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MINUTES OF THE REGULAR MEETING OF SEPTEMBER 27, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 27, 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 adopt the agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of September 13, 2001 as amended.

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

PUBLIC HEARINGS

SUBDIVISION #2001-24 -- application of **CRAIG HUDSON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 81.98 acres into 73 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 251, 666 feet southeast of Road 319.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of September 19, 2001 will be made a part of the record for this application.

Mr. Abbott advised the Commission that one letter in support of this application has been received and seventeen letters in opposition to this application have been received and passed out copies of the letters to the Commission for their review.

Mr. Abbott advised the Commission that revised preliminary plans were submitted on September 24, 2001 reflecting revisions recommended by the Technical Advisory Committee.

The Commission found that Craig Hudson, applicant, Robert Witsil, attorney, and Mark Davidson of DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the total site is over 80 acres; that one entrance to the development is proposed; that this application is not for a change in density; that all lots are a minimum of three-quarters of an acre as required; that no multi-family units are proposed; that the proposed deed restrictions are more restrictive than the existing Moore-Layton strip subdivision; that no double wide

manufactured homes will be permitted; that the minimum square footage of the homes will be 1,800 square feet and with a two car garage; that twelve lots are greater than one acre in size; that the proposed subdivision meets the subdivision code; that the entire site is wooded and that the developers will preserve as many trees as possible; that the average lot size is 0.88 acres; that the density is 1.1 units per acre; that a forested buffer has been provided on the revised plan since the land to the southeast was recently tilled; that the project will have curbed and guttered streets to control stormwater run-off; that the streets will be privately maintained; that the revised plan does not require a variance from the maximum allowed cul-de-sac length of 1,000 feet since a turnaround has been provided between lots 23 and 24; that the entrance location is where DelDOT would like it since it provides a good view to both the east and west; that the applicant will comply with all recommendations made by DelDOT; that there are other developments in the county with the entrances located on curves in the road; that the applicant will comply with all the recommendations made by the Technical Advisory Committee; that the revised plans were submitted prior to the 72 hour rule that the Commission has; that the development fits into the existing terrain; that the applicant proposes to minimize the loss of wooded lands; that there are no wetlands or flood plains on the site; that the closest point of the development to Dutton Ditch is 75-feet; that there are no historical features on the property; that open space will be preserved and provided; that scenic views will be provided on all lots; that on-site wells and septic systems are proposed and that they will be regulated by DNREC; that provisions for water supply, sewage disposal, prevention of pollution of surface and groundwater and erosion and sedimentation control measures have been addressed; that there will not be any negative impacts to existing property values; that the applicant has been a developer since 1975; that the development will provide nice homes in the area; that the lots will sell in the 30,000 to 35,000 dollar range and that land and home packages will sell in the 150,000 to 200,000 dollar range; that the development will be for one and two story homes; that the roof pitch will be 6 to 12; that each home will be required to have a two car garage; that all driveways will be hard surfaced with either asphalt or concrete; that the development will be for mid market homes; that the Homeowners Association will have an architectural review committee; that no farmland will be affected; that the project is located in the Cape Henlopen School District; that fire protection will be available by both the Milton Fire Department and the Georgetown Fire Company; that police protection will be provided by the Delaware State Police; that the development is for single family homes; that no variances are needed; that the project complies with the subdivision code; that the Moore-Layton subdivision has twenty-seven separate driveways; that the proposed subdivision is a better design than strip development; that there are no eagle nesting sites in the area; that the applicant will work with the DNREC Fish and Wildlife in any investigations of the property; that open space is not required in subdivisions, only suggested; that the development will provide quality homes in a wooded setting; that the development will provide for safe and affordable homes in the Milton area; that a real estate agent wrote a letter stating that there is a need for housing in the Milton area and submitted the letter into the record; that

stormwater management ponds will be put in; that the common areas will be stormwater management areas and open space; that lot 44 of the Moore-Layton Subdivision will remain as recorded; that the entrance location was determined at a meeting with DelDOT; that a homeowners association is created at the outset of the development and the developer will turn over the development to the homeowners association when 66 percent of the lots are sold; that the minimum 1,800 square foot homes do not include the two car garages; and that no manufactured housing will be permitted, and that it will be so noted in the restrictive covenants.

The Commission found that no parties appeared in support of this application.

The Commission found that Janice Ferneyhough was present in opposition to this application and advised the Commission that the proposed development will increase traffic in the area and that the project is not in character with the area.

