

MINUTES OF THE REGULAR MEETING OF NOVEMBER 21, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 21, 1996, at 7:30 P.M., in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following members present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director. Joel Leidy, ex-officio member, representing DelDOT was also present.

No action was taken on the Minutes of November 14, 1996, as the Commission just received a copy of the minutes.

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

II. PUBLIC HEARINGS

1. RE: C/U #1171--Hab Nab Transportation

Michael Hubbard and David Rutt, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred for Agricultural Offices, Offices Related to a Trucking Operation Including But Not Limited to Repairs, Truck and Tractor Equipment Sales, and Recycled Truck Washing Facility on the east side of U.S. Route 13, 877 feet north of Polks Branch, and approximately one mile north of Road 584, located on a parcel containing 19.56 acres more or less.

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

Mr. Rutt stated that the parcel is a 19.56 acre portion of a 100 acre tract of land being purchased by the applicant, that the use will have a direct link to the agricultural community, that the use will have direct access to U.S. Route 13, a major thoroughfare, and that the Western Sussex Land Use Plan references that business activities relies on U.S. Route 13 and trucking.

Mr. Hubbard, owner and president of Hab Nab Transportation, stated that their business is bulk hauling of grains, fertilizers, and feeds, that they are also a truck brokerage, that the existing facility in Seaford is not adequate for the size of the business, that the Seaford facility is used primarily for professional offices and a sales office for the trailers sales department, that the existing facility in Federalsburg, Maryland, is used primarily for truck and trailer repair and bulk storage, that the company harvest approximately 3,000 acres of corn which is placed in bulk carriers and hauled to a cannery in

New York, that there are presently 15 employees in Delaware and 15 employees in Maryland, that they propose one building for professional and leasing offices, one building for truck bays and service, and a future building for a truck washing facility, that the buildings proposed will be set back approximately 300 feet from property lines and 600 feet from the nearest residential neighbor, that one entrance will serve the entire site, that the business presently sells Merit Hopper Bottom Trailers and Raven Dump Trailers, that sales are agricultural industry oriented, that the nearest truck washing facilities are in Dover and Salisbury, that the company needs to consolidate the business activities to one site, that other business uses exist in the general area including a hair salon, day care, truck garage, and horse training facility, that the remaining acreage will be farmed, that adequate parking exist on the site, that the trailer and truck display area is proposed to be stoned, and then paved in the future, that the parking area will be crusher run or surface treatment, that the only outside storage will be for parking trailers and trucks, that security lighting will be provided, that all lighting will be directed toward the building and equipment stored outside, that combining the two existing facilities to one site will bring a total of 30 employees to Delaware, and that the business will create an additional 8 to 10 employees in the parts and sales facilities, that the hours of operation will be from 6:00 A.M. to 12:00 Midnight on weekdays, and 6:00 A.M. to 5:00 P.M. on Saturdays, that there will be no Sunday hours, except for emergencies, that no adverse impact is anticipated on property values, the neighborhood, or the health, safety, morals, convenience, order, prosperity and general welfare of the citizens of Sussex County.

Mr. Rutt submitted a copy of the Contract of Sale for the property, the conceptual site plan, and photographs of the Seaford site, and added that it appears that the Western Sussex Land Use Plan depicts the site within a commercial district.

Mr. Hubbard, in response to questions raised by the Commission, stated that the company presently maintains 12 trucks, and 20 trailers of which 8 trailers are liquid fertilizer haulers, that the company has 2 corn harvesters, 2 tractors, and numerous other pieces of farm equipment, that all truck repairs will be performed indoors, that no public truck washing facility exist in the area, that the brokerage is a telephone operation providing contact work for 50 to 100 trucks per day in 26 states, that truckers dealing with the brokerage are private operators who do not operate from the facility, that the only trailers that will remain on the site will be trailers owned by the company, and that approximately 6 new trailers will be displayed for sale and that some used trailers may also be displayed for sale.

Mr. Rutt, in response to questions raised by the Commission, stated that the original application to DelDOT referenced C-1 General Commercial, that DelDOT suggested that the Department preferred a Conditional Use type of application, and that based on DelDOT's recommendation, they applied for the Conditional Use.

