



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 22, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 22, 2012, 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 March 8, 2012 as amended. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2005-60 – application of **MARDRIN HOMES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 27.34 acres into 56 lots, (Environmentally Sensitive Development District Overlay Zone), located west of Road 381, 3,860 feet north of Route 54, and south of Dirickson Creek.

Mr. Abbott advised the Commission that this is a Final Record Plan for a 56-lot Environmentally Sensitive Developing District Overlay Zone subdivision application; that the Commission granted preliminary approval for 56 lots on October 17, 2007; that time extensions were granted on September 17, 2008; October 14, 2009, October 4, 2010, and August 9, 2011; that the Final Record Plan complies with the Subdivision and Zoning Codes and the conditions of preliminary approval; that all agency approvals have been received; and that the Commission had been provided with a report from the DNREC Natural Heritage and Endangered Species Section.

Mr. Smith stated that the Commission had deferred action two weeks previous for participation of all Commission members, and asked Mr. Edward M. Launay of Environmental Resources, who was in the audience, to come forward and address the Commission.

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Mr. Launay advised the Commission that he has received an approved wetland delineation; that a man-made agricultural ditch crossing the site was an issue; that at one point the ditch connected a wooded area and an agricultural area; that the ditch is considered waters of the United States, not a wetland; that the ditch is not a blue-line stream; that the ditch is to remain open and will have culverts installed for crossing; and that no wetlands exists on any of the lots within the project.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant final approval of Subdivision #2005-60 subject to the staff approving acceptable wording on the Record Plan indicating that there are not wetlands on the individual lots. Motion carried 5 – 0.

C/U #1923 – application of **DONNA MASSEY** to consider the Conditional Use of land in 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 Seaford Hundred, Sussex County, containing 35,000 square feet, more or less, lying at the west of Road 552 (Shufelt Road) ½ mile north of Route 20 (Stein Highway).

The Commission discussed this application which has been deferred since February 9, 2012.

Mr. Wheatley referenced that, if approved, the motion should reference that the intent is to include family members.

Mr. Ross referenced the existence of a homeowners association and questioned if the Commission were to recommend approval can the homeowners association and the Applicant work with each other to resolve their differences.

Mr. Smith stated that the Commission held a public hearing, deferred action and then listened to Mr. Robertson's findings as to the restrictions and covenants and then asked if he was correct that what the Applicant is requesting, a 2-unit multi-family dwelling structure, is prohibited by Ordinance; that the restrictions and covenants do and are pertaining to the site and the surrounding neighborhood in adjacency to the site; that the Commission is being asked to recommend approval for a multi-family 2-unit dwelling structure that does not, in it's current format, exist; that as stated by the Applicant, the cooking facilities are not in place nor were they in place previously; that the Commission is not being asked forgiveness of a violation; that the Commission is being asked to allow the creation of a multi-family dwelling structure that is prohibited by the recorded restrictions and covenants from being allowed; that the restrictions and covenants were recorded 10 years prior to the Applicant's purchasing the property; that the restrictions and covenants were public record as indicated by the nine (9) signatures and a petition in opposition to the application; that the restrictions and covenants were relied on by the opposition and all parties to sales of those lands as to what could and could not be created upon those lands; that at the public hearing the Applicant could provide no evidence of this multi-family 2-unit dwelling structure being in conformity to the nature of the surrounding neighborhood; that Mr. Robertson said the County Council gives a lot of consideration to conformity when the Council deals in matters of restrictions and covenants; that the Applicant stated her intention to deed the property to another family member, resulting in her, perhaps, residing in the created smaller living unit; questioning how many times the Commission has heard Mr. Fuqua or Mr. Schrader, as examples, tell the Commission that the Commission must

obey the ordinances in effect at the time of application and public hearing; that the Commission has been cautioned not to “legislate”, but that if the Commission finds an ordinance to the contrary or in need of amendment to do so, but we must honor that ordinance or findings of fact as to its enforcement in the present time; that even if it means submerging our individual opinions as to what the law ought to be, the Commission must respect the majesty of the law; that the public needs to be able to rely on this being so; that the signers of the petition relied on those restrictions and covenants and while one, Mr. Dennis Stordall, indicated that he could be comfortable with a family members only condition as an approval recommendation, Mr. Stordall indicated twice that he did not speak for anyone, other than himself; that no one has expressed a comfort level with a family members only condition as an approval recommendation; that the Commission has a difficult decision to make; that many times I, myself, and perhaps other Commission members as well, have had to “Hold your nose and vote” for approval of an application; that why, because it was the proper thing to do; that this may be a time when I have to “hold my nose” and vote for denial for the same reason; that a lot of energy has been spent on this application, and is the same energy that we try to bring to each application and public hearing that is brought before us; and that we are a good Commission and I will respect the vote no matter the outcome.

