



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF MARCH 9, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 9, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Wheatley, Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Burton with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of February 23, 2006 as circulated and the Minutes of March 1, 2006 as amended. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2005-12 – application of **LACROSSE HOMES OF DELAWARE, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 175.08 acres into 350 lots (Cluster Development), located at the northeast corner of the intersection of Road 227 and Road 229B and east of Road 229.

Mr. Burton stated that he would move that the Commission deny Subdivision #2005 – 12 for Lacrosse Homes of Delaware, Inc. based upon the record and for the following reasons:

1. The proposed project as designed does not meet the purpose of the Subdivision or Zoning Ordinance. It does not promote the orderly growth of the County and the project is not in a Development District established by the 2002 Sussex County Land Use Plan Update.

2. The proposed project also does not meet the purpose of the Subdivision Ordinance because it does not ensure that residential development are conveniently and properly located.
3. The proposed project is not in accordance with the 2002 Sussex County Land Use Plan Update, as follows:
 - A. It does not represent growth in an area where public infrastructure and services are available.

Minutes
March 9, 2006
Page 2

- B. The location of the proposed development is in an area where farmland preservation exists through Agricultural Preservation Districts, and one of the goals of the Plan Update is to reduce pressure for development in agricultural areas and to promote the preservation of farmland.
4. The P.L.U.S. process does not transfer zoning authority from the County to the State, and the County makes the final decision on this application. But, the Commission must still consider the comments from the P.L.U.S. process, which are part of the record. These comments include the following:
 - A. Because the project is outside of an area where the State and local governments have planned for growth, the State opposes the proposal.
 - B. The State has no plans to invest in infrastructure upgrades or additional services such as schools, police and transportation for the area.
 - C. The Office of the State Planning Coordination is opposed to the project and is generally concerned that the project is out of character with the surrounding area.
 - D. The State Department of Agriculture has stated that the site is designated as both high-value cropland and forestland in accordance with the State's Green Infrastructure priorities map. Consequently, the State is recommending other alternative methods of development for the property.
5. The project is in an area that has not developed with similar projects or residential density. There are no other developments that are similar in density to what has been proposed.
6. The proposed project is served by Smith Road, Warren Farm Road and Goose Road, which are all classified as local roads by the State. And, the project is located on a dangerous curve on Hummingbird Road. All these roads are also used regularly by large farm equipment. The project would also lead to increased congestion on the adjacent and surrounding roads and the State has no plans to invest in roadway upgrades in this area.

7. For the reasons in my Motion, I am also not satisfied that the proposed clustered subdivision is superior to a standard subdivision. Instead, it appears that the main goal of the developer is the maximization of the number of residential home lots. The Developer is asking for approval of 350 lots or exactly 2 units per acre. which is significantly more than the net density that would be achieved with a standard subdivision; other reasons why I feel this is not a superior design are as follows:

- A. Although the Developer achieved the maximum number of lots, it is at the expense of approximately 20 acres of existing woodlands.

Minutes
March 9, 2006
Page 3

- B. The design does not preserve the natural environment. For instance, the design would fragment the existing forested lands, which the Department of Agriculture has stated can have an irreversible affect on the regional eco system.
- C. The design, with the relocation or piping of the unnamed tributary draining to the Broadkill River and the clearing or removal of the forested areas adjacent to the stream, does not preserve the natural environment.
- D. A majority of the lots back up to either County Roads or other lots. It appears that the developer traded open space between lots for the maximum density possible.
- E. The Developer has included a non-contiguous 6.45-acre parcel in its open space calculations to obtain the maximum possible density. This parcel is across Smith Road and is not within the developed lands and does not add any additional open space within the developed lands, so I do not feel it should be county towards the project's density.

8. I do not feel that the Items set forth in Section 99-9C of the Subdivision Ordinance have been favorably addressed. For example:

- The subdivision is not integrated into the existing terrain and surrounding landscape and will adversely affect natural areas while causing significant tree, vegetation and soil removal. If the subdivision was approved, it would require extensive grading for new roads, the large community septic system, grading for the proposed large storm water management areas with even more impervious areas caused by the homes, streets, amenities, driveways, etc. Also, it will require the removal of forested areas and the relocation of a tributary to the Broadkill River.
- The project does not promote the preservation of open space. The preservation of open space is offset by the developer's goal of obtaining the maximum possible density.
- The project will adversely affect area roadways and does not provide for the safe vehicular and pedestrian movement within the site and along adjacent roads. There will be many cars per day added to the roadways in and around the project.