Mr. Hubbard added that the size of the site allows for future growth and greater setbacks, that the proposed building includes a 100' by 100' shop area and a 50' by 100' office, and that by comparison the Federalsburg building is a 80' by 100' farm equipment storage type building.

Michael Collison, Carl Parker, Gerald Campbell, Bobby Adkins, and Joseph Conaway spoke in opposition to the application and expressed concerns relating to the residential and agricultural character of the area, that the existing commercial activities in the area are operated by resident owners, concerns relating to depreciation of property values, that 2 day care centers exist in the area and that the day care centers have school bus stops, existing traffic, that the business will draw tractor trailers driving slow in and out of the facility, that the cross over in the median of U.S. Route 13 is not adequate for truck turning, that the storage of old trucks and trailers may turn into a junk yard, noise, concerns about expansions to the facility, that the use sounds more like a truckstop with trucks and trailers being repaired all hours of the day and night, that traffic will increase, concerns about pollution from sediments from the truck wash on Polk Branch, that other sites, already zoned C-1 General Commercial, exist along U.S. Route 13, that truck parts and repair facilities already exist along U.S. Route 13, that DelDOT is ducking its responsibility by suggesting a Conditional Use type of application, rather than requiring a traffic impact study for rezoning, that the application involves both C-1 General Commercial and LI-2 Light Industrial types of uses, that the Office of State Planning Coordination declined to put this application through the Land Use Planning Act review and commenting system shows a lack of coordination on the State's part to provide support comments to the County, that the site contains soil types that are considered Prime Farmland, that the Western Sussex Land Use Plan depicts the site within an Agricultural District, that the proposed Comprehensive Land Use Plan depicts the site within an Agricultural District and a Conservation District, that the use will change the character of the area and property values, that the use does not promote the area, that the use will increase congestion, that the use may be detrimental to the agricultural industry, that the use does not conform to the Land Use Plans, and that the use is an intense zoning for an area of nice homes.

Fifteen (15) 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 a traffic impact study would be required for a rezoning, that the annual average daily traffic for the road segment of U.S. Route 13 in this area is 18,240 vehicles per day, and that the Department has no objection to the County processing this application as a Conditional Use.

The Commission found, based on comments received from the Sussex Conservation District, 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 soils are mapped as Sassafras sandy loam which has slight limitations, that the applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation, and that the farmland rating of the soil types is considered Prime Farmland.

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 that the owner and president of the business, and an attorney were present, and that the attorney stated that the parcel is a 19.56 acre portion of a 100 acre tract of land being purchased by the applicant, that the use will have a direct link to the agricultural community, that the use will have direct access to U.S. Route 13, a major thoroughfare, and that the Western Sussex Land Use Plan references that business activities relies on U.S. Route 13 and trucking.

The Commission found that the owner stated that the business is bulk hauling of grains, fertilizers, and feeds, that they are also a truck brokerage, that the existing facility in Seaford is not adequate for the size of the business, that the Seaford facility is used primarily for professional offices and a sales office for the trailers sales department, that the existing facility in Federalsburg, Maryland, is used primarily for truck and trailer repair and bulk storage, that the company harvest approximately 3,000 acres of corn which is placed in bulk carriers and hauled to a cannery in New York, that there are presently 15 employees in Delaware and 15 employees in Maryland, that they propose one building for professional and leasing offices, one building for truck bays and service, and a future

building for a truck washing facility, that the buildings proposed will be set back approximately 300 feet from property lines and 600 feet from the nearest residential neighbor, that one entrance will serve the entire site, that the business presently sells Merit Hopper Bottom Trailers and Raven Dump Trailers, that sales are agricultural industry oriented, that the nearest truck washing facilities are in Dover and Salisbury, that the company needs to consolidate the business activities to one site, that other business uses exist in the general area including a hair salon, day care, truck garage, and horse training facility, that the remaining acreage will be farmed, that adequate parking exist on the site, that the trailer and truck display area is proposed to be stoned, and then paved in the future, that the parking area will be crusher run or surface treatment, that the only outside storage will be for parking trailers and trucks, that security lighting will be provided, that all lighting will be directed toward the building and equipment stored outside, that combining the two existing facilities to one site will bring a total of 30 employees to Delaware, and that the business will create an additional 8 to 10 employees in the parts and sales facilities, that the hours of operation will be from 6:00 A.M. to 12:00 Midnight on weekdays, and 6:00 A.M. to 5:00 P.M. on Saturdays, that there will be no Sunday hours, except for emergencies, that no adverse impact is anticipated on property values, the neighborhood, or the health, safety, morals, convenience, order, prosperity and general welfare of the citizens of Sussex County.

