



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF OCTOBER 28, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 28, 2004 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, and Mr. Wheatley, with Mr. Robertson – Assistant County Attorney, Mr. Abbott – Assistant Director, Mr. Kautz – Planner, and Mrs. Mowbray – Zoning Inspector III.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of October 14, 2004 as circulated.

### OLD BUSINESS

CU #1555 – application of **PAUL ROBINO AND ROBINO-SANIBEL VILLAGE, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (122 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 15.29 acres, more or less, lying southeast of Route 54 (Lighthouse Road) and 100 feet northeast of Route 394.

This Commission discussed this application, which has been deferred since September 16, 2004.

Mr. Gordy stated that he would move that the Commission recommend approval of CU #1555 for Paul Robino and Robino-Sanibel Village, L.L.C. based upon the record and for the following reasons:

1. The Proposed Conditional Use is appropriate in areas where central water and sewer are available. The County Engineering Department states that there is sewer capacity for the project, but the project is not within an existing Sewer District. The Applicant has stated that it will seek annexation into a County Sewer District and will construct, at its own expense, all sewer infrastructure to connect the project to the existing sewer.

2. The property is in an area where other residential development has occurred, including the Americana Bayside MR-RPC project.

3. The project will be served or benefited by amenities that are on-site. These amenities include a swimming pool.

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4. The Applicant is seeking only single-family detached condominiums at a density acceptable to the County Engineering Department.

5. With the stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.

6. This recommendation for approval is subject to the following conditions:

- The maximum number of residential units shall not exceed 61 single-family detached condominium units.
- All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- The swimming pool shall be constructed and open to use by residents within 2 years of issuance of the first building permit for the project.
- The development shall only be served by Sussex County Sewer. The applicant must seek to have the property annexed into a County Sewer District. If annexation is approved, the Developer shall install all sewer infrastructure at its own expense to connect to the existing sewer according to all Engineering Department standards and requirements.
- The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- Stormwater management and erosion and sediment control shall be constructed in accordance with applicable state and county requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
- Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.

- The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along at least one side of all streets.
- 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 7 am and 6 pm.

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- Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.

Motion by Mr. Gordy, seconded by Mr. Wheatley, 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 4 – 0.

CU #1563 – application of **GEORGE AND EDITH WANDA CANAKIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a gift shop/art gallery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 36,109 square feet, more or less, lying northwest of Route 9 (Savannah Road), 327 feet southwest of Ritter Road.

The Commission discussed this application, which has been deferred since September 23, 2004.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to recommend approval of CU #1563 for George and Edith Wanda Canakis for a gift shop/art gallery based upon the record made at the public hearing and for the following reason and condition:

1. There are other similar uses of this type along Savannah Road. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 4 – 0.

CU #1562 – application of **PATRICK SWIER, M.D.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a doctors office to be located on a certain parcel of land lying and being in Lewes and Rehoboth, Sussex County, containing

3.601 acres, more or less, lying north of Route 9 (Savannah Road), 700 feet east of Ritter Road.

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

Mr. Wheatley stated that he would move that the Commission recommend approval of CU #1562 for Patrick Swier, M.D. for a doctors office based upon the record made at the public hearing and for the following reasons:

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1. The proposed Conditional Use is generally similar to other uses in the vicinity of the 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 use as a doctors office in close proximity to Beebe Hospital will benefit the health, safety and welfare of Sussex County residents.
4. This recommendation for approval is subject to the following conditions and stipulations:
  - There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side. The sign shall not be illuminated between 9:00 pm and 6:00 am.
  - Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
  - No outside storage shall be allowed on the premises.
  - There shall be a buffer of Leyland Cypress or similar vegetation along all boundaries with adjacent residential properties. Any plantings shall be at least 5 feet tall at the time of planting.
  - There shall be no more than 3 physicians and 6 additional employees at the office.
  - Hours of operation shall be limited to between 7:00 am and 8:00 pm, Monday through Saturday.
  - The site plan shall be subject to approval of the Planning and Zoning Commission.

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 for the reasons stated.

Motion carried 4 – 0.