And, state roads in the area, including those within the proposed subdivision, are classified as local roads of minimal width that are frequently used by large pieces of farm equipment. Also, it is located along a dangerous curve on Hummingbird Road.

- The project does not preserve and conserve farmland. Instead, it eliminates a large area of farmland that has been classified as high-valued cropland in an area where the state has spent a great deal of money to preserve farmland.
- The project is not compatible with other area land uses, which are primarily agricultural, as stated above. The proposed density is also inconsistent with other developments in the area.

Minutes
March 9, 2006
Page 4

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to deny this application for the reasons stated. Motion carried 5 – 0.

Subdivision #2005-24 – application of **CASCADE PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 258.64 acres into 494 lots (Cluster Development), located north of Route 16, south of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road).

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

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY.

The Commission discussed this Ordinance Amendment, which has been deferred since January 26, 2006.

Mr. Gordy stated that he would move that the Commission recommend approval of the Cluster Density Trade Ordinance, subject to the following additional recommendations:

- 1) The Ordinance should be revised to eliminate reference to any recipient of funds other than Sussex County. The County should be completely in charge of the receipt of any funds, and how they may ultimately be spent to acquire open space.
- 2) The method of determining the amount of the fee should be clarified. Since the fee amounts are to be reviewed annually by County Council, there should be clarification as to whether the fee is the amount in effect at the time a

development may be approved, or the amount at the time the fee is to be paid when the final site plan is recorded. It's possible that the fees may change between those two events.

- 3) The County Council should consider changing the proposed revision to Section 115-25B (3)(2) to state that "...the maximum number of dwelling units that may be permitted by the Planning and Zoning Commission shall be determined by dividing the gross area by 10,890 square feet..." This way, there is no uncertainty as to whether any additional lots are "by-right" just because a fee was promised at the time an application was filed.

Minutes
March 9, 2006
Page 5

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the application be approved for the reasons and with the amendments referenced. Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2005-25 – application of **NORTHERN OAK ESTATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 13.72 acres into 13 lots, located north of Road 231 (Reynolds Pond Road), 1,266 feet northwest of Route 5.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on July 20, 2005 and that the report will be made a part of the record for this application; and that the applicant's engineers submitted a revised plan addressing the recommendations of the Technical Advisory Committee on March 6, 2006.

The Commission found that Heidi Balliet; Attorney, Steve McCabe; Engineer with George, Miles and Buhr, and Kathy Engel and Dwayne Mousley; Applicants were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is zoned AR-1 and contains 13.72 acres; that 13 lots are proposed; that the lot sizes range from 0.75-acre to 1.00-acre; that there are no wetlands on the site; that individual on-site septs and wells are proposed; that the design complies with the subdivision code and land use plan; that it also complies with all agency regulations; that there were not any negative comments from the Technical Advisory Committee; that the site is in a low density area; that restrictive covenants have been submitted; that the dwellings will be stick built; that manufactured homes will not be permitted; that a forested buffer is not required since the adjoining property has preliminary subdivision approval; that the project will provide affordable housing in the Milton area; that the Milton area is experiencing growth; that there are other residential

uses in the immediate area; that a septic feasibility statement has not been issued yet; that open space is provided; and that the applicants will preserve as many trees as possible.

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

The Commission found that Brenda Sims and Robert Essick were present in opposition to this application and raised questions about the location of the storm water management ponds; expressed concerns about their septic systems being impacted; questioned the location of the proposed septic systems; questioned the types of homes that will be permitted; and questioned the price range of the homes.

Minutes
March 9, 2006
Page 6

The Commission found that Ms. Balliet responded by saying that the minimum square footage of the dwellings will be 1,800 square feet and in the price range of \$300,000.00; and that manufactured homes will not be permitted.

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

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

C/U #1639 – application of **BETHANY COURT, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (proposing 6 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.2873 acres, more or less, lying east of Route One, 900 feet north of Dune Road within Tower Shores.

