

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 25, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 25, 2003 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. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director and Richard Kautz - Planner.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as amended by deletion of the approval of the Minutes of September 18, 2003, since the meeting was cancelled due to Hurricane Isabel.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of September 11, 2003 as amended.

OLD BUSINESS

Subdivision #2001-35 – application of **BEVERLY T. THAWLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 70.289 acres into 64 lots, located west of Road 206, 1,470 feet northeast of Route One.

Mr. Abbott advised the Commission that this is the final record plan for a 64-lot subdivision; that the Commission granted preliminary approval on December 27, 2001; that the Commission granted a one-year time extension on January 16, 2003; that the final record plan meets the requirements of the subdivision and zoning codes; and that all agency approvals have been received.

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

Motion carried 5 – 0.

Subdivision #2002-38 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 22.02 acres into 42 lots, located south of Route 54, 450 feet southeast of Road 58B.

Mr. Abbott advised the Commission that this is the final record plan for phase 1 of a 37-lot subdivision; that phase 1 is for 22 lots; that the Commission granted preliminary approval on May 22, 2003 for 37 lots of a 42-lot subdivision application; that phase 2 will be for 14 lots; that the record plan meets the requirements of the subdivision and zoning codes; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve phase 1 as a final.

Motion carried 5 – 0.

Subdivision #2003-14 – application of **H.M. PROPERTIES, ROUTE 23, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 240.81 acres into 352 lots, located at the southwesterly corner of the intersection of Road 286 and Road 285.

Mr. Abbott advised the Commission that this application has been deferred since July 24, 2003.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2003 – 14, for H.M. Properties, Route 23, L.L.C., based upon the record and for the following reasons:

Mr. Robertson read that Mr. Johnson moves that we grant preliminary approval of Subdivision #2003 – 14 for 215 lots, for H.M. Properties, Route 23, L.L.C., based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. It is also in an area where other residential subdivisions exist, including the Reserves at Fortune Fields and Oak Crest Farms.
2. The land is zoned AR-1 which permits low-density single family residential development at a density of approximately 2 lots per acre. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. Mr. Johnson is only approving 215 lots based upon DelDOT's statement that it can recommend approval of only 215 lots and that any further development will require completion of a traffic impact study. The 215 lots that Mr. Johnson is approving are those identified in Phases 1 and 2 on the Preliminary Site Plan.
4. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The proposed subdivision will include amenities such as a bathhouse, pool, tennis courts and a playground.
6. The proposed subdivision will not adversely affect schools, public buildings and

community facilities.

7. There will be central wastewater treatment provided on-site, and DNREC has indicated that the proposed treatment and disposal system is feasible under current regulations. In addition, the Applicant has stated that an escrow account will be created for maintenance of the wastewater treatment facility, and that the account will be regulated or controlled by DNREC's Division of Water Resources.
8. The Applicant has stated that central water will be provided by Artesian Water Company.
9. This recommendation is subject to the following conditions:
 - The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - The stormwater management system shall meet or exceed the requirements of the State and County.
 - No wetlands shall be included within any lot lines.
 - All entrances shall comply with all of DelDOT's requirements.
 - The Applicant has agreed to install a multi-modal paved path throughout the project that will be 5 feet wide and separated from the streets by a 3 foot wide grass area.
 - A system of street lighting shall be provided by the Applicant, and the location of the streetlights shall be shown on the final site plan. The streetlights shall be maintained by the Applicant or a successor Homeowners' Association as part of the common elements of the subdivision.
 - The Restrictive Covenants shall include the Agricultural Use Protection Notice, if required.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the 215 lots referenced, as a preliminary, based on the reasons and with the conditions stated above.

Motion carried 5 – 0.

C/U #1497 – application of **BOBBY R. JONES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to construct, build, and repair wooden pallets to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 13.392 acres, more or less, lying northwest of Route 611, 1,500 feet south of Route 16.

The Commission discussed this application which has been deferred since August 14, 2003.

