



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 11, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 11, 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 Vice-Chairman Smith presiding. The following members of the Commission were present: Mr. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott, Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Mr. Lank announced that C/Z #1668 and C/Z #1669, the applications of CB Twin Cedars, LLC, have been postponed and will be re-advertised and rescheduled for some later date. The Applicant's attorney had requested postponement so that they could finalize their Exhibit Booklets.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of February 17, 2010 as amended, and the Minutes of February 25, 2010 as circulated. Motion carried 4 - 0.

OLD BUSINESS

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 units to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.84 acres, more or less, lying southwest of Oak Orchard Road, northeast of Pine Street and northeast of Bay Road in Oak Orchard.

The Commission discussed this application which has been deferred since February 25, 2010.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to give the Applicant more time to consider the application requested. Motion carried 4 - 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.

The Commission discussed this application which has been deferred since February 25, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1674 for Lee Repass for the change of zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

1. The change in zone is for a property that is within the Environmentally Sensitive Developing District Overlay Zone as set forth in the 2008 Update to the Sussex County Comprehensive Land Use Plan. It is also in a Combined Highway Corridor Overlay Zone.
2. The application for rezoning to CR-1 is consistent with neighboring and adjacent properties. The site is bordered on the north and south by existing commercial zoning and it is adjacent to and in close proximity to several commercial and business uses, including boat storage and repair, a restaurant, a retail lighting business and other uses.
3. The application is for land that is situated along Route 1, which is appropriate for CR-1 Zoning. Any development on the site will be subject to the Highway Corridor Overlay District requirements, as applicable.
4. Any uses proposed for the site will require site plan review by the Planning and Zoning Commission, along with all agency reviews, including DelDOT.
5. The rezoning of this property to CR-1 is consistent with the purposes of the CR-1 District because it is located along a major collector highway where there are previously existing commercial and service activities, and the site will serve a wide commercial area.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 4 – 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 #533-19.00-17.01).

The Commission discussed this application which has been deferred since February 25, 2010.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be conducted.

Subdivision #2009-1 – application of **ROY C. AND SHIRLEY B. STREET** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 5.65 acres into 4 lots, and a waiver from the street design requirements, located north of Road 291, 1,088.93 feet east of Route 5.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of June 5, 2009 will be made a part of the record for this application; that an aerial photograph and photograph of the public hearing notice depicts a single-wide manufactured on the proposed Lot 4, that a trailer placement permit was issued as an on farm permit on April 8, 1987; that a certificate of compliance was issued on May 21, 1987; and that if the single-wide is going to remain on the site, a special use exception to retain a manufactured home on less than 10 acres would be required from the Board of Adjustment.

Shirley and Roy Street were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the intention of the subdivision is to finalize their will; that they would like to leave the lots for their children; that at this time, there is not an existing driveway or road where the proposed right of way is intended to be located; that they would like to keep the proposed right of way as grass until the lots are in their children's name and they are ready to start construction; that the existing manufactured home will be replaced with a dwelling; and that the lots will be given to their children and that they will have lifetime rights.

Mr. Lank advised the Commission that the Engineering Department adopted new street design standards and indicated that the improved right of way will require 6 inches of crusher run for a width of 20-feet; and that the manufactured home would have to be removed or a special use exception obtained from the Board of Adjustment prior to the application receiving final record plan approval.

Amy Killian, an adjacent land owner, was present in opposition to this application and advised the Commission that the land is currently under water; that she moved into a rural area and wants it to remain rural; that a housing development is not needed in the area; and that the other parcels in the area are large parcels.

Marlene Henry, an adjacent land owner, was present and advised the Commission that the Street's are good neighbors; that she is a widower; that she owns a 1.0-acre lot; questioned how many lots there would be; and questioned what happens to the property if it is ever sold and wanted assurances that she would be protected.

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 pending receipt of a septic feasibility statement and for further consideration. Motion carried 4 – 0.

