

MINUTES OF THE REGULAR MEETING OF MAY 23, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 23, 2002 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to amend the agenda by reviewing the Old Business items before the public hearings.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of May 9, 2002 as amended.

Mr. Schrader described how the public hearings would be conducted.

OLD BUSINESS

C/U #1453 --application of **JOSEPH E. BOWMAN, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a used car sales lot to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.24 acres, more or less, lying northeast of Route 404 (Seashore Highway), 280 feet southeast of Road 569 (Woodenhawk Road).

The Chairman referred back to this application that was deferred at the May 9, 2002 meeting.

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

Motion carried 5 - 0.

C/Z #1468 - - application of **BOCA EAST, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying northeast of Road 279, 0.9 mile southeast of Road 277, to be located on 258.11 acres, more or less.

The Chairman referred back to this application that was deferred at the May 9, 2002 meeting.

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

Motion carried 5 - 0.

Subdivision #2001-6 - - application of **SUSSEX SHORES WATER CO.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, by dividing 10.57 acres into 23 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Delaware Route One, 3,050 feet north of Road 360.

Mr. Abbott advised the Commission that this application received preliminary approval on April 5, 2001; that the Commission granted a one-year time extension on April 4, 2002; that the final plan meets the requirements of the Subdivision Code and Zoning Code; that all agency approvals have been received; and that the record plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

Motion carried 5 - 0.

PUBLIC HEARINGS

C/U #1454 -- application of **RICHARD M. QUILL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for medical offices with small warehouse to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.061 acres, more or less, lying northeast of Road 268 (Kings Highway), 1,200 feet northeast of Route One.

The Commission found that the applicant had submitted, prior to the meeting, a packet of information that included a letter from James F. Waehler, Attorney, a copy of a portion of the Tax Map of the area highlighting the surrounding parcels utilized for commercial activities, pictures of an office in Dewey Beach to depict a similar architectural style to the proposed structure, pictures of the site, pictures of the surrounding properties, a conceptual site plan, a letter in support from Raven Bakery, Inc., and a letter from Susie Hudson of Re-max Realty Group.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that the Department does not recommend a traffic impact study; that the Department is concerned about this application; that the Department has concerns regarding access to the site; that the Department sees the application as encouraging more traffic in an area that the Department has identified as operating at unacceptable levels of service; that the site is located in an area defined by the Statewide Long-Range Transportation Plan as a Multimodal Investment Area where DelDOT

intends to support development with a more comprehensive menu of transportation facilities and services, to diversify the transportation system by adding capacity and supporting development that is consistent with that goal; that investments in transit, bicycling, and walking facilities are the focus so the Department can support these alternative modes as supplements to the automobile; that the site is located in a Community Area according to the Strategies for State Policies and Spending map, and that from a transportation perspective, Community Areas are treated similar to Multimodal Investment Areas; that the intended use is not an intense use on 2.06 acres; that the site is located immediately south of the "T" intersection of Road 268 and Road 268A; that the entrance is directly across from the entrance to a professional center for offices; and that the Department is concerned about adding more traffic to an area with existing poor levels of service (E) during the summer peak hour and that access is a concern.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Fallsington sandy loam; that the Evesboro soils have slight to moderate limitations; that the Fallsington soils have severe 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 Evesboro soils are considered of Statewide Importance; that the Fallsington soils are considered of Statewide Importance and Prime Farmland; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements due to the increased impervious area and the poorly drained soils on-site that will pond water during storm events; and that there may be regulated wetlands on the site.

The Commission found that Richard Quill was present with James Waehler, Attorney, and Jessica Nichols of Meridian Consulting, and stated in their presentations and in response to questions raised by the Commission that two (2) two-story office buildings and a small warehouse are proposed; that the use will be in compliance with the 1997 Comprehensive Plan since the site is located in a Development District; that the area is heavily commercialized; that there is a need for medical facilities; that central water and central sewer are available for the use; that according to DelDOT traffic will be negligible; that a traffic impact study was not required; that there is no benefit for motorist travelling south along Kings Highway at this location since they would have no direct access to southbound Route One; that medical offices should not impact traffic since they are typically closed on weekends when traffic is the heaviest; that the warehouse is intended for storage of maintenance equipment to maintain the facility; that a preliminary entrance design is being prepared for review by DelDOT; that the design will include a bike lane and walking path across the frontage; that there is no intent to impact the wetlands on the site; that 44% of the site will remain in open space; that stormwater management is proposed to be located on the adjoining residual property and

that easements will be provided; that the entrance is offset by approximately 100-feet from the entrance to Carpenters Crossing; that the residual driveway serves as access to the residual acreage and the adjoining parcel to the south; that professional office complexes exist to the south and west of the site; that Beebe Medical is building a surgical unit on Route 24 and that this site is approximately half way between the proposed unit and the Beebe Medical Center in Lewes; that the proposed building will be similar in appearance to the Life Saving Station in Dewey Beach; that the number of doctors that may utilize the facility has not been determined; that there may be from 4 to 10 doctors utilizing the facility; that he has no intent to rent the warehouse; that a non-conforming use (electrical motor repair) exists north of the site; and that a vacant lot, a bakery, a funeral home and a professional office park exist to the south of the site.

