



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF MARCH 31, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 31, 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, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to approve the Agenda as amended. Items 4 and 5 under Other Business were removed from the agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of March 3, 2005 and March 10, 2005 as amended.

### OLD BUSINESS

Subdivision #2004-2 – application of **BROOKS-PALMER CUSTOM HOMES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 86.25 acres into 41 lots, located east of Road 290 (Coolspring Road), 360 feet southeast of Road 292.

Mr. Abbott advised the Commission that this application has been deferred since September 23, 2004; that DNREC has issued a septic feasibility statement; and that the site is suitable for on site septic.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried 4 votes to none, with Mr. Johnson abstaining, to approve the application as a preliminary.

Motion carried 4 – 0 – 1.

Subdivision #2004-21 – application of **SPRINGFIELD SELF STORAGE, L.P.** to consider the Subdivision (Clustered Development) of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.27 acres into 34 lots, located north of Route 48, 1,750 feet southwest of Route 5.

Mr. Abbott advised the Commission that this application has been deferred since January 20, 2005; that DNREC has issued a septic feasibility statement; and that the site is suitable for septic provided a community wastewater treatment and disposal system is utilized,

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried 4 votes to none, with Mr. Johnson abstaining, to defer action.

Minutes  
March 31, 2005  
Page 2

Motion carried 4 – 0 – 1.

Subdivision #2004-23 – application of **FOREST IRVING WALLS, IV** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 6.56 acres into 2 lots, located at the end of Beverly Lane and being Lot 16 within Creek Falls Farm Subdivision.

Mr. Abbott advised the Commission that this application has been deferred since March 3, 2005 so that Mr. Robertson could review the restrictive covenants.

Mr. Robertson advised the Commission that he has reviewed the restrictive covenants and that they do not prohibit the proposed subdivision.

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

Motion carried 5 – 0.

#### PUBLIC HEARING

C/U #1600 – application of **ROBERT E. AND KIM C. KUHL** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family dwelling structure to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 6,000 square feet, more or less, lying south of Admiral Road, 320 feet east of Route One, and being Lot 6 within Tower Shores Subdivision.

Mr. Lank provided the Commission with copies of the survey/site plan for the project, an aerial photograph of the Tower Shores area, and a tax map depicting the uses on the lots within Tower Shores.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Coastal Beach and Dune Land which has severe limitations for development; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation;

that the soils are considered Hydric; that no storm flood hazard area or tax ditch is 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 North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that sufficient wastewater capacity is available for the project; that there is currently one EDU on the parcel; that

Minutes

March 31, 2005

Page 3

there will be a credit when the existing EDU is disconnected; that the current System Connection Charge Rate is \$3,219.00 per EDU; that there is one six-inch lateral on Admiral Road; and that conformity to the South Coastal Area Planning Study will be required.

The Commission found that Robert E. Kuhl and Kim C. Kuhl were present with Harold E. Dukes, Jr., Attorney, and that they stated in their presentations and in response to questions raised by the Commission that they propose to build a duplex on the site; that the use will be compatible with the ongoing activities in the Tower Shores Subdivision; that the use is similar to other uses in the subdivision; that all agency permits will be obtained; that the duplex will be built on pilings and will be three stories high.

Mr. Lank advised the Commission that the parking layout on the site plan will have to be revised.

Mr. Dukes responded that the site plan was done in a rush and will be altered to conform to all regulations.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1600 for Robert E. and Kim C. Kuhl for a multi-family dwelling structure of 2 units based upon the record and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.
2. There are other, similar 2-Unit multi-family dwelling structures with similar characteristics in the immediate vicinity.
3. The project will not have an adverse impact on the neighboring properties or community.
4. This recommendation for approval is subject to the following conditions and stipulations:

1. The density shall be subject to review and approval by the Sussex County Board of Adjustment.
2. Only 2 units shall be constructed upon the property.
3. The development shall be served as part of a Sussex County Sanitary Sewer District.
4. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 8:00 a.m. and 6:00 p.m.
5. The site plan shall be revised to correct the parking layout.

Minutes

March 31, 2005

Page 4

6. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Smith, 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 and stipulations stated.

Motion carried 5 – 0.

C/Z #1568 – application of **HAROLD E. DUKES, JR.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southwest of Route 5, 1,600 feet northwest of Route 48, to be located on 4.61 acres, more or less.