The Commission found that the attorney submitted copies of the Contract of Sale for the property, the conceptual site plan, and photographs of the Seaford site, and added that it appears that the Western Sussex Land Use Plan depicts the site within a commercial district.

The Commission found that the owner, in response to questions raised by the Commission, stated that the company presently maintains 12 trucks, and 20 trailers of which 8 trailers are liquid fertilizer haulers, that the company has 2 corn harvesters, 2 tractors, and numerous other pieces of farm equipment, that all truck repairs will be performed indoors, that no public truck washing facility exist in the area, that the brokerage is a telephone operation providing contact work for 50 to 100 trucks per day in 26 states, that truckers dealing with the brokerage are private operators who do not operate from the facility, that the only trailers that will remain on the site will be trailers owned by the company, and that approximately 6 new trailers will be displayed for sale and that some used trailers may also be displayed for sale.

The Commission found that the attorney, in response to questions raised by the Commission, stated that the original application to DelDOT referenced C-1 General Commercial, that DelDOT suggested that the Department preferred a Conditional Use type of application, and that based on DelDOT's recommendation, they applied for the Conditional Use.

The Commission found that the owner added that the size of the site allows for future growth and greater setbacks, that the proposed building includes a 100' by 100' shop area and a 50' by 100' office, and that by comparison the Federalsburg building is a 80' by 100' farm equipment storage type building.

The Commission found that five (5) of the fifteen (15) people present in opposition expressed concerns relating to the residential and agricultural character of the area, that the existing commercial activities in the area are operated by resident owners, concerns relating to depreciation of property values, that 2 day care centers exist in the area and that the day care centers have school bus stops, existing traffic, that the business will draw tractor trailers driving slow in and out of the facility, that the cross over in the median of U.S. Route 13 is not adequate for truck turning, that the storage of old trucks and trailers may turn into a junk yard, noise, concerns about expansions to the facility, that the use sound more like a truckstop with trucks and trailers being repaired all hours of the day and night, that traffic will increase, concerns about pollution from sediments from the truck wash on Polk Branch, that other sites, already zoned C-1 General Commercial, exist along U.S. Route 13, that truck parts and repair facilities already exist along U.S. Route 13, that DelDOT is ducking its responsibility by suggesting a Conditional Use type of application, rather than requiring a traffic impact study for rezoning, that the application involves both C-1 General Commercial and LI-2 Light Industrial types of uses, that the Office of State Planning Coordination declined to put this application through the Land Use Planning Act review and commenting system shows a lack of coordination on the State's part to provide support comments to the County, that the site contains soil types that are considered Prime Farmland, that the Western Sussex Land Use Plan depicts the site within an Agricultural District, that the proposed Comprehensive Land Use Plan depicts the site within an Agricultural District and a Conservation District, that the use will change the character of the area and property values, that the use does not promote the area, that the use will increase congestion, that the use may be detrimental to the agricultural industry, that the use does not conform to the Land Use Plans, and that the use is an intense zoning for an area of nice homes.

The Chairman closed the public hearing.

2. RE: C/U #1172--Charles G. & Patricia A. Wagner

Charles G. Wagner and David Rutt, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Retail Sales and Professional Offices on the southwest corner of the intersection of Road 297 and Route 24, located on a parcel containing 30,950 square feet more or less.