The Commission found that Michael J. Malkiewicz, attorney representing the residents of Neptune Road, was present in opposition to this application and advised the Commission that a petition with 65 signatures opposed to the application is included in the exhibit submitted into the record; that the exhibit contains letters in opposition to the application; that the residents of Neptune Road want to maintain a quiet way of life in a country atmosphere; that there are concerns about the public notice and that the residents were not aware of the revised plans being submitted; that the preliminary plan does not comply with the Technical Advisory Committee report; that exhibit five depicts pictures of the tar and chip road ; that there is no shoulder along Road 251; that the packet contains pictures of the existing conditions of Road 251; that the curve along Road 251 is dangerous and is referred to as deadman curve; that there are 700 trips per day along Road 251 according to DelDOT; that the existing lots in the Moore-Layton Subdivision are larger than what is being proposed for this application; that the State Spending Maps and Governors Cabinet Committee have the area marked as a rural area; that the proposed development does not comply with the intent of the AR-1 Agricultural Residential Zoning District; that the DNREC has not issued a septic feasibility statement; that there are no comments from DelDOT in reference to the entrance being located on the curve; that Neptune Road (Road 251) is classified as a local road; that according to the Department of Agriculture, tree farming is a genuine agricultural operation; and submitted photographs and a packet with 14 exhibits into the record.

The Commission found that David DeLuca, Stephen Fabian, Lance Mueller, Jeff Carroll, Cheryl Tilton, Michael Powell, Luther Warren, Susan Huff, David Jensen, and Russell Pappas, all residents of Neptune Road (Road 251) were present in opposition to this application and advised the Commission that the proposed development will decrease the

existing property values in the Moore - Layton Subdivision; that the smallest lot in the Moore Layton Subdivision is 1.76 acres; that there are concerns about the proposed number of septic systems in the area; that the restrictive covenants are the same for a development that is not even approved or built yet; that the entrance location is proposed on a curve on a narrow road; that the development would negatively affect the quality of life for the residents in the area; that not all of the existing Moore - Layton lots are occupied yet; that there will be safety concerns for children in the area; that the site contains wetlands; that there are farming operations in the immediate area; that the homes on the site should be stick built; and that large trucks utilize the narrow road.

The Commission found, based on comments made by Mr. Witsil in his rebuttal that the Moore-Layton development deed restrictions allow for manufactured homes, stick built or modular homes; that a buffer could be established along the entire perimeter of the development; that now is not the time to submit the plan to all agencies for approval since this is done after preliminary approval has been obtained; that the wetlands consultant has determined that there are no wetlands on the site; that the right of way of Road 251 is 50-feet however the entire right of way is not paved; that the Moore-Layton development is on the same right of way; and that the development is for the lowest single family density allowed.

The Commission found, by a show of hands, that there were 28 people present in opposition to this application.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a non-binding septic feasibility statement from DNREC.

Vote carried 5 to 0.

SUBDIVISION #2001-25 -- application of **S & M VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 35.63 acres into 60 lots, located 1,300 feet southwest of Road 318, 300 feet southeast of Road 324.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of September 19, 2001 will be made a part of the record for this application.

Mr. Abbott advised the Commission that a revised plan reflecting the recommendations of the Technical Advisory Committee and revised restrictive covenants were submitted prior to the 72 hour rule of the Commission.

The Commission found that Mike Makowski and Bill Schab, applicants, James Fuqua, attorney, and Ken Christenbury of the DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project is adjacent to a subdivision and farmland; that there are strip subdivision lots along Road 318; that the site has been zoned MR, Medium Density Residential, since the 1970's; that the access road to the site exists and has been recorded; that a revised preliminary plan and deed restrictions have been submitted; that the proposed entrance is off of Road 318 and will be landscaped and have an entrance sign; that the streets will be private and built to Sussex County specifications; that a homeowners association will be established; that the minimum allowed lot size is 10,000 square feet and that the lots range in size from 12,000 to 19,000 square feet; that the wetlands have been delineated and that the 404 wetlands line will be the building restriction line; that the area is wooded and that removal of trees will be on a selected basis; that the wetlands and stormwater management areas are designated as common open space; that some homeowners do not want large lots; that the adjoining Fairway Oaks Subdivision has larger lots; that Golf Village is zoned MR and has 20,000 square foot lots since DNREC would not allow septic systems on any smaller lots; that the lots in this development will be served by a central sewer system provided by the Town of Georgetown; that individual on-site wells are proposed; that the sewer plant for the Town of Georgetown is located across from the site along Road 318; that the proposed homes will be 1,400 to 1,800 square feet excluding garages, decks and porches; that there are two subdivisions in close proximity to this application; that the stormwater management design will be in compliance with the Sussex Conservation District; that there is minimal traffic utilizing Road 318; that the site is not farmland; that the project would be close to amenity areas; that the project will be for young homeowners to start a family; that the subdivision meets the requirements of the subdivision code; that the subdivision will be controlled and that the open areas will be maintained by a homeowners association; that the first lot is 1,300-feet from Road 318; that the proposed development will not adversely affect surrounding property values; that the central sewer takes away any environmental issues; and that speed limit signs or speed bumps could be provided along the entrance road.

