visitors that use this part of the River for outdoor recreational use, thereby potentially threatening the emerging "Eco Tourism" business in western Sussex County; that they are concerned about a deterioration of water quality downstream; that the site is not physically adjacent to the existing site due to the Branch and wetlands; that the farm has had a conservation program that supports farming, not a borrow pit; and questioning how 22 ton trucks can travel across a 15 ton limit bridge.

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action so that the Commission could review the documentation submitted.

Vote carried 5 - 0.

V. OLD BUSINESS

C/Z #1441 -- application of **DAVID B. WEBB, JR.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a LI-2 Light Industrial District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, land lying east of Route 482 and 700 feet northeast of U.S. Route 13, to be located on 27.3139 acres, more or less.

The Commission discussed the points and issues raised during the Public Hearing held on July 26, 2001.

There was a consensus of the Commission that the applicant applied for a LI-2 Light Industrial District to satisfy other agencies and that the proposed uses stated by the applicant are permitted in a C-1 General Commercial District. It was noted that everything permitted in a C-1 District is allowed in a LI-2 District.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied based on the above consensus. There was a consensus of the Commission that it be suggested to the applicant to withdraw this application and reapply for a lesser zoning classification and that the fee be waived.

Vote carried 5 - 0.

Subdivision #2000-28--application of **CHARLES H. GUY, IV, ROBERT A. NEDZEL, AND DOUGLAS STAMBAUGH** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred, by dividing 99.37 acres into 53 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northwest corner of the intersection of Road 531 and Road 533.

Mr. Abbott advised the Commission that this application received preliminary approval on October 26, 2000 for 53 lots; that the final record plan has been reduced to 51 lots; that the record plan meets the requirements of the Subdivision Code; and that all agency approvals have been received.

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

VI. OTHER BUSINESS

Lincoln Park
Preliminary Multi-Family Site Plan
Lot 2 Carpenter's Crossing Subdivision

Mr. Abbott advised the Commission that a letter of no objection has been received from DelDOT; that the site plan is for 16 multi-family dwelling units; that the site is 2.30 acres and that 27 units would be permitted by the Zoning Code; that 48 parking spaces are required and provided; that the parking located within the front yard setback needs a waiver from the Commission; that the interior driveway is 16 feet in width and has parking spaces on both sides that would need a variance from the Board of Adjustment and need to be revised since 25-feet is the minimum requirement; that the final site plan needs to include the 20-foot landscaped buffer plan since the site is located within the Highway Corridor Overlay Zone; and that the site plan is suitable for conceptual approval.

Mike Riccitelli of Meridian Consulting Engineers advised the Commission that the designer would look into revising the interior driveway to 25-feet.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a concept. Preliminary approval shall be subject to the interior driveway being revised or subject to a variance being granted by the Board of Adjustment.

Rehoboth Car Wash
Preliminary Commercial Site Plan
Route One Service Road

Mr. Abbott advised the Commission that a letter of no objection has been received from DelDOT; that the proposed car wash is 4,200 square feet; that 10 parking spaces are required and proposed; that the final site plan needs to show the 20-foot landscaped buffer since the site is located within the Highway Corridor Overlay Zone; that the setbacks meet the requirements of the Zoning Code; and that the site plan is suitable for preliminary approval.

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

The Estates of Sea Chase
C/U #1379 Site Plan Road 274 and Road 275

Mr. Abbott advised the Commission that the preliminary site plan is for 45 detached units; that there are three types of dwellings that range from 2,335 square feet to 3,000 square feet; that there is a minimum of 20-foot separation between units; that sewer will be provided by Sussex County and water provided by Tidewater Utilities; that there will be a combined entrance for Sea Chase 1 and this phase; that the pool and clubhouse will be built after 24 units are constructed; and that the site plan meets the requirements for preliminary approval.

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

Oyster Bay Villas
C/U #1385 Site Plan Road 273A

Mr. Abbott advised the Commission that the preliminary site plan is for 34 multi-family dwelling units; that the units will be duplexes and that there are 17 buildings proposed; that 102 parking spaces are required and that 106 are proposed; that there is a 24' by 32' clubhouse with a swimming pool proposed; and that the site plan meets the requirements for preliminary approval.

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

Oyster Bay Villas II
Preliminary Multi-Family Site Plan Road 273-A

Mr. Abbott advised the Commission that the preliminary site plan is for 16 units on 1.40 acres; that access to the site will be through the Oyster Bay Villas site; that 48 parking spaces are required and proposed; and that the site plan meets the requirements for preliminary approval.

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

Urology Associates
Preliminary Commercial Site Plan
Lot 5 Old Towne Office Park

Mr. Abbott advised the Commission that the preliminary site plan is for a 4,908 square foot medical office; that the setbacks meet the requirements of the zoning code; that 10 parking spaces are required and that 18 are proposed; and that the site plan meets the requirements for preliminary approval.

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

Happy Harry's Pharmacy
Revised Commercial Site Plan Route One

Mr. Abbott advised the Commission that the revised site plan is for an 8-room motel addition; that the Commission denied the revised site plan on April 13, 2000; that the Commission denied 4 townhouses in the same location on August 26, 1999; and that the Commission deferred action at the June 28, 2000 meeting; that the staff received answers in response to questions raised by the Commission from the developer's attorney; that the site plan meets the requirements for site plan approval; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried 4 vote to 1, with Mr. Allen opposed, to approve the revised site plan as a final.

The Villages of Five Points

- a. Private Street System
- b. West Village - Preliminary Site Plan
- c. Town Center West - Preliminary Site Plan
- d. North Village - Preliminary Site Plan
- e. Conditions of Approval

Jeff Clark of Land Tech and Jim Fuqua, Attorney, discussed the proposed street system within the Villages of Five Points and requested that they be allowed to record the street system.

Mr. Lank questioned if all approvals would be necessary since this is the same as a subdivision.

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

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to rescind the previous motion.

Mr. Abbott advised the Commission that item d. has been removed from the agenda at the request of the engineer; that the West Village is a preliminary site plan for 104 single family lots; that the minimum lot size for this phase is 8,273 square feet and that 7,500 square feet is permitted by the zoning code; that a 20-foot front yard setback is requested; that there will be a 20-foot separation between units; that the proposed garages will have a 15-foot separation; that the Town Center West Phase is for 96 multi-family units; that the setbacks meet the requirements of the zoning code; and that the site plans are suitable for preliminary approval.

Mr. Fuqua discussed the Condition of Approval Number 26 referencing site work being done prior to obtaining final approval.

The Commission discussed this policy and took no action on this request.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to grant preliminary approval for items a., b., and c.

Meeting adjourned at 1:15 A.M.