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

Mr. Rutt advised the Commission that Dr. Wagner, a family practitioner, purchased the property in December 1995, and submitted copies of the deed and site survey, and added that the proposed building is for professional offices, i.e. lawyer, dentist, accountant, etc..., that the existing building, a former service station, will be converted to a craft and antique shop, that the soil reclamation is taking place on the site due to removal of fuel tanks, that the existing building will be renovated and will remain the same size, that the proposed building will contain one or two stories, that the area is growing in retirement age residents and there is a need for medical and professional services, that septic exist on the site for the existing building, that central water is available for the site from Public Water Supply Company, that signage will be limited to 32 square feet per side or facing, that no major increase is anticipated on traffic, that security alarms and lighting will be provided, that no adverse impact is anticipated on property values, the nature or character of the area, the health, safety, morals, convenience, order, prosperity and general welfare of the residents of Sussex County, that the owners across Route 24 intersection have voiced no objection, and that the hours of business are proposed to be 9:00 A.M. to 5:00 P.M., that the site has adequate space for parking, that they are not aware of any sight easements at the intersection, and that they are willing to landscape along Route 24 and to control access to interior drives.

Ms. Carrie Davis, an adjacent landowner, stated that the applicant has not yet spoken to her, questioned parking along her property line, requested no fencing along her property line, and stated that she supports the need for professional offices.

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 DelDOT, that a traffic impact study would be required for a rezoning, that the annual average daily traffic of Route 24 in this area is 10,449 vehicles per day and 17,130 vehicles per day as a summer average daily traffic, that the annual average daily traffic of Road 297 in this area is 966 vehicles per day, and that the Department has no objection to the County processing this application as a Conditional Use.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations, that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation, that the farmland rating of the soil type is considered of Statewide Importance, 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, 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 that the applicant and an attorney were present and that the attorney advised the Commission that the applicant, a family practitioner, purchased the property in December 1995, submitted copies of the deed and site survey, and added that the proposed building is for professional offices, i.e. lawyer, dentist, accountant, etc..., that the existing building, a former service station, will be converted to a craft and antique shop, that the soil reclamation is taking place on the site due to removal of fuel tanks, that the existing building will be renovated and will remain the same size, that the proposed building will contain one or two stories, that the area is growing in retirement age residents and there is a need for medical and professional services, that septic exist on the site for the existing building, that central water is available for the site from Public Water Supply Company, that signage will be limited to 32 square feet per side or facing, that no major increase is anticipated on traffic, that security alarms and lighting will be provided, that no adverse impact is anticipated on property values, the nature or character of the area, the health, safety, morals, convenience, order, prosperity and general welfare of the residents of Sussex County, that the owners across Route 24 intersection have voiced no objection, and that the hours of business are proposed to be 9:00 A.M. to 5:00

P.M., that the site has adequate space for parking, that they are not aware of any sight easements at the intersection, and that they are willing to landscape along Route 24 and to control access to interior drives.

The Commission found that an adjacent landowner stated that the applicant has not yet spoken to her, questioned parking along her property line, requested no fencing along her property line, and stated that she supports the need for professional offices.

The Chairman closed the public hearing.

3. RE: C/U #1173--Raab/Ford Partnership

Tom and Sally Ford, and Robert Witsil, Jr., Attorney, were present on behalf of this application to consider the Conditional Use of land in an MR Medium Density Residential District in Baltimore Hundred for Thirteen Multi-Family Units on the south side of Delaware Route 54, 313 feet northwest of Lincoln Drive within Cape Windsor, located on a parcel containing 2.48 acres more or less.

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

Mr. Lank read a letter in opposition to the application from Joan C. Rockstroh.

Mr. Witsil expressed a concern about the comments sent by the Office of State Planning Coordination and DelDOT since the State has an interest in the property for possible mitigation along Route 54 for the proposed improvements to the roadway.

Mr. Witsil stated that in 1967 the parcel was conveyed to Great Eastern, that Great Eastern subdivided the site and intended commercial uses for the site, that the site was resubdivided as Windsor North and rezoned MR Medium Density Residential, that in 1990 an application was filed for B-1 Neighborhood Business that was denied, and that the applicants purchased the site in 1993, that the applicants obtained entrance permits for the two entrances which were never constructed, that the entrance permits are now void for lack of construction, that the applicants are proposing 13 multi-family units, that the size of the site would allow a maximum of 29 units, and that the traffic calculations for single family uses and multi-family uses in the Support Facilities Report from DelDOT disagree with the comments received from DelDOT and the Office of State Planning Coordination.