Mr. Wheatley stated that he would move that the Commission recommend denial of C/U #1497 for Bobby R. Jones to operate a facility to construct, build and repair wooden pallets based on the record made at the public hearing and for the following reasons:

- 1) While there may generally be a need for the uses and services that the Applicant has proposed for this property, this area is not well suited for the Applicant's proposed business.
- 2) The application is not consistent with the character of the surrounding property.
- 3) The property is zoned AR-1. The purpose of this district is to protect agricultural lands from the depreciating effect of objectionable, hazardous and unsightly uses. The Applicant has been operating his business on a nearby property without approval. The type of business that he operated there is hazardous and unsightly, and would be objectionable to the other surrounding AR-1 properties.
- 4) Approval of this application could lead to increased noise in the area. The Applicant has stated that power nail guns and power saws are used in the operation of his business, which he stated currently begins operating at 6:30am seven (7) days a week. In addition, the pallets are delivered to and from the site via tractor trailer.
- 5) This application is not of a public or semi-public character, and it is not essential for the general convenience and welfare of the community.

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

Motion carried 5 – 0.

C/Z #1513 – application of **WINDMILL VENTURES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying east of Route 352 (Windmill Road), 0.4 mile south of Route 26, to be located on 34.09 acres, more or less.

The Commission discussed this application which has been deferred since August 28, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1513 for Windmill Ventures, LLC to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential to MR Medium Density Residential based upon the record made at the public hearing and for the following reasons:

- 1) The area has developed with other projects that are consistent with those allowed in a MR zone. In addition, the property that is the subject of this application is in the immediate vicinity of two (2) municipalities.
- 2) The proposed MR zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County.
- 3) MR zoning is appropriate for the site because medium density development is appropriate in areas where central water and sewer are available.

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

C/U #1502 – application of **WINDMILL VENTURES, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 34.09 acres, more or less, lying east of Route 352 (Windmill Road), 0.4 mile south of Route 26.

The Commission discussed this application which has been deferred since August 28, 2003.

Mr. Lynch stated that he would move that the Commission recommend denial of C/U #1502 for Windmill Ventures, LLC based upon the record made at the public hearing and for the following reasons:

- 1) The property that is the subject of this application is not suitable for the type of multi-family development that has been proposed under the Conditional Use. The project is in an environmentally sensitive area that should be conserved. Nearly one third of the property consists of "404" Wetlands. There are also poorly drained soils on the property, and development of the property would lead to an increase of impervious area and drainage problems.
- 2) The project is not essential or desirable for the general convenience and welfare of the area where it is located or the County in general.
- 3) The proposed roadways in the project contain parking on curves that would require drivers to back out into traffic to exit parking spaces. In many cases, this

would occur on the interior side of the curve. This would cause a danger to residents of the project.

- 4) The surrounding properties in the immediate vicinity of the project consist primarily of single family homes or lots. The multi-family project that is proposed would not be in character with neighboring and adjacent single family properties.

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 reasons stated above.

Motion carried 5 – 0.

C/U #1504 – application of **NARDO, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a B-1 Neighborhood Business District for expansion of Conditional Use No. 1290 (Ordinance No. 1323) for additional offices and storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 5.0 acres, more or less, lying south of Route 9, 0.5 mile west of Route 262.

Mr. Wheatley advised the Commission that he would not be participating in the discussion of this application.

The Commission discussed this application which has been deferred since August 28, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1504 for Nardo, Inc. to operate additional offices and storage facilities based upon the record made at the public hearing and for the following reasons:

- 1) This application is for the expansion of Conditional Use #1290, which allowed offices and storage on the portion of the Applicant's property closest to Route 9.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 3) There are other businesses and structures in the area of this property with similar characteristics to those requested by the Applicant. Also, there are other conditional uses, and B-1 and C-1 properties in this area of Route 9.
- 4) The use as a storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area and the County.
- 5) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) The project shall be used for indoor storage purposes only. There shall not be any outside storage, including boats or RVs, within the project.

- 2) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
- 3) The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion carried 4 – 0. Mr. Wheatley did not participate in the vote.

C/Z #1514 – application of **DON CONAWAY** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 1.0 mile west of “The Ditch” and 0.6 mile east of Route 58B, to be located on 1.43 acres, more or less.

Mr. Lynch advised the Commission that he would not be participating in any discussion of this application.

The Commission discussed this application which has been deferred since September 11, 2003.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried with four votes, to defer action on this application for further consideration.

Motion carried 4 – 0. Mr. Lynch did not participate in the vote.

C/Z #1515 – application of **DON CONAWAY** to amend the Comprehensive Zoning Map from a B-1 Neighborhood Business District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 54, 1.0 mile west of “The Ditch” and 0.6 mile east of Route 58B, to be located on 2.61 acres, more or less.

Mr. Lynch advised the Commission that he would not be participating in any discussion of this application.

