

MINUTES OF THE REGULAR MEETING OF NOVEMBER 18, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 18, 1999 at 7:30 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:30 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as amended by deleting item #2 from Old Business and item #8 from Other Business.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the minutes of October 28, 1999 as amended.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of November 4, 1999 as amended.

Mr. Schrader explained how the meeting would be conducted.

IV. PUBLIC HEARINGS

C/U #1312 -- application of ALBERT J. BIERMAN to consider the Conditional Use of land in an AR-1 Agricultural Residential District for pallet rebuilding and grinding of residue wood for mulch to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 17.025 acres, more or less, lying west of Road 431 across from Road 322.

Mr. Lynch stated that he will abstain from participating in the public hearing due to a possible conflict of interest.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service "B" of Road 431 may change to a level of service "C" based on this application.

The Commission found, based on comments received from the State Fire Marshal's Office that the Office has no objection to the use, and that it will be necessary for all building plans relating to the operation to be submitted to the Office for review and approval.

The Commission found, based on comments received from the State DNREC Water Supply Section, that a water supply well will not be required for the operation and that the Section has no objection to the project; that the only well on the site is an existing Domestic use well that will serve the dwelling exclusively; and that if in the future a well is required for the operation, the owner will contact a Delaware licensed well contractor to have the proper permit application procedure done.

The Commission found, based on comments received from the Sussex County Office of Economic Development and Industrial Park, that they support the concept of the application and their efforts to locate in the County; that they have met with representatives of the applicant and participated in the State Development Advisory Committee meeting when the project was reviewed; that they have visited the site; that the operation, in a controlled setting on 4 to 5 acres of the 17 acre parcel will be small and non-invasive with two full time and two part time employees; that the business has a customer base in the County, which include Tyson Foods, Rapa Scrapple, Coastal Supply, and other related agricultural related industries; that the scrap wood is non-toxic, all waste is ground and recycled into many uses in the County, eliminating dumping of wood materials in landfills; that the business will be monitored by various agencies, especially the State DNREC; that earthen berm screening, fencing, and tree plantings are proposed; that the operation should not impose any hardship on adjoining property owners; and that the operation should not be compared to the industrial operation in Maryland, since this project is much smaller.

The Commission found, based on comments received from the State DNREC Air Quality Management Section, that no air permit is required for a tub grinder with no air pollution control equipment that is powered by a generator, as long as there are no other process equipment on the site that will require a permit; that these comments only relate to the permitting requirements of the Air Quality Management Section, and does not relieve a tub grinder operator from securing permits from other Federal, State, or local agencies

The Commission found, based on a letter received from Adams-Kemp Associates, a professional surveying and land planning firm, that the southerly boundary of the site, adjoining lands, now or formerly, of the Charles F. Sauers Revocable Trust, is in dispute; that the line was established by agreement on a survey prepared by their firm, signed by the adjoining property owner, and recorded; that subsequently, the adjoining property owners, engaged another firm to reestablish the line; that the two survey lines are approximately fifty feet apart; that the site plan for this project has been designed so that it can be completed and conform to County setbacks, even if the other survey is established to be correct; and that they have allowed for an alternative entrance and drive that is well north of the line in question.

The Commission found that Albert Bierman, Barbara Pivoc, and Robert Witsil, Jr., Attorney, were present on behalf of the application.

The Commission found that Mr. Witsil presented a packet of information, which included: a letter describing the proposed pallet repair and recycling operation, the purpose and necessity for re-zoning, the proposed use being consistent with agricultural uses in the surrounding area, the re-zoning being in compliance with the recommendations of the Comprehensive Plan, and the applicant's voluntary conditions as positive response to concerns expressed by nearby neighbors; excerpts from the Comprehensive Plan; the Adams-Kemp Associates, Inc. letter previously referenced; the Sussex County Office of Economic Development and Industrial Park letter previously referenced; letters from agricultural/industrial uses of the pallets, which included: Coastal Supply Company, New Process Fiber Company, Inc., Ralph & Paul Adams, Inc., Jade Run Sod Farm of Delaware, Vincent Farms, Field Container Co., L.P., Tyson Foods, Inc.; a note from the Baltimore County Department of Permits and Development Management advising that the applicant has no outstanding code violations at this time; and a copy of the letter from the State DNREC Air Quality Management Section previously referenced.