Mr. Witsil submitted a copy of an August 26, 1996 letter from DelDOT.

Mr. Witsil exhibited an aerial photograph of the wetlands and the area showing Route 54.

Tom Ford described the site and general area, and the site plan.

Jay Hauck, Realtor, spoke in support of the application, and described photographs of the site and area. The photographs included photographs of Route 54, commercial uses in the area, Cape Windsor Subdivision, and multi-family uses in the area and stated that the area is a mixture of uses, commercial and residential, that the use intended is typical for the area, and that the use will be upscale of some projects in the area.

Tom Ford added that he proposes five (5) buildings which includes 3 triplexes and 2 duplexes, that the maximum multi-family density could be 12 units per acre, that the proposed density is 5.2 units per acre, that the minimum setback shall be 40 feet from the front, 10 feet from the sides, and 50 feet from State designated wetlands, that 26 parking spaces will be provided, that the subdivision of record contains 6 lots with 2 entrances, that the density proposed is lower than the density of projects in the area, that the Cape Windsor subdivision has 8.3 lots per acre, that the units will be designed with a nautical flair, that all flood plain requirements will be met, that the existing site is at or above 4' above mean sea level, that he will comply with all agency requirements, that no encroachments are proposed into wetlands, that the central sewer will be built to Sussex County Ordinance No. 38 standards and all impact fees will be paid, and that he is willing to landscape along the homes to the rear of the site.

Mr. Witsil added that the site is included in the Development District in the Coastal Sussex Land Use Plan, that the site is in close proximity to the Roxana Fire Company, and that the site is within the Indian River School District.

Mr. Ford, in response to questions raised by the Commission members, stated that the project has no access to Cape Windsor streets, that the units will contain approximately 1,650 square feet of living space, that the units will contain 2 stories, that 2 parking spaces will be created under each unit, that it may take 9 months to acquire all agency permits, and that he feels that multi-family use of the site is more appropriate than single family dwellings with 2 entrances.

Joel Leidy, Subdivision Engineer for DelDOT, stated that the existing 6 lot subdivision does not have a valid entrance permit, that part of the site contains wetlands, that the proposed causeway improvements include the possibility of this site being used for mitigation of wetlands, described the appraisal process required, and added that if the Conditional Use is approved, DelDOT will not issue an entrance permit.

John W. Weston, Patricia Ficken, Barbara Wargo, and Dan Hartman spoke in opposition to the application and expressed concerns relating to the impact on residents in the area of Cape Windsor, which has 249 properties, of which 60 are utilized year round, concerns relating to stormwater run-off and flooding, future improvements to Route 54, that the site and Route 54 adjoining the site are the first areas flooded at storm high tides, that no development should take place until the road is elevated, that the use provides additional impact on the evacuation Route, that the site is in a Conservation District in the proposed Comprehensive Land Use Plan.

Mrs. Wargo submitted a petition in opposition to the application with approximately 100 signatures.

There were 18 people present in opposition to the 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 DelDOT, that a traffic impact study is not now recommended, that the Department is generally opposed to any action that would increase summertime congestion on this section of Route 54, that the proposed townhouses are likely to generate more traffic than single family homes, that DelDOT anticipates purchasing the site as a wetlands mitigation area for planned improvements to Route 54, that DelDOT may have to pay more for the property or acquire other property if the Conditional Use approval increases the appraised value of the property, therefore the cost to DelDOT and therefore the public would be higher, and that the Department recommends that the County simply deny the application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Klej loamy sand and Tidal marsh, that the Klej soils have slight limitations, that the Tidal marsh has severe limitations, that

the applicants will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation, that the farmland rating of the Klej soils is of Statewide Importance and a Hydric soil in depressions, and the Tidal marsh is a Hydric soil, that a storm flood hazard area may be affected and that flooding may be severe, that it will be necessary for some on-site and off-site drainage improvements, that no tax ditch is affected, that the Tidal marsh soils are usually saturated with water, and when Tidal marsh soils dry, they may shrink by 30 to 40 percent by volume.