Subdivision #2009-12 – application of **DEBBIE BRENNAN, KEVIN MCGRORY AND REVOCABLE TRUST OF EDWARD J. KOSMOWSKI** to consider the Subdivision of land

in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 8.603 acres into 2 lots, located east of Road 479 (Fire Tower Road), 1,000 feet north of Road 465 (Chipman's Pond Road).

Mr. Abbott advised the Commission that the Technical Advisory Committee did not review this application since the 2 lots proposed are strip lots; and that the applicant has created the maximum allowed by-right strip lots.

Charles Adams, P.L.S., with Adams – Kemp Associates, Inc. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the property was originally subdivided by the Givens family; that 4 lots have been subdivided out of the original parcel; that an additional lot was created based on the remaining acreage; that the remaining land contains 8.60-acres with 300-feet of road frontage; that the applicants would like to subdivide the 8.60-acre parcel into 2 equal lots; that a joint entrance is proposed based upon DelDOT requirements; that there are no drainage problems in the area; that the site is currently tilled agricultural lands; that no grading is planned; that the lots will be occupied by single-family dwellings; that an utility easement is provided; that on-site septic and well are proposed; that the site is not in a flood plain and there are no wetlands on the site; that letters in support from adjoining property owners were submitted with the application; that no future subdivision is anticipated; and that the existing lots on the original minor lots contain three dwellings.

No parties appeared in support of or in opposition to this application.

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

Mr. Ross stated that he would move that the Commission grant preliminary and final approval of Subdivision #2009 – 12 for Debbie Brennan, Kevin McGrory and Revocable Trust of Edward J. Kosmowski, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 2 lots on 8.603 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This approval is subject to the following conditions:
 - A. There shall be no more than 2 lots within the subdivision. Any further subdivision will require the approval of the Planning and Zoning Commission.
 - B. All entrances shall comply with all of DelDOT's requirements.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to approve this application as a preliminary and a final, for the reasons, and with the conditions stated. Motion carried 4 – 0.

C/Z #1677 – application of **OLD TOWNE POINT, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Savannah Road and North Village Main Boulevard at the Savannah Road entrance to the Village of Five Points, to be located on 4.04 acres, more or less.

The Commission found that on March 1, 2010 the Applicant had provided an Exhibit Booklet which contains a copy of the application form, a preliminary site plan, a survey, site data information, an aerial overlay showing zoning of the area, an aerial photograph, USDA soils information, a copy of the Future Land Use Map from the Comprehensive Plan Update, a map of the Highway Commercial area, a copy of portions of the Contract of Sale, a copy of Restrictive Covenants, Easement, Maintenance and Cost-sharing Agreement, a copy of the Declaration of Restrictions, a copy of a letter to DelDOT from Davis, Bowen & Friedel, Inc., a letter from DelDOT, dated July 10, 2008, references to compliance with the Comprehensive Plan Update and the Zoning Code, and proposed Findings of Fact.

Mr. Lank provided the Commission with copies of Ordinance No. 1377, the Findings of Fact for C/Z #1400, the application of Olde Towne Pointe, L.L.C., the MR-RPC approval for the Villages of Five Points since the Findings reference a 4.5 acre site in Condition of Approval #21 on page 6 of the Ordinance.

The Commission found that the Sussex Conservation District submitted comments on February 24, 2010 which reference that the site contains three soil types; that the Applicant 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 is not likely that off-site drainage improvements will be required; and that on-site drainage improvements will be required.

The Commission found that the Sussex County Engineering Department Utility Planning Division submitted comments on March 11, 2010 which reference that the site is located in the West Rehoboth Expansion Area; that system design and capacity evaluations have considered the Villages of Five Points as a whole project; that the parcel considered for rezoning did not exist separately and the area was anticipated to be used for community service purposes; that the Village of Five Points is projected to be at capacity assumptions as the project approaches build-out of the planned and approved proposal; that there are downstream sewer lines that are deficient at build-out conditions; that the Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses; that the proposed commercial zoning is located on lands not previously identified for commercial use by Planning and Zoning; that the current System Connection Charge Rate is \$4,336.00 per EDU; that the location and size of laterals or connection points is to be determined by the County Engineer; that conformity to the North Coastal Area Planning Study will be required; and that a concept plan is not required.