The Commission found that Mr. Witsil, Mr. Bierman, and Ms. Pivoc stated in their presentations and in response to questions raised by the Commission that they are aware of the oppositions concerns; that a small operation is proposed for the reconstruction and repair of broken pallets; that in Baltimore, the applicant has the highest available industrial zoning on a large active site; that the Baltimore site was formerly used for a Class 1 Truck Terminal; that they propose to occupy approximately 4-acres of the 17-acre site; that pallets are proposed to be stored within an 8-foot high stockade fence behind the building; that the mulching operation will be located to the rear of the site within an enclosed 2-acre area with forested buffers; that 8-foot high vegetated berms are proposed to create screening and sound barriers in certain areas of the site; that they acknowledge that a law suit has been filed in reference to the property line agreement and that if the law suit is upheld adequate land is available between the building and the suggested property line to meet all setback requirements; that neighboring homes are 600-feet to 1,000-feet from the building; that the tools utilized for the operation will include circular saws, band saws, and air guns; that a forklift will be utilized for the movement of pallets; that Ms. Pivoc and her husband live on the premises and will operate the business; that the mulching machinery will be operational no more than 10-hours per week; that no more than two tractor-trailer deliveries are anticipated per day; that the Baltimore facility has been in operation for approximately 10-years, and that the only violation ever issued was for parking vehicles off-site; that at no time will more than 4,500 cubic yards of unprocessed waste material be stored on the site; that the use is not specifically referenced in the Zoning Ordinance; that Conditional Use is the preferred choice since restrictions can be placed on the application; that the voluntary conditions proposed in the packet of information and on the site plan are acceptable to the applicant;

that the mulch will only include green wood materials; and that all metals and nails from the pallets are discarded.

The Commission found that Mr. Witsil and Ms. Pivoc presented and submitted photographs of the site, the proposed building, and neighboring properties; photographs of a mulch facility near Delmar; photographs of a pallet facility near Route 16 in Maryland that is unsightly and that they do not plan to duplicate; photographs of the Baltimore pallet and mulch facilities; a copy of their Solid Waste Processing Facility/Site Permit from Baltimore County Department of Permits and Development Management; a copy of the Permit Conditions from Baltimore County; a letter from the Baltimore County Department of Public Works; a copy of a Baltimore County public service notice relating to recycling; a letter from Rosedale Volunteer Fire Co., Inc.; a copy of the State DNREC Development Advisory Service report dated November 16, 1999; and a copy of a letter from Eastern Technical High School.

The Commission found that Mr. Johnson, Commission member, stated that he visited the Baltimore site on November 2, 1999; that he was concerned about the 30-foot height of the pallets; the size of the tub grinder; the height of the mulch piles; and the pallet storage area.

The Commission found that Mr. Witsil responded that there is no height limitation for the height of the pallet storage in Baltimore County, that they propose to not exceed the height of the stockade fencing; that the tub grinder will have an 8-foot diameter load area; that the mulch bins, proposed for display of different types and grades of mulch, will not exceed the height of the stockade fencing; and that the pallets stored in the fencing area will not exceed the height of the fencing.

The Commission found that David J. Weidman, Attorney, was present on behalf of approximately 150 people in opposition, submitted a packet of information to the Commission, which included a copy of the survey of the disputed area, excerpts from the Comprehensive Plan, a copy of the Statute describing the legal status of the Comprehensive Plan, excerpts from the Planning and Zoning Code, a soil survey and map, an appraisal from LandMark Associates, and pictures of the applicant's Maryland Facility.

The Commission found that Mr. Weidman added that the application is great in theory and on paper, but questioned the need for 25,000 square foot for the storage of pallets, the policing of the site plan, if approved, the noise created by the operation, the height of the proposed berms, Saturday hours, the hours per day utilized for the tub grinder, the policing of the number of deliveries per day, how the use is economically viable with all the improvements necessary to conform to all permits and the site plan, air pollution