CU #1596 – application of **CAROLE A. LEVITSKY AND SARA TAMMANY** to consider the Conditional Use of land in a GR General Residential District for an office building to be located on a certain parcel of land lying and being in Lewes and Rehoboth

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Hundred, Sussex County, containing 12,591 square feet, more or less, lying at the northwest corner of Route 273 (Hebron Road) and Burton Avenue, 650 feet north of Route One, and being Lots 2 and 3 within West Rehoboth Subdivision.

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

Mr. Johnson stated that he would move that the Commission recommend approval of CU #1596 for Carole A. Levitsky and Sara Tammany for an office building based upon the record made at the public hearing and for the following reasons:

1. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The operation of an appraisal business within the office building will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site and there will be no customers visiting the site.
3. The applicants have proposed to construct a building that will have residential features.
4. The project will revitalize the property, which currently has two buildings that are in very poor condition.
5. This recommendation for approval is subject to the following conditions and stipulations:
  - There shall be no signs on site aside from the one on the front door.
  - Any security lights shall only be installed on the buildings and shall not shine on neighboring properties.

- The hours of operation for the business on this site shall be limited to 9:00 am to 5:00 pm seven days per week.
- Privacy fencing or planted screens shall be constructed along the boundaries of the property adjacent to any other residential property.
- The site plan shall be subject to approval of the Planning and Zoning Commission.

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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 4 – 0.

CZ #1552 – application of **NASSAU GROVE, L.L.C.** 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 southwest of the intersection of Route One and Route 265 (Minos Conaway Road), to be located on 112.28 acres, more or less.

The Commission discussed this application, which has been deferred since August 26, 2004.

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

Motion carried 4 – 0.

CZ #1554 – application of **MARINE FARM, L.L.C.** 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 southeast of Beaver Dam Road (Road 285) and southwest of Jim Town Road (Road 285A), to be located on 373.82 acres, more or less.

The Commission discussed this application, which has been deferred since September 23, 2004.

Mr. Johnson stated he would move that the Commission defer action on CZ #1554 for Marine Farm, L.L.C. to allow him more time to review all of the additional information that was recently given to the Commission by DelDOT.

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

Motion carried 4 – 0.

Subdivision #2004 – 4 – application of **WILMA HOWETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex

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County, by dividing 41.90 acres into 44 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east and west of Road 258, 1,650 feet south of Delaware Route One.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary with the stipulation that the approval is for lots 1 through 39 only since lots 40 through 44 are no longer a part of this application.

Motion carried 4 – 0.

## PUBLIC HEARINGS

CU #1567 – application of **WILLIAM H. PRETTYMAN, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an addition to an existing campground to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.09 acres, more or less, lying north of Route 254, 1.0 mile west of Route 9.

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 will not change as a result of this application.

The Commission found, based on comments received from the Sussex County Engineering Department Division of Planning and Permits, that the project is not in a County operated and maintained sanitary sewer and/or water district; that an onsite septic system is proposed to serve the addition to the campground; and that the proposed project is not in an area where Sussex County expects to provide sewer service in the foreseeable future.

The Commission found that William Prettyman was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the existing park has been in operation for 30 years; that the park is open from May 1<sup>st</sup> until September 30<sup>th</sup> of each year; that the proposed septic will be pumped to a bed area that has been approved by DNREC; that the applicants maintain the lawns and roads; that the campers trim their lawn around their units; that the existing porches that are attached to the units are manufactured for camping; that there is a recreation building/community center in the park and that the park holds three dinners per season; that no cabins exist in the park; that none of the trailers are rented; that the occupants own their units; that the proposed site is adjacent to the existing park; that the required buffers have been provided

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on the site plan; that 72 campsites are proposed; that the campground currently has 273 campsites; and that all of the units are either travel trailers or approved park models.

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

The Commission found that Elaine Tieman, Barbara Hardy, and Sandy Naugler were present in opposition to this application and advised the Commission that the park keeps expanding; that traffic along Road 254 has increased and that the road is not safe due to people speeding on the road; that poultry trucks use the road; that people are still camping in the park when the park is supposed to be closed after September 30<sup>th</sup>; that Road 254 cannot handle any more traffic; that the tax ditch that runs along the site is not maintained; expressed concerns about possible contamination to water wells in the area; that the area is predominately residential; and that Road 254 is damaged by heavy vehicles using the road.

