

MINUTES OF THE REGULAR MEETING OF NOVEMBER 14, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 14, 1996, at 7:30 P.M., in the Court of Common Pleas, the Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the minutes of October 10, 1996, as amended.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of October 17, 1996 as circulated.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the minutes of October 24, 1996 as circulated.

Motion made by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to approve the minutes of October 30, 1996 as circulated.

Mr. Schrader explained how the public hearings and agenda items will be conducted.

II. PUBLIC HEARINGS

1. RE: C/Z #1290--Bethany Proper, L.P.

James Fuqua, Attorney, George Keen, Developer, and Jeff Clark of Land-Tech, Inc., were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HR-RPC High Density Residential - Residential Planned Community in Baltimore Hundred, located on the northeast side of Road 361 and west of Assawoman Canal to be located on a parcel containing 26.75 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District, DelDOT, and the Sussex County Engineering Department.

Mr. Fuqua stated that the applicants are George Keen and Gerald Wilgus, that they have developed several projects in the area, described the site and general area, noted that the site is within sight of four (4) planned community or multi-family projects, Sea Colony West, Bahama Beach, Clearwater, and Foxfire Meadows, stated that the proposed density is four (4) units per acre, that 37 single family detached units, 42 multi-family units, and 34 apartments are proposed, that one (1) acre is being

set aside for a business area as permitted by the Zoning Ordinance, that they applied for the HR High Density due to the size of the parcel, 26 acres, that they would have preferred to apply for MR Medium Density, but multi-family was not permitted in an RPC overlay, that the use is consistent with the purpose of the HR District in the Zoning Ordinance by proposing a variety of housing types and providing for residential densities appropriate to the area, which will be served by central sewer and water and is well located with respect to major thoroughfares, shopping facilities and employment centers, that the use is consistent with the RPC District in the Zoning Ordinance by providing for design ingenuity while protecting existing and future developments and achieving the goals of the land use plans, that the RPC zoning allows certain B-1 Neighborhood Business uses at a one acre per 100 unit basis to serve the needs of a relatively small area, primarily nearby rural, low-density or medium density residential neighborhoods, that the rezoning will comply with the Coastal Sussex Land Use Plan since the site is clearly within the Development District, since central water and sewer are proposed, and since the RPC concept is encouraged, that the rezoning will comply with the proposed Comprehensive Plan for the same reasons, that Tidewater Utilities, Inc. is willing and able to serve the site with central water, that public sewer capacity is available, that the streets will be private, that one entrance will serve the project from Route 361, that preliminary contacts have been made with DelDOT and the County Engineering Department for street and entrance design, that the developer will make all necessary improvements required by any agencies, that the B-1 Neighborhood Business uses will help eliminate travel time for some of the residents, that stormwater management will be subject to the approval of the Sussex Conservation District, that stormwater ponds shall be located in non-wetland area, that upland wetlands disturbance will be held to a minimum at access crossings only, that the building restriction line will be held at the upland wetlands lines, that the property is not immediately adjacent to the Assawoman Canal due to the width of the Canal right of way, that they have no intent to utilize the Canal right of way, that the site is in close proximity to the Beebe Medical Facility and the Fire Company in Millville, that the site is within the Indian River School District, that recreational facilities will be provided, that a need exist in the area for rental apartments, that the project will be an economic benefit to the County tax base, and suggested some conditions/stipulations, which included that density shall not exceed 113 residential units, that the development shall be served by a central water system and public sewer, that the federal wetland line shall be considered as a building restriction line, and that the development will require issuance of all required County and State permits.

Jeff Clark advised the Commission that 90% of the site is wooded and 10% is tilled, that a wetlands delineation has been completed and that no tidal wetlands exist on the site, that approximately 7.0 acres of upland wetlands exist on the site over which only 4 access crossing will be necessary to cross existing ditches, that the entrance location has been reviewed and approved by DelDOT, that stormwater will be maintained on site with ponds, that the largest pond will not exceed 10,000 square feet, that all ponds excavated will be located in upland areas, that the site has positive drainage with outfall to the Canal, and that recreation facilities on site will include a pool, bathhouse and tennis.

Mr. Fuqua stated that, according to a letter from Charles Miller of Environmental Consulting Services, Inc., disturbance within wetlands is proposed for culvert crossings, and that the construction is subject to the Conservation District, that there is no intent to build docks or slips along the Canal, and that the project is proposed to start as soon as all agency permits are obtained.

Mr. Keen stated that the first phase of development will include the retail area with apartments on the second floor, and 3 or 4 model homes within the single family detached area.

