



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF NOVEMBER 18, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 18, 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. 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unanimously to approve the Agenda as amended by deleting Item 2 under Other Business and noting that C/U #1570 has been withdrawn.

Motion by Mr. Gordy, seconded by Mr. Wheatley and carried unanimously to approve the Minutes of October 21, 2004 as circulated.

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to approve the Minutes of October 28, 2004 as amended.

OLD BUSINESS

C/Z #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.

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1552 for Nassau Grove, L.L.C. and asked Mr. Robertson to read Mr. Johnson's motion.

Mr. Robertson stated that Mr. Johnson recommends approval of C/Z #1552 based on the record and for the following reasons:

1. The RPC meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area as established by the 2002 Comprehensive Plan Update.
2. Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. The project will also be served by central water.
3. The Application, with the conditions placed upon it, will contain a diversity of housing types and pedestrian and motor vehicle circulation.

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4. With the conditions placed upon the project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
5. This is a project that is close to existing commercial and service areas.
6. There will be amenities included within the project, including tennis courts, a swimming pool and related facilities. At least 10 acres of the project has been set aside for active recreation.
7. This recommendation is subject to the following conditions:
 1. The maximum number of residential units shall not exceed 351 units as follows:

189	Single-Family Lots
92	Duplex Units
70	Multi-Family Units

The Applicant may increase the number of single-family lots within the maximum number of units, but may not increase the number of duplex or multi-family units.
 2. There shall not be any multi-family units along the perimeter of the project adjacent to any neighboring single-family homes.
 3. Site plan review shall be required for each phase of development.
 4. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
 5. An underground gas storage facility for service limited to the project shall be allowed, subject to State Fire Marshal approval and any other required Agency approval. The location of the facility shall be required to be approved by the Planning and Zoning Commission as part of Site Plan review. The facility shall be located at least 100-feet from neighboring properties.
 6. Recreational facilities and amenities shall be constructed and open to use by the residents of the project within 2-years of the issuance of the first building permit. These recreational facilities shall include tennis courts, swimming pool, and community buildings.

7. The project shall be served as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
8. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.

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9. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs).
10. The interior street design shall comply with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on both sides of the streets and street lighting.
11. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
12. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
13. The Applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas. The Applicant shall be responsible for this maintenance until such as association is formed.
14. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The existing wooded buffers surrounding the wetland areas shall remain undisturbed.
15. As agreed to by the Applicants, a 400-foot wide corridor on the westerly portion of the site shall be reserved until the last phase of development to allow DelDOT to review it's Western Parkway concept.
16. Addressing shall be subject to review and approval by the Sussex County Mapping and Addressing Division.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried with 3 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated.

Motion carried 3 – 1, with Mr. Allen opposing the motion since he was opposed to the proposed duplex and multi-family units, not the single-family units.

C/Z #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.

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

Mr. Johnson stated that he would move that the Commission defer action on this application at this time; that at the public hearing, the record was left open to receive additional DelDOT comments; that once those comments were received, the public was given 15 days to submit written comments; that on October 12, 2004 DelDOT submitted written comments, and they were distributed to members of the public that spoke during the public hearing; that on October 14, 2004 the County received more comments from DelDOT supplementing what had already been sent; that on October 22, 2004 the County received a letter from DelDOT stating that the Department needs to do additional work and will not have final comments until mid-December; and that since the Commission had agreed to leave the record open until all of DelDOT's comments are received, he believes that the Commission should continue to defer until the Commission has DelDOT's final comments, with another 15 days for the public to comment.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action for the reasons stated.

Motion carried 4 – 0.

C/Z #1556 – application of **DOUGLAS W. BROCKWAY** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying west of Route 288 (Wil-King Road), 4,100 feet north of Route 280-B, to be located on 1.67 acres, more or less.

The Commission discussed this application which has been deferred since October 21, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1556 for Douglas W. Brockway to amend the Comprehensive Zoning Map from GR General Residential to AR-1 Agricultural Residential based upon the record made at the public hearing and for the following reasons:

1. The Applicant has simultaneously applied for a Conditional Use to establish a boat repair and boat accessory installation business on this property. This application was necessary since such a Conditional Use is not permitted in a GR district. Since he will also be making a motion recommending approval of the Conditional Use, he believes that this Change of Zone is appropriate.

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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.

C/U #1568 – application of **DOUGLAS W. BROCKWAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a boat repair and accessory installation business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.67 acres, more or less, lying west of Route 288 (Wil-King Road), 4,100 feet north of road 280-B.

The Commission discussed this application which has been deferred since October 21, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1568 for Douglas W. Brockway for a Conditional Use to operate a boat repair and boat accessory installation business based on the record and for the following reasons:

1. This application is for a business that is limited in nature. With the conditions placed upon it, it will not adversely affect traffic or adjacent or neighboring properties.
2. The proposed use meets the purpose of a Conditional Use since it will serve the existing needs and convenience of boaters in the area.
3. This recommendation is subject to the following conditions:
 1. The site plan shall be subject to all appropriate agency approvals.
 2. The facility will be open during daylight hours only.
 3. There shall be no more than four (4) boats on the site at any given time.
 4. Aside from boats owned by the Applicant, there shall not be any boats stored on the property other than those that are being worked on as part of the Applicant's business.
 5. Security lighting on the site shall use lights that are directed away from any neighboring properties.

6. There shall be a landscape screening buffer of Leyland Cypress or similar vegetation planted along Penny Lane. The plants shall be of a height of at least 5-feet at planting.
7. There is currently litigation over the right to use Penny Lane by the Applicant. Until that litigation is resolved in favor of the Applicant, there shall not be any access to the business that is the subject of this application from Penny Lane. Instead, access for the Conditional Use shall be from County Road 288.

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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 approved for the reasons and with the conditions stated.

Motion carried 4 – 0.