The Commission found, by a show of hands, that 9 people were present in opposition to this application.

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

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

Motion carried 4 – 0.

CU #1569 – application of **MOUNTAIRE FARMS OF DELAWARE, INC.** (Cordrey Tract and Frame Tract) to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of bio-solids from Mountaire wastewater treatment systems to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 376.32 acres, more or less, with the Cordrey Tract



lying 450 feet east of Route 305 and 450 feet south of Route 297, and with the Frame Tract lying south of Route 314, east of Route 30 and west of Route 305.

CU #1570 – application of **MOUNTAIRE FARMS OF DELAWARE, INC.** (Colony Tract) to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of bio-solids from Mountaire wastewater treatment systems to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 80.00 acres, more or less, lying northeast of Route 326, across from Route 329 and north of Route 86.

It was the consensus of the Commission and the Applicant's Attorney to hold both of these hearings at the same time and that the decision on each will be separate paragraphs.

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Mr. Abbott advised the Commission that the Applicant's Attorney submitted an information booklet on October 26, 2004 that contains Sussex County Code Subsection 115-22 Conditional Use for land application; Correspondence of Lawrence Lank dated January 7, 2004; Copies of aerial photography of Cordrey Farm, Frame Farm, and Colony Tract; Photography of transport tanker, Ag-gater, Ag-gater with injection knives, Ag-gater applying bio-solids, and ground after injection application; Copies of relevant portions of Sussex County Comprehensive Plan; October 26, 2004 correspondence of R. Peder Hansen, P.E., Manager, Surface Water Discharges Section; Minutes of August 14, 2003 Planning and Zoning Commission Decision approving CU #1498 and 1499 – application of Synagro-WWT, Inc. for land application of bio-solids on "Baxter Farms", one copy of the State of Delaware Department of Natural Resources and Environmental Control Regulations Governing the Use and Disposal of Wastewater Sludge and October 31, 2002 Authorization to Operate a Land Treatment System For the Agricultural Utilization of Sludge for four other Mountaire sites; and that the booklet will be made a part of the record for this application.

Mr. Abbott advised the Commission that a letter was received from Mr. and Mrs. Timothy A. Berger in opposition to CU #1569; and that the letter will be made a part of the record for that application; and that a letter was received from the Indian River School District in opposition to CU #1570; and that the letter will be made a part of the record for that application.

The Commission found, based on comments received from the Division of Water Resources that Mountaire Farms of Delaware Incorporated has submitted applications to the Department of Natural Resources and Environmental Control (DNREC), Division of Water Resources, Surface Water Discharges Section for the land treatment of wastewater treatment residuals (sludge) from their Millsboro poultry processing plan for CU #1569 and CU #1570 at agronomic rates; that DNREC is the State permitting authority for such activity and perform both permit review, issuance and oversight of residual land treatment practice; that the Department has completed review applications for the

proposed activity; that based on the information submitted in the application, and Mountaire's exemplary history of adherence to regulatory standards and permit guidelines, the DNREC is ready to proceed with the permit issuance pending County review and issuance of a Conditional Use zoning approvals under Chapter 115 of the Sussex County Code; that Mountaire currently possesses two land treatment permits issued in 1991 and 1995; that there has not been an incidence of non-compliance with either permit since their issuance; and that the Department expects Mountaire to continue in compliance with the respective permits and the additional land treatment tracts requested with the current applications.

The Commission found, based on comments received from the Department of Agriculture, Secretary Michael T. Scuse, that the Department supports both applications

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(CU #1569 and CU #1570); that these applications are important requests in support of Delaware's agricultural industry; that the land application of bio-solids is a proven technology that is regulated by the State of Delaware to insure environmental safety and effective recycling of by-products; that this approach is state-of-the-art and is one example of the continuing efforts by Delaware agriculture to lead the way in stewardship and protection of the environment; that agriculture continues to be Delaware's leading industry and the poultry industry is the capstone of that leadership; and that positive consideration of these applications will help insure this position.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division that CU #1570 (Colony Tract) is not located in a County operated and maintained sanitary sewer and/or water district; and that the proposed use does not require sewer capacity and is not near a current or proposed Sussex County operated wastewater facility.