The Commission found that no parties appeared in support of this application.

The Commission found that Bruce Carter of Golf Village was present and questioned if the project is outside of the Town of Georgetown; the location of the proposed pump station; and concerns about the removal of stormwater.

Mr. Christenbury advised the Commission that sewer capacity is available from the Town of Georgetown for this project and the Fairway Oaks subdivision; that the stormwater management areas will be wet ponds located near the wetlands and that the run-off will be collected in swales.

The Commission found that John Willey an adjoining property owner was present in opposition to this application and questioned why a buffer is not required along his property line since he grows hay for horses; expressed concerns about the length of the entrance road; and would like to see a tree buffer along the entrance road.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action so that the applicant can meet with the adjoining property owner about a tree buffer.

Vote carried 5 to 0.

C/U #1416 -- application of **TRI-GAS & OIL CO., INC.** to consider the Conditional Use of land in a C-1 General Commercial District for two 20,000 gallon fuel oil tanks to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.03 acres, more or less, lying east of U.S. Route 113 and 1,000 feet north of North Bedford Street Extended.

The Commission found that the application included a site plan of the site showing two existing propane storage tanks and the two proposed fuel oil tanks.

The Commission found that a valid commercial entrance permit exists for the parcel.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objection to this Conditional Use; that the State ask that the County require to owner/developer to meet with officials of the North Georgetown Elementary School prior to placement of the tanks; that the Delaware Emergency Management Agency has noted that the school is on the same side as the proposed site; that if the tanks were to leak or explode, it could cause broken windows and the evacuation of the school; that the soils in the vicinity of the site are mapped as Evesboro and Pocomoke; that the Evesboro soil is an excessively well-drained soil associated with uplands that has moderate limitations for development; that the Pocomoke soil is a very poorly drained hydric soil associated with wetlands and has severe limitations for development; that the applicant should be reminded that they must

avoid construction and associated activities in those areas containing hydric soils, as they are subject to regulatory provisions under the Federal 404 Program of the Clean Water Act governing jurisdictional wetlands; that if the County approves the application, the applicant should contact DelDOT's South District Permit Supervisor to determine whether a new entrance plan and permit will be needed; and that if the tanks are to be placed so as to maintain the current flow of traffic in and out of the site, the existing entrance should continue to be adequate.

The Commission found that Thomas Thompson of Tri-Gas & Oil Co., Inc. was present and stated in his presentation and in response to questions raised by the Commission that the tanks will be surrounded by a self-contained dike as required by the State Fire Marshal and DNREC; that the tanks will be used for storage of fuel oil and kerosene; that fuel oil and kerosene tanks do not have a history of explosions; that tanks that have exploded usually contain gasoline; and that business hours will not change.

Mr. Lank stated that when he inspected the site, he noted that a tank truck was parked in front of the gate to the impound so that the driver could unlock the gate, and that another employee, or friend, had to park on the shoulder of U.S. Route 113 behind the tank truck to talk to the driver, and expressed a concern that the gate should be inset into the impound to allow for more than one vehicle to park in the driveway.

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

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations: 1) The gate and/or fence shall be relocated to allow off street parking for at least two vehicles when the gate is closed. 2) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Vote carried 5 - 0.

C/U #1417 -- application of **BOYS AND GIRLS CLUB OF DELAWARE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a recreational facility for children to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 37,785 square feet, more or less, lying southwest of Route 297 (a.k.a. Route 5), 450 feet southeast of Route 24.

