

MINUTES OF THE REGULAR MEETING OF MARCH 26, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 26, 2015 in the County Council Chambers, Sussex County Administrative Office Building, 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 III, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director, and Ms. Janelle Cornwell – Planning and Zoning Manager.

Mr. Lank advised the Commission that CZ #1766 for Stonemark Ventures, LLC was withdrawn on March 20, 2015.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of March 12, 2015 as amended. Motion carried 5 – 0.

OLD BUSINESS

Change of Zone No. 1766 – Stonemark Ventures, LLC

Application of **STONEMARK VENTURES, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HR-1 – RPC High Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19.52 acres, more or less, land lying south of Road 285 (Beaver Dam Road) 2,500 feet west of Road 275 (Plantation Road) (911 Address: None Available) (Tax Map I.D. 334-5.00-222.01).

Mr. Wheatley announced that this application was withdrawn on March 20, 2015.

Change of Zone No. 1765 – Red Mill Pond, LLC

Application of **RED MILL POND, LLC** to amend the Comprehensive Zoning Map of Sussex County 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, containing 29,289 square feet, more or less, land lying northeast of Route One (Coastal Highway) across from Red Mill Pond (911 Address: None Available) (Tax Map I.D. 334-1.00-5.00).

Mr. Wheatley referred to this application which has been deferred since March 12, 2015.

Mr. Burton asked for some discussion on this application prior to making a motion, and added that the record may have been inadequate.

Mr. Johnson stated that he has no problem with the application since the applicant intends to combine this property with the adjacent property; since commercial areas adjoin the property; that the concept is acceptable; and that he was also concerned that the presentation could have been more informative.

Mr. Ross stated that combining the parcels makes sense; that he has no objection; and that the applicant may have assumed that since the parcels are being combined that there should be no problem.

Mr. Smith stated that the record could have been stronger and more supportive.

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

PUBLIC HEARINGS

Mr. Robertson explained the public hearing process.

Change of Zone No. 1767 – Adel M. Baghouli

Application of **ADEL M. BAGHOULI** to amend the Comprehensive Zoning Map of Sussex County 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, containing 2.867 acres, more or less, land lying south of U.S. Route 9 (Lewes-Georgetown Highway) and 1,000 feet west of Road 282 (Arabian Acres Road) (911 Address: 28990 Lewes-Georgetown Highway, Lewes) (Tax Map I.D. 334-10.00 31.05 and 31.06).

The Commission found that the applicant provided a copy of the survey of the property with the application filed on November 19, 2014.

The Commission found that on July 17, 2014 DeIDOT provided comments in the form of a letter and Service Level Evaluation referencing that the Department recommends that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed; and that the current Level of Service “E” of Route 9 will not change as a result of this application.

The Commission found that on March 20, 2015 the Sussex Conservation District provided comments in the form of a memorandum referencing that there are two (2) soil types on this property; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; that no off-site drainage improvements will be necessary; that it is not likely that the project will necessitate on-site drainage improvements; and that no tax ditches are affected.

The Commission found that on March 23, 2015 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the property is located in the North Coastal Planning Area; that an on-site septic system is proposed;

that conformity to the North Coastal 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 Adel M. Baghouli was present with David Hackett, Esquire, and stated in their presentation and in response to questions raised by the Commission that the applicant is a local businessman that does custom painting and wall design, including window treatments and closet organization; that they are requesting B-1 Neighborhood Business zoning, a zoning classification that references the uses intended; that a dwelling exist on the easterly property; that the applicant is proposing to erect a 5,000 square foot building with three (3) retail units; that one of the units will be utilized by the applicant and the other two will be leased; that there are several B-1 Neighborhood Business properties, C-1 General Commercial properties, and some Conditional Use properties in the immediate area; that those properties include antique stores, a Moose Lodge, a building supply business, a landscaping supply business, a gun shop, a roofing business, and an appliance business; that Route 9 is an Arterial Roadway, which is trending toward business, rather than residential uses; that the site is more appropriate if used as B-1 Neighborhood Business than residential; that there should be no adverse impact on the community; that the use is consistent with the Comprehensive Land Use Plan Map, which designates the area as Low Density; that the applicant realizes that the use of the property will be subject to a site plan review by the Commission; that the applicant is building a structure on the site for storage of vehicles and materials, and has obtained a Building Permit for a pole barn for his personal use; that the applicant has owned the property for approximately two years; that the applicant was not aware that there had been a previous application for the site; that another similar pole building exists on the adjacent site; that Mr. Hackett suggested that the applicant apply for a rezoning, rather than a Conditional Use due to the number of commercial zonings and uses in the area; that the applicant resides in the dwelling on the easterly lot, and plans to build the commercial building on the westerly lot; that the applicant may combine the lots, but would prefer to keep the lots separate since one or both of the lots could be sold in the future; that they have not yet met with DelDOT for consideration on the entrance; and that the B-1 Neighborhood Business zoning classification permits this type of use.