The Commission found that Robert Witsil; Attorney, Walter Morehead with Mountaire Farms, John Rehn, Jeff Smith and Gordon Serman with Mountaire Farms were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission; that both applications are identical to the proposed use; that the proposed use is for the land application of sludge; that the process will be injected into the ground and also sprayed; that the Cordrey Farm (CU #1569) contains 125.8 acres and that only 65 acres of the site will be injected which is approximately half of the site; that a 100-foot buffer is proposed from the dwellings located off of Road 305; that the use is highly regulated by DNREC; that if there were not any septic wastewater being used, the applicants would only have to obtain approval from DNREC; that the Frame Tract (CU #1569) is located between Route 30 and Route 314; that this site is close to the existing plant which minimizes transportation; that this site is needed to make up for the loss of the Udell acreage in 2005 for development; that this site contains 291 acres; that 207 acres will be injected and 65 acres sprayed on trees; that the existing woods is to be cleared and grubbed for injections with the perimeter to remain wooded as a buffer; that

the Colony Tract (CU #1570) is located east of Route 326 and north of Route 329; that this location is farther from the plant and is not expected to be used extensively; that the site contains 80 acres and 75 acres of the site will be injected; that the existing wooded buffer between this site and the school will remain; that the surrounding parcels are currently agricultural uses except for the school; that for both applications, the buffers will be 25 feet from property lines, 100 feet from occupied off-site dwellings, 50 feet from on site dwellings, 100 feet from potable wells, 25 feet from non-potable wells, 15 feet from public roads, 25 feet from bedrock outcroppings, 25 feet from streams, tidal waters or other water bodies, and 25 feet from drainage ditches; that the bio-solids produced as a result of the facility's biological wastewater treatment plant are treated and stabilized to reduce pathogens and vector (rodents, flies, etc.) attraction, thickened and

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pumped into 6,000 gallon leak-proof tankers which transport the bio-solids to the land application sites; that once at the site, the bio-solids are vacuum off-loaded from the transportation tanker to a 2,200 gallon Ag-Gator for land application; that the Ag-Gator is equipped to either sub-surface inject the bio-solids at 12 to 18 inches below the surface or in the case of the tree farm, sprayed into the canopy; that bio-solids are applied at permit-based agronomic rates; that they currently apply an average of 5 loads per day, 5 days per week; that each site is used for roughly 12 weeks before moving to another land application site; that the Ag-Gator creates no more noise than combines or tractors; that Mountaire Farms has 3 DNREC issued permits for treatment of bio-solids, spray application to a tree farm, and subsurface injection; that they have applied for permits for these applications; that all land application is done in accordance with the Federal 503 regulations and DNREC permit conditions which include nitrogen loadings based on agronomic rates for the crops grown with a nutrient management crop plan submitted annually to DNREC, pathogen and vector attraction reduction, no application during periods of saturated, frozen or snow covered ground or during periods of precipitation, non-application in buffer zones or areas of unsuitable soils where fields are flagged with DNREC concurrence prior to the land application, representative sampling on the bio-solids and soils, semi and annual reporting to DNREC, daily operations reports documenting the activity on each land application site including the date, type and wet/dry weights of the bio-solids, origin of the bio-solids, any deviations from the operating plan, daily weather conditions, and application rate and location; that the use will not create any additional truck traffic; that Mountaire will continue to till the fields and grow crops; that no odors will be created; that Mountaire Farms has an exemplary compliance record as can be attested to by DNREC; that no notices of violation or any enforcement actions have been taken against Mountaire Farms for bio-solids activities; that Mountaire Farms' Engineering and Environmental Services Department reviews all reports, sampling results, operations records and activities to ensure continuous compliance with applicable Federal, State, and local laws, regulations and permit conditions; that the proposed use complies with the Comprehensive Land Use Plan; that additional lands are needed since the applicants are losing one of their sites for

development; that the land application of sludge is an accepted practice to the farming community; that Sussex County and local municipalities utilize this practice; that there are no negative impacts to groundwater; that the water flows from the Frame Tract towards Millsboro Pond, from the Cordrey Tract towards Swann Creek and from the Colony Tract towards local branches in the area; that they do not anticipate any negative impacts to the Indian River School District since the use will not have any negative impacts to the School's groundwater; that the Department of Agriculture and U.S. Food and Drug Administration regulate poultry plants and there are no PCB's and other contaminants as described in the Berger's letter at the poultry plant; that there are less nutrients in the bio-solids than what farmers are applying to fields now; that the only odors would be similar to the smell when a field is freshly plowed; that there is no exposed liquid; that the spraying technique is performed during the winter months;