complaints, what information was provided to Air Quality Management by Ms. Pivoc, and expansion of the facility; that the law suit should not be a part of the record of this hearing; that the site is zoned AR-1 Agricultural Residential; that the Comprehensive Plan depicts the site in an Agricultural Residential District; that the purpose of the Agricultural Residential District is to provide for a full range of agricultural activities and to protect agricultural lands as one of the County's most valuable natural resources, from the depreciating effect of objectionable, hazardous and unsightly uses; that the use is not necessary or compatible to the area; that the intent of the Zoning Ordinance is to promote the health, safety, morals, convenience, order, prosperity and general welfare of the inhabitants of Sussex County; that the regulations are made with reasonable consideration, among other things, of the character of the particular district involved, its particular suitability for particular uses, the conservation of property values and natural resources and the general and appropriate trend and character of land, building and population development; that the use does not meet the criteria of the Ordinance in an Agricultural Residential District; that the use is more appropriate in an LI-2 Light Industrial District; that the purpose of the Agricultural Residential District in the Zoning Ordinance references that these districts are also intended for protection of watersheds, water resources, forest areas and scenic values and, at the same time, to provide for low-density single-family residential development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings; that the regulations seek to prevent untimely scattering of more dense urban uses, which should be confined to areas planned for efficient extension of public services; that the purpose of the Light Industrial District includes references to manufacturing and processing; that permitted uses in Light Industrial Districts includes certain open or enclosed storage of products and materials, service industries and light industries that manufacture, process, store and distribute goods and materials and are dependent on raw materials refined elsewhere, and manufacture, compounding, processing, packaging or treatment, as specified, of products, and referenced specifically agricultural or farm implements, building materials and lumber, commercial green houses, wholesale or retail, and nurseries for the growing of plants, trees, shrubs, including a building for sale of products produced on the premises, fireplace logs, planing and millwork, lumberyards, shipping containers, wood products manufacturing, including baskets, boxes, crates, barrels, and veneer; that the purpose of a Conditional Use includes references to certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations; that these uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare; that some of the soils on the site have moderate to severe limitations for most non-farm or community uses; that it does not appear to be logical or sensible for this site to be a pallet recycling facility; and that LandMark Associates, a real estate appraisals firm, has advised them that it is their professional opinion that the facility, as proposed, will have a negative impact on surrounding property values.

The Commission found that Mr. Weidman presented and submitted a videotape of the Baltimore site, petitions in opposition with approximately 197 signatures, and a suggested findings of fact for denial of the application.

The Commission reviewed approximately 4-minutes of the 15-minute videotape.

The Commission found that David Jones, an owner of an automotive facility near Salisbury, Maryland, spoke in support and stated that he plans to build a dwelling within 100-yards of the site, and has no objection.

The Commission found that Kevin Shockley, Wayne Robinson, James Marvel, and David Trent, of the 41 people present in opposition, stated that they were concerned about children's safety and welfare, noise, odors, smoke, dust, exhaust fumes from equipment, weekend use of equipment, increased traffic, additional truck traffic, contamination of the soils and water by oils, greases, and other materials absorbed into the pallets, the close proximity of a bus shelter to the site, varmints and rodents, run-off, water quality; that mulch piles may heat and smolder; that the only cleaning of the site has been done in the last week; that they do not want a site developed in their neighborhood that looks like the Baltimore site; that the use is not appropriate for the area, is out of character within the area, and may not be environmentally safe; that the use is an industrial use and should be located within an industrial park; that the property is within 200-feet of a residence of other ownership; that some of the residents in the area live on properties that have been owned by their families for generations; that they oppose the use, whether it is considered big or small, because big projects start out as small projects; and that the use will impact the quality of life for the residents in the area.

The Commission found that Mr. Witsil and Mr. Bierman, in response to questions raised by the Commission, stated that they chose the Conditional Use process, rather than the rezoning to Industrial, since more people would be concerned about all of the uses relating to a rezoning, and since the use is an agricultural related use, the creation of mulch for use in landscaping, and poultry house flooring; that they are willing to buffer the front of the building; that the County will enforce the stipulations if the use is approved; that mulch piles will not exceed 20-feet in height; that the tub grinder will be diesel-powered and will comply with DNREC requirements; that all pallets processed are natural processed wood which were kiln dried, not chemically treated; that reconditioned pallets are delivered to users, broken pallets are picked up and then taken to facilities for reconditioning; and that they have no objection to a restriction that the tub grinder will not be utilized on Saturdays.