Mr. Robertson stated that the use is not a permitted use, but an application process is available for an application, i.e. Conditional Use; that the use is not prohibited by the Code or Ordinance, only that it is not a permitted use, but requires Conditional Use approval; that the County is not bound to abide by restrictive covenants, but the County should give some consideration to those restrictive covenants.

Mr. Burton agreed with Mr. Smith and referenced to previous considered Folmsbee application.

Mr. Robertson referenced that the Folmsbee application was originally approved for family use and the recent application was requested to eliminate family use only, and that application seeking an amendment to the original approval was denied.

Mr. Johnson agreed with some of Mr. Smith’s comments and with Mr. Wheatley’s comments, and stated that he may support the application since the lot is on a public road, not in a subdivision, and since the improvements appear to be one (1) single family dwelling structure.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1923 for Donna Massey 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 she desires to use as two (2) separate dwelling units while she occupies one of them.
- 2) With the conditions placed upon this use, it will be limited to the Applicant as long as she occupies one of the units.
- 3) The use will not have any significant impact on roadways or traffic.
- 4) Although there was opposition to the proposed use, that opposition appeared to be directed against the possibility that both units would become rental units occupied by unrelated parties and not the Applicant or her family.
- 5) This recommendation is subject to the following conditions:

- a. Only two (2) units shall be permitted, and they shall be located within the existing structure.
- b. One of the units shall be occupied by the Applicant, Donna Massey, and her family. In the event she no longer occupies a unit on the property as her residence, this Conditional Use shall automatically terminate.
- c. The property may be subject to Restrictive Covenants concerned the proposed use. The County is not a party to, nor governed by those Restrictions. This recommendation should not be construed to override any applicable Restrictions or the rights of property owners to enforce them.
- d. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 3 – 2.

Vote by roll call: Mr. Ross, yea; Mr. Smith, nay; Mr. Johnson, yea; Mr. Burton, nay; and Mr. Wheatley, yea.

C/U #1924 – application of **COLONY POOL SERVICE** to consider the Conditional Use of land in an MR Medium Density Residential District for a public utility (above ground storage tank) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.19 acres, more or less, lying at the northwest corner of the intersection of Sanctuary Court with the Sanctuary Subdivision and Delaware Route One.

The Commission discussed this application which has been deferred since March 8, 2012.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1924 for Colony Pool Service for a public utility (above ground storage tank) based upon the record made at the public hearing and for the following reasons:

- 1) This application is for a chlorine storage tank to be located within the existing Sussex Shores Water Company, Inc. compound on Route One near Bethany Beach.
- 2) This storage of this product will allow Colony Pool Service to better and more efficiently serve its clients in Sussex County as well as the Sussex Shores Water Company, Inc.
- 3) Colony Pool Service currently has a similar tank in the Wilmington area that is its only source of the chlorine product requiring it to be trucked from Wilmington to sites throughout Sussex County. Locating a tank within Sussex County will eliminate excessive trips to and from Wilmington carrying the product to customers in Sussex County.
- 4) The use of the tank will only be seasonal.
- 5) The proposed use is consistent with the existing utility use of the Sussex Shores Water Company, Inc. for the property.
- 6) This property is located in the Environmentally Sensitive Development District Overlay Zone and is near the coast where it will be susceptible to high wind, hurricanes, etc. and is in close proximity to residences. As a result, this recommendation is subject to the following conditions:

