



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF MARCH 22, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 22, 2007 in the County Council Chambers, County Administrative Office Building, 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. 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 March 8, 2007 and March 22, 2007 as circulated. Motion carried 5 – 0.

#### \* DISCUSSION ONLY \*

The Commission discussed a February 26, 2007 memorandum prepared by Mr. Lank in reference to a February 16, 2007 letter from DelDOT in reference to the following applications:

- C/Z #1615 – North Milton Development Group II
- C/Z #1616 – North Milton Development Group II and 1630 Ventures L.L.C.
- C/Z #1617 – North Milton Development Group I and North Milton Development Group II
- C/Z #1618 – North Milton Development Group II and 1630 Ventures L.L.C.
- C/U #1724 – North Milton Development Group II
- C/U #1725 – Harry Isaacs, Jr.

Mr. Lank summarized the memorandum by reminding the Commission that on January 25, 2007 the Commission deferred action on the referenced change of zone applications and left the record open for final comments from DelDOT on the traffic impact study for the project and then upon receipt of the final comments to leave the record open for 15 days for written comments from the public on the traffic impact study comments only;

that DelDOT had advised that the developer's traffic engineer, The Traffic Group, is preparing a traffic impact study which is expected to be received within a few weeks; that the letter further stated that "DelDOT does not object to Sussex County approving the rezoning and conditional use applications with a stipulation. That stipulation is that this development may move forward through the County approval process to include but not exceed the number of dwelling units that would not require a traffic impact study (214 dwelling units if all are single family detached houses, a somewhat higher number if other dwelling unit types are included. Additional, the number of units permitted must include a proportional number of MPHUs. Upon completion of the traffic impact study and County acceptance of the recommendations for traffic improvements, the developer

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may proceed with the remainder of the units including the remainder of the MPHUs"; that the memorandum was prepared so that the Commission may decide whether the letter from DelDOT satisfies the reasons for deferral so that we can announce the receipt of the letter during a public meeting of the Commission and then proceed with leaving the record open for 15 days for the referenced written comments or that the Commission may decide to wait for final comments from DelDOT on the traffic impact study and then to leave the record open as referenced.

The Commission discussed the memorandum and the options.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to wait for DelDOT's final comments on the traffic impact study for all six applications. Motion carried 5 – 0. The staff was asked to check with DelDOT for a status report on the traffic impact study and to question when we may receive the comments.

## PUBLIC HEARINGS

Mr. Robertson summarized the process and procedures for the public hearings.

**C/U #1680** – application of **SAMIR GHABAR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a business park to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.2905 acres, more or less, lying southeast of Shady Road (Road 276), 400 feet northeast of Plantations Road (Road 275).

The Commission found that the Applicant submitted a site plan and an Exhibit Booklet and that the Booklet contained a tax map showing commercial zoning and uses in the area; ten photographs of the site and area; a copy of the area on the Future Land Use Map from the 2002 Comprehensive Plan and excerpts from the Plan; a copy of the area from the State Strategies Map and references to Investment Level 2 from the Strategies; a copy of the survey for the site; a copy of the proposed site plan; a copy of the DelDOT Support Facilities Report; and proposed conditions of approval.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Road 276 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is not available for the proposed buildings containing in excess of 32,000 square feet; that capacity is available for an office of up to 3,000 square feet or retail space of up to 9,000 square feet; that the current system

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connection charge rate is \$3,911.00 per EDU; that each parcel is served with a 6-inch lateral; that installation of an 8-inch lateral may be required; that downstream upgrades could be required; that if upstream upgrades are required, they would be completed by the developer at the developers expense; that conformity to the North Coastal Area Planning Study will be required; that proper disconnection of the existing structures on two of the parcels is required before the dwellings are demolished or before a building permit is issued for the proposed project; and that a separate disconnection permit is required for each parcel and the disconnections must be inspected by the County.

