

## MINUTES OF THE REGULAR MEETING OF OCTOBER 25, 2001

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 25, 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 October 11, 2001 as circulated.

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

### PUBLIC HEARINGS

**SUBDIVISION #2001-26**—application of **MABEL BETTS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 2.59 acres into 2 lots, located north of Ross Lane, 210 feet east of Road 68, 0.7 mile north of Route 54.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of October 17, 2001 would be made a part of the record for this application.

Mr. Abbott advised the Commission that a letter was received from Elsie Phalen, an adjoining property owner, in support of this application.

The Commission found that Mabel Betts was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that she wishes to give a one-acre lot to each of her children.

The Commission found that there were no parties 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. Gordy, seconded by Mr. Lynch, and carried unanimously to approve this application as submitted.

**C/U #1422**—application of **DONALD D'AQUILA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for additional motel uses (parking, wastewater, expansion, etc.) to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 8.3437 acres, more or less, lying southeast of Route 532, 260 feet northeast of U.S. Route 13.

The Commission found that the applicant has submitted a packet prior to the meeting and that the packet included a plot plan of Marathon Village, a plot plan referencing the proposed site, the C-1 General Commercial area, and Marathon Estates Subdivision, and a plot of the subject site.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that the Department recommends that the County require a traffic impact study for this rezoning; that the Department is concerned about the potential traffic that could be associated with the proposed rezoning; that any traffic from the proposed use would be negligible; that the Department feels that a conditional use approval, limiting the use of the property to exactly what is proposed is the best way for the County to address this project; that the Department would see no need for a traffic impact study if the applicant were to apply for a conditional use approval for the proposed use; that if the applicant continues to seek a rezoning, then the Department's recommendation for a traffic impact study still stands. Attached to the comments was a Support Facilities Report, which referenced that the annual average daily traffic on this road segment of Road 532 is 241 vehicles per day and the year of the traffic count was 1990.

The Commission found, based on comments received from the Sussex County Engineering Department's Planning and Permits Division that the project is located within the Seaford Service Area, Commercial District within the Western Sussex Water and Sewer Plan Area; and that the applicant should contact the City of Seaford concerning the availability of water and sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that soils mapped on site are Evesboro loamy sand; that the suitability of the soil for the intended use has slight limitations; that with respect to erosion and sedimentation control practices, the applicant be required to follow recommended erosion and sediment control practices during construction and maintain vegetation after completion of construction; that the farmland rating of the soil is of Statewide Importance, Hydric Soil in small depressions; that no storm flood hazard area is affected; that it would not be necessary for any on site or off site drainage improvements; and that no tax ditch is affected.

The Commission found that letters in opposition to this application were received from John and Donna Hassman, Jim V. Mosley, Andrew and Catherine Schmidt; and that packets were received from Ruth Ellen Miller and Jack Miller including a petition with one hundred signatures opposed to the application and two video tapes.

The Commission found that Donald D'Aquila was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the site plan for the motel in the C-1 General Commercial District was approved by the Commission in 1998; that construction of the motel will start in the year 2002; that the entrance to the site has been built to Delaware Department of Transportation standards; that he is the developer of Marathon Estates and Marathon Village subdivisions which are in the area of this site; that the intended uses for the conditional use of the property include sediment/erosion control: Storm water management pond type structure will be built to enhance the property; waste system expansion in the event the need should arise for the expansion of the waste water system due to changes in regulations, upgrading as necessary, or replacement since there is no county or municipal water or sewer available in the area; and any amenities and or structures associated with the Marathon Inn building on the adjacent property; that no buildings are proposed for this site; that according to DNREC, septic is feasible for this site; that the storm water management design has been submitted for approval; that the area needs additional storm water management facilities; that the area could be used for additional parking; that his engineers have not advised him that the existing C-1 site is inadequate for storm water management; that a site plan for the proposed site has not been prepared; that he will withdraw having to be able to use the site for parking if the Commission deems it necessary; that of this application, approximately 1.5 to 2 acres would be used for storm water management; that there could possibly be tennis courts and walking paths in the remaining area; that a site plan has not been prepared; that the C-1 site is ten acres; and submitted a list of the intended uses, a plot plan of the motel and an aerial photograph of the site.

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

The Commission found that Matt Miller was present in opposition to this application and referenced the map contained in the packet submitted by his sister and advised the Commission that most of the residents in the area are opposed to this application.

The Commission found that Jack Miller was present in opposition to this application and advised the Commission that he is opposed to a motel and parking in this area; that he purchased his home in a C-1 district and that the home has been restored; that flooding occurs throughout the area; that tractor trailers have difficulty utilizing Camp Road; that there have been traffic fatalities at the intersection of U.S. Route 13 and Road 532; and discussed the exhibits that were submitted in the packet he submitted prior to the hearing.

