

MINUTES OF THE REGULAR MEETING OF JULY 30, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 30, 2015 in the County Council Chambers, Sussex 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. Rodney Smith, Mr. Michael Johnson, Mr. I.G. Burton, III and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Ms. Janelle Cornwell – Planning and Zoning Manager.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with four votes to approve the Agenda as amended, referencing the withdrawal of Subdivision No. 2015-3 Reddenwood II Subdivision. Motion carried 4 – 0. Mr. Johnson was absent during the motion.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with four votes to approve the Minutes of July 9, 2015 as amended. Motion carried 4 – 0. Mr. Johnson was absent during the motion.

OLD BUSINESS

C/Z #1768 – Convergence Communities

An Ordinance to amend the Comprehensive Zoning Map of Sussex County 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, containing 49.66 acres, more or less. The property is located north of Road 361 (Muddy Neck Road) east and south of Ocean Way Estates Subdivision, west of Assawoman Canal, and also north of the Ocean View Beach Community in the Town of Ocean View with access from Nantasket Ave, Old Orchard Ave, Ocean Beach Ave, and Gooseberry Ave (911 Address: None Available) Tax Map I.D. 134-17.00-12.00. To announce receipt of information regarding amenities.

The Commission discussed this application which has been deferred since April 9, 2015.

Mr. Lank reminded the Commission that the types of amenities were announced on June 11, 2015, after receipt of a letter referencing the amenities from James Fuqua, Jr., Esquire, on behalf of the applicant.

Mr. Smith stated that he was originally confused by the application since part of the project is within the Town of Ocean View, since access to the project is thru a project in Ocean View, and since all amenities are in Ocean View; and that he anticipates that the project will be annexed into the Town of Ocean View in the future.

Mr. Ross agreed and added that he also anticipates that the developer and the Town of Ocean View will be working together for annexation purposes; and that the Commission needs to act based on the record of the application.

Mr. Burton agreed.

Mr. Johnson referenced some concerns about who to call if there is a safety issue, when part of the project is in the Town of Ocean View and part of it is under County jurisdiction.

Mr. Wheatley agreed that intergovernmental coordination is an issue, but the Commission needs to address this application.

Mr. Smith stated that he would move that the Commission recommend approval of Change of Zone No. 1768 for Convergence Communities for a change in zone from AR-1 Agricultural Residential to MR-RPC Medium Density Residential – Residential Planned Community based upon the information contained in the record and for the following reasons:

- 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area as established by the Comprehensive Land Use Plan.
- 2) The proposed rezoning to an MR-RPC meets the purpose of both the MR and the RPC zoning designations since it provides for a superior living environment where County sewer and central water are available.
- 3) Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.
- 4) Central water will be provided to the project.
- 5) With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity.
- 6) The development will be required to comply with all DelDOT requirements, including entrance locations and roadway improvements.
- 7) This application, with the conditions placed upon it, is consistent with the surrounding areas which include a mix of single family residential and multi-family residential developments.
- 8) There was no opposition to this application reported during the public hearing.
- 9) This recommendation is subject to the following conditions:
 - A. The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units.
 - B. Site plan review shall be required for each phase of development.
 - C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements, or in accordance with any further modification required by DelDOT.
 - D. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.

- E. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as so required by applicable regulations.
- F. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As so proffered by the applicant, street design shall include sidewalks on both sides of all streets.
- H. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- I. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- J. The applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- K. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State Permits. The wetland areas shall be clearly marked on the site with permanent markings.
- L. There shall be a 50 foot buffer from all tidal wetlands.
- M. As proffered by the applicant, owners and residents of the proposed development shall be entitled to use all of the recreational amenities of the adjacent Ocean View Beach Club development under the same rights, responsibilities and fees applicable to owners and residents of the Ocean View Beach Club.
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, 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.

2004-52 – Holland Mills Subdivision

Walker Road Development, LLC is requesting to revise the approved final record plan to consider the deletion of the sidewalks throughout the development. The subdivision is zoned AR-1. The subdivision is located on the south side of Walker Road, approximately 1 mile west of Hudson Road. Tax Map I.D.: 235-26.00-8.00, 8.01 and 235-26.00-183.00 through 235-26.00-318.00.

The Commission discussed this request which has been deferred since July 9, 2015.

Mr. Johnson stated that he had prepared a motion, but would like to hear any comments from the other Commission members prior to making a motion.

Mr. Burton stated that there were many homeowners present during the public hearing requesting that the sidewalks not be installed.

