



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF JANUARY 6, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 6, 2005 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. Smith, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to approve the Agenda as amended by noting the removal of Hudson Homes from Other Business.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to approve the Minutes of December 9, 2004 as amended.

Motion by Mr. Gordy, seconded by Mr. Wheatley and carried unanimously to approve the Minutes of December 9, 2004 as amended.

OLD BUSINESS

C/Z #1559 – application of **GREG IVANOFF** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Plantation Road (Route 275) and Cedar Grove Road (Route 283), to be located on 16.49 acres, more or less.

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Johnson asked Mr. Robertson to read Mr. Johnson's motion.

Mr. Robertson advised the Commission that the office has received a letter from DelDOT, dated January 5, 2005, stating that the Department supports the proposed relocation of Road 283.

Mr. Robertson read that Mr. Johnson moves that the Commission recommend approval of C/Z #1559 for Greg Ivanoff based upon the record and for the following reasons:

- 1) The RPC promotes the orderly growth of the County because the proposed project is in a Development District as established by the Comprehensive Plan Update.
- 2) Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. The project will also be served by central water.

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- 3) The Developer has cooperated with DelDOT to relocate Cedar Grove Road so that it intersects Plantation Road at the same point as Postal Lane. This relocation should increase the safety of the intersection.
- 4) The RPC designation is appropriate for this parcel of land in that one of the purposes of an RPC is to create superior living environments using design ingenuity while protecting existing and future uses. The developer has designed the project with DelDOT so that the area roadways will be improved. Although there's not much open space, the lack of open space is due to the relatively small size of the project and the dedication of a significant area of land to DelDOT for the road realignment.
- 5) This is a project that is close to existing commercial and service areas.
- 6) This recommendation is subject to the following conditions:
 1. The maximum number of residential lots shall not exceed 49.
 2. Site Plan Review shall be subject to approval of the Planning and Zoning Commission.
 3. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements including the Memorandum of Understanding dated April 8, 2004, or any further modifications required by DelDOT.
 4. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
 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 facilities shall be constructed in accordance with State and County requirements. The Final Site Plan shall provide details about the transfer of stormwater from the project to the Stormwater Pond shared with DelDOT.
 7. The interior street design shall comply with or exceed Sussex County street design requirements and/or specifications. The street design shall include sidewalks on both sides of the streets and street lighting.

8. The Applicant shall submit as a part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
9. 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.
10. The Applicant shall cause to be formed a homeowners association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas. The

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Developer shall be responsible for this maintenance until such as association is formed.

11. A fence and tree buffer shall be installed along the westerly property line of the project to separate the project for the adjacent dog kennel.
12. There shall be a deed reference in all lots within the project to reflect that a dog kennel exists along the westerly boundary and that there may be noise and odors associated with the kennel.
13. Addressing and street naming shall be reviewed and approved by the Sussex County Mapping and Addressing Division.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated.

Motion carried 4 – 0 – 1. Mr. Smith did not participate in the decision since he was not a Commissioner during the public hearings.

C/Z #1565 – application of **ALLEN FAMILY FOODS, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a MR Medium Density Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 5, 0.25 mile south of Route 9 at Harbeson, to be located on 2.60 acres, more or less.

The Commission discussed this application which has been deferred since November 18, 2004.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1565 for Allen Family Foods, Inc., seeking a Change of Zone from MR and AR-1 to HI-1 Heavy Industrial, based on the record and for the following reasons:

- 1) I do not believe that the application is consistent with the character of the surrounding residential properties fronting along Route 5.

- 2) Although the Applicants stated that the intended use is limited to parking, a change of zone to HI-1 would potentially allow more intrusive industrial uses that are not compatible with the surrounding uses and properties adjacent to Route 5.
- 3) I am not satisfied, based on the record, that this is the only area where the Applicant can locate additional parking. It appears that there are other HI-1 lands on the northern side of the railroad tracks that are either vacant or under-utilized that could be developed for employee parking.
- 4) If the Applicant chooses to revisit the need for parking on this parcel, I believe it should apply for a Conditional Use, which allows the County to place limitations and conditions on the particular use of the property.