The Commission found that Susie Hudson of Re-max Realty Group was present and described the business uses in the area.

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

At the conclusion of the public hearings the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch to deny the application due to traffic concerns. Motion died for the lack of a second.

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

Motion carried 5 - 0.

C/Z #1469 -- application of **CAROLINE DEVELOPMENT, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying west of Route 348 (Irons Lane), 3,000 feet north of Route 346 (Holts Landing Road), to be located on 139.367 acres, more or less.

The Commission found that the applicant had submitted, prior to the meeting, a booklet of information that included a presentation outline, references to land use, a conceptual layout, references to existing zoning, references to the RPC concept master plan, a land utilization summary printed in black and white, a land utilization summary printed in color, references to utilities, references to traffic engineering including a DelDOT letter, an overview map, a traffic impact study summary and conclusions, a DelDOT E-mail,

references to the project's land use compliance with State plans, and references to the project's land use compliance with the 1997 Comprehensive Plan.

Mr. Lank advised the Commission that a copy of the traffic impact study prepared by Davis, Bowen & Friedel, Inc. is a part of the record for this application.

The Commission found, based on a Support Facilities Report from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on a letter from DelDOT, that the Department has no disagreement with postponing the traffic impact study for this application; that the applicants have requested that they be allowed to include a convenience store with the application; that the addition of convenience store traffic would result in the proposed development generating more traffic than would be generated by a development under existing zoning; that if the applicant were to return with a separate rezoning proposal for the convenience store, it would not generate enough traffic to warrant a traffic impact study; that by providing convenience shopping on the site, the proposed store would intercept traffic that would otherwise be traveling out to Route 26; that anything we can reasonably do to reduce summer traffic on Route 26 seems desirable; and that for these reasons, the Department is agreeable to postponing the traffic impact study for the site until after the rezoning is acted upon.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within an Environmentally Sensitive Developing area of the Strategies for State Policies and Spending document where the State will seek a balance between resource protection and sustainable growth; that the DNREC has noted that the site either contains or is immediately adjacent to sensitive wetlands bordering the Indian River Bay and an unnamed tidal tributary to the Bay; that although most of the wetlands potentially impacted by the project are tidal, some non-tidal wetlands may also be impacted; that soil types and data were included; that the applicant should be reminded that construction/filling activities must be avoided in those areas containing wetland associated hydric soils, as they are subject to the Federal Clean Water Act 404 program governing jurisdictional wetlands; that a DNREC permit is required to destroy any regulated wetland; that tidal wetlands are subject to even more stringent regulatory protection than that accorded to non-tidal wetlands, and are regulated by DNREC; that the Inland Bays are designated as Water of Exceptional Recreational or Ecological Significance (ERES Waters); that designated ERES Waters shall be accorded a level of protection and monitoring in excess of that required by most other waters in the State; that both non-point and point nutrient sources in these waters may be subject to control through Best Management Practices which may include establishment of vegetated buffers adjacent to watercourses, or maintaining existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative

entrapment; that protection of this site would include adequate buffer to the wetlands along Blackwater Creek and the unnamed tributary to the northeast; that buffers should be part of the design of the site; that the Department recommends a buffer of 100-feet from the wetland edge; that maintenance and expansion of the existing buffers adjacent to the various other wetlands on the site will protect those habitats and contribute to maintaining the quality of these streams and Indian River Bay; that the proposed development is adjacent to shellfish waters already classified as other-than-approved; that DNREC requests the opportunity to work with the developer to minimize impacts to the adjacent waters which could potentially preclude the nearby waters from ever being upgraded in classification to approved; that the State Historic Preservation Office has noted that there are known historic and prehistoric sites on and adjacent to this site and therefore there is a high potential for additional historic and prehistoric sites; that there are other historic and prehistoric sites within and adjacent to the property leading to a high potential of other sites and there is a building on the property that may have historic significance; that there is a mid-19th century cemetery on the site and the applicant should consult with the State Historic Preservation Office to identify the limits of the cemetery; that the applicant should be made aware of sections of the Delaware Code relating to the Unmarked Human Remains Act, Desecration of Burial Place, and Permits for Disinterment of Bodies in Kent and Sussex County; that in conclusion, DelDOT has agreed to postpone the traffic impact study until after the rezoning request has been acted upon; however the State asks that the County require the developer to work with DelDOT on their recommendations from the study; that the State also asks that the County require the developer to work with the DNREC to make sure that the regulated wetlands are protected and that the surface water is protected by using the necessary Best Management Practices to control nutrients in non-point source pollution and to work with the State Historic Preservation Office to minimize the effects on any historic resources; and that the State further urges the County to take into account the cumulative effects of development in this area.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington loamy sand, Rumford loamy sand, Swamp, Tidal Marsh, and Woodstown sandy loam; that the Evesboro, Rumford, and some of the Woodstown soils have slight limitations; that some of the Woodstown soils have moderate limitations; that the Fallsington, Swamp, and Tidal Marsh soils have severe limitations; that the applicant shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that no storm flood hazard areas are affected; that no tax ditches are affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements since there may be places that are concave and may pond water for extended periods of time; that there may be regulated wetlands in the wooded areas as indicated by hydric soils; that the Evesboro, Fallsington, and Rumford soils are considered of Statewide Importance; that the Fallsington and Woodstown soils

are considered Prime Farmland; and that some of the Evesboro, Fallsington, Swamp, Tidal Marsh, and Woodstown soils are considered Hydric, Hydric in depressions, or Hydric in small depressions.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that capacity of the available wastewater transmission system is a concern; that the Engineering Department requests the Planning and Zoning Commission to defer a decision on this proposal until after June 30, 2002 when a technical memorandum regarding this subject is available; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$3,219.00 per EDU; that the site is adjacent to the Holts Landing Sanitary Sewer District; and that conformity to the South Coastal Planning Study or undertaking an amendment will be required.

The Commission found that a letter was received from Representative Shirley Price expressing a concern about any increase in density involving this site; that the last traffic study done in the area was done in 1997; that the area surrounding both Irons Lane and Holt's Landing Road has grown significantly since 1997; that the creation of a convenience store increases her level of concern since a retail store would not only be an unnecessary addition to the area, it would certainly be out of character with surrounding properties; that several residents in surrounding communities object to this project because it increases density, traffic/roadway conditions, and the potential commercial use.

The Commission found that a letter was received from Gary F. Taylor on behalf of Bay Colony Property Owners Association expressing concerns about the application and referenced that the area is having a difficult time handling the traffic for the four surrounding developments just past the site; that the developments of Bay Colony, Cripple Creek, the Greens, and Mallard Creek have approximately 730 homesites combined; that all of the properties are served with water from Tidewater Utilities off of one well; that the water situation in the area is critical to the current developments and adding over 200 housing units with commercial shops may be more than one well can handle; that the proposed project has asked to be connected to the new sewer system that the current developments are paying for at this time; that the Greens and Mallard Creek are not yet tied into the system; that this type of development seems to be in direct conflict to the Governor's Livable Delaware Initiative; that the communities will not support the current request for high density, and request that the project not be allowed to change the zoning for any more than two units per acre with no commercial zoning allowed.

The Commission found that letters were also received from Wesley E. Barnes, as a resident and as Secretary/Treasurer of Fairway Villas within Cripple Creek, and John C. Hickey, as a resident of Bay Colony expressing concerns in reference to increased traffic on Irons Lane; that Irons Lane was not designed or built for this volume of traffic; that the rezoning could lead to endangering the lives of the citizens by increasing traffic without first making a change in the road system; that the present water supply may not handle the proposed increase in users using the present water facilities; and similar comments as referenced in the letters from Representative Shirley Price and Gary Taylor.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the Division recommends that the project be reviewed by the Technical Advisory Committee; that the roads be designed and constructed in accordance with Chapter 99 and inspected by the County; that the multi-family areas be constructed to the same specifications since the streets serving the multi-family areas will become privately owned and maintained by a property owners association; that the street construction should use a curb and gutter drainage system for the multi-family, apartments and community areas; that swale construction and stabilization have been difficult to maintain in multi-family projects since those types of projects are so labor intensive and space confining that builders destroy any grade and stabilization that has been built and drainage has to be redone; that construction of this project should not adversely impact existing drainage ditches that provide drainage to adjacent properties; that sidewalks and street-lighting should be provided in the multi-family areas; that since the plans depict bridges and false bridges/box culverts the bridges shall be designed and constructed to meet American Association of State Highway and Transportation Officials HS-20 loading requirements; that a separate design and detailed plan shall be required for each structure for review by the County Engineering Department; that the site has a cemetery located on it and should not be disturbed by the project; that adequate street access and buffers should be provided to the cemetery; and that the developer should contact the State Historic Preservation Office for information on any requirements they have before beginning any construction activities on the site.