No parties appeared in support or 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.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Pocomoke sandy loam, Fallsington sandy loam, Woodstown sandy loam, and Rumford loamy sand, that the Pocomoke and Fallsington soils have severe limitations, that the Woodstown soils have slight to moderate limitations, that the Rumford soils have slight limitations, that the developers will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction, that the farmland rating of the Pocomoke soils is Prime Farmland, where drained, and of Statewide Importance where not drained, and a Hydric soil, that the farmland rating of the Fallsington soils is both Prime Farmland and of Statewide Importance and a Hydric soil, that the farmland rating of the Woodstown soils is Prime Farmland and a Hydric soil in depressions, and that the Rumford soils is of Statewide

Importance, that the site may be located in a storm flood hazard area, that it may be necessary for off-site and on-site drainage improvements due to some of the poorly drained soils, and that a tax ditch is not affected, that most of the site has very poorly drained soils which have a seasonally high water table from November through April, that water may pond on the surface without surface or subsurface drainage, that in order to adequately drain the site an adequate outlet may be needed, and that flooding may be a problem during storm events.

The Commission found, based on comments received from DelDOT, that the present level of service of Route 361 at this location is level of service "A" and that the level of service will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department, that the site is located in a Priority II Planning Area and is adjacent to areas currently receiving sanitary sewer service, that existing sanitary sewer lines in the area have been designed with adequate capacity to address development that is done in accordance with the Coastal Sussex Land Use Plan, that an extension of a regional sewer line will be required with some oversizing to accommodate up-gradient development areas, that the site could be served through the extension of the South Bethany Sanitary Sewer District, and that the Department encourages the developers to consider sanitary sewer service for the project.

The Commission found that the application was represented by an attorney, one of the developers, and a representative from a surveying firm, and that the attorney stated that the applicants are George Keen and Gerald Wilgus, that they have developed several projects in the area, described the site and general area, noted that the site is within sight of four (4) planned community or multi-family projects, Sea Colony West, Bahama Beach, Clearwater, and Foxfire Meadows, and stated that the proposed density is four (4) units per acre, that 37 single family detached units, 42 multi-family units, and 34 apartments are proposed, that one (1) acre is being set aside for a business area as permitted by the Zoning Ordinance, that they applied for the HR High Density due to the size of the parcel, 26 acres, that they would have preferred to apply for MR Medium Density, but multi-family was not permitted in an RPC overlay, that the use is consistent with the purpose of the HR District in the Zoning Ordinance by proposing a variety of housing types and providing for residential densities appropriate to the area, which will be served by central sewer and water and is well located with respect to major thoroughfares, shopping facilities and employment centers, that the use is consistent with the RPC District in the Zoning Ordinance by providing for design

ingenuity while protecting existing and future developments and achieving the goals of the land use plans, that the RPC zoning allows certain B-1 Neighborhood Business uses at one acre per 100 unit basis to serve needs of a relatively small area, primarily nearby rural, low-density or medium density residential neighborhoods, that the rezoning will comply with the Coastal Sussex Land Use Plan since the site is clearly within the Development District, since central water and sewer are proposed, and since the RPC concept is encouraged, that the rezoning will comply with the proposed Comprehensive Plan for the same reasons, that Tidewater Utilities, Inc. is willing and able to serve the site with central water, that public sewer capacity is available, that the streets will be private, that one entrance will serve the project from Route 361, that preliminary contacts have been made with DelDOT and the County Engineering Department for street and entrance design, that the developer will make all necessary improvements required by any agencies, that the B-1 Neighborhood Business uses will help eliminate travel time for some of the residents, that stormwater management will be subject to the approval of the Sussex Conservation District, that stormwater ponds shall be located in non-wetland area, that upland wetlands disturbance will be held to a minimum at access crossings only, that the building restriction line will be held at the upland wetlands lines, that the property is not immediately adjacent to the Assawoman Canal due to the width of the Canal right of way, that they have no intent to utilize the Canal right of way, that the site is in close proximity to the Beebe Medical Facility and the Fire Company in Millville, that the site is within the Indian River School District, that recreational facilities will be provided, that a need exist in the area for rental apartments, that the project will be an economic benefit to the County tax base, and suggested some conditions/stipulations, which included that density shall not exceed 113 residential units, that the development shall be served by a central water system and public sewer, that the federal wetland line shall be considered as a building restriction line, and that the development will require issuance of all required County and State permits.

