

## MINUTES OF THE REGULAR MEETING OF JUNE 13, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 13, 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.

Mr. Lank advised the Commission that C/Z #1472 - Pierce Hardy Limited Partnership, Item #5 under Old Business, has been withdrawn.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as amended by referencing the above referenced withdrawal.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of May 23, 2002 as amended.

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

## PUBLIC HEARINGS

**Subdivision #2002-10--application of W.T. WILSON, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Broadkill Hundred, Sussex County, by dividing 3.00 acres into 4 lots, located southwest of Route One, both sides of Red Fox Lane, and 1,200 feet northwest of Route 88.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the proposed lots will be located on both sides of Red Fox Lane which is an existing street; that no new streets are proposed with this application; and read a letter received from Charles D. Lee, owner of Lot 14 within Red Fox Run Subdivision in support of this application.

The Commission found that Walt Wilson, developer, and Mark Davidson of the DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that a homeowners association has been formed but it is still controlled by the developer, and that the restrictions for the 4 lots will be the same as the existing subdivision.

Mr. Abbott advised the Commission that the developer did submit proof that 51% of the lot owners are aware of the subdivision and have no objections.

The Commission found that no parties appeared in support of or in opposition to this application.



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

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

Motion carried 5 - 0.

**C/Z #1470-application of TROUT, SEGALL & DOYLE DEVELOPMENT CO., L.L.C.** 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 Baltimore Hundred, Sussex County, land lying north of Route 54 (Lighthouse Road), 2,500 feet east of Road 381 (Old Mill Bridge Road), to be located on 10.36 acres, more or less.

The Commission found that the applicant had submitted, prior to the meeting, a booklet of information that included an introduction of the project, a land planning analysis, an environmental analysis, appendices which included a traffic analysis and correspondence, and exhibits of existing features and the development plan.

The Commission found that the applicant also submitted a traffic impact analysis prepared by The Traffic Group.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State sent a letter to the Department on June 2, 2002 and that on June 12, 2002 a revised letter was sent to update the original letter; that update information appears to show that there are no State regulated wetlands on the site; that the developer is in possession of a letter from the Army Corp. of Engineers dated May 16, 2002 which states that there are no federally regulated wetlands on the site; that the State had expressed concerns about nutrient loading and TMDL; that it's no secret that the Inland Bays are over-enriched with nutrients, from many sources, and that drastic cuts in those sources will be required to meet the legally required TMDL; that the project is slated to be served with central sewer, which is obviously much better than any sort of on-site disposal; that subdivisions served by central sewer have a nutrient impact on nearby waters, either through direct surface water runoff or via ground water discharge, especially in many of the sandy soils exhibited on this site; that the engineer for the project stated that conversion of the land from row crops to residential development and open space will have a net improvement on nutrient loading and Inland Bays water quality; that DNREC has stated that this may or may not be the case and that it would have to be analyzed in light of expected nutrient loading from the development, present loadings from any agricultural operations, and existing nutrient levels in the soils; that the State continues to be concerned about the cumulative effects of the project for the coastal



Sussex area; that Route 54 is a Hurricane Evacuation Route; that continuing development in this area places more cars on this Route if an evacuation occurs; that a portion of the site is located within the 100-year flood plain of the Assawoman Bay; that the units could be subject to flooding during severe coastal storms; that the State asks that the County require that the recommendations of DelDOT be placed as conditions to any approval given on this application; that the State withdraws its recommendation to table this application until further environmental studies can be completed; that the State requests that the County consider the cumulative effects of the recent rezoning applications that have been received by or approved by the County in the area and that the County coordinate with local jurisdictions that could be directly affected by this proposal, such as Selbyville and Fenwick Island, so that their concerns can be addressed.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam, Klej loamy sand, Osier loamy sand, Pocomoke sandy loam, and Rumford loamy sand; that the Rumford soils have slight limitations; that the Klej soils have slight to moderate limitations; that the Fallsington, Osier and Pocomoke soils have severe limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that all of the soil types are considered of Statewide Importance; that the Fallsington and Pocomoke soils are considered Prime Farmland; that the Fallsington, Klej and Pocomoke soils area considered either Hydric or Hydric in depressions; 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 because of the presence of poorly drained and very poorly drained soils and the increased impervious area; and that there may be regulated wetlands on the site.