Mr. Hackett presented suggested Findings of Fact for consideration.

Mr. Lank advised the Commission of the differences between the required property line setbacks for an AR-1 Agricultural Residential property v. a B-1 Neighborhood Business property.

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. Johnson stated that he has some concerns that a previous application for the same site or adjacent site was denied and suggested that the staff research the property and provide Minutes of the Planning and Zoning Commission for review.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration, and that the staff shall provide a copy of Minutes of the Planning and Zoning Commission for any previous applications on this site, if any. Motion carried 5 – 0.

There was a consensus of the Commission that the public hearings for Change of Zone No. 1769 and Conditional Use No. 2012 be combined for the purpose of the public hearing and announcing that the decisions on the two applications will be individual decisions.

Change of Zone No. 1769 – Ocean Atlantic Communities, LLC

Application of **OCEAN ATLANTIC COMMUNITIES, LLC** to amend the Comprehensive Zoning Map of Sussex County 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, containing 36.98 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision, and southeast of Railroad near Nassau; (911 Address: None Available) (Tax Map I.D. 335-11.00-55.00, 56.00, 59.00, and 59.01).

Conditional Use No. 2012 – Ocean Atlantic Communities, LLC

Application of **OCEAN ATLANTIC COMMUNITIES, LLC** to consider the Conditional Use of land in a MR (Medium Density Residential District) for a mixed residential use with multi-family dwellings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.26 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision and southeast of Railroad near Nassau (911 Address: None Available) (Tax Map I.D. 335-11.00-55.00, 56.00, 59.00 and 59.01).

The Commission found that the applications were filed on November 25, 2014 and included surveys and site plans.

The Commission found that the applicants submitted an Exhibit Booklet on March 16, 2015 for consideration, and that the Exhibit Booklet contains a presentation outline; a data column; a history of the project; a copy of Ordinance No. 1790 for Conditional Use No. 1526, the application of Robino-Sanibel Village, LLC for multi-family use of the property approved September 13, 2005; a copy of the previously approved plan for the multi-family use that never developed; a copy of the proposed rezoning plan; a copy of the proposed conditional use plan; a copy of the revised proposed conditional use plan based on Technical Advisory Committee comments; a series of map, plans, aerials, and renderings; a copy of the 1868 Beers Atlas map of the area; a copy of the response to the PLUS comments; an Environmental Assessment and Public Facilities Evaluation Report; a letter on Source Water Protection; a response to the Technical Advisory Committee comments; a U.S. Army Corps. of Engineers Jurisdictional Determination letter; a site specific assessment and brownfield investigation report from Environmental Alliance, Inc.; a letter from DelDOT in reference to the Traffic Impact Study for the project; and a Willing and Able to Serve letter from Tidewater Utilities, Inc.

The Commission found that on March 12, 2015 the applicants provided additional Exhibits, including a Google Earth photo of the site; copies of portions of the Sussex County Comprehensive Land Use Plan relating to the Environmentally Sensitive Developing Area and Future Land Use Map; copies of portions of the Sussex County Comprehensive Zoning Map; copies of the Minutes of the Planning and Zoning Commission meeting of March 2, 2004 and April 29, 2004 relating to the Robino-Sanibel Village, LLC application for Conditional Use No. 1526; and a copy of Ordinance No. 1790, dated September 13, 2005 referencing the approval of Conditional Use No. 1526 by Sussex County Council.