The Commission found that on March 10, 2010 Claude O-Connor, President of the Property Owner's Association for the Village of Five Points, wrote that the Board of Directors for the Village of Five Points Property Owners Association offers its full support of the Applicants in their efforts to bring CVS Pharmacy to the main entrance of the project; that the Board of Directors believes that having a CVS Pharmacy located inside of the project would be congruent with the developers original concept of a mixed-use master planned community; that the Board of Directors is aware and fully understands that the parcel being considered is currently zoned AR-1 and will need to be rezoned to B-1; and that the Board of Directors offers its full support on this proposal, and have no objection to the B-1 zoning.

The Commission found that a letter in opposition was received from Donna Pasek, a resident living in the Villages of Five Points, expressing concerns about having to look at the back loading dock and rear of a pharmacy building; that there are currently vacancies within the business/retail portion of the Villages and questioning the need; that the rezoning is not necessary since retail space is already available and not occupied; that several pharmacies exist in the Lewes area; that when closing on their property in the Villages, they were required to review the by-laws, and to sign-off on their understanding that the site could be developed in the future, if the project was for the betterment of the community; that they were told several times that the property would never be rezoned for commercial use; that they are concerned about additional traffic, noise, increased pollution, increased garbage and litter, and increased crime; that they are concerned about the continued commercialization of Lewes and the surrounding area; that they are concerned about property values being negatively impacted; and reminding the Commission that recently the County Council denied an application for an office complex on Savannah Road stressing concerns with sewer capacity and traffic.

The Commission found that a letter in opposition was received from Michael Hobbs, a resident living in the Villages of Five Points, expressing concerns about the negative affect on property values; that the use could be a traffic nightmare especially during summer months; that three pharmacies already exist close to each other, i.e. Walgreen's, Cape and Rite-Aid; concerns about noise from trash processing, delivery trucks, and pollution; that the page 6 of the Declaration of Covenants, etc. references that the site shall be limited to community service. Attached to the letter was a copy of page 6 of the Declaration of Covenants, etc. referencing the community service facility.

The Commission found that a letter in opposition was received from Maureen Hobbs, a resident living in the Villages of Five Points, expressing concerns about looking at the rear of a pharmacy with loading docks, trash dumpsters and a drive-in window for prescription drop-off and pick-up; that there is no need for additional pharmacies in the area; that there is a high vacancy rate of commercial space available in the Villages; concerns about traffic and noise; that the site was originally intended to be used for community service use, not commercial; that the Declaration of Covenants, etc. references community service use; that community service use includes, but is not limited to fire, police, emergency medical services, library, and/or museum; and that she questions the listing of property owners notified on this application. Attached to the letter was a copy of pages 4 through 6 of the Declaration of Covenants, etc. referencing annexed property and the community service facility.