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained a project summary, an Environmental Assessment and Public Facility Evaluation Report, an Affirmation of Conformance with the Comprehensive Plan Update, and a site plan.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “C” of Route One will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Coastal beach and dune land and Tidal marsh, salty, which have severe limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the soils are Hydric; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site was reviewed in the PLUS (Preliminary Land Use Service) process on December 1, 2004; that the Applicants responded to the PLUS comments on June 15, 2005; and that, in final response to the Applicants responses, the Office offers that this project is located within a Level 3 Investment Area according to the Strategies for State Policies and Spending; that Investment Level 3 Areas reflect long-term growth areas and/or areas within growth areas with environmental constraints on or around the site; that this particular site is oceanside of Route One and borders State Park Land; that Mr. Kea's response to many of the agency recommendations is that he will satisfy all requirements set forth by the agencies; that while this is an appropriate response on his

Minutes

March 9, 2006

Page 7

part, this Office would hope that extra consideration would be given to our recommendations by the developer, given the location and environmental features related to this site; and that the Office asks that the County review our comments and recommendations and consider them when reviewing this site plan.

The Commission found that a letter was received from Randall A. Snowling, President of Indian Harbor Villas Condominium Association, requesting that the Commission defer action on this application on the grounds of improper notice, and that Indian Harbor Villas will be directly affected by the construction on this property, and wishes to be heard as to its concerns and cannot do so on such short notice.

Mr. Lank advised the Commission that the advertisement for the public hearing references that the site is east of Route One and 900 feet north of Dune Road within Tower Shores; that Dune Road is the closest street reference available to locate the property; and that Dune Road is a street within Tower Shores.

Mr. Robertson stated that he is satisfied with the correctness of the advertisement and noted that the site was also posted.

The Commission found that Frank Kea and Rich Polk of Caldera Properties and Bethany Court, LLC were present with Eugene Bayard, Attorney, and Ed Launey of Eenvironmental Resources, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the address shown on the Assessment records for Indian Harbor Villas is the address of the developer of that project; that the Indian Harbor Villas were developed as 15.7 units per acre; that the Atlantic Watergate project was developed as 12.1 units per acre; that the Tower Shores Subdivision has a density of 5.9 units per acre; that Breakwater Beach Subdivision was developed as 2.7 units per acre; that The Villas at Beach Cove were developed as 12 units per acre; that Zacharias Cove Subdivision was developed as 1.5 units per acre; that the proposed project is proposing 6 units on 1.28 acres which is a density of 4.7 units per acre; that the area is residential with a predominance of multi-

family units; that they are proposing a beach access from the site out to the Atlantic Ocean; that the walkway, if approved by DNREC, will measure approximately 600-feet in length; that they propose to plant native vegetation along the property line with Indian Harbor Villas and along the front of the site; that there are two small pockets of wetlands on the site that will be left undisturbed; that the Corps. of Engineers have approved the wetlands delineation; that the wetlands contain approximately 3,600 square feet of the site; that all of the local utility companies have provided ability to serve letters; that there is adequate capacity for sewer for this project according to the County Engineering Department; that the project is consistent with the Comprehensive Plan Update, the Zoning Ordinance, and the Better Models for Development in Delaware manual; that the maximum height will not exceed 42-feet; that the 18-foot wide driveway is a one-way

Minutes

March 9, 2006

Page 8

driveway as recommended by DelDOT; that the Indian Harbor Villas extend out further on the oceanside setback than this project proposes; that they have no objections to a sidewalk being required from the one-way driveway to the entrance to the State Parks parking lot to the north; and that they propose individual trash container pickup, not dumpsters.

The Commission found that Mr. Bayard provided copies of a color rendering of the site plan and an aerial photograph with notes indicating the density of the projects in the immediate area; a booklet containing copies of ability to serve letters from utility companies, a legal description and copy of the survey, preliminary site plans, a Phase I Environmental Site Assessment report, a copy of a letter from the Army Corps. of Engineers on the jurisdictional determination on the wetlands, and letters from the State Natural Heritage and Endangered Species Division and the United States Department of the Interior; and some proposed findings of fact and suggested conditions

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. Smith, seconded by Mr. Gordy and carried unanimously to defer action.
Motion carried 5 – 0.