The Commission found that on March 20, 2015 the Sussex Conservation District provided comments in the form of a memorandum referencing that the site contains five (5) soil types; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it is not likely that this project will necessitate any off-site drainage improvements; that on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that on March 23, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the project is located in the West Rehoboth Expansion Area; that wastewater capacity is available for the project; that Ordinance 38 construction is required; that the current System Connection Charge Rate is \$5,500.00 per EDU (Equivalent Dwelling Unit); that the appropriate connection point is not known at this time; that conformity to the North Coastal Planning Study will be required; that the project proposes a mixed residential development of single family detached dwellings and duplexes, for a total of 147 residential units on 36.98 acres; that the project is located within the boundary of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and connection to the sewer system is mandatory; that a potential connection point for the project exists near the northerly end of Tulip Drive; that the potential point drains to nearby Pump Station 240, which in turn discharges through a 4-inch force main to Manhole 19263 near the intersection of Tulip Drive and the northerly side of Route One; that Pump Station 240 currently lacks capacity to serve the proposed project; that the developer shall be required to either upgrade the existing pump station or pump around the station to an acceptable connection point; that all work shall be performed at the developer's expense; that based on limited information available at this time, capacity appears adequate in the downstream transmission system; that the County shall require the developer to undertake or fund a capacity evaluation and planning study to determine sewer connection options and upgrade requirements; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a new concept plan must be submitted to the County Engineering Department for review and approval prior to the design of the sewer system; and that a check list for preparing concept plans is available.

Mr. Lank advised the Commission that the Department has received copies of emails from Jeff Greene and Barbara Vaughan referencing a Traffic Management Study for the area; an email from Bob Maloney referencing the Georgetown Lewes Rail Trail and that the developer could complete the bordering trail and extend under Route One at the Nassau Bridge, and that this

would be an awesome improvement to Route One pedestrian and cycling safety; and an email from Robert Rice in opposition due to the difficulty of getting onto Route One in the summer months to go southbound because of traffic, and adding that all year long the Saint Jude's Church must have the State Police direct church traffic onto Route One, and suggesting denial due to the limited access from Tulip Drive. Mr. Lank provided the Commission with copies of the emails referenced.

Mr. Lank also provided the Commission with a letter received by email from Sol Peltz on behalf of residents from the Village of Five Points requesting that the Commission considered some suggested conditions of approval relating to buffering and access. Mr. Lank provided the Commission with a copy of the referenced letter.

The Commission found that Preston Schell and Ben Gordy were present on behalf of Ocean Atlantic Communities, LLC with James Fuqua, Esquire of Fuqua, Yori and Willard, P.A. and Zac Crouch, Professional Engineer, and D. J. Hughes, Professional Engineer, from Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they realize that there are some concerns from neighbors and the St. Judes Church; that access to the site is from Tulip Drive, a State maintained street within Dutch Acres; that to the south of the site is Dutch Acres, a 40 lot subdivision; that to the east is the Village of Five Points, a 586 unit Residential Planned Community; that to the northeast is Atlantic Concrete, an industrial use; that to the north is the railroad; and to the west is Nassau, the Reserves of Nassau I development, and Taramino, a multi-family project; that in 2005 the site was approved for a 152 multi-family unit project for Robino-Sanibel Village, LLC; that the Commission had originally denied the requested application, and that the County Council approved the application with conditions; that there are two differences in this application and the original application: 1) the original application had a shared entrance with Atlantic Concrete from Old Orchard Road; that a private traffic signal was to be required with the access road; that Tulip Drive is a State maintained street, that provides access to this site; and 2) this application is intended to be an age restricted community with master bedrooms on the first floor; that an age restricted community creates a lower traffic volume; that a Traffic Impact Study was prepared by Davis, Bowen & Friedel, Inc. and has been reviewed by DelDOT; that the Route One and Tulip Drive crossover with have extended turning lanes; that a Traffic Signal Justification Study was performed and that McCormick/Taylor, Consultants to DelDOT have agreed that a full service traffic signal is not warranted at this location; that the applicants will be dedicating a 5.0 foot wide strip along the railroad for a future rail to trail expansion; that central water will be provided by Tidewater Utilities; that central sewer will be provided by the County; that electrical services will be provided by Delmarva Power; that studies indicate that there are no endangered species or cultural resources on the site; that there are 4.51 acres of Federal wetlands on the site; that stormwater management and erosion and sediment control will be provided subject to the current regulations of the Sussex Conservation District; that the previous use of the site was a borrow pit with some fill including debris, stumps, etc.; that the site is being enrolled into the State Brownfield program for future mitigation; that they are requesting consideration for 147 condominium type units, including 43 single family dwelling units, 46 duplex units, and 58 townhouse style units; that recreational amenities will include a clubhouse, a swimming pool, trails and a playground; that the site is located in an Investment Level 1 according to the State Strategies, where the State considers the area already developed or urban in nature; that