The Commission found that Don Birch, Lawrence Jones, Larry Gregory, Keith Short, Joanne Clayville and Reid Mitchell, all area residents, were present in opposition to this application and advised the Commission that flooding occurs in the area; that they have concerns about traffic and children's safety in the area; that the area does not need to be impacted by more flooding; that noise and trespassing problems could occur; and that the applicant's motel in Laurel has been closed down in the past for health reasons.

The Commission found, by a show of hands, that sixteen people were present 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. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the County Council with the recommendation that it be denied for lack of a proper site plan and the overly general quality of the application.

**C/U #1423**—application of **SKYDIVE DELMARVA, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for parking for ten (10) mobile campers/RV trailers as an expansion to Conditional Use No.869 (expansion of existing airport facility) to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 52 acres, more or less, lying northwest of Route 24 and northeast of Route 494.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that a traffic impact study is not recommended, and that the existing Level of Service "C" of Route 24 will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that according to the Department of Transportation, depending on where the mobile campers will be placed on the site and what they will be used for, it is possible that a new entrance plan and permit might be needed; that the owner should contact DelDOT to determine specifically what will be required; that the soils in the vicinity of this parcel are listed as Rumford, Klej, Fallsington and Osier in the Sussex County soil survey; that the Fallsington and Osier soils are poorly drained hydric soils that are associated with wetlands; that both have severe limitations for development; that the applicant must avoid filling activities in areas containing wetland-associated hydric soils, as they are subject to regulatory provision of the Federal Clean Water Act 404 Program governing jurisdictional wetlands; that the State Historic Preservation Office (SHPO) has noted that there is a possibility that a 19<sup>th</sup> century archeological site associated with the J.T. Moore House is within this parcel; that there are also several adjacent historic properties, including a dwelling on Sharptown

Road immediately in front of the airport and another dwelling across Airport Road from the project; and that the State asks that the developer be required to work with SHPO to determine if these sites would be affected.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Fallsington sandy loam, Fallsington loam, Klej loamy sand, Osier loamy sand, and Rumford loamy sand; that the suitability of the soils for the intended use are severe for the Fallsington and Osier soils, slight to moderate for the Klej soils, and slight for the Rumford soils; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices during construction and maintain vegetation after completion of construction; that the farmland rating of the fallsington soils is of Statewide Importance, Hydric Soil; that the farmland rating of the Klej soil is of Statewide Importance, Hydric Soil in depressions; that the farmland rating of the Osier soil is of Statewide Importance, Hydric Soil; that the farmland rating of the Rumford soil is of Statewide Importance; that no storm flood hazard is affected; that it may be necessary for off-site and on-site drainage improvements due to the increased impervious area, there may be an increase in storm runoff; that no tax ditch is affected; and that there may be some jurisdictional wetlands that are regulated by the Army Corps of Engineers and a permit may be necessary.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located within the Laurel Service Area, Town center District within the Western Sussex Water and Sewer Plan Area; and that the applicant should contact the Town of Laurel concerning the availability of water and sewer service.

The Commission found that Brian Kunkowski, President of Skydive Delmarva, Inc. and David Rutt, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are seeking approval for ten mobile campers for instructors from April 1 to November 30 of each year; that the units would be for the instructors on site who teach skydiving; that the applicant has owned Skydive Delmarva since 1997; that instruction is given from beginners to a National Team Competition; that there are usually ten instructors who come to the site from all over the country; that most of the instructors also have other professions such as doctors and attorneys; that during the winter months, instructors move to warmer climates; that the owner has applied to bring the campers into compliance with the zoning code; that the campers will be for a maximum of two people; that the campers are parked at no charge for the instructors; that the campers are needed to maintain a stable staff; that the campers are parked in a grass area; that there is room to park ten campers; that the applicant and another pilot fly the planes; that if