The Commission found, based on a letter from the Indian River School District, that the District is aware of the potential 208 units proposed; that the District appreciates being apprised on the project; that based on the information they have received regarding the caliber of the project and the age bracket of the potential homeowners targeted, they do not feel that the project will have a great impact on the District.

The Commission found, based on a letter from the Millville Volunteer Fire Co., Inc., that Clarke Droney, Fire Chief, has reviewed the site plan for the project and realizes that the project will have 208 units with central water and fire hydrants, and that the station is willing and able to provide fire protection to the project.

The Commission found that ten letters have been received in support of the application from Jack Hickman, a resident of Bay Colony, Frank Zuppo, Chris Zuppo, Charles and Carol Steele, Shirley Hernyak, a recent purchaser of a lot in Cripple Creek, Susan Ryan, a property owner in Bay Colony, Walter and Mary Buckert, property owners in Bay Colony, Michael Downes, a resident in Bay Colony, Joe and Julie Schroeck, property owners in Bay Colony, and Hugh and Maralen O'Neil, property owners in The Greens at Indian River.

The Commission found that Lee and Donna Repass, the developers, James Fuqua, Attorney, Gerald Friedel of Davis, Bowen & Friedel, Inc., and Greg Hastings were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they applied for MR-RPC to allow for the lesser lot size and since conditions can be placed on an application limiting the number of the units; that the number of units is the same as if the zoning would remain AR-1; that the gross acreage less State wetlands equals 1.75 units per acre; that the net acreage less State wetlands, roads, and the commercial area equals 2.1 units per acre; that the site is located within a Development District according to the 1997 Comprehensive Plan; that the site is to be served with central sewer and central water; that the immediate area is zoned MR Medium Density Residential and HR-2 High Density Residential; that the intended uses are similar to those already being developed in the area; that the project is not a high density project; that the 2 acre commercial area is proposed to be improved with a 10,000 square foot convenience store; that the Comprehensive Plan suggest that Development Districts be developed with a mixed use communities with residential uses and convenience shopping; that several residential communities exists in the immediate area; that a convenience store will provide for less travelling out onto Route 26; that the project is proposed to be developed with 208 units which includes 124 single-family detached homes and 84 multi-family units; that the site has been farmed; that several homes exists along the waters edge; that lot/home packages are proposed; that the project includes recreational amenities including tennis, a swimming pool, and a clubhouse; that one entrance is proposed to serve the project; that the developers are willing to provide an entrance to the Mallard Creek Subdivision to allow access to the convenience store site; that a graveyard exists on the property and will be preserved; that no marina is proposed; that no motorized boats will be permitted; that outlots will be provided with cross-access easements; that the MR-RPC zoning is proposed to allow for a minimum lot size of 7,500 square feet; that Tidewater Utilities will provide water for domestic consumption and fire protection; that fire protection will be provided by the Millville Volunteer Fire Company; that electricity will be provided by Delaware Electric Cooperative; that telephone service will be provided by Verizon; that cable television will be provided by Comcast; that no gasoline sales are proposed at the convenience store; that a homeowners association will be created to enforce the declaration of restrictions; that the project will be phased to a maximum of 80 units per year; that approximately 13 pre-existing lots exists along waters edge (Bennett Beach); that the design provides for reclamation of active borrow pits,

some of which have existed for 30 years; that the project avoids disturbance to trees and wetlands; that the roadway system is designed to create smaller neighborhoods which provides the ability to phase the project, and differing housing products; that street requirements will exceed County and Fire Marshal standards; that 30-foot wide forested buffers are planned along adjoining AR-1 properties; that no lots will be created in wetlands; that 75% to 80% of the trees on the site will be retained; that 50-foot wide buffers will be provided along tidal waters; that a 30-foot wide buffer is proposed from the Mallard Creek Subdivision; that they propose to build two piers for public use to replace the multiple piers at waters edge; that they propose to build wildlife observation decks; that the single family lots average 9,000 square feet with typical dimensions of 75-feet by 120-feet; that standard MR building setback lines are proposed; that 5-foot wide sidewalks will be provided along primary streets; that a community beach is proposed; that stormwater management will be designed to meet or exceed State and County specifications; that this project is smaller than the Bay Colony Subdivision; that the square footage of the proposed homes could range from 2,400 to 6,000 square feet; that the streets will be designed to meet or exceed County specifications; that access will be provided to the existing lots along water's edge that are currently using a dirt road as their only means of ingress/egress; that DelDOT did not require a traffic impact study for the rezoning due to the project density proposed; that DelDOT gave a favorable recommendation for the convenience store as it was seen to keep local residents off of Route 26; that a traffic impact study has been prepared and submitted to DelDOT for consideration; that the project will benefit the County with impact fees for the sewer system, sewer inspection fees, road inspection fees, building permit fees, transfer taxes, annual taxes, school taxes, and annual sewer usage fees; that the County will also benefit since the project will generate sales and jobs; that the site is within a growth area with other existing communities; that the project is located within a Development District where public sewer and central water are available; that the Comprehensive Plan suggest that Development Districts be developed at 4-units per acre; that the project proposes approximately 2-units per acre; that the Comprehensive Plan suggest that business uses be provided in mixed communities; and that the density is consistent with other projects in the area.