C/Z #1557 – 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 Baltimore Hundred, Sussex County, land lying south of Double Bridges Road (Route 363), 1,100 feet southwest of Muddy Neck Road (Route 361), to be located on 64.16 acres, more or less, and being lands of **MUDDY NECK, L.L.C.**

The Commission discussed this application which has been deferred since October 21, 2004.

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z #1557 for Muddy Neck, L.L.C. based upon the record and for the following reasons:

1. The RPC meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area as established by the 2002 Comprehensive Plan Update.
2. Sewer service must be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. The project will also be served by central water.
3. The project, with the conditions placed upon it, will contain a diversity of housing types.
4. With the conditions placed upon this project, the RPC designation is appropriate for this property because the purpose of an RPC is to encourage such development to create superior living environments and the use of design ingenuity while protecting existing and future uses.
5. This is a project that is close to existing MR and HR developments, including Ocean Farms, Waterside, Bethany Meadows, and Clearwater.

6. The Applicants have made extensive revisions and improvements to the project, based upon the comments received through presentations during the State PLUS process.
7. There will be amenities included within the project, including a swimming pool and related facilities.
8. This recommendation is subject to the following conditions:
 1. The maximum number of residential units shall not exceed 138 units as shown on the preliminary site plan:

50	Single-Family Units
88	Townhouse Units

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The Applicant may increase the number of single-family units within the maximum number of units, but may not increase the number of townhouse units.

2. There shall not be any Townhouse units along Double Bridges Road.
3. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
4. Recreational facilities and amenities shall be constructed and open to use by residents of the project within 2 years of the issuance of the first building permit. These recreational facilities shall include a swimming pool and community buildings.
5. The project shall be served as part of a County operated Sanitary Sewer District.
6. The project shall be served by a public central water system providing adequate drinking water and fire protection.
7. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with State and County requirements.
8. The interior street design shall comply with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on both sides of the streets and street lighting.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, and the proposed reforestation program.
10. Construction, site work, grading, and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. to 6:00 p.m.
11. The Applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities, and other common areas. The

Applicant shall be responsible for this maintenance until such an association is formed.

12. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits.
13. State and Federal wetlands and the associated uplands areas shown on the Applicant's conservation easement plan shall be placed under a conservation easement to ensure future protection and non-disturbance. The site shall have signs indicating the areas that are not to be disturbed.
14. A fence shall be erected along the western boundary from County Road 363 to the Federal wetland line.

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15. There shall be a vegetated buffer along the boundary of the project adjacent to agricultural lands owned by the State. The buffer must be at least 50-feet in width.
16. The deeds to all properties or units within the project shall contain the Agricultural Use Protection Notice. In addition, the deeds shall contain a similar Notice about hunting activities on adjacent properties.
17. Addressing shall be subject to review and approval of the Sussex County Mapping and Addressing Division.

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 for the reasons and with the conditions stated.

Motion carried 4 – 0.

C/U #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 discussed this application which has been deferred since October 28, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1567 for William H. Prettyman, Jr. for an addition to an existing campground based on the record and for the following reasons:

1. This application is for the expansion of an existing seasonal campground that has been in operation for at least 30 years.
2. DelDOT has stated that the existing Level of Service A on adjacent roads will not be adversely affected.

3. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
4. There is a need for this type of campground in Sussex County, given the closure of several others in the eastern part of the County.
5. This recommendation for approval is subject to the following conditions and stipulations:
 1. There shall only be 72 campsites on this property. These shall not be any permanent cabins on the property.
 2. The campsites shall be served by on-site septic as approved by DNREC.
 3. 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. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated.

Motion carried 4 – 0.

C/U #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.

The Commission discussed this application which has been deferred since October 28, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1569 (Cordrey Tract and Frame Tract) for Mountaire Farms of Delaware, Inc. and asked Mr. Robertson to read Mr. Johnson's motion.

Mr. Robertson stated that Mr. Johnson recommends approval of C/U #1569 based on the record and for the following reasons:

1. This is a use that is necessary as part of Mountaire's agricultural operations in Sussex County. It is a goal of the County Comprehensive Plan to promote agricultural uses in the County whenever possible.
2. DNREC has received an application from Mountaire for land treatment of sludge from its properties. DNREC has stated that based on the information supplied and Mountaire's exemplary record in the past, it is ready to issue a permit for this operation pending County approval.

3. The Delaware Department of Agriculture supports the application, and that the proposed use is a proven technology that is regulated to ensure environmental safety.
4. This recommendation for approval is subject to the following conditions and stipulations:
 1. The application of sludge shall be subject to DNREC and other State and Federal regulatory approvals.
 2. The application of sludge shall be limited to bio-solids from Mountaire Farms.
 3. There shall not be any human waste included in the sludge that is applied to the site.
 4. There shall not be any stockpiling of sludge materials on the site.

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5. The maximum number of sludge applications to the property shall be subject to approval of DNREC and other regulatory agencies with jurisdiction over this use.
6. This Conditional Use shall be valid concurrent with DNREC's permit for this use. If the DNREC permit shall be terminated or expire, this Conditional Use shall also expire.
7. Sludge application shall be limited to the hours of 7:00 a.m. through 6:00 p.m. Monday through Saturday.
8. There shall be buffers of at least 25 feet from all property lines, 100 feet from all off-site dwellings, 100 feet from all potable wells, 25 feet from non-potable wells, 15 feet from public roads, 25 feet from streams or other bodies of water, and 25 feet from all drainage ditches.
9. On the Cordrey Tract property, there shall be a 100-foot buffer from all properties along the western boundary that are not owned by Mountaire Farms.
10. On the 125.8-acre Cordrey Tract property, only 65 acres shall be injected with sludge.

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

Motion carried 4 – 0.

C/U #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 80.0 acres, more or less, lying northeast of Route 326, across from Route 329 and north of Route 86.