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

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

Motion by Mr. Johnson, seconded by Mr. Hastings, and carried 4 - 0, with Mr. Lynch abstaining, to forward this application to the Sussex County Council with a recommendation that it be denied since the site of the proposed application lies in an AR-1 District under the Planning and Zoning Code and in the Comprehensive Plan; since the preservation of agricultural land is considered essential to the future of the County, and controlling growth in rural areas is critical; since the Comprehensive Plan strives to protect agricultural lands as one of the County's most valuable natural resources, from the depreciating effect of objectionable, hazardous, and unsightly uses; since the applicant's proposed pallet recycling plant is neither necessary, essential, nor compatible with an AR-1 District; since the applicant's proposed use does not promote the health, safety, morals, convenience, order, prosperity, or general welfare of the inhabitants of Sussex County; since the applicant's proposed use does not qualify as a conditional use, as defined in 115-171 of the Code, because the use is not of a public or semipublic character, nor is it essential or desirable for the general convenience and welfare of Sussex County's residents; since the applicant's proposed use will create excessive truck traffic, endanger the safety of adjacent property owners, generate air pollution from heavy equipment, cause water pollution and soil contamination from dirty wood lying on the ground, and create excessive noise from operations; since the applicant's proposed use will have a negative impact on surrounding land values; and since the applicant's proposed use is out of character for an AR-1 District, is unsuitable for the particular site, and will be detrimental to the conservation of property values and natural resources.

C/Z #1389 -- application of BLEMHEIM LANDS, L.L.C. to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, lying northeast of Route One, 1,000 feet north of Road 283, to be located on 106.68 acres, more or less.

The Commission found, based on comments received from DelDOT, that the project would be in a Multimodal Investment Area with respect to the Statewide Long Range Transportation Plan; that balancing the project location in a Multimodal Investment Area to a significant extent is the fact that the traffic impact study indicates poor levels of service at several of the study area intersections during the summer Friday evening peak hours; that the analysis shows that the Route 1/Road 268A and the Route 1/Postal Lane intersections would operate at level of service "F" for all future cases; that at both of these intersections, the Department is able, and would continue to be able, to keep through traffic on Route 1 moving acceptably only by creating unacceptably long delays on the intersecting roads; similarly, the northbound and southbound left-turn lanes at Route 1 and the site entrance intersection would operate at level of service "F" for all of the future cases because traffic using them must yield to high volumes of through traffic

on Route 1; that the development of this site would add more traffic to those already high volumes and the Department would prefer that this does not happen; that it is the Department's opinion that there are mitigating factors in this case to warrant the approval of the project with certain conditions; that the applicant's have agreed to provide certain connections through the property as a part of the site plan; that some of those connections are essential to the SR 1 Grid Concept; that another connection would simply provide for better access in and out of the site; that the Department understands that there is already a recorded plan for the site; that if the applicant's are to build in accordance with the recorded plan, those connections would require a DelDOT project to buy subdivision lots and build the connecting streets; that doing so would introduce unwanted traffic onto residential streets that were not planned and designed to accommodate it; that the Department is supportive of this project as a means of replacing the existing record plan; that another mitigating factor is that the proposed development would represent an increase in density but could actually generate less traffic than would development under the existing record plan; and that should the County choose to approve the rezoning, there are certain restrictions and improvements that should be made part of the record plan and deed restrictions for the project prior to the issuance of any certificates of occupancy. The report included a project description and background, reference to the Statewide Long Range Transportation Plan, reference to trip generation, an overview of the traffic impact study, reference to intersections analyzed in the traffic impact study, which included Route 1/Route 9, Route 1/Site Access, Route 1/Postal Lane/Melson Road, Route 1/Route 24, transit and pedestrian facilities, bicycle and pedestrian facilities, Melson Road Connection (East Isaacs Drive), the SR1 Grid Concept Study, conclusions and recommendations, and general improvements and requirements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the rezoning; that according to the State DNREC it appears that the project is at least partially in the water service area of Tidewater Utilities, Inc; that the developers need to contact the Water Utility Division for information on the availability of public water in the area; that the north/northeast portion of the site appears not to be in the company service area; that the developer needs to contact the DNREC Division of Water Resources to see if a Certificate of Public Convenience and Necessity must be submitted to Tidewater Utilities, Inc.; that because of the site and location of the project, when considering the adopted nutrient Total Maximum Daily Loads (TMDL) Regulations for the watershed, a non-point source pollution control strategy should be prepared that would reduce environmental impacts of the project to the Inland Bay waters; that the project contains lands identified by the State's Natural Areas Inventory as part of the Cape Henlopen Natural Area; that the same area is identified in the Cape Henlopen State Resource Area by the Open Space Program; that of the 104-acre site, approximately 38 acres are within the aforementioned boundaries; that preliminary discussions between the applicant's and Delaware State Parks and Recreation regarding protection of the forest area took place in the spring; that