Mr. Lank provided the Commission with copies of the survey/site plan for the project and an aerial photograph of the area.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicants 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; that no storm flood hazard area or tax ditch is 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 DelDOT, that a traffic impact study was performed; that the traffic impact study was found to conform to DelDOT's Rules and Regulations; that the Strategies for State Policies and Spending Map indicates that the site is in an Investment Level 4 area; that State investment policies for Rural Areas are to retain the rural landscapes, preserve open spaces and farmlands, and to establish defined edges to more concentrated development; that the State intends to discourage additional development in Investment Level 4 areas unrelated to the areas

needs; that the development of a 16,000 square foot industrial park would be inconsistent with the objectives of the State Strategies document; that the projected employment estimates for the development's Transportation Analysis Zone would be exceeded when considering the development; that their point is not that the County should deny the development because it does not fit the demographic employment forecast; that traffic forecast can only be as good as the demographic forecasts; that should the County choose to approve the application, the following items should be incorporated into the site design, reflected on the record plan and shall be completed prior to the issuance of any certificate of occupancy: 1) as part of the driveway design on Route 5, the developer

Minutes

March 31, 2005

Page 5

should do the following: a) Align the site driveway directly opposite the Danfield Drive to create a four-legged intersection; b) Construct the site driveway to permit all northbound and southbound Route 5 entry and exit movements with separate left-turn and right-turn lanes and one entering land; c) Ensure the site driveway is wide enough and striped to accommodate bicyclists entering and exiting the development; d) Construct sidewalks along Route 5 frontage and provide sidewalks along both sides of the internal development streets; and e) Continue to maintain a bicycle lane along Route 5 site frontage either utilizing the existing shoulder or construct a minimum 5-foot wide lane.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Applicant did submit to their Office for a PLUS review; that the Applicant was originally proposing C-1 Zoning; that the C-1 zoning is not consistent with the 2002 Comprehensive Plan Update; that the site is located in a Low Density Area according to the 2002 Comprehensive Plan Update and that an applicable zoning district for commercial activities in the Low Density Area is B-1; that the Applicant should be encouraged to seek a rezoning category that is consistent with the Update; that the comments includes references from the State Historic Preservation Office, DelDOT, DNREC, the State Fire Marshal's Office, the Department of Agriculture, the Public Service Commission, and the County; that it was noted that the project is located within a low nutrient reduction zone; that in order for the Applicant to verify compliance with the Total Maximum Daily Loads (TMDLs) mandate, a full nutrient accounting process known as nutrient budget should be prepared; that in recognition of the need to make further reductions in subsurface wastewater nutrient discharges (mainly nitrogen) to meet the TMDL mandate, DNREC is currently pursuing efforts to implement more stringent on-site wastewater performance standards for all septic systems sited within the Inland Bays watershed; that these standards are still pending development, but are expected to be codified into regulations in the near future; that until these regulations are fully promulgated, DNREC strongly recommends that the Applicant implement the best available technologies to pretreat or reduce all "end of the pipe" nitrogen discharges to a level that meets or exceeds the 10mg/l Federal drinking water standard; that the Department of Agriculture stated that they will not support or oppose the request; and that it was noted that a B-1 rezoning or a Conditional Use would be more appropriate.

The Commission found that Harold E. Dukes and Cindy Dukes were present with Zach Crouch of Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they started a center for small business uses years ago; that they create a division within the buildings for small business users; that the project is proposed to be similar to their center on Route 9 near Gravel Hill; that this site is adjacent to C-1 zoned property and uses; that they have a waiting list for tenants; that their tenants could include cabinet makers, contractors, repair services, transportation services, a tile installer, computer services and repairs; that the existing building on the site was approved as a Conditional Use for a motorcycle repair facility;

Minutes

March 31, 2005

Page 6

that they do not have leases with their tenants, but they do control all activities in the units; that the existing septic may be adequate for the entire project; that they will install a new well and septic if required; that a Conditional Use was recently approved for the parcel immediately adjacent to the site to the north; that there is adequate space on the site for parking; that they applied for B-1 based on the recommendations of the PLUS agencies; that all PLUS comments will be addressed on the site plan; that they have not yet met with other agencies since they do not yet have the zoning; that the project can be built to comply with all agencies; that the intended use is primarily for warehousing; that some retail uses may be permitted; that the market will drive the type of uses; that several other commercial uses exist along Route 5 in the immediate vicinity; that the proposed building will not exceed 18-feet in height; and that the project will be phased depending on the market.