- a. The use shall be limited to the proposed 6,250 gallon vertical tank as stated during the Applicant's presentation within the Sussex Shores Water Company, Inc. water plant compound.
- b. In the event that the Conditional Use issued to Sussex Shores Water Company, Inc. shall terminate, this Conditional Use shall also automatically terminate.
- c. As stated by the Applicant, the use shall be seasonal from April 15 through October 15.
- d. As further stated by the Applicant, deliveries to and from the storage tank shall be limited to Monday through Friday between 8:00 a.m. and 4:00 p.m.
- e. The tank area shall be enclosed with fencing and the fencing shall contain a sign with notification information in the event of a leak or other damage to the tank. The notification shall include a 911 reference and phone number for the owner and the Department of Natural Resources and Environmental Control (DNREC). Such a sign shall also be installed at the entrance to the Sussex Shores facility.
- f. Prior to the issuance of the Final Site Plan approval, the Applicant shall provide the Office of Planning and Zoning with confirmation that it has notified the State Fire Marshal of the intended use and the chemical that will be stored on site.
- g. The Applicant shall comply with any and all Federal, State and County regulatory agencies having authority and jurisdiction over the proposed use; In addition, the Applicant shall comply with all applicable County Building Code requirements for construction of this structure in a coastal high-wind area.
- h. The Final Site Plan shall be subject to review and approval of the Sussex County Planning and Zoning Commission.

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 #1925 – application of **PIEDMONT LEASING** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and trucking storage to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 10.54 acres, more or less, lying at the northeast corner of Bethel Road (Road 54 and Road 414) Parker Road (Road 415).

The Commission discussed this application which has been deferred since March 8, 2012.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1925 for Piedmont Leasing for an office and trucking storage based upon the record made at the public hearing and for the following reasons:

- 1) The site has historically been used for agribusiness operations, with two prior Conditional Use approvals. In 1984, it was approved for a livestock market and then in 1999, it was approved for a stockyard and slaughter house for a maximum number of animals, not to exceed 26,000 per year. There was testimony during the public hearing that under these prior uses there were as many as 30 to 40 trucks per day handling the livestock.
- 2) The proposed use is important to agricultural and poultry operations in Sussex County. The Applicant will have approximately 450 employees, including 18 crews and 3

members of management. Those employees work throughout Sussex County doing chicken catching operations for Perdue Farms and they are not generally working at the site. There will be approximately 10 lowboy trailers parked on the site for hauling forklifts and 30 forklifts will be stored within the existing buildings when not in use in poultry operations. There will not be a great deal of truck or vehicle traffic to and from the site associated with this use, and this use will be much less intensive with less heavy truck traffic than the prior approved uses for this site.

- 3) The Applicant has stated that no large vehicle repairs or other mechanical work will occur on site, only regular and routine maintenance.
- 4) This use is appropriate for this site as redevelopment of the previously approved agribusiness operations and the use is consistent with the underlying AR-1 Agricultural Residential zoning of the property.
- 5) The Applicant has stated that by approval of this Conditional Use, the prior Conditional Uses for a livestock market and slaughter house will terminate.
- 6) This recommendation is subject to the following conditions:
 - a. The use shall be limited to a trucking storage operation and an office as stated by the Applicant.
 - b. All security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - c. The hours of operation shall be from noon to midnight, Monday through Saturday.
 - d. No livestock shall be kept on the land at any time.
 - e. There shall be no manure handling or storage on site.
 - f. There shall only be light mechanical work allowed on the site and it shall occur within the existing building for the Applicant's equipment and vehicles only.
 - g. There shall not be any outside storage of permanently inoperable, junked or abandoned vehicles or equipment.
 - h. Used oil and greases shall be disposed of off-site via an approved environmentally safe method.
 - i. There shall be no more than 2 tractors, 4 vans and 35 forklifts and 12 low-boy trailers on the site at any one time.
 - j. The areas set aside for vehicles, equipment and employee parking shall be clearly delineated on the Final Site Plan and on the site itself. There shall be parking for at least 3 employees.
 - k. A forested buffer of at least 10 feet wide shall be provided along the perimeter of the use except for the boundaries along County roadways. The location of this forested buffer and a landscape plan shall be included as part of the Final Site Plan.
 - l. Any dumpsters on the site shall be screened from view from neighboring properties or roadways.
 - m. Upon approval of this Conditional Use by Sussex County Council, all prior Conditional Uses for this property shall automatically terminate.
 - n. The Final Site Plan for this use shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, 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.

