

MINUTES OF THE REGULAR MEETING OF JANUARY 24, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 24, 2013, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of January 10, 2013 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1950 – application of **ERLIN I. RIVERA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for parking commercial tractor trailers, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 9.59 acres, more or less, lying west of Road 516 (Concord Pond Road) 600 feet south of Road 525 (King Road)(Tax Map I.D. 2-31-12.00-152.00).

The Commission discussed this application which has been deferred since January 10, 2013.

Mr. Smith stated that the Applicant is operating a business which serves the agricultural industry, and that there was one party present in opposition expressing concerns about noise.

Mr. Johnson stated that he would request additional time for further consideration of this application.

Mr. Burton and Mr. Ross agreed.

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

C/U #1953 – application of **THOMAS MILSPA W** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (2 Units), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.88 acres, more or less, lying west of Road 345 (West Beach Road) 0.4 mile north of Route 26 (Vines Creek Road)(Tax Map I.D. 1-34-7.00-81.04).

The Commission discussed this application which has been deferred since January 10, 2013.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1953 for Thomas Milspaw for a multi-family dwelling structure of 2 units based on the record made at the public hearing and for the following reasons:

- 1) The Applicant owns the existing structure which is 10 years old. It was designed as two separate units on opposite ends of a pole building type structure. The Applicant testified that the septic system was designed, approved and installed to serve two (2) residential units. The Applicant stated that there is only one electric meter for the entire structure.
- 2) The Applicant desires to use the premises as two (2) separate dwelling units with him occupying one of them and his handicapped brother-in-law occupying the other one.
- 3) With the conditions placed upon this use, it will be limited to the Applicant and his brother-in-law only as long as they occupy the units.
- 4) The use will not have any significant impact on roadways, traffic, or neighboring property owners.
- 5) The Applicant has stated that neither unit will be rented.
- 6) This recommendation is, however, subject to the following conditions:
 - A. Only two (2) units shall be permitted, and they shall be located within the existing structure as shown on the Preliminary Site Plan, as well as the Final Site Plan.
 - B. The units shall be occupied by the Applicant, Thomas Milspaw, and by his brother-in-law. In the event that they no longer occupy a unit on the property as their residence, this Conditional Use shall terminate automatically.
 - C. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission, and that the Final Site Plan shall identify who will occupy each unit as permitted by this recommendation.

Motion by Mr. Smith, 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 5 – 0.

C/U #1954 – application of **ROBERT A. HERMANSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for commercial/retail shop (handcrafted furniture/gifts and antiques), to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.306 acres, more or less, lying northwest of Route 48(Zoar Road) 150 feet west of Road 315 (Deep Branch Road)(Tax Map I.D. 2-34-14.00-20.03 and 20.04).

The Commission discussed this application which has been deferred since January 10, 2013.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1954 for Robert A. Hermanson for a commercial/retail shop for handcrafted furniture, gifts and antiques based upon the record and for the following reasons:

- 1) The use is very nearly a home occupation. The Conditional Use is only necessary because the Applicant intends to sell a small number of goods that are not made by him.
- 2) The Applicant has stated that there will be no employees other than he and his wife.
- 3) With the conditions placed upon it, the application will not have an adverse impact on traffic or on neighboring or adjacent properties.
- 4) No parties appeared in opposition to the project.
- 5) This approval is subject to the following conditions:
 - A. The use shall be limited to the sale of furniture, gifts, antiques and similar items.
 - B. The hours of operation shall be Monday through Saturday, with hours of operation of 10:00 a.m. to 6:00 p.m. with no Sunday hours.
 - C. One lighted sign no larger than 32 square feet per side shall be permitted.
 - D. The areas to be used for any outdoor displays shall be clearly shown on the Final Site Plan.
 - E. Areas designated for parking shall be shown on the Final Site Plan and shall be clearly marked on the site.
 - F. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/Z #1724 – application of **CENTRAL STORAGE @ HARBESON, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District, to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 8.05 acres, more or less, lying north of Route 9 (Lewes Georgetown Highway) 500 feet west of Route 5 (Harbeson Road) and 700 feet east of Road 254 (Prettyman Road)(Tax Map I.D. 2-35-30.00-8.02).