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that noise will not be an issue; that DNREC can place conditions on the permits and can revoke the permits at any time; that the sludge could be incinerated; that it could be put in a landfill; that the plant could use a lagoon to store the sludge but would have to go back to the State for a permit and the plant could possibly be forced to close; that groundwater monitoring wells are required and a \$25,000 bond is required to be posted with DNREC; that the location of the monitoring wells is subject to DNREC; that the Cordrey and Frame Tract were tentatively approved for spray irrigation and that only the Frame Tract will utilize this application; that the soils are suitable for subsurface injection for the Cordrey and Colony Tracts; that by the year 2007, all farmers will have to follow nutrient management plans; that some metals are required from growing crops such as zinc; that the applicants will be required to perform quarterly monitoring; that DNREC is ready to approve the permits once these applications receive a decision; and submitted proposed conditions of approval for both applications that include: 1) The application of sludge shall be subject to State DNREC approval; 2) The sludge applied shall be limited to bio-solids from Mountaire Farms; 3) There shall be no stockpiling of sludge materials on site; 4) The maximum number of applications of sludge on the sites shall be subject to the approval of the State DNREC; 5) This Conditional Use will be valid concurrent with the State DNREC permit; 6) Buffers – In addition to buffers required by DNREC Permit Regulations, a 100' buffer shall be maintained on the western boundary of the Cordrey Farm adjacent to all properties not owned by Mountaire; and 7) Application of sludge shall be limited to 7:00 AM to 6:00 PM, Monday through Saturday.

The Commission found that Steve Rehn of DNREC was present in support of this application and advised the Commission that these applications will replace lands that are being lost due to development; that 2 of the 3 tracts were previously sprayed in the past; that the Colony site is a new tract; that the permits for this process are more strict than farmers applying fertilizer to fields; and that DNREC is ready to approve the permits.

The Commission found that Sharon Cook, Howard McMillian, Ned Dorey, and Don Perke were present in opposition to the Cordrey and Frame Tracts (CU #1569) and

advised the Commission that nitrates run off into groundwater; that the nitrate levels in the area average about 9.4; that a level higher than 10 is unsafe for drinking water; questioned where the monitoring wells will be located; questioned if any monitoring has been done to date; questioned what the water table levels are; that the applicants have had time to prepare their presentation and that the opposition has not had ample time to prepare; questioned the number of applications that will be applied; that they do not want human waste in the area; that the opposition should be given at least one month to review the applications; questioned what type of buffers will be implemented; questioned the amount of gallons that will be applied to such small sites; raised concerns about possible spillages; and contamination to domestic water wells.

The Commission found, by a show of hands, that 11 people were present in opposition to  
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this application (CU #1569).

The Commission found that Earl Savage – Assistant Superintendent of the Indian River School District, Terrance Babbi of Milton, Helen Cropper, Joyce Betts, and John McClintock were present in opposition to the Colony Tract (CU #1570) that the existing hedgerow between this site and the Sussex Central High School is not very thick; that trees die when they are subject to debris; questioned what type of buffers are proposed; that the Indian River School District does not support this application; that they are concerned about the long range impact on their well water and potential offensive odors that could effect the education of 1,200 students attending Sussex Central High School; that Mountaire has a processing plant next to the Indian River School District's central office and School of Arts that has negatively impacted the office and school; that offensive odors will devalue property values in the area; that the high school and Stockley Center have private wells that could be negatively impacted; that nitrate levels in the area are close to the maximum allowed level for safe drinking water; that the developments in the area all have individual wells that could be impacted; that the soils in the area are very sandy; raised concerns about the length of time the process will take; that there would be negative impacts to the students at the high school; that the area is heavily populated; raised concerns about the water flow in the area; that wells could be contaminated; and questioned why the 1% of human waste cannot be processed separately.