approved, a professional site plan will be submitted for review and approval; that there are four bathrooms on site with two of them having shower capabilities; that the flights are from 8:00 A.M. to 9:15 P.M.; that the operation usually begins at 7:00 A.M. and lasts until 11:30 P.M.; that they have had over two hundred students in a weeks time; that most of the users are from out of state; that the use is an economic benefit to the County since the students utilize motels, restaurants and shopping in the area; that there will not be any change to traffic; that a lack of camper use could negatively impact the business since instructors would not have a place to stay; that there would not be any adverse impact on the area; that the applicant was contacted in the Spring of 2001 about possible zoning violations and that he has worked with the zoning inspector to bring the site into compliance; that there is not any water hooked up to the campers; that there are fire extinguishers located in each hanger; that the hangers have been converted to training facilities for rigging, team training, classrooms, offices, waiver room, bathrooms, packing room, and storage; that adequate parking is provided on site; and submitted proposed conditions of approval that include 1) the campers will be located on site from April 1<sup>st</sup> to November 30<sup>th</sup>, 2) that use of the campers be strictly limited to instructors and pilots, 3) the maximum number of campers permitted shall not exceed ten, 4) no more than one family per camper, 5) that the camper holding tanks be pumped out by private waste haulers, 6) that if the jump school is closed by Skydive Delmarva Inc., the conditional use will be voided; 7) that the use will be limited to RV type trailers (legally licensed), 8) that the applicant will provide screening if required; 9) all spacing shall be in compliance with the Office of State Fire Marshal regulations and submitted a copy of the lease agreement for the property.

The Commission found that Malcolm Douglas Evans, an instructor, was present in support of this application and advised the Commission that he has made over 10,000 jumps; that he became an instructor in 1983 and that a need exist for campers for the instructors.

The Commission found that Lee Littleton was present in support of this application and advised the Commission that the use is a family operated business; that skydiving is a thrill; and that the use is an economical benefit to the area.

The Commission found that David Sulley was present in opposition to this application and advised the Commission that he has another business on the airport property; that he is not opposed to the use but the way the use was processed; that the applicant did not obtain any permits for the work that has been done on the site; that the improvements are not up to code with building code and fire marshal regulations; that the applicant will not follow any conditions of approval; and submitted a booklet containing photographs of the work that has been done and photographs of campfires at the property.

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

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

**C/U #1424**—application of **L. THOMAS HARMON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for retail sales of landscaping supplies to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 12.5531 acres, more or less, lying north of Route 280-B and 800 feet east of Route 285.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Evesboro Loamy sand and Rumford loamy sand; that the suitability of the soils for the intended use have slight limitations; that with respect to erosion and sedimentation control the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the farmland rating of the soils is of Statewide Importance; that no storm flood hazard area is affected; that it will not be necessary for any off-site or on-site drainage improvements; and that no tax ditch is affected.

The Commission found, based on comments received from the Office of the State Planning Coordination, that the parcel is located within the "Rural" area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in 1999; that the State would prefer to see commercial uses located closer to Community areas where they can be better accessed by different modes of transportation; that this will be a retail sales facility in a rural area that is surrounded by residential homes, the office ask that the County consider the design of any new structures so that the character of the neighborhood is not disturbed; that since the site is 12.55 acres, consideration should be given to the square footage allowed and storage should be buffered; that this activity could negatively impact t residential area of the County; that according to the Department of Natural Resources and Environmental Control (DNREC), the soils in the area are listed in the Sussex County Soil Survey as Rumford, Evesboro, and Fallsington; that Fallsington soils are poorly drained hydric soils associated with wetlands and have severe limitations for development; that the applicant must avoid filling activities in areas containing wetland associated hydric soils, as they are subject to regulatory provision of the Federal Clean Water Act 404 program governing jurisdictional wetlands; that the Department of Transportation (DelDOT) has

noted that a new entrance plan and permit might be needed; that the applicant needs to contact the DelDOT planning office to determine specifically what will be required; that the State would prefer to see commercial uses located in the Community and the Developing areas; however, if the County requires the owner to consider the character of the neighborhood when designing any new structures, the State has no objections; that they feel the sale of landscaping materials such as mulch will not promote growth and could be suitable in a rural area; and that the State asks that, if the County approves this proposal, the applicant be informed that any wetlands on this parcel must be protected and cannot be infilled.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division that the project is not located in a County operated and maintained sanitary sewer and/or water district; and that the project is located within the West Rehoboth Moratorium Area where the Sussex County Council agreed to restrict zoning changes and conditional uses to parcels to be connected to a County owned sanitary sewer system; and that this agreement is outlined in the Memorandum of Understanding signed between the State of Delaware Department of Natural Resources and Environmental Control and the Sussex County Council.

The Commission found that twenty-three letters, a petition with seventy-eight signatures, and sixteen photographs of the area were received in opposition to this application.