development of the site is supported by the State; that the site is located in an Environmentally Sensitive Developing Area (a growth area) according to the Sussex County Comprehensive Land Use Plan; that the type of development intended is an appropriate use in this area; that the rezoning and conditional use is appropriate since the site is located in a growth area, since the site is surrounded by developments, and since the use conforms to the Sussex County Comprehensive Land Use Plan Future Land Use Map; that the location is already urban in character; that the MR zoning requested is consistent with the zonings in the area; that the conditional use for a mixed residential use is consistent and similar to the adjoining uses in the area; that the site is surrounded by MR Medium Density Residential and C-1 General Commercial properties; that two wetlands crossings will be necessary; that they will be providing a minimum of 20-feet for buffering along all Federal wetlands; that the proposed parking lot serving the Rail to Trail will be open to the public; that the site is located in an excellent recharge area; that 29% of the site will be impervious; that bio-retention facilities are proposed; that there will be 26 acres of open space; that tree clearing will be held to a minimum; that most of the trees should be preserved; that a 2014 Environmental Report includes references to 120 test borings of the soils on the site; that the State DNREC has made two recommendations for the mitigation of the site; that the State DNREC has advised that there are no hazardous or health issues or concerns; and that the original approved conditional use was never built and the approval for that use has expired.

The Commission found that Mr. Fuqua submitted and summarized suggested proposed Findings of Fact for Change of Zone No. 1769 for consideration, which include:

- 1) The site is located in Investment Level 1 according to the Strategies for State Policies and Spending which is an area where future redevelopment or infill projects are expected and encouraged by State policy.
- 2) The site of the proposed rezoning is located in the Environmentally Sensitive Developing Area, according to the Sussex County Comprehensive Plan, which is one of the designated growth areas of The Plan.
- 3) The site is surrounded by properties located in the mixed residential area or highway commercial area, which is also designated growth areas of The Plan.
- 4) The proposed rezoning is consistent with the stated purpose of the MR Zoning District, which is to provide for medium-density residential development in areas which are generally urban in character.
- 5) The site is surrounded by land zoned MR-Medium Density, C-1 Commercial and a non-conforming commercial/industrial use.
- 6) The site of the proposed rezoning is located in the West Rehoboth Expansion area of the Dewey Beach Sanitary Sewer District and complies with the system design assumption of a maximum of 4 units per acre. The Engineering Department indicates that there is adequate capacity for the proposed development.
- 7) The site will be served with water for domestic use and fire protection by Tidewater Utilities, Inc.
- 8) The proposed rezoning and use is consistent with neighboring and adjacent property uses and densities, which include single family and multi-family communities and will not have an adverse impact on those communities.

- 9) DelDOT has reviewed and approved the Traffic Impact Study performed for the site and any development will comply with the entrance and road improvements required by DelDOT.
- 10) The proposed MR Zoning designation meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County at an appropriate location established by the Comprehensive Plan.

The Commission found that Mr. Fuqua submitted and summarized suggested proposed Findings of Fact and Conditions of Approval for Conditional Use No. 2012 for consideration, which include:

- 1) These Findings incorporate the Findings for Change of Zone No. 1769, which are applicable to this proposed Conditional Use.
- 2) A Conditional Use for 152 multi-family units was previously approved by the County Council for this site. This Conditional Use proposal with the relocated entrance and the age restriction creates a safer development with less impact for the benefit of current residents and future residents of the development.
- 3) The Conditional Use will permit the development of the property in a way that is consistent with the area and consistent with the prior approval for multi-family dwellings on the parcel.
- 4) The Conditional Use promotes the orderly growth of the County at an appropriate location and provides residential housing which is essential and desirable for the general convenience and welfare.
- 5) These Findings are subject to the following conditions:
 - A. There shall be no more than 147 units being a mixture of 43 single family units, 46 duplex units, and 58 townhouse units.
 - B. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrance and roadway improvements shall comply with DelDOT requirements and, as offered by the Applicant, a five foot easement adjacent to the Railroad right-of-way shall be dedicated for use as part of the proposed Georgetown-Lewes Trail and a parking area shall be provided on site for access to the Trail for the general public.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - G. Buffers and landscape screens will be provided as indicated on the Preliminary Plan.
 - H. The development will be served as part of a Sussex County Sewer District and central water will be provided by a public utility company.
 - I. The clubhouse, pool and playground amenities shall be constructed no later than the issuance of the 80th residential building permit for the project.