The Commission found that the application included a site plan and building plans for the recreational facility.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic; that based on the 1999 Traffic Summary the last traffic count for Delaware Route 5 between Route 24 and Road 312 was conducted in 1997; and that the 1999 Traffic Summary indicated that the annual average daily traffic of that road segment was 6,893 vehicles per day with a summer average of 11,300 vehicles per day.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located in the Environmentally Sensitive Area of the Strategies for State Policies and Spending document; that this is an area where growth continues to put pressure on the infrastructure and the environment; that in this area, the State will seek a balance between resource protection and sustainable growth; that this project is proposed in an area that is already very developed with both commercial and residential uses and the State does not feel that a recreational facility for the children of Oak Orchard area would spur further growth; that the State has no objection to this proposal, but would ask that the County consider the following requirements when it moves forward to make a decision on this application: 1) This parcel is immediately adjacent to the Harmon School, now used as the Nanticoke Indian Museum, which is listed in the National Registry of Historic Places as part of the Thematic Resources of the Nanticoke Indian Community. This development has the potential to affect this historic property adversely, through a change in setting and an increase in traffic. There does appear to be a vegetated buffer around the Harmon School already, however, and this is a more compatible use than some others, offering an opportunity for the Boys and Girls Club to work with the Nanticoke Indian Museum and educate Sussex County children about the Native American history of the area. The State asks that the County require the Boys and Girls Club to work with the State Historic Preservation Office to plan the siting and design of the facility, to be as compatible as possible with the Harmon School. 2) The Inland Bays are designated as Waters of Exceptional Recreational and Ecological Significance (ERES Waters). Designated ERES waters shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State. Both non-point and point nutrient sources in these waters may be subject to control through Best Management Practices which may include establishment of vegetated buffers adjacent to watercourses, or maintaining existing natural riparian buffers. Buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment. Additional nutrient reduction methodologies may be instituted in the future should further reductions be deemed necessary. DNREC has noted that this parcel could be developed if appropriate pollution control strategies (e.g., stormwater management and buffers), consistent with TMDL target rate reductions, are employed to mitigate nutrient runoff into any adjoining streams or watercourses. That the State has no objections with this

project, however, the State respectfully request that the County require the developer to work with DNREC on the appropriate pollution control measures and with the State Historic Preservation Office to minimize the effects of this development on the neighboring historic property.

The Commission found that a letter was received from the Honorable Shirley Price, State Representative of the 38th District, in support of the application; that she is a member of the Board of the organization and has been involved in fundraising for the facility; that the facility fits well with the location; that the site is behind the Indian Museum and in an area of the community that makes it accessible to many young people; that the facility is greatly needed and is very important; and that she feels that the location would be an excellent one.

The Commission found that Ross Harris of E.C.I., Pat Gunyon of the Boys and Girls Club of Delaware, Inc., and Rob Rollins of Moonlight Architecture, Inc. were present and stated in their presentations and in response to questions raised by the Commission that the Boys and Girls Club has 16 sites in Delaware with 4 sites in Sussex County; that the Sussex County sites are located in Georgetown, Laurel, Seaford, and Milford; that they submitted a list of Outcome Measurements which include improving academic performance, enhanced technology skills, work force preparation, and practicing healthy life skills; that they propose to build a 4,800 square foot building; that when public schools are in session they utilize the facilities from 3:00 P.M. to 6:00 P.M. for children of the ages of 8 to 12, and from 6:00 P.M. to 9:00 P.M. for children of the age of 13 up; that the age groups younger children are not allowed to mix with the older children; that the facilities are open from 7:00 A.M. to 6:00 P.M. when public schools are closed; that the site will be served with on-site septic and central water; that adequate parking is available on site; that they are willing to work with DNREC and the State Historic Preservation Office as recommended by the Office of State Planning Coordination; that the Boys and Girls Club currently utilizes the Oak Orchard Community Center; that the rear yard of the site will be fenced and that the property and the building will have security cameras; that the facility will have some full-time and part-time staff members; and that typically they provide at least one staff member per 15 children.

The Commission found that Al Gargano, Linda Walls, and Millie Charnick were present in support of the application and stated that the programs are structured to help the children in the area; that the project is needed for the area; that the area has grown and changed; that the facility is supported by local business', the school district and the residents in the area; and that 25 children got off the bus at the community center today to utilize the programs.