The Commission found, by a show of hands, that 15 people were present in opposition to this application (CU #1570).

At the conclusion of the public hearings, the Commission discussed these applications.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action on CU #1569 (Cordrey and Frame Tracts).

Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action on CU #1570 (Colony Tract).

Motion carried 4 – 0.

CU #1572 – application of **DONALD K. MILLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a guest house and surveying office to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 10.0652 acres, more or less, lying northeast of Route 365 and 1,327 feet south of Route 368.

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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” will not change as a result of this application.

The Commission found that Tim Miller was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the property is owned by his father, his sister and himself; that the application is for a surveying office that will be located in the existing dwelling; that there will not be any negative impacts to traffic in the area; that they currently have an office located in Seaford and that it will remain open; that the closest dwelling from this site is approximately 400 feet away; that the new office will need 3 new employees; that the guest house will be built in the future to the rear of the property; that the office will be located on the first floor of the dwelling; that he resides in the dwelling; that the proposed hours of business would be from 6:30 AM to 5:00 PM five days a week; that they would like a non-illuminated sign; that the existing pole shed is used for storage of equipment and work trucks; that approximately 95% of business is conducted via telephone, fax or e-mail; that they average about 1 person a day walk-in traffic; that the 3 employees would be an office manager, an AutoCAD technician, and a field technician; and that his father is going to build a home on the site in the future.

Mr. Abbott advised the Commission that a guest house is a permitted use provided the 2 homes are on the same electric meter and that there are no cooking facilities in the guest house; that if they are not, then the second home would be considered a multi-family type use of the property; that the application does not reference multi-family use; and that it appears that the property could be subdivided for the second home.

The Commission found that no parties appeared 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. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record made at the public hearing and with the following conditions:

1. The hours of operation shall be from 7:30 AM to 5:00 PM, Monday through Saturday.
2. One non-illuminated sign, not to exceed 32 square feet per side, may be permitted.
3. The Conditional Use of the property shall be for a surveying office. For any new dwelling to be built on the site, the property will need to be subdivided.

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

Motion carried 4 – 0.

CU #1573 – application of **ROBERT BURTON, DOUBLE R HOLDINGS, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for medical/professional offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.40 acres, more or less, lying southwest of Plantation Road (Road 275), 2,400 feet southeast of Cedar Grove Road and Postal Lane, and 1,900 feet northwest of Route 24.

Mr. Abbott advised the Commission that the applicants submitted an Exhibit Booklet on October 25, 2004 that contains Site Data, Site Information, Water Service, Sanitary Sewer Service, Stormwater Management System and Appendices; that the Exhibit Booklet will be made a part of the record for this application; that a letter in support of this application was received from Anderson Homes and will be made a part of the record for this application; and that a letter from Atlantic Resource Management, Inc, has been received and will be made a part of the record for this application.

The Commission found, based on comments received from DelDOT, that the applicant's engineers' Orth-Rodgers & Associates has prepared a traffic impact study; that it was submitted on October 1, 2003; that on December 15, 2003 they submitted a significant addendum; that the department tries to maintain a twenty working day response time on these reviews which means that they would have commented by January 15, 2004; that they are currently reviewing studies that arrived in October 2003; that with the County's back log of applications, they are not opposed to the application being filed; that the Planning and Zoning Commission can table an application for up to 45 days and would do so if requested; and that if necessary, the department will do so.

Mr. Abbott advised the Commission that as of this date, no additional information has been received from DelDOT.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the project is not located in a County operated and maintained sanitary sewer and/or water district; that central sewer is not available in the area at this time; that the site is adjacent to the West Rehoboth Expansion Area to a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the study is expected to be completed in approximately 18 months; that the proposed project is outside of the West Rehoboth Expansion area and cannot receive central sewer service

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at this time; that sewer capacity was not included in the design of the West Rehoboth Expansion System; that Sussex County has recently undertaken the North Coastal Planning Study to consider wastewater needs of the area; that Sussex County may develop a process in the near future to consider a limited number of projects on a priority basis; that if the property owner would like to pursue central sanitary sewer they can participate as a priority project in the North Coastal Planning Study; that this could possibly allow the department to determine options for the parcel as early as December 2005; and that it is not known at this time if there will be an additional cost to being considered as a priority project.