The Commission discussed this application which has been deferred since January 10, 2013.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1724 for Central Storage @ Harbeson, LLC from AR-1 to CR-1 based upon the record made at the public hearing and for the following reasons:

- 1) The site currently has a Conditional Use approval as a central storage facility. The CR-1 zoning will be consistent with this existing business use.
- 2) The property is in the immediate vicinity of the Route 9 and Route 5 intersection where a variety of small commercial enterprises already exist. This rezoning is consistent with the uses and trends in this area.
- 3) The rezoning is consistent with the guidelines in the current Sussex County Land Use Plan which permits retail and service uses in this area along Route 9.
- 4) The rezoning will not have an adverse impact on neighboring or adjacent properties or the community. There is also no indication that it will have an adverse impact on traffic.

- 5) The proposed rezoning promotes the orderly growth, convenience, prosperity, order and welfare of the present and future inhabitants of Sussex County.
- 6) Any proposed use on the site, including use as a mini-storage facility, would require site plan approval by the Sussex County Planning and Zoning Commission. Since the Applicant relied heavily on the proposed use as a mini-storage facility during its presentation, the Applicant should expect that the conditions imposed on that Conditional Use for the site would transfer to the site plan for such a use under this rezoning.

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

PUBLIC HEARINGS

C/U #1955 – application of **STATE OF DELAWARE (DELDOT)** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for DelDOT maintenance yard, to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 30 acres, more or less, lying north of Newton Road (Route 404A) and east of railroad (Tax Map I.D. 5-30-16.000-11.01).

The Commission found that the Applicants submitted a site plan with their application for consideration. The site plan depicts the location of a crew operations building, scales, fuel island, truck and mower sheds, salt barn, shop, material storage areas, and drives.

The Commission found that the County Engineering Department Utility Planning Division submitted comments on January 11, 2013 which reference that the site is located in the Western Sussex Planning Area #1; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Edwin Teneffoss was present on behalf of DelDOT and stated in his presentation that the parcel is located just north of Bridgeville and is proposed to be utilized for a DelDOT maintenance yard to replace the current yard site north of Seaford; that the current site is out of date and has some flooding issues; that they did submit an application to the Preliminary Land Use Service (PLUS) review; that landscaping and fencing is proposed; that the entrance to the site is already in place; that they would like to erect a lighted sign at the entrance; that they have no objection to a limitation on signage; that dumpsters will be provided; that the entire maintenance yard will be screened; that the entrance will be gated; that approximately 20 employees will be working from the facility; that adequate space is available for parking for employees; that two of the spaces will be handicapped spaces; that the use will be operational Monday through Friday, and for emergency use only (i.e. snow removal); that they are proposing two truck sheds for approximately 10 trucks; that across Route 404A near the entrance

is an industrial/commercial area; and that the location is more centralized in the service area than the current Seaford maintenance yard.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1955 for the State of Delaware (DelDOT) for a maintenance yard based upon the record and for the following reasons:

- 1) The Applicant stated that the need is of a public nature and promotes the health, safety and general welfare of the public. No parties appeared in opposition.
- 2) The Application with the following conditions placed upon it will not have an adverse impact on traffic or the surrounding properties:
 - A. The entrance shall be secured by a gate when the maintenance yard is not in use.
 - B. One lighted sign, not to exceed 48 square feet per side shall be permitted.
 - C. Any dumpster pads shall be screened from view and shown on the Final Site Plan.
 - D. Days and hours of operation shall be Monday through Friday, 7:00 a.m. to 3:00 p.m., except as emergency conditions dictate.
 - E. Any security lighting shall be downward focused so as to not impact neighboring properties.
 - F. Areas designated for parking shall be shown on the Final Site Plan and shall be clearly marked on the site.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/Z #1725 – application of **JACK LINGO ASSET MANAGEMENT, LLC** to amend the Comprehensive Zoning Map from GR General Residential District to AR-1 Agricultural Residential District, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 74 acres, more or less, lying southwest of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284)(Tax Map I.D. 3-34-12.00-16.00 Part of).

C/U #1951 – application of **JACK LINGO ASSET MANAGEMENT, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a RV resort and campground, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 162.424 acres, more or less, lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284)(Tax Map I.D. 3-34-12.00-16.00, Part of).

It was noted that the applications were being combined for the purpose of the public hearing so that the records did not have to be duplicated, and that the Commission would make a decision of each application independently.