Mr. Allen reminded the Commission that it was announced during the review of the Agenda that this application had been withdrawn on November 12, 2004.

C/U #1573 – application of **ROBERT BURTON, DOUBLE R HOLDINGS, LLC** 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.

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The Commission discussed this application which has been deferred since October 28, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1573 for Robert Burton and Double R Holdings, LLC for medical and professional offices based on the record and for the following reasons:

1. The site is within a Developing Area according to the 2002 Comprehensive Plan Update and in a Community or Developing Area based upon the State Strategies Map.
2. This application is for professional offices including doctor's offices. This location is appropriate for such a use, given the close proximity to the Beebe Health Campus.
3. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
4. The use has a public or semi-public character and is desirable for the general convenience and welfare of the area and the County.
5. This recommendation for approval is subject to the following conditions and stipulations:
 1. The offices shall be limited to professional medical care or other services incidental to such a use. The offices may also be used for professional services such as law offices, accountant offices, engineering offices and similar professions. The project shall not be occupied by general contractors, contractors, retail operations, or other uses inconsistent with the residential nature of the neighboring properties.
 2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
 3. The use shall comply with all DelDOT regulations and requirements.
 4. The site is adjacent to the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. Conformity with the North Coastal Planning Study or an amendment to the sewer district is required.

5. The site plan shall be redesigned so that the buildings are reconfigured with a residential appearance. As part of the site plan review, front, side and rear elevation plans shall be submitted to the Commission to confirm the residential appearance and character of the buildings.
6. All parking shall be relocated to the rear or the interior of the property and screened from view from Plantation Road and neighboring properties. In addition, there shall be a landscape buffer area along the northerly and southerly boundaries of the property.
7. Hours of operation shall be limited to 7:00 a.m. until 8:00 p.m. Monday through Friday and 8:00 a.m. through 5:00 p.m. on Saturdays.
8. One sign, as shown of the site plan, shall be permitted.

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

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

Motion carried 4 – 0.

Subdivision #2002-43 – application of **BOCA EAST, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 258.11 acres into 180 lots, located east of Road 279, 0.9 mile southeast of Road 277.

Mr. Abbott advised the Commission that this is a final record plan is for Phase I for 158 lots; that the site received preliminary approval on June 12, 2003 and that a time extension was granted on July 8, 2004; that the Subdivision plan meets all of the requirements of the Subdivision Ordinance; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant final approval of Phase I.

Motion carried 4 – 0.

PUBLIC HEARINGS

Subdivision #2004-26 – application of **LAWRENCE A. BIASOTTO** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred,

Sussex County, by dividing 12.73 acres into 37 lots, located south of Hickman Road (Road 359), 1,800 feet east of Cedar Neck Road (Road 357).

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 18, 2004 and that the report will be made a part of the record for this application; and that on November 12, 2004 the applicants submitted an exhibit booklet that contains site data, site information, water service, sanitary sewer service, stormwater management system, and appendices and that the booklet is made a part of the record.

The Commission found that James Fuqua; Attorney, Lawrence Biasotto; Applicant, and Gary Cuppels and Ken Kullman; Engineers with ECI Corporation were present on behalf of this application and stated in their presentations and in response to questions raised by

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the Commission that the application is for 37 single family lots on 12.78 acres; that the site is located on the south side of Hickman Road; that of the 12.78 acres, approximately 0.20 acres are federal wetlands; that the site is zoned MR, Medium Density Residential as much of the area is; that 55 lots would be permitted based on the zoning code; that the proposed density is 2.9 lots per acre; that single family lots adjoin the site to the west; that lands owned by the State of Delaware are located to the east; that Murray's Estates adjoins the site to the south; that the site is located in an Environmentally Sensitive Developing Areas which is a development district based on the Comprehensive Land Use Plan; that Sussex Shores Water Company will provide central water to the site; that Sussex County will provide central sewer to the site; that Media Com will provide cable television; that Conectiv will provide electricity to the site; that the Sussex County Engineering Department issued a letter advising that adequate sewer capacity is available for the site and submitted a letter from the Engineering Department; that there will not be any encroachments into the 404 wetlands; that an environmental phase 1 assessment of the site has been conducted and no problems were found to exist; that the Cedar Neck area is developing as planned; that there is shopping and restaurants in the area; that the entrance design will comply with all recommendations of DelDOT; that the project will not adversely impact traffic in the area; that the site has been designed meeting the requirements of the Environmentally Sensitive Developing Ordinance; that the minimum lot sizes are 7,500 square feet; that private streets with street lighting and sidewalks on one side of the streets are proposed; that the proposed stormwater management ponds exceed the requirements of the Sussex Conservation District; that a community center with a swimming pool and tot lot is proposed; that there is a natural buffer from the State of Delaware lands; that a large ditch is adjacent to the site between these lands and the State of Delaware lands; that the State of Delaware maintains the ditch; that the ditch is not referenced as a tax ditch; that the application complies with Chapter 99, Subsection 99-9 ©; that the centerline of the ditch is the property line; that the State of Delaware lands have posted no hunting signs; that 2 stormwater management ponds are proposed; that the site will not negatively impact the aquifer recharge area; that the site was an old

poultry farm that has been abandoned and grown up with weeds; that the site is not listed as a superfund site; that the development will be an improvement to the area; and submitted proposed findings of fact which include:

- A. The subdivision's location is appropriate for the proposed development:
 - 1. The land is zoned MR which permits medium density single family residential development at a density of appropriately four (4) lots per acre. Fresh Pond's density of 37 lots on 12.78 acres of land is a gross density of 2.9 lots per acre.
 - 2. The subdivision is in character with other residential developments in the Cedar Neck area.
 - 3. The site is located in close proximity to Cedar Neck Road which contains a concentration of business and services for the Cedar Neck Area.
 - 4. The subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.