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

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations: 1) Fencing or hedge shall be provided along the adjoining properties to the north and south to screen the parking lot. 2) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/Z #1451 -- application of **DAVID B. WEBB, JR.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in 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 found, based on comments received from the Office of State Planning Coordination, that in July 2001 the Office commented that they had no objections to the LI-2 proposed rezoning, but that they did have some concerns; that the State agencies continues to have concerns; that the site is located within the Secondary Developing area of the Strategies for State Policies and Spending document; that these areas are designated for growth in the County Plan, but not included in the State's developing areas; that in these areas, the State will promote efficient, orderly development and the coordinated phasing of infrastructure investment, consistent with the extent and timing of future growth and within the limitations of State financial resources; that the State would normally prefer to see commercial or industrial uses in the Community areas; however, a poultry equipment distributor would serve the surrounding farms and rural areas, and, therefore, the Office feels that this use would be appropriate close to the areas it would serve; that DelDOT has recommended that the County require a traffic impact study or deed restrictions for this rezoning; that DelDOT has noted that they would have the same concerns with a C-1 zoning as they did with LI-2 zoning and that they continue to believe that two conditions would be needed to satisfy them that the traffic impact of this rezoning would be negligible; that the two conditions include that the property would have to be restricted so as to prohibit at least the following uses: restaurants, including but not limited to fast food, service stations, convenience stores, pharmacies, banks, retail bakeries, and theaters, and that the restrictions would have to be worded such that it could no be lifted without concurrence from DelDOT; that if these two conditions were satisfied, DelDOT would have no reason for a traffic impact study; that it is the Department's understanding that the applicant is selling the property and that the prospective buyer wants the proposed rezoning for agricultural and farm equipment sales; that if the prospective buyer's intent is what he has represented, then these restrictions should not be a burden; that the Department acknowledges that neither the State or the County can place conditions on a rezoning and that this is voluntary by the applicant; that

the State Historic Preservation Office has noted that there is one historic agricultural complex on Boyce Road and that it is within sight of the parcel; that they noted that there is a potential for prehistoric archaeological sites on the site; that they suggest that the County require the applicant to landscape the northern side of the parcel to block off this development from the visual setting of the historic property; that if there were no development in the currently wooded section of the site, this would preserve the area most likely to contain any archaeological sites; and that if there is development planned in the wooded section, they would suggest the owner/developer work with the State Historic Preservation Office to locate and avoid any sites that may be on the property.

The Commission found, based on comments received from the County Engineering Department Planning and Permit Division, that the site is located, according to the Western Sussex Water and Sewer Plan, in the Laurel Service Area and that the applicant should contact the Town of Laurel concerning the availability of water and sanitary sewer services.

The Commission found that David B. Webb, Jr. was present and stated in his presentation and in response to questions raised by the Commission that he had applied for LI-2 zoning in July; that no objections were noted; that the Commission denied his application and suggested that he withdraw and apply for a rezoning for a lesser zoning classification and that the fee be waived; and that the intended uses are the same as presented in the original Public Hearing.

Mr. Lank ask Mr. Schrader if the record of the original Change of Zone #1441 could be made a part of the record for this application.

Mr. Schrader stated that if there were no parties present in opposition, then the record of Change of Zone #1441 could be made a part of the record.

The Commission found that there were no parties present in opposition.

There was a consensus of the Commission that the record of Change of Zone #1441 be made a part of the record for this application. The following comments are from the Minutes of July 26, 2001 and August 9, 2001 relating to Change of Zone #1441.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Blades Sanitary Sewer District Planning Area and in the Development District according to the Western Sussex Water and Sewer Plan, and that the Engineering Department has no schedule to provide sanitary sewer service to this area at this time.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected by this application; that it may be necessary for some on-site and off-site drainage improvements due to the presence of poorly drained and very poorly drained soils and the increase in surface runoff due to the increased impervious areas; that the Mt. Zion Tax Ditch may be affected; that there may be jurisdictional wetlands in the area; that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam, Klej loamy sand, and Pocomoke sandy loam; that the Evesboro soils have slight limitations; that the Fallsington and Pocomoke soils have severe limitations; that the Klej soils have slight to moderate limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that all of the soil types are considered of Statewide Importance; and that the Fallsington and Pocomoke soils are considered Prime Farmland.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Secondary Developing area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues; that these areas were designated for growth by the County Comprehensive Plan, but were not included in the State's developing areas; that in these areas, the State will promote efficient, orderly development and the coordinated phasing of infrastructure investment, consistent with the extent and timing of future growth and within the limitations of State financial resources; that the State would normally prefer to see commercial or industrial uses in the Community areas, however, a poultry equipment distributor would serve the surrounding farms and rural areas and, therefore, the State feels that this use would be appropriate close to the areas that it would serve; that the State concurs with the DelDOT comments; that the State Historic Preservation Office has noted that there is one historic agricultural complex within sight of the parcel; that there is a potential for prehistoric archaeological sites on the parcel; that they suggest that the County require the applicant to landscape the northern side of the parcel to block off the development from the visual setting of the historic property; that they suggest that the owner/developer work with the State Historic Preservation Office to locate and avoid any archaeological sites on the parcel; that due to the wide range of commercial uses permitted as a right under the Light Industrial District, the State suggests that the County require deed restrictions to properly limit the use of the property; that if the rezoning moves forward without the requirement of deed restrictions, the State suggests that the County require a traffic impact study be done; that the State further requests that the County require the owner/developer to work with the State Historic Preservation Office to avoid any archaeological sites that may be on the parcel.

