



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF FEBRUARY 25, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 25, 2010 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. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mrs. Rebecca Trifillis – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott, Assistant Director.

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

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of January 20, 2010 as corrected, and the Minutes of January 28, 2010 as corrected. Motion carried 5 - 0.

PUBLIC HEARINGS

Mrs. Trifillis described how the public hearings would be conducted.

Mr. Lank advised the Commission that the Applicants scheduled for public hearings this evening were granted a waiver due to the weather recently to allow submittal of their Exhibit Booklets on February 19, 2010, rather than on February 15, 2010, which was also a County holiday.

C/U #1816 – application of **ANDREW AND CAROL WALTON** to consider the Conditional Use of land in a MR Medium Density Residential District for a marina with restaurant, retail and 4 multi-family dwelling units to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.84 acre, more or less, lying southwest of Oak Orchard Road, northeast of Pine Street and northeast of Bay Road in Oak Orchard.

Mr. Lank advised the Commission that on February 16, 2010 the Applicant submitted an Exhibit Booklet titled “Oak Orchard Marina” which included a presentation outline, references to land use and zoning, land utilization, civil engineering, traffic impacts, and environmental issues; a map of the area depicting the zoning; a copy of previous Conditional Use #1088 for Clyde Hull for the site; a series of photographs of the site; a survey/site plan depicting the existing conditions of the site and the proposed site plan; a color rendering of the same survey/site plan; and a copy of the DelDOT Support Facilities Report.

The Commission found, based on comments from DelDOT, dated April 9, 2008, that a traffic impact study was not recommended and that the current Level of Service "C" of Old Orchard Road will not change as a result of this application.

The Commission found, based on comments from the County Engineering Department Utility Planning Division, received February 24, 2010, that the site is located in the Oak Orchard Sanitary Sewer District; that the Planning Study and sewer capacity assumption for the parcel reference 4.45 EDU, which reflects the current use of the parcel; that a typical assumption for a MR residential zoned parcel of less than 1.0 acre is 1.0 EDU; that the proposed use is estimated to be more than double the EDU capacity allocation (4.45 EDU) for the parcel; that the proposed use will significantly increase the demand on the downstream wastewater system serving the parcel; that approving uses that exceed sewer system design assumptions has a negative impact on sewer system capacity; that additional information should be provided and a capacity review completed before approval by the Engineering Department; that the developer may be required to complete or participate in system upgrades in order to provide adequate capacity for the proposed use; that Ordinance No. 38 construction will be required; that there is a 4.45 System Connection Charge credit for the project; that the current System Connection Charge Rate is \$3,352,00 per EDU; that the parcel has been provided with an 8-inch sanitary sewer lateral during original construction; that installation of an additional 8-inch later is required; that an extension of mainline sewer may also be required; that the developer is responsible for costs associated with lateral installations or extensions of mainline sewer; that if the existing structure is to be removed or significantly altered, it must be properly disconnected requiring a disconnection permit, disconnection by a County licensed plumber and inspection by the County; that conformity to the North Coastal Planning Study will be required; and that a concept plan is required.

The Commission found, based on comments received from the Sussex Conservation District on February 24, 2010, that the soils on the site are mapped as Runclint loamy sand; that the developer will be required to follow recommended erosion and sediment control practice during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements are required; and that it is very possible that on-site drainage improvements will be required.

The Commission found that Margaret Hurt, an immediate neighbor to the site, submitted a letter on February 25, 2010 in opposition to the application expressing concerns about the size of the parcel and the uses intended; road widths; children living and playing in the area being at risk; traffic and disturbances; the number of vehicles; restaurant hours; and flooding.