The Commission found that the Office of State Planning Coordination forwarded this application through the Land Use Planning Act review and commenting system.

The Commission found, based on comments received from the Office of the State Planning Coordination, that the Office and other state agencies have reviewed the application, that the State objects to the application since DelDOT intends to purchase the parcel as a wetland mitigation site to use the site to create wetlands to replace wetlands the Department expects to impact when it improves Route 54 from Road 58-C to Delaware Route One, that approval of the Conditional Use would likely increase the appraised value of the property, that a higher appraisal would place the State in an awkward position of either paying more for the parcel or acquiring other less desirable property, that the proposed townhouses are likely to generate more traffic on roads which are already heavily congested during summer months, that the site is subject to periodically throughout the year, that this roadway is impassable at many times of the year, that the soils on the site do not support construction, that placing 13 possible townhouses would certainly exacerbate the flooding problem in this area, that any development in the floodplain is subject to County floodplain management regulations, that a public safety concern is increasing the number of persons living in a flood prone area with known evacuation hazards, that there are two inactive and two active leaking underground storage tank projects within about a one mile radius of the site, that although the Division of Historical and Cultural Affairs has not inventoried this parcel, there is some potential for a prehistoric archaeological site in the higher areas, and that the Division would be happy to meet with the project manager to discuss the actual siting of the project to help minimize any potential adverse effects on archaeological properties in the area.

The Commission found, based on comments received from the County Engineering Department, that the proposal is located in the Fenwick Island Sanitary Sewer District, that there is currently a 6 inch sanitary sewer lateral serving the property,

that the 6 inch sanitary sewer lateral is not sufficient to serve the proposed project, that infrastructure to serve the project must be constructed by the developer in accordance with Ordinance No. 38 procedures, that the tie-in into the existing sewer main must be made on the south side of Route 54, that there is capacity available for the 13 units, and that the proposed project will also be responsible for system connection charges (impact fees).

The Commission found that a resident of Cape Windsor sent a letter in opposition and expressed concerns relating to the triangular shape of the parcel which is partially occupied by wetlands and on a floodplain that overflows each time Route 54 floods out, that this causes detours and/or bottlenecks of traffic as drivers try to pass one lane at a time, that the property has no ingress/egress to Cape Windsor and that Route 54 is its only access, that traffic is already overcrowded, that Route 54 is an evacuation route for use in emergencies, that the project would compound the traffic, questioning where parking of vehicles and boats with trailers would take place, questioning the impact on the adjacent bird sanctuary by additional population created by the project, questioning the impact on the neighbors in Cape Windsor, and questioning the impact on the wetlands.

The Commission found that the application was represented by two of the applicants and an attorney.

The Commission found that the attorney expressed a concern about the comments sent by the Office of State Planning Coordination and DelDOT since the State has an interest in the property for possible mitigation along Route 54 for the proposed improvements to the roadway, and stated that in 1967 the parcel was conveyed to Great Eastern, that Great Eastern subdivided the site and intended commercial uses for the site, that the site was resubdivided as Windsor North and rezoned MR Medium Density Residential, that in 1990 an application was filed for B-1 Neighborhood Business that was denied, and that the applicants purchased the site in 1993, that the applicants obtained entrance permits for the two entrances which were never constructed, that the entrance permits are now void for lack of construction, that the applicants are proposing 13 multi-family units, that the size of the site would allow a maximum of 29 units, and that the traffic calculations for single family uses and multi-family uses in the Support Facilities Report from DelDOT disagree with the comments received from DelDOT and the Office of State Planning Coordination.

The Commission found that the attorney submitted a copy of an August 26, 1996 letter from DelDOT.

The Commission found that the attorney exhibited an aerial photograph of the wetlands and the area showing Route 54.

The Commission found that Tom Ford, one of the applicants, described the site and general area, and the site plan.

The Commission found that a Realtor spoke in support of the application, and described photographs of the site and area. The photographs included photographs of Route 54, commercial uses in the area, Cape Windsor Subdivision, and multi-family uses in the area and stated that the area is a mixture of uses, commercial and residential, that the use intended is typical for the area, and that the use will be upscale of some projects in the area.