The Commission found that Jim Fuqua; Attorney, Ross Harris; Engineer with ECI, and Robert Burton were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 4, 6, 076 square foot buildings are proposed for a total of 24,304 square feet; that the site is 3.40 acres; that the site is located in the Environmentally Sensitive Developing Area based on the Comprehensive Land Use Plan; that the site is located in a Community or Developing Area based on the State Strategies Map; that the use meets the intent of the Comprehensive Land Use Plan; that Tidewater Utilities will provide central water to the site; that a traffic impact study has been prepared and submitted to DelDOT for review and comments; that they anticipate comments from DelDOT at any time; that the use would have limited evening and weekend traffic; that the site is located in the Lewes Fire Department fire protection district; that County central sewer is available across the road; that the soils work done on the site indicate that the site is suitable for on site septic; that the site is located in a fast growing area; that there are other developments in the area and submitted a copy of a portion of a tax map indicating the development; that the site is about ½ of a mile from the expanding Beebe Health Campus; that the septic will be located to the rear of the site; that landscaping will be provided along all boundary lines; that a 30-foot forested buffer is proposed for the rear of the site; that the site plan meets the requirements of the zoning code; that no other commercial uses exist in the immediate area; that it is not unusual to locate offices in a growing area; that a church plans to build



on the adjacent parcel' that they would like a lighted sign for the site; that there is an interest for office space in the area; that 4 buildings are proposed; that they anticipate 5 to 7 doctors for each building; that adequate parking will be provided; that Woods Cove, a high density development project, is planned across the road; and read and submitted proposed conditions of approval as follows: 1) The offices shall be limited to professional medical care or other professional service use; 2) The use shall be in conformity with all government regulations, including DelDOT entrance review and permit and Sussex County Engineering Department Sewer Regulations; 3) This approval shall be in accordance with the submitted Site Plan indicating four (4) one story buildings, each building containing 6,076 square feet of floor space; 5) Landscaping shall be placed along the northern and southern boundaries of the property to create a buffer from the adjacent properties; 6) Public Office hours shall be limited to 7:00 a.m. to 8:00 p.m.

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Monday to Friday and 8:00 a.m. to 5:00 p.m. on Saturday with no Sunday hours (other than for emergencies); 7) One sign as shown on the site plan shall be permitted; and 8) The site plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

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

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

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

Motion carried 4 – 0.

#### OTHER BUSINESS

Kensington Park RPC  
Final Record Plan – Road 362

Mr. Abbott advised the Commission that the final record plan is for a 58 unit residential planned community; that 12 single family lots and 46 multi-family units are proposed; that the Commission granted preliminary site plan approval on October 23, 2003; that the final plan is the same as the preliminary plan; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a final.

Motion carried 4 – 0.

Subdivision #2003 – 46 – Georgelas Group  
Beaver Creek – Revised Preliminary Plan – Route 9

Mr. Abbott advised the Commission that the preliminary plan has been revised to delete the wetlands within the proposed lots as stipulated in the preliminary approval; that Covered Bridge Trail has been revised from a through street to a cul-de-sac thus eliminating any wetlands crossing; that the cul-de-sac is just over 1,000 feet in length and would need a variance from the maximum allowed cul-de-sac length of 1,000 feet; and that an eyebrow type turn has been incorporated into Covered Bridge Trail as a traffic calming device.

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Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the revised plan as a preliminary and to grant a variance from the maximum allowed cul-de-sac length of 1,000 feet for Covered Bridge Trail.

Motion carried 4 – 0.

