



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF FEBRUARY 26, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 26, 2009 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. C. Shane Abbott – Assistant Director, and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of February 12, 2009 as amended, and the Minutes of February 18, 2009 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1764 – application of **BUCHANAN DEVELOPERS, INC.** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (7 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.61 acres, more or less, lying east of Route One, 300 feet north of Route 361-A.

The Commission discussed this application which has been deferred since February 12, 2009.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1764 for Buchanan Developers, Inc. for multi-family dwelling structures based upon the record made at the public hearing and for the following reasons:

1. The project is located within the Environmentally Sensitive Developing Area and Town Center Area according to the 2003 and 2008 Updates to the Comprehensive Plan.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. The project is located within a Sussex County Sanitary Sewer District.

4. The project is consistent with surrounding properties that have already developed with other residential and commercial uses.
5. This project is identical to one that was approved by the Planning and Zoning Commission and County Council in 2003.
6. This recommendation for approval is subject to the following conditions and stipulations:
 1. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring residential properties.
 2. The maximum number of residential units shall not exceed 7 single family condominium units.
 3. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
 4. The project shall be served as part of a Sussex County Sanitary Sewer District.
 5. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable statutes and regulations.
 6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 7. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission and shall contain a landscape plan for the project.
 8. Construction, site work, grading and deliveries of construction materials, etc., to the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday.
 9. Street naming and addressing shall be subject to the Mapping and Addressing Department.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Robertson advised those present as to how the public hearings would be conducted.

C/Z #1632 – application of **PELICAN LANDING – ROUTE 24, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying northwest of Route 24, 800 feet east of Road 279 (Camp Arrowhead Road), to be located on 14,549 acres.

The Commission found that prior to the meeting the Applicants provided an Exhibit Booklet that contains an executive summary; a project overview with a boundary survey, an overview of current site conditions, and references to the Preliminary Land Use Service (PLUS) comments; references to compliance with zoning regulations with references to B-1 Neighborhood Business and ES-1 Environmentally Sensitive Development District Overlay Zone; 29 Figures (maps, letters, reports, and renderings), a resume of Jason Palkewicz, P.E., and proposed Findings of Fact.

The Commission found that the Department had received 4 letters from DelDOT in reference to this application, that the letters, dated January 28, 2008, June 13, 2008, November 7, 2008, and January 8, 2009 are a part of the record, and that the latest letter, dated January 8, 2009, references in summary that the letter is for entrance location only and does not authorize commencement of entrance construction; that the entrance location for this site is contingent upon the developer acquiring the necessary right-of-way for the entrance and roadway improvements; that the parcel shall have two (2) access points along Route 24; that the northern entrance shall be full access directly across from Davidson's Way and the southern entrance shall only be a rights-in/rights-out; that a building permit for this parcel shall not be issued until the Route 24 entrance and roadway improvements plans have been approved by the Department and all the required rights-of-way/easements have been acquired and the acquisition deeds recorded in the Sussex County Recorder of Deeds Office; that a Certificate of Occupancy for this parcel shall not be issued until all the Route 24 entrance and roadway improvements have been completely constructed and final inspected and approved by the South District Permit Supervisor and all monetary contributions have been received from the owner/developer to the Department towards Contract 27-112-01; that all off-site improvements shall be per the final Traffic Impact Study letter prepared by McCormick Taylor, dated June 13, 2008; that the owner/developer shall enter into an agreement with DelDOT to contribute \$200,000 towards Contract 27-112-01; Route 24 – Route 30 to Love Creek Bridge; and that entrance and roadway improvements plans shall be developed in accordance with the Department's rules and regulations prior to entrance approval.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that wastewater capacity is available and allocated for up to 49.96 EDU; that Ordinance 38 construction will be required; that the System Connection Charge Rate has not yet been established and will be calculated at a future time; that sewer service has not been extended to the parcels at this time; that the parcels are capable of being annexed into the Angola Neck Sanitary Sewer District if additional area is included; that conformity to the North Coastal Area Planning Study will be required; that the project is located in the Environmentally Sensitive Developing Area and the Angola Neck Planning Area; that connection to the sewer system is mandatory, and the best opportunity for near-term service would be a developer driven project to install regional infrastructure to connect to the District; that to proceed with annexation into the District, the developer shall coordinate with the Utility Planning Division; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specification; that a sewer concept plan must be submitted for review and approval prior to the design of the sewer system; and that a concept plan is required.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains 4 soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation upon completion of construction; that no storm flood hazard areas are affected; that off-site drainage improvements are not likely; that on-site drainage improvements depend upon the scope of the project; and that no tax ditches are affected.