The Commission found that Samir Ghabar was present with Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the applicant intends to develop the site as a business park with four buildings; that the project will be an improvement to the area; that the site is in close proximity to C-1 General Commercial zoning and close to other commercial/business uses and Conditional Uses; that the site is in close proximity to a building supply business, restaurants, multi-family, auto repairs, etc.; that the site is currently occupied by a manufactured home, a dwelling and a logging business; that the use is consistent with the Comprehensive Plan since it is located within the Environmentally Sensitive Developing Area which references that additional commercial uses will be needed and should be limited to neighborhood shopping and businesses to serve the rapidly expanding population; that the use is consistent with the State Strategies Investment Level 2 area since commercial and offices uses serving primarily local residents are referenced, since the promotion of a broader mix of housing types and commercial sites are referenced, since compact, mixed use development uses are encouraged, and since there may be many opportunities for small and medium sized businesses in Level 2 Areas, especially in mixed use, compact development areas; that the proposed professional business/office park proposes 4 – 1 story office buildings; that Tidewater Utilities will supply central water; that the County will provide public sewer; that the project meets the Conditional Use statute in that the use will serve a public need and since the area is unique due to the many commercial and business activities existing on Shady Road; that parking may have to be expanded and/or the building sizes reduced to allow for additional parking; that the business uses will be limited to doctors, lawyers,

accountants, real estate related firms, mortgage companies, financial firms, insurance businesses, technological businesses, computer consulting and other businesses; that a need exists for office space in the area; that there has been a recent expansion of the residential housing in the area and that the occupants of those homes will not the services; and that there will not be any contractor shops in the project.

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

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

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There was a consensus of the Commission that the site, as presented, may not be suitable for the size of this project.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied based on the information presented; since the conceptual plan for 32,650 square feet of office space far exceeds the 3,000 square foot of office space referenced by the County Engineering Department; since the design of the parking is not in compliance with Codes and has been underestimated; and since there are too many buildings on too small of a parcel.. Motion carried 5 – 0,

**C/U #1681** – application of **W. EDWARD METZ** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a campground with area for boat and RV storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 59.866 acres, more or less, lying east of Shingle Point Road (Road 249), across from Road 253.

The Commission found that the Applicant submitted a site plan and an Exhibit Booklet and that the Booklet contained a site plan; proposed conditions of approval; proposed rules of the campground; excerpts from the 2002 Comprehensive Plan; excerpts from the State Strategies referencing Investment Level 4; a copy of the PLUS review comments; letters in support of the application from area residents; a copy of a portion of the tax map of the area; a copy of a Keystone Kabins brochure; and reports from Coastal & Estuarine Research, Inc. on Jurisdictional Wetlands.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “A” of Road 249 may change to a Level of Service “B” when the site is fully developed.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated or maintained sanitary sewer district or water district; that the site is located within the

North Coastal Planning Area; that an individual on-site wastewater system is proposed to serve the project; that the site is not in an area where the County expects to provide sewer service in the foreseeable future; that the County requires the design and construction of the collection and transmission system to County requirements; that a review and approval of the collections, treatment and disposal system by the Engineering Department is required and plan review fees may apply; and that a concept plan, including the wastewater collection and treatment system, must be submitted to the Engineering Department for review and approval.

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The Commission found that Edward Metz, Michael Metz and Marty Metz were present with Tim Willard, Attorney, and Charles Adams, Surveyor, and that they stated in their presentations and in response to questions raised by the Commission that they are proposing a camping facility containing 172 camp sites and 21 cabin sites; that a campground is a listed Conditional Use in the AR-1 Agricultural Residential District; that the site plan complies with the Zoning Ordinance in design, setbacks and amenities; that the campsites exceed 400-feet from adjacent dwellings; that the 172 lease sites will contain a minimum of 2,400 square feet; that the appropriate buffers will be provided; that the campground will be open from April 1 to November 1; that central water is proposed to be provided; that central on-site wastewater treatment and disposal is proposed; that they propose two bathhouses, dumpster areas, septic dump stations, a community center, a pool and bathhouse, pavilions and trails; that the site is located in a Low Density Area according to the 2002 Comprehensive Plan which references that recreational facilities may be necessary and should be compatible with residential surroundings; that the site is located in an Investment Level 4 Area according to the State Strategies which references that Level 4 Areas boast large recreational uses; that the PLUS comments were not negative towards the application; that they have received eight (8) letters in support of the application from area residents; that the use is appropriate in the Low Density Area of the Comprehensive Plan and the Level 4 Area of the State Strategies; that the use will be an economic benefit; that Byron Jefferson, Professional Engineer has been contacted to design the sewer system with underground disposal; that tenants will be allowed to retain their campers on the lease sites; that originally they intended to clear the site for agricultural use; that the streets will be gravel and may be paved in the future; that speed bumps and signage may be provided in the future; and that Phase II of the project will consist of 30 campsites and an area set aside for boat and RV storage.