The Commission discussed this application which has been deferred since September 11, 2003.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried with four votes, to defer action on this application for further consideration.

Motion carried 4 – 0. Mr. Lynch did not participate in the vote.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS RELATING TO RESIDENTIAL USES IN THE B-1 AND C-1 COMMERCIAL ZONING DISTRICTS BY LIMITING SUCH USES TO 4 DWELLING UNITS PER ACRE, TO ELIMINATE SECTION 115-77.1 LARGE SCALE USES, AND MAKES OTHER TECHNICAL CHANGES TO ARTICLE X, B-1 NEIGHBORHOOD BUSINESS DISTRICT AND ARTICLE XI, C-1 GENERAL COMMERCIAL DISTRICT.

The Commission discussed this Ordinance which has been deferred since September 11, 2003.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to allow time to consider comments received while the record was left open.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ADD A NEW SECTION CREATING A C-2 LARGE SCALE COMMERCIAL DISTRICT.

The Commission discussed this Ordinance which has been deferred since September 11, 2003.

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

Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1505 – application of **DAVID RITTER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for boat storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.83 acres, more or less, lying 270 feet south of Route 22 (Long Neck Road), 0.2 mile east of Route 298 and east of Julia's Lane, and being more particularly described as Lots 2 and 3 within Julia's Place Subdivision.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Long Neck Sanitary Sewer District; that the current System Connection Charge Rate is \$2,411.00; and that a six inch lateral has been provided to each parcel along its parcel line on Julia's Lane.

The Commission found that David Ritter and Patrick Scanlon, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site has previously been reviewed for rezoning to C-1 General Commercial for boat storage; that the surrounding neighbors have voiced no objections; that Ms. Goertz and Mr. Willman, immediate neighbors within the Subdivision, have written letters of no objections; that the original rezoning file contains copies of those letters; that properties in the immediate area along Long Neck Road are zoned commercial; that there are a few scattered parcels mixed in with the commercial properties that are zoned residential; that the C-1 zoning application was recommended favorably by the Commission; that the County Council denied the application in March of 2003; that the recent hurricane showed justification for the need of relocating boats in the area; that the Applicant relocated approximately 200 boats out of harms way; that the Comprehensive Plan references the need for some commercial uses in the area; that boaters in the area need boat storage facilities; that the site is intended for boat storage only; that the Applicant plans to fence the site; that no signage is proposed; that there will not be any lighting on the site since the Full-Tilt Marine site and the Grotto's Pizza site illuminate the area; that there will not be any boats stored on the street; that there will be no public access to the storage yard; that there was some confusion about the recent tent sale during Labor Day weekend; that no multi-level storage of boats is proposed; and that employees will move all boats to and from the storage yard.

The Commission found that Mr. Scanlon submitted a copy of Ms. Goertz letter, a letter written to Mr. Lank referencing a request for a tent sale, a response letter from Mr. Lank, and a copy of a violation notice.

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

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

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

Motion carried 5 – 0.

C/U #1506 – application of **OCEAN HIGHWAY, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for self-storage and warehousing to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 9.4 acres, more or less, lying south of Route 9, 0.25 mile west of Route 262.

Mr. Robertson excused himself from participating in this public hearings due to a possible conflict of interest.

The Commission found, based on comments received from DelDOT, that the Department does not recommend a traffic impact study; that the Department is concerned about the application because they see it as encouraging more traffic in an area that has been identified as operating at unacceptable levels of service and would be inconsistent with their understanding of the Cabinet Committee on State Planning Issues' Strategies for State Policies and Spending document; and that the Department recommends that this application be denied.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the "Rural" area of the Strategies for State Policies and Spending document as well as the "Low Density Area" of the County Comprehensive Plan Update; that the State would prefer to see self storage units in "Community" or "Developing" areas of the County; that the State objects to this application; that there is a potential historic property immediately to the west of the site; that it is recommended that the trees on the site be retained around the perimeter, especially along the western edge, to lessen the adverse effects this project may cause to the potential historic property; that well construction permits must be obtained prior to construction of any wells; and that if the project is approved the applicant shall be required to subject entrance plans to DelDOT.

The Commission found that letters voicing objection to the project have been received from Bailey W. Maull III and Janet R. Maull, Betty Maull, and Palmer and Peggy Prettyman. The letters expressed concerns about the negative impact on residents in the area, that the use would be an eyesore, depreciation of property values, additional traffic increasing safety hazards, the permitted height of buildings, impervious surfaces, the impact on horses being raised on adjoining lands, water problems, contamination problems, and the lack of buffer areas for possible widening of Route 9.