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Mr. Johnson stated that this is his motion.

The motion died for the lack of a second

Mr. Wheatley stated that since the parcel belongs to the same Applicants there may be some feeling that it should all be the same zoning and that as a practical matter it probably will never be any more than that for which it is proposed and that he thinks that that is what every body is concerned about.

Motion by Mr. Wheatley to recommend that the Commission approve C/Z #1565 for Allen Family Foods, Inc. for the reason that it is a contiguous parcel and that it is appropriate for it to all be one zoning.

Mr. Gordy seconded the motion for the reason that it is a small area and that the setback for HI-1 will protect the neighboring properties.

By roll call vote it was determined that Mr. Wheatley and Mr. Gordy voted for the motion, Mr. Johnson and Mr. Allen opposed the motion, and Mr. Smith did not vote since he was not a Commissioner at the time of the public hearing. The vote was 2 – 2 – 1.

Mr. Robertson advised those present that since the vote was tied the recommendation to the Sussex County Council will be that the application be denied due to the lack of a majority of affirmative votes.

C/U #1576 – application of **SWAIN PIT, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for storage of clam shells for recycling in existing borrow pit site to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 40 acres, more or less, lying 400 feet west of Route 225 and ½ mile north of Route 225D and east of Railroad.

The Commission discussed this application which has been deferred since December 14, 2004.

Mr. Wheatley stated that he would move that the Commission deny C/U #1576 for Swain Pit, Inc. for clamshell recycling based on the record and for the following reasons:

- 1) Even though I support recycling, this area is not well suited for the Applicant's proposed use and the odors that would be associated with it.
- 2) I do not believe that the application is consistent with the character of the surrounding property.

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- 3) The Applicant obtained a Conditional Use in 1978 for a borrow pit on this site. Since then, a junkyard has been created on the site, which is not permitted under the prior Conditional Use or the Zoning Ordinances.
- 4) The information submitted by the Applicant does not comply with the requirements contained in the Zoning Ordinance.

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 for the reasons stated.

Motion carried 5 – 0.

Mr. Wheatley suggested that the Applicant be allowed a maximum of 6-months to clean up the site and that if the site is not cleaned up within that time frame that the violation be turned over to the Constables Office for legal action.

There was a consensus of the Commission that the Department notify the Applicant of the violation in writing to provide a record of the violation to the Applicant.

Subdivision #2003-6 – application of **OYSTER ROCK PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 42.10 acres into 32 lots, located northwesterly of Road 264, 2,726.40 feet northeast of Route One.

Mr. Abbott advised the Commission that the final record plan is for 32 lots; that the Commission granted preliminary approval on July 24, 2003; that the Commission granted a time extension on July 22, 2004; 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 #2004-3 – application of **THOMAS L. MARKLE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 8.31 acres into 5 lots, located north of Road 88 (Cave Neck Road), 791 feet west of Road 257.

Mr. Abbott advised the Commission that this application has been deferred since September 23, 2004; that the staff has received a non-binding septic feasibility statement

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from DNREC; and that DNREC advises that the site is suitable for individual on-site septic systems.

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

Motion carried 5 – 0.

Subdivision #2004-8 – application of **SPRING BREEZE ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 139.05 acres into 275 lots, located north of Road 48 (Hollymount Road), 1,380 feet east of Road 285.

Mr. Abbott advised the Commission that this application has been deferred since December 9, 2004.

Mr. Johnson stated that he has concerns about this application; that his concerns are that the rest of the neighborhood has large lots around it; that the proposed swimming pool area isn't centrally located within the community; that he does not think that it's shown anywhere on the site plan, but he thinks the applicants stated that it would be located with a community center at the entrance to the subdivision; that he is not sure that the applicant created much of a record during the public hearing; and that the applicant hasn't really addressed the issues in Section 99 – 9C of the Subdivision Ordinance.

Mr. Gordy stated that the applicants have not addressed Section 99 – 9C of the Subdivision Ordinance and that he is concerned about the number of trees that would be lost.

Mr. Wheatley stated that this is the first application that has been designed using the cluster ordinance; that the existing area has large lots; and that the applicants did not create much of a record.