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- 5. The subdivision is consistent with the historical trend of the residential development in the area.
- B. The subdivision is in compliance with the Sussex County Subdivision Ordinance:
 - 1. The site design integrates the development's location on the site so as to have a minimal impact on wetlands. No wetlands are included within any lot lines, nor will wetlands be impacted. The total wetlands on site are a small area of 0.27 acres.
 - 2. Due to the existing nature of the site, no significant grade changes are anticipated.
 - 3. Central water and a Sussex County sewer will serve the development.
 - 4. The stormwater management system will meet or exceed the requirements of the State and County.
 - 5. The use of the Sussex County sewer system and the stormwater management system will maximize ground water recharge and erosion and sediment control measures will comply with State and County requirements.
 - 6. Entrances will comply with the requirements of DelDOT.
 - 7. The subdivision will contribute significant revenue to the local School District through school taxes.
 - 8. The development does not affect area waterways or other natural features.
 - 9. The development will not adversely affect the environment and no threatened or endangered species or habitat exist on the site.

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

The Commission found that Bernard McMahon and Betsy Devlin; residents in Murray's Estates, were present in opposition to this application and stated in their presentations that their property abuts the proposed subdivision; that they have spoken with four of the five other property owners whose land abuts the proposed subdivision have the same concerns; that the development should be done in a manner which preserves the existing character of the neighborhood and as much of the natural environment as possible; that the minimum side and rear yard setbacks are only ten feet; that the proposed height limit

is forty-two feet; that the lots abutting Murray's Estates are 7,500 square feet; that a stormwater management pond abuts Murray's Estates; that Fresh Pond Drive is only 100 feet north of Murray's Estates property lines; that most of the trees and plant life currently on the site will be destroyed; that only a minimum buffer is provided from the wetlands and Fresh Ponds State Park; that when sewer was promoted for Cedar Neck, it was portrayed as a means to protect the environment; however, the amount of dense development, made possible by the sewer, is doing more to degrade the environment than the sewer did to protect it; that the land directly behind the six Murray's Estates homes is heavily forested and undeveloped for 500 feet or more; that wildlife abounds in the forest and yards; that it is inappropriate to have homes only 10 feet off of property lines; the sizes and heights of the homes would be out of character with the area; that locations of the stormwater management ponds will cause problems; that there will be problems with

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construction activities; that there will be increase in traffic; that the stormwater management ponds should be relocated; that a minimum 75 foot buffer should be provided between this development and Murray's Estates; that time limits should be enforced on construction hours; that as many trees as possible should be left; that larger setbacks should be required; that the lots should be larger; that a wider forest buffer should be provided to the State Park; that the building height should be limited to 35 feet; that open space is being deleted; that the community pool is not needed since there are only 37 lots proposed; that the project could be designed more environmentally sensitive; and submitted a written statement and submitted 20 photographs of the area.

Mabel Granke, a resident of Rehoboth Beach, advised the Commission that the Commission should consult with DNREC about the critical recharge area.

Michael Tyler, President of the Citizens Coalition advised the Commission that the site plan does not meet good development design; that Best Management Practices need to be applied; and that there is a need to protect the recharge areas.

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

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

Motion carried 4 – 0.

C/U #1574 – application of **RAY A. ELLIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for mud bog racing to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 17.94 acres, more or less, lying east of Route 445A, 1,900 feet east of Route 61.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam and Pocomoke sandy loam; that the Evesboro soils have slight limitations for development; that the Fallsington and Pocomoke soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction; that all of the soil types are considered of Statewide Importance; that the Fallsington and Pocomoke soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements due to the presence of very poorly drained and poorly

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drained soils which have seasonally high water tables from November through March; and that there may be regulated wetlands on the site.

The Commission found that Ray Ellis was present and stated in his presentation and in response to questions raised by the Commission that he farms the family farm; that the mud bog is a hole full of mud where his two sons started racing; that they do not permit an alcohol beverage drinking on the premise since the intent of the events is for family fun; that he received a letter from John C. Atkins, State Representative, in support of the activity; that trucks race to get out of the mud; that they have had events for charitable fund raisers and church groups; that the activity is not operated as a business; that they would like to be able to have 10 or 11 events per year; that the events would run from 1:00 p.m. to 6:00 p.m. Sundays from April to October; that normally there are no entry fees; that they do have two events that they charge fees and distribute the fees collected as prizes; that the entries during the last event contained 100 trucks; that they do not drag race against one another; that they would also like to have 2 or 3 truck pulls; and that a truck pull is an event where a truck pulls a large weighted sled for a certain distance in an attempt to reach the finish line.

The Commission found that Mr. Ellis submitted a letter from John C. Atkins, State Representative, and 18 photographs of the site and activities.

The Commission found that Brenda Conaway, a neighbor, was present and expressed no opposition to the events; complimented the Applicant that the events are nice family entertainment that do not permit alcoholic beverages; that there has been a minimal increase in traffic; and requested that there be no night (lighted) events.

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

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

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1574 for Ray Ellis to operate a mud bog and truck pull for the following reasons:

1. The use will not adversely impact traffic.
2. The use will not adversely impact neighboring or adjacent properties.
3. The Applicant has stated that the project is used by Sussex County families and residents and has been used for fundraisers for County charities, etc.
4. This recommendation is subject to the following conditions:
 1. There shall only be 12 mud bog events during any calendar year and only 4 truck pull events during any calendar year.
 2. There shall not be any nighttime mud bog events or truck pull events.

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3. The site plan, showing the mud bog areas, truck pull areas, parking, spectator areas, concession areas, etc. shall be subject to review and approval by the Planning and Zoning Commission.
4. Event hours shall be limited to 12:00 noon through 7:00 p.m.

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 and with the conditions stated.

Motion carried 4 – 0.

C/Z #1558 – application of **REHOBOTH CANAL VENTURES, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR High Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying west of the Lewes and Rehoboth Canal, 450 feet southwest of Route One, to be located on 5.0 acres, more or less.