The Commission found, based on comments received from DelDOT, that the Department recommends that the County require a traffic impact study; that the Department offers this recommendation because the Department is concerned about the potential traffic that could be associated with the proposed rezoning; that a wide range of commercial uses are

permitted as of right under the Light Industrial District; that any traffic from the proposed use would be negligible; that the Department recommends deed restrictions that could not be lifted without the concurrence of the Department as conditions for approval of the rezoning; that for this reason, the Department sees no need for a traffic impact study if the applicant were to satisfy this condition; that if the applicant continues to seek a rezoning without deed restrictions, then the Department recommends that a traffic impact study be required.

The Commission found that David B. Webb and David Rutt, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that this application, if approved, would be consistent with Change of Zone #1380, an application to C-1 General Commercial approved by Sussex County Council in June 1999; that the findings of the Sussex County Council are appropriate to this application since: 1) The parcel is located on Route 13, a major arterial road through the State, and therefore situated for business use; 2) The applicant established that the zoning is an extension of commercial zoning on adjacent lands; established that the change of zone proposed is an appropriate change; and established that the zoning and use will conform to the general use of the area; and 3) The applicant established that the site is located within the Development District in the Comprehensive Land Use Plan; that the applicant proposes to develop the parcel into 3 parcels; that the entrance to the commercial parcel has been built; that private on-site wells and septic are proposed; that Light Industrial zoning was applied for since the uses would be more suitable for the area, since the uses would compliment the surrounding area; and since there should be less traffic from the intended uses.

The Commission found that Mr. Rutt submitted a tax map of the area and photographs of the site, the adjoining farm, and the business, commercial and industrial uses in the immediate area.

The Commission found that Mr. Webb described the uses in the photographs as a seafood and produce business, a farm, a rental equipment business offering leases for backhoes, loaders, compressors, etc., warehousing, retail sales of lumber and hardware, and antiques; and added that one of his clients proposed to locate an agricultural equipment business on part of the parcel; that the agricultural equipment business would be compatible with the area; that the use would not change the character of the area; that there is a need for light industrial space in the area; that he has no objection to the DelDOT request for deed restrictions; and that he forwarded a letter to the Planning and Zoning Office on April 23, 2001 stating that he would incorporate deed restrictions prohibiting restaurants, including but not limited to fast food, service stations, convenience stores, pharmacies, banks, retail bakeries, and theaters with the condition that the restrictions could not be lifted without prior written consent from DelDOT and the County.

Mr. Lank advised Mr. Webb that any reference to the County in deed restrictions would not be acceptable.

Mr. Schrader added that the deed restriction is a private matter between the applicant and DelDOT.

The Commission found that Paul Shalk, a representative of Hale Trailer Brake and Wheel, a company interested in purchasing a portion of the site, stated that his company sells and leases all types of tractor trailers, including but not limited to flat bed trailers, dump trailers, construction trailers, storage trailers, and office trailers; that all trailers will be empty when stored on the site; that there would be one tractor on the site for use to deliver and pick-up trailers; that some of the trailers are utilized for agricultural purposes, i.e. watermelons, vegetables, etc.; that having access to the trailers will benefit the agricultural community in the area; that he anticipates no more than 2 to 5 vehicles trips from the site per day; that repairs on trailers on the site will be minimal; that normal business hours are 7:30 A.M. to 5:00 P.M. weekdays; and that he will have 4 to 5 employees.