- J. Federal wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State Permits.
- K. Any site remediation work required by DNREC as a result of the site study performed by Environmental Alliance, Inc. shall be completed in accordance with DNREC instructions.
- L. As indicated by the Applicant, the development shall be operated as an “age restricted, over 55 community” as that term is generally interpreted.
- M. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.
- N. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The Staff shall approve the revised Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

The Commission found that the Applicants representatives responded to questions raised by the Commission by stating that disclosure documents shall include a reference that a Rail to Trail project may be created along the existing railroad; that disclosure documents will also include a reference that the Atlantic Concrete project and a concrete reclamation site exist to the east of the site; that they will add a 20 foot wide buffer along the perimeter line next to the Village of Five Points; that a 5-foot wide dedication of right-of-way will be added along the railroad for the proposed Rail to Trail; that according to DelDOT, the turn lanes at the crossover will be extended on Route One; that 147 age-restricted units will generate 660 vehicle trips per day which equates to approximately ½ the number of trips for a standard development; that they have not asked Atlantic Concrete for approval of an access for construction only; that there will be minimal fill added, mostly earth moving around the site; that the bridge design has not yet been determined; that the design of the bridges will cause the least impact on the wetlands; that the fill in the borrow pit area is mostly stumps and construction debris; that the project will probably be developed in two phases; that they are providing a playground since residents in age restricted communities like to have playgrounds for their children and/or grandchildren; that the State DNREC considers part of the site a Brownfield site and will be overseeing the removal of all debris and contaminants from the site; that the covenants for the age restricted community will be based on Federal restrictions; that they may incorporate a dog park; that the proposed parking area for public access to the Rail to Trail will contain 25 parking spaces; that they did not consider applying for a Conditional Use for the multi-family use in the current AR-1 District because they wanted to design the project with different housing types; that the rezoning and the project are an infill to the similar zonings and uses in close proximity; that the dedication of land for the Rail to Trail replaces the need for sidewalks; that the driveways/streets are proposed to be curb and gutter with wider paving to allow for walking along the curb; and that the pathway next to Atlantic Concrete will be removed and possibly replaced with a berm and landscaping.