The Commission found that Andrew Walton was present with Zac Crouch, Professional Engineer with Davis, Bowen & Friedel, Inc., and Attilio Cafini, the restaurant operator, and that they stated in their presentations and in response to questions raised by the Commission that the site was originally approved for a marina with boat rental, boat slip rental, bait and tackle sales, sandwich shop, crabbing pier, office and residence in September 1994 as Conditional Use #1088; that they propose to revise and expand the use by improving the existing marina by relocating the existing building and constructing a new building with specialty retail, restaurant, and 4 condominium units; that the site is located in a MR District within the Environmentally Sensitive

Developing District Overlay Zone; that the Applicant purchased the property and has worked with DNREC to improve the marina under the Delaware Clean Marina Program; that currently the site is improved by a building which contains a restaurant with dining space on the first floor and within a closed-in area on the deck, and a living unit on the second floor; that a cross access easement exists on the site for access to other parcels and will be relocated and improved; that access to the cross access easement will not change; that sewer is to be provided by the County; that Tidewater Utilities will provide central water; that the existing building is proposed to be relocated to the north end of the parcel and is intended to be converted into a 2-unit structure; that a new building is intended to be constructed for the retail, restaurant, and 4 multi-family units; that the marina will remain; that DelDOT comments did not warrant a traffic impact study; that relocation of the access road/driveway will improve access to other properties; that all setbacks will be met; that an architectural rendering has not yet been prepared; that 23 parking spaces are required and that 24 parking spaces are proposed; that adequate space is available for parking; that the restaurant's largest shift has 10 employees; that they do not intend to apply for any variances; that the restaurant closes at 10:00 p.m.; that there will be no outside entertainment; that the State Alcohol Beverage Commissioner has granted approval of the restaurant; that stormwater management will be provided by use of bio-swales and bio-retention; that no ponds are proposed; that the proposed building will contain 3 stories and will not exceed 42 feet in height; that the dumpster will be screened from view; that a landscape plan will be submitted with the site plan; that a sign is presently attached to the building; that the shoreline is bulkheaded; that they are proposing 4 new multi-family units and to convert the existing building when relocated into 2 units; that the restaurant could be open 6 days per week, no Mondays, with hours of 11:00 a.m. to 10:00 p.m. weekdays, and 3:00 p.m. to 10:00 p.m. Saturdays and Sundays; that the existing building contains 3 stories with an unfinished third floor; that the site plans were prepared to Code; and that if the building needs to be sized down the Applicant has no objection.

The Commission found that Linda Walls, an adjacent landowner to the north, spoke in support of the application and referenced that the proposal will improve the community, helps the economy, provide jobs, and that parking should not be a problem.

The Commission found that David Harper, an adjacent landowner to the east, spoke in support of the application and referenced that the Applicant has already improved the property, and that he supports the proposal.

The Commission found that Scott Walls, an area resident that owns three properties, spoke in support of the application and referenced that the use will improve the community and should improve property values.

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.

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

C/Z #1674 – application of **LEE REPASS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Route One, 850 feet northwest of Road 265A (Old Mill Road), to be located on 40,271 square feet, more or less.

Mr. Lank advised the Commission that on February 19, 2010 the Applicant submitted an Exhibit Booklet for this application which included a copy of the application form, a copy of the deed, a boundary and topographic survey plot, a portion of the Beers Atlas of the area, a soils map and references, an aerial overlay showing zoning in the area, aerials of the site and area, a copy of a DelDOT letter, dated August 8, 2008, stating that it was not recommended that a traffic impact study be required, and correcting a previous May 21, 2008 letter requesting a traffic impact study, a proposed site plan and elevation views for a Meineke Muffler Repair Shop, a copy of an E-mail from County Engineering Utility Planning Division, building plans for the Meineke Muffler Repair Shop, suggested Proposed Findings of Fact, and support letters from Thomas E. Lewis, President of T.E. Lewis, LLC, Ronald Scrutchfield of Lighthouse Lighting, and Paul G. Townsend, President of J.G. Townsend, Jr. & Co.

The Commission found that the Applicant also submitted a handout, titled “Meineke car care centers, inc.” describing environmentally friendly hazardous materials handling.

The Commission found that on February 24, 2010 the Sussex Conservation District submitted a report on this application advising that the soils are mapped as Fort Mott loamy sand; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; and that comments were not provided in reference to on-site or off-site drainage improvements since the intended use was not referenced.

The Commission found that on February 24, 2010 the County Engineering Department Utility Planning Division submitted a memorandum on this application advising that the site is located in the North Coastal Planning Area; that the planning assumption for the parcel allocated 1.0 EDU based on a residential zoned parcel of less than 1.0 acre; that central sewer service has not been extended to the parcel and that there is no gravity connection point available in the area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Planning Study will be required; that the parcel is not located in a sewer district; that it is in a planning area for sewer, but the County does not have a schedule to provide service at this time; that preliminary planning for the area east of Route 1 calls for new infrastructure that must pump directly to the treatment plant; that the east side of Route 1 was not included in any capacity considerations of the existing collection and transmission system; and that a sanitary sewer concept plan is not required if the proposed use connects to an approved on-site septic system.