The Commission found that Mr. Fuqua submitted a set of proposed conditions on behalf of the developers, as follows:

1. The maximum number of residential units shall not exceed 208 comprised as follows: 124 single family lots and 84 multi-family units.
2. Residential building permits shall be limited to 80 permits per year commencing with County Council approval.
3. The RPC shall be served as part of the Sussex County Sewer System.
4. The RPC shall be served by a central water system providing water for consumption and fire protection per applicable regulations and approvals

- of DNREC, the State Fire Marshal, the Public Service Commission, and Public Health.
5. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the applicant in accordance with any further modification required by DelDOT.
 6. Site plans for each phase of the development shall be reviewed and approved by the Sussex County Planning and Zoning Commission.
 7. Applicant will provide recreational facilities including tennis courts, a swimming pool and a clubhouse. All to be completed within two years of the issuance of the first building permit.
 8. Development shall provide landscape and buffer areas in the general locations shown on the RPC Master Plan subject to approval by the Planning and Zoning Commission.
 9. The 2.11-acre B-1 commercial area shall not exceed 10,000 square feet of floor area, shall be subject to architectural restrictions and no sale of gasoline shall be permitted.
 10. No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the applications for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the costs of site work authorized by the Sussex Conservation District Permit and in a form acceptable to the County Attorney. The Bond shall be released upon the issuance of all other permits and the filing of an approved master plan.

The Commission found that Don Moore was present in support of the project and stated that he has not heard any negativity; that he owns property at Bennett Beach, and that emotionally the use may seem inappropriate; that if the rezoning is approved, the business area should be approved with certain conditions; that the business use make sense if it helps eliminate traffic to and from Route 26; that DNREC permits should be verified; and that the project should be phased.

The Commission found that Susan Ryan, a landowner in Bay Colony and Cripple Creek, was present in support and stated that the project has a terrific design.

The Commission found that Lee Daugoloff, Treasurer of the Greens of Indian River, Don Bell, a resident of Bennett Beach, Gary Taylor of Bay Colony, Roland Frazier of Georgetown, Guy Clark, President of the Homeowners Association for Mallard Creek, Lewis Yike, Wayne Mellin, Jack Hickey, and Carolyn DeSilva, a resident of Bennett Beach, of the approximately 50 people present in opposition spoke in opposition and expressed concerns about the commercial use, the change in the character in the area by adding a commercial use, traffic, the safety of children riding bikes along Irons Lane, the safety of people walking along Irons Lane; that the existing homes at Bennett Beach should be given consideration; that the piers out to the Bay should not be located between existing homes within Bennett Beach; that the road may need to be raised by 2-feet to protect the road during floods; that Tidewater Utilities takes a long time to respond to complaints; that a water tower would be an eyesore; that if a commercial use is necessary it should be located in the middle of the project, not along Irons Lane; that multi-family use is not appropriate on this side of Irons Lane; that the DNREC has been asked to investigate a dump area on the site; that phasing should be less than 80 units per year and suggested that if the rezoning is approved, the number of units per year should be 40; that Bennett Beach was originally considered a mobile home park; that the park started in 1954; that 13 homes exists within Bennett Beach; that 6 other rental sites existed in the past; that the existing beach depicted on the site plan is actually marsh; that the jetty was installed by Mosquito Control; that they object to multi-family use, not single family; that a large portion of the site is located in a flood plain; that the site appears to be a dump site where people have dumped off some appliances; that one of the dwellings on the site may be eligible for the Historic Registry; that a large dump exists on the site and is covered with sand; that the residents are concerned about their water supply and the impact on water supply by drawdown; and that emergency access should be a concern.