The Commission found that a petition has been received containing 94 signatures in opposition to this application.

The Commission found that Keith Monigle was present with Tim Willard, Attorney, and Mark Davidson of Design Consultants Group, L.L.C. and that they stated in their presentations and in response to questions raised by the Commission that the site contains 9.4 acres with 650 feet of road frontage along Route 9; that the site is wooded and is not utilized for agriculture; that the Sycamore trees will not be removed; that offices with related storage are proposed to be built along the front of the parcel; that the area is mixed with commercial uses and is bordered by a power line to the east, an entrance drive to the west, Route 9 to the north, and the railroad to the south; that they are

proposing to erect a 6-foot high fence to screen the site along the westerly property line from the front of the building back to the railroad; that five (5) office and storage buildings are proposed along the front; that each building will contain three (3) units; that no building will exceed 30-feet in height; that office space will be on the second floor; that a manager's office and caretakers apartment will also be built along the front; that the second row of buildings will consist of three (3) buildings containing fifteen (15) units; that the third and fourth rows will each contain one (1) 22,080 square foot building for self storage units; that the area between the second and third row of buildings will contain a fenced in area for boat and RV storage and the septic area; that access to the storage yard will be electronically access with cards or keys and will have limited hours for access; that the two self storage buildings to be rear will have security fencing and gates; that the rear portion of the site will contain the stormwater management area; that soils in the area of the proposed stormwater management area are appropriate for infiltration; that the entrance is designed for traffic flow and will be constructed per DelDOT specifications; that the site will be served by a on-site well; that all regulations of the State Fire Marshal will be met; that security lighting will be directed toward the buildings and away from neighbors; that one lighted ground sign will be erected to advertise the project; that each office unit within the project will have signage on the building; that the 30-foot height has been chosen to meet State Fire Marshal regulations for sprinkler systems; that the only outside storage that will be permitted will be within the boat and RV storage area; that contractors may do some work on equipment indoors; that there is no intent for material storage outside; that the proposed buildings are designed to be compatible with the residential housing in the area; that they propose to landscape the front of the site with trees and shrubs; that curb appeal to this type of business is based on how it is run and maintained; that no individual offices will be leased unless they include storage; that the commercial activities in the area include automotive sales, industrial uses, antiques shops, retail shops, housemovers, an electrical substation, auto repair, contractors offices and storage, a bed and breakfast, and other uses; that the Office of State Planning Coordination letter ignores the existing commercial uses in the area; that the area is more of a transitional area and should be mapped as a developing area; that DelDOT did not recommend a traffic impact study; that the area is between the areas of Georgetown, Milton and Lewes; and that the Comprehensive Plan Update recognizes the need for commercial and industrial uses that support an area.

The Commission found that Mr. Willard submitted some proposed conditions if this application is approved. The conditions included: 1) The Conditional Use shall be restricted to office, storage and warehouse buildings and uses and shall include one facility management office and apartment; 2) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals; 3) Landscaping – A buffer of existing trees and shrubs shall be maintained along the perimeter of the property, especially those on the western edge. In addition,

appropriate road side landscaping will be established. 4) Fencing – A six foot (6') high privacy fence securing the facility shall be established and maintained as provided for on the survey. 5) Lighting – Adequate security lighting directed at buildings (not outward) shall be established. Lights may include those directed on tenant signs and on a facility complex sign. 6) Signage – One (1) complex facility sign shall be allowed between Route 9 and the office buildings and individual tenant signs (similarly affixed to the office building) shall be allowed.

The Commission found that Joe Slitz and Matthew Engle of the four (4) people present in support of this application and stated that based on the way the County is growing there is a need for storage facilities; that space is needed for specialty contractors; that the use will be a benefit to businesses in the area and the economy; that storage and office space in the area of Route One is not affordable to the small contractors; that there is a need for affordable space; and that the site plan and proposal seems very attractive.