C/U #1641 – application of **CARROLL AND DIANE BRASURE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for parking service vehicles in garages to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.99 acres, more or less, lying southwest of Route 20 (a.k.a. Zion Church Road) 600 feet southeast of Road 92.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service "C" of Zion Church Road will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on this site are mapped as Berryland loamy sand, Evesboro loamy sand, Fallsington sandy loam and Pocomoke sandy loam; that the Berryland, Fallsington, and Pocomoke soils have severe limitations for development; that the Evesboro soils have slight limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Berryland soils are considered Hydric; that the Evesboro, Fallsington and Pocomoke soils are considered of Statewide Importance; that the Fallsington and Pocomoke soils are considered Prime Farmland; that there are no storm flood hazard

Minutes

March 9, 2006

Page 9

areas affected; that the Batson Branch Tax Ditch and the Bear Hole Tax Ditch may be affected; that it may not be necessary for any on-site or off-site drainage improvements; that there may be regulated wetlands on site; and that the Applicant should check with the Army Corps. of Engineers to verify if any wetlands do exist on the site.

The Commission found that Carroll Brasure was present and stated in his presentation and in response to questions raised by the Commission that he needs a facility to park his pest control vehicles; that the company has 20 trucks and 25 employees; that the garage on the site is used for personal storage; that the proposed garages are intended for parking the service vehicles; that the dwelling is not intended for business purposes; that the L-shaped garage building and one of the 24' by 52' garages already exists on the site; that the shed in the right-of-way will be relocated or removed; that business hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday with no weekend hours; that his employees will come to the site, move the service vehicles from the garages and then place their personal vehicles in the garages while they are making service calls; that the service vehicles will always be parked in the garages when on the site; that he does not intend to erect any signage on the site; that any security lighting will be downward illuminated; that there will be no pesticide storage on the site, except that which is already stored on the service vehicles; that all office work and storage of materials will be maintained and controlled at the existing office located north of Route 54.

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

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action. Motion carried 5 – 0.

C/U #1643 – application of **LLOYD SAUNDERS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a roofing business to be located on a

certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.21 acres, more or less, lying southwest of a private access road, 235 feet southwest of Road 299 and 800 feet west of Route 24.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service "A" for Autumn Road will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered of Statewide Importance and Hydric in small depressions;

Minutes

March 9, 2006

Page 10

that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Lloyd Saunders was present with Eugene Bayard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that Mr. Saunders has been in business for many years; that he has 13 employees; that the majority of his work is for County residents; that the dwelling, office and shop already exists; that he wants to expand the shop building with an addition; that residential developments containing manufactured homes and dwelling exists to the north; that a shopping area and boat storage facility exists to the east; that the immediate neighbor provided a letter of no objections to the application; that business hours are from 7:00 a.m. to 5:00 p.m. Monday through Saturday; that this Conditional Use application is appropriate and complies with the Comprehensive Plan Update and the Zoning Ordinance; that the only outside storage would be for the storage of felt and shingles and that the storage would be contained within an area measuring 30' by 35'; that no dumpster is proposed to be placed on the site since all waste materials from job sites is taken to the State landfill; that the parking area will be improved with crusher run; that the storage area on the site plan is not located properly and will be located at least 30 feet from the neighboring properties; that the area behind the office and around the shop will be fenced as shown on the site plan; and that sometime in the future he may want to convert the dwelling into an office for the business.

The Commission found that Mr. Bayard submitted a copy of the letter referenced from the immediate neighbors, Charles W. Coursey and Diane Coursey, and some proposed conditions of approval.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1643 for Lloyd Saunders to operate a roofing and siding business based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property. For example there is a boat storage business across the lane from this property.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 3) The operation of a roofing business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.

Minutes
March 9, 2006
Page 11

- 4) This recommendation for approval is subject to the following conditions and stipulations:
 1. All trucks and trailers associated with the roofing business shall only be parked in the designated parking area shown on the site plan.
 2. Parking as shown on the site plan shall be provided to accommodate not less than 15 vehicles.
 3. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
 4. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
 5. Gasoline storage and dispensing shall not be permitted on the property.
 6. The hours of operation for the business on the site shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Saturday, with no Sunday hours.
 7. The existing home on the property may continue to be used as a residence or may be used as an office in the future.
 8. The rear of the property shall be screened by fencing.
 9. Outside storage shall be setback at least 30-feet from the property lines. The outside storage of materials to be contained within the proposed 30' by 35' storage area.
 10. The site plan shall be subject to approval by the Planning and Zoning Commission.