Mr. Lank advised the Commission that this is an application for B-1 zoning, which has greater restrictions than the Applicant's site on Route 9 which is zoned LI-2 Light Industrial.

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

The Commission found that John Davidson, the developer of a business just south of the site, expressed concerns about the types of buildings proposed and that the buildings should be taller so as to be similar to other buildings in the immediate commercial area.

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/Z #1569 – application of **HENRY W. GRAY** 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 southwest of Route 5, 250 feet southeast of Road 292A, to be located on 32,962 square feet, more or less.

Mr. Lank provided the Commission with copies of the survey of the site, a sketch, and an aerial photograph of the area.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicants will be required to follow recommended erosion and

Minutes

March 31, 2005

Page 7

sediment control practices during construction and to maintain vegetation; that the soils are considered of Statewide Importance and Hydric in small depressions; that no storm flood hazard area or tax ditch is 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 DelDOT, that a traffic impact study was not recommended and that the level of service of Route 5 will not change as a result of this application.

The Commission found that Henry Gray was present and stated in his presentation and in response to questions raised by the Commission that he is a building contractor and proposes to erect a pole shed on the site for storage of building materials; that he has spoken to some of the area residents and obtained a petition voicing no objections to the proposed rezoning; that the petition contains 12 signatures; that the pole building will measure approximately 40-feet by 70-feet with a height of 12-feet; that he proposes to fence the area; that as many trees as possible will be retained; that he hopes to build a home on the site in the future; that he was not comfortable applying for a Conditional Use; that a chicken plant and other commercial uses are in close proximity; that as a building contractor he also does plumbing, heating and air conditioning; that he may fill the existing ditch that crosses the property; that the driveway will be installed per DelDOT requirements; that the business utilizes three trucks and two trailers; and that he has been operating the business from his home.

The Commission found that Mr. Gray submitted a copy of the referenced petition for the record and a sketch site plan and elevation view of the building.

Mr. Kautz advised the Commission that this application is not consistent with the Comprehensive Plan Update and has not yet been submitted to the PLUS process.

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.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1569 for Henry W. Gray based on the record and for the following reasons:

- 1) He does not believe that the application is consistent with the surrounding area since all adjacent properties are zoned AR-1.
- 2) Although the Applicant has stated that the intended uses are limited, a change of zoning to C-1 would allow potentially more intensive uses that are not compatible with the surrounding area.

Minutes  
March 31, 2005  
Page 8

- 3) A Conditional Use application would be more appropriate for this project. Should the Applicant choose to reapply for a Conditional Use, he recommends that the application fee be waived and that the project be put on a fast scheduling process for consideration.
- 4) The above reasons and recommendations by no means imply that such an application for Conditional Use will be granted. Only the merits of the Conditional Use application, project design, and public information offered at the time of a public hearing will determine the Commission's recommendation.

Motion by Mr. Johnson, seconded by Mr. Wheatley, 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.

C/Z #1570 – application of **WILLIAM AND LESLIE BROWN** 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 Broad Creek Hundred, Sussex County, land lying south of Route 9, 900 feet east of U.S. Route 13, to be located on 4.46 acres, more or less.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Kenansville loamy sand which has slight limitations for development; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered of Prime Farmland; that no storm flood hazard area or tax ditch is 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 Laurel Service Area according to the Western Sussex Water and Sewer Plan Area Study and that the



Applicant should contact the Town of Laurel concerning the availability of water and sanitary sewer service.

The Commission found that William Brown was present and stated in his presentation that they had purchased this additional land because of a surveying error in the design; that this expansion corrects the error; that the adjacent farm is irrigated; that the expansion does not affect the irrigation system; that the expansion is proposed for parking and stormwater management; that the entrance on Route 9 will be relocated further away from the intersection of Route 9 and U.S. Route 13; and that this rezoning

Minutes  
March 31, 2005  
Page 9

will bring the entire site into one zoning classification, C-1, rather than having two zoning classifications.