Bay Farm MR-RPC  
CZ #1474 – Revised Condition and Revised Master Plan – Roads 298 and 299

Mr. Abbott advised the Commission that the master plan was approved by the Commission on December 11, 2003; that 660 total units are permitted by the approved ordinance; that 190 single family lots at 10,000 square foot minimum, 170 single family lots at 7,500 square foot minimum, 228 condominium units and 72 duplex/quadrplex units were approved; that the applicant is requesting that the types of units be revised as follows: 588 single family lots at 7,500 square foot minimum and 72 multi-family units; that 660 total units are still proposed; that the Commission may modify the types of units since the condition of approval originated at the Commission; that if the Commission is favorable to the request, the master plan has been revised and creates more open space; that the multi-family units are still located in the same location as the previously approved master plan; and that final approval shall be subject to the review and approval by the Commission upon receipt of all agency approvals.

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

Motion carried 4 – 0.

274 Associates, L.L.C.  
CU #1524 Site Plan – Road 274

Mr. Abbott advised the Commission that this is a site plan for 140 condominium units within 70 duplex buildings; that the building setbacks, separation distances and building lengths meet the requirements of the zoning code; that a swimming pool, pool house, and park area are provided; that sidewalks and streetlights are shown on the preliminary site plan with a 15' wide landscape buffer along Road 274; that 420 parking spaces are required and provided; that each unit has an attached garage for 1 of the required parking spaces; that central sewer will be provided by Sussex County and that central water will be provided by Tidewater Utilities; that there are not any wetlands located on the site and the site is not located in a flood zone; that the site 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

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the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all required agency approvals.

Motion carried 4 – 0.

Riverview Associates, L.L.P.

Multi-Family Site Plan – Road 357

Mr. Abbott advised the Commission that the site plan is for 12 multi-family units on 1.70 acres; that the property is zoned M, Marine; that 2 buildings have 4 units each and 1 building has 3 units; that the remaining unit is an existing dwelling; that the attached garages account for 16 parking spaces; that there are 42 open parking spaces; that the building setbacks, separation distances and building lengths meet the requirements of the zoning code; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Gordy, 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 required agency approvals.

Motion carried 4 – 0.

Windmill Ventures, L.L.C.

CU #1502 Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension; that the application was approved on December 16, 2003 for 106 multi-family units; that this is the first request for an extension; and that the Commission granted preliminary site plan approval on June 24, 2004.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve a one-year time extension.

Motion carried 4 – 0.

William Askew

2 Parcels and a 50' Right of Way – Route 30

Mr. Abbott advised the Commission that this is a request to subdivide a 5.02 acre tract into 2 lots; that 1 lot would be 2.80 acres; that the other would be 2.22 acres; that there is an existing 50' wide road serving as access to the site; that DelDOT has granted entrance

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approval; that the owner applied for a major subdivision and that if approved, the application would be refunded.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the subdivision as submitted and to refund the application fee.

Motion carried 4 – 0.

Chester L. Kaser

Lot and Right of Way – Road 226

Mr. Abbott advised the Commission that this is a request to create a 1.0 acres lot out of a 2.0-acre tract; that access to the lots would be from an existing 100-foot right of way.

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

Motion carried 4 – 0.

Sports at the Beach

CU #1421 Revised Site Plan – Route 9

Mr. Abbott advised the Commission that the revised site plan is for a 54,600 square foot indoor arena (210' x 260'), a 1,600 square foot concession and restroom facility (40' x 40'), and a 4,000 square foot maintenance building (50' x 80'); that none of the proposed buildings are located within the airport approach zone; that the County Engineering Department has received approval from the FAA, and that both find the revised site plan acceptable; that the site plan can be approved as a revised preliminary; and that final approval shall be subject to the staff receiving all required agency approvals.

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

Motion carried 4 – 0.

Warwick Cove  
CU #1393 Discussion

Mr. Abbott advised the Commission that Mr. Lank and Mr. Abbott inspected this site on April 23, 2004; that site work was commenced at the time; that the Sussex Conservation

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District stopped the site work since the erosion and sediment control plan had expired; that the plan was re-approved by the District; that a pre-construction meeting with the Division of Public Works was held up since they were not sure if the conditional use were still valid; and based on Mr. Lank and Mr. Abbott's inspection, would the Commission consider that the project is substantially underway.

The Commission discussed this item.

It was the consensus of the Commission that the use is substantially underway and that a new Conditional application is not needed.

Meeting adjourned at 10:40 P.M.