Mr. Smith agreed and added that, based on the statements made by the homeowners, the sidewalks would be a hardship on the residents of the community. Mr. Smith added that the Ordinances need to be revised to be more specific about sidewalk requirements.

Mr. Ross stated that the applicant should have realized that sidewalks had been proposed and should have been installed since they were proffered on the Record Plan; that if sidewalks are proffered they should be required based on a specific County Engineering design; that sidewalks should be in the street right-of-way, not on private lots; and that the Certificates of Occupancy should be withheld until the sidewalk is built or guaranteed by bonding the construction.

Mr. Wheatley agreed that an ordinance is needed; and that, based on their testimony, the residents do not want sidewalks.

Mr. Johnson stated that approval of this request should not be considered a precedent.

Mr. Johnson stated, that concerning Subdivision 2004-52 Holland Mills Subdivision and the developer's request to revise the approved Final Record Plan to delete sidewalks throughout the development, he offers the following motion:

Sidewalks help to provide for safer pedestrian travel and superior design for subdivisions, especially cluster subdivisions that incorporate greater density via smaller lots. This subdivision was originally proffered to have curb and gutter streets and sidewalks on both sides of the streets. Between the original public hearing in 2005 and the submission of the Final Site Plan, the developer, without input from the Commission, took it upon themselves to remove the curb and gutters, and reduced the sidewalks to one side of the streets. Unfortunately, this substantial change was approved by the Commission without fanfare. Sometime after the approval of the Final Site Plan, again without conferring with the Planning and Zoning Commission, the developers took it upon themselves to remove sidewalks entirely and told builders to proceed without the sidewalks, despite sidewalks being clearly identified on the approved Final Site Plan. Perhaps due to the developer's willful and intentional removal of sidewalks from the subdivision and allowing for the sale of lots, building of homes, and eventual occupancy of almost ½ of the approved lots, without sidewalks, the developer may have been in violation of 115-229 and 99-38 - Violations and Penalties.

However, the developer, instead, has sought relief from the Planning and Zoning Commission, whereby the developer has asked the Commission to remove sidewalks from the subdivision.

In this subdivision, the development has been substantially constructed without sidewalks, and many homes have been built and sold without them. The sidewalks, road and drainage design would also require the sidewalks to be placed within many of the individual lots, which would directly impact the homeowner's driveways, landscaping and other improvements that homeowners may have made to their properties. During the public hearing, many residents testified that they would not want the sidewalks installed now.

For these reasons, in this particular case, the Commission essentially has no alternative but to grant the developers and homeowner's relief from the obligation to provide sidewalk.

Given these particular circumstances, I move that the Commission grant approval of the request to delete sidewalks from Subdivision #2004-52 Final Site Plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the request to delete sidewalks from Subdivision #2004-52 for Holland Mills Subdivision. Motion carried 5 – 0.

2004-53 – Anthem Subdivision

Holland Mills Development, LLC is requesting to revise the approved final record plan to consider the deletion of the sidewalks throughout the development. The subdivision is zoned AR-1. The subdivision is located on the north side of Walker Road, approximately 1 mile west of Hudson Road. Tax Map I.D.: 235-26.00-7.00, 7.01 and 235-26.00-336.00 through 235-26.00-487.00.

The Commission discussed this request which has been deferred since July 9, 2015.

Mr. Johnson stated that while Subdivision #2004-53 was presented jointly with the Subdivision #2004-52 request to revise the approved Final Record Plan to delete sidewalks throughout the development, it is indeed a separate application and is to be considered under its own merits.

Subdivision #2004-53 Anthem Subdivision is not substantially underway. No lots have been sold, no homes have been constructed, streets and stormwater management features, etc. have not been constructed.

The developer has not presented any material facts which might warrant the removal of sidewalks from the cluster subdivision. No hardships, engineering design problems, topography issues, etc. were ever mentioned.

The applicant did not make a record sufficient to justify the removal of the sidewalks from the approved plans.

Therefore, regarding Subdivision #2004-53 Anthem Subdivision, I would move that the Commission deny the applicant's request to approve a revised Final Record Plan with the sidewalks deleted from it based on an insufficient record.

Prior to a second on the motion by Mr. Johnson, Mr. Smith stated that in pondering both projects the projects were discussed at the same time during one public hearing; and that he questioned the sufficient record reference.

Mr. Wheatley agreed that the record shows no activity; and added that the Ordinance does not specifically require sidewalks.