Mr. Lank advised those parties present that the Applicant had provided an Exhibit Booklet on January 14, 2013 for consideration, and that the Commission had previously been provided a copy of the Exhibit Booklet. The Booklet contains copies of the Preliminary Land Use Service (PLUS) comments and DelDOT comments.

The Commission found that the County Engineering Department Utility Planning Division had provided comments, in the form of a memorandum, on January 11, 2013 and referenced that the site is located in the Goslee Creek Planning Area; that wastewater capacity is available based on certain conditions; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,715.00 per Equivalent Dwelling Unit (EDU); that sewer service has not been extended to the Goslee Creek Planning Area; that the project is capable of being annexed into the West Rehoboth Expansion Area; that conformity to the North Coastal Planning Study will be required; that the project is located in the Goslee Creek Planning Area for sewer service, but the developer must construct regional infrastructure to connect to an approved connection point; that the developer's engineer has undertaken a planning study to determine the scope of regional sewer infrastructure needs; that the report proposes several options for connection and is being reviewed by the County Engineering Department; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a sewer concept plan must be submitted for review and approval prior to design of the sewer system and prior to requesting annexation into the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that a checklist for preparing concept plans is attached to the memorandum; that a list of steps for completing a district expansion is also attached; and that a concept plan is required.

Mr. Lank advised the Commission that he reviewed the file at the close of business earlier today and that the Department had received nine (9) letters in support of this application; 528 signatures on petitions in opposition to the application; and 111 letters/emails in opposition to the application. Mr. Lank added that an additional 2 letters and petitions containing an additional 89 signatures were received just prior to the meeting. The letters/emails and petitions were signed by parties living in Harts Landing, along Ward Road, in Sandy Brae, in Henlopen Landing, in The Plantations, in Bay Front, in Briarwood Estates, in Webb's Landing, in the Retreat at Love Creek, and other project and locations in the general area.

The Commission found that Nick Hammonds, Project Manager, was present on behalf of Jack Lingo Asset Management, LLC, with Gene Bayard, Attorney with Morris, James, Wilson, Halbrook and Bayard, P.A., Ring Lardner, Professional Engineer, D.J. Hughes, Professional Engineer, and Michael Wigley, Architect, of Davis, Bowen & Friedel, Inc. and stated in their presentations and in response to questions raised by the Commission that the property has been owned by the Townsend family for many years; that the property is located in a Tidewater Utilities franchise area; that the property is located in a County regional sewer district; that the

developers will be building all of the required infrastructure; that the site contains approximately 162 acres of a 324 acre tract owned by J.G. Townsend, Jr. & Company; that they are proposing to change 74 acres from GR General Residential to AR-1 Agricultural Residential; that the GR portion of the property is capable of being subdivided into approximately 322 single family lots for manufactured homes, modular homes or dwellings; that the AR portion of the property is capable of being subdivided into approximately 191 single family lots; that a RV park/campground is needed in the area; that a study was performed in the area and there is a demand for campsites; that the majority of the site is wooded; that Love Creek is actually an amenity/attraction for the proposed park; that Davis, Bowen & Friedel, Inc. have prepared and revised the site plan of the layout of the project; that a national RV park designer reviewed the site and the plans and made comments on the design; that the developers held a public meeting on December 27, 2012 to present the project to area residents to obtain comments; that approximately 80 parties attended the public meeting and raised several issues, primarily traffic issues; that an RV park generates less traffic than residential development; that the project is being planned as a destination spot which creates even less traffic trips than a subdivision; that they originally intended to access from Ward Road and have since revised the plans to access from Cedar Grove Road; that concerns were expressed about the distance the proposed cabins are from dwelling that exist on lands of other ownership and that they have relocated the cabins; that there will be no to minimal impacts on wetlands; that the Exhibit Booklet contains a series of maps, i.e. flood plain map, wetlands map, sewer district map, zoning map, State Strategies map, and map of the Environmental Sensitive Developing District Overlay Zone; that according to the State Strategies the site is located in Level 2 and 3 growth areas; that a wetlands delineation has been performed and is now being prepared for submittal to the State and Corps. of Engineers; that a timber cruise has been completed to establish a minimization of tree removal; that a review of the Federal and State Endangered Species listing indicates that none were found or reported on the site; that the Beers Atlas of 1868 indicates that a dwelling existed on the site, but no structures have been found; that any archaeological features found on the site will be preserved; that there are no known indian burial sites on the site; that there are no historical sites referenced on the site included on the National Registry; that the soils on the site are well drained and there should be no issues relating to stormwater management of the site; that they are proposing a 50-foot wide buffer from all wetlands; that they attended the PLUS review and have responded to the comments received from PLUS; that those comments and responses are included in the Exhibit Booklet; that they have provided an Environmental Assessment and Public Facility Evaluation Report in the Exhibit Booklet; that the entrance and welcome center with related parking have been relocated to an entrance on Cedar Grove Road; that the project will provide sites for towable campers and RVs; that the site is almost entirely wooded which can provide a natural buffer; that fencing and landscape screening will also be provided; that all camping sites will be a minimum of 400 feet from any residence off-site; that the buffers to be provided will also include a 50-foot buffer from property lines and a 100-foot buffer from any public road; that the sites will have all necessary hook-ups, i.e. water, sewer, electric; that the minimum size of a camping site per Code is 2,000 square feet, and that they are proposing approximately 3,000 square feet per site; that they intend to preserve as many trees as possible; that the layout proposed creates some thru lots for convenience of the RVs; that the stormwater management ponds are being designed as water features and will allow for