The Commission found that revised site plans had been submitted depicting 30 duplex units, rather than 40 condominium units.

Mr. Lank provided the Commission with copies of all agency correspondence received to date.

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington sandy

loam, Pocomoke sandy loam, Portsmouth loam, and Sassafras sandy loam; that the Evesboro and Sassafras soils have slight limitations for development; that the Fallsington and Pocomoke soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction; that the Evesboro, Fallsington, Pocomoke and some of the Sassafras soils are considered of Statewide Importance; that the Fallsington, Pocomoke and some of the Sassafras soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements since there are locations on the site with very poorly drained or poorly drained soils and because of the increased impervious areas; and that the Applicant should check with the Army Corps. of Engineers to verify wetlands and permits.

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The Commission found, based on comments received from the Office of State Planning Coordination, that this parcel is located within Levels 1 and 2 of the Strategies for State Policies and Spending document, where State policies supports well-planned development that is consistent with the character of the area; that the site is located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan Update; that the State has no objections to this rezoning and asked that the County consider the comments from State agencies that reference that the site is entirely within the 100-year flood plain; that soil type were referenced; that wetlands need to be delineated and should be verified by the Corps. of Engineers through the Jurisdictional Determination process; that the Applicant should attend a Joint Process Meeting to find out more about permitting requirements; that the project is located adjacent to receiving waters of the Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES); that ERES waters are recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that the Applicant shall implement Best Management Practices; that this project is proposed within the Low Nutrient Reduction Zone per the Total Maximum Daily Loads criteria which requires a reduction of nitrogen and phosphorus by 40 percent; that in order for the Applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as a nutrient budget should be prepared; that the Applicant should contact the Watershed Assessment Section of DNREC for information regarding the acceptable protocol for calculating a nutrient budget; that the Applicant is encouraged to preserve and enhance forested resources on the site and remove all structures from the forested areas; that a transitional zone of turf grass to forest should be established; that this zone could consist of shrubs or meadow grasses such as coastal panic grass; that the Applicant is encouraged to designate community open space along the Lewes and Rehoboth Canal with 100-foot buffers consisting of additional forested areas or meadow type grasses to provide increased water infiltration into groundwater, decreased run-off into surface water, air quality improvements, and much less maintenance than traditional turf grass; that open space

containing forest and/or wetlands should be placed into a permanent conservation easement or other permanent protection mechanism; that if stormwater management ponds are incorporated into the design of the project, it is recommended that consideration for problems with nuisance waterfowl be taken into account; that it is requested that no invasive species be used in the revegetation of disturbed or landscaped areas; that the use of native plants is encouraged; that there is one inactive Leaking Underground Storage Tank site located near the proposed project and that no environmental impact is expected; that there is a high probability for prehistoric and historic archaeological sites on the property; that a portion of the access to the site is from a service road located on the lands of the Corps. of Engineers and that DelDOT recommends that the County consult the Corps. in the review of this project; that DelDOT reserves the right to require improvements to Road 273C as conditions for plan approval or access; that the Applicant will be required to obtain an entrance approval for

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access; that due to the number of units proposed there is an impact on public safety and the Applicant should notify the police, fire service, and emergency medical response organization serving the City of Rehoboth to keep them apprised of all development activities; that this property falls into the 100-year and 500-year flood areas and could experience possible flooding from a category 2 or greater hurricane; that Route One and Route 24 are storm evacuation routes and this development will be affected by traffic volume on these routes during a coastal storm event; that the Office of the State Fire Marshal has no objections to this rezoning; that site plans shall be required to be submitted to the Office of the State Fire Marshal for review and approval; and that in conclusion, the State has no objections to the proposed rezoning.

The Commission found that Steven Ellis, Attorney, and Jessica Nichols, Professional Engineer with Meridian Engineering, were present and stated in their presentations and in response to questions raised by the Commission that the site was formerly used by the City of Rehoboth for storage of City equipment and properties, waste materials (lawn and tree) and automotive repair and used appliances, and is improved by an old oyster house; that the site is bounded by condominium projects and property of the U.S. Army Corps. of Engineers; that the proposed use is a substantial upgrade to the site; that the present condition of the site is disrepair; that the Applicants plan on building all duplex units; that they had originally applied for 40 units; that the plans have been revised to show 30 units; that the original proposal would have had a density of 8.0 units per acre; that the revised proposal will have 6.36 units per acre; that a swimming pool and poolhouse are proposed; that 60% of the site will be green open space; that Blue Point Villas, Oyster Bay Condominiums, and a subdivision are immediately adjacent to the site; that the primary access to the site is from Oyster House Road and cross access easements; that central water will be provided by the City of Rehoboth Beach; that public sewer will be provided by Sussex County; that a capacity of 17 EDU for sewer based on existing zoning; that upgrades will be performed to the sewer system which will allow for a larger number of units; that the site has outfall to the Lewes and Rehoboth Canal; that HR zoning allows

for 12 units per acre; that Parcel 39 is part of their overall calculation for density; that the units may be built up to 42-feet in height; and that the entrance design will meet or exceed DelDOT criteria.

The Commission found that Mable Granke, present on behalf of the Citizens Coalition, Inc., submitted and read a letter expressing concerns about any construction along the Canal and requesting deferral so that the Corps. of Engineers can review the project; that the Corps. of Engineers placed a required 40-foot setback from the Canal bank to provide a buffer and protect the bank from unnecessary erosion for a project now under construction in Rehoboth Beach bordering State Road; and that this project is just south of the State Road construction and should also be considered to provide the same protection for the Canal.

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

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

Motion carried 4 – 0.

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

The Commission found that revised site plans had been submitted depicting 49 single family lots, rather than the 55 lots originally submitted with the application.

Mr. Lank provided the Commission with copies of all agency correspondence received to date.