Mr. Ross stated that the discussion was almost totally referencing Holland Mills Subdivision; and that he is not keen on additional conditions of approval.

Mr. Johnson stated that, given the discussion, he moves that the Commission deny the request to delete the sidewalks from the Final Record Plan for Subdivision #2004-53 Anthem Subdivision. The motion was seconded by Mr. Ross.

Mr. Wheatley asked for a vote by roll call: Mr. Johnson – yea; Mr. Ross – Yea; Mr. Burton – Nay; Mr. Smith – Nay; and Mr. Wheatley – Nay. Motion failed.

Mr. Burton stated that he would move that the Commission allow and approve the deletion of the sidewalks from Subdivision #2004-53 Anthem Subdivision. The motion was seconded by Mr. Smith.

Mr. Wheatley asked for a vote by roll call: Mr. Burton – Yea; Mr. Smith – Yea; Mr. Johnson – Nay; Mr. Ross – Nay; and Mr. Wheatley – Yea. Motion carried 3 – 2.

To continue the discussion, Mr. Johnson asked if his suggested additional conditions should be considered.

Mr. Robertson stated that, in general, amenities have been issues, including sidewalks; that a lot of Residential Planned Communities and Subdivisions have included conditions and requirements, most of which were proffered, i.e. sidewalks, clubhouses, game courts, pools, etc.

Mr. Wheatley added that purchasers need to know what were offered and proffered in disclosures.

2015-2 – Tall Grass Estates Lands

Lands of Mary S. Hazzard zoned AR-1 (Agricultural Residential District) and GR (General Residential District) in Indian River Hundred, Sussex County, by dividing 18.366 acres into 16 lots. The property is located east of Wil King Road (Road 288) 600 feet north of Conley's Chapel Road (Road 280B). Tax Map I.D.: 234-6.00-74.09 and 74.10.

The Commission discussed this application which has been deferred since June 25, 2015.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2015-2 for Tall Grass Estates, based upon the record and the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code which have been favorably addressed.
- 2) The proposed subdivision density is less than the density permitted by the existing AR-1 Agricultural Residential zoning.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) The proposed subdivision is consistent with other developments in the area.
- 5) The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- 6) Recently, DNREC has indicated that the site is suitable for individual on-site septic systems.
- 7) Although there were concerns expressed during the public hearing about present and possible future runoff from this property, the Sussex Conservation District will review and approve all stormwater management plans associated with the project. As an undeveloped parcel, there is currently no engineered design for water runoff of the site,

and this will be improved by the engineering that will go into this project and the Sussex Conservation District approval of the development.

- 8) This approval is subject to the following conditions:
 - A. There shall be no more than 16 lots within the subdivision.
 - B. The applicant shall form a homeowners' association responsible for the perpetual maintenance of roads, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - G. There shall be a 20-foot wide vegetated buffer shown along all of the boundaries of the project. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - H. Preliminary approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions stated on this approval. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 - I. 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. Ross, and carried with four (4) votes to approve the Preliminary Site Plan for Subdivision #2015-2 based on the reasons and conditions stated. Motion carried 4 – 0. Mr. Johnson did not participate since he was not present for the public hearing.

C/Z #1779 – Thomas K. Munce and Judy L. Munce
An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County containing 3.033 acres, more or less. The property is located east of U.S. Route 113 (DuPont Blvd) 0.54 mile north of Route 16 (Beach Highway) (911 Address: 12327 N. DuPont Blvd, Ellendale) Tax Map I.D.: 230-26.00-35.00.

The Commission discussed this application which has been deferred since July 9, 2015.

Mr. Burton stated that he would move that the Commission recommend denial of Change of Zone No. 1779 for Thomas K. Munce and Judy L. Munce for a change in zone from AR-1

Agricultural Residential District to CR-1 Commercial Residential District based upon the record made during the public hearing and for the following reasons:

- 1) The applicants currently have a conditional use to operate a Tavern on the property.
- 2) The applicants have stated that the only reason that they are seeking CR-1 Commercial Residential zoning is so that they can serve food at their establishment on the property. The property has had a tavern on it for many years, but without food service.
- 3) The applicants have not given any other reason for the rezoning to CR-1, or how CR-1 would be an appropriate zoning for this property in this location.
- 4) I am not satisfied that CR-1 zoning, with all of the permitted uses that can exist in the CR-1 zoning district, is appropriate for this location. It would also be the only CR-1 property in the area.
- 5) The applicants can get the ability to serve food in this location through a more appropriate application, such as a modification of their existing conditional use.
- 6) Because I do not believe that a sufficient record has been created to support a rezoning to CR-1, and because there are other more appropriate ways to address the applicant's request to serve food on the premises, this rezoning application should be denied.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

2015-3 – Reddenwood II Subdivision

The plan proposed to subdivide 53.39 acres into 41 single family lots with open space. The property is located southwest of the Reddenwood Subdivision, south of Neptune Road, approximately 265 feet southwest of White Oak Drive. The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D.: 135-7.00-12.00.