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

The Commission found that Andy Martin, Kenneth Ciarlone, Greg Arena, Helen Truitt, Bob Rice, Sandy Spence, Sol Peltz, Mike Farr, Julien Karpoff, Bill Gregg, Kelly Racz, Jim McQuire, Becky Healey, Herb Von Goerres, Kevin Gray, Kirsten Sultan, and John Gilbert were present in opposition or expressing concerns about the project and stated that the intersection crossover is dangerous now due to access to and from Dutch Acres, Taramino, the Saint Jukes Church, and other traffic traveling along Route One; that there have been multiple accidents at this crossover; that this proposal will multiply the dangers; that the proposed driveways/street design creates bridges across wetlands which include a tidal gut that drains into the Delaware Bay; questioning the requirements for an age-restricted community; questioning the setbacks from wetlands to dwelling units; questioning discharges into the Federal jurisdictional waters; that a petition is being submitted containing approximately 900 signatures in opposition; that there is a 12 foot drop down to the Black Hog Gut; questioning environmental protection; referencing that several new projects in the area are already creating more traffic; questioning why the developer has not provided 100-foot wide buffers from all wetlands as suggested by the State DNREC; stating that any wetlands impacted should be replaced elsewhere; expressing concerns that the wetlands will be disturbed and trees will be lost; that natural areas are important and should be preserved; that when the Saint Jukes Church expanded the traffic signal was installed and curbs were installed; that it may be difficult for trucks and tractor trailers to enter onto Tulip Drive; that remediation of the site is needed; questioning if the Traffic Impact Study included the access and parking for the Rail to Trail; questioning ground water recharge; questioning if anyone considered access to the site from New Road across the railroad; that the residents of the area and the Church are very concerned about safety at the crossover and on Tulip Drive; that the traffic light was installed due to a traffic fatality; that the State Police control the traffic at the intersection of Route One and Tulip Drive during church activities; that the residents of Tulip Drive are concerned about drivers short cutting through Dutch Acres; that children play along Tulip Drive; that the church is concerned about drivers short cutting across the church driveways and parking lots; that the church has a school for children and bus services daily on church property; that people park on church property without permission, and that the church does not want to be liable for others that may be trespassing on church property; that the walkway next to the Atlantic Concrete property line should be removed so that it does not appear that people have access to cross the Village of Five Points project; questioning if there will be dewatering for construction that may impact on-site well water of the residents in Dutch Acres; questioning if the developers should put up bonds to protect the residents in Dutch Acres if their wells are impacted by the dewatering; questioning if the bridges will have sidewalks; expressing concerns about children safety; expressing concerns about the close proximity between Tulip Drive and the Nassau Road intersection; questioning if DelDOT considered the church traffic when reviewing the Traffic Impact Study; questioning if anyone considered the impact on the wildlife in the area of the site and on the site; that Tulip Drive was built to serve the Dutch Acres subdivision, not additional traffic from other projects and the church; that some of the opposition supports an access from the Atlantic Concrete side of the project, rather than the Tulip Drive access proposed; and questioning if the site is suitable for the construction of residential units.

Mr. Robertson announced that Mrs. Truitt had submitted letters and a petition in opposition to this application and that the letters and petition will be a part of the record for these applications.

The Commission found that the Applicants representatives responded to some of the concerns and questions raised by the opposition by stating that there will be less run-off than the run-off that already exists on the site; that run-off will be infiltrated back into the groundwater; that permits are required from the U.S. Army Corps. of Engineers for the bridges; that the U.S. Corps. of Engineers has already made a preliminary jurisdictional determination for the project; that there are topographic issues with this site; that the dwellings will be located where drop offs are at a minimum; that 50-foot buffers will be provided from all tidal wetland boundaries; that a voluntary 20-foot buffer will be provided from all Federal wetlands; that DelDOT sidewalks will be curbed; that turning lanes will be lengthened per the specification described by DelDOT; that the dedication of 5-feet to the Rail to Trail allows for a 10-foot trail with 5-foot of grass shoulders on both sides; that the dedication of 5-feet was requested by DelDOT; that a crossing over the railroad was not requested; that the railroad only allows so many crossovers per mile; that no access has been requested to cross the railroad; that the traffic counts for the Traffic Impact Study were counted in August 2013, and that Davis, Bowen & Friedel, Inc. performed additional counts in August 2014; that the walkway along the Atlantic Concrete property line will be removed so that it does not appear to provide a connection to the Village of Five Points project; that dewatering would be for groundwater, not the aquifer; that the borrow pit has existed since the 1950s; that the 100-foot buffer requested by the State is only a suggestion, not a requirement; that there are two components to remediation: one to remove and relocate some soils and to recap an area of soils; that the remediation will be supervised by DNREC; that there is no alternative access intended except for emergency use and construction; that they cannot discharge water onto lands of others per State laws; and that they intend to fill in the understory of the trees to help screen the project.

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

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action on Change of Zone No. 1769 for further consideration. Motion carried 5 – 0.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action on Conditional Use No. 2012 for further consideration. Motion carried 5 – 0.

OTHER BUSINESS

Americana Bayside MR/RPC Village C Amended Preliminary Site Plan – Route 54

Mr. Abbott advised the Commission that this is a revised preliminary site plan for 44 single-family detached lots and 34 duplex units; that preliminary site plan approval was granted by the Commission on October 10, 2013 for 135 residential units within Village C; that this is a revised phasing plan for Village C; that the proposed setbacks are the same as what was approved on October 10, 2013; that if revised preliminary approval is granted, final approval would be subject to the review and approval of the Commission upon receipt of all agency approvals; 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 site plan as a revised preliminary. Motion carried 5 – 0.