The Commission found that Palmer Prettyman, Prentice Watkins, William Hopkins, and Peggy Prettyman of the eight (8) people present in opposition expressed concerns that Route 9 and Route 24 are major east/west roads; that DelDOT recommends denial; that the proposal is inconsistent with State plans; that no provisions are provided to allow for widening of Route 9 in the future; that DelDOT estimates 1,164 average vehicle trips per day in this road segment; that the site plan does not show any screening; that lighting and parking are concerns; questioning if the area set aside for stormwater management is adequate; questioning the water table; questioning septic capability; depreciation of property values; traffic safety and accidents along Route 9 at the entrance to Hunters Mill Subdivision entrance; that commercial uses are taking over the area; that there is no need for any additional commercial land in the area; that 90 or more immediate area residents oppose the application; and concerns about the number of vehicles to and from the site.

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

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

Motion carried 5 – 0.

C/U #1507 – application of **NORTH BEACH, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (52 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 13.07 acres, more or less, lying south of Fred Hudson Road (Route 360), 0.2 mile west of Route One.

The Commission found that the Applicants had submitted a booklet of information prior to the meeting and that the booklet included presentation outline, references to land use and zoning, references to land utilization, civil engineering, traffic, environmental issues, and economic impacts.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "D" of Route 360 will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located in an Environmentally Sensitive Developing Area" according to the Strategies for State Policies and Spending document and the Comprehensive Plan Update; that the State will seek a balance between resource protection and sustainable growth in this area; that the soils on the site vary from moderately well drained to very poorly drained; that the Applicant should be reminded that they must avoid construction/filling activities in areas containing wetlands or wetland associated hydric soils; that the project is located adjacent to receiving waters of the Inland Bays that are designated as waters having Exceptional Recreational or Ecological Significance (ERES) that are recognized as special assets to the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that the property owner may be required to implement Best Management Practices to reduce non-point sources of nutrient runoff; that the site is completely within the 100-year floodplain on a very flood-prone stretch of road; that primary and secondary impacts to wetlands should be avoided; that any increase in density will place additional property in a flood-prone area; that this proposal does not specify whether filling is to be utilized but if so this could potentially worsen flooding conditions on adjacent lands; that DNREC records indicate that this project is located within the public water service area granted to Sussex Shores Water Company; that the State Historic Preservation Office noted that this area has a medium to high probability for prehistoric archaeological resources; and that if any ground disturbance, the owner should be required to contact the State Historic Preservation Office.

The Commission found that letters in opposition to the application were received from Roy Villers, John L. Gordon, President of Lake Bethany Community Association, James J. Kennedy, and Amos F. Hutchins, Jr. The letters expressed concerns and questions relating to the delineation line of the wetlands not being the same as the line drawn for Pond Acres Subdivision, an adjacent development; flooding problems; runoff from parking lots and homes running onto Pond Acres Subdivision; lighting from the parking lots and pool area; traffic flow; the impact on the ecology of the Salt Pond and newly acquired State Park lands north of Route 360; the direct contrast to the surrounding medium density residential areas; the number of units; the overloading of sewer and water systems; the entrance location; the use of fill; and the location of the pool area.

The Commission found that Lauren Alberti of North Beach, LLC was present with James Fuqua, Attorney, and Gerald Freidel of Davis, Bowen & Freidel, Inc. and stated in their presentations and in response to questions raised by the Commission that the area has a mix of residential uses including single family homes, townhouses, and condominiums; that 5.72 acres of the 13.07 acre parcel are considered State or Federal Wetlands; that the proposed land use is consistent with the area; that the site is located within an Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that several years ago an application was filed to develop the site with a sailing/soccer complex and was denied; that in 1999 the adjacent parcel to the east was approved for 15 dwelling units; that they propose to develop 52 townhouse units on the site with a swimming pool and bathhouse; that the proposed entrance (existing location of an entrance) to the site does not cross any wetlands; that no wetlands encroachments are proposed unless DelDOT requires relocation of the entrance; that the proposed pier is for pedestrian access to the pond only; that no launching of motorized watercraft will be permitted; that canoes and kayaks will be permitted; that sewer capacity is available from the County; that central water will be acquired from a public water company; that electrical service will be provided by Conectiv; that telephone service will be provided by Verizon; that fire protection will be provided by Bethany Beach Volunteer Fire Company; that an emergency evacuation plan will be established; that stormwater management will be maintained on the site; that some minor filling will be created; that the homes will be elevated above the floodplain; that sidewalks will be provided along one side of the drives; that fencing or landscaping will be provided to screen lights along parking lots; that the proposed pond will be approximately 5 or 6 feet in depth; that a rip-rap swale will be provided from the pond to the out-fall; that low-intensity lighting will be provided to help eliminate glare; that the project will be developed using Best Management Practices; that wetlands will be avoided; that they do not intend to do any major filling or cause drainage problems; that lights will be shielded; that the use is appropriate for the area based on the Strategies for State Policies and Spending and the Comprehensive Plan Update; that DelDOT did not require a traffic impact study; that if the State will allow the entrance to remain at its present location there will be no wetlands crossing; that the site plan will be revised to relocate some parking and a driveway so that there are no wetlands disturbances; that the use is compatible with other projects in the area, and referenced that the Salt Pond RPC project has townhouses near the waters edge of the Salt Pond and the adjacent parcel is under construction with multi-family units; that the developer is requesting reasonable use of the property; and that the project is being designed to be environmentally sensitive.