The Commission found that PLUS comments and the Applicants response to the PLUS comments are a part of the Exhibit Booklet, and that based on a February 26, 2009 letter from the

Office of State Planning Coordination referencing this project, the Office advises that their original comments noted that this project is located in a Levels 2 and 3 according to the Strategies for State Policies and Spending; that this is incorrect; that the project is actually located completely in a Level 3 area; that their comments remain that these areas are where the State anticipates future growth but because it is within the Environmentally Sensitive Developing Area it is expected that special consideration be made to lessen the environmental impacts of the development to the Inland Bay Watershed; that the State DNREC has requested a copy of the consultant's report regarding Rare Species and what methods were used to determine that the site does not contain species of conservation concern; that the State recognizes that the developer has pulled the wet pond out of the design, as requested, and is reviewing Green technology initiatives for these areas and we appreciate the efforts in this area; that the developer response states that the revised design has reduced the amount of necessary tree clearing, however a review of the new site plan shows that the area where the stormwater management pond was is not parking so it is unclear how the footprint was reduced; and that the State urges the County to review the differences in the site plan to determine if there are ways that the site plan could be changed to lessen the impacts on the surrounding environmental features.

The Commission found that Jim O'Hara, Jr. of Jim O'Hara Realty, LLC submitted a support letter referencing that he represents the Applicants in their efforts to find tenants for this project and feels that they have considerable interest from several tenants for the property; and that he is hopeful that they will be successful in getting these tenants to commit to the site.

The Commission found that letters in opposition to the application have been received from Charles C. Minter, William L. Fink and Donna Fink, Tim Tenerovich, E.J. Allman, Mr. and Mrs. Walter Reed, and the O'Neill family and that the letters, in summary, express concerns that they object to the rezoning and have major concerns about the quality of life that zoning change would bring to the peace and tranquility that they now enjoy; that they have a quiet area unaffected by those items that are proposed by this development and referencing water well supply and the potential effect it has on water wells, placement of sanitary sewage facilities and disposal areas, visual impacts as caused by this project on local residents, stormwater runoff problems and flood control, effect on existing wetlands, area lighting, delivery trucks, building signage, increased traffic and noise, refuse disposal and vermin control, food/trash odors, parking, impact on local wildlife and natural resources, negative impact to adjacent homeowner's property values, potential vandalism and security issues; questioning if the Applicants have had an Environmental Impact Assessment performed and if a copy is available; that the neighboring area is a beautiful pristine area and deserves to be protected from conversion to a commercial area; questions why anyone would put a project of this type so close to Camp Arrowhead Road, where the traffic is already overwhelming; concerns about the increase in accidents; that there are already numerous shopping centers in the general area; that there are 19 neighborhood stores within a stones-throw of the area; that getting out onto Route 24 is difficult due to existing traffic; and questioning the buffer width from wetlands.