recreational amenities, i.e. paddle boats; that trails and paths will be provided for interconnection throughout the park; that the amenities include pools, a general store, bathhouses, playgrounds, picnic pavilions, a fitness club, an amphitheater/chapel, a canoe/kayak launch and outfitter, and a dock/bar; that the amphitheater is approximately 1,300 feet from Ward Road; that the amenities are proposed for guest of the campground only; that security will be provided 24 hours/7 days per week; that no marina or boat ramp is proposed for motorized boats; that it is their intent to provide all of these facilities for the benefit of the campers only, not outsiders; that ponds will be stocked with fish; that access to the campground will be gated; that the main entry road will be paved; that all streets within the campground area will be gravel; that the layout provides for 21 acres of roads, 42 acres of RV lots, 3 acres of premium RV lots, 5 acres for stormwater management, 30 acres of wetlands, and approximately 50 acres of residual lands; that approximately 90 acres of land will be left undisturbed; that DelDOT did not require a traffic impact study when they filed their application; that DelDOT stated in their May 17, 2012 letter that the Department was agreeable to the County accepting the application and considering it without the use of a traffic impact study; that the campground would generate enough traffic to warrant a traffic impact study and the Department will require the completion of a traffic impact study as a condition for plan approval; that the results of a traffic impact study are not, in the view of the Department, necessary for the County's consideration of the application; that a traffic impact study was completed on January 11, 2013 and that DelDOT response time normally takes 60 days from receipt; that they prepared a report for comparison on "Existing Zoning Potential per DelDOT Methodology", "Proposed Land Use per Conditional Use Conceptual Plan", and "Proposed Land Use Compared to Existing Zoning Potential"; that the anticipated improvements required by DelDOT include a 310-foot left turn land, 1,500 feet of resurfacing with 11 foot wide lanes with 5-foot shoulders, and participation in some signalization at other intersections; that they reviewed the history of some of the campgrounds in the area; that Three Seasons Campground was open from 1978 to 2006; that prior to 1978 there was minimal development activity in the Rehoboth Beach Yacht and Country Club community; that after the campground was opened the community has grown to approximately 900 dwellings; that Treasure Beach Campground, near Fenwick Island, and Holly Lake Campground, near Route 24, are fully developed; that if negative impacts on property values would have been anticipated those projects would not have developed; that they feel that they have complied with the Comprehensive Land Use Plan, and the Zoning Code, including the Environmentally Sensitive Developing District Overlay Zone; that the use will be a benefit to tourism; that the use will be seasonal and will not impact schools; that they fully intend to comply with all DelDOT requirements; that the use is less environmentally impacting than a subdivision; that a subdivision will generate more traffic than a campground; that 628 sites are proposed; that they are planning on developing the project in three (3) phases; that phase 1 is planned to contain 159 RV sites, 39 Premium RV sites, and 20 cabins; that phase 2 is planned to contain 40 RV sites and 29 cabins; that phase 3 is planned to contain 278 RV sites, 33 cabins, and 30 tent sites; that they intend to develop the majority of the amenities with the first phase; that they are planning on seasonal rentals, rather than daily rentals; that the cabins will be self-sustaining, either site built or modular units containing approximately 600 square feet; that rules and regulations will include a limitation on the number of people that can stay in a cabin; that the original project submitted to DelDOT contained 400 sites, and the recent traffic impact study references the