The Commission found that L.T. Harmon was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he has owned a landscaping business on Long Neck Road since 1985; that the proposed use is in an area where several businesses exist; that he cleared part of the property for ponds that are on the site; that he brought in raw materials of trees from the Long Neck area and was storing the material on site; that he has not been selling any products from this site; that the materials were ground into mulch and have been stored on the site; that he has tried to comply with all regulations; that he would like to have the ability to stockpile stone, dirt, and mulch in bulk storage; that he is willing to withdraw the retail part of the application if he can retain the bulk storage; that the grinder on the property has not been operated for the last month; that he has been in the landscaping business since 1970; that he originally began in Wilmington; that the grade elevations have been altered due to the wetness of the soils; that there is fifty-feet at the entrance to the site; that he has not dyed any stone or mulch at this site; that on site sales could be limited to the retail sales of palletized stone products and mulch; that other products would be sold and displayed at the Long Neck site; and that the proposed hours of business would be from 8:00 A.M. to 5:00 P.M. five days per week with no Sunday hours.

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

The Commission found that Robert Muncy, representing his mother, A. Dean Betts, Jr., Susan Head, Henry Glowiak, Teresa Cain, Gary Price, Charles Moore, and Marie Smith were present in opposition to this application and advised the Commission that the mulch is stockpiled directly behind a dwelling; that the operation creates dust, noise and truck traffic; that if the application is approved, traffic will increase in the area; that the existing lot width is not adequate for truck traffic; that the area is a quiet residential area; that property values would be negatively impacted; that there was a lot of noise at the site this past summer; that the entire site has been cleared and bulldozed; that the proposed use is not in compliance with the Land Use Plan; that the proposed use is not compatible with the State Plans; that the increased traffic would cause safety concerns for small children in the area; that tractor trailers have been observed on site at all hours of the day and night; that Road 280-B is a narrow rural road with no shoulders; and that the proposed use would be out of character with the neighborhood.

The Commission found, by a show of hands, that eighteen people were present 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. Lynch, and carried unanimously to defer action.

**C/U #1425**—application of **BRICE AND WANDA M. BUTLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for storage and an office for a local plumbing business to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 23,700 square feet, more or less, lying southwest of Route 366, 500 feet northwest of Route 84.

The Commission found that the applicants had submitted a packet prior to the meeting and that the packet included a copy of the tax map, seventeen copies of photographs of the area, a copy of the proposed site plan, a copy of the proposed building to be built (Morton Buildings), a map of the Sussex County Comprehensive Land Use Plan and text of the Development District of the Land Use Plan, and six proposed conditions for approval.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Osier loamy sand and Pocomoke sandy loam; that the suitability of the soils for the intended use have severe limitations; that with respect to erosion and sedimentation control, the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the farmland rating of the Osier soils is of Statewide Importance, Hydric Soil; that the farmland rating of the Pocomoke soils is of Statewide Importance, Prime Farmland, Hydric Soil; that no storm flood hazard area is affected; that it may be necessary for off-site and on-site drainage improvements due to the presence of very poorly drained soils and the increase in impervious area; that the Beaverdam Canal tax ditch is affected; and that jurisdictional wetlands which are regulated by the Army Corps of Engineers may be present and permits may be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the property is located within the "Environmentally Sensitive" area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas, State policies will be to seek a balance between resource protection and sustainable growth; that the State does not object to the use of a vacant single family lot for the purpose of an office for a plumbing business; however they would like the county to consider the following when considering the issue; that this will be a commercial use in the middle of an already built-up residential neighborhood; that the owners/developers should work to design an office that fits into the character of the neighborhood; that if any storage is needed, it should be in a completely enclosed structure to protect the neighborhood integrity; that the Department of Natural Resources and Environmental Control (DNREC) noted that the Sussex County Soil Survey maps the soils in the area as Pocomoke soils; that Pocomoke soil is a poorly drained soil associated with wetlands; that the applicant must avoid filling activities in areas containing wetland-associated hydric soils, as they are subject to regulatory provision of the Federal clean Water Act 404 program governing jurisdictional wetlands; that the Department of Transportation (DelDOT) has noted that the proposed development will require a new entrance plan and permit; that the applicant should contact the DelDOT Planning Office to determine what will be required; that the State Historic Preservation Office (SHPO) has noted that there is medium potential for a prehistoric archaeological site on the parcel; that the State asks that the owner/developer be required to work with SHPO to avoid any possible prehistoric sites; and that the State has no technical objections to this proposal; however they ask that the County consider the above stated concerns.

The Commission found that two letters and a petition with twenty signatures were received in opposition to this application.