The Commission found, based on comments received from DelDOT, that given the seasonal traffic congestion on Plantation Road the Department would ordinarily recommend that the County require a traffic impact study; that this application is different because of its location on the northwest corner of Cedar Grove Road and Plantation Road; that the Department's review of other traffic impact studies in the area, as well as other DelDOT studies in the Lewes/Rehoboth area, have identified a need to realign Cedar Grove Road opposite Postal Lane; that the subject lands include the rights-of-way needed to build that realignment; that if the Applicant were to dedicate the rights-of-way necessary for DelDOT to build that alignment and improve the intersection that

dedication would, in the Department's judgement, more than offset the value of what DelDOT might gain from a traffic impact study for this application; and that the dedication of right-of-way would significantly reduce the amount of land left for development; therefore, if the Applicant were to dedicate those rights-of-way the Department would not recommend a traffic impact study.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the project is not located in a County operated or maintained sanitary sewer district; that wastewater capacity is available with off-site construction; that to obtain sewer, the proposed project will require extensive construction, at the developer's expense; that all sewer construction shall be in accordance with County standard procedures and specifications; that capacity is available in the existing system for up to 4.0 EDUs per acre; that Ordinance No. 38 construction is

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required; that the current system connection charge rate is \$3,537.00 per EDU; that the location and size of laterals or connections points will be determined by the County Engineer; that there is no sewer service to the parcel at this time; that the West Rehoboth Expansion Area is the adjoining sewer district; that conformity to the West Rehoboth Expansion Area Planning Study and Amendment #1 will be required; that the site is located in a sanitary sewer planning area; that sewer service can be obtained when the developer completes certain administrative procedures and construction of an extension of mainline sewers and rerouting and construction of an additional force-main from a connection point in Postal Lane to a new connection point to a 27-inch gravity line at Route One.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam and Sassafras loam which have slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that Sassafras soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a letter was received from Jeff Crystle in opposition to this application expressing safety concerns that until the road congestion and safety issues are addressed there should not be any rezoning in the Plantation Road area; that DelDOT and the Planning and Zoning Departments need to coordinate their efforts to ensure improvements are made before any rezoning takes place; and suggested that Postal Lane and Cedar Grove Road need to be straightened out because this is a very dangerous intersection and includes noise and air pollution via car exhaust; that there is a need to ensure that homes in Sandy Brae Subdivision are protected from potential traffic accidents and additional noise and air pollution; and that part of the project should be public park or open space.

The Commission found that Greg Ivanoff was present with James Fuqua, Attorney, and Gary Cuppels of ECI..

Mr. Fuqua advised the Commission that he had submitted an Exhibit Booklet for distribution and provided the Commission with copies. The Exhibit Booklet contained site data; site information, references to water service, sanitary sewer service, stormwater management; and appendices with utility commitment letters, a preliminary site plan, a declaration of covenants, conditions and restrictions, an assessment of cultural resource review, a Phase I Environmental Site Assessment Report, and correspondence between DelDOT and the Applicant.

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The Commission found that Mr. Fuqua and Mr. Cuppels stated in their presentations and in response to questions raised by the Commission that according to the 2002 Comprehensive Plan Update the site is located in an Environmentally Sensitive Developing Area; that according to the State Strategies the site is located in a Community Developing Area; that they are now proposing 49 single family lots; that the minimum lot size is 7,500 square feet; that capacity is available for sewer; that a Cultural Resource Assessment was performed; that a Phase I Environmental Assessment was performed; that the Cape Henlopen School District has voiced no objections; that the site is in close proximity to health facilities, stores and shops, and recreational facilities; that the area is developing with a mixture of subdivisions and residential planned communities; that they had originally proposed 55 lots and that in the process of review with DelDOT it was agreed upon that there was a need to realign the intersection of Postal Lane, Plantation Road and Cedar Grove Road; that DelDOT did not require a Traffic Impact Study; that street lights and sidewalks on at least one side of the street will be provided; that DelDOT has agreed to share a stormwater management facility ; that a dog kennel facility exists on the adjoining property to the west and that they propose to provide a deed reference acknowledging the dog kennel; that the Applicant has no objection to planting a tree buffer along the westerly property line; that they have not provided any open space on the site due to the size of the project and the taking of right-of-way for the proposed intersection improvements; that drainage from the site will be piped under Cedar Grove Road to the stormwater management facility; and that they have no objection if fencing is required along the westerly property line near the dog kennels.

The Commission found that Mr. Fuqua submitted some suggested conditions of approval.

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

The Commission found that Dottie Quillen, the property owner to the west, stated that she had no objections to the project, but requested that the conditions of approval include that a 6-foot high solid fencing be installed along her property line.

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.

C/Z #1565 – application of **ALLEN FAMILY FOODS, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and MR Medium Density Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of

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Route 5, 0.25 mile south of Route 9 at Harbeson, to be located on 2.60 acres, more or less.

The Commission found that site plans and an Exhibit Booklet had been submitted for the record. The Exhibit Booklet contained a general map of the area, photographs of the existing conditions of the site, photographs of the proposed parking area and landscaping, a landscaping plan and site plan, and a site lighting plan.

Mr. Lank advised the Commission that the by copy of the cover letter attached to the Exhibit Booklet the Applicants have withdrawn their request for rezoning of Parcels 89 and 90, and that the application has been reduced to the area of Parcels 83 and 84 only.

Mr. Lank provided the Commission with copies of all agency correspondence received to date.

The Commission found, based on comments received from Michael T. Scuse, Secretary of the Department of Agriculture, that this application is very important to the farmers, poultry producers, and the States of Delaware, Maryland and Virginia; that the Department supports the application and recommends approval; that the application is a part of a multi-million dollar expansion of the facility; and that it will have a tremendous positive economic impact, not only in our agricultural community, but also in the number of jobs it will create.