The Commission found that Mark Handler and Randy Mitchell were present on behalf of Pelican Landing – Route 24, LLC with Dennis Schrader, Attorney, of Wilson Halbrook & Bayard, P.A., and Jason Palkewicz, P.E., and Holly Hearne, E.I.T. of McCrone, Inc. and that Mr. Schrader and Mr. Palkewicz stated in their presentations and in response to questions raised by the

Commission that they started working on the application almost 3 years ago; that they have recently removed a dwelling from the site; that the application contains five (5) parcels; that a plumbing business existed on one of the parcels at one time; that they are proposing to develop the site with retail, office, and service type uses on the site to serve this growth area; that there are 29 Figure Sections in the Exhibit Booklet and specifically referenced: Figure 4 – Comments on the Traffic Impact Study from McCormick Taylor; Figure 10 – Wetlands letter from Environmental Resources, Inc.; Figure 15 – a soils map; Figure 17 – a FEMA map; Figure 18 – the original PLUS submittal site plan; Figure 19 – the original PLUS review letter from the State Planning Coordination Office; Figure 20 – the response letter to PLUS from McCrone, Inc.; Figure 22 – a Nutrient Loading Report; Figure 25 – a DNREC Natural Heritage & Endangered Species letter; Figure 26 – a U.S. Fish and Wildlife Service letter; and Figure 27 – a copy of the Pelican Landing Open Space Management Plan; that the basis of a Environmental Assessment Report is contained in these Figures; that they are not creating any streets; that Tidewater Utilities will be providing water service; that this area of Route 24 is growing into a commercial corridor; that the use intended will be an infill of the commercial area between Windswept Farms and Peddlers Village; that there are 1,300 to 1,800 homes in or proposed in the area; that this site will be served by a County sewer district; that development in this area is on-going; that a need exists for retail shopping and services uses in the area; that the use will be a benefit to the residential area and reduces vehicular travel time for area residents, not requiring them to travel to Millsboro and the outlets at Rehoboth and Lewes; that the area contains single family lots, mobile home parks, commercial and business uses and recreational features; that they realize that the site plans being submitted are non-binding, but are exhibited to show the maximum potential of the site; that they do not anticipate developing the site at the maximum potential; that they have completed the Traffic Impact Study based on DelDOT recommendations; that DelDOT has suggested that they will be permitted two entrances, one full movement and one with rights-in and rights-out; that a small portion of the site is located in an wellhead protection area where DelDOT wants the entrance located; that an extra stormwater management area is being proposed near the DelDOT entrance due to the wellhead protection area; that the central sewer will help eliminate 4 septic systems; that the wetlands line has been re-delineated showing both tidal and upland wetlands; that the map in Figure 8 indicates that the use will be an infill; that they are proposing a minimum 50-foot wide buffer from State wetlands that is further than 25-foot from non-tidal wetlands; that the site will be improved with landscaping and a multi-modal path; that the site will be re-subdivided from 5 parcels into 2 parcels, one for the shopping center and one for a bank; that the shopping center will not exceed 75,000 square feet; that they could not respond to the PLUS comments until they received an answer from DelDOT on their Traffic Impact Study; that interconnectivity to neighboring sites is not likely; that by providing central water and central sewer there should be no effect on neighboring properties; that all stormwater management will be maintained on-site; that the site is adjacent to commercial uses, commercial uses, and conditional uses making the site appropriate for such use; that the use is consistent with the Comprehensive Plan Update; that the use conforms to the Environmentally Sensitive Developing District Overlay Zone requirements; and that the use conforms to the permitted B-1 Neighborhood Business District uses.

The Commission found that Terry Simmons spoke in support of the application and stated that traffic is a problem in this area, but the use creates a benefit for shopping access for local residents with less travel distances.

The Commission found that Gene O'Neill, William and Donna Fink, Tom O'Neill, Charles and Carol Minter, Sandy Spence, and Tom Tenerovich spoke in opposition to this application and stated that the parcel backs up to some of their properties; that they are concerned about the loss of trees; that they purchased their properties knowing the existing zoning; that they are concerned about run-off from the parking lots; that recent in-fill projects have been subdivisions not commercial uses; that they are concerned about noise pollution, lighting pollution from vehicles and parking lot lighting, odors, traffic increases, and depreciation of property values; that there are 15 sites within ½ mile to shop; that Route 24 is an evacuation route; that they are concerned about commercial wells impacting their private wells; that they are concerned about large septic systems impacting the water table; that they object to the minimal time that they have had to review the record; that the entrance location will cause backups on Route 24; that a shopping center will not improve their residential property values; that more information needs to be placed on the County website for review of projects; that development of this site will impact the birds and other wildlife in the area; that there should be a minimum buffer of 100-feet as recommended by DNREC; that they may not object to the frontage along Route 24 being rezoned, if the wooded rear portion of the site is left natural to protect the wildlife; that the use is not compatible with the residential character of the adjacent residential area; that this application will turn 15 acres into pavement; that they oppose the size of the rezoning; that traffic is the major concern; that they oppose the scale of the project; that the project will impact Route 24, a Collector Route; and that the State does not support development in Investment Level 3 areas.