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

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

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

**C/U #1682** – application of **TIM HAINES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a pet grooming service to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.80 acres, more or less, lying northeast of Route 26, 525 feet southeast of Road 346.

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The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “E” of Route 26 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department, that the site is not located in an County operated or maintained sanitary sewer district or water district; that the site is located within the Vines Creek Planning Area; that the site is proposed to be served by an on-site septic system; and that sanitary sewer service is not available at this time.

The Commission found that Tim Haines was present and stated in his presentation and in response to questions raised by the Commission that he proposes to located his pet grooming shop within a bay of his two car garage; that the garage sits approximately 160-feet from Route 26; that the site was previously used as a Conditional Use embroidery business; that business hours are proposed for Tuesday through Friday from 9:00 a.m. to 5:00 p.m. with one day having extended hours to 7:00 p.m. and Saturday hours from 9:00 a.m. to 1:00 p.m. depending on demand; that no Sunday or Monday hours are proposed; that the on-premise sign shall not be lighted; that no additional security lighting is proposed; that he will be grooming dogs; that there is no need for a dumpster; that no outside kennels are proposed; and that the business will be operated as a family business with no external employees.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1682 for Tim Haines to operate a pet grooming service and that this recommendation is based upon the record and for the following reasons:

1. The project with the conditions and stipulations placed upon it will not have an adverse impact on the neighboring properties or community.

2. The use as a pet grooming business is desirable for the general convenience and welfare of the citizens in the area.
3. The use will not have an adverse impact on traffic.
4. The use is in a location of a prior Conditional Use for an embroidery shop, and will be located within an existing structure.
5. This recommendation for approval is subject to the following conditions and stipulations:
  1. Days and hours of operation shall be from Tuesday through Friday from 9:00 a.m. to 5:00 p.m. and Saturday from 9:00 a.m. to 1:00 p.m. One workday may have extended hours until 7:00 p.m.

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2. One non-lighted sign, not exceeding 32 square foot per side or facing, may be permitted.
3. Any lighting on the premises shall be directed downward and away from neighboring properties.
4. The Applicant shall comply with all DelDOT requirements including entrance permits.
5. No dumpsters outside of that normally used by a residence will be permitted.
6. The Final Site Plan shall include a parking plan and a landscape plan.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy 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 stated. Motion carried 5 – 0.

**C/U #1683** – application of **WAYNE BAKER, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 72.72 acres, more or less, lying at the northeast corner of Avalon Road (Road 302A) and Lawson Road (Road 296).

The Commission found that the Applicants had provided a site plan and an Exhibit Booklet and that the Exhibit Booklet contained a color rendered site plan, a copy of the Conditional Use application, proposed conditions of approval for the borrow pit, copies of deeds to the property, DelDOT reports and correspondence, six photographs of the site and roadways, a series of maps relating to 2002 land use and land cover, proposed truck routes, aerials, topography, soils, wetlands, flood plains, groundwater recharge and tax ditching, a soils report, an environmental review report from Envirotech, and wetlands comments from Coastal & Estuarine Research, Inc.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service "A" of Avalon Road could change to a Level of Service "B" when the site is fully developed; that the existing Level of Service "A" of Lawson Road will not change as a result of this application; that the Department is concerned that truck traffic to and from the pit could damage roads in the vicinity of the project; that the Department recommends that the County require the applicant to provide DelDOT with additional information pertaining to trip generation and trip distribution before the Department makes recommendations about any entrance requirements; and that the trip generation information should include estimates of the average daily trips and the average morning and evening peak hour trips that the pit

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would generate while operating and the percentages of those trips that would be made by heavy trucks.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the project is not located within a County operated and maintained sanitary sewer district or water district; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Area Study will be required; that the County is currently conducting the planning study and that the study is scheduled to be completed by April 2007; and that the County currently has no schedule to provide service to this project.