the State is open for further discussion on a fee simple acquisition of the environmentally sensitive sectors of the site; that the State is working to protect the Pot Hook Creek riparian corridor in the immediate vicinity of the project; that numerous rare species depend on the Pot Hook Creek/Wolfe Glade watershed downstream of the project; that these species will continue to persist only if the water quality continues to be at or better than its current quality throughout this small watershed; that the State Historic Preservation Office has stated that the site contains two known prehistoric sites and recommends that the developer avoid the prehistoric sites and preserve them in place; that the State Historic Preservation Office would be happy to meet with the developer to discuss the best ways to avoid these areas; that the State urges the County and the developer to work with DelDOT to set restrictions and improvements that will address their concerns before the rezoning is approved; and that if the rezoning is approved, the developer should contact the State Fire Marshal's Office to submit site plans.

The Commission found, based on comments received from the Sussex County Engineering Public Works Division, that the Division recommends that the project should be reviewed by the Technical Advisory Committee since the previous submittal was for the rezoning, since the current submittal is much more detailed, since the proposed units have been modified from the previous plans submitted, and since a determination of the roads, subject to Chapter 99 regulations, should be made at the Technical Advisory Committee review.

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 capacity have been approved to serve a 270 EDU project; that service has been extended into the parcel; that connection can be made at manhole 44A; that in accordance with Ordinance No. 38 procedures, the developer should construct all additional infrastructure needed to serve the project; that system connection charges will be due; that the current system connection charge rate for the period July 1, 1999 to June 30, 2000 is \$2,954.00 per EDU; and that each single-family residence is assessed at 1.0 EDU.

The Commission found that thirteen (13) letters of opposition have been received to date, and that the opposition includes concerns relating to the impact on the quality of life, density, access through streets within Midway Park, especially Isaacs Drive, the negative impact on the community, the depreciation of property values, increased traffic and congestion on an overburdened Route 1, noise, the number of trips per day per home creating a hazardous condition on the streets within Midway Park to get to Melson Road and Route 1, traffic signal delays, the impact on wells, the impact on wetlands, children's safety, and suggesting that the site be developed as it is recorded, as a 133 lot subdivision.

The Commission found that James Fuqua, Jr., Attorney, was present on behalf of the applicants, and stated that they propose to develop the site as a MR-RPC Medium Density Residential District - Residential Planned Community; that the site contains approximately 106 acres and is located behind the Jiffy Lube east of Route 1; that the site is currently zoned AR-1 and is approved and recorded for a 133 lot subdivision of 0.5 acre lots; that the subdivision was originally designed for septic systems; that the subdivision has approved access to Route 1 and Isaacs Drive, a public street; that they propose to develop the community with 95 townhomes, 179 single-family lots, a clubhouse, swimming pool, exercise and craft facilities, and open space; that lawn and maintenance services will be provided; that the maximum number of units calculated could be 344 units, but they only propose to develop 274 units; that the community should be less intrusive and less impacting since it is proposed to be age restricted; that some of the proposed restrictions include that residents be 55 years of age or older; that the fair housing laws contemplate that up to 20% of the homes in an age restricted community may be occupied by individuals whose age is less than 55, or by families in which the head of household is less than age 55; that homeowners associations will be established and recorded; that restrictions will be enforced by the developer until the project is turned over to the association; that the project will be served by the County sewer system; that water will be provided by Tidewater Utilities, Inc.; that fire protection will be provided by both the Rehoboth Beach Volunteer Fire Company and the Lewes Volunteer Fire Company; that police protection will be provided by the Delaware State Police; that medical facilities are in close proximity in the City of Lewes; that shopping areas and convenience shopping is available in close proximity; that an economic impact study was prepared and concluded that during a 20-year period the community would have a net positive impact on the school district with little to no impact on the school system; that in considering the project the developer address two major issues, traffic impacts and environmental impacts; that according to the letter from DelDOT, the application warrants approval of the project with certain connections; that the neighbors in Midway Park do not want traffic from this project; that the original subdivision has a connection to Isaacs Drive, a public street; that the applicants acknowledge that they will be required to fund improvements required by DelDOT; and that a 50-foot buffer is proposed from State wetlands, and that the Federal wetlands line shall be the building restriction line.