Mr. Lank read the J.G. Townsend Jr. & Co. support letter since the original was submitted to the Department.

The Commission found that Lee Repass was present with Eugene Bayard, Attorney with Wilson, Halbrook and Bayard, P.A., and Ken Christenbury, Professional Engineer with Axiom Engineering, LLC, and that they stated in their presentations and in response to questions raised by the Commission that Mr. Repass holds the Meineke Franchise for Sussex County; that this application is a textbook infill site; that the site is bordered on the north and south by existing commercial zoning and uses; that the site is adjacent to and in close proximity to several commercial and business uses, i.e. boat storage and repair, restaurant, retail lighting business; that the Applicant proposes to build a Meineke auto service center; that they propose to develop the site with on-site well and septic; that an infiltration basin is proposed; that the State Fire Marshal has advised that there is no need for firelanes; that the use is in character with the area; that there are no residential neighbors; that DelDOT has voiced no objections; that there are no historical or cultural features on the site; that the auto center will provide general auto maintenance, brakes, oil changes and service, and muffler repair; that they anticipate 10 to 12 customers per day; that all oils and fluids will be stored in required containers; that all waste oils and fluids will be stored in required containers and will be picked up and disposed of by licensed handlers; that tires will be picked up by tire vendors; that shop rags and uniforms will be picked up by uniform vendors for cleaning and then returning them; that operational hours will be from 7:30 a.m. to 6:00 p.m. weekdays and on Saturdays from 7:30 a.m. to 1:00 or 2:00 p.m. with no Sunday hours; that there will not be any automobile storage on the site; that they anticipate a maximum of 7 employees; that they have spoken to the operators of Lighthouse Lighting and Beach Marine and received no negative comments; that the use and rezoning are consistent with the character of the area and trend of development; that the use and rezoning are consistent with the Comprehensive Plan Update; that the use and rezoning are consistent with the Environmentally Sensitive Developing District Overlay Zone; that they have offered suggested proposed Findings of Fact in the Exhibit Booklet; that signage will be per standards of Meineke and will comply with Sussex County sign regulations; that storage of oils and fluids will be above ground; and that compressors will be inside of the building.

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

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

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

C/Z #1694 - application of **CMF BAYSIDE, LLC** for an Ordinance to modify Condition No. 24 imposed on Ordinance No. 1433 for Change of Zone No. 1393, the application of CMF Bayside, LLC, for “Americana Bayside”, a MR-RPC Medium Density Residential District – Residential Planned Community, to allow revised commercial entrance locations as may be approved by DelDOT, and to permit the commercial use of a 1.27 acre parcel on the north side of Route 54 (Tax Map #5-33-19.00-17.01).

The Commission found that on February 12, 2010 the Applicants submitted an Exhibit Booklet which contains a copy of the proposed Ordinance to modify Condition No. 24 of Ordinance No. 1433 for Change of Zone No. 1393, a copy of a DelDOT “Letter-of-No-Objection” for the

entrance location, dated September 9, 2009, a copy of the concept plan for rights-in/rights-out for the parcel on the south side of Route 54, a copy of the original statement for Condition No. 24 and a copy of a modified version for Condition No. 24, a series of site plans and aerials for the site on the south side of Route 54 and the triangular site on the northeast corner of Route 54 and Route 20.

The Commission found that the Applicant also submitted a series of photographs of the two sites.

The Commission found that on February 24, 2010 the Sussex Conservation District submitted a memorandum which referenced that there are six (6) soil types on the parcels; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it may be possible that on-site drainage improvements will be required.

The Commission found that on February 24, 2010 the Sussex County Engineering Department Utility Planning Division submitted a memorandum which referenced that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$4,738.00 per EDU; that the location and size of laterals or connection points has yet to be determined; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed zoning is to amend a condition of approval to revise DelDOT entrance requirements; that the Division is meeting with the Applicant to determine the impact and sewer requirements; that the Division anticipates that their requirements will be met and has no objection to the proposed rezoning at this time; and that a concept plan is required.