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. Gordy, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved based on the record and since the rezoning is an expansion to an existing C-1 General Commercial property; since the entrance will be relocated to a safer location further away from the intersection of Route 9 and U.S. Route 13; and since the expanding of stormwater management facilities will improve the drainage.

Motion carried 4 – 0.

C/Z #1572 – application of **RIVERVIEW, LLC.** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying southeast of Road 346A, 3,100 feet east of Road 346, to be located on 79.432 acres, more or less.

Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed the proposal on January 19, 2005, that comments in the TAC Report included comments received from the Office of State Planning Coordination, DelDOT, Health and Social Services, County Addressing, the Department of Agriculture, County Engineering Public Works Division, County Engineering Planning and Permits Division, the Fire Marshal's Office, and the Sussex Conservation District, and that the TAC Report is a part of the record for this application.

Mr. Lank advised the Commission that they had previously been provided with copies of a survey of the property, site plans, an Exhibit Booklet, dated June 2004, an Exhibit Booklet, dated March 24, 2005 with an attached Appendix Booklet, and an aerial photograph of the area.

Mr. Lank advised the Commission that the record includes a copy of the Applicants Preliminary Land Use Service (PLUS) Submission dated April 30, 2004.

The Commission found, based on revised comments received from the Office of State Planning Coordination, dated March 28, 2005, with an attached response from Riverview, L.L.C., dated March 4, 2005, and a copy of the June 21, 2004 PLUS agency

Minutes

March 31, 2005

Page 10

comments, that the Applicants had responded to the PLUS agency comments; that there appears to be no changes made to the plan in response to the agency concerns; that the PLUS comments of June 21, 2004 stand as written; that the State continues to be concerned about the potential impacts to the environment if this project moves forward; and that the State is particularly concerned with the impacts to wetlands and the access to the site being possible only through a long bridge over tidal wetlands.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Rumford loamy sand, and Tidal Marsh; that the Evesboro and Rumford soils have slight limitations for development; that the Tidal Marsh soils have severe limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro and Rumford soils are considered of Statewide Importance; that the Tidal Marsh soils are considered Hydric; that no storm flood hazard area or tax ditch is affected; that it may be necessary for any on-site or off-site drainage improvements because of the presence of Hydric soils, the possibilities of wet-spots in the fields, and increased impervious areas; and that it may be necessary for the Applicant to obtain permits from the Army Corps. of Engineers and the State.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County maintained or operated sanitary sewer and/or water district; that the site is within the Holts Landing Planning Area as defined by the South Coastal Area Planning Study Update of 2004; that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required; and that the Division commented on the application during the PLUS process.

The Commission found that Frank Kea and Rick Polk of Riverview, LLC were present with James Fuqua, Jr., Attorney, and Ed Launay of Environmental Resources, Inc. and that they stated in their presentations and in response to questions raised by the

Commission that they propose to develop 72 single family condominium units on the site; that the site has been zoned MR Medium Density Residential since 1974; that the purpose of the MR district is to provide for medium-density residential development in areas which are expected to become generally urban in character with the appropriate infrastructure; that the original RPC was voided for the lack of development; that the site is located in the Environmentally Sensitive Developing Area; that the site is located in the study area for the Holts Landing Sanitary Sewer District; that DelDOT did not require a traffic impact study; that a Phase I Environmental Site Assessment was performed; that a family cemetery was found on the site and that it will be delineated; that the Applicants purchased the site in 2002; that wetlands have been delineated; that there should be no impacts on the wetlands by this development with the exception of the bridge; that the