The Commission found that Mr. Mellin submitted copies of three photographs of the home referenced as eligible for historic registry, and a copy of some forms from the Delaware State Historic Preservation Office in reference to the home. The forms included a sketch of Bennett Beach layout of lots and streets, information on the home and area, copies of photographs of the home, a cultural resource survey of the Bennett House, a U.S. Geological Survey map of the area, and two historical maps of the area depicting the location of the home site.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

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

Motion carried 5 - 0.

C/Z #1472 -- application of **PIERCE HARDY LIMITED PARTNERSHIP** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 620 feet south of Route 26, 750 feet west of Route 17, to be located on 8.387 acres, more or less.

The Commission found that prior to the meeting the applicant provided more detailed site plans. The site plans included a cover sheet, demolition plans, site and utility plans, grading and stormwater plans, elevation plans for the millwork building, and elevation plans for the storage sheds.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel has a high potential for prehistoric archaeological sites as well as some historic resources; that the State asks that the County require the developer to work with the State Historic Preservation Office to minimize any impacts; that the Inland Bays are designated as Waters of Exceptional Recreational and Ecological Significance (ERES Waters); that designated ERES waters shall be accorded a level of protection and monitoring in excess of that required for most other waters in the State; that both non-point and point nutrient sources in these waters may be subject to control through Best Management Practices which may include establishment of vegetated buffers adjacent to watercourses, or maintaining existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment; that the project is just upstream of the Blackwater Creek Natural Area and the Inland Bays State Resource Area; that the project is almost entirely located within a 220-acre forest parcel ranked just below the middle in importance on a statewide ranking system based upon forest size, interior forest and connectivity; that this is the largest forest complex remaining in the Blackwater Creek watershed; that Blackwater Creek is one of the highest quality streams left that enter the Inland Bays; that it is entirely within the Environmentally Sensitive Area based on the Strategies for State Policies and Spending document; that if the site is completely cleared, it would remove 3% of the forest and almost 1% of the forest remaining in the watershed; that the increase in impervious surface in the commercial expansion, plus the loss of forested recharge area both will negatively effect the stream; that the soils in the vicinity of the site area mapped as Fallsington and Evesboro; that the predominant soil type is Fallsington, which is a poorly drained bottomland soil indicative of a wetland environment and is considered to have severe limitations for development; that Evesboro soils occupy only a small portion of the site, and is considered to have moderate limitations for development because of its excessive permeability; that the applicant should be reminded that they should avoid construction/filling activities in those areas containing wetland associated hydric soils, as

they are subject to regulatory provisions of the Federal Clean Water Act 404 program governing jurisdictional wetlands; that tidal wetlands are subject to even more stringent regulatory protections than that accorded to non-tidal wetlands, and are regulated under the DNREC administered State Tidal Wetlands Act of 1973; that a permit is required for destroying regulated wetlands; that if the County requires the developer to initiate proper Best Management Practices to control runoff, protect regulated wetlands, maintain as much of the forest as possible, and work with the State Historic Preservation Office to minimize the negative effects on the historic resources the State has no objections to the project.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard areas are affected; that it may be necessary for some on-site and off-site drainage improvements because of the increased impervious areas, increased storm runoff, and the presence of poorly drained soils and wet pockets of water; that there may be regulated wetlands on the site; that the soils are mapped as Evesboro loamy sand and Fallsington sandy loam; that the Evesboro soils have slight limitation for development; that the Fallsington soils have severe limitations for development; that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that both soil types are considered of Statewide Importance; and that the Fallsington soils are considered Prime Farmland.

The Commission found that Christine A. Toras, Attorney, was present on behalf of Pierce Hardy Limited Partnership, and submitted a summary letter about the applicants, the location of the site, the rezoning request, the property uses intended, the improvements intended, lighting, screening, capital investments and increase of tax base, hours of operation, traffic and parking, stormwater management, water, sewer, jobs, and the consistency with surrounding properties. Ms. Toras also submitted photographs of business uses in the area.

The Commission found that Ms. Toras stated in her presentation and in response to questions raised by the Commission that they propose to rezone three parcels of land as expansion to the existing 84-Lumber business on the site facing Route 26; that they propose to disassemble two existing lumber sheds and relocate them to the rear of the site; that the 6.9 acre site is heavily wooded; that business hours will be from 7:00 a.m. to 7:00 p.m. Monday through Friday, 8:00 a.m. to 5:00 p.m. Saturday, and 9:00 a.m. to 4:00 p.m. Sunday; that parking will remain the same since the store is not being expanded; that storage will be improved; that there should be no additional traffic generated by the expansion; that the use should be compatible with the surrounding area; that they have no intent to change the entrance; and that they cannot access Route 17 from the site since they do not have frontage on Route 17.