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

C/Z #1589 – application of **DOUGLAS BREEDING** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred,

Sussex County, land lying at the northeast corner of Route 5 (Oak Orchard Road) and Delaware Street near Oak Orchard, to be located on 0.45 acres, more or less.

Mr. Lank advised the Commission that there is an error in the advertisement and referenced that the existing zoning is GR General Residential, not AR-1 Agricultural Residential.

Mr. Robertson stated that he has no problem with continuing the proceeding since the proposed zoning is correctly advertised.

The Commission found that the Applicant provided an Exhibit Booklet prior to the meeting and that the Booklet contains an aerial photograph and tax maps showing the property and zoning in the area, photographs of the site and the surrounding area and

Minutes

March 9, 2006

Page 12

business uses, a copy of the Planning and Zoning Commission Minutes for November 20, 2003 for Change of Zone #1524 for Patrick Tell, a copy of the County Council Minutes for December 16, 2003 for Change of Zone #1524 for Patrick Tell, a copy of the Findings of Fact for the approval by the County Council on December 16, 2003, a copy of a portion of the Comprehensive Plan Update referencing guidelines for housing types, a copy of the DelDOT Support Facilities Report for March 11, 2005, a copy of a letter from the Office of State Planning Coordination, dated March 30, 2005, a site plan for the existing improvements on the site, and a site plan for a proposed 5 unit multi-family structure.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "C" of Oak Orchard Road will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Oak Orchard Sanitary Sewer District; that wastewater capacity is not available; that the design of the system did not anticipate zoning changes to commercial in this residential area; that the Department opposes this rezoning because of the potential for increased wastewater flow; that the proposed zoning is not located on residential lands previously identified for commercial zoning; that capacity is available for 1 EDU per lot; that the current system

connection charge rate is \$1,540.00 per EDU; that sewer service will become available to the parcel when sewer system construction is completed around April 2006; that a 6-inch sanitary sewer lateral for future connection is located at approximately the center of the parcel's frontage along Delaware Avenue; that additional lateral installations, at the property owners expense, could be required if the parcel subdivides or the use changes; that conformity to the Preliminary Engineering Report and the North Coastal Planning Study shall be required; and that a concept plan is required for changes referenced.

The Commission found, based on a letter from the Office of State Planning Coordination, that County and State planning staff mutually agreed that the project does not impose a significant impact on State interests or resources, and that we have decided to waive the PLUS process on this application; and that it should be noted that the fact that this project is not required to go through the PLUS process, in no way indicates that the State

Minutes

March 9, 2006

Page 13

supports this project nor does it indicate that it is not subject to review through the County planning process; and that during the approval and/or development process, all relevant State regulations must be followed and relevant permits must be obtained.

The Commission found that Douglas Breeding was present with Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to build five (5) upscale townhouses on the site; that the Exhibit Booklet describes the site and surrounding area; that the site is close to other C-1 zoned parcels; that the site is surrounded by C-1, MR and GR zonings; that the site has been improved by a business for over 50 years; that the Applicant originally intended to expand the liquor store and now feels that he cannot compete with the larger liquor stores in the area; that he intends to remove the existing business and build the townhouses; that the use is consistent with the Comprehensive Plan Update since the site is located within the Environmentally Sensitive Developing Area which indicates that housing types include townhouses; that the Engineering Department controls the issuance of EDUs; that if the property would be rezoned to C-1 the Commission would not approve the site plan for the townhouses unless the Engineering Department approves the number of units; that the site is unique since commercial uses already exists; and that some of the residents in the areas support the intended use over the existing liquor store.

The Commission found that Patrick Miller and Craig Lintz, area property owners, were present in support of the application and voiced no opposition to the application and added that a business has existed on the site for years and that the Applicant intends to improve the site.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1589 for Douglas Breeding to change the zoning to C-1 General Commercial based on the record of the public hearing and finds that the change of zone is an appropriate legislative action based on the following findings of fact:

- 1) The site has been historically used for commercial purposes and the use would be in character with the surrounding area.
- 2) There were no persons in opposition to the application.
- 3) Approval of the application will allow the continued restoration of the Oak Orchard area including the addition of facilities that will serve the general convenience and welfare of the public.
- 4) The granting of the application will not have an adverse impact on traffic.
- 5) Approval of the application will promote the health, safety, general welfare and prosperity of present and future inhabitants of the County.