The Commission found that the representative of the surveying firm advised them that 90% of the site is wooded and 10% is tilled, that a wetlands delineation has been completed and that no tidal wetlands exist on the site, that approximately 7.0 acres of upland wetlands exist on the site over which only 4 access crossing will be necessary to cross existing ditches, that the entrance location has been reviewed and approved by DelDOT, that stormwater will be maintained on site with ponds, that the largest pond will not exceed 10,000 square feet, that all ponds excavated will be located in upland areas, that the site has positive drainage with outfall to the Canal, and that recreation facilities on site will include a pool, bathhouse and tennis.

The Commission found that the attorney added that, according to a letter from Charles Miller of Environmental Consulting Services, Inc., disturbance within wetlands is proposed for culvert crossings, and that the construction is subject to the Conservation District, that there is no intent to build docks or slips along the Canal, and that the project is proposed to start as soon as all agency permits are obtained.

The Commission found that the developer stated that the first phase of development will include the retail area with the apartments on the second floor, and 3 or 4 model homes within the single family detached area.

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

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The Density shall not exceed 113 residential units
2. The Development shall be served by central water and Public sewer.
3. The Federal wetlands line shall be considered the building restriction line.
4. Development will require issuance of all required County and State permits.
5. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

2. RE: C/Z #1291--Dyer, McCrea Ventures, L.L.C.

Preston Dyer and Gary McCrea, developers, were present on behalf of their application to amend the zoning map from C-1 General Commercial and GR General Residential to GR General Residential-RPC Residential Planned Community in Lewes and Rehoboth Hundred, located on the southeast side of the intersection of Route One and Road 270A to be located on a parcel containing 45.54 acres more or less.

Mr. Wheatley stated that he would not participate in the public hearing or the decision.

Mr. Lank summarized comments received from DelDOT, the Sussex County Engineering Department, the Sussex Conservation District, and letters received from the Citizen's Coalition, Inc. and the Sierra Club.

Mr. Dyer quoted the purpose of the RPC District in the Zoning Ordinance, and stated that the Coastal Sussex Land Use Plan encourages large scale development, that access to the site is from a 50 foot wide right of way from Road 270A, that 5.5 acres of the original parcel is being reviewed by the Board of Adjustment for a 120 unit assisted living facility, that they are proposing a residential planned community consisting of two (2) parcels, the first parcel containing 5.54 acres and including a 7,000 square foot medical offices on the first floor with a 100 unit assisted living facility that they agree to restrict to 100 units, that the second parcel proposes an 80 lot single family subdivision with age restricted usage, that the subdivision will be developed in two (2) phases, that concurrent applications are being filed with the Board of Adjustment (Assisted Living), the Commission (Subdivision), and the Commission and Sussex County Council (Residential Planned Community), that a lesser front yard setback is proposed to allow for greater setback from Beachfield Subdivision, that 7,500 square foot lots are proposed, that the current zoning would allow 32 units within the Commercial District and 159 units within the GR General Residential District, that they have met with members of the property owners association within Beachfield Subdivision and a number of issues have been raised, that in response to the issues raised no tidal wetlands or streams exist within the project, no filling of wetlands are proposed, that within the Commercial area fill is currently being placed under a previous approval received by the present owner from the Army Corps. of Engineers, that no encroachments are proposed into the floodplain, that no construction is proposed in floodplains or wetlands, that no construction is proposed within the 50 foot buffer, that traffic counts were conducted for the assisted living project by Environmental Consultants International Corporation and the information was submitted to DelDOT which later indicated that a traffic impact study was not necessary, that a proposed entrance design has been submitted, and it is the opinion of DelDOT that no further studies are necessary for the entrance and that the site loading can adequately be handled by Road 270A, that stormwater ponds are proposed in upland areas, that public sewer service will be provided, that central water will be provided by Tidewater Utilities, that the building for the assisted living facility will have a residential appearance, that according to the National Health Management Group the national average age in an assisted living facility is 83, that 3 out of 100 residents in an assisted living facility may have an automobile, that traffic generation will be less due to the age of the residents for the entire project, that the entrance serving the projects is totally within the C-1 General Commercial District.

Mr. Dyer, in response to questions raised by the Commission members, stated that he would define assisted living as a care facility that is not for individuals requiring full-time care, that some of the individuals may need assistance with medication and assistance with meals and transportation, that open visitation is permitted and family members are encouraged to visit, and that parking conforms to the Zoning Ordinance and exceeds the national average for care facilities.