The Commission found that Jamin Hudson was present on behalf of Old Towne Point, LLC with John Sergovic, Attorney with Sergovic & Carmean, P.A., Ken Christenbury, Professional Engineer, with Axiom Engineering, LLC, and Robin Davis of Hudson Management and that they stated in their presentations and in response to questions raised by the Commission that the original rezoning application for the Villages of Five Points did not include this parcel; that CVS Pharmacy contacted the developers in February 2007 wanting to purchase a portion of the parcel; that the CVS Pharmacy developers were advised that there was a condition of approval (Condition #21) with the rezoning application for the Villages of Five Points which will have to be addressed; that the County Council approved the rezoning to MR-RPC Medium Density Residential – Residential Planned Community with 26 conditions of approval; that the site is currently zoned AR-1 Agricultural Residential and that they are requesting B-1 Neighborhood Business zoning; that they are proposing a pharmacy site on the front 2 acres and a pad site for the remaining acreage; that the entrance location is already improved to the site; that they apologize for the error on the zoning map in Tab 5 which indicates that the site is zoned MR Medium Density Residential; that adequate space is available for parking; that the soils are well drained; that DelDOT did not require a traffic impact study; that the site will ingress/egress on North Village Main Boulevard out to Savannah Road at a signalized intersection, which was built at the developers expense; that Davis, Bowen & Friedel, Inc. provided a traffic analysis in June 2008 for the proposed CVS Pharmacy and that DelDOT responded in July 2008 that the traffic associated with the pharmacy was accounted for in the 1999 Traffic Impact Study for the Villages of Five Points; that the calculations do not address development of the remaining 1.94 acres or the effect of the pharmacy traffic on the intersection; that DelDOT has reserved the right to require analyses and, if necessary, improvements at the intersection in DelDOT review of the plans for the pharmacy and any future development on the 1.94 acres; that DelDOT no longer recommends that a Traffic Impact Study for the rezoning; that they just received a copy of the County Engineering Department comments late today and will respond to the comments at the County Council public hearing; that they do not agree with the comments and will be contacting the County Engineering Department; that a pharmacy has little water usage; that they would have no objection to the Commission providing them with time to work with County Engineering to response to any issues prior to taking action on this application; that they are proposing a private restrictive covenant that B-1 Neighborhood Business uses will be permitted on the site, except for a filling station; that the developers have attempted to contact several community service users for interest in locating at the site, i.e. University of Delaware, DelTech, the Lewes Volunteer Fire Department, State Police, Emergency Medical Services, U.S. Post Office, Citizens Coalition, a Maritime Museum, Lewes Historic Society, and others; that the developer has exercised significant efforts over the past 10 years to meet the required Condition No. 21, but has been unable to generate any interest with regard to the property for community service use; that the majority of the community services uses in the area already have properties in use; that they did not approach CVS Pharmacy; that the pharmacy developers contacted them in 2007; that the Board of Directors of the Villages of Five Points have approved the request; that the site is surrounded by commercial/business sites; that the rezoning will comply with the Comprehensive Plan Update; that the rezoning will comply with the Zoning Ordinance; that the location is not suitable for residential use; that the use will create job opportunities and increase the tax base; that B-1 zoning is appropriate since it is more compatible to the existing uses in the community for retail and personal service uses; that the property accesses Business Route 9; that

this same basic process is necessary whether the Applicant applies for a rezoning or a Conditional Use; that they do not currently have an agreement with the Property Owners Association for use of the stormwater management facilities; that they would have no objection to the Commission providing them with time to prepare a listing of contacts made with dates of the meetings to show their attempts to provide a site for a community service use; that the U.S. Postal Service did not respond; that a church approached the developers in 2009, but never responded after their meeting; that the Villages of Five Points project originally proposed 586 units of which 520 units have been sold; that the majority of the vacant lots are on in the East Village across Old Orchard Road; that there are 12 single family townhouse units that have not been built; that the community service facility site was proffered by the developer in the original public hearing process; that they need a recommendation from the Commission to go forward to the County Council; that any rezoning can modify an ordinance; and that they may also have to amend the Condition No. 21 of the original ordinance.

The Commission found that Sol Pasek, Chairman of the Villages of Five Points Architectural Review Committee, stated that he was not present in support of or in opposition to the project, but wanted to express some observations; that the Board of Directors has acted without feedback from the residents of the project; that CVS is not just a pharmacy, they also provide groceries, etc.; that increased traffic will be generated; that the interior streets are not public roads; that there should be safety concerns; that there will be a lot of cross traffic; that a traffic signal does exist; and that there are concerns about drainage.