The Commission found that Brice and Wanda Butler and Tim Willard, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed use is for a small plumbing business; that there are residences, business uses and commercial activities in the area; that the site is zoned AR-1 Agricultural Residential; that the following businesses are in the area, cabinet maker, landscaping business, used car sales; that the proposed use will not disrupt the area; that the applicant has a small plumbing business for residential and small business uses; that the company has four vans and one pick up truck; that the proposed building is intended for an office and storage of plumbing supplies; that parking will be to the rear of the building with crusher run stone; that the vans will be parked overnight at the site; that the proposed building will be a Morton type building; that the site is located within the Development District based on the Land Use Plan; that there will be minimal impacts to traffic in the area; that the typical business hours are from 7:30 A.M. to 4:00 P.M.; that the proposed use will be an economical benefit to the area; that the Office of State Planning Coordination is not opposed to this application; that the applicant has no problem complying with all agency requirements; that the site is in close proximity to commercial zoning and uses; that the site will be kept very clean; that the applicants currently operate the business at their residence and have an approved conditional use for that site; that they would like to separate the business from the residence; that more room is needed; that the applicants have four employees; that the employees have the option of taking the work vans home with them; that one mechanic is on emergency call on Saturdays; that deliveries are received by flatbed trucks and not tractor trailers; that there are usually three to four deliveries per week; that there will not be any outside storage; that the applicant is not opposed to limiting the size of the building to forty feet by sixty feet; and submitted proposed conditions of approval which include the hours of operation shall only be from 7:30 A.M. through 6:00 P.M., the business shall plant Leyland Cypress around the perimeter of the parking area and shall landscape the front of the property, no outside storage shall be permitted, other than the vans and only if properly screened; lighted signage shall be limited to those affixed to the building, lighting shall be limited and directed to the building and to parking security, and the site plan shall be subject to review by the Planning and Zoning Commission.

The Commission found Glenn Prettyman, an area resident, was present in support of this application and advised the Commission that the proposed use would be an improvement to the area.

The Commission found that Carol Ryall, John Ryall, and Margo Bodie were present in opposition to this application and advised the Commission that they bought lots to build single family homes in the area; that the proposed use will have truck traffic and noise associated with unloading trucks; that the area is residential; and that if the application is approved, it could set a precedent for other commercial uses in the area.

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

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions: 1) The hours of operation shall be from 7:30 A.M. to 6:00 P.M. Monday through Friday. Emergency services may be permitted on Saturdays. There shall be no Sunday hours. 2) The site shall be landscaped with Leyland Cypress around the perimeter of the parking area and the front of the site shall be landscaped. 3) No outside storage shall be permitted other than company vehicles, and only if properly screened. 4) Signage shall be limited to the building and may be illuminated. 5) Lighting shall be limited and directed towards the building and parking area for security purposes. 6) The site plan shall be subject to the review and approval by the Planning and Zoning Commission upon receipt of all agency approvals.

**C/Z #1450**—application of **BEAVER CREEK, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1/RPC Agricultural Residential District/Residential Planned Community for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying north of Route 9 and 2,000 feet east of Route 5 at Harbeson, to be located on 133.28 acres, more or less.

The Commission found that the applicants had submitted a packet prior to the meeting and that the packet included a summary of the project, comments from the Development Advisory Service, and comments from the Technical Advisory Committee Report of February 14, 2001.

The Commission found, based on comments received from the Department of Transportation (DelDOT), that on February 8, 2001, the Department sent a support facilities report and recommended that a traffic impact study be done for the project; that at that time, they assumed the development of 267 single-family homes; that the applicant notified DelDOT that the maximum achievable density is 99 single-family homes and they are only proposing 98 single-family homes; that they are amending their previous support facilities report and recommendation that a traffic impact study be done; that they do not recommend that the County require a traffic impact study; that they are concerned about this rezoning application; that they see this application as encouraging more traffic in an area that they have identified as operating at unacceptable levels of service and it would be inconsistent with their understanding of the Cabinet Committee on State Planning Issues' Strategies for State Policies and Spending; and that they recommend that the County deny this application.