Vincent Saccardi, Jr., a resident of Beachfield, spoke in opposition and expressed concerns about traffic on Road 270A and Route One, that only 10 feet of setback is proposed from the 50 foot access road, that DelDOT comments exhibit the number of vehicles on Route One and Road 270A, that traffic counters do not indicate how long a person has to wait for a traffic light at the intersection, that consideration has not been given to the number of service vehicles that will be using the access road, i.e. utility companies, service companies, customers going to and from the outlets, ambulances, and other emergency vehicles, that this project is not the only project utilizing Road 270A, and referenced numerous subdivisions, a motel, commercial uses and a miniature golf course, trailer parks, and a campground, that the access road should be located at another location since the Route One and Road 270A intersection is a safety hazard.

Vincent Robertson, Attorney on behalf of the Beachfield Homeowners Association, stated that the application does not promote the health, safety, convenience, order or welfare of the neighboring property owners and residents of Sussex County, that the proposed subdivision and assisted living applications need to be resolved prior to a decision on the residential planned community, that the residents of the subdivision also object to the assisted living application and the subdivision, that the requested rezoning does not satisfy the requirements for a residential planned community, that the assisted living facility, a high intensity use, is not proportionate to Beachfield, a single family subdivision, that planned communities are only acceptable if they provide a superior living environment while being sensitive to the environment, that there may be several negative impacts upon the surrounding environment, i.e. Beaver Dam Branch, wetlands and a stream which flows into Holland Glade, the Lewes and Rehoboth Canal, and the Delaware Bay and Rehoboth Bay, that run-off and other detrimental effects will be created by construction and causing increased risks of flooding, degradation of the water quality, increased sedimentation, negative impacts on aquatic organisms, negative impacts on wildlife and other resources, that the rezoning could adversely affect the State Park and its natural resources, that the use cannot be considered an appropriate relationship with the low intensity uses existing in the State Park, that traffic will be

generated by the owners and guests of the lots, residents and guests of the assisted living facility, staff of the assisted living facility, and deliveries to the facility among other sources, that the traffic will lead to congestion along the roadways and may cause a safety hazard to the existing and proposed communities, that DelDOT's recommendation regarding the proposed design of the internal site intersections would be to reduce the number of traffic movements and conflict points, that the current internal site intersection proposal creates numerous driver decision points and would have the potential to cause confusion and thereby congestion, that the potential to cause confusion and congestion is increased since the internal intersections are intended to serve the Lighthouse Plaza Shopping Center and a proposed motel, that there is a greater than average need for unhindered access by emergency vehicles, requested that the application be denied as submitted, and added that if the project is approved the access road should be moved away from the property lines and the internal intersections of roads should be reviewed and revised.

Mr. Robertson submitted his written comments.

Mabel Granke submitted written comments in opposition to the application and added that the access to the entire area is from Route One, that the three lane capacity of Route One is already exceeded, and that Route One is over capacity.

Rich Anthony advised the Commission that the parcel is now being developed, cleared, filled, and that the Army Corps. of Engineers permit is being disputed, that the size of the assisted living facility is out of scope and scale and out of character with the residential character of the area, that a need does exist for assisted living facilities, but not at this location, that an assisted living facility should not be in an area that could be hazardous to the health of the residents.

Mr. Anthony submitted two copies of responses received over the Internet relating to assisted living facilities that reported that these facilities require a sizable staff, plus deliveries, plus visitors, and generate a great deal of traffic in addition to the residents, that it may be the staff and visitors that constitute most of the traffic, and that who the drivers are is less important than the volume of traffic, and that the volume of traffic may well be as great as those associated with standard residents.

Bill Holman, a resident of Beachfield, read the following poem, titled "ODE TO THE MASTER PLAN" to be made a part of the record:

"Have you ever been thrilled by the site of a deer
Captured the beauty of a majestic tree
Listened to the songs of the birds upon your ear
Admired the wondrous beauty without a tear?
Without God's plan for nature and beauty the world
will have lost the master plan.
And we will be blinded for an eternity.
I plead with you - leave God's plan in tact
Assure posterity the same joys we've had."

Eleven (11) parties were present in opposition.

At the conclusion of the public hearing, the Chairman referred back to this application.