The Commission found that Jeff Clark, of Land Tech, Inc., was present on behalf of the developers and stated that his firm prepared the site plan; that wetlands were delineated; that topographic surveys were performed; that traffic was studied; that a future access is proposed through Dove Knoll and the 3-par golf course north of the site; that the streets will be designated as both private and public; that the community is designed so that the townhomes create a transition between the single-family lots and the commercial areas along Route 1; that approximately 1/3 of the site will remain in open space; that adequate

space is available on site for parking; that sidewalks are proposed throughout the project; that buffers, wetlands and stormwater management areas are included in the open space; and that the design conforms to a typical planned community with mixed housing types, some clustered homes, some lots, some townhomes, interconnection to outside communities, amenities, and open space.

The Commission found that Mr. Fuqua added that several things have changed since the original subdivision was recorded: public sewer has become available; central water is available; the Comprehensive Plan was adopted with goals that include the preservation of agricultural lands and the concentration of development; that the site is located in a Development District in the Comprehensive Plan where 4-units to the acre is appropriate for single-family development and higher density is appropriate for townhomes; and that the proposal has flexibility with a mixture of housing types.

The Commission found that Michael F. Green, a Professional Wetlands Scientist, was present on behalf of the applicants and stated that the site is predominantly farmland and supported a crop of corn during the 1998 growing season; that forested uplands and wetlands areas are located in the northeasterly part of the site; that the vegetative species in the woodland include a mix of plants; that there were no rare, threatened, endangered or unusual species or animals observed during the site inspection; that wetlands areas should be preserved and protected; that although the forested upland has some value, it is second growth forest and does not contain unique habitat; that, in response to concerns raised by representative of DNREC, wetlands impacts would be minimal and the wetlands would continue to function quite well since other similar wetlands, bordered by residential developments, continue to function as wetlands; since a contiguous vegetative community consisting of wetlands along with adjacent upland riparian border, a 50-foot wide buffer, will remain on the site post development; since the border will provide benefits such as bank stabilization and aquatic food web benefits, water temperature moderation, nitrogen removal, sediment removal, flood mitigation, and wildlife habitat; that overall nutrient load for the site will probably decrease due to the fact that most of the site is changing from farming to residential; that no loss of wetlands is anticipated; that there is no regulatory requirement to buffer the '404' wetlands by the EPA or the U.S. Army Corps of Engineers; that it is important to note that, post development, a significant upland riparian buffer will remain since the trees will not be cleared from the rear of the lots; that it should be noted that although portions of lots are on SaC2 (Sassafras) soils, typically the area of the lot to be cleared and used for construction shall not be on the sloped SaC2 portion of the lot; that it should be noted that the northerly side of Pot Hook Creek is bounded by agricultural lands where substantial amounts of fertilizers, lime, and chemicals are routinely used; that runoff from the farmland has certainly influenced water quality of the Pot Hook Creek for decades; that by developing the land, and using required stormwater management and sediment control practices, uncontrolled surface

drainage will end; and that stormwater management on the site is protective of the wetlands and Pot Hook Creek water quality.

The Commission found that Jeff Rigner of Orth-Rogers and Associates was present on behalf of the applicants and stated that his firm conducted the traffic impact study for DelDOT; that traffic counts were conducted during the second week of June 1998; that the applicant agrees to all of the general improvements and requirements recommended by DelDOT, which include the design of the lefts and rights-in and rights-out only intersection, pedestrian, transit, and bicycle related improvements, reservation of the right-of-way for, and design and construction of a multimodal local road within the project to connect to a future road on the north and the local road proposed through adjacent developments, construction of the site access connection to Melson Road as a multimodal facility, improvements to East Isaacs Drive, reserve funding for traffic calming measures, i.e. speed bumps, design and construction of a multi-use path for pedestrian and bicycles along the frontage of the site, a queuing analysis of the southbound left turn from Route 1; provisions of turn lanes at the site entrance of sufficient width to accommodate bicycle traffic, construction of sidewalks along the primary access road to a proposed bus stop on Route 1, and that no building permits shall be issued for development on the site until all of the recommendations have been addressed.

The Commission found that Mr. Fuqua added that population is increasing in the County; that the population of people over 55 years of age is increasing; that the Comprehensive Plan refers to the preservation of agricultural lands; that the Development District encourages development; that the application is in full compliance with the Comprehensive Plan; that development is being directed into the Development District by design; that growth is intended for this area; that cluster/high density is appropriate; that the project is proposed to have a lesser density than the maximum allowed in a planned community; and that there is a need for housing with different housing opportunities with age restrictions.