Minutes

March 31, 2005

Page 11

only legal access to the uplands on the site will be from the bridge; that there are other developments in the area with bridges; that it has been recommended that an alternative access be established; that the Applicants have been attempting to get access across the Murray property; that they proposed County sewer and central water on site; that the adjoining properties are in agriculture; that Tuckahoe Acres Camping area is across from the site; that there are several MR-RPC projects in the general area; that the general area has been and is still being developed; that the County has recently approved additional developments in the area with environmental compliance; that the site is similar to Ellis Point RPC which has single family detached condominiums; that one of the amenities for the project will be a swimming pool; that the bridge will be built to public road standards; that they hope to be able to build a pedestrian bridge from the uplands to the waters edge; that the site contains approximately 16 acres of uplands; that they propose to preserve the remaining wetlands in permanent conservation easements; that the site is within the 100-year flood plain; that the bridge will be elevated above the minimum flood elevation; that TMDL reductions will be met by use of Best Management Practices; that the project will comply with all DelDOT requirements; that they propose to create a stub connector from an interior street to an adjacent property; that the proposed houses are similar to single family houses built in Sea Colony; that the timber bridge is approximately 1,300 feet long with approximately 1,230 feet crossing wetlands; that the bridge design is similar to a smaller bridge built in Ellis Point; that the bridge will be capable of supporting any trucks allowed to traverse public roads; that the bridge will be 25-feet wide with a 5-foot wide pedestrian walkway separated by a guardrail; that the turning radius for the curve on the bridge is adequate to allow two passing tractor trailers; that they are working with the Office of the State Fire Marshal for water access locations along the bridge; that they have been working with Orth-Rodgers & Associates to establish an evacuation plan for the project; that the bridge should withstand the elements for at least 80 years and that the decking on the bridge should be replaced every 25 years; that the maintenance cost for the bridge is substantially greater than a paved street; that parts of the bridge crosses non-tidal wetlands regulated by the Corps. of Engineers; that other parts of the bridge crosses tidal wetlands regulated by the State; that approximately 1.68 acres of non-tidal wetlands are affected; that 0.22 acres of tidal wetlands are affected; that the corridor for the

proposed bridge goes through areas that are high and vegetated with Phragmites; that permits will be required to crossing the tidal wetlands; that no permits are required for crossing the non-tidal wetlands since no fill is being proposed, only a bridge; that the reference by the Office of State Planning Coordination that a Coast Guard permit is required is in error since no navigable water crossing is proposed; that the bridge does not shade or cover any productive wetlands; that a mitigation plan may include conversion of some poor wetlands containing Phragmites into productive wetland habitat; that the use of a bridge causes less impact on wetlands than a road; that at some time in the past some fill was placed on the site and some berms were created; that the Phragmites should be sprayed, mowed, and cleaned-up to enhance the site; that the areas containing Phragmites could be excavated for elimination of the Phragmites and then mitigated by planting

Minutes

March 31, 2005

Page 12

marsh plants; that Phragmites do get dry in the summer and could be a fire hazard; that the bridge is proposed to be built with treated timbers which slows burn time; and that a water stand pipe located along the bridge will be beneficial for fire fighting if there is a marsh or bridge fire.

The Commission found that Mr. Fuqua submitted for the record: a bridge concept including a detail of the location of the bridge, a bridge elevation/section view, photographs of similar bridges; an exhibit of turning radii which depicts tractor trailers meeting each other at the turn on the bridge; an aerial photograph depicting the site, existing developments, and approved local developments; an aerial view of the site superimposed with the project; an enlarged aerial view of the site superimposed with the project; three photographs of proposed dwellings to be built in the proposed project; an evacuation plan for the project; photographs of the marsh on the site; and a set of proposed conditions of approval.

The Commission found that Mr. Fuqua added that the proposed access way is the only legal access to the site at this time; that the Applicants did not originally purchase the site with the intent of building a bridge; that the site is located in a growth zone, the Environmentally Sensitive Developing Area; that central water and central sewer are proposed; that the site has been zoned MR for many years; that the MR zoning was granted by the County with the intent that the site be developed as Medium Density Residential; that the cost of the bridge has been estimated at \$2,500,000; that the dwellings will be placed in clusters not exceeding 165-feet; that there will be a 40-foot spacing between clusters of dwellings; and that individual dwellings will be spaced per the requirements of the Building Code.

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

The Commission found that Barbara Murray was present with Michael Malkiewicz, Attorney, in opposition to the application and that they stated in their opposition and in response to questions raised by the Commission that approval of this project will be a

major decision for the Commission; that there is no known bridge of this magnitude in the County that crosses wetlands, through wetlands, carrying vehicles and utilizing infrastructure; that there should be a fear of establishing a precedent; that the Applicants and the neighbors have talked about alternative access; that the Commission should base its decision on the County Ordinances and agency comments, not because a deal has been made; that the site was originally a part of a larger RPC and that this site was intended to be a marina; that the marina was never approved by the State; that the parcel has set vacant for years; that the purchase price was \$250,000; that the site is zoned MR; that the RPC does not have to be approved; that the upland can be developed with the home; that if sewer becomes available additional lots could be created; that since the upland can be developed with a home, a taking is not an issue; that this project does not