The Commission found that Evelyn Ballo stated that she is in support of the application; that a need exists in the area for small shops, a drug store, and convenience shopping; and that she agreed with the objectors that the buffer should be left undisturbed.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1633 – application of **HERTRICH PROPERTIES V, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, land lying at the southwest corner of U.S. Route 13 and Road 485 (O'Neals Road), to be located on 2.708 acres, more or less.

The Commission found that prior to the meeting the Applicant provided an Exhibit Booklet that contains an executive summary, site data, a deed to the property, a site plan, Preliminary Land Use Service (PLUS) comments, a response letter to PLUS from G. Matthew Dean, P.E., an aerial photograph of the site, a Site Evaluation by Atlantic Resource Management, Inc. and photographs of the site.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Blades Planning Area #2; that the

Division realizes that an individual on-site septic system is proposed; that the use is not capable of being annexed into a Sewer District; that the proposed project is not in an area where the County has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains two (2) soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas affected; that there are no tax ditches affected; that it may be necessary for some off-site drainage improvements; and that on-site drainage improvements depends upon the amount of impervious surface and the scope of the project.

The Commission found that the Department received a copy of the PLUS comments and that they are a part of the record submitted by the Applicant in the Exhibit Booklet.

The Commission found that Frederick Hertrich was present with James Sharp, Attorney, and Al Guckes, P.E. and that they stated in their presentations and in response to questions raised by the Commission that the site contains two (2) parcels with a triangular shape at the corner of U.S. Route 13 and O'Neals Road; that the site presently is improved with three (3) billboards; that they intend to utilize the site for vehicles sales and storage; that they anticipate that they can store 110 vehicles on the site; that a 4,500 square foot building is proposed; that they anticipate three (3) to five (5) employees; that the site is directly across U.S. Route 13 from other sites utilized by the Applicant for automotive sales and service; that the site is in close proximity to other commercial and business uses; that the use is an expansion of an existing use, even though it is across U.S. Route 13; that DelDOT did not require a Traffic Impact Study; that no additional entrances are proposed on U.S. Route 13; that the Applicant is prepared to work with DelDOT on right-of-way dedications; that Best Management Practices will be utilized in maintaining stormwater management features; that two (2) ponds are proposed to the rear of the site and that they create a buffer from neighboring properties; that septic has been approved for the site; that a 20-foot wide landscape corridor buffer will be provided; that this site is the only corner of the intersection of U.S. Route 13 and O'Neals Road that is not zoned commercial; that the rezoning could be interpreted as an infill; that other commercial/business uses in the area include an insurance office, an automotive body shop, automotive and truck sales, a radio station, a tractor sales and rental facility, etc.; that the site is limited in size; that the site is already being used commercially by the use of the billboards; that the site has been used to display trucks for sale; that the only entrance to be used to access the site will be from O'Neals Road; that there are no wetlands on the site; that they have not yet submitted a formal entrance plan for the site to DelDOT since they do not have the necessary zoning; and that the primary use of the site is for the storage of vehicles.