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

The Commission found, based on comments received from DelDOT, that Road 270A has an annual average daily traffic of 980 vehicles and a summer average daily traffic of 1607 vehicles based on a calculation utilizing 1984 traffic counts, that Route One has an annual average daily traffic of 42,477 vehicles and a summer average daily traffic of 69,634 based on a calculation utilizing 1993 traffic counts, that a traffic impact study is not recommended, and that the existing levels of service "B" of Road 270A and "E" of Route One will not change as a result of this application.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, that the proposal will not increase the allowable density of the property, that capacity is not expected to be a problem since the density will not exceed that previously anticipated, that the sewer system must be constructed in accordance with Ordinance No.38 procedures and that if the Ordinance No.38 project is completed after December 29, 1996, impact fees will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Johnston loam or silt loam, and Sassafras sandy loam, that the Evesboro and Sassafras soils have slight to moderate limitations, that the Johnston soils have severe limitations, that the developers will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-

site or off-site drainage improvements, that the area along the stream needs to be maintained as a natural area to ensure that drainage for the site is adequate, that the area along the stream is a valuable asset for flood control, that the farmland rating of the Evesboro soils is of Statewide Importance and a Hydric soil in depressions, that the Johnston soils are Hydric soils, and that the Sassafras soils are Prime Farmland.

The Commission found, based on comments received from the Citizens Coalition, Inc., that the Coalition is opposed to the rezoning since the rezoning is not appropriate for this location, since it is in a high traffic area already plagued by congestion, accidents and residential density, since it creates problems for emergency service vehicles responding to such a facility, since Route One is already beyond capacity, and since the land is currently designated as a conservation district and should not be developed.

The Commission found, based on comments received from the Sierra Club, that the Club is opposed to the rezoning since the area is already widely recognized for it's ecological values, expressing a concern relating to protection of the drainage basin for the area being impacted by all the existing residential and commercial developments in the area, the applications proposed for this site, and future applications in the area, questioning if this application will enhance water quality, wildlife habitat, and quality of life, questioning if the applicants are willing to present to the public the entire project, questioning how large the stormwater management ponds will be, questioning how the discharge is being filtered, questioning if the applicants plan to connect into other storm water management systems, expressing concerns relating to changes in hydrology, removal of forest canopy and vegetation, filling in of wetlands, encroachment into the floodplain and increased traffic and impervious surface, and stating that the Coastal Sussex Land Use Plan states that good water quality is vital to our economy.

The Commission found that the application was represented by Preston Dyer and Gary McCrea, and that Mr. Dyer quoted the purpose of the RPC District in the Zoning Ordinance, and stated that the Coastal Sussex Land Use Plan encourages large scale development, that access to the site is from a 50 foot wide right of way from Road 270A, that 5.5 acres of the original parcel is being reviewed by the Board of Adjustment for a 120 unit assisted living facility, that they are proposing a residential planned community consisting of two (2) parcels, the first parcel containing 5.54 acres and including 7,000 square foot of medical offices on the first floor with a 100 unit assisted living facility that they agree to restrict to 100 units, that the second parcel proposes an 80 lot single family subdivision with

age restricted usage, that the subdivision will be developed in two (2) phases, that concurrent applications are being filed with the Board of Adjustment (Assisted Living), the Commission (Subdivision), and the Commission and Sussex County Council (Residential Planned Community), that a lesser front yard setback is proposed to allow for greater setback from Beachfield Subdivision, that 7,500 square foot lots are proposed, that the current zoning would allow 32 units within the Commercial District and 159 units within the GR General Residential District, that they have met with members of the property owners association within Beachfield Subdivision and a number of issues have been raised, that in response to the issues raised no tidal wetlands or streams exist within the project, no filling of wetlands are proposed, that within the Commercial area fill is currently being placed under a previous approval received by the present owner from the Army Corps. of Engineers, that no encroachments are proposed into the floodplain, that no construction is proposed in floodplains or wetlands, that no construction is proposed within the 50 foot buffer, that traffic counts were conducted for the assisted living project by Environmental Consultants International Corporation and the information was submitted to DelDOT, which later indicated that a traffic impact study was not necessary, that a proposed entrance design has been submitted, and it is the opinion of DelDOT that no further studies are necessary for the entrance and that the site loading can adequately be handled by Road 270A, that stormwater ponds are proposed in upland areas, that public sewer service will be provided, that central water will be provided by Tidewater Utilities, that the building for the assisted living facility will have a residential appearance, that according to the National Health Management Group the national average age in an assisted living facility is 83, that 3 out of 100 residents in an assisted living facility will have an automobile, that traffic generation will be less due to the age of the residents for the entire project, that the entrance serving the projects is totally within the C-1 General Commercial District.

The Commission found that Mr. Dyer, in response to questions raised by the Commission members, stated that he would define assisted living as a care facility that is not for individuals requiring full-time care, that some of the individuals may need assistance with medication and assistance with meals and transportation, that open visitation is permitted and family members are encouraged to visit, and that parking conforms to the Zoning Ordinance and exceeds the national average for care facilities.