Mr. Lank announced that this application was withdrawn by the applicants Attorney on July 20, 2015.

C/U #2022- Home of the Brave Foundation, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a nonprofit boarding home for female veterans to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 5.0 acres, more or less. The property is located northwest of Sharps Road (Road 200) 0.6 mile northeast of Coastal Highway (Route One) (911 Address: 6632 Sharps Road, Milford) Tax Map I.D. 330-12.00-11.01.

The Commission found that the application was filed on May 22, 2015; and that the applicants provided an Exhibit Packet on July 20, 2015, which contains background information on the Home of the Brave Foundation, Inc.; a site plan; aerial photographs; a copy of the Rules Statement for clients; a copy of the Resident Rules for a Home of the Brave Foundation facility; and suggested proposed Findings of Fact and Conditions of Approval for consideration.

The Commission found that DelDOT had provided comments in the form of an email from Derek Sapp, Subdivision Manager, advising that the intended expansion is considered to have no impact on traffic generation; that there is no accident history at this location; that the site distance for the existing entrance is beyond the maximum required; and that DelDOT requires no further review or analysis of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated July 22, 2015, referencing that there are two soil types at this location; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that no off-site drainage improvements will be necessary; that only minor on-site drainage improvements will be necessary; and that no tax ditches are affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated July 27, 2015, referencing that the site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that letters of support were received from David Moore, Commander of the Walter L. Fox Post No. 2 of the American Legion; Larence W. Kirby, Executive Director of the Delaware Commission of Veterans Affairs; Olin B. Davis, Jr. of Davis – Smith Accounting Associates, P.A.; and Debra L. Smith voicing support of the proposed female facility and the need for such a facility in Delaware and on the Delmarva Peninsula, in the hope of helping eliminate veteran homelessness.

The Commission found that James A. Fuqua, Jr., Esquire with Fuqua, Yori and Willard, P.A. was present on behalf of the Home of the Brave Foundation, Inc. with several of the Foundation Board members, and Michael Cotton of Cotton Engineering, LLC, and stated in their presentation and in response to questions raised by the Commission that they are proposing a traditional housing facility to provide housing, food, transportation, and employment and counseling assistance; summarizing Exhibit “A” and Exhibit “D” in the Exhibit Packet; and continuing that the current Sharps Road facility currently serves 16 residents; that a few years ago the Foundation filed a Special Use Exception application for a facility near Milford and received some opposition; that another site was found within the City of Milford and opened as a temporary facility; that the temporary facility is only adequate for such a temporary use; that the application site contains 5.0 acres with adequate frontage; that the existing men’s facility is located to the rear of the acres and has 5 residential units to provide housing for 15 veterans; that the facility has an on-site septic and on-site well; that this application proposes two (2) two (2) story dwellings to house 8 female veterans in each dwelling with a 24 hour care giver; that the dwellings will be built in two (2) phases; that the County Comprehensive Land Use Plan places this site in a Low Density Area where single family residential use is permitted; that the site could be developed with a similar density; that the use meets the purpose of the AR-1 Agricultural Residential District and the purpose of a Conditional Use; that the use is of a public character; that the site is surrounded by agricultural lands; that there should be no negative

impact on the neighborhood; that the site has been utilized for 19 years for the housing for male veterans; that the maximum number of residents will be 31 veterans with care givers/staff; that buses are used for transportation, since the residents do not drive; and that an individual will not stay at the facility for more than 6 to 9 months.

Mr. Lank advised the Commission that this site was originally established as “People’s Place”.

Mr. Robertson questioned if there were any prior conditions of approval.

The Commission found that Al Wier, a Commissioner for Veterans Affairs, was present and stated that the Commission for Veterans Affairs is in support of this application.

The Commission found, by a show of hands, that there were 31 parties present in support of this application.