The Commission found based on comments received from the County Engineering Department Planning and Permits Division, that capacity appears to be available for the commercial site as proposed; that there is insufficient capacity in the 24-inch line in Route 54 for the entire commercial site; that there is also insufficient capacity at pumping station #30 near the intersection of Road 381 and Route 54 for the build out of the Fenwick Island Sanitary Sewer District; that improvements are planned; that the Division recommends a limit of 60 EDU per year to allow time for the improvements to occur; that the current System Connection Charge Rate is \$2,389.00 per EDU; that tentative approval has been given for a portion of the commercial property to be connected to the existing 24-inch line; that the remainder will be connected to the new pipelines to be constructed for the subdivision; that the site is adjacent to the Fenwick Island Sanitary Sewer District and that conformity to the South Coastal Area Planning Study, or undertaking an amendment, will be required.



The Commission found that a letter had been received from Anthony J. Deprima, City Manager of the City of Dover, acknowledging the cooperation and good working relationship that he has had with the developers in building the Dover Crossing project at the Route 13 and Route 113 split; that most people agree that that project is one of the better-designed and better-presented developments of its kind in Delaware; that the developers did not hesitate to meet the City of Dover's relatively high architectural, landscaping and sidewalks standards; and that he would welcome the opportunity to work with the developers in Dover again.

The Commission found that James Fuqua, Attorney, was present on behalf of the application and requested that the applications for C/Z #1470 and C/Z #1471 be combined into one public hearing so as not to be repetitious and that he intends to summarize the presentation and then answer any questions raised by the Commission.

There was a consensus of the Commission to combine the applications into one public hearing. It was noted that separate decisions would be rendered for each case.

To combine the applications into one public hearing it was necessary for Mr. Lank to introduce the application for C/Z #1471 and any comments received.

**C/Z #1471-application of GLADYS A. SWANN/TROUT, SEGALL & DOYLE DEVELOPMENT CO., L.L.C.** 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 200 feet north of Route 54 (Lighthouse Road), 2,500 feet east of Road 381 (Old Mill Bridge Road), to be located on 109.51 acres, more or less.

The Commission found that the applicant had submitted, prior to the meeting, a booklet of information that included an introduction of the project, a land planning analysis, an environmental analysis, an engineering analysis, appendices which included a traffic analysis, architecture and correspondence, and exhibits of existing features, the development plan, site details, and a phasing plan.

The Commission found that the applicant also submitted a traffic impact analysis prepared by The Traffic Group.

The Commission found that comments received from the Office of State Planning Coordination were the same as those comments introduced for C/Z #1470.

The Commission found that comments received from the Sussex Conservation District were the same as those comments introduced for C/Z #1470.



The Commission found based on comments received from the County Engineering Department Planning and Permits Division, that sewer treatment capacity is available for the subdivision; that there is insufficient capacity at pumping station #30 near the intersection of Road 381 and Route 54 for the build out of the Fenwick Island Sanitary Sewer District; that improvements are planned; that the Division recommends a limit of 60 EDU per year to allow time for the improvements to occur; that there will be no limit after the improvements are completed; that the current System Connection Charge Rate is \$2,389.00 per EDU; that the subdivision must be connected directly to pump station #30; that a conceptual plan for all work associated with the proposal must be approved; that the site is adjacent to the Fenwick Island Sanitary Sewer District and that conformity to the South Coastal Area Planning Study, or undertaking an amendment, will be required.

The Commission found that on June 10, 2002 Consultants Unlimited faxed copies of Army Corps. of Engineers correspondence referencing that there are no federally regulated wetlands on the site, DNREC correspondence referencing that there are no wetlands shown on the maps within the boundaries of the property, and a copy of a letter from Robert R. Jones of Frederick Ward Associates, Inc. to Constance Holland, Director of the Office of State Planning Coordination, in reference to both wetlands letters.

The Commission found that Mr. Fuqua, Craig Ward, Kevin Small, Robert Jones, Wes Guckert, Gladys Swann, James and Nancy Swann, Jerome Trout, Jim Brooks, and Louis Di Bitonto were present on behalf of the applications and stated in their presentations and in response to questions raised by the Commission that the site contains 119.87 acres that has been owned by the Swann family since 1947; that the B-1 application for "Fenwick Plaza" contains a 55,256 square foot grocery and 8,000 square foot of retail shops, and 3 pad sites; that the MR-RPC application for "Swann Cove" proposes 372 single family lots, recreational areas, open space, walking trails, and a density of approximately 3.4 units per acre gross; that central sewer is available for both applications; that originally they proposed to restrict the project to development of 80 units per year and that they have no objection to the County Engineering limitation of development of 60 units per year; that Artesian Water will be the water supplier; that the developers have no objections to the five recommendations required by DelDOT; that the five recommendations are the same as those required by DelDOT on the Bunting-Gray application on the adjoining property to the east; that the developers will prepare an emergency evacuation plan; that the developers will provide deed restrictions referencing evacuation procedures; that the site has been tilled; that the site has no forested areas; that no rare endangered species have been found on the site; that no historic sites have been inventoried on the site; that a portion of the site is located within the 100-year flood plain; that stormwater management will comply or exceed County and State requirements and should improve the quality of any run-off and be much less than agricultural uses; that no State or Federally regulated wetlands exists on the site; that electrical service will be supplied by Delaware Electric Cooperative; that telephone service will be provided by