The Commission found that one of the immediate neighbors and resident of Beachfield spoke in opposition and expressed concerns about traffic on Road 270A and Route One, that only 10 feet of setback is proposed from the 50 foot access road, that DelDOT comments exhibit the number of vehicles on Route One and Road 270A, that traffic counters do not indicate how long a person has to wait for a traffic light at the intersection, that consideration has not been given to the number of service vehicles that will be using the access road, i.e. utility companies, service companies, customers going to and from the outlets, ambulances, and other emergency vehicles, that this project is not the only project utilizing Road 270A, and referenced numerous subdivisions, a motel, commercial uses and a miniature golf course, trailer parks, and a campground, that the access road should be located at another location since the Route One and Road 270A intersection is a safety hazard.

The Commission found that an attorney, present on behalf of the Beachfield Homeowners Association, submitted written comments and stated that the application does not promote the health, safety, convenience, order or welfare of the neighboring property owners and residents of Sussex County, that the proposed subdivision and assisted living applications need to be resolved prior to a decision on the residential planned community, that the residents of the subdivision also object to the assisted living application and the subdivision, that the requested rezoning does not satisfy the requirements for a residential planned community, that the assisted living facility, a high intensity use, is not proportionate to Beachfield, a single family subdivision, that planned communities are only acceptable if they provide a superior living environment while being sensitive to the environment, that there may be several negative impacts upon the surrounding environment, i.e. Beaver Dam Branch, wetlands and a stream which flows into Holland Glade, the Lewes and Rehoboth Canal, and the Delaware Bay and Rehoboth Bay, that run-off and other detrimental effects will be created by construction and causing increased risks of flooding, degradation of the water quality, increased sedimentation, negative impacts on aquatic organisms, negative impacts on wildlife and other resources, that the rezoning could adversely affect the State Park and its natural resources, that the use cannot be considered an appropriate relationship with the low intensity uses existing in the State Park, that traffic will be generated by the owners and guests of the lots, residents and guests of the assisted living facility, staff of the assisted living facility, and deliveries to the facility among other sources, that the traffic will lead to congestion along the roadways and may cause a safety hazard to the existing and proposed communities, that DelDOT's recommendation regarding the proposed design of the internal site

intersections would be to reduce the number of traffic movements and conflict points, that the current internal site intersection proposal creates numerous driver decision points and would have the potential to cause confusion and thereby congestion, that the potential to cause confusion and congestion is increased since the internal intersections are intended to serve the Lighthouse Plaza Shopping Center and a proposed motel, that there is a greater than average need for unhindered access by emergency vehicles, requested that the application be denied as submitted, and added that if the project is approved the access road should be moved away from the property lines and the internal intersections of roads should be reviewed and revised.

The Commission found that a Rehoboth Beach resident submitted written comments in opposition to the application and stated that the access to the entire area is from Route One, that the three lane capacity of Route One is already exceeded, and that Route One is over capacity.

The Commission found that a Lewes area resident stated that the parcel is now being developed, cleared, and filled, and that the Army Corps. of Engineers permit is being disputed, that the size of the assisted living facility is out of scope and scale and out of character with the residential character of the area, that a need does exist for assisted living facilities, but not at this location, that an assisted living facility should not be in an area that could be hazardous to the health of the residents, and submitted two copies of responses received over the Internet relating to assisted living facilities that reported that these facilities require a sizable staff, plus deliveries, plus visitors, and generate a great deal of traffic in addition to the residents, that it may be the staff and visitors that constitute most of the traffic, that who the drivers are is less important than the volume of traffic, and that the volume of traffic may well be as great as those associated with standard residents.

The Commission found that Bill Holman, a resident of Beachfield, read the following poem, titled "ODE TO THE MASTER PLAN", into the record:

"Have you ever been thrilled by the site of a deer
Captured the beauty of a majestic tree
Listened to the songs of the birds upon your ear
Admired the wondrous beauty without a tear?
Without God's plan for nature and beauty the world
will have lost the master plan.
And we will be blinded for an eternity.
I plead with you - leave God's plan in tact
Assure posterity the same joys we've had."

The Commission found that eleven (11) parties were present in opposition.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried with 4 votes. Mr. Wheatley abstained from voting.

3. RE: C/Z #1292--Thelton D. Savage

Thelton and Barbara Savage were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broad Creek Hundred, located on the south side of Route 20, 590 feet southeast of Road 485 to be located on a parcel containing 3.27 acres more or less.

Mr. Lank summarized comments received from the Office of State Planning Coordination, DelDOT, and the Sussex Conservation District.