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

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

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

C/U #2023 – Frank Miranda

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a veterinarian office to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.52 acres, more or less. The property is located northeast of Lighthouse Road (Route 54) 1,112 feet northwest of Road 389, near Williamsville Intersection (911 Address: 33053 Lighthouse Road, Selbyville) Tax Map I.D. 533-18.00-12.00.

The Commission found that this application was filed on June 4, 2015 with a survey/site plan.

The Commission found that DelDOT provided comments on June 2, 2015 in the form of a Support Facilities Report referencing that a Traffic Impact Study was not recommended, and that the current Level of Service “C” of Route 54 will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on July 22, 2015 in the form of a memorandum referencing that there are three soil types on this property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas are affected; that off-site drainage improvements will not be necessary; that any new construction may require additional on-site drainage improvements; and that no tax ditches are affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments on July 27, 2015 in the form of a memorandum referencing that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed; that

conformity to the South Coastal Area Planning Study, 2005 Update will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Frank Miranda was present with Joseph Baker, the property owner, and that they stated in their presentation and in response to questions raised by the Commission that Mr. Baker has had a commercial dog kennel business on this site for approximately 25 years; that Mr. Miranda wants to purchase the property and extend the use to provide veterinary services by creating a veterinary clinic in the dwelling and to provide retail sales of accessory products normally sold in a veterinary clinic; that the area is predominately agricultural; that DelDOT has voiced no objections; that there are no veterinary clinics in the area; that the closest veterinary clinics are in West Ocean City, Selbyville and Ocean View; that the use will provide a service for the residents of the area; that they would be providing health care for small animals; that medications are controlled by State laws and will be kept secure; that the building will be alarmed; that the existing gun safe should be adequate for medication storage; that the maximum number of employees will not exceed ten; that appointments will be staggered by at least 45 minutes; that the existing signage on the premises will be altered to include references to the veterinary clinic; that the County owns the adjacent property; and that part of the driveway is on County property.

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 Conditional Use #2023 for Frank Miranda for a veterinarian's office based on the record made during the public hearing and for the following reasons:

- 1) The property is currently used as a home with a commercial kennel. The proposed use as a veterinarian office is an expansion of the existing use, and similar to the existing use. The kennel is a Special Use Exception that has been in existence for approximately 25 years.
- 2) This is an appropriate location for this use. The property is surrounded by other lands used for farming. The use will not have any impact on these nearby and adjacent properties.
- 3) The use as a veterinarian's office is consistent with the underlying AR-1 Agricultural Residential zoning of the property.
- 4) DelDOT has no objection to this use, and it will not adversely affect nearby roadways.
- 5) The use will provide a service to residents/guests and their pets in this area of Sussex County. It is a public use which satisfies the purpose of a conditional use under the Zoning Code.
- 6) No parties appeared in opposition to this application.
- 7) This recommendation is subject to the following conditions:
 - A. The use shall be a veterinarian's office, in addition to the existing kennel operations. Retail sales ancillary to a veterinarian's office shall be permitted.

- B. The applicant shall comply with any DelDOT entrance requirements associated with the veterinarian's office.
- C. The applicant shall utilize the existing sign for this use. No additional signage shall be permitted.
- D. The parking shall comply with the Sussex County parking requirements for the uses as a kennel and a veterinarian's office. The parking spaces shall be clearly marked on the site.
- E. Any security lights shall be downward screened so that they do not shine on neighboring or adjacent roadways or properties.
- F. All dumpsters associated with the use shall be screened from view of neighboring properties and roadways.
- G. 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. Ross, 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 #2024 – Stockley Materials, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for commercial landscaping materials, storage and sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.68 acres, more or less. The property is located southeast of Lewes-Georgetown Highway (Route 9) 0.3 mile southwest of Coastal Highway (Route One) (911 Address: None Available) Tax Map I.D. 334-5.000-192.00, 193.00, 194.00.