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 should not be impact by this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the industrial use that this parking lot will support is an existing use and the Office understands the need for the parking lot; the according to the Comprehensive Plan Update the zoning requested is inconsistent with the applicable zoning districts for the Low Density area; that the parcel is located in a "Level 3 Investment Area" according to the State Strategies and that there are residential areas adjacent to the proposed site; that the State opposes this rezoning; that State agencies also offered comments; that the State asked that the County consider the comments from State agencies that reference the site; that increasing the amount of impervious surfaces in this area will impact surrounding forested area, palustrine wetlands and Beaverdam Creek; that the developer should ensure adequate buffers and stormwater management facilities are constructed to protect the riparian corridor of Beaverdam Creek; that the soils in the area are moderately well-drained to well-drained with moderate to low limitations; that impacts to wetlands should be avoided; that vegetated buffers should be employed to protect any wetlands; that the developer should employ best available technologies and/or

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best management practices as methodological mitigative strategies to reduce degradative impacts associated with development; that the developer is encouraged to contact the Small Systems Branch for regulatory requirements regarding wastewater; that there are two inactive leaking underground storage tank sites near the project; that no environmental impact is expected; that the developer will be required to obtain a new entrance approval to proceed with their parking lot expansion; that the site is located in the Potential Harbeson Historic District which is eligible for listing in the National Register of Historic Places; that if the developer proposes to demolish additional houses the State Historic Preservation Office would like to be informed; that the State Historic Preservation Office would prefer that no more houses in this potential district be demolished; that the parking lot will have an effect on the potential historic district, as it will change the historic streetscape and character of the district; that it is recommended that the parking lot be designed in a manner that is sensitive to the historic district and that the developer provide landscaping along the lots edges to help minimize the visual effects; and that in conclusion, the State does not support this rezoning, but would not object to a Conditional Use for the parking lot.

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

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the proposed use is not in an area where the County expects to provide sewer service in the foreseeable future.

The Commission found that a letter was received from Michael Zahorchak in support of the rezoning.

The Commission found that four (4) letters were received in opposition to the application. The letters were signed by Louis Ashcroft, Joyce E. Brown, Chris Cliften, and Lisa D. Suthard.

The Commission found that Terry Nichols of Allen Family Foods, Inc. was present with Mark Dunkle, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the site contains the entrance to the Allen Family Foods facility, a mobile home and an old house; that the front lot is zoned MR; that the rear lot is zoned AR-1; that the poultry plant facility is zoned HI-1; that the character of the neighborhood is HI-1 and MR; that they propose to use the site for a

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parking lot built to County specifications with landscape plantings of shrub and trees on a berm; that they propose to plant landscaping along the rear of all neighboring properties and landscaping of the area around the parking lot; that a lighting plan has been provided to show that lighting will be restricted to the parking lot area; that HI-1 zoning is appropriate in a MR density area according to the Comprehensive Plan Update; that the rezoning supports agriculture; that the rezoning will protect the agricultural related industries; that the Future Land Use Map and the text of the Comprehensive Plan Update supports this application; that the Applicants have met with area residents several times; that the Applicants chose to withdraw Parcels 89 and 90 since that area was located between two homes; that the rezoning is in character with the adjoining use; that the parking lot is needed to accommodate employees; that the site is well suited for the use since it adjoins a parking lot; that the site is not suitable or desirable for residential use due to the existing poultry plant and the railroad; that they are going to request a revised letter from the Office of State Planning Coordination; that the poultry plant will be expanding by 100 to 200 employees; that there are presently approximately 1,000 employees; that the mobile home and dwelling on the premises will be removed; that it is more reasonable to develop a parking lot on this site than a parking lot across the railroad; that additional security forces have been added; that the planting of trees and shrubs will improve the site; that upgrading the site will be an improvement over the existing conditions; that they had applied for HI-1 zoning since the parking lot proposed is to serve the poultry plant operation in a HI-1 district; that a Conditional Use was not a method of application on the MR portion of the site; that an industrial use would not likely be built on the parcel due to the size of the parcel; that rezoning the site to B-1 is not appropriate and may be considered spot zoning; that rezoning of the site is the best practical use of the site; and that the plant has been in operation since at least 1950.

Mr. Dunkle submitted a copy of a map of the area showing zonings.

The Commission found that Michael Scuse, Secretary of the Department of Agriculture, and stated that the poultry plant is a very important facility in the State and the County; that the use provides employment, a means for poultry growth expansion, a means for grain growers; that there are demands for poultry products worldwide; that poultry is important to our economy; and that the Department of Agriculture and the Agricultural industries supports this application.

The Commission found that David Weidman, Attorney, was present on behalf of the Harbeson Improvement Association, and submitted and read a letter in opposition and stated that he request that the Commission exclude the map submitted into the record by Mr. Dunkle since it was not persented prior to the meeting.

Mr. Robertson rejected Mr. Weidman's request.

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The Commission found that Mr. Weidman continued by stating that there should be a limit on intrusion; that the request is creating a commercial parking lot in a residential area; that the use is not in compliance with the residential neighborhood; that the proposal brings HI-1 zoning out to Route 5; that several alternatives are available; the Applicants could provide a private deed restriction limiting the use of the site to parking; that Applicants could provide parking across the railroad on another HI-1 site owned by the Applicants; the Applicant could have applied for a Conditional Use for a parking lot; that his clients prefer that the area along Route 5 remain MR; that the Applicant could explore public transportation; that B-1 zoning could have been applied for; and that there is nothing is this rezoning that will eliminate a change of use of the site to an industrial use.

The Commission found that Mr. Weidman submitted photographs of the existing poultry plan site, the existing parking areas, trash, etc.