Mr. Savage stated that they intend to build a building to create space for a beauty shop, a barber shop, and a garage for storage of antique cars.

Mr. Wheatley questioned the size of the parcel for the use intended and why they applied for rezoning.

Mr. Savage stated that his son cuts hair and will have employees, that they do not intend any other business, that the hours of operation will be from 8:00 or 9:00 A.M. to 8:00 P.M. except for Sunday and Monday when they will be closed, that the entrance already exist, that the site is across from a convenience market and down the road from a restaurant.

Leroy Hughes, an adjoining landowner, spoke in opposition and stated that the convenience market is directly across from his residence, that the store has been robbed and has had attempted robberies, that "No Parking" signage has not been complied with by the patrons at the convenience market, that a store/restaurant down the road has been closed, that the use will depreciate property values and creates an inconvenience to the neighbors, that B-1 Neighborhood Business uses are suppose to create convenience, that the use will infringe onto the neighbors, that the use will cause the lose of the country atmosphere, and that he opposes a parking lot close to his property line.

At the conclusion of the public hearing, the Chairman referred back to this application.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that the office has declined to put this application through the Land Use Planning Act review and commenting system.

The Commission found, based on comments received from DelDOT, that the annual average daily traffic for Route 20 at this location is 5425 vehicles and the summer average is 7750 vehicles based on 1994 traffic counts, that a traffic impact study was not recommended and that the level of service "D" of Route 20 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro sand which has slight limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation, that the soil is Hydric in depressions, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant and his wife were present and that the applicant stated that they intend to build a building to create space for a beauty shop, a barber shop, and a garage for storage of antique cars, that their son cuts hair and will have employees, that they do not intend any other business, that the hours of operation will be from 8:00 or 9:00 A.M. to 8:00 P.M. except for Sunday and Monday when they will be closed, that the entrance already exist, that the site is across from a convenience market and down the road from a restaurant.

The Commission found that an adjoining landowner spoke in opposition and stated that the convenience market is directly across from his residence, that the store has been robbed and has had attempted robberies, that "No Parking" signage has not been complied with by the patrons at the convenience market, that a store/restaurant down the road has been closed, that the use will depreciate property values and creates an inconvenience to the neighbors, that B-1 Neighborhood Business uses are suppose to create convenience, that the use will infringe onto the neighbors, that the use will cause the lose of the country atmosphere, and that he opposes a parking lot close to his property line.

Mr. Wheatley stated that he feels that a Conditional Use would be a better method of application since the County cannot impose restrictions on a commercial application.

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied, and to encourage the applicants to reapply for a Conditional Use, and to waive the application fee for the Conditional Use application rather than encore additional cost on the applicant.

4. RE: Ordinance to Amend Chapter 115
(Height in Mobile Home Parks)

Mr. Lank read the text of the proposed Ordinance relating to the height limitation of authorized structures in Conditional Use mobile home parks or trailer parks.

John Sergovic, Attorney, present representing Tunnell Companies, L.P., advised the Commission that he authored the Ordinance, and stated that the Ordinance affects the entire manufactured home industry, that his clients have researched modern methods to establish possible additional benefits to residents within manufactured home parks, submitted an article titled "Upwardly Mobile" describing a mobile home park in California that has a double-tall plan for the future, and submitted a set of building plans prepared by Schult Homes Corporation for two story mobile home units.

Steve Class, President of First State Manufactured Housing Institute, submitted supporting documents endorsing the Ordinance which included typical cross sections and roof pitches of a single story home, a cross section of roof rafters for a 7/12 pitch roof, the same building plans submitted by Mr. Sergovic, and stated that the house plans are for a mobile unit being built for a lot in Columbia, Maryland, and stated that the change in the Ordinance will create ecstastically pleasing housing with appropriate heights similar to stick built dwellings.

Phyllis McKinley, Executive Director of the First State Manufactured Housing Institute, stated that members of the Institute have reviewed the Ordinance and support the amendments, and that the Ordinance allows for the manufactured housing industry to move forward to create a wide range of housing types.

Mr. Sergovic added that it may be more appropriate to call the unit the "main" residential structure and not the "primary" residential structure, that this Ordinance only applies to manufactured home parks with Conditional Uses, and reminded the Commission that heights in all other sections of the Zoning Ordinance were recently increased.

Mr. Allen expressed a concern for residents that have recently made investments in their homes with the limited height adjoining vacant lots that may be improved with the higher structures.

Mr. Sergovic stated that some lots are not adequate size to permit doublewide manufactured homes.