The Commission found that two letters in support of the application were received from Mark J. Davis, LLC. and Melvin L. Joseph Construction Co., Inc. referencing the demand for dirt; that existing pits in the area are becoming depleted; that the material is not only for area development projects, but also for use by area construction companies, road building and improvements, new and existing driveways and entrances, yard fill dirt/improvements; and that the location of the site is ideal with respect to approved projects in the County.

The Commission found that one letter in opposition to the application was received from Deborah Sundberg expressing concerns about the lack of notification to neighbors; that the land was not posted, and that they found nothing in the newspapers about the proposal.

Mr. Robertson stated that all statutory requirements have been met in the advertising and that the public hearing may proceed.

The Commission found that Wayne Baker was present with Dennis Schrader, Attorney, and Mark Davidson and J.C. Owens of Design Consultants Group; that they are proposing a 20-acre borrow pit on 66-acres of the 834.99 acre tract; that according to the 2002 Comprehensive Plan the project is located in a Low Density Area; that according to the State Strategies the project is located within an Investment Level 4 area; that no

wetlands exists within the area of this application; that the 834.99 acre tract is primarily used for agriculture, forest and reforestation; that the trees on the proposed site were planted approximately 10-years ago; that the area of disturbance for the pit and surrounding buffers will contain approximately 25 acres; that the pit is proposed to be at least 600-feet from Avalon Road and Lawson Road; that the closest dwelling is 750 to 800 feet away across Lawson Road; that the closest lots are located along Avalon Road, with are owned by the applicant; that the existing cemetery will have a 100-foot buffer from the pit area; that they propose to place a 100-foot buffer around the pond to allow for plantings year round; that a security gate will be installed at the entrance; that the proposed entrance is located at an old logging road entrance location; that e-mail between

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DelDOT and the DC Group indicate that road improvements shall be from the proposed entrance to the intersection of Avalon Road and Lawson Road; that DelDOT discourages truck traffic leaving the site to utilizing Avalon Road in a southeast direction; that other considerations such as entrance radius and width will be determined during the entrance review process; that Lawson Road from the entrance to Avalon Road will be required to be paved; that the proposed truck route will go from the entrance to the intersection of Avalon Road and Lawson and then along Lawson Road to Zoar Road and from Zoar Road either east or west to project sites; that no threatened or endangered species have been reported on the site; that no critical areas or natural areas are affected; that no State Resource Areas are near the site; that the 20-acre pit will provide 665,000 cubic yards of material of which 644,000 will be select material; that they anticipate that it could take 8 to 10 years to complete the excavation; that they anticipate 25 trucks per day on 200 days of the year; that they propose to excavate from the east side toward Lawson Road; that the pit shall be converted into a Conservation/Wildlife Pond and will be stocked with fish; that a water truck will be located on the site to control dust on the site; that all agency approvals will be obtained prior to digging; that the pond will be utilized for recreation by family members once completed; that the maximum depth of the pond will be 25-feet; that the use is an appropriate use of land in an agricultural area; that the use will benefit commercial enterprises in the County; that a loaded dump truck may weigh approximately 70,000 pounds; that the road surfaces will be tested so that DelDOT labs can provide a description on the required overlay pavement on Lawson Road; that due to the truck route proposed DelDOT discourages the alternative entrance location on Avalon Road; that Zoar Road has recently been improved; that no dredging is proposed; that excavators will be utilized for removal of materials; that there will be no pit activities on Sundays; that hours of operation will be from 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturdays; that the soils on the site have been tested and found to be suitable for borrow; that the tilled areas of the property are proposed to be planted with crops and that there will be crops planted year round to protect the soils; that the entrance will be paved and connect to the dirt construction road to the pit; that the pit will be stabilized with natural vegetation; that native plantings will be planted around the perimeter of the pond; that food plots will be planted around the pond for wildlife

habitat; and that tree stumps and tree tops will be placed in the pond to improve habitat for future fish in the pond.