intended 628 sites; that the proposed bridge over wetlands will be subject to the Corps. of Engineers; that the success of the project will be determined by the market; that the seasonal schedule will be from mid-April to October; that they are proposing an area for RV storage; that some RVs will be stored in the storage area or removed from the site; that they would prefer that the RVs be removed to allow them to winterize the campground; that the welcome center will be a part of phase 1; and that the signalization of the intersection of Plantation Road, Postal Lane, and Cedar Grove Road is scheduled to start in the Spring of 2014 and for completed by the Fall of 2015.

Mr. Robertson stated that the Commission has several options to consider, i.e. both applications could be approved, both applications could be denied, the rezoning could be denied, which voids out the Conditional Use, or approve the rezoning and deny the Conditional Use.

Mr. Bayard responded that he would be concerned if the Commission recommended approval of the rezoning and denied the Conditional Use because a grid subdivision would then be a possibility and that the Commission can stipulate that RVs not be stored on the site off-season.

Mr. Hammonds responded that the camping seasons would be move specifically April 1 to October 31; and that check-in for camping and security will relate to the opening of Phase 1.

Mr. Hughes responded that, since the traffic impact study was just submitted on January 11, 2013, they should receive DelDOT's response to the traffic impact study by March; and that no improvements are anticipated to be required for Mulberry Knoll Road or Robinsonville Road.

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

The Chairman asked if any attorneys were present on behalf of any groups in opposition.

The Commission found that Mary Schrider-Fox, Attorney with Steen, Waehler & Schrider-Fox, P.A. was present on behalf of The Retreat at Love Creek Homeowners Association in opposition to this application and stated that The Retreat is a residential planned community near the proposed campground site; that some of the Association's members and residents from some of the other communities are here to directly express their concerns about and objections to the proposed project; that there are two parts to the applications, a rezoning request and a Conditional Use request; that the Applicants are seeking to "down zone" a portion of the site from GR to AR-1, which might not be any harm if the Applicant was requesting the change in order to pursue a permitted use under the Zoning Code; that the reason for this rezoning is to develop the RV campground, which will eventually be the daily, weekly or seasonal vacation destination of 516 RV travelers, as well as campers sleeping in tents and some sleeping in camp cabins, for a total of 628 groups of campers of various sorts and sizes; that this is not a permitted use, but one requiring a Conditional Use; that the Applicants proposed use of the property and Conditional Use request are inextricably intertwined with the rezoning; that as the Court in Orchard Homeowners Association v. County Council said, the rezoning the Applicant's proposed use of the property in question is very relevant to the propriety of the rezoning

decision; that without a record as to how the Applicant plans to use the property, the court is not able to determine whether or not the rezoning decision is acceptable under the Comprehensive Plan, under the zoning statutes, and under relevant State law; that what the Applicants want to do with the subject property matters; that this is mentioned because the primary objections to the rezoning are based on the proposed use of the subject property; that Section 6904 of Title 29 of the Delaware Code makes it clear that rezoning decisions shall be in accordance with the Comprehensive Plan and shall be for the purpose of promoting the health, safety, morale, convenience, order, prosperity or welfare of the present and future inhabitants of the County; that some of the specific things that Section 6904 references that must be considered are: the lessening of congestion in the streets, protection of the tax base, and securing safety from fire, flood or other dangers; that Section 6904 also states that reasonable consideration must be given to the character of the particular district involved, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building and population development; that the Comprehensive Plan Future Land Use Map identifies that the property is located in an area slated for Mixed Residential and Low Density with an Environmentally Sensitive Developing Area overlay; that the rezoning will not be in keeping with the Future Land Use Map of the Comprehensive Plan if the rezoning sought is within the Mixed Residential Area; that the Future Land Use Element of the Comprehensive Plan references that the County's zoning regulations are intended to carry out the Future Land Use Plan; that State law requires that all zoning regulations be in accordance with the Comprehensive Plan; that in Title 9 of the Delaware Code, in both Sections 6951 and 6959, it is clearly stated that the land use maps forming part of the Comprehensive Plan have the force of law and no development shall occur except in conformity with the Land Use Maps; that much of the surrounding area consists of residential developments of various sorts; that the proposed campground is not residential in nature and rather, is a commercial venture designed to attract transient vacationing guests to the area; that when considering the well-being of the present residents in the immediately surrounding area, the pending application causes them great concern about their safety and convenience because of the condition of the existing roads, i.e. narrow, sharp turns, and largely without shoulders, and the idea of them being heavily travelled on a daily basis by hundreds of large RVs; that it causes the residents great concern that their prosperity in terms of their property values and how this kind of commercial venture located so nearby might affect them; that while the pending application may arguably be a good thing for residents of other parts of the County, the residents who are here, in the affected part of the County, disagree; that according to information submitted by the Applicant, the Level of Service for Plantation Road/Cedar Grove Road/Postal Lane intersection has an unacceptable "F" rating; that there are plans in the coming years to improve this intersection, but in the meantime, there is a known congestion problem which this different type of traffic (large RVs) will exacerbate; that if visitors are seasonal, 600+ daily trips will be made out into the community; that there is also a danger presented by having a campground located so close to so many residential communities in that campfires will be permitted according to the draft rules of the park on file; that campfires go hand in hand with camping and are part of the overall experience, but they make a campground like this unsuitable for a residentially developed area where the consequences could be severe; that the natural resources on and around the property are a concern; that DNREC expressed concerns about the protection of some quite rare animal species and unique habitats;