Mr. Allen questioned the impact on the tax base.

Mr. Sergovic stated that the tax base would remain the same.

No parties appeared in opposition to the amendments.

At the conclusion of the public hearings, the Chairman referred back to this Ordinance.

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

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

5. RE: Ordinance to Amend Chapter 115
(Defining Authorized Structures in MHP)

Mr. Lank read the text of the proposed Ordinance relating to defining authorized structures in Conditional Use mobile home parks and trailer parks.

Mr. Sergovic requested that the testimony of the previous hearing be incorporated into the records of this hearing.

Mr. Schrader stated that the testimony would be incorporated into the record.

John Mervine, representing a new corporation in Delaware that will be manufacturing H.U.D. Code homes, stated that he would like to be able to build units that can be moved to a site, placed on a foundation, and then the chassis be removed and reused, that he can presently place this type of unit in Maryland in manufactured home parks, exhibited some pictures he borrowed of similar units built in California, stated that he presently employs 700 people, that he will be able to add an additional 100 people to operate the H.U.D. Code plant, and that he supports the need for the additional height since a 16 foot wide section of a double wide unit with a 4/12 pitch will exceed the present 15 foot height.

Mr. Allen questioned the difference between his units now and the proposed H.U.D. Code units.

Mr. Mervine stated that the biggest difference in H.U.D. Code homes is lesser quality, a lesser value, and the steel frame chassis.

Mr. Wheatley questioned if this Ordinance will allow modular homes to be placed in manufactured home parks.

Mr. Sergovic stated that the units would only be allowed in Conditional Use approved mobile home parks, that the proposal makes good economic sense since the units will be cheaper to the consumer.

Mr. Mervine added that H.U.D. Code homes require a Certificate of Origin and a Title with the State Division of Motor Vehicles.

Phyllis McKinley stated that the manufactured home industry has upgraded over the years, that H.U.D. Code standards were changed in 1976, and that the units are called manufactured homes, not mobile homes or trailers.

At the conclusion of the public hearings, the Chairman referred back to this Ordinance.

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

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

III. OTHER BUSINESS

1. RE: The Cove Subdivision

The Commission reviewed a site plan for a community recreation area for The Cove Subdivision on the west side of Route One, south of the Indian River Inlet.

Mr. Abbott advised the Commission that the site plan references a community pool and bathhouse, a swimming pool, and a tennis court, that the setbacks are acceptable, and that the four parking spaces would have to be relocated since they are partially located within the fifty foot right of way of Frances Wood Street.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan with the stipulation that the parking area be revised.

2. RE: The Salt Pond

The Commission reviewed a request to permit a waiver from the ten foot setback from the 404 wetlands on lot 347 within the Salt Pond Residential Planned Community on Walkabout, a private street.

Mr. Abbott advised the Commission that the developers incorporated the ten foot setback from the wetlands as a part of the developments approval, that one of the developers has sent a letter stating no objection to the waiver, and that on other lots within the development, the 404 wetland line has been the building restriction line.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the waiver.

3. RE: Old Welcome Full Gospel Holiness Church, Inc.

The Commission reviewed a site plan for a church located on the south side of Road 38, and west of Road 232-A.

Mr. Abbott advised the Commission that a 40' x 100' building is proposed, that the property is zoned AR-1 Agricultural Residential and that churches are permitted in all zoning districts, that the setbacks and parking requirements meet the zoning code, that there is parking located within the forty foot front yard setback requirement and that this would have to be waived by the Commission.

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

4. RE: Fenwick Restaurant and Cafe

The Commission reviewed a commercial site plan for a restaurant on Route 54 across from Treasure Beach Campground.

Mr. Abbott advised the Commission that the site is zoned B-1 Neighborhood Business, that the restaurant is a permitted use, that the setbacks and parking meet the requirements of the zoning code, and that there is parking located within the forty foot front yard setback on Route 54 and that this would have to be waived by the Commission.

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

ADDITIONAL BUSINESS

A. Mr. Lank advised the Commission that the Sussex County Council, on November 12, 1996, requested that the Commission render a decision on the proposed Land Use Plan by December 31, 1996.

It was the consensus of the Commission that more workshops be scheduled so that the Commission can discuss the Land Use Plan and possibly make a recommendation to the County Council.

It was the consensus of the Commission that a workshop be scheduled for Tuesday, November 26, 1996, at 7:00 P.M. in the County Council Chambers.

B. Mr. Schrader discussed the letter that he sent the Commission members about annexation of towns and the Planning and Zoning Commission input.

Meeting adjourned at 11:15 P.M.