Mr. Allen stated that he agrees with the others.

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

Motion carried 5 – 0.

Subdivision #2004-5 – application of **RITTER FARM, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred,

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Sussex County, by dividing 218.45 acres into 225 lots, located northeast of Road 286 (Hopkins Road), 2,319.82 feet northwest of Road 285 (Beaver Dam Road).

Mr. Abbott advised the Commission that this application has been deferred since October 14, 2004; that action was deferred pending receipt of DelDOT's findings of the traffic impact study; that DelDOT has reviewed the traffic impact study and recommends that if the application is approved as a preliminary, it should include seven conditions of approval as referenced in their letter.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried 4 votes to none, with Mr. Allen not participating, to approve the application as a preliminary.

Motion carried 4 – 0 – 1.

PUBLIC HEARINGS

C/U #1579 – application of **JODY SWEETMAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an upholstery shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.0395 acres, more or less, lying south of Road 370, 1,500 feet east of Road 370B and west of Bayard.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Road 370 will not change as a result of this application.

The Commission found that Jody Sweetman was present and stated in his presentation and in response to questions raised by the Commission that he is applying for an upholstery shop; that he is a 4th generation upholsterer; that he has one part-time employee; that 90% of his business contacts are at a customers site, not on the premise; that he seldom has customers come to the site; that he does do some marine upholstery;

that boats are done one at a time indoors; that he has upholstered some truck seats for local farmers; that he does minimal automotive upholstery work; that his business hours are typically from 7:00 a.m. to 4:00 p.m. Monday through Saturday with no Sunday business hours; that he has been in the upholstery business since 1981 in Newark and on this site for approximately one year; that he discards trash and waste in a 2-yard dumpster located at his parents lot behind the shop; that there is no signage on the site; that he does minimal advertising; that he has no objections to a limitation of the number of boats that may be parked on the site; that he has some security lighting on the site; that the shop is located in a 24' by 40' garage building; that the taller 24' by 24' garage is used for boat upholstery; that 90 percent of his work is household furniture upholstery; that 7 to 8 percent of the work is boat seats and pads; and that 2 percent may be truck seats; that his

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driveway and entrance are from his parents property; and that his parents co-own the business with him.

Robert Bunting, present on behalf of the Atkins family that live across Road 370, of the six people present in support of the application, stated that 3 other business uses are within 100 yards of the site toward Bayard and that the family has no objections to the business.

Jo Brown, an immediate neighbor to the west of the site, stated that she and her husband are opposed to the application for the upholstery shop; that the shop has impacted negatively their way of life; that they had previously submitted letters of opposition to the Commission and the County Council for the record; that they are concerned about the amount of traffic to and from the site and the amount of vehicles parked daily at the shop; that the site plan only depicts one building intended for the upholstery shop and that at least two of the three buildings are being used; that the three buildings will contain approximately 5,300 square feet; that the Applicant does advertise; that vehicles frequent the shop sometimes as early as 5:30 to 6:30 in the a.m.; that the stone driveway is similar to their stone driveway and the noise of vehicles on the stone driveway causes makes them and their pets think that the vehicles are coming into their property; that mis-directed deliveries and customers intrude onto their property; that they are concerned about trash from the site; and that there is a need for screening of the site.

Mrs. Brown submitted a letter voicing their objections and some remedies if the use is approved; a copy of the Applicants site plan showing more parking; dated photographs of the buildings with tabs showing parking; dated photographs showing vehicles and boats parked near the buildings; and dated photographs of the buildings; a County tax map marked to show the relationship of properties; an aerial photograph showing the properties; and pages from telephone directories showing advertisements for residential and commercial fabrics for all furniture and boat tops, cover and enclosures for boats.

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

Motion by Mr. Smith, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved with the following conditions:

- 1) Business hours shall not exceed 8:00 a.m. to 5:00 p.m. Monday through Saturday with no Sunday hours.
- 2) Landscape screening shall be provided along the westerly property line and shall be subject to review and approval by the Planning and Zoning Commission.
- 3) One on-premise unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.
- 4) No more than two (2) boats shall be parked outside at any one time.