The Commission found that Robert Lawson, President of the Harbeson Improvement Association, was present and submitted four (4) letters in opposition and stated that the site was originally a home and an office for Paramount Poultry; that the home was removed by Allens Family Foods, Inc.; that Parcel 83 should be left vacant; that he is concerned about control over the use of the property; that Parcel 84 could have been applied for as a Conditional Use for a parking lot; that Parcel 84 has already had top soil removed for parking that is already taking place; that the area does not need any more heavy industrial truck traffic; that a DART bus stop does exists on the plant site and could be expanded; that storage trailers are being parking along existing fence lines where vehicle parking could be provided; that the Applicants could improve their good

neighbor policies; that cleaning up the construction area would provide adequate parking; and that the existing plant facility and the proposed parking facility needs to be lighted.

The Commission found that H.D. Johnson was present and stated that he is opposed to the expansion; that one new home has been built and another home has been remodeled this year in Harbeson; that the area where construction debris and trailer parking takes place was a formerly a grass area; that no trees have been planted by the Applicants previously; that a landscape plan should be required; and that he went out within ¼ mile of the site and obtained signatures opposed to the expansion for 113 people. Mr. Johnson submitted the signed petitions.

The Commission found that Sarah Greene submitted a letter in opposition to the application.

The Commission found that Mada Graves was present in opposition and stated that she lives across the railroad from the site and is opposed to the rezoning; that she does not want to look out at a parking lot with people hanging around, lighting, and noise.

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The Commission found that Louis Ashcroft was present and stated that he supports industry, but not the related traffic, and that he is opposed to trucks that haul renderings, and trash.

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

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

Motion carried 4 – 0.

OTHER BUSINESS

The Vineyards at Nassau Valley
Revised Preliminary Site Plan –Route 9

Mr. Abbott advised the Commission that this is a revised site plan for 927 multi-family units on 82.00 acres; that the site is zoned C-1; that the site plan also includes 214,670 square feet of retail area, 42,407 square feet of office space, a 159 room hotel, and 2 clubhouses totaling 10,416 square feet; that there are 688 flat units, 92 townhouse units, 120 big house units, and 27 single family detached units proposed; that there are 8 parking garages proposed; that 123 parking spaces are located within the front yard setback and would need a waiver from the Commission; that the setbacks, building lengths and separation distances meet the requirements of the zoning code; that central

sewer will be provided by Sussex County; that central water will be provided by Tidewater Utilities; that 2 swimming pools and bath houses are proposed; that there are not any wetlands located on site; and that preliminary approval was granted in April 2003.

James Fuqua; Attorney, and Jeff Clark of Land Tech were present on behalf of this site plan and advised the Commission that the site plan originally received preliminary approval in April 2003; that the site plan has been redesigned to meet the regulations of the Livable Delaware document; that all parking spaces meet the minimum 10 foot by 20 foot requirement; that the applicants sought a variance from the Board of Adjustment to reduce the parking space size but were denied; that the site plan depicts the parking for each section; that the applicants have met with DelDOT and that the traffic impact study is still being reviewed; that the project will be developed in 12 phases; that the site has been zoned C-1 since 1971; that when the site plan was originally submitted for review, opponents stated that there was not enough commercial space proposed; that the site plan has been reviewed by the Office of State Planning Coordination through the PLUS process; and that the applicants know that they need to obtain all agency approvals and that at this time they are only seeking a revised preliminary approval.

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The Commission found that Michael Tyler, President of the Citizens Coalition was present and read and submitted a letter raising questions and issues and questioned why this site plan is not required to go through a major subdivision hearing.

Mr. Robertson advised the Commission that the site is not being subdivided.

Mr. Johnson stated that he did not like the parking located within the front yard setback.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the revised site plan as a preliminary and to not grant a waiver for the parking to be located within the front yard setback. Final site plan approval shall be subject to the review and approval by the Commission upon receipt of all agency approvals.

Motion carried 4 – 0.

Midway Highway, L.L.C.

Commercial Site Plan – Route 1

This item was removed from the agenda on November 10, 2004.

Subdivision #2003 – 50 - - Kaplan, Gallo & Howett
Request for Reconsideration

Mr. Abbott advised the Commission that John Sergovic, Attorney, has requested that the Commission reconsider their denying this application contending that three of the five reasons referenced are not supported by the text of Chapter 99 or 115.

The Commission discussed the reasons that were referenced and it was the consensus of the Commission that these reasons are valid.

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

Motion carried 4 – 0.

Subdivision #2003 – 51 - - Morris Mill Pond, L.L.C.
Request for Reconsideration of Conditions of Approval

Mr. Abbott advised the Commission that John Sergovic, Attorney, has requested that the Commission reconsider the conditions of approval for this application; that one of the conditions stated that no lots contain any wetlands and the other requiring sidewalks on at

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least one side of all streets; that no wetlands on any lots would result in a loss of 35 lots; and that sidewalks would have to be located on individual lots.

Mr. Robertson advised the Commission that Subsections 99-24(D) and 99-9© support these conditions of approval.

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

Motion carried 4 – 0.

CU #1462 – Dr. Michael and Judith Poleck
Time Extension – Route 9

Mr. Abbott advised the Commission that this is a request for a time extension; that the application was approved on November 19, 2002; that the Commission granted a time extension on November 6, 2003; that the Commission granted preliminary site plan approval on March 11, 2004; that the engineers are in the process of obtaining all agency approvals; and that this is the last time extension that the Commission has the authority to grant.

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

Motion carried 4 – 0.

Ron Cross

Lot on 50' Right of Way – Road 520

Mr. Abbott advised the Commission that this is a request to create a lot with access from an existing 50 – foot right of way; that under the old policy of 3 lots and a right of way, this would be the third lot if the front lot can obtain access from Road 520.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending comment from DelDOT whether the front parcel can have access from Road 520.

Motion carried 4 – 0.

Mr. Lank advised the Commission that there would be three meetings in January 2005. They will be scheduled for the 6th, 13th, and 20th.

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The Commission discussed dates for a dinner for Mr. Lynch.

Meeting adjourned at 11:15 p.m.