The Commission found that Janki Ramnath, a property owner to the north of O'Neals Road, stated that he is not for or against the application, but expressed concerns about a tax ditch in close proximity to the site; that in major storm event all of the water from the existing automotive sales facilities across U.S. Route 13 ran through the ditch across U.S. Route 13 and flooded his property causing the loss of his chicken flocks; that he is concerned that people will complain about the dust and odors from his chicken farm; that he would prefer an entrance on

U.S. Route 13, rather than an entrance onto O'Neals Road; and that alarms are always going off at the existing automotive sales facilities in the middle of the night.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action and to leave the record open for receipt of the final PLUS response. Motion carried 5 – 0.

Mr. Lank advised the Commission that the Applicants have requested that the applications for C/Z #1661 and C/Z #1662 be presented with one presentation, and acknowledges that they realize that the decisions for each application must be made separately.

C/Z #1661 – application of **WAYNE BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 30, 2,300 feet north of Road 319 and south of railroad, to be located on 9.03 acres, more or less.

C/Z #1662 – application of **WAYNE BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 30, 1,200 feet north of Road 319 and 300 feet south of railroad, to be located on 19.02 acres, more or less.

The Commission found that the Applicant had submitted an Exhibit Booklet prior to the meeting that contains references to the project team, qualifications of Mark H. Davidson and Design Consultants Group, L.L.C. (DC Group), and DCG Environmental Services, Inc., a copy of the application forms for the rezoning requests, surveys and deeds of the properties, a rezoning plot, a response to the Preliminary Land Use Service from DC Group on the PLUS comments, DelDOT comments on the entrance location, and a series of maps and aerial photographs.

The Commission found that DelDOT had responded with Support Facilities Reports for both application, that Traffic Impact Studies were not recommended; that the existing Level of Service "C" will not change as a result of these applications; that the Department has also commented that they have reviewed a site plan for the sites and has no objections to the entrance location; that all lots shall have access from the internal street and that direct access to Route 30 from the lots will not be permitted; that maintenance of the street within this site will be the responsibility of the developer, the property owners or both; that the State assumes no responsibility for the future maintenance of the street; that a "Letter of No Objection" shall be required from DelDOT for each parcel prior to final site plan approval by the Planning and Zoning Commission; and that entrance plans shall be developed in accordance with the Department's rules and regulations prior to an entrance approval.

The Commission found, based on comments received from the Sussex Conservation District, that there are 2 soil types on the site of the application for C/Z #1661 and 5 soil types on the site of the application for C/Z #1662; that no storm flood hazard areas or tax ditches are affected by the

applications; that it is not likely that off-site drainage improvements will be necessary; that there may be a possibility that on-site drainage improvements will be required.

The Commission found that the PLUS comments received from the Office of State Planning Coordination are a part of the Exhibit Booklet presented by the Applicant.

The Commission found, based on comments received from the Sussex County Engineering Department Utility Planning Division, that the sites are located in the North Coastal Planning Area; that on-site septic systems are proposed; that conformity to the North Coastal Planning Area Study will be required; that the parcels are not in an area where the County currently plans to provide sewer service; and that a concept plan is required.

The Commission found that a letter was received from Jordan L. Reynolds, a property owner living across Route 30 from the site, in support of the application and referencing that the order that the Applicants run their business has far exceeded their expectations of a company of that nature; that they are aware that a petroleum business can often bring negative effects to a community including noise, odor, and various aesthetic issues; that the Applicants have not fallen into this stereotype; that for the amount of traffic the business has, the upkeep on the property is superb; that the Applicants attract no negative attention and it seems to be a very well run business; that they support the application; that they see no reason why the Applicants would allow anything short of a high quality business to call their property home; that they would much rather have an industrial zoning than a residential or other zoning; that allowing more businesses into the area means more jobs, and jobs are needed more than ever; that even if it is several years before jobs are created, it is much more of a positive movement than flooding the market with more housing lots; that the Applicants have earned their trust when it comes to their property use; that they have no doubt that their use for this property will be one that is beneficial for the community, the economy, and the environment; and that the Applicants have our utmost support moving forward in the zoning change of their property.