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- 5) There shall be no outside storage.
- 6) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

Mr. Robertson suggested that the Applicant create cross-access easements between he and his parents for recordation.

C/U #1580 – application of **CRAWFORD AND DAVID MATTHEWS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a lumber (logging) business and repair and storage of equipment to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 5.13 acres, more or less, lying northeast of Road 78, 1,085 feet northwest of Road 493.

Mr. Johnson stated that he will be abstaining from participating in this public hearing.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Road 78 will not be impacted as a result of this application.

The Commission found that prior to the meeting the Applicants provided an Exhibit Booklet containing references to the Zoning Ordinance and the Comprehensive Plan Update, a site plan, photographs, a copy of the DelDOT report, and proposed conditions if the use is approved.

The Commission found that David Matthews and Crawford Matthews were present with Tim Willard, Attorney, and stated in their presentations and in response to questions raised by the Commission that the business has been operated from the site for approximately 20-years; that they were not aware that they were in violation; that they are in the business of clearing forest and woodlands; that the site is used for an office and

storage; that the garage is used for the repair and service of vehicles and equipment; that the shed is used for storage of materials; that they sometimes park equipment and haul trailers on the site; that the uses is an agricultural activity; that the use is in compliance of the Zoning Ordinance per 115-19 and 115-22; that the Comprehensive Plan Update depicts the site in a Low Density Area and references that industrial uses that support or depend on agricultural or forest products are appropriate; that the site plan depicts parking and a proposed addition to the shed; that the manufactured home on the front of the site is occupied by their mother; that the manufactured home in the rear was approved by the County Board of Adjustment and is occupied by David Matthews; that the photographs in the Exhibit Booklet depict trucks and equipment parked on the site, that the site is well maintained and orderly, and the improvements on the site; that there are

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two entrances on the site, a 25-foot wide drive and a 50-foot wide right-of-way serving the site and the immediate neighbors to the west; that the business has 4 employees; that there should be no adverse affect on the community or property values; that the business has been a family business for over 40 years and at this location for approximately 20 years; that the strip lots along Road 78 were improved prior to the establishment of the business on the site; that no accidents have been caused by the business at the site; that the business creates no noise other than that caused by the service and repair of the equipment; and that they would like to build a dwelling on the premises and convert the manufactured home to the rear into an office for the business.

Mr. Robertson stated that the Board of Adjustment has the authority over the use of the manufactured home.

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

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved with the following conditions:

- 1) The Applicant shall be permitted to operate a logging business headquarters from this property, which includes storage and repair of equipment for the business and an office.
- 2) All parking of vehicles shall be behind the residential manufactured home in the front of the property.
- 3) The only lighting shall be for security and directed onto the property.
- 4) The hours of operations shall be limited to Monday through Friday, 7:00 a.m. until 5:00 p.m.
- 5) Only one 3-foot by 3-foot sign identifying the business shall be posted at the entrance on Woodland Ferry Road.
- 6) The change of use of the manufactured home and construction of the dwelling shall be subject require Board of Adjustment review and approval.

- 7) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

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

C/U #1581 – application of **LEON L. BURTON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat storage facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 29.138 acres, more or less, lying south of Route 22 (Long Neck Road), 4,300 feet east of Road 298 and 1,000 feet west of Road 22C.

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The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 22 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available; that the current System Connection Charge Rate is \$2,783.00; that the parcel is served with an eight-inch lateral located along the frontage; that conformity to the Long Neck Wastewater Facility Plan will be required; and that if the parcel no longer qualifies for enrollment in the Farmland Assessment Act, the parcel will be assessed annual frontage at the current Long Neck Sanitary Sewer District rate.

The Commission found that a letter was received from Lois Goepel, the adjacent property owner, voicing no objections to the application since her land has been used for the same use for many years.