The Commission found that Mr. Fuqua submitted some proposed conditions if this application is to be approved. The conditions included: 1) The maximum number of residential units shall not exceed 52; 2) All entrance, intersection, roadway, and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination; 3) Recreational facilities and amenities shall

be constructed and open to use by the residents of the development within 2 years of the issuance of the first residential building permit. These amenities shall include a swimming pool and bathhouse; 4) The development shall be served as part of the Cedar Neck Sanitary Sewer Project in accordance with Sussex County Engineering Department specifications; 5) The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations; 6) Stormwater Management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements; 7) Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission; 8) The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design; 9) 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 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 application 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 cost of the site work authorized by the Sussex Conservation District 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 or final site plan; 10) Construction, site work, grading and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur between the hours of 7:00am and 6:00pm, Monday through Saturday; 11) Fencing will be located along the westerly side of the property along the boundary of the project with Pond Acres; 12) Access to the Salt Pond shall be limited to non-motorized watercraft such as kayaks and canoes. No motorized watercraft shall be permitted water access; 13) Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best management practices will be utilized to minimize any environmental impact.

The Commission found that Bill Naughton, John Gordon, President of Lake Bethany Homeowners Association, Al Stango, and John Liebert were present in opposition to this application and expressed concerns about the density; the periodic flooding of Route 360; traffic; that the area is predominantly single family residential; that DelDOT has no plans to improve Route 360; that the multi-family project on the adjacent property to the east is being developed as single family clusters, not multi-family buildings; that a drainage system is needed between this site and Pond Acres Subdivision; and that a pier proposed on the Salt Pond to serve Pond Acres Subdivision was rejected by the Army Corps. of Engineers.

The Commission found that Mr. Naughton submitted a petition in opposition to the application signed by 208 people, a photograph of one of the homes on the site after flooding occurred in 1998, and a newspaper photograph from the Wave newspaper, dated February 4, 1998, showing a utility worker assessing water damage to lines on Route 360.

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

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

Motion carried 5 – 0.

C/Z #1518 – application of **THERESA E. MURRAY, TRUSTEE** to amend the Comprehensive Zoning Map from a MR Medium Density 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 east of Cedar Neck Road (Route 357), 1,100 feet south of Route 359 and north of South Orlando Avenue, to be located on 37,362 square feet, more or less.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that there is capacity for expansion of the bait and tackle shop; that the current System Connection Charge Rate is \$3,066.00 per EDU; and that the parcel is served with one 6-inch lateral from Orlando Avenue.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service “B” may change to a level of service “C”.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this expansion; that the State Historic Preservation Office has noted that there is a high probability for prehistoric archaeological sites at this location; that DelDOT has commented that even though the shop already exists a significant expansion would be a change in use and could mean entrance improvements would be necessary; that this project is located adjacent to receiving waters of the Inland Bays that are designated as waters having Exceptional Recreational or Ecological Significance (ERES) and that the property owner should be required to implement Best Management Practices to reduce non-point sources of nutrient runoff; and that plan for expansion shall be required to be submitted to the State Fire Marshals Office for formal review and approval.

The Commission found that Theresa Murray was present with Ellen Magee, her daughter, who stated that they are requesting the rezoning to allow expansion of the existing bait and tackle shop; that the property with the existing bait and tackle shop is zoned C-1 General Commercial; that the bait and tackle shop has existed since 1952; that the community is growing and by expanding their business they can accommodate the needs of the citizens in the area; that the use is a part of Cedar Neck; that they have owned the site for several years; and that other commercial uses exists immediately to the north and across Cedar Neck Road.