Verizon; that cable television service will be provided by Comcast; that the main entrance off of Route 54 will serve both applications; that the collector street within the project will have a 60-foot wide right-of-way with a boulevard design; that bike paths and landscaping will be provided along the boulevard; that sidewalks will be provided on both sides of the boulevard; that sidewalks will be provided on one side of side streets; that a secondary access to the project is proposed to Road 381 across lands of the Delaware Electric Cooperative; that the portion of the site along Dirickson Creek is bulkheaded; that there are no direct lot frontages along the Creek; that no motorized boats will be permitted to be launched from the site into Dirickson Creek; that the applications comply with the 1997 Comprehensive Plan and the 1999 Strategies for State Policies and Spending Map; that the site is located within a Development District according to the Comprehensive Plan and proposes central water and central sewer; that the project proposes less than 4 units per acre; that the combined projects provide a mixed use community with recreational facilities and walking trails; that the project will be an economic benefit to the County through taxation, fees, jobs, etc.; that the project is located in an Environmentally Sensitive Area according to the Strategies Map and that the project is environmentally sensitive; that other commercial areas exist along Route 54 and referenced the adjoining boat sales and storage, retail shops, and proposed commercial area on the Bunting-Gray project; that the developers feel that a need exists in the area for a large grocery store with related retail shops; that the density is consistent with other projects in the area and referenced Bayville Shores, Swann Keys, Mallard Lakes, and Shady Park; that the application is similar to the recent applications of Bunting-Gray, and McCabe/Smith; that DelDOT comments are the same as on those applications; that County Engineering comments are similar to those applications; that DNREC comments differ since no forest exists on this site; that the recent decisions on Bunting-Gray and McCabe/Smith are consistent with this application; that the residential use is appropriate according to the Comprehensive Plan since it is located in a Development District; that the B-1 application will be an asset to the project and to the residents to the area by providing a location for shopping needs; that they applied for a residential planned community knowing that restrictions can be incorporated into the decision; that the main entrance serves both the subdivision and the B-1 area; that a second ingress/egress is proposed along Route 54 for rights in and rights out only and will be subject to DelDOT approval; that a small cemetery does exist on the site and will be preserved; that the access to Road 381 is under negotiation with Delaware Electric Cooperative; that no street connections are proposed to the streets within Magnolia Shores Subdivision; that an off-site lot owned by Jim Lebrum will have access to the internal street system; and that the future development phase depicted on the site plan will be developed individually by the Swann family.

The Commission found that Jim Lebrum was present in support of the application and stated that the location of his driveway easement will provide him with a paved drive; that the four homes near his home have access to an easement on the Bunting-Gray site.



The Commission found that Mr. Fuqua stated in response to questions raised by the Commission that approximately 15% of the site will be open space; that the recreational area has been located in the middle of the project; that a water front area is proposed along Dirickson Creek; that interconnecting trails wander throughout the project; that they would have no objection to providing interconnection to the Bunting-Gray business area; that the long swales that cross the site are actually farm ditches that will be relocated; that the existing mobile home on the site will be removed; that they do not propose a boat ramp; that boats will have to be launched at public ramps; that stormwater management ponds have been located near perimeter property lines to separate neighboring homes for the proposed lots and to act as buffers; and that no specific plans are proposed for the three pad sites.

The Commission found that Mr. Di Bitonto stated that a Safeway store is the proposed grocery and that the 8,000 square foot retail space will be leased retail units.

The Commission found that Mr. Fuqua added that the business site will be developed simultaneously with the first phase of the subdivision and that the recreational area will be constructed and open by the time the certificate of occupancy is issued for the 123 homes.

The Commission found that Mr. Brooks, a representative for Safeway, stated that the store will be an average sized Safeway store.

The Commission found that Ken Sprole, a neighboring property owner, questioned buffers along his property.

The Commission found that Kevin Small responded that landscape buffers will be provided.

The Commission found that Mr. Fuqua submitted for the record a photocopy of the flood map for the area, a photocopy of the tax maps for the area showing commercial sites; and photocopies of the County Council decisions for C/Z #1460 (Bunting-Gray, LLC) and C/Z #1466 (Raymond McCabe and J. Oliver Smith, Jr. t/a Bayview Acres), a reduced photocopy of the area depicting a cumulative review of the area projects and the site location, a statement on compliance with the Comprehensive Plan, and proposed conditions for consideration of the MR/RPC application.