The Commission found, based on comments received from the Office of the State Planning Coordination, that the State recommends denial of this rezoning proposal due to the following State concerns: the property is located within the "Rural" area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in December 1999; that in these areas, State policies will encourage the preservation of a rural lifestyle and discourage new development; that the State would prefer to see new residential development in the "Community" or the "Developing" areas of the County; that according to the State Historical Preservation Office (SHPO), this parcel contains three historic farm complexes, all built in the early 20<sup>th</sup> century; that this is also an area of high potential for a prehistoric archaeological site; that this project will have adverse effects on historic properties, including destruction of the early 20<sup>th</sup> century farm complexes and possible destruction of prehistoric sites; that if the County does approve this proposal, the State recommends that Sussex County do some level of documentation on the farms to be demolished and that the County require the developer to work with SHPO in planning the layout to avoid the areas of highest archaeological potential; that the Department of Natural Resources and Environmental Control (DNREC) is concerned about the wastewater disposal; that the information given to the State states that the wastewater will be "central" but there is no information available that describes where the wastewater will finally be discharged; that the State asks that the County require the developer to resolve this issue through the DNREC planning office before any decision is reached on this project; that the Department of Transportation (DelDOT) has noted that while they will not recommend that a traffic impact study be done for this project, this project is in a Management Investment Area according to their Statewide Long Range Transportation Plan; that in these areas, DelDOT believes that investments in transportation infrastructure need to be managed carefully; that there are places where DelDOT will not be eager to invest capital improvement funds; that the subject segment of Route 9 (from Delaware 5 to Delaware Route 1) operates at a level of service "E" during summer peak hours; that DelDOT is concerned about any proposal that would add additional traffic to an area with existing poor levels of service; and that in conclusion, the State recommends that the County deny this rezoning proposal.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Evesboro Loamy sand, Johnston loam or silt loam, Klej loamy sand, Rumford loamy sand, Swamp, and Woodstown sandy loam; that the suitability of the soils for the intended use are moderate and slight for the Evesboro soils, severe for the Johnston and Swamp soils, slight for the Rumford soils, and slight to moderate for the Klej and Woodstown soils; that with respect to erosion and sedimentation control, the developer be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the farmland rating of the soils for the Evesboro soils is of Statewide Importance, Hydric Soil in small depressions; that the farmland rating of the

Johnstown soils is Hydric Soil; that the farmland rating of the Klej soils is of Statewide Importance, Hydric Soil in depressions; that the farmland rating of the Rumford soils are of Statewide Importance; that the farmland rating of the Swamp soils is Hydric Soil; that the farmland rating of the Woodstown soils is Prime Farmland, Hydric Soil in depression; that no storm flood hazard area is affected; that it may be necessary for off-site and on-site drainage improvements because of the presence of poorly drained soils and the increased impervious area; and that no tax ditch is affected.

The Commission found, based on a letter received from Wade R. Hudson, that he owns land adjacent to the proposed site that is zoned commercial and that his business entails some trucking operations and operations that do create noise and dust; that he does not oppose the requested rezoning, however, he would like any of the lot owners to be aware of his operation so as to not create problems in the future; and that if possible, he would like a restriction placed in the deeds similar to the agricultural residential restriction that is required by Planning and Zoning.

The Commission found that Craig Hudson, James Fuqua, Attorney, and Jeff Clark of Land Tech LLC were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application for a residential planned community overlay; that the property will remain AR-1 Agricultural Residential; that the purpose of the RPC district is to provide for large scale development with design ingenuity; that a maximum of 98 units are proposed on 133 acres; that 24 single family lots and 74 detached condominium dwellings are proposed; that the development will cater to equestrian uses where horses may be present; the owners of the single family lots would be permitted one horse for every acre of their lot; that the condominium owners will not be permitted to keep horses on the common areas; that an indoor arena, riding trails and a fenced riding area are proposed; that there will be a horse waste management program; that the site is adjacent to Hunters Mill Estates; that one entrance from Route 9 is proposed and will be constructed to DelDOT standards; that the Level of Service "E" exist on Route 9 at peak Saturday hours; that private streets built to County specifications and maintained by a homeowners association are proposed; that the single family condominium units will include sidewalks; that central water is proposed for the condominium units and on-site wells are proposed for the single family lots; that the condominium units will have a shared community wastewater system and individual on site disposal systems for the single family lots; that the Department of Natural Resources and Environmental control has issued a septic feasibility statement that the site is suitable for the proposed septic systems; that storm water management will comply with the regulations of the Sussex Conservation District; that the site has been disturbed and farmed in the past; that all of the farm buildings have been destroyed or removed from the site; that the wetlands on site will not be disturbed; that all wooded areas will be preserved as much as possible; that the wooded areas create a buffer from the neighbors; that the site is located within an

Agricultural District at the Land Use Plan; that the proposed density meets the guidelines of the Land Use Plan; that the site is far from a rural area as there is a gas station, post office, convenience store, antique stores, commercial warehousing, offices, assisted living complex, bed and breakfast, subdivisions, auto sales, electric substation, truck repairs and a contractor's storage yard in the area; that the applicant will include a deed restriction about the adjoining property being used for trucking activities; that the homeowners association will take over maintenance of the streets and open areas when 50 to 75 percent of the lots have been sold; that no further subdivision of the property will be allowed; that the riding arena will be for the homeowners association and not for commercial uses; and submitted copies of the feasibility statement, copies of the Land Use Plan, State Strategies Map, and proposed conditions of approval.