The Commission found that the application was filed on June 6, 2015 and that the applicant provided surveys/site plans with the application. The applicants also provided an Exhibit Booklet on July 20, 2015 for inclusion into the record. The Exhibit Booklet contains references to the project team and their qualifications; a series of maps, aerials, and photographs; references to the 2008 Sussex County Comprehensive Plan; references to the application with deeds, tax maps, adjacent property owners, the DelDOT Service Level Evaluation Request, sales agreements, surveys and site plans; Google photographs and site photographs; suggested proposed Findings of Fact and Conditions of Approval for consideration; and support letters.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated June 2, 2015, referencing that a Traffic Impact Study was not recommended, and that the current Level of Service "E" of U.S. Route 9 Lewes Georgetown Highway will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated July 22, 2015, referencing that there is one soil type on this property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas are affected; that it will not be necessary for any off-site drainage improvements; that it may be possible that on site drainage improvements will be necessary; and that no tax ditches are affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated July 27, 2015, referencing that the property is located in the West Rehoboth Expansion Area; that wastewater capacity is available if the proposed use does not exceed 1.0 Equivalent Dwelling Unit (EDU) of sewer assessment per parcel; that the planning study and design assumption for the parcels is 1.0 EDU each based on a residential use on a residentially zoned parcel of less than 1.0 acre; that if the proposed use is expected to exceed 1.0 EDU per parcel, additional information should be provided and a capacity review completed prior to approval; that the current System Connection Charge Rate is \$5,775.00 per EDU; that each parcel has been provided with a 6-inch sanitary sewer lateral located along each parcels road frontage; that conformity to the West Rehoboth Expansion Area Planning Study will be required; that prior to moving or demolishing an existing home or commencement of site work on Parcel 192 and 193, a proper disconnection of sewer service must be completed by a Sussex County licensed plumber; that proper disconnection includes issuance of a disconnection permit and inspection by County personnel; and that a concept plan is not required.

The Commission found that Kenneth Adams, Manager for Stockley Materials, LLC was present with Dennis Schrader, Esquire of Morris James Wilson Halbrook & Bayard, LLP, Mark Davidson of Pennoni Associates, Inc., and Robert Stickels, Administrative Assistant for Stockley Materials, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the site includes three properties containing 1.68 acres, more or less; that the zoning is AR-1 Agricultural Residential; that the area across Route 9 to the north is zoned C-1 General Commercial; that a Delmarva Power substation exists to the west of the property; that the current location of the use exist to the west in the Vinyards project and it is their intent to relocate to this site; that public sewer is available through the County; that private water exist on the site; that various commercial uses exist across Route 9; that a 10-foot wide dirt lane separates the substation from this property; that they are proposing an entrance on the westerly side of the frontage; that storage bins for mulch, stones, etc. will be placed along the perimeter; that the existing home on the premises may be used for a temporary office for the business; that two employees are normally on the site during business hours; that they anticipate a maximum of three employees when busy; that they will be providing sales and display of pavers, patio displays, etc. on the site; that stormwater management facilities are proposed along the rear of the property; that the property will be fenced and gated; that a 32 square foot sign is intended; that they have been in business for 9 years near Stockley on U.S. Route 113 and at their current location on Route 9 for 3 years; that their customer base is landscapers and landowners; that they are proposing to move from their current location since they currently lease, and since the business is expanding and needs additional space; that a minimum amount of security lighting is needed since the site will be fenced; that the County pump station next to their current site is being expanded and has impacted the business on the current site; that normal business hours are from 7:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturdays; that the business has been successful; that the Exhibit Booklet contains several support letters; that the Exhibit Booklet contains suggested proposed Findings of Fact and Conditions of Approval for consideration; that the owner of the 10-foot lane is unknown; that their proposed fencing will not impede the lane; that the speed limit along Route 9 is reduced at this location; that this location should be safer than the existing location; that no grinding will be performed at

this facility; that they may sell Christmas trees and firewood in the off-season; and that the gate will be off-set allowing vehicles to get off of Route 9 to open the gate.

The Commission found that Reverend Braven Duffie, one of the property owners, was present in support of this application and stated that the use is a benefit for the area. Mr. Duffie did ask a question if ownership was required to file an application.

The Commission found that Gene Williams was present with Mr. Duffie and stated that the 10-foot lane, called Stingy Lane by the area residents, was built by his Grandfather.

The Commission found that Anthony Morgan III was present in opposition to this application and expressed concerns about the 7:00 a.m. morning hours; the height of the fencing; mulch dyes getting into the water table; run-off; the location of the stormwater management facilities; and that the supporters are only present for profit.

In response to questions, Mr. Adams responded that the mulch will not be dyed on the premises; that mulch is normally dyed at the production site or plant; that once the dye is applied it normally has been absorbed into the mulch within 24 hours; that there will be minimal run-off from this site; and that hot-mix asphalt will be laid under the storage bins.

In response to questions, Mr. Davidson responded that the stormwater management will include infiltration and will be self-contained and is not intended to hold water; and that by regulations they cannot discharge any more run-off than that which is currently running off from the site.

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.