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

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since it is an extension to an existing C-1 General Commercial zone and allows for the expansion of an existing commercial use.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ALLOW AGRICULTURAL RELATED INDUSTRY AS A CONDITIONAL USE IN THE AGRICULTURAL RESIDENTIAL ZONING DISTRICT, TO DEFINE AGRICULTURAL RELATED INDUSTRY, AND TO DELETE CONFLICTING LANGUAGE.

The Commission found, based on comments received from the Office of State Planning Coordination, that they agree with the concept of the Ordinance, but are concerned with the wording; that the Department of Agriculture has commented that the use of the word “local” in the Ordinance could render the Ordinance ineffective since the word “local” is not defined and could cause difficulty in enforcement; that DelDOT has noted their concern regarding the third part of the Ordinance which is intended to delete language about Conditional Uses; that the County should consider how much the deletion of this section would limit the use of Conditional Use approvals; and that the State suggests that the County meet with the Department of Agriculture to address their concerns.

Mr. Kautz suggested that the County should recognize the common definition of “local” in the dictionary as they do on other words that are not specifically defined in ordinances.

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

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action to allow time for the staff to confer with the Department of Agriculture on their comments.

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ALLOW A BIOTECH INDUSTRY AND A BIOTECH CAMPUS AS A CONDITIONAL USE IN THE AGRICULTURAL RESIDENTIAL ZONING DISTRICT AND TO DEFINE BIOTECH INDUSTRY AND BIOTECH CAMPUS.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State is concerned with the wording of this Ordinance because the definition seems to be too broad; that as written the Ordinance would allow a facility that does crop research to be located in a rural area; that it would also allow a pharmaceutical plant, that is unrelated to the rural environment surrounding it; that for a biotech industry to be appropriate in the rural area, it should be related to the agricultural activity that is taking place around it; therefore, the Office recommends that the definition be revised; that the Department of Agriculture noted that the proposed Ordinance to allow biotech industry uses in the AR-1 zone as a Conditional Use is a good idea; that there are several flaws in the proposed Ordinance language which will render enforcement and implementation near impossible; that the Department suggests that examples be removed from the definition and rather listed in an appendix; that the same paragraph stated the use of products which “may” be toxic to human, plant or animal life will be prohibited which may render the Conditional Use provision meaningless; that the term “may” be hazardous is impossible to define; that as a result almost any substance could be determined “toxic”; that the Ordinance should define a standard, such as, prohibiting substances listed as toxic by EPA or FDA; that the buffer standards should specify the use of native species and require a minimum width; that the use of non-native species and particularly invasive species must be guarded against in agricultural areas; and that the State urges the County to meet with the Department of Agriculture to discuss this Ordinance and their concerns.

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

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to defer action to allow time for the staff to confer with the Department of Agriculture on their comments.

Motion carried 5 – 0.

OTHER BUSINESS

Warrington Creek MR/RPC
C/Z #1503 – Master Record Plan – Road 274

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the master record plan.

Motion carried 5 – 0.

Long Neck Shores HR/RPC
C/Z #1473 – Final Record Plan – Road 299

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the final record plan.

Motion carried 5 – 0.

Fenwick Shoals
Preliminary Commercial Site Plan – Route 54

Motion by Mr. Lynch, seconded by Mr. Johnson, 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.

Laura Brady
Lot and 50' Easement – Road 72

Mr. Abbott advised the Commission that this is a request to widen an existing driveway to a 50-foot easement and to create a new lot with access from the easement.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the request.

Motion carried 5 – 0.

Francis H. Prettyman
Lot and 50' Right of Way – Road 254

Mr. Abbott advised the Commission that this is a request to create a lot with access off of an existing 50-foot right of way; and that the right of way extends from Road 254 to Route 9.

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

Motion carried 5 – 0.

Timothy Elder
Lot and 50' Right of Way – Road 361

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the lot and 50' right of way.

Motion carried 5 – 0.

Subdivision #2002 – 22 - - Derrick Matthews
Revised Preliminary – Road 254

Mr. Abbott advised the Commission that this is a request to have the proposed lot 5 be considered a non-buildable lot; that Mr. Matthews is purchasing lot 4 at this time and that he has the first option to purchase the proposed lot 5 in the future; and that if he does purchase lot 5, it will be an extension to lot 4.

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

Motion carried 5 – 0.

Dorothy Theriault
C/U #1289 – Revised Site Plan – Route 26

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised site plan.

Motion carried 5 – 0.

Meeting adjourned at 11:18 P.M.