that the Applicants environmental scientists have taken a different view; that the Commission needs to give DNREC's comments and concerns appropriate weight as a State agency that exists for the stated purpose of protecting the environment and our natural resources; that for these reasons the rezoning request is not appropriate and should be denied; that the Comprehensive Plan must be considered when deciding whether or not to grant the Conditional Use; that according to the Future Land Use Element, in Low Density Areas, business development should be confined to businesses addressing the needs of the primary uses of agricultural activities and single family detached homes; that retail and office uses should focus on providing convenience, goods and services to the nearby residents; that in the Environmentally Sensitive Developing Areas, a range of housing types are appropriate, as are retail and offices uses, or light commercial or institutional uses that provide convenient services and that allow people to work close to home; that the pending Conditional Use application does not fit into any of those use categories; that this is not a residential project where there will be residents, it is offering a vacation destination for RV and camping enthusiasts; that any goods and services being provided within the park are being offered for the convenience of the visitors, not the surrounding neighborhoods; that the Section 115-171 of the Zoning Code presents certain problems; that the Section states that conditional uses are to be "essential and desirable for the general convenience and welfare"; that for all of the reasons already stated, this project is for the convenience and welfare of people from other places, for the developer as a commercial venture, but not for the neighborhood in general and the many residents living in the nearby area; that Section 115-172.H. references campgrounds, and in subparagraph (9) thereof it states "All units to be used for the purpose of human habitation shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes."; that the only exception is one structure or manufactured home within the campground area that may be used by the park manager as a residence and/or office; that the proposed 82 cabins for human habitation clearly fall outside the scope of the subparagraph; that it is important to consider whether the proposed amenities are appropriate and in conformity to Section 115-172.H.; that an amphitheater has been proposed, as well as swimming pools and a boat launch with a dock bar, all uses that are recreational, as opposed to retail, in nature; that while Section 115-172.H. permits the existence of small retail businesses in the park, such as a grocery store or an automatic laundry, it is silent with respect to these types of recreational facilities, that are not small retail businesses, being located in the park; that in other conditional use situations in Section 115-172, recreational space or facilities are specifically permitted and the requirements are described; that in the mobile home park context, recreational land is specifically contemplated in Subparagraph G; that in the swimming or tennis club context, outdoor recreational facilities are specifically permitted; that nothing similar is contained in or contemplated by Subparagraph H. for campgrounds; that this type of project, like others recently proposed by other developers, are simply beyond the scope of the more traditional campground project that is contemplated in 115-172.H.; that for all the reasons stated and most importantly because of this project's non-conformance with the Comprehensive Plan, we hope that the Commission will recommend denial of this application.