Minutes

March 31, 2005

Page 13

create a superior living environment; that there is no ingenuity in the design; that State wetlands cannot be developed; that the Applicants have not revised the site plan per the recommendation of the PLUS comments; that the proposal does not achieve the goals of the Comprehensive Plan; that this will be the largest timber bridge in the County; that if the zoning is approved the property may be sold; that commercial uses have not been discussed; that there should be safety concerns about the bridge, such as fire, accident, or natural disaster; that utilities could create safety issues; that snow removal could be a problem; that a major concern should be that there is only one access to the site, the bridge; that trees will be removed or destroyed by creation of the bridge; that the wetlands will be impacted during the construction of the bridge by walking, mowing, spraying of chemicals, and installation of utilities; that the wetlands may be impacted by dripping lubricants from vehicles using the bridge; that central sewer will not be available for at least 4 years; that there are no cultivated lands on the site as indicated in the Applicants calculations; that farm fields do adjoin the site; that the height of the piling for the bridge is questionable; that wetlands will be lost by the erection of the bridge and the shadows created by the bridge; questioning if lighting is planned to be installed on the bridge; that lighting will impact the environment; that the bridge will be a noise nuisance; that an automobile accident could occur on the bridge forcing vehicles into the marsh and blocking an access to the project; that the project does not comply with the purpose of an RPC District; that an Environmental Assessment should be required; that use of a bridge will create shadows, noise, and a blight on the landscape; that the proposal does not protect the Inland Bays; and that creation of an alternative access across the Murray property would impact the use of the Murray property.

The Commission found that Mr. Malkiewicz presented three (3) correspondence about access, two (2) newspaper articles, fourteen (14) photographs, an exhibit board showing the profile of a 1,400 foot bridge, and an exhibit board showing a cross section of a bridge with a shadow line.

The Commission found that Ed Howe and Alfred Windell were also present in opposition and expressed concerns about the loss of wildlife, the possible impacts on the project by a

northeaster; that placing 70 home on a small piece of uplands is overkill; that evacuation could be a major problem if something occurred that impacted the bridge; that the proposed walkway across the wetlands from the uplands to the water will impact the wetlands; that lighting on the bridge will be a nuisance; that the noise of traffic on the bridge will be a nuisance, especially at night; and that the Bethany Forest project was denied access across wetlands to the water by the State.

The Commission found that Frank Kea responded that he anticipates that construction of the project would start within 2-years if the rezoning is approved.

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

Minutes

March 31, 2005

Page 14

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

Motion carried 5 – 0.

#### OTHER BUSINESS

Americana Bayside MR/RPC

Final Record Plan – Phases 4, 5 and 8 – Route 54

Mr. Abbott advised the Commission that this is the final record plan for Phases 4, 5 and 8; that the plans are the same as the ones which received preliminary approval on August 26, 2004; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried 4 votes to none, with Mr. Johnson absent, to approve the plans as a final.

Motion carried 4 – 0.

North Beach Community

CU #1507 Site Plan – Road 360

Mr. Abbott advised the Commission that this is a preliminary site plan for a 40 – unit multi-family project; that the Conditional Use was approved by the County Council on December 16, 2003; that the Commission granted a time extension on August 26, 2004; that 40 units are permitted by the approved ordinance; that there are five buildings with 6 units each and two buildings with 5 units each; that the building lengths, separation distances and setbacks meet the requirements of the zoning code; that 120 parking spaces are required and 131 spaces are proposed which includes an attached two car garage with each unit; that a pool house and swimming pool are proposed; that a required landscape plan has been submitted; that the application was approved with 15 conditions and the site plan addresses the conditions; that central sewer will be provided by Sussex County

and central water will be provided by Sussex Shores Water Company; 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. 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.

Minutes  
March 31, 2005  
Page 15

Swann Cove MR/RPC  
Amended Condition – Route 54

Mr. Abbott advised the Commission that this is a request to have a condition of approval removed; that the condition is that residential building permits shall not exceed 60 per year; that the condition originated at the Commission's recommendation of approval and was based on comments received from the Sussex County Engineering Department Division of Planning and Permits; and that the Engineering Department has issued a letter of no objection to having this condition removed since the existing infrastructure is sufficient to convey the build out of this project.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to remove the condition.