The Commission found that Doug Brown and Chris Garland of CMF Bayside, LLC were present with James Fuqua, Jr., Attorney with Fuqua & Yori, P.A., and Jim Willey, Professional Engineer with George, Miles & Buhr, and that they stated in their presentations and in response to questions raised by the Commission that the Americana Bayside project was approved for 1,700 residential units, 170,000 square feet of business area, and a golf course on 883 acres with 24 Conditions of Approval; that they have applied to modify Condition No. 24 since it stipulates that "All commercial activities shall be limited to the south side of Route 54, with no direct access to Route 54. Entrance to the commercial area shall be a minimum of 300 feet from Route 54." by requesting two exceptions to allow for commercial use on the north side of Route 54 and to allow rights-in and rights-out on the south side of Route 54; that a rights-in and rights-out will still be provided on the westerly side of Americana Boulevard 300-feet south of Route 54; that the modification will allow for commercial use of a residual 1.27 acre parcel on the north side of Route 54; that this is not a change of zone request since the 1.27 acre parcel is a part of the MR-RPC Americana Bayside; that the modification will not allow them to exceed the 170,000 square feet of business area in the project; that the parcel adjoins the redesigned intersection of Route 54 and Route 20; that the developers built the new redesigned intersection with DelDOT approval; that the 1.27 acre parcel was offered to the Roxana Volunteer Fire Company and the State Police; that the Fire Company chose another site to the west of the intersection closer to Williamsville and the State Police declined the site since they felt that there was no need for a troop substation in this area; that this site is not appropriate for residential use; that it is

appropriate for business use based on the surrounding uses; that the site on the south side of Route 54 is presently used as a sales center for the Americana Bayside project and has temporary approval from DelDOT and the Board of Adjustment for the use; that the developers engineers studied the site and intersection and submitted to DelDOT their findings; that DelDOT found no negative impact and granted the "Letter-of-No-Objection"; that no left turns will be permitted from the site on the south side of Route 54; that Condition No. 24 was imposed by County Council; that a median island is proposed to eliminate left turns onto Route 54 based on the conceptual plans submitted to DelDOT; that the site south of Route 54 may be revised to allow pedestrian connection only from Founders Avenue within Americana Bayside; that there is not currently a U-turn restriction at the intersection of Route 54 and Americana Boulevard; that the use intended is the same or a similar use as shown on the original Master Plan for the project; and that currently the project has site plan approval to utilize less than 100,000 square feet of the business area proposed.

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

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

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

In reference to C/Z #1675 and C/U #1853, Mr. Lank advised the Commission that the Applicant has requested that the two applications be consolidated for the purpose of the public hearing and that the Applicant acknowledges that he realizes that the applications will be decided on separately. Therefore, Mr. Lank introduced the application:

C/Z #1675 – application of **BARRY BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Old Orchard Road (Road 269-A) and approximately 1,200 feet southeast of New Road (Road 266), to be located on 9.33 acres, more or less.

C/U #1853 – application of **BARRY BAKER** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less, lying northeast of Road 269A (Old Orchard Road) approximately 1,115 feet southeast of Road 266 (New Road).

The Commission found that on February 19, 2010 the Applicant submitted an Exhibit Booklet, titled "Brownfield Investigation – Donovan Site – DE-0151 – Lewes, Delaware" as prepared by Duffield Associates which included a Final Plan of Remedial Action, a Proposed Plan of Remedial Action, a Groundwater Monitoring Report - Final, a Brownfield Investigation Report – Approval, and a Brownfield Investigation Report; and a Project Development Booklet, titled Oyster Cove, prepared by Becker Morgan Group, which included an Executive Summary, 20

Exhibits, suggested Findings of Fact for C/Z #1675, suggested Findings of Fact for C/U #1853, and suggested Proposed Conditions of Approval for C/U #1853.

The Commission found that, based on comments from DelDOT, dated January 30, 2008, a traffic impact study was not recommended and that the Level of Service "A" of Orchard Road will not change as a result of this application; and that on February 3, 2010 DelDOT forward a "Letter-of-No-Objection" for the entrance location.