The Commission found that Mona Schwartz, a resident and Board Member of Hart's Landing, Jason Beale of the Delaware Nature Society, Paul Hammesfahr, President of the Home Owners Association for The Retreat of Love Creek (The Retreat), Charles Tinacci, a resident of The

Retreat, Hollis Provins, a resident of The Retreat, Trista Engle, a resident of Sandy Brae, Dick Snyder, a resident of The Retreat, Billy Westergard, a resident of The Retreat, William Zak, a resident of Briarwood Estates, Ron Lapara, a resident of The Retreat, Sandy Spence, a resident of Sea Woods, Kit Zak, a resident of Briarwood Estates, William Payne, a resident of Webbs Landing, Henry Glowiak, speaking on behalf of the Inland Bays Foundation, Adrienne Crimmins, a resident of The Retreat, Dave Jaeger, a resident of Selbyville, Mable Granke, a resident of Rehoboth Beach, and David Racine, a resident of Mulberry Knoll, were present and spoke in opposition to these applications and expressed concerns about the impact on the quality of life of the residents in the area; that traffic congestion is at a high and that traffic signalization is needed in the area; questioning the occupancy rate of the existing campgrounds in the area; concerned about daily, weekly or seasonal rentals; concerned about the enforcement of laws and regulations; crime issues; the closeness of the dock/bar; concerned about kayakers since Love Creek is not always travelable due to the change of time, water depths, and the narrowness of the Creek; questioning the tax benefit of campsites v. homes; depreciation of property values; concerns about endangered species, i.e. salamanders and tree frogs, being located on or near the site; that the Applicants should consider dedicating the site into conservation easements; that ponds are used for breeding; that the Applicants should work with the State and/or the Delaware Nature Society for purchase of the site; that the residents of the area overwhelmingly object to this project in a residential area; concerns about the size and number of RVs traveling the narrow roadways in the area; noise and light pollution; that the use is not only a destination use, the visitors will still be traveling to stores, shops, and beaches in the area; concerns about historic gravesites in the area; the impact on the emergency services, i.e. fire, police, paramedics; possible impacts on the Beacon School; the lack of consistency; that the use is not in character with the residential area; impacts on Love Creek; archaeological impacts on the site and area; environmental concerns, i.e. loss of wetlands and wildlife habitat; that roads anticipated to be utilized by the visitors are not the same as the roads indicated on a GPS directional system; the lack of adequate roadways to and from the site, and causing further impacts on Route One, Route 24, Plantations Road, and other local roads; safety concerns for motorist due to the blind turns and curves on Cedar Grove Road; the anticipation of traffic jams at intersections; concerns about children safety on school buses in the area; concerns that DelDOT did not require a traffic impact study prior to this application being heard; that traffic patterns are changing; that traffic data referenced relates to 2005; that seasonal crime is a problem; concerns about noise travelling down Love Creek impacting residential areas; that the Applicants representatives referenced that the primary access anticipated to get to the site is from Route One, down Postal Lane, across Plantation Road, to Cedar Grove Road, to the site; the impact on the 100 year flood plain; questioning the use of the remaining acreage of the property; questioning if there is a 400 foot setback from campsites to the homes in Briarwood Estates across Hettie Fisher Glade; that the Center for the Inland Bays has reported that there is a flourishing bed of tidal grasses growing in Love Creek and that those tidal grasses could be impacted; questioning the amount of impervious surfaces; questioning what green infrastructures will be utilized to reduce the nutrient levels that may impact the waterways, i.e. Nitrogen and Phosphorous; questioning compliance with the Federal Cleanwater Act; that this area of Love Creek is a mudflat at low tide; that Love Creek is not feasible for canoeing and/or kayaking at low tide; that the insect/pests are terrible during warm weather; that campgrounds normally provide camping trails; that the number of proposed