Minutes
March 9, 2006
Page 14

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 stated. Motion carried 5 – 0.

C/Z #1590 – application of **PENINSULA OIL CO., INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Seaford Hundred, Sussex County, land lying at the northeast corner of the intersection of Hebron Street Extended (a.k.a. Hitchens Road) and Nanticoke Avenue (a.k.a. Cargill Road), 1,100 feet south of railroad, 500 feet north of the Nanticoke River and west of the city limits of Seaford, to be located on 4.99 acres, more or less.

Mr. Wheatley announced that he will not be participating in this public hearing.

Mr. Gordy, Vice Chairman opened the public hearing.

The Commission found, based on comments received from DelDOT, that the Department recommends that a traffic impact study be performed based on the size of the parcel (6.5 acres according to the tax map); that if the applicant were to reduce the amount of acreage to be rezoned to 3.9 acres or less, or request a Conditional Use under the current zoning, the Department would not recommend that a traffic impact study be completed.

Mr. Lank advised the Commission that the application was accepted and allowed to proceed since the site contains only 4.99 acres and that more than one acre of the site is wetlands, thereby reducing the site to less than the referenced 3.9 acres.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Swamp; that the Evesboro soils have slight to moderate limitations; that the Swamp soils have severe

limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that some of the Evesboro soils are considered of Statewide Importance; that the Swamp soils are Hydric; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that John Wiley of Peninsula Oil was present with Scott Pinder of River Basin Engineering and that they stated in their presentations and in response to questions raised by the Commission that the site does contain more than an acre of wetlands; that the site is surrounded by Heavy Industrial and Commercial uses; that the company purchased the site in the late 1970s; that the site has never been built upon, but was utilized for the storage of stone for hauling; that they originally intended to build mini-storage buildings on the site, but may convert the use to a heated building since they

Minutes

March 9, 2006

Page 15

are also in the portable restroom service business; that the heating building would be used to store the service trucks; that the site surrounds a lot improved by a commercial building formerly used as a Cargill office; that the area around the site has historically been used for commercial and industrial uses; and that the City of Seaford boundaries are immediately adjacent to the site.

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

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

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action. Motion carried 4 – 0. Mr. Wheatley did not participate in the vote.

C/Z #1591 – application of **CHARLES J. PEARSALL** to amend the Comprehensive Zoning Map from a C-1 General Commercial District to a GR General Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying south of a private road, 50 feet east of Route 213, 1.3 miles south of State Street in Ellendale, being Lot 2 of Robert B. Fitzgerald Subdivision, to be located on 3,500 square feet, more or less.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Ellendale Sanitary Sewer District; that the Department has no objections to the change of zoning proposed; that a 6-inch sanitary sewer lateral is located approximately in the center of the parcel's frontage along New Hope Road; that conformity to the North Coastal Planning Study will be required; that Utility Billing records indicate an improvement on the parcel that connected to the sewer on October 27, 2005; that if the improvement has been removed, or will be removed, a proper disconnection and inspection must be completed;

and that a building permit or placement permit will not be issued until a disconnection is completed.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam and Klej loamy sand; that the Fallsington soils have severe limitations for development; that the Klej soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that both soil types are considered of Statewide Importance; that the Fallsington soils are also considered Prime Farmland; and that both soil types are considered Hydric; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Minutes
March 9, 2006
Page 16

The Commission found that Charlie Pearsall was present and stated in his presentation and in response to questions raised by the Commission that he owns two lots at the site and proposed to improve the lots with manufactured homes similar to adjacent lots in the subdivision.

Mr. Lank advised the Commission that Mr. Pearsall's application only references Lot #2, and does not include Lot #1.

There was a consensus of the Commission that they would be willing to waive the fee if Lot #1 is also applied for from C-1 to GR.

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

Motion by Mr. Burton, 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 the rezoning is a down zoning to residential use and since the rezoning will be consistent with the zoning of the adjacent subdivision. Motion carried 5 – 0.

There was a consensus of the Commission that a Special Meeting be held on April 13, 2006 at 3:00 p.m. to discuss Old Business and Other Business.

Meeting adjourned at 8:40 p.m.