OTHER BUSINESS

Glen Cove 2013-5 Final Subdivision Plan

Ms. Cornwell advised the Commission that this is a Final Subdivision for Glen Cove to allow for the creation of 16 single family lots with two open space parcels along a private road. The subdivision includes sidewalks around a portion of the development. The subdivision complies with the Subdivision Code and all conditions. The Planning Commission granted preliminary subdivision approval at their May 8, 2014 meeting. The property is zoned AR-1 (Agricultural Residential District). The tax parcel is 134-12.00-374.01. The subdivision is located on the north side of Burbage Road west of Windmill Drive. Staff is in receipt of all agency approvals.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

Pelican Point 2013-6 and 2013-7 Phases 2-5
Final Subdivision Plan for Phase 2 – 5

Ms. Cornwell advised the Commission that this is a Final Subdivision for Pelican Point Phases 2-5 to allow for the creation of 356 single family lots with multiple open space parcels. The subdivision complies with the Subdivision Code and all conditions. The Planning Commission granted preliminary subdivision approval at their June 13, 2013 meeting. Phase 1 was granted final subdivision approval by the Planning Commission at their February 27, 2014 meeting. The property is zoned AR-1 (Agricultural Residential District). The tax parcels are 234-16.00-21.00, 19.07 and 892.00. The property is located between Cannon Road and Townsend Road. Staff is awaiting approval from the Sussex County 911 Addressing and has all other agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Final Subdivision Plan upon receipt of approval from Sussex County 911 Addressing. Motion carried 5-0.

Arbor at Cottage Dale
Final Site Plan

Ms. Cornwell advised the Commission that this is a Final Site Plan for the construction of 6 apartment buildings for a total of 168 dwelling units. This Site Plan is part of Conditional Use (CU 1845). The Planning Commission recommended approval of the Conditional Use at their meeting of November, 12, 2009. The Sussex County Council granted approval of the Conditional Use at their meeting of February 23, 2010. The plan proposes stormwater management within the 50' buffer. The stormwater management area within the 50' buffer requires Planning Commission approval. The property is located off of Mackenzie Way off of Plantations Road. Staff is awaiting approval from Sussex County 911 Addressing, DART and the Cape Henlopen School District regarding the placement of the bus stop location. Staff handed out architectural renderings to the Planning Commission.

There was discussion about the location of the stormwater management areas within the 50' buffer, plantings within the stormwater management area, and ensuring the clubhouse and pool were to scale on the plan. The Commission asked Mr. Frank Kea, representative of the applicant, to come forward to answer concerns about the items discussed. There was also a brief discussion regarding what constitutes being substantially under construction as the plan is set to expire on January 1, 2016. It was recommended by the Planning Commission that the Site Plan issues be addressed and the applicant resubmit the Final Site Plan.

No action was taken on this application.

Master Tire on Rt. 113
Final Site Plan for Conditional Use #1964

Ms. Cornwell advised the Commission that this is a Final Site Plan to allow for the use as a used car facility and tire sales. The Site Plan complies with the conditions of approval. The Conditional Use was approved by County Council at their July 16, 2013 meeting. The property

is zoned AR-1 (Agricultural Residential District). The tax parcel is 135-14.00-65.00. The property is located on the east side of Rt. 113 north of N. Bedford Street. Staff is in receipt of all agency approvals.

There was discussion regarding the violations and fees that may be owed. It was noted that the violations had been addressed; however, the question regarding the fee for the cleanup of tires would be need to be checked.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer the application. Motion carried 5-0.

Coastal Club – Land Bay 5 Final Site Plan for Land Bay 5

Ms. Cornwell advised the Commission that this is a Final Site Plan for Coastal Club – Land Bay 5 to allow for the creation of 51 single family lots. The plan is in compliance with all conditions of the RPC. The property is zoned MR (Medium Density Residential District) and is an RPC. The tax parcel number for this portion is 334-11.00-5.00. The property is located off of Beaver Dam Road. Staff is awaiting approval from the Sussex County 911 Addressing and has all other agency approvals.

There was discussion about whether they could approve the application as County Council had not taken action about the off-site improvements associated with the application. The Commission asked Mr. Zac Crouch, representative of the applicant, to come forward to answer concerns. Mr. Crouch stated that the number of units proposed in the phase is in compliance with the agreement for sewer access. Mr. Robertson also stated that the Planning Commission could make a decision about this application while awaiting a decision from County Council regarding the off-site improvements.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Final Site Plan. Motion carried 5-0.