sites equal the size of the Town of Lewes; that cyclists will be impacted along local roadways since there are no improved shoulders; that Bald Eagles and other wildlife species will be impacted; that the speed limit along Cedar Grove Road will need to be reduced; that there is no economic benefit to the citizens of the County; that courting and mating Great Blue Herons will be disturbed, thereby impacted; noise concerns since the County does not have a noise ordinance; that restrictions should be increased in the Environmentally Sensitive Developing Area; that additional buffering should be required along Love Creek; that the Center for the Inland Bays Wetlands Health Report Card references that the Inland Bays watershed has lost approximately 60% of its wetlands resources since European settlement; that the Report Card recommends for the health of riverine wetlands: restoring channelized streams to more natural streams and to control invasive species; recommends for the health of flat wetlands: protecting large forest blocks, restore natural distribution of water, and to implement sustainable forest management; recommends for the health of tidal wetlands: the minimization of development adjacent to wetlands, restore natural distribution of water, and to control invasive species; that nutrient levels are still too high for eelgrass; that in 2008, the existence of a previously undocumented meadow of Horned Pond Weed, a bay grass preferring lower salinities, was discovered in upper Love Creek; that Love Creek is one of the largest tributaries of the Inland Bays; that the Corps. of Engineers and the Center for the Inland Bays recommend larger buffers; that air quality effects waterways; that there is no wetland delineation on file; that a Love Creek Nature Area should be established to protect the area around and along Love Creek; that this application is a threat to the Inland Bays; questioning where run-off will go, i.e. on-site or into Love Creek; that having only one entrance is a safety concern; that this application is the second of three application to be considered in one year, and questioning the possible impact on the County; concerns about traffic on Mulberry Knoll Road; that the County only designed the sewer district out 50 years; that there could be a major impact on the aquifers in the area; that DelDOT has no plans for improvements to secondary roads; and that this type of project should not be considered until all infrastructure is in place, i.e. roads, sewer, water.

It is noted that William Payne, Dennis Fisher, Kit Zak, David Jaeger, William Zak, Sandra Spence, Hollis Provins, and Jason Beale of the Delaware Nature Society provided written comments relating to their presentations in opposition to these applications.

At the conclusion of the public hearings, the Chairman asked for a show of hands for those parties present in support of these applications and those parties present in opposition to these applications. There were no parties, other than the representatives of the applications, present in support. There were, at least, 110 parties present in opposition. It was noted that some parties had already left prior to the conclusion of the public hearings.

The Commission discussed these applications.

Mr. Robertson stated that the Commission can leave the record open for a response from DelDOT on the traffic impact study submitted to DelDOT by the Applicants.

In reference to C/Z #1725:

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to leave the record open for 15 days after the announcement of the receipt of DelDOT comments on the traffic impact study and any other written comments. Motion carried 5 – 0.

In reference to C/U #11951:

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to leave the record open for 15 days after the announcement of the receipt of DelDOT comments on the traffic impact study and any other written comments. Motion carried 5 – 0.

OTHER BUSINESS

Baywood GR/RPC
Final Record Plan – Phases 7 – 9

Mr. Abbott advised the Commission that this is the final record plan for 132 single-family lots and 40 townhouse units; that the Commission granted preliminary approval for the same on September 19, 2007; that the proposed setbacks are 10-feet from all lot lines; that none of the units are located within a flood plain; that central sewer will be provided by Inland Bays Preservation Company and central water will be provided by Tidewater Utilities; that the record plan complies with the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the record plan as a final. Motion carried 5 – 0.

David Fluharty
3 Lots and 50' Easement – Road 78

Mr. Abbott advised the Commission that this is a request to subdivide a 7.38-acre parcel into 3 lots with access from a 50-foot easement; that the owners are proposing to create the easement over an existing entrance and driveway; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Mr. Johnson expressed concerns about the amount of wetlands located on the site and raised questions about the existing buildings shown on the survey.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action pending receipt of a legible survey and more information on the existing buildings. Motion carried 5 – 0.

Francis R. Hazzard

3 Lots and 50' Easement – Road 288

Mr. Abbott advised the Commission that this is a request to subdivide a 21.92-acre parcel into 3 lots with access from a 50-foot easement; that the lots will contain 1.0-acres, 2.55-acres and 18.37-acres; that the owner is proposing to create the easement over an existing stone road; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Bryden Joseph

2 Lots and 50' Easement – Road 451

Mr. Abbott advised the Commission that this is a request to subdivide a 7.04-acre parcel into 2 lots with access from a 50-foot easement; that the lots will contain 1.67 and 5.37-acres; that the owner is proposing to create the easement over an existing entrance and culvert; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Leonard Swarthout

3 Lots and 50' Easement – Road 34

Mr. Abbott advised the Commission that this is a request to subdivide a 3.55-acre parcel into 2 lots with access from a 50-foot easement; that the lots will contain 1.0 and 2.55-acres; that the owner is proposing to create the easement over an existing asphalt driveway; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision since this would make 3 lots having access from the easement.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Meeting adjourned at 10:15 p.m.