The Commission found that Leon Burton was present and stated in his presentation and in response to questions raised by the Commission that he now proposes to change the setback from Route 22 to 50-feet, rather than 35; that the Tunnell property to the east is wooded; that business hours will be from 7:00 a.m. to 5:00 p.m. seven (7) days per week; that he plans on renting the site to local boat dealers who will operate the business; that there will be no storage of flammable solvents; that signage will be minimal; that security lighting will be provided; that the site plan depicts 1,459 spaces on grass for boat storage; that there will not be any boat repairs performed on the site; that the site will be fenced; that the dealers will have keys to the site; that there will not be an office on the site; that he plans on fencing approximately 10 acres at a time as the business grows; and that the adjoining site to the west is a boat storage facility.

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

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

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

Motion carried 5 – 0.

C/U #1582 – application of **DUANE AND DANIELLE MUSSER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sign shop for vehicle lettering to be located on a certain parcel of land lying and being in Broad Creek

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Hundred, Sussex County, containing 3.15 acres, more or less, lying on the east end of a Private Road being east of Route 13A, 750 feet south of Road 485 and 1,700 feet north of Road 480.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 13A will not change as a result of this application.

The Commission found that Duane Musser was present and stated in his presentation and in response to questions raised by the Commission that he proposes a small sign shop for vehicle lettering and pin-stripping; that he has lived on the site for approximately 9-years; that he purchased a computer for lettering approximately 3-years ago; that he presently does lettering as a hobby; that he is not in business; that he plans to have business hours from 8:00 a.m. to 5:00 p.m. Monday through Saturday with no Sunday hours; that all work will be performed inside of the 1,280 square foot shop; that he has lettered stock cars; and that he has no objections to a limitation that all work be limited to inside of the shop building.

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. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved with the following conditions:

- 1) Business hours shall be from 8:00 a.m. to 5:00 p.m. Monday through Saturday, with no Sunday hours.
- 2) There shall be no more than one (1) vehicle stored outside at any one time.
- 3) One unlighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.

- 4) The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion carried 5 – 0.

Subdivision #2004-43 – application of **TAMARI PROPERTIES** to consider the Subdivision of land in an Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 332.71 acres into 455 lots, (Cluster Development), located west of Route 5 and Road 303A, and north of Road 302.

Mr. Abbott advised the Commission that this application was reviewed by the Technical
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Advisory Committee on March 17, 2004 and that the report will be made a part of the record for this application; that the applicants submitted a letter to the Office of State Planning Coordination addressing the comments that were made at the Preliminary Land Use Service meeting; that a letter has been received from the Office of State Planning Coordination in reference to the applicant's letter; that a letter was submitted to Mr. Robertson in reference to the proposed deed restrictions; that a letter of opposition has been received from The Friends of Herring Creek; and that the applicant's attorney submitted an information booklet on December 23, 2004 that Land Use Surrounding Zoning and Site Location; Site Plan, Data, and Overview of Project; Feasibility; Waste Water; Disposal Mapping; DNREC Prelim. Approvals; Stormwater Management; Traffic Considerations; Utility Providers; Amenities; Road Layout; and Agriculture Buffer; Lot Clearing; Easement; and that the booklet will be made a part of the record for this application.

The Commission found that James Fuqua; Attorney, Tom Ford of Land Design Inc, and Dawn Riggi; of Davis, Bowen & Friedel, Inc., were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 455 single family lots on 332.7 acres are proposed; that the proposed density is 1.73 lots per acre; that the site is a low density single family development; that the development was designed meeting the requirements of the Cluster Ordinance; that 665 lots would be permitted by the zoning code; that the site is zoned AR-1 Agricultural Residential; that 7,500 square foot lots are permitted and that the average lot size is 12,756 square feet; that 30% of the site is required to be open space and that 46% of the site is proposed to be open space; that an on-site community septic system is proposed and that DNREC has given a preliminary feasibility statement that the site is suitable for a community system; that Artesian will maintain and operate the community system; that the system will be built to meet the County requirements of Ordinance No. 38; that Artesian will also supply central water to the project; that Sharp Energy will provide gas; that Verizon will provide telephone service; that Delaware Electric Cooperative will provide electricity; and that they all have submitted letters that they are able and willing to provide these services; that the applicants have met with the Cape Henlopen School