PUBLIC HEARINGS

C/U #1926 – application of **NANTICOKE SHORES ASSOCIATES, LLC** an Ordinance to Amend Condition No. 8 of the Conditions of Approval in Ordinance No. 2204 for Conditional Use No. 1862 for Nanticoke Shores Associates, LLC as it relates to earthen berms around the perimeter of the property for a Campground/RV Park to be located on certain parcel of land lying and being in northeast of Long Neck Road (Road 22) 1 mile east of Pot Nets Road (Road 22C).

The Commission found that the Applicant had submitted Exhibit Booklets on March 12, 2012 and that the Commission had previously received said Exhibit Booklets. The Booklets contain a copy of Ordinance No. 2204 for Conditional Use No. 1862; a copy of a June 22, 2011 letter from the Department to the Applicants; a copy of a November 28, 2011 letter from the Department to the Applicant's Engineer; a Google Earth photo showing the manufactured home park area and the site area; a December 7, 2011 letter from the Sussex Conservation District to the Applicant's Engineer; December 20, 2011 and January 5, 2012 letters from the Applicant's Attorney to the County Attorney; a copy of the Application form; and a suggested and proposed new Condition No. 8 for consideration.

Mr. Lank advised the Commission that comments were not requested from DelDOT or County Engineering since this application is for an amendment to a Condition of Approval for the previously approved Conditional Use No. 1862.

The Commission found that David A. Podlaseck of Nanticoke Shores Associates, LLC was present with Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A., and that they stated in the presentations and in response to questions raised by the Commission that the original application had substantial opposition; that the Commission recommended denial of the original application; that the County Council had similar opposition on the original application, but chose to approve the Conditional Use with a reduction of the number of units permitted and 12 Conditions of Approval; that they are here before the Commission to amend Condition No. 8 only; that the original Conditional Use was adopted by the County Council as an Ordinance, and that any condition created by County Council can only be amended after consideration by both the Commission and the County Council; that Condition No. 8 references that "The project shall be surrounded by a 50 foot vegetative buffer with a 6-foot earthen berm, planted with indigenous trees, and the perimeter of the property shall be fenced with a security gate at the entrance to the campground/RV park, with appropriate security lighting, and shall include a separate office for this project, with appropriate directional signage"; that Jessica Watson of the Sussex Conservation District has advised, by letter to Bryon H. Jefferson, P.E. for the project, that it has been questioned whether installing a berm along the marsh to the north of the development will obstruct drainage, and that per the District review, the District believes that the berm will obstruct rear lot drainage from the proposed units; that a continuous berm around the perimeter of the site will obstruct the natural conveyance of the property to the marsh, and in a developed condition the berm will act as an impoundment potentially creating flood conditions; that in order for the District to approve the sediment and stormwater plan, significant engineering and construction would be needed to design a drainage/stormwater conveyance plan to work around the berm; and that the District does not believe that this was the intention of the County Council;

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that the earthen berm could affect Rehoboth Shores community; that it is the intent of this amendment of Condition No. 8 to eliminate that portion of the berm along the marsh; that the fencing proposed will be split-rail; that the Applicants believe that the original intent of the County Council was to screen the campground/RV park from the existing manufactured home community; and that Tab 8 of their Exhibit Booklet contains their suggested wording as replacement to the original Condition no. 8 and read "A 50 foot vegetative buffer with a six foot wide earthen berm planted with indigenous trees shall be constructed around that portion of the perimeter of the site which abuts any existing mobile homes in Rehoboth Shores, running parallel to Seagull Lane, Seahawk Lane, crossing Bayview Land and ending at the Northern portion of the site at Baybreeze Lane, screening all existing mobile homes from view of the Campground/RV site. The balance of the perimeter of the property shall have a 50 foot vegetative buffer, with three rows of indigenous trees planted in the buffer area in addition to the trees that already exist on that portion of the perimeter of the property, thereby insuring that best practice storm water management will occur and that potential for flooding the site and any portion of the developed area of Rehoboth Shores Community is minimized. The perimeter of the property shall be fenced, with a security gate at the entrance to the Campground/RV park, with appropriate security lighting, and shall include a separate office for this project, with appropriate directional signage".

The Commission found that Mr. Bayard submitted an aerial photograph of the site high-lighted to depict the area of the intended berm with the appropriate plantings, and that the area of perimeter that is not high-lighted will contain the additional three (3) rows of indigenous trees.