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

The Commission found that Anthony Pasek, a resident of the Villages of Five Points spoke in opposition to this application and expressed concerns that the true intent of the application is to construct a CVS Pharmacy with a 68 parking space lot; that the deciding factor in purchasing a unit in the Villages was a promise by the seller, the property management company, and both real estate agents that the acreage opposite their front door would never be developed, except as stated in the "Declaration of Covenants, Conditions and Restrictions for the Villages of Five Points"; that the site is known as the "Community Service Facility" as described in Association documents as "4.5 acres of property fronting on Savannah Road and shown in the record master plan, the use of which shall be limited to community services including, but not limited to fire, police, emergency medical services, library and museum"; that a B-1 designation to allow the building of a pharmacy is not a "community service facility" within the original intent of the Association documents; that it was recently ascertained, while reading Olde Towne Pointe's application, that a November 1999 ordinance was passed stipulating that Olde Towne Pointe must first attempt to develop/sell the property as a Community Service Facility with no profit to the builder for a period of no less than 10 years and that if Olde Towne Pointe has unsuccessfully attempted not-for-profit development, it will be allowed (with an amendment to the original ordinance) to attempt and develop the property commercially in November 2009; that this ordinance, plus the 10 year option, is not in the Association documents that they were required to read and sign at closing; that this development exception was never mentioned to him at any Association meetings attended since moving into the community; that June 24, 2006 Association Minutes attribute Michael Lynn, a member of the Association Board and an Olde Towne Pointe partner, responded to a homeowner that asked if there were any plans for the site that the area is

zoned agricultural and can only be used for community use; that Mr. Lynn also mentioned at a July 14, 2007 Association meeting that a wellness center was a consideration to be built, but that any development must be effected with no profit to the builder; that Mr. Lynn never mentioned the 10 year ordinance being satisfied before attempting commercial development; that Mr. Lynn also mentioned in the June 24, 2006 Association Minutes that “there is 4.5 acres of land on the left as you enter into the community that was originally planned to hold a commercial library, but the plan was turned down by the County because the community already has enough commercial businesses”; that in the Spring of 2009, he observed a commercial real estate sign erected on the site and was assured by Resort Quest’s on-site property manager that the property cannot and will not be developed commercially; that a plan and agreement was already in-place as of March 14, 2008; that the sign observed referred to vacancies in the downtown Villages commercial area; that as of March 10, 2010, the Villages has a total of 28 commercial locations for rent, that 16 are occupied, and that 12 are vacant and available; that several of the vacant properties are the result of businesses relocating after their leases expired; that two of the most recent business vacancies left the Villages due to rent increases, and referenced “Seaside Interiors” and “Quiet Storm”; that there is an abundance of commercial property available in the Villages; that there is no need for the rezoning of the site to justify another commercial building, parking lot and a pharmacy; that it is disturbing that there is an ordinance permitting Olde Towne Pointe the right to develop the site as a commercial venture fore-going the good of the community; that Olde Towne Pointe has been engaged in discussion with CVS prior to 2008 and has not faithfully attempted to develop the site with a not-for-profit community service facility before the 10 year period has ended and ceased attempts after beginning plans with CVS; that Olde Towne Pointe ceased trying not-for-profit development of the site with 3 years still remaining to fulfill a 10-year obligation, therefore violating the 1999 ordinance; that Olde Towne Pointe never disclosed at any time, in any manner that the 1999 ordinance and its consequences to the Association homeowners of his building which directly faces the site; that Olde Towne Pointe is guilty of lying by omission to the homeowners their plans to develop a pharmacy; that the site is vital to the area and a beautiful piece of property to behold, highlighting the community; that in Sussex County we depend on rainfall fed underground aquifers to re-charge our potable water supply; that the site is a large absorption point for collection as well as a preventive barrier controlling local flooding; that the site is an annual stop for migrating Canada Geese; that DelDOT does not believe that a traffic impact study should be required; that you should try making a left turn onto Savannah Road, any time-of-the-day; that during summer months Savannah Road is frequently crawling with traffic comprised of DART buses, Lewes Fire Department apparatus, ambulances, polices, tourists, vehicles towing boats and local traffic; that Savannah Road is a major route to the Beebe Medical Center; that DelDOT should be required to conduct a current traffic impact study during in-season and off-season for accurate conditions; that Cape Pharmacy already exist in the Villages; that a Rite-Aid Pharmacy and a Happy Harry’s Pharmacy already exist on Savannah Road; that a 24-hour Super Wal-Greens is under construction on Savannah Road within eyesight of the site; that there are also other pharmacies along Route One; that the rezoning will negatively impact the Villages, especially the 6 units in his building; that Olde Towne Pointe is attempting to rezone, as a conditional requirement, for the sale of 2 acres to CVS for 2 purposes, one to off-set the loss of rental income from the vacant and closing businesses, and two to avoid their obligation to try and develop the site as a community service facility; that if the rezoning is approved the value of his property will decline; that his home, his village and his property cannot afford anything that