The Commission found that on February 24, 2010 the County Engineering Department Utility Planning Division submitted comments that reference that the site is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that there is no central connection point available in the area; that it is uncertain how the project will have central sewer; that the project is not capable of being annexed into a County operated District; that the site is not in an area where the County expected to provide sewer service; that the parcel is located in the growth and annexation area for the City of Lewes and that the City could provide central sewer service at some future time; that the developer should contact the City of Lewes for their requirements and plan for sewer service and connection to the City system; and that a concept plan is not required.

The Commission found that on February 24, 2010 the Sussex Conservation District submitted comments that reference that there are six soil types on this site; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard area or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that on-site drainage improvements will be required.

The Commission found that on August 11, 2008 the Board of Public Works commented to Becker Morgan Group, Inc. that the Board of Public Works would accept wastewater from the project in accordance with the conditions established in Board Resolution No. 07-002; that details for service would be further defined in an Utility Services Agreement; that a copy of such an agreement was provided as an example of the type of agreement that would be required; and that the Board looked forward to working with Becker Morgan Group, Inc. on this project.

The Commission found that on February 8, 2010 Bruce C. Hefke of Lewes wrote that he and his wife are neighbors to the project, and that they have seen the plans for the development and are in full support of the request for Change of Zone and Conditional Use.

The Commission found that on February 18, 2010 the Department received a memorandum from Glenn T. Piper, President of LandMark Associates, in opposition to the proposed simultaneous applications; that they have been awaiting more detailed development information as per the "10-day rule"; that such was not submitted to the County by February 15, 2010; that the Applicant was granted a waiver until February 19, 2010, based on poor delivery services during the past week's storms; that the Homeowners Association (H.O.A.) requests postponement of both hearings to a later date; that the H.O.A. need a reasonable timeframe to consider the proposal; that the preliminary site plan states public sewerage to be provided by the City of Lewes; that it will be at least 5 to 10 years before the City of Lewes will provide sewerage to this

locale; that the Applicant has not yet disclosed that the site is a State-funded "Brownfield" site; that receipt of more detailed development information on February 19, 2010 only provides 3 business days to consider the information; that there are also other neighborhood H.O.A.'s that are expecting more detailed information; and requested that the applications be delayed for at least 30 days.

The Commission found that on February 25, 2010 Mr. Piper wrote a memorandum to David Baker, County Administrator expressing his opposition and requesting a postponement and referencing his comments of February 18, 2010; that he had asked if there was a decision on his request for postponement to Mr. Lank and that Mr. Lank had replied "Not likely, it's already been scheduled"; that the developer's Attorney received a written waiver within hours; that as a prominent local real estate appraiser, Mr. Piper could assure the Commission that after they know the details, they will appreciate the major land use implications that would occur as a result of what appears to be a relatively small and inconspicuous 24-unit proposal; that there is a winter storm warning in effect in the County until 6:00 p.m. Friday; and again requested a decision so that he could notify those property owners that have called him.

Mr. Wheatley advised those present that this public hearing is only one of two public hearings scheduled on these applications and that individuals have the right to speak up at this public hearing or at the public hearing scheduled before the County Council. The County Council public hearing is scheduled for March 23, 2010 at 1:30 p.m.

The Commission found that Barry Baker was present with Mark Dunkle, Attorney with Parkowski, Guerke & Swayze, Garth Jones, Professional Engineer with Becker Morgan Group, Inc. and Jeffrey Bross, Professional Engineer, and Jennifer Gresh, Professional Geologist, of Duffield Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the rezoning to MR Medium Density Residential is appropriate as transition between residential single family and C-1 General Commercial uses; that the adjacent subdivision is AR-1 zoned; that across Old Orchard Road is a MR zoned subdivision; that adjacent lands to the south are C-1 zoned; and that the Village of Five Points across the railroad line is MR-RPC zoned; that they are proposing to develop the site with 24 multi-family units in 12 duplex buildings; that the use is appropriate in a mixed residential area; that the site is a Brownfield site; that when the Applicant purchased the site it was a municipal landfill; that the site is being cleared of debris, concrete, materials under the guidance of DNREC; that surface cleaning has been completed; that the site has been improved environmentally and has been studied, drilled, and tested; that the site can be cleaned and remediated; that there may be underground materials that can be removed to allow development of the site; that when the project is completed it will comply with State Code and will preserve the character of the area; that once completed there should be no negative impact on property values; that the Applicant will build a sewer line from the site to the City of Lewes Board of Public Works sewer facility; that the site has been entered into the Brownfield program with DNREC; that the site is suitable for development per DNREC; that a Contaminated Materials and Soils Management Plan has been developed and prepared and is pending approval from DNREC; that preliminary estimates provide for a successful development and a Brownfield cleanup; that the proposed duplex buildings will appear to be large dwellings; that the street will be private and that an existing easement will be relocated to provide access from the private street to the property to the rear of