**Dollar General – Long Neck
Commercial Site Plan – Route 24**

Mr. Abbott advised the Commission that this is a site plan for a 10,640 square foot retail store located on 42,444 square feet (0.97 acre) of land that is zoned C-1; that the proposed setbacks exceed the minimum requirements of the zoning code; that 43 parking spaces are required and proposed; that 20 spaces and portions of 15 other spaces are located within the front yard setback; that ingress/egress is from a cross access easement to the adjoining parcel to the northeast; that there is no direct access to Route 24 from this site; that central sewer will be provided by Sussex County's Long Neck Sanitary Sewer District and central water will be provided by Tidewater Utilities; that preliminary and final approval can be considered since all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned where the storm water management is located.

Mr. Abbott advised the Commission that the adjoining health care facility's storm water management area was designed to handle this project also.

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

**Hardy's Self Storage
Commercial Site Plan – U.S. Route 113**

Mr. Abbott advised the Commission that this is a site plan for a 32,971 square foot self-storage building located on 2.33 acres of land that is zoned C-1; that the proposed setbacks exceed the minimum requirements of the zoning code; that 6 parking spaces are proposed and are located within the front yard setback; that central sewer and water will be provided by the Town of Selbyville; that the 20-foot Highway Corridor Overlay Zone Buffer needs to be provided on the final site plan; that the Commission previously approved a site plan for 21,900 square feet located in 5 separate buildings on August 16, 2006; that DelDOT, Office of the State Fire Marshal and Sussex Conservation District approvals have been received; that if revised preliminary approval is granted, final approval could be subject to the staff receiving approval from the Town of Selbyville and the final site plan showing the required 10-foot Highway Corridor Overlay Zone Buffer; 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 site plan as a preliminary. Motion carried 5 – 0.

**Royal Farm Store No. 226
Commercial Site Plan – Route One and Route 24**

Mr. Abbott advised the Commission that this is a preliminary site plan for a 4,166 square foot convenience store located on 1.497 acres of land that is zoned C-1; that the setbacks exceed the minimum requirements of the zoning code; that the Board of Adjustment granted a variance of 7 feet for the canopy over the gas island on February 2, 2015; that there is a right in and right out located off of Route One; that a full ingress/egress is located off of Truitt Avenue; that 26 parking spaces are required and 41 spaces are proposed; that central sewer will be provided by Sussex County and central water will be provided by Tidewater Utilities; that the entrance onto Route One is proposed to be landscaped; that the other boundaries of the site have been provided with additional landscaping; that there is a 20-foot sanitary sewer easement along Route One; that the Commission would need to waive the Highway Corridor Overlay Zone Buffer along Route One due to the County's Sanitary Sewer Easement; that if preliminary is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned the location of the storm water management area.

Garth Jones, P.E. with Becker Morgan Group advised the Commission that they are trying to infiltrate the storm water runoff and that the site is a Brownfield site that will have to comply with DNREC regulations, and that the final storm water design has not been completed.

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

**Schagrin Gas – Millsboro
Commercial Site Plan – U.S. Route 113**

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story, 3,067 square foot office/showroom building and a proposed 1 1/2 story 3,200 square foot garage located on 31,849 square feet of land that is zoned C-1; that the setbacks exceed the minimum requirements of the zoning code; that 16 parking spaces are required and proposed; that 3 spaces are located within the front yard setback; that the site will be served by on-site sewer and water; that 22 plantings and a sidewalk are proposed within the required 20-foot Highway Corridor Overlay Zone; that final approval may be considered since all agency approvals have been received; and that the Commission was previously provided a copy of the preliminary site plan.

Mr. Johnson questioned the location of the storm water management area.

John Murray with Kercher Engineering, Inc. advised the Commission that the storm water management system will be an infiltration system and will be located near the proposed parking area a minimum of 20-feet from the septic area.

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

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that County Administration has asked if the Commission would like to move up the start time of the Public Hearings scheduled for April 23, 2015 due to the anticipated time that the hearings may take.

It was the consensus of the Commission to keep the start time of 6:00 p.m. so as not to confuse anyone.

Mr. Smith and Mr. Johnson advised the Commission that they both will miss the May 7, 2015 Regular Meeting.

Meeting adjourned at 10:00 p.m.