continues to contribute to the decline of current living conditions and property values; requesting denial of the application; and requesting that the site remain AR-1 and to protect the area leading into the City of Lewes and the Villages from un-necessary commercial blight.

The Commission found that Joel Banini, a resident of the Villages of Five Points, was present in opposition and stated that the Board of Directors responded without consulting the residents; that she has traffic and traffic configuration concerns; that the site should at-least be traded for green space at another location in the Villages; that within less than 0.25 mile from the site are two existing pharmacies; that she supports the small business owners in the community; that she questions the community use of the site; that she questions the price proposed; and expressed concerns relating to stormwater issues.

The Commission found that Jennifer Short, a resident of the Villages of Five Points, was present in opposition and stated that she overlooks the site; that Association meetings are typically closed; that the property should be donated; that more research is needed on the users; and that property values will be negatively impacted.

Mr. Lank, in response to a question by the Commission, advised them that the application was advertised in two local newspapers, and that the site was posted on February 10, 2010.

The Commission found that the Applicants representatives responded to questions raised by the Commission that the Property Owners Association is responsible for maintenance of the streets; that there is a provision for cost sharing for maintenance; that they are not sure if the YMCA was offered the site, but did acknowledge that the developers did talk with the YMCA about another site; that the site contains 4.04 acres of which CVS is interested in 2.0 acres; that the use of the remaining portion of the site is unknown; and that the site will be restricted from the use of a filling station.

The Commission found that Ms. Banini asked what happens if the site is rezoned B-1.

Mr. Robertson advised that if the rezoning is granted, a developer would then have to submit a site plan for review by the Commission and that other agency approvals would be required prior to the Commission granting final approval of the site plan.

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

Mr. Burton asks for input from the other Commissioners.

Mr. Johnson stated that he is not in position to vote at this time since an adequate record is not available on the attempted community service uses.

Mr. Ross stated that 10 days should give the Applicant adequate time to get a sewer response from County Engineering.

Mr. Johnson again requested documentation on the attempts to get a community service uses since Mr. Hudson was not available due to illness.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to leave the record open for ten (10) business days for written comments on the County Engineering comments and for documentation on the community service uses from the Applicant. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Mr. Lank provided the Commission with copies of an E-mail with attachments from Mark Dunkle, Attorney on behalf of the Barry Baker applications for C/Z #1675 and C/U #1853. The attachments include a letter from Kenneth Mecham, General Manager of the Board of Public Works for the City of Lewes, a copy of Board Resolution No. 07-002, dated March 27, 2007, a resolution to establish a procedure for application for utility services for areas beyond the limits of the City of Lewes, and a copy of the policy on providing Board of Public Works utility services outside the Lewes city limits. The copies were provided since on February 25, 2010 the Commission had deferred action on both applications for further consideration and had left the record open for written comments for 10 days. The 10 day period ended March 7, 2010. Since March 7, 2010 was a Sunday comments were accepted until close of business on Monday March 8, 2010.

Mr. Lank provided the Commission with a letter and report from the League of Women Voters of Sussex County Observer Corps. The document reports on their attendance and observations of the County Council and Commission public hearings and offers comments and suggestions.

Meeting adjourned at 8:20 p.m.