the site; that DelDOT will be requiring a 5-foot wide dedication of right-of-way along Old Orchard Road, a multi-modal path, right-turn lanes, and a bike path; that public central water will be provided by Tidewater Utilities, Inc.; that public sewer will be provided by the City of Lewes; that they have reserved an area for a pump station; that a tot-lot playground will be provided; that they are proposing to buffer all perimeter property lines; that stormwater management will be to the rear of the site near the branch; that the density is needed to justify the cleanup of the site; that DNREC has advised that construction of the project can start during the remediation of the site; that DNREC has certified that the site is suitable for development if developed in compliance with the Brownfield documents; that groundwater monitoring has been completed; that the exact route of the sewer line has not yet been established with the City; that sidewalks will be provided; that street lights will be provided; that a bus stop will be provided if required or needed by the School District; that the units may be in the price range of \$275,000 to \$350,000; that full disclosure will be provided to buyers of units in the project about the Brownfield; that as construction proceeds Duffield Associates will be on site to notify DNREC for agency guidance if potential contaminants are discovered during construction; that DNREC has a well developed system and has oversight to make final recommendations; and that the units will have two-car garages.

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

The Commission found that Glenn Piper was present in opposition and stated that he has lived next to the "Donovan's Site" for 10 years and that it has been a nightmare; that the City of Lewes Comprehensive Plan intends to provide sewer to the area in the future; that the Board of Public Works has advised him that it may be 5 to 10 years before they provide such service to the area; that he questions the actual size of the parcel because it appears to have changed from approximately 7 acres to 9.33 acres; that approval of this project does not make economic sense; that he does not oppose the rezoning to MR for single family detached dwellings; that he does oppose the Conditional Use request; that the Village of Five Points has mixed residential uses and commercial uses; that the only multi-family use in the area is at the Village of Five Points on the westerly side of Old Orchard Road, not on the easterly side; that he opposes the permitted 42-foot height; that the site contains some PCBs; that traffic is a major concern by increasing traffic and mixing with truck traffic from the concrete plant across Old Orchard Road; that there is no market of the priced product being offered; that the ditch behind the site is a headwater to Canary Creek that drains into the Great Marsh; that he has a fear of a precedent being established by providing a 50-foot access easement to the property to the rear; that Old Orchard Road has no shoulders; and that Old Orchard Road at Savannah Road and at New Road needs intersection improvements.

The Commission found that Norm Kogel, Vice President of the Nassau Station Subdivision Homeowners Association across Old Orchard Road, spoke in opposition and expressed concerns that the entrance was not directly across from the entrance to Nassau Station, and referenced a fear of a worst case scenario of contaminants not being mitigated.

The Commission found that the Applicants representatives responded to some of the questions that the actual acreage by survey (Tab 2.4) is 9.33 acres; and that if a worst case scenario is found on site, work may have to cease, but they do not anticipate such a scenario; that the

entrance was located as plotted due to the right-turn lane and deceleration lane design; that the entrance will probably move to align with the entrance to Nassau Station; and that they have not yet submitted the formal entrance plan for review by DelDOT.

The Commission found that Mr. Dunkle submitted a copy of the Certification of Harold L. Carmean, Appraiser, for the project.

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

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to defer action for further consideration and to leave the record open for written comments on C/Z #1675 for 10 days. Motion carried 5 – 0.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action for further consideration and to leave the record open for written comments on C/U #1853 for 10 days. Motion carried 5 – 0.

Meeting adjourned at 9:38 p.m.