Board and that the developers will provide two sheltered bus stops within the development and that the school board agrees with the location of the shelters; that an eight foot multi-modal path will be located throughout the development; that sidewalks will be provided on at least one side of all of the interior streets within the development; that the streets will be private and built to Sussex County specifications; that street lights will be provided throughout the project; that a homeowners' association will be created; that the project is located in a developing area; that other single family residential developments are currently under construction in the immediate area; that the project will not create any adverse impacts to the area; that the developers will contribute \$100.00 from each initial settlement to the local fire department; that as best as they can tell, the site is located in the Millsboro Fire Department's jurisdiction; that a traffic impact study

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was prepared by Davis, Bowen & Friedel and was submitted to DelDOT; that DelDOT has reviewed and approved the traffic impact study and that the applicants will be required to make certain improvements; that the developers will comply with all of these recommendations and requirements; that Unity Branch adjoins the site to the north; that no wetlands will be disturbed; that there will not be any wetlands located on any lots; that there will be a 100 foot buffer from the wetlands; that there are not any rare plants, animals or species located on the site; that approximately 83.5 % of the site is open fields and 16.5 % of the site is wooded; that the developers propose to retain 80% of the existing forested areas; that the applicants went through the Preliminary Land Use Service process on a voluntary base; that the project has been redesigned to incorporate the recommendations of the PLUS meeting into the design; that all lots are greater than 9,000 square feet; that the lots take up 40% of the site; that the streets consists of 13% of the site, and that the open space consists of 47% of the site; that 214 lots are proposed on the east side of the site and 241 lots are proposed for the west side; that agricultural buffers will be provided; that there is a drainage swale on the site; that 91% of the site drains into Unity Branch; that the developers will utilize Best Management Practices; that the stormwater management system will contain bio-swales retention areas and wet ponds; that a 30,000 gallon gas storage tank will be located on the site; that the recreation amenities will include swimming pools, decks, a clubhouse, pool house, tennis courts, and multi-modal paths; that the proposed multi-modal paths will be approximately 3 miles in length and the sidewalks will be approximately 5 miles; that street lights will be located on approximately 300 feet on center; that about 90 street lights are proposed; that approximately 3,000 liner feet of buffer is proposed; that there is ample parking for the recreation amenities; that the open space is provided throughout the project; that this design creates more open space than what a RPC would create; that the project has been integrated into the existing terrain; that there is 155 acres of open space; that the proposed sewage disposal areas are not located adjacent to residential uses; that the open space excludes all lot and street areas; that the individual lots will be maintained by the individual lot owners and that everything else will be maintained by the homeowners' association; that the State and County have different developing areas; that the private infrastructure will be paid by the developers; that the proposed development complies

with the intent of the cluster ordinance; that the site fits into the existing terrain; that no wetlands are being disturbed; that the site contains no historical features and buffers are being provided; that there will only be grade changes where necessary; that no objectionable features are proposed; that central sewer and water will be utilized; that the development will be an upscale development; that there will be positive economic impacts to the County and Cape Henlopen School District; and submitted proposed findings of facts and conditions of approval.

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

The Commission found that Andrew Nupp, Robert Magaro, Emily Sloan, Lester Lynch,
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Tiffany Dirreckson, John Davidson, and Jeff Mott, all area residents, were present and spoke in opposition to this application and advised the Commission that traffic on Route 24 is a nightmare; raised questions about contamination to existing water wells; that public sewer should be required; that there are traffic accidents in the area; negative impacts to water quality; that there is an eagle nesting in the area; that homeowners' associations have too many rules that are not enforceable, that the local roads cannot handle this much traffic; that the project would be in violation of federal law if additional contaminants impact the Inland Bays; questioned where the septic disposal area would be located; questioned the price range of the homes, and that the project will have negative impacts on property values.

Mr. Fuqua responded that the price range for dwellings and lots would start in the \$300,000.00 range.

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.