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

At the conclusion of the public hearings the Commission discussed the applications.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action on C/Z #1470.

Motion carried 5 - 0.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action on C/Z #1471.

Motion carried 5 - 0.

#### 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 Commission discussed this application which has been deferred since May 9, 2002.

Mr. Wheatley stated that he anticipates traffic problems at this location, and that he has concerns about the site plan and the application.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the discussion above.

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 Commission discussed this application which has been deferred since May 9, 2002.

Mr. Lynch stated that he would move to deny the application with reasons, passed out his reasons, and asked Mr. Schrader to read his recommendation. Mr. Schrader read that based upon the record of opposition made at the public hearing on May 9, 2002, Mr. Lynch moves that the application be recommended for denial for the following reasons: The proposed project meets a growing need for out the area, but the orderly growth of the



County requires that it be closer to municipalities and town centers. Although the proposed project is in an area identified in the 1997 Sussex County Comprehensive Plan as a development district within a growth area, the site is not appropriate for this project because:

1. The project is out of character with the area in which it is proposed to be located. The surrounding area is made up of single family homes and manufactured housing units in AR-1 Single Family Residential and GR General Residential Districts, many of which are non-conforming uses existing prior to the adoption of zoning ordinances. This project includes one hundred fifty-three (153) of the proposed units as apartments in multi-family structures and fifty (50) units in an assisted living structure.
2. The single road that provides access to the project is inadequate to meet the needs of this project and the surrounding area. The road is narrow, curved, and lacks adequate shoulders. Area property owners report that it floods during unusual storm conditions. The roadway is inadequate to serve emergency vehicles, construction vehicles, or to provide for an emergency evacuation plan.
3. The project is in an environmentally sensitive area that should be conserved. The project is located adjacent to Rehoboth Bay and within the project site, and that 104 acres, more or less, or 40% of the project, are State tidal wetlands. State agencies and individuals familiar with the site report rare species of plants and animals. Angola Neck contains several protected areas of high conservation value, such as Delaware Wild Lands.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be denied based on the above reasons.

Motion carried 5 - 0.

**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 discussed this application which has been deferred since May 23, 2002.

Motion by Mr. Lynch, seconded by Wheatley, 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 discussed this application which has been deferred since May 23, 2002.

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.

This application was withdrawn on June 4, 2002.

#### OTHER BUSINESS

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 with an approved conditional use; that 17 buildings are proposed with 4 units each; that each building is proposed to be 137-feet by 67-feet; that 204 parking spaces are required and 215 spaces are proposed including garages; that the swimming pool has been relocated to the west of the site and away from the entrance road; that the site plan meets the setback requirements of the zoning code and complies with the 17 conditions of approval stipulated by the County Council; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Johnson, 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.



Sugar Maple Farms  
Public Streets to Private Streets - Route One

Mr. Abbott advised the Commission that the staff has received a request to revise the streets within Sugar Maple Farms subdivision from Public Streets to Private Streets; that the subdivision is currently under construction; and that none of the lots have been sold yet.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the request.

Subdivision #2001-13 - - Paul and Doris Barron  
Time Extension - Road 465A

Mr. Abbott advised the Commission that a request for a one-year time extension has been received in order to obtain final approval; that this application received preliminary approval on May 24, 2001 for 22 lots; and that this is the first request for an extension.

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

McKinley Evans  
Waiver of Topography Requirements - Road 213

Mr. Abbott advised the Commission that a request has been received seeking a waiver of the topography requirements for a major subdivision; that the proposed subdivision is for one lot; and that the Sussex County Engineering Department has no problems with the request.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the request.

Pot Nets Bayside  
Revised Lots

Mr. Abbott advised the Commission that this is a revised site plan for the relocation of 15 lots with Pot Nets Bayside; that the lots were lost in another area due to the location of the sewer system; that all of the lots exceed the requirements of the zoning code; and that in December of 2001 the Commission approved the relocation of 12 other lots.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as submitted.



John W. Evans Subdivision  
Revised Street - Road 485

Mr. Abbott advised the Commission that this is a request to delete a cul-de-sac at the end of the street and create a "L" shaped turn around; that the cul-de-sac utilizes too much of the lot and will not allow for the necessary buildable area; and that the staff has received letters of no objection from all of the lot owners who utilize this street.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the revised street layout.

Additional Business

Mr. Allen stated that he would like the minutes to show the acknowledgement of the Commission for the outstanding service and dedication of Mr. Franklin O. Bunting, Zoning Inspector III, and Mr. Norman "Bud" Rickard, Chief Zoning Inspector, who are retiring.

Meeting adjourned at 8:50 P.M.