The Commission found that Mr. Ford added that he proposes five (5) buildings which includes 3 triplexes and 2 duplexes, that the maximum multi-family density could be 12 units per acre, that the proposed density is 5.2 units per acre, that the minimum setback shall be 40 feet from the front, 10 feet from the sides, and 50 feet from State designated wetlands, that 26 parking spaces will be provided, that the subdivision of record contains 6 lots with 2 entrances, that the density proposed is lower than the density of projects in the area, that the Cape Windsor subdivision has 8.3 lots per acre, that the units will be designed with a nautical flair, that all flood plain requirements will be met, that the existing site is at or above 4' above mean sea level, that he will comply with all agency requirements, that no encroachments are proposed into wetlands, that the central sewer will be built to Sussex County Ordinance No. 38 standards and all impact fees will be paid, and that he is willing to landscape along the homes to the rear of the site.

The Commission found that the attorney added that the site is included in the Development District in the Coastal Sussex Land Use Plan, that the site is in close proximity to the Roxana Fire Company, and that the site is within the Indian River School District.

The Commission found that Mr. Ford, in response to questions raised by the Commission members, stated that the project has no access to Cape Windsor streets, that the units will contain approximately 1,650 square feet of living space, that the units will contain 2 stories, that 2 parking spaces will be created under each unit, that it may take 9 months to acquire all agency permits, and that he feels that multi-family use of the site is more appropriate than single family dwellings with 2 entrances.

The Commission found that Joel Leidy, Subdivision Engineer for DelDOT, stated that the existing 6 lot subdivision does not have a valid entrance permit, that part of the site contains

wetlands, that the proposed causeway improvements include the possibility of this site being used for mitigation of wetlands, described the appraisal process required, and added that if the Conditional Use is approved, DelDOT will not issue an entrance permit.

The Commission found that 4 of the 18 people present in opposition spoke and expressed concerns relating to the impact on residents in the area of Cape Windsor, which has 249 properties, of which 60 are utilized year round, concerns relating to stormwater run-off and flooding, future improvements to Route 54, that the site and Route 54 adjoining the site are the first areas flooded at storm high tides, that no development should take place until the road is elevated, that the use provides additional impact on the evacuation Route, that the site is in a Conservation District in the proposed Comprehensive Land Use Plan.

The Commission found that one of the opponents submitted a petition in opposition to the application with approximately 100 signatures.

The Chairman closed the public hearing.

4. RE: Subdiv. #96-16--Dale Wheatley

Dale Wheatley, developer, and Don Miller, surveyor, were present on behalf of this application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 47.66 acres into 48 lots, located on the north side of Road 483, 1,360 feet southeast of Road 484.

Mr. Abbott summarized the Technical Advisory Committee Report of October 16, 1996, and comments received from the State DNREC Division of Parks and Recreation Land Preservation Office and Greenways, the State DNREC Wetlands and Subaqueous Lands Branch, the Historic Preservation Planner of the County Engineering Department, and the State of Delaware Department of Agriculture.

Mr. Abbott read letters in opposition to this application from David A. Pepper and John T. and Karen Pepper, David A. and Laura Pepper, and Cecil A. Pepper.

Mr. Miller advised the Commission that the applicant has already reduced the size of the subdivision from 1/2 acre lots to 1 acre lots, that all lots have an average of 1 acre, that the site is wooded, that the minimum dwelling size will be 1,200 square feet, that the developer must approve the design of all dwellings and outbuildings, that there will be a stormwater

management pond located on site, that a 30 foot forested buffer will be retained from agricultural lands, and that there will be no further subdivision of the property.

Mr. Wheatley advised the Commission that he purchased the property from the Conaway Estate, that he has owned the land for approximately six months, that he purchased the land for development, and that the land will be improved by the clearing of junk and tires presently located on the site.

No one was present in support of this application.