The Commission found that Frank Pusey, a representative of Northeast Agri Systems, Inc., a company interested in purchasing a portion of the site, stated that his company builds and services equipment for the poultry industry and other livestock; that they will build prefab walls for assembly of poultry houses; that the walls are built in 6' by 12' sections; that they presently assemble the walls in Pennsylvania and deliver the wall sections to building sites; that this site is more centrally located with direct access to U.S. Route 13, a major arterial roadway; that they will have 6 to 8 employees; that they propose to build steel buildings with a showroom, offices, and warehousing; that normal business hours are 7:30 A.M. to 5:00 P.M. weekdays; and that the size of the site makes it desirable for future expansions.

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

On July 26, 2001 the Commission deferred action.

On August 9, 2001 the Commission discussed the points and issues raised during the Public Hearing 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. The Commission recommended 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.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved since the site is adjacent to and in close proximity to other commercial uses and districts.

Vote carried 5 - 0.

OLD BUSINESS

C/Z #1447 -- application of **ROUTE 54. LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying northeast of Route 54 and 500 feet east of Route 389, to be located on 2.0 acres, more or less.

The Commission discussed this application which was deferred September 13, 2001.

There was a consensus of the Commission that the site is located directly across from 5 or 6 single family dwellings and that the use may not be appropriate for night-time activities and lights from vehicles travelling to and from the site, and that the use would be more appropriate if applied for as a Conditional Use where the County could stipulate some conditions for the activities on the site.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously that the application be forwarded to the Sussex County Council with the recommendation that it be denied based on the consensus referenced above.

Vote carried 5 - 0.

C/Z #1448 -- application of **GULFSTREAM DEVELOPMENTCORP.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying east of Route 352 and 250 feet south of Route 353, to be located on 17.85 acres, more or less.

The Commission discussed this application which was deferred September 13, 2001.

It was noted that the Technical Advisory Committee Report of September 19, 2001, relating to this application, is made a part of the record.

Mr. Schrader discussed the lot sizes for multi-family dwelling structures.

There was a consensus of the Commission that they were concerned about a street travelling through a recorded subdivision for single family homes leading to a multi-family development; that they were concerned about whether the stub street concept could accommodate the vehicular movement of emergency equipment; and that they were concerned about the variation of the abutting lot sizes to the proposed project.

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

Vote carried 5 - 0.

Subdivision #2001-21--application of **HUDSON - REED, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 57.68 acres into 49 lots, located north of Road 277, 825 feet west of Road 279.

The Chairman referred back to this application which was deferred at the August 23, 2001 and September 13, 2001 meetings.

Mr. Abbott advised the Commission that the office has received a letter from the developers advising them that they have contacted the State of Delaware about purchasing the property; that at this time the state has no intentions of purchasing the property since it is isolated from other State properties; and that they will continue having discussions with the state; and at this time request preliminary subdivision approval.

Mr. Abbott advised the Commission that a septic feasibility statement has been received from DNREC and that the site is suitable for individual on-site septic disposal systems.

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

Vote carried 5 to 0.

Subdivision #2000-17--application of **VILLAGE DEVELOPERS, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred, by dividing 12.77 acres into 13 lots, located south of Road 338, 2,950 feet southwest of Road 82.

Mr. Abbott advised the Commission that this application received preliminary approval on July 13, 2000 for 12 lots; that a one year time extension was granted by the

Commission on June 28, 2001; that the final record plan is the same as the preliminary plan ; that the record plan meets the requirements of the subdivision code; and that all required agency approvals have been received.

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

Vote carried 5 to 0.

VI. OTHER BUSINESS

Rules of Procedure of the Planning and Zoning Commission

Rule 1 - Order of Business; Conduct of Meetings

1.1 - Revision to Order of Business

The Commission discussed a proposal to amend the agendas by having Old Business items discussed prior to public hearings and was advised by the staff that most all other organizations conduct Old Business items prior to any new items.

Mr. Allen advised the Commission that the agendas have always been prepared the way they are now and that once the agenda is posted, the public will know when an item is scheduled to be heard or discussed.

It was the consensus of the Commission that the agendas continue to be prepared as they are now and that no changes be made.

The Palms of Rehoboth

Preliminary Multi-Family Site Plan Route One

Mr. Abbott advised the Commission that the preliminary site plan is for 78 units; that the staff has received a letter of no objection from DelDOT since the property is located on Route One; that the proposed density for the project is twelve units per acre as allowed by the zoning code; that the 78 units are located in five buildings; that there are 4 building with 18 units each and 1 building with 6 units; that the maximum building length is 165-feet and needs to be referenced on the final site plan; that there is a minimum of 40-feet separation between buildings; that there are no wetlands on the site and the site is not located in a flood plain; that 234 parking spaces are required and proposed; that sewer will be provided by Sussex County and water provided by the City of Rehoboth; that the final site plan needs to reference the 20-foot landscaped buffer along Route One; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the office receiving all required agency approvals.