Coastal Club – Clubhouse Preliminary Site Plan for Clubhouse and Amenities

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the Coastal Club development for the construction of a 16,816 SF clubhouse along with other amenities. The other amenities includes an arts and craft building, a community garden, swimming pools, tennis courts, a dog park, tot lot, bocce court, horseshoe pit area, shuffleboard area and parking lot. There is also a gate house located near the entrance of the community. The arts and craft building is proposing a six (6) foot front yard setback. The reduction in the front yard setback requires Planning Commission approval as it is part of a RPC. A portion of the parking is located within the front yard setback. The parking within the front yard setback requires Planning Commission approval. The property is zoned MR (Medium Density Residential District) and is an RPC. The tax parcel numbers for this portion is 334-11.00-395.00. 5.00,

5.01, and 396.00. The property is located off of Beaver Dam Road. Staff is awaiting agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan with parking located within the front yard setback, the arts and craft building with a six (6) foot front yard setback, and Final Site Plan approval subject to staff upon receipt of agency approval. Motion carried 5-0.

Harold E. Dukes, Jr. on Lewes-Georgetown Hwy.
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the construction of a 5,400 SF warehouse building to be located on Lewes-Georgetown Hwy. A previous site plan was approved for the existing 7,800 SF warehouse building. The site plan is in compliance with the *Zoning Ordinance*. The property is zoned C-1. The tax parcel is 135-16.00-14.00. The property is located on the north side of Lewes Georgetown Highway and east of Shingle Point Road. Staff is awaiting approval letters from DNREC and the Sussex Conservation District and is in receipt of all other reviewing agencies.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Lands of Delores B. Lane off Noble Road.
Minor Subdivision off of a 50' Easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one (1) parcel of land off an existing 50' easement. The new lot will be 1 acre and the residual parcel will have 9 acres. The property is zoned AR-1. The tax parcel number is 530-7.00-1.01. The property is located south of Elliott Lane. The easement is located off of Noble Road. in Maryland. Caroline County, Maryland granted approval for the easement for the original minor subdivision.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minor Subdivision off an existing 50' easement. Motion carried 5-0.

Bay Forest Club Subdivision Phase 3.1
Relocation of Sidewalks & Amenity Changes for Phase 3.1

Ms. Cornwell advised the Commission that the plan is to allow for changes to the Bay Forest Club Subdivision Phase 3.1. The plan proposes the removal of the sidewalks along Flycatcher Way and to place the sidewalks going east to west between buildings 8 and 9 and buildings 12 and 13 with a circle in the middle of the sidewalk. The plan also proposes a change in the layout of the sidewalk in the open space at the rear of the buildings. There will also be sidewalk connections from the rear of the units to a sidewalk that forms a "v" shape from the south where there is a new shade pavilion to the north where there is a revised community herb garden center.

All of the sidewalks provided within the open space connect. The property is MR and is a RPC. The property is located on the west side of Whites Neck Road near Old Mill Road.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the requested relocation of the sidewalks and changes to the amenities per the revised plan. Motion carried 5-0.

The Overlook off Bayville Road.

Relocation of Walking Path

Ms. Cornwell advised the Commission that this plan is to allow for changes to the Overlook Subdivision. The plan proposes to relocate the walking trail from the open space behind the single family dwellings located on Watchtower Place and Tower Place to the open space behind the townhouses located along Watchtower Place and Tower Place. The proposed location of the trail will go through the wetlands on the property. The applicant has provided documentation regarding the construction of the trail and its impact on the wetlands. The property is MR and is a RPC. The property is located at the end of Bayville Road.

There was discussion about the need for the walking path amenity around the stormwater management area where they are currently located and the impact the relocation to the wetlands area would have.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to allow for the deletion of the walking path amenity around the stormwater management area and not require the relocation of the walking path in the wetlands. Motion carried 5-0.

CU # 1642 Sunrise Ventures

Request for a time extension

Ms. Cornwell advised the Commission that this is a request for a five (5) year extension for the Conditional Use for 30 multifamily dwellings. The Conditional Use (CU 1642) was originally approved by County Council on March 21, 2006. The Conditional Use was granted extensions as part of County Council's Time Extension Ordinances. The plan will expire on January 1, 2016 unless the site is under substantial construction. The applicant has stated that due to litigation construction on the project has been delayed leading to the extension request.

There was a brief discussion about what constitutes substantial construction and if remediation work counted or an extension with a specific timeframe could be granted to begin once remediation ceased.

No action was taken on this application.

Meeting adjourned at 9:40 p.m.