Jane Timmons an area resident spoke in opposition to this application stating that within a two mile radius there are 93 homeowners, that in the spring of 1996 there was an attempt to burn the tires on site, expressed concerns about negative impacts to the environment, that the existing condition of the roads may not support traffic increases, safety of the children and elderly in the area, that there is no recreation areas proposed for the subdivision, that the subdivision has only one proposed entrance and exit, negative impacts on the Nanticoke Watershed, that the soils in the area are somewhat less suitable for septic systems, that there is no need for another subdivision in the area since there are existing lots in the area available, that Waterview Acres is 45 percent vacant, that Seipp development is 15 percent vacant, that Evans subdivision is 70 percent vacant, and that the strip lots on the Road 483 and Road 484 is 33 percent vacant, that the area is a quiet farming community with low density, referenced possible property value depreciations, that residents hunt in the area, that there is an Historic registered cemetery with 11 known grave sites on the property, that there are possible Indian artifacts and grave site in close proximity to the proposed subdivision, that there are seven additional strip lots existing on Road 483, requested buffer strips, requested that an environmental and traffic impact study be done, requested buffers around wetlands and the stormwater management area, submitted requested restrictions if approved, requested that this application be denied, and submitted a petition with 187 signatures within a 2 mile radius of people who are opposed to this application.

Raymond Knett, a resident of Road 484, spoke in opposition and stated that the area is rural with a mix of working couples and retirees, that the area is made up mostly of families living close to one another, that agricultural land needs to be protected, that there are available lots in the area, that after the subdivision is completed the developer will be gone, questioned the soil limitations for septic systems and the possibility of contamination to wells, the possible loss of water pressure, and stated that the application should be denied.

John Pepper, an area resident, submitted written comments and spoke in opposition since the area is predominantly agriculture, that strip development should be eliminated, negative impacts to wells, that there are three farm irrigation systems that are used in the area, and that the proposed subdivision impacts the adjoining Agricultural Preservation District.

David Fees, President of the Nanticoke Watershed Preservation Committee, submitted written comments and spoke in opposition stating that the location of the proposed development is away from the existing community, that it is not compatible to the rural area, and expressed concerns about septic systems being located near Fleetwood Pond.

There were 46 people present in opposition to this application.

The Chairman closed the public hearing.

5. RE: Subdiv. #96-17--Dale Wheatley

Dale Wheatley, developer, and Don Miller, surveyor, were present on behalf of this application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 80.27 acres into 88 lots, located on the north side of Road 545, 1,380 feet northwest of Road 594.

Mr. Abbott summarized the Technical Advisory Committee Report of October 16, 1996, and comments received from the State of Delaware Department of Agriculture, the State DNREC Division of Parks and Recreation Land Preservation Office and Greenways, the State DNREC Wetlands and Subaqueous Lands Branch, and from the Sussex County Engineering Department Historic Preservation Planner.

Mr. Miller advised the Commission that the developer will comply with the recommendations of the Technical Advisory Committee, that a 30 foot forested buffer will be provided along agricultural lands, that the minimum lot size is 1/2 acre, that the site is a continuation of the strip lots along the public road, that Tidewater Utilities will provide a central water system, that individual septic systems are proposed, and that as of this date, no septic feasibility report has been received from DNREC.

Mr. Wheatley advised the Commission that the existing restrictions for Morningside Village which is across the road will apply to this subdivision also.

There were no parties present in support of this application.

Pam Bixby, owner of lot 20, spoke in opposition due to increases in traffic, that the developer has no power in enforcing the deed restrictions in the existing Morningside Village, that the area is rural, that property values will depreciate, and that she was misled by a Nanticoke Home sales representative.

David Fees, President of the Nanticoke Watershed Preservation Committee, spoke in opposition stating that the subdivision is not compatible with the agricultural area, and septic impacts on the water.

Barbara Shaloka, an area resident, spoke in opposition due to increases in traffic, that the shoulders would need improvements, and that there are available lots in Walkers Mill Mobile Home Park, Country Glen and Knot's Landing subdivisions.

There were 14 people present in opposition to this application.

The Chairman closed the public hearing.

It was the consensus of the Commission that the public hearings for Subdivision #96-18, Subdivision #96-19, and Subdivision #96-20 be continued at a later date.

Meeting adjourned at 12:15 A.M.