The Commission found that Barbara Dobb, a member of the Homeowners Association of Rehoboth Shores, was present in opposition and stated that the existing fencing is not being maintained; that a large number of the existing trees have died or been removed; that she is opposed to removal of the berm; and that she is still concerned about trespassing.

The Commission found that Ms. Dobb submitted photographs of some of the existing fencing and trees.

The Commission found that James Robinson was present and questioned what kind of material will be used for the berm, and wondering if it was be dredge material; and questioned if an environmental impact study has been performed.

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/U #1927 – application of **TWO FARMS, INC.** to consider Conditional Use of land in AR-1 Agricultural Residential District for a convenience store with gas pumps to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 8.88 acres, more or less, lying east of U.S. Route 13 and south of Route 24.

The Commission found that the Applicants provided a survey/site plan with their application.

The Commission found that DelDOT provided comments in the form of a memorandum and a letter in reference to a Traffic Impact Study performed for the application, which is a part of the record.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex – Laurel Growth Area; that an on-site septic system is proposed; 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 the Sussex Conservation District provided comments in the form of a memorandum which references that there are four (4) soil types on this parcel; 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 any off-site drainage improvements will be required; and that it may be possible that on-site drainage improvements will be required.

The Commission found that a letter was received from Carolyn M. O’Neal, an adjacent property owner, stating that if she must live next to a convenience store with gas tanks, she asks that two things be required: 1) that the store not be allowed to operate 24 hours per day; 2) that a solid, at least 6-foot fence be constructed along her west and south attached boundary lines to preserve a little privacy to her house and back yard; and noting that the existing chain-link fence does not provide any privacy; and suggesting that if the Applicants would rather square off their land, she would be happy to talk to them about adding her 1.5 acre to their acquisition.

The Commission found that Jeff Bainbridge of Two Farms, Inc. was present with Garth Jones, P.E. of the Becker Morgan Group.

Mr. Jones submitted a revised letter from Carolyn M. O’Neal, dated March 22, 2012 and advising that she would like to rescind her March 19, 2012 letter, and that she only asked for a stipulation that a solid 7-foot fence be constructed along her west and south attached boundary lines to preserve a little privacy in her house and back yard for she and her 90-year-old mother; that the chain-link fence already there will not provide such protection; and that if Two Farms, Inc. would rather square off their land plot, she would be happy to talk to them about adding her 1.5 acre to this acquisition.

The Commission found that Mr. Jones and Mr. Bainbridge continued by adding that a 5,800 square foot Royal Farm Store is proposed with two fuel canopies, one on the Route 13 side and one on the Route 24 side; that DelDOT will require a right-in/right-out on Route 13, acceleration lanes on both Routes, and a left turn on Route 24 among other requirements; that the Applicants intend to combine both parcels, one zoned C-1 General Commercial and one zoned AR-1 Agricultural Residential, to develop the site; that the existing repair shop on the C-1 parcel will be removed; that the auction building and related parking on the AR-1 parcel will remain; that parking will be shared and shall be subject to site plan approval; that the site is surrounded by

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properties zoned C-1 and B-1, Conditional Uses, and non-conforming businesses; that the Applicants have agreed to install the fencing requested by Ms. O'Neal; that a landscaping plan has not been prepared, but will be submitted; that dumpsters will be screened; that they are proposing two pylon signs; that there will also be directional signage for entry/exit; that there will be no more than 40 employees total on shifts during the 24 hours operation with three shifts; and that all lighting will be downward illuminated.

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. Ross questioned why the Applicant did not seek a CR-1 zoning classification since the property includes a small area of C-1 General Commercial zoned land and is at a major intersection.

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

Subdivision #2012-1 – application of **RALPH E. AND BETTY F. MARVEL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 3.89 acres into 5 lots, and a waiver from the street design requirements and a waiver from the forested buffer requirements, located on the easterly side of Road 346 (Holt's Landing Road) 847 feet north of Route 26 (Vines Creek Road).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 20, 2012 is a part of the record for this application; that DelDOT issued a Letter of No Objection on December 7, 2011; that the applicant's submitted an Exhibit Booklet on March 12, 2012; that a soils report from Coastal Soils indicating that the site meets current DNREC requirements for on-site wastewater treatment and disposal systems was received on March 20, 2012; and that a letter in opposition was received from Margaret H. Lane and family on March 21, 2012.