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

The Commission found that Shirley Price, a resident that lives across Route 26 from the site, spoke in opposition to the expansion and stated that the original intent for the site, when the original rezoning was approved, was a boat sales showroom; that the entrance is not adequate for the use; that truck motor noises and forklift noises are annoying late at night; that the site does not provide enough parking for the customers; that tractor trailers park along Route 26 prior to opening of the business with motors running; that the site does not provide adequate parking for tractor trailers; that DelDOT should re-evaluate the entrance; that traffic accidents should be a concern; and that the entrance is blocked occasionally with vehicles parking along the shoulder of Route 26.

The Commission found that Tad Gerisher, an engineer for 84-Lumber, was also present on behalf of the applicants and stated that they will try to revise the site plan in response to the concerns referenced.

At the conclusion of the public hearings, the Commission discussed the points and issues raised during the public hearing.

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

Motion carried 5 - 0.

Subdivision #2002-9 - - application of **SUSSEX VENTURES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nantiocke Hundred, Sussex County, by dividing 23.55 acres into 16 lots, located west of Road 446, 1,163 feet south of Route 9.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of April 17, 2002 would be made a part of the record for this application.

Mr. Abbott read comments received from the Natural Resources Conservation Service and a letter received from Eleanor Adams with concerns about the proposed development.

The Commission found that Drew Ward and Donald Ward were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the proposed subdivision is a low density project; that there is an increased demand for lots in the area as shown by the number of new homes that are being built; that it seems that the demand is much greater than the supply of available lots; that most local people want large lots located in a country setting; that the lots will

range between 0.75 acres and 1.5 acres; that local families want lots with restrictions to preserve property values; that there is a demand for lots located near a town; that the proposed development is located about 7 miles from Laurel, 7 miles from Seaford, and 6 miles from Georgetown; that the proposed site is mostly sandy soil with some areas of heavier soil that slopes toward a major tax ditch; that the field is small and not economical for irrigation nor efficient for large scale farmers; that currently any farm runoff from this site is unimpeded as it flows into two major tax ditches; that the proposed subdivision will provide safeguards such as stormwater ponds, grass areas, and tree buffers, that will prevent runoff from farming operations and thus reduce pollution in the two adjacent ditches; that only a small portion of the property appears to have any concerns from the overflow of the tax ditches; that the area is not proposed for building lots, but is proposed to be part of a conservation area, most of which will be kept in its natural state; that it appears that because of the low number of proposed homes in this subdivision and a low traffic count on Asbury Road, there is little concern for the traffic generated; that the site fits between two tax ditches and a small field; that the north end is wooded and has some wetlands; that a planned 30-foot buffer in the non-wooded areas will make this project completely surrounded by trees and a tax ditch; that since the site is mostly clear and will be surrounded completely with trees and a tax ditch, it will be an ideal site for homes; that there are some wetlands found on this site; that a conservation easement is proposed for the wetland area and other areas of open space; that this will preserve the area in its present form with a minimal amount of disturbance; that the natural feature of the parcel is a gentle rolling field between two ditches; that the area will be preserved by moving a minimum amount of soil; that the area is proposed for perpetual conservation easement; that the view from all lots will be trees, other lots, and a pond on the adjacent property; that the open space will be deeded to the homeowners association for play areas, picnic areas, walkways, etc.; that a 30-foot tree buffer will be planted on the same side where this subdivision borders farmland; that the final road design will incorporate a minimum movement of soil and maintain current grade to the extent possible; that it appears that very few trees will need to be removed with minimal amount of grade change; that while there are few objectionable features visible on neighboring properties, the planting of trees on the proposed buffer as well as additional plantings along the lot lines near the entrance will limit the views of the neighboring properties; that these tree buffers will provide a wind buffer as well as a landscape border; that water supply will be from on site wells; that sewage disposal is proposed to be by on site septic systems; that a soil scientist has indicated that 14 of the 16 lots have soils that are consistent for gravity septic systems; that the project design has a system of swales that forces the surface water (rain runoff) to be diverted to designated storm ponds where the water will filter back to the aquifer thereby recharging it; that the subdivision will reduce erosion and sedimentation, have little impact on ground water levels, decrease the rate of runoff and maximize groundwater recharge; that erosion and sedimentation will be reduced since water from this site will not leave as it does now; that it will be slowed as it flows through grassy swales and collected in storm ponds; that groundwater