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

The Commission found that Trudy Belotti and Walter Hyler spoke and submitted written comments in opposition and that Art Sundberg, Deborah Sundberg, David Swain, David Pusey and Brian Bonkowski spoke in opposition expressing concerns that they purchased their properties in an AR-1 Agricultural Residential area; that when they asked about any proposed projects in the area they were advised that there were none; that the Belotti driveway is directly across the road from the site; that they are concerned about dust and

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noise; that the area is very windy and debris and dust will be blowing; that tree plantings should be a requirement if the use is approved; that Avalon Road and Lawson Road are not wide enough for two passing vehicles, especially dump trucks; that the roads are in very poor condition, breaking pavement, and no shoulders; that the landscaped buffering required by the Zoning Code should be enforced on the project and that the trees planted in the buffer should be of mature growth; that operational hours should be restricted; that they are concerned about the depreciation of their property values; that reclamation plans should be required prior to approval if the project; that the project should have a certain time limit for completion; that outside contractors and drivers will not know about the truck route agreed upon; that they have concerns for the safety of the children and pets that live along Lawson Road; that the site should be fenced and landscaped to protect the children of the area since the pit will become an attraction for exploration by children; that the neighbors will be impacted by the operation for 8 to 10 years on a daily basis; that the local fire company has had to put out fires at the property on several occasions, at least once during a burning ban; that both Lawson Road and Avalon Road are utilized by walkers, joggers, and bikers; that a bald eagle has been sighted on the property; that if approved Lawson Road should be repaved from the entrance to Zoar Road; that the applicant should be responsible for any damage to the roadways; that mosquitoes should be a concern; and that the entrance road to the borrow pit should be from Route 48 (Hollyville Road).

The Commission found that Michael Ruchman was present and stated that he was not in opposition to the application, but concerned about the entrance on Lawson Road, and suggested that the entrance should be on Avalon Road.

Mr. Davidson responded that DelDOT discouraged the location of the entrance being on Avalon Road.

The Commission found that Mrs. Belotti submitted 2 large photographs and 10 small photographs of the site and area for the record.

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.

**Subdivision #2006-1** – application of **THOMAS HEAD – H & H INVESTMENT ASSOCIATES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 62.41 acres into 48 lots, located south of Road 548 (Horseshoe Road), 1,770 feet southwest of Road 552 (Neals School Road).

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Mr. Abbott advised the Commission that Road 552 is actually Shufelt Road; that this application was reviewed by the Technical Advisory Committee and that comments were requested by September 20, 2006; that the comments received are a part of the record for this application; that the engineers submitted a revised plan on October 25, 2006; and read a letter received from Mr. and Mrs. Paul Jarrett in opposition to this application.

The Commission found that John Barwick of Meridian Architects and Engineers and Mark Handler and Thomas Head, developers, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that streetlights will be provided; that the site on the west side of the ditch was previously a part of this application but is now residual lands since the soils are not suitable for septic systems; that there are two small pockets of wetlands on the site; that there are no trees on the site; that the site has been tilled and farmed in the past; that there is an open space area at the entrance of the site; that this site is surrounded by strip lots; that a bus stop can be provided; that the residual land will be retained by the original owner and two 25.00 acre farmettes may be proposed; that the price of the dwellings will range from \$300,000.00 to \$450,000.00; that on site sewer and water are proposed; that DNREC has issued a septic feasibility statement indicating that the site is suitable for on-site septic systems and submitted the feasibility report into the record; and submitted a letter addressing the items referenced in Subsection 99-9C of the Subdivision Code.

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

The Commission found that Keith Wheatley, Dawn Smart, Jim Ellis, Bonita Bowers, Diane Smith and Darrel Banning, all area residents, spoke in opposition to this application and stated in their presentations that they are not opposed to development; that they like scenic views; that storm water management ponds are not attractive; that the area is prone to flooding; that the site was not posted about a public hearing; that the roads in the area cannot handle additional traffic; that there are inaccuracies with the site map; that they have safety concerns for children in the area; that vehicles do not obey the posted speed limit in the area; that the entrance location will negatively impact homes

across the road with headlights shining in windows; that there are drainage concerns in the area; that the individual septic systems could negatively impact the existing wells in the area; and questioned if a central septic system has been considered.

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 for further consideration. Motion carried 5 – 0.

Meeting adjourned at 9:35 p.m.