The Commission found that Mr. Fuqua submitted six (6) proposed conditions acceptable to the applicants, if the application is approved.

The Commission found that Peter Hallock of Midway Park, Michael Tyler, President of the Citizens Coalition, Inc., Richard Deskis of Dove Knoll, Ronald Ray of Dove Knoll, Billy Hammond of Dove Knoll, and Mable Granke of Rehoboth Beach, of the 17 people present in opposition, expressed concerns about the proposed connection road to East Isaacs Drive; that homes in Midway Park are setback approximately 10-feet from the front property line; that there is no room for landscaping; that parking is permitted on the streets within Midway Park; that there is no room for through traffic; concerns about noise; concerns about additional traffic and traffic congestion; service vehicle traffic; the

need for more parking at the Midway Shopping Center; that the designation RPC should stand for "Really Packed Community"; that presently if your car is the fifth car in line at the traffic signal at Route 1 and Melson Road you will not get across the intersection until the next signal change; that crime has increased in the area; that the use detracts from the quality of life of the residents in the area; that the traffic impact study should be reconsidered since the study was performed by a consultant hired by the applicants; that they have a fear that water availability will be reduced; that the proposed access connection through Dove Knoll is through lot 11, recently improved by a dwelling and now occupied; questioning what the area can absorb; questioning the SR1 Grid Concept and stating that projects should not be approved based on a concept study; that a transit system exists from May through September; questioning where is multimodal planning for year round residents; and questioning how a 133 lot subdivision can generate more traffic than a 274 unit project.

The Commission found that Mr. Tyler submitted written comments for the record which referenced the Comprehensive Plan, the Development District, net development area, wetland buffers, the SR1 Grid Concept, and assumption made by representatives of DelDOT in reviewing the project.

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.

There was a consensus of the Commission that there were concerns about the traffic summary being prepared by a private company that is paid by the applicant; questioning if the site plan is a residential planned community design when there are no clustered single-family areas; questioning how more homes create less traffic; and expressing concerns about directing traffic through existing subdivisions of Midway Park and Dove Knoll; and noting that only two parking spaces are provided for the townhomes, rather than the required three parking spaces.

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

C/Z #1390 -- application of FIRST STATE STORAGE to consider a proposal to amend the Comprehensive Zoning Map from a C-1 General Commercial District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, lying south of Route 9, 200 feet east of Road 321, to be located on 9.0 acres, more or less.

The Commission found that no agency comments had been requested since this application was for downzoning from C-1 General Commercial to AR-1 Agricultural Residential.

The Commission found that Robert Jennings, one of the developers, was present and stated that they propose to downzone approximately 9.0 acres of commercial land for inclusion into a residential subdivision.

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

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.

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

OLD BUSINESS

C/U #1314 -- application of PERDUE-AGRIRECYCLE, LLC to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry litter to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 228.88 acres, more or less, lying west of U.S. Route 13A and north of Road 485.

The Chairman referred to this application which was deferred on November 4, 1999.

The Commission discussed the points and issues of the public hearing. Mr. Hastings abstained from participating in the discussion.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried with a 4 - 0 vote, with Mr. Hastings abstaining, to forward this application to the Sussex County Council with a recommendation that it be approved with the following stipulations:

1. The Conditional Use area shall be strictly limited to the improvements shown on the site plan and attached supplements, the site plan prepared by McCrone. Any future additions, alterations, or improvements shall be subject to an application and public hearings to amend this Conditional Use.