Mr. Robertson advised the Commission that he received a letter from Mr. Fuqua in reference to deed restrictions and that the restrictions will include street maintenance and the Agricultural Use Protection Notice.

James Fuqua, Attorney and Jeff Marvel were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is a small family subdivision request; that four lots and residual land are proposed; that an Exhibit Booklet was submitted earlier; that the site is on the east side of Road 346 and contains 3.89-acres; that all of the proposed lots exceed 0.75-acres; that access to the lots will be from a 50-foot easement; that the easement is proposed to be between Lots 1 through 4 and the residual lands; that DelDOT has issued a Letter of No Objection; that each deed will contain language for the maintenance of the easement; that the proposed street design will be 2-inches of crusher run over an approved sub-base; that the proposed lots will utilize on-site septic and wells; that a soils study has been completed however it has not been approved by DNREC; that the proposed

project will have minimal impact on the surrounding area; that the site has been tilled in the past; that there are existing subdivisions located to the east and north; that the lands to the east are farmland; that the site is not located in a flood plain and there are no wetlands on the site; that the project will not have a negative impact on the local school district; that the applicant is requesting a waiver from the required 20-foot landscaped buffer around the perimeter of the site; that the Marvel family has owned the property for 80 plus years; that the proposed lots will be for family members; that the Agricultural Use Protection Notice will be included in the Restrictive Covenants; that the streets will be reviewed by the Public Works Office; that the proposed 50-foot easement can be shortened; that they are requesting the waiver from the buffer requirements since it would be lots abutting other lots; and that no manufactured homes are proposed.

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

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

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC and for further consideration. Motion carried 5 – 0.

Subdivision #2012-2 – application of **H K S 4, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 63.59 acres into 138 lots, (expansion of 16 lots to an approved 122 – lot Environmentally Sensitive Overlay District), located south of Road 336 (Piney Neck Road) approximately 1,800 feet west of Road 335 (Bunting Road).

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the approved street layout is similar to what was originally approved; that the Commission granted preliminary approval for 125 lots on July 27, 2006; that a revised final approval was granted for 122 lots on September 19, 2007; that the applicants submitted supporting comments on January 24, 2012; and that this application is for the expansion of 16 additional lots for a total of 138 lots.

The Commission found based on comments received from the Sussex County Engineering Department Utility Planning Division that the site is located in the Dagsboro/Frankford Sanitary Sewer District; that wastewater capacity is available; that there are no System Connection Charge credits available; that it is likely that System Connection Charges will be required; that the current System Connection Charge Rate is \$6,474.00 per EDU; that sewer service has not been extended to the area at this time; that the developer must complete construction of regional infrastructure and onsite collection system in order to receive sewer service; that the Sussex County Engineering Department has agreed to the developer pumping and hauling wastewater for sixteen homes in the proposed project prior to completion of regional infrastructure; that conformity to the Dagsboro/Frankford Planning Study is required; that the project is within the boundary of the Dagsboro/Frankford Sanitary Sewer District and connection to the sewer system is mandatory; that the parcels were added to the sewer district and sanitary sewer service has not been extended to the parcels; that the developer is required to construct a regional pumping

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station and forcemain to the existing treatment plant; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity at the treatment plant; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's requirements and procedures; that the Sussex County Engineer must approve the connection point; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; that all costs associated with extending sewer service will be the sole responsibility of the developer; and that a proper turnaround, meeting Sussex County Standards, shall be provided at lots 107 and 129.

Stephen Marsh, P.E. with George, Miles and Buhr, LLC and Bobby Horsey, developer were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that 16 additional lots for a total of 138 lots are proposed; that the recorded plan is for 122 lots; that the total open space has been increased from 11 acres to 22 acres; that there is a minor road adjustment in the street layout that will be subject to Public Work's review and approval; that the project will be served by Sussex County Sewer; that there is a pump station located on the site on the south side of Piney Neck Road; that a tot lot is not proposed; that the open space area on the north side of Piney Neck will contain walking trails; that there are 8 homes under construction; that the boat slips and pier is permitted by DNREC; and that 7 out of 8 property owners area aware and agree to the revised plan.