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

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

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions: 1) The maximum number of residential units shall not exceed 98, comprised of 24 lots and 74 single family condominium units. 2) The development shall utilize one entrance from State Route 18 (aka Route 9) which entrance and improvements shall comply with the requirements of DelDOT. 3) Street lighting shall be provided throughout the development and sidewalks shall be provided in the single family condominium areas. 4) The single family condominium units shall be served by a central water system and by an on site septic sewer system approved by DNREC. 5) Storm water management shall comply with the requirements of Sussex Conservation District. 6) Use of the B-1 arena area shall be limited to uses related to horses, including grooming, riding lessons, horse rides, sale of horse related items etc. 7) A horse waste management program shall be prepared and implemented by the Developer/Homeowner Association. 8) No site preparation, site disturbance, excavation, or other construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final record plan is recorded. 9) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all agency approvals.

#### OLD BUSINESS

**C/Z #1449**—application of **FIRST SHORE FEDERAL SAVINGS AND LOAN ASSOCIATION** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a B-1 Neighborhood Business District for a certain parcel

of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 26 and 500 feet east of Route 349A, to be located on 0.998 acre, more or less.

The Chairman referred back to this application which was deferred at the October 11, 2001 meeting.

The Commission discussed the points and issues raised during the Public Hearing.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is adjacent to a commercial use (Post Office) and since the site is in close proximity to other commercial and business uses.

**C/U #1419—application of V. EUGENE WATKINS, SR. AND CAROLYN A. WATKINS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for retail sales (flea market) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 40,800 square feet, more or less, lying west of Route 213, 1,800 feet north of Route 623.

The Chairman referred back to this application which was deferred at the October 11, 2001 meeting.

The Commission discussed the points and issues raised during the Public Hearing.

Motion by Mr. Wheatley, seconded by Mr. Lynch, 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 use of the existing 18-foot by 40-foot building shall only be used for the retail showroom (flea market).
- 2) Hours of operation shall be from 8:00 A.M. to 8:00 P.M. on Fridays and Saturdays only. There shall be no Sunday sales.
- 3) Any future construction on the property shall require the applicant to work with the State Historical Preservation Office.
- 4) Sale items shall be limited to yard sale items, appliances, knick-knacks and used lawnmowers.
- 5) All items for sales will be displayed inside the existing 18-foot by 40-foot converted carport building. There shall be no outside displays.
- 6) No parking signs shall be erected along both sides of Route 213 along the Applicant's property frontage and shall be subject to the approval of DelDOT.
- 7) The site plan shall be subject to the review and approval by the Planning and Zoning Commission.

**C/U #1420**—application of **PUSEY RENTALS, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 45.78 acres, more or less, lying north of Route 454A, 605 feet east of U.S. Route 13.

The Chairman referred back to this application which was deferred at the October 11, 2001 meeting.

The Commission discussed the points and issues raised during the Public Hearing.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the use is a reactivation of an old abandoned pit site with reclamation proposals, and with the following stipulations:

- 1) The hours of operation shall be from 7:00 A.M. to 5:00 P.M., Monday through Friday with weekend activities for emergencies only.
- 2) No de-watering shall be permitted.
- 3) No fuel shall be stored on site.
- 4) A water truck shall be on site at all times for dust control.
- 5) Excavation, storage and transportation of borrow pit material shall be the only permitted activity on the site. There shall be no asphalt batching, concrete recycling, mulching or shredding operations, or storage of any kind other than borrow and other related activities on the site.
- 6) A minimum setback of 400 feet shall be maintained from any dwelling not on the premises.
- 7) No material shall be stored on any access roads or buffer areas within the project area.
- 8) Access roads shall have a fenced gate, which shall be secured when the operation is closed. The access road from P & A Engineering to the borrow pit does not have to be gated.
- 9) Entrance improvements, as required by DelDOT, will be completed by the applicant.
- 10) Reclamation shall follow plans submitted by the applicant. The reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. Reclamation will be completed in sections as excavation operations in a section are completed. Applicant will notify the Planning and Zoning Department in writing on or about April 1<sup>st</sup> of each year as to the status of the reclamation and reclamation plans for the following year.
- 11) No stumps, branches, debris or similar items will be buried on the site.
- 12) The existing wooded buffer will be left and maintained by the applicant.

- 13) Markers and signage will be placed at appropriate locations to designate pit areas.
- 14) Final approval of the site plan shall be required by the Planning and Zoning Commission and shall include receipt of all agency approvals and permits.
- 15) The applicant will avoid construction and associated activities in those areas that are subject to regulatory provisions under the Federal 404 Program of the Clean Water Act.

**C/U #1421**—application of **WALLACE P. TOWNSEND, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an athletic facility to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 95 acres, more or less, lying south of Route 9, 0.4 mile west of Route 321.

The Chairman referred back to this application which was deferred at the October 11, 2001 meeting.