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

Vote carried 5 to 0.

Long Neck Back Bay Center
Preliminary Multi-Family Site Plan Route 24

Mr. Abbott advised the Commission that the site plans for 96 units on 8.76 acres; that the proposed density is at 10.9 units per acre; that 105 units are permitted by the zoning code; that 7 buildings have 8 units each, 6 buildings have 6 units each and 1 building has 4 units; that each unit will have a one car garage; that 288 parking spaces are required and provided; that water will be provided by Tidewater Utilities and sewer will be on-site; that there are no wetlands on site and the site is not located in a flood plain; that there is a minimum of 40-foot separation between buildings; that the setbacks meet the minimum requirements of the zoning code; that the note referencing the front yard setback of 20-foot needs to be revised on the final site plan to 40-foot; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the office receiving all required agency approvals.

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

Vote carried 5 to 0.

Bridgeville Park Center
Preliminary Multi-Family Site Plan U.S. Route 13

Mr. Abbott advised the Commission that the preliminary site plan is for 52 units on 4.60 acres; that the proposed density is 11.3 units per acre; that the zoning code permits 55 units; that 6 buildings will have 6 units and 2 buildings will have 8 units; that 156 parking spaces are required and proposed; that water will be provided by Tidewater Utilities and sewer will be on-site; that there are no wetlands on site and the property is not located in a flood plain; that the front yard setback of 20-foot along the interior street needs to be revised on the final site plan to 30-foot; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the office receiving all required agency approvals.

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

Vote carried 5 to 0.

Allen Handy
Preliminary Commercial Site Plan U.S. Route 13

Mr. Abbott advised the Commission that the preliminary site plan is for a 19,600 square foot warehouse/service building; that the construction of the building will be metal and block; that 8 parking spaces are proposed; that the setbacks meet the minimum requirements of the zoning code; that all agency approvals have been obtained; and that the site plan meets the requirements for preliminary and final approval.

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

Vote carried 5 to 0.

Christian Tabernacle
Revised Site Plan Road 207

Mr. Abbott advised the Commission that the revised site plan is for a 24-foot by 60-foot building to be used as classrooms for an existing conditional use and questioned if the Commission would approve the site plan as amended or require another conditional use application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised site plan as submitted.

Vote carried 5 to 0.

Sussex Shores Water Company
C/U #24 Revised Site Plan Route One

Mr. Abbott advised the Commission that the revised site plan is for a 42-foot by 66-foot Morton building and questioned if the Commission would approve the site plan as submitted or require another conditional use application.

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

Vote carried 5 to 0.

Cedar Valley MR/RPC
C/Z #1430 Final Site Plan Road 274

Mr. Abbott advised the Commission that the final site plan is for a 50-lot residential planned community; that the site plan meets the requirements of the zoning and subdivision codes; that sidewalks are proposed throughout the development; and that all required agency approvals have been received.

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

Vote carried 5 to 0.

Edgar F. and Jeanette B. Isaacs
50' Easement Route 36

Mr. Abbott advised the Commission that this is a concept to create a 50-foot easement to serve as a secondary access to a 20.52 acre parcel to be deeded to the Delaware Nature Society; and that the acreage already has access from a 50-foot easement off of Road 633.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the 50-foot right of way as a concept.

William Warren
C/U #1259 Revised Site Plan Route 16

Mr. Abbott advised the Commission that the revised site plan is for a 60-foot by 100-foot building; that the setbacks have been met; and questioned if the site plan could be approved as submitted or require another conditional use application.

The Commission discussed the conditions of approval when the project was originally approved and reviewed photographs taken by the zoning inspector of the fence and landscaped buffer.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to allow the Commission members to inspect the site.

Vote carried 5 to 0.

Moonlopen L.L.C. Office Building
Preliminary Commercial Site Plan Lot 2 Old Towne Office Park

Mr. Abbott advised the Commission that the preliminary site plan is for medical and professional offices; that the setbacks meet the requirements of the zoning code; that 30 parking spaces are required and 32 are proposed; that water will be provided by Tidewater Utilities and sewer provided by Sussex County; that there are no wetlands on the site and the property is not located in a flood plain; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the office receiving all required agency approvals.

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

Meeting adjourned at 11:35 P.M.