recharge will be increased since the on site storm water will seep back into the ground instead of running into the tax ditch as it does now; that each of these areas will be positively impacted by this project; that the proposed subdivision has a proposed entrance on Asbury Road which is a local road with a low traffic count; that given the number of lots, it seems that the impact on traffic will be minimal; that the interior roads are proposed to be built to county specifications; that a speed limit of 15 miles per hour is proposed within the development; that the proposed land/home packages will range from \$119,000 and up; that property values in the area will increase; that following the law of supply and demand, lot prices in the County have risen over the past few years at a rate much higher than inflation; that prices are still rising since there are not enough lots for sale in the area to meet the demand; that with higher lot prices and grain prices at a very low level, farmers are under increasing pressure to sell farmland; that by making lots in this subdivision available to the public, pressure to sell other farmland is reduced; that all new subdivisions must be created from farmland or woodland; that this subdivision will increase the supply of lots and decrease the pressure to sell other farmland; that since it is expected that most purchasers will be families already living in Sussex County, the major effect on schools will be a change in attendance areas or movements between school districts; that with the advent of charter schools and school choice, the net increase in students from this subdivision to local schools appears to be negligible; that using DelDOT's formula to compute traffic generated by subdivisions, the average traffic increase on Asbury Road will be very minimal; that this road is not considered a high traffic road nor will it be if this subdivision is approved; that the area is not an industrial or commercial area; that it is composed of homes and farmland; that the subdivision will be very compatible with other land uses; that the effect on the two tax ditches will be positive since runoff will be slowed and contained prior to its movement into the tax ditches; that the borrow pit is about 40 to 50 feet from the subdivision; that a tax ditch separates the subdivision and borrow pit; that a maintenance easement for the tax ditch exists on this site; and submitted a booklet outlining their presentation.

The Commission found that no parties appeared with any interest to this application.

At the conclusion of the public hearings, the Commission discussed the hearing.

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

Motion carried 5 - 0.

OTHER BUSINESS

Fresh Cut Lawn Service Commercial Site Plan - Route One

Mr. Abbott advised the Commission that the site plan is for a landscaping business; that the site is zoned C-1; that the entrance is off of the private street in the Jiffy Lube subdivision and there is no direct access to Route One; that the site has a storage and retail sales area; that the setbacks meet the requirements of the zoning code; that 17 parking spaces are located in the front yard setback and need a waiver from the Commission; that the plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 - 0.

Oasis Car Wash Commercial Site Plan - Route One

Mr. Abbott advised the Commission that the site plan is for a 2,980 square foot, 5 bay car wash; that access to the site is from a subdivision street to the rear of the site and that there is no direct access to Route One; that the setbacks meet the requirements of the zoning code; that there are some minor revisions in reference to notes that need to be revised; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the office receiving all required agency approvals.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 - 0.

Georgetown Auto Sales Commercial Site Plan - Route One

Mr. Abbott advised the Commission that the site plan is for used car sales and a retail store; that DelDOT has issued an entrance permit for the site; that the setbacks meet the

requirements of the zoning code; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 - 0.

Wright Property (Grady, Inc.)
C/U # 1434 Site Plan - Road 276

Mr. Abbott advised the Commission that the site plan is for 68 multi-family units; that there are 17 buildings with 4 units each; that a pool is proposed; that the setbacks meet the requirements of the zoning code; that the final plan needs to address the stipulations that were imposed by the County Council; and that the site plan meets the requirements for preliminary approval.

The Commission discussed the proposed location of the swimming pool.

Zach Crouch of Davis, Bowen and Friedel was present and advised the Commission that the pool could be relocated and that the stipulations will be addressed on the final site plan.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action.

Motion carried 5 - 0.

John Lynch
Non-buildable Lot - Road 406

Mr. Abbott advised the Commission that the applicant would like the Commission to consider a 35,000 square foot lot with 120 feet of road frontage as a non-buildable lot.

It was the consensus of the Commission that they do not have the authority to consider the lot non-buildable and that a variance should be obtained from the Board of Adjustment.

Subdivision #2001-8--David B. Webb, Jr.
Time Extension

Mr. Abbott advised the Commission that a request for a time extension has been received and that this is the first request.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve a one-year time extension.

Motion carried 5 - 0.

Subdivision #2001-16--Thomas Head
Time Extension

Mr. Abbott advised the Commission that a request for a time extension has been received and that this is the first request.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve a one-year time extension.

Tom Ford and George Raab
C/U #1238 Status Report - Route 54

Mr. Abbott advised the Commission that the use was approved in 1998; that the site plan was approved; that an entrance built to DelDOT specifications has been built and central water provided to the site by Artesian Water Company has been completed and questioned if the Commission would consider the use substantially underway.

Mr. Schrader advised the Commission that only two time extensions are permitted by the Zoning Code.

The Commission discussed the issues.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to determine that the conditional use is not substantially underway.

Motion carried 5 - 0.

Meeting adjourned at 12:05 A.M.