The Commission discussed the points and issues raised during the Public Hearing.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried four votes to none, with Mr. Johnson not participating, to defer action.

#### OTHER BUSINESS

John Quattlebaum  
Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that the site plan is for two 12,400 square foot warehouses; that 14 parking spaces are proposed for each site; that the parking and interior driveways will be paved; that one entrance that serves both parcels is proposed and has been approved by DelDOT; that individual wells and septic are proposed; that the site is not located in a flood plain and there are no wetlands on the site; that the site plan meets the requirements of the zoning code and that the site plan is suitable for preliminary approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried four votes to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals.

Bridgeville Park Center  
Commercial Site Plan – Route 404

Mr. Abbott advised the Commission that the site plan is for a 37,530 square foot mini storage complex; that seven buildings are proposed; that the property is not located within a flood plain and that there are no wetlands on the site; that the front and side yard setbacks meet the requirements of the zoning code; that the rear yard setback needs to be revised to thirty feet since the adjoining property is zoned AR-1 Agricultural Residential or a variance is needed; and that the site plan is suitable for preliminary approval subject to the revised setback or variance being granted.

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 rear yard setback being revised or a variance being granted and receipt of all required agency approvals.

CVS Pharmacy  
Commercial Site Plan – Delaware Route One

Jim Bell, Project Manager, was present as the Commission reviewed a commercial site plan.

Mr. Abbott advised the Commission that the site plan is for a 10,800 square foot pharmacy with retail sales; that a letter of no objection has been received from DelDOT; that 45 parking spaces are required and that 48 spaces are proposed; that one loading space is required and proposed; that the setbacks meet the minimum requirements of the zoning code; that the 20-foot landscape buffer needs to be provided on the final site plan or a variance will be required; and that the plan meets the requirements for preliminary approval.

Mr. Bell advised the Commission that he was not aware of the required 20-foot landscape buffer requirements and that the revised plan will have a landscape buffer along Route One.

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 20-foot landscape buffer being provided and receipt of all required agency approvals.

Edgewater Park  
Multi Family Site Plan – Church Street

Mr. Abbott advised the Commission that the preliminary site plan is for 41 units on 3.72 acres; that 44 units are permitted by the zoning code; that four buildings have eight units each; that one building has seven units; that one building has two units; that the site plan meets the requirements of the zoning code; that a swimming pool is proposed; that 123 parking spaces are required and that 126 spaces are proposed; that some of the parking

areas have stacked parking; that central sewer and water are proposed; that the property is not located within a flood plain and there are no wetlands on the site; and that the site plan meets the requirements for preliminary approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried four votes to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary. Final approval shall be subject to receipt of all required agency approvals.

Bethany Meadows Phase 6  
Multi Family Site Plan – Road 361

Mr. Abbott advised the Commission that the site plan is for 96 units located within eleven buildings; that 192 parking spaces are required and proposed; that the building lengths and setbacks meet the requirements of the zoning code; that a new entrance is proposed off of Road 361 and that DelDOT has issued a letter of no objection; that central sewer and water are proposed; that there are no wetlands located on the site; 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. Final approval shall be subject to receipt of all required agency approvals.

IPM Equities, Inc.  
Multi Family Site Plan – Delaware Route One

Mr. Abbott advised the Commission that the site plan is for four units on 0.60 acres; that seven units would be permitted by the zoning code; that 12 parking spaces are required and that 16 spaces are proposed including a one car garage for each unit; that central sewer and water are proposed; that the site is not located in a flood plain; that the setbacks meet the requirements of the zoning code; 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. Final approval shall be subject to receipt of all required agency approvals.

IPM Equities, Inc.  
2 Parcels – Delaware Route One

Mr. Abbott advised the Commission that this is a concept to create two lots off of Route One; that a letter of no objection has been received from DelDOT; and that the

subdivision needs the Commission's approval since Route One is a major arterial roadway.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the two lots as submitted.

C/U #1306 DMV Partnership  
Time Extension

Mr. Abbott advised the Commission that this application was approved on October 12, 1999 for 15 multi family units; that the Planning and Zoning Commission approved the site plan on November 20, 2000; that the Commission granted a time extension on January 25, 2001 retroactive to October 12, 2000; that a request for a one year time extension has been received; and that this is the last time extension that the Commission may grant per the zoning code.

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

Subdivision #99021 - - Wolfe Properties  
Time Extension

Mr. Abbott advised the Commission that preliminary approval was granted on October 28, 1999; that the Commission approved a one year time extension on November 2, 2000; that another request for a time extension has been received since the applicant has had delays in obtaining all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to grant a one year time extension with the stipulation that this will be the last extension granted by the Commission.

Meeting adjourned at 12:40 A.M.