Motion carried 5 – 0.

Paynter's Purchase MR/RPC  
Interpretation of Condition – Route 88

This item was removed from the agenda on March 15, 2005.

Seagrass Plantation MR/RPC and Bennett's Beach  
Street Layout – Road 348

This item was removed from the agenda on March 28, 2005.

Lamb Ventures, L.L.C.  
Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a site plan for a 12,433 square foot rental store and equipment storage building on 2.92-acres; that the parcel is zoned C-1; that the

setbacks meet the requirements of the zoning code; that 43 parking spaces are proposed; that 13 spaces are located in the front yard setback and need a waiver from the Commission; that on-site septic and well are proposed; 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. Wheatley, 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 and to grant the waiver for the 13 parking spaces located within the front yard setback.

Minutes  
March 31, 2005  
Page 16

Motion carried 5 – 0.

Parker's Point Addition  
Revised Subdivision Plan – Beth's Court

Mr. Abbott advised the Commission that this is a request to combine a 1.36-acre open space parcel with Lot 53 which contains 1.51-acres; that Lot 53 would then become a 2.87-acre parcel; that the Parker's Point Homeowners' Association Board of Directors has sent a letter approving this request; and that Mr. Robertson was going to review the restrictive covenants.

Mr. Robertson advised the Commission that he has reviewed the restrictive covenants and that the request is legal.

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

Motion carried 5 – 0.

Derwin B. Lowe  
3 Lots and a 50' Right of Way – Route 9

Derwin Lowe and Doug Parker, Surveyor, were present on behalf of this request to create 3 lots with access from a 50-foot right of way and advised the Commission that the proposed subdivision is to allow for the sale of lots to help Mr. Lowe to be able to help care for his mother; that they are trying to disturb less than 5,000 square feet; and that the lots meet the minimum 100 foot lot width at a setback of 113.50 feet.

Mr. Abbott advised the Commission that the County requires the 100-foot lot width at the cul-de-sac or at the minimum required setback of 30 feet.



Mr. Robertson advised the Commission that the lot width requirement would have to be at the minimum required setback and not at the proposed setback.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the request with the stipulation that the lot width requirement be met at the minimum required setback.

Motion carried 5 – 0.

Minutes  
March 31, 2005  
Page 17

Randy and Donna Gooner  
Parcel and a 50' Right of Way – Route 30

Mr. Abbott advised the Commission that this is a request to create a 5.0-acre parcel with access from a 50-foot right of way.

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

Motion carried 5 – 0.

CU #1421 Sports at the Beach  
Reconsideration of Revised Site Plan – Route 9

Mr. Abbott advised the Commission that Mr. Townsend has sent a letter requesting that the Commission reconsider their decision of denying the infirmary and arcade.

Mr. Townsend advised the Commission that the infirmary and arcade were supposed to have been on the revised plan that included the indoor arena and was an oversight on his part; and that the infirmary and arcade will be the last revisions to the site plan.

Mr. Johnson stated that he would approve CU #1421 for Sports at the Beach for a new arcade building and an infirmary for the following reasons:

1. The arcade will provide the players and spectators at Sports at the Beach with a much-needed recreational outlet when they are between games and provides supervised diversion during idle times.
2. The arcade will compliment the activities at Sports at the Beach, will not create any additional traffic, and will not cause any burden or hardship for the neighbors.

The recommendation of this approval is subject to the following conditions:

The arcade will be open and available to the public in attendance at Sports at the Beach. The arcade will not be in operation when there are no scheduled games or tournaments. The hours of operation will be from 7:00 a.m. to 10:00 p.m. Approval of the infirmary will further provide for health and welfare of the general public in attendance and more importantly will provide the essential medical facilities for the overnight players and coaches. Furthermore, said motion is made with the recognition that Sports at the Beach has been as asset to the Community and Sussex County and that approval of these requests will enhance their provision of recreational and health services to the participants.

Minutes  
March 31, 2005  
Page 18

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised site plan with the reasons and conditions as stated.

Motion carried 5 – 0.

Meeting adjourned at 11:25 p.m.