OTHER BUSINESS

Double R Holdings
CU #1573 Site Plan – Road 275

Mr. Abbott advised the Commission that this is the site plan for medical/professional offices on 3.40 acres; that the site is zoned AR-1; that the conditional use was approved by the County Council on November 30, 2004; that 4, 1-story buildings are proposed and that each building is 98-feet by 62-feet (6,076 square feet); that the setbacks meet the requirements of the zoning code; that on-site septic is proposed and that central water will

be provided by Tidewater Utilities; that the site is not located in a flood zone and that there are not any wetlands located on the site; that 96 parking spaces are provided; that the site plan meets the requirements of the zoning code and complies with the conditions of approval; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Ross Harris, Partner, and James Fuqua, Attorney, were present and discussed the proposed elevations of the structures.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the

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staff receiving all agency approvals.

Motion carried 5 – 0.

Hudson Homes Route No. 24
Multi-Family Site Plan – Route 24

This item was removed from the agenda on January 3, 2005 at the request of the developers.

N.C.O.R.B.

CU #1552 Site Plan – Road 361

Mr. Abbott advised the Commission that this is a site plan for 4 doctors' offices; that the Conditional Use was approved by the County Council on September 21, 2004; that three 1-story buildings and a 2-story building are proposed; that the 1-story buildings contain 3,055, 1,944, and 2,046 square feet; that the 2-story building contains 2,252 square feet; that 6 doctors and 12 employees are proposed; that 30 parking spaces are required and that 46 spaces are provided; that 22 spaces are located within the front yard setback and need a waiver from the Commission; that the setbacks meet the requirements of the zoning code and that the site plan complies with the conditions of approval; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Corporate Contractors

Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for a 2-story, 9,450 square foot office building on 0.60 acres; that the site is zoned C-1, General Commercial; that a letter of no objection has been received from DelDOT in reference to the entrance location; that cross access easements are provided to both the north and south sides of the site; that 6,600 square feet will be used as office space; that 33 parking spaces are required and proposed; that 10 spaces are located within the front yard setback and need a waiver from the Commission; that a 20-foot landscaped buffer has been provided along Route One; that the setbacks meet the requirements of the zoning code; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities;

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that the site is not located in a flood zone and there are not any wetlands located on the site; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Carillon Square

Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a site plan for a 58,000 square foot commercial project on 8.59 acres; that the site is zoned C-1, General Commercial; that 2, 1-story 5,500 square foot restaurants are proposed; that a 1-story 5,500 square foot bank is proposed; that a 2-story 10,500 square foot retail building is proposed; that a 2-story 10,400 square foot retail building is proposed; that a 2-story 7,600 square foot retail building is proposed; that a 1-story 8,800 square foot drug store is proposed; that a 1-story 2,400 square foot retail building is proposed; and that a 1-story 1,800 square foot retail building is proposed; that the setbacks meet the requirements of the zoning code; that 290 parking spaces are required based on the gross leasable area of the site and that 443 parking spaces are proposed; that 41 parking spaces are located within the front yard setback and need a waiver from the Commission; that central sewer will be provided by Sussex County and that central water is proposed; that the site is not located within a flood zone and there are not any wetlands located on the site; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Gerald and Mary Devine
2 Lots and a 50' Right of Way – Road 291

Mr. Abbott advised the Commission that this is a request to create 2, 0.75-acre lots with access from an existing 50-foot right of way; that the residual land would 3.46-acres and has an existing dwelling located on it; that the Commission can approve the request as submitted or require a public hearing for a major subdivision; and that if the request is

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approved as submitted, any further subdivision will require a public hearing for a major subdivision.

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

Motion carried 5 – 0.

George and Martha Whitworth
Lot and a 50' Right of Way – Road 58

Mr. Abbott advised the Commission that this is a request to create a 0.93-acre lot with access from a 50-foot right of way; that the owners proposes to create the right of way over a paved driveway and create a lot for his daughter; that the right of way currently exists and that the owner would be extending the right of way.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to approve the request as submitted.

Motion carried 5 – 0.

Gilbert Shane
Lot and a 50' Right of Way – Road 594

Mr. Abbott advised the Commission that this is a request to widen an existing driveway to a 50-foot right of way and to create a 0.75-acre lot for the owner's son; and that the Commission can approve the request as submitted or require a public hearing for a major subdivision.

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

Motion carried 5 – 0.

Meeting adjourned at 10:35 p.m.