The Commission found that Wayne Baker, Mark Baker and Matt Baker of Wilson Baker, Inc. were present with Mark Davidson of DC Group and stated in their presentations and in response to questions raised by the Commission that the site for C/Z #1661 contains 9.03 acres that was approved in 2005 for a Conditional Use for a propane, kerosene, diesel fuel storage and transfer facility; that the site for C/Z #1662 contains 19.02 acres surrounding a State Emergency Operations Tower; that both sites are proposed to rezoned from AR-1 Agricultural Residential to HI-1 Heavy Industrial; that the site for C/Z #1661 adjoins the railroad; that both sites have frontage along Route 30, a State designated truck route; that the adjoining property to the west is in agricultural use and is separated from the sites by a hedgerow; that the sites drain from the north to the south; that the southerly portion of the site for C/Z #1662 is wooded to Pemberton Branch; that 0.78 acre of wetlands exists along Brittingham Branch; that they are conceptually proposing 4 pad sites, containing 2 to 3 acres each, on the site for C/Z #1662; that a railroad spur is proposed to serve the pad existing site and the pad sites; that a 30-foot wide buffer is proposed along the agricultural lands to the west; that the sites are located adjacent to an Investment Level 3 Area according to the State Strategies; that the County Comprehensive Plan Update designates the sites in a Town Center Area; that DelDOT has voiced no opposition to the applications; that the entrance to the existing facility has already been built to DelDOT specifications and that

DelDOT has issued a "Letter of No Objection" to the proposed access service road; that the proposed stormwater management area is in an upland area to the southerly end of the site for C/Z #1662 and will be built to meet or exceed State and County regulations and that Best Management Practices will be utilized; that they have no intent to disturb any wooded areas; that the soils are conducive to infiltration; that a Flood Zone A exists to the south of the site outside of any disturbance areas; that they will work with the State Fire Marshal's Office; that on-site septic disposal is proposed on each pad site and will be located between Route 30 and the service road creating a greater setback for any buildings; that the State Department of Agriculture supports the application since it is located in a growth area; that it is hard to find property with industrial zoning for sale in the County; that this site has been found to be suitable due to the truck route and the railroad; that the use will enhance economic opportunities and job growth; that the location of the site being situated south of the railroad, west of Route 30, a truck route, with a large communication tower to the south is not suitable for residential use; that the Coastal Zone Act boundary is located east of Route One; that they established the use on the site of C/Z #1661 in 2005 and recently realized that to expand the use they may have to re-apply for another Conditional Use; that they need room to expand; that all agencies can require changes; that rezoning eliminates the need to keep coming back for additional hearings before the Commission and the County Council; that the agricultural hedgerow will remain intact; that a 30-foot wide buffer will be provided along the hedgerow; that 60-foot will be dedicated for a railroad spur line into the properties; that wetlands have been delineated and will be left undisturbed; that they have met with the Economic Development Office for Sussex County and are planning a meeting with the Economic Development Office for the State; that there are unknowns related to Conditional Use project and businesses do not like to commit to a Conditional Use project; and that they intend to operate their business on this site long term.

Mr. Robertson advised the Commission that HI-1 Heavy Industrial zoning is set up in three (3) tiers: permitted uses, permitted manufacturing uses subject to the County Board of Adjustment and potentially hazardous uses that are also subject to the County Board of Adjustment.

The Commission found that there were no parties present in support of this application.

The Commission found that Deborah Schultz was present, not in support or in opposition, with some concerns and stated that it makes sense to create industrial sites along railroads and truck routes; that she is concerned that the site was placed in a growth area without public knowledge; that she is concerned that the parcels and neighboring parcels are prime agricultural lands; that she is concerns about the impact on rare and endangered species in the area; that she would like to see the low lands along Pemberton Branch be protected since it is on the Natural Inventory List and placed in a conservation easement; and that she feels that the Comprehensive Plan was amended prior to adoption to benefit the developer.

The Commission found that Ms. Schultz submitted written comments for the record.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action on C/Z #1661 and to leave the record open until receipt of the final response from PLUS.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action on C/Z #1662 and to leave the record open until receipt of the final response from PLUS.

Meeting adjourned at 9:40 p.m.