2. The proposed truck entrance shall be located as shown on the supplement to the site plan north of the boundary of the lands of Victor E. Moore, parcel 92, and shall have the buffer areas shown on the supplement to the site plan vegetated with native trees and Leyland Cypress.
3. The proposed truck entrance route shall be improved to limit dust by an appropriate surface treatment to the railroad right-of-way.
4. Movement of rail cars within the Conditional Use area for loading purposes shall be limited to daylight hours.
5. Rail cars shall be cleaned off-site.
6. All truck trailers shall have the raw litter enclosed in waterproof tarps and shall be designed to prevent leakage.
7. Truck travel to the site shall be during daylight hours limited to Monday through Saturday.
8. The pelletized product of the processing plant shall be shipped in enclosed railroad cars or enclosed tractor-trailers.
9. All activities shall be limited to the inside of the building (loading, unloading, and processing of raw material/litter).
10. The noise and odor emissions from the plant shall be controlled by the negative air system, and shall be controlled by using bag houses, cyclone fans and air scrubbers; in no event shall the plant be allowed to operate with noise or odors exceeding minimum standards established by the Department of Natural Resources and Environmental Control or any other agency having jurisdiction over the project.
11. The lands shown on the site plan as cultivated and acquired from E. Jean Fleetwood shall remain in the wooded and cultivated state north of the truck entrance and shall be enhanced with native trees and Leyland Cypress in the buffer areas shown on the supplement to the site plan.
12. All woodland areas within the site and shown as woodland areas will remain as woodland, cut-over woodland will be allowed to mature.
13. All timber areas will only be harvested with mandatory replanting after harvest. No harvesting shall occur within 100 feet of a property line or public roadway.
14. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

OTHER BUSINESS

Hudson Homes Sales Center
Preliminary Commercial Site Plan
Route 24

The Commission reviewed a preliminary commercial site plan for a manufactured home sales lot located on the north side of Route 24 and west of Route One.

Mr. Abbott advised the Commission that a 32' x 76' sales office is proposed; that a 40' x 60' maintenance building is proposed; that the units for display are 20' x 34' and 36' x 75'; that 12 parking spaces are required and that 38 are proposed; that there is a landscaping area along Route 24; that the proposed setbacks meet the requirements of the zoning code; and that the site plan meets the requirements for preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried 3 votes to 2 votes with Mr. Allen and Mr. Lynch opposed, to approve the site plan as a preliminary. Final approval shall be subject to review and approval by the Commission upon receipt of all required agency approvals.

Angola Estates GR/RPC
Revised Master Plan
Roads 277 and 278

Craig Hudson, developer, and Kevin Burdette of McCrone, Inc. were present as the Commission reviewed a revised master plan for Angola Estates.

Mr. Abbott advised the Commission that the site was originally approved for 424 units utilizing a buildable area concept; that the revised plan reduces the units to 319 with a leaseable area concept; and that each phase would have to be reviewed by the Commission.

Mr. Hudson and Mr. Burdette advised the Commission that the revised plan would eliminate the buildable areas; that the revised plan creates lot areas; and that the revised plan is to accommodate doublewide units.

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

Savannah Road Professional Offices
C/U #1162 Site Plan
Savannah Road (Route 9)

Ross Harris, engineer, was present as the Commission reviewed a preliminary site plan for an office complex.

Mr. Abbott advised the Commission that this was approved October 1, 1996; that a time extension was granted in October 1997; questioned if the Commission would declare the project substantially underway since all of the engineering work has been submitted to the required agencies; that the site plan meets the requirements of the zoning code and conditions of approval; and that all required permits should be obtained by December.

Mr. Harris advised the Commission that he should have all approvals by the second meeting in December.

Motion by Mr. Johnson, seconded by Mr. Hastings, and carried 4 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.

Briggs Family Enterprises, Inc.
C/U #1216 Time Extension

The Commission reviewed a request for a time extension for C/U #1216.

Mr. Abbott advised the Commission that this is the second request for an extension.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to grant a one-year time extension. It was noted that this is the last extension that the Commission may grant.

Russell Smith
Lot on 50' Right-of-way
Road 493

Frances Smith was present as the Commission reviewed a concept to create a lot with access from an existing 50' private road.

Mrs. Smith advised the Commission that her existing lot is too large to maintain and that she would like to sell the back portion of her lot; that the existing road is paved.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve this request as a concept.

Division of Fish and Wildlife
Parcel and 50' Right-of-way
Road 484

The Commission reviewed a request to create a 3.00-acre parcel with access from a 50' right-of-way.

Mr. Abbott advised the Commission that the lot will be for a boat ramp and parking lot for Fleetwood Pond and that no buildings are proposed.

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

Banning Properties, L.L.C. and John and Deborah Quattlebaum
3 Parcels Route 13

The Commission reviewed a concept to create 3 parcels off of Route 13.

Mr. Abbott advised the Commission that DelDOT has approved the entrance location; that there will be only one entrance; and that the lots will have cross access easements.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the 3 lots as submitted.

Meeting adjourned at 12:15 AM.