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

OTHER BUSINESS

Americana Bayside MR/RPC

Revised Setbacks

Revised Site Plan – Phase 6

Revised Site Plan – Phase 11

Mr. Abbott advised the Commission that this is a request to amend the side yard setbacks for single-family dwellings and duplex home types to 5 feet for future homes in this project; that the developers feel that this revision will help to achieve a traditional neighborhood design; that since the project is a residential planned community, the Commission may amend, modify the setbacks to create a superior design; and that the Commission was previously provided a copy of a letter from the developers explaining this request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised side yard setbacks as requested. Motion carried 5 – 0.

Mr. Abbott advised the Commission that this is a revised site plan for Phase 6; that this phase was originally approved and recorded on March 20, 2007; that the Commission granted a revised

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approval of May 19, 2010 for a mix of townhouse, duplex and single-family homes for 57 units; that the revised plan decreases the density to 50 units while decreasing the townhomes and increasing the single-family type dwellings; that the proposed side yard setback is 5 feet; and that the Commission was previously provided a copy of the revised site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised site plan as submitted. Motion carried 5 – 0.

Mr. Abbott advised the Commission that this is a revised site plan for Phase 11; that this phase was originally approved and recorded on April 4, 2011; that the proposed revision would decrease the density from 33 units to 31 units due to a decrease in the number of duplex homes and an increase to single-family homes; that the proposed side yard setback is 5 feet; and that the Commission was previously provided a copy of the revised site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the revised site plan as submitted. Motion carried 5 – 0.

Evans Farm

C/U #1849 Site Plan – Road 349

Mr. Abbott advised the Commission that this is a preliminary site plan for 200 multi-family units located on 48.35 acres; that this conditional use was approved on February 1, 2011 with 14 conditions; that the 14 conditions of approval are noted on the preliminary site plan; that 23 buildings are proposed; that the typical buildings are 56-feet by 110-feet with the minimum 40-foot building separation between units; that the maximum allowed building length is 165-feet; that 100, 22-foot by 22-foot detached garages are proposed providing 200 parking spaces; that there are also 292 outside parking spaces proposed; that the amenities include the required sidewalks on one side of the streets, mulch walking trails, a clubhouse, swimming pool, playground, tennis and basketball courts and a sand volley ball court; that a landscaping plan has been submitted, which includes shrubs, ornamental plantings, evergreen screening trees and shade trees; that Tidewater Utilities will provide central water to the site and Sussex County will provide central sewer to the site; that there is a note on the site plan indicating that the maximum allowed building height is 52 feet; that the plan needs to be revised to reference 42 feet in height or a variance from the Board of Adjustment is required; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and the correct height limit being referenced on the site plan; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals and the building height note being corrected. Motion carried 5 – 0.

The Peninsula MR/PC – Marina Bay – Area 3

Revised Site Plan – Road 299

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Mr. Abbott advised the Commission that this is a revised site plan for single-family detached units in a 165-foot building envelope; that the previously approved plan for this area was for 53 single-family detached units; that the revised plan is for 48 single-family detached homes; that there a 6, 4 unit groups and 8, 3 unit group building envelopes proposed; that the building envelopes meet the maximum length of 165 feet and have the minimum required 40-foot building separation between envelopes; that the same setbacks are proposed as the previously approved plan; that since this project is a residential planned community, the Commission needs to approve any revisions to the site plans; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the revised site plan as submitted. Motion carried 5 – 0.

Nelsa F. & Ernest H. Hosse, III

3 Lots & 50' Right-of-Way – Route 18

Mr. Abbott advised the Commission that this is a request to subdivide a 3.01-acre parcel into 3 lots with access from a 50-foot right of way; that the owner is proposing to create the 50-foot right of way over an existing entrance and roadway; that Lots A and C are proposed to contain 0.84-acres and Lot B 0.80-acre; 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 this request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this request 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.

Beverly W. Smith & Marlene W. Hamilton

2 Lots – Warrington Lane – Road 70

Mr. Abbott advised the Commission that this is a request to create 2, 0.75-acre lots out of a 10.15-acre parcel; that the proposed lots would have access from Warrington Lane; that the residual lands will contain 8.65-acres; 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.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve this request 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 8:30 p.m.