



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 27, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 27, 2008 in the County Council Chambers, 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. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director, and Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended by removal of C/U #1732 from the Public hearings since it has been withdrawn. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of March 5, 2008 as circulated, the Minutes of March 13, 2008 as amended, and the Minutes of March 19, 2008 as circulated. Motion carried 5 – 0.

OLD BUSINESS

In reference to Subdivision #2006-52, C/U #1772, and C/Z #1630 the applications of L. T. Associates, LLC:

Mr. Johnson asked that the following prelude be provided for the record of each application and stated that these comments are being submitted in response to all three (3) applications of L. T. Associates, LLC and are intended to be incorporated into the record of all three (3) applications and referenced:

The Applicants stated in their presentations and materials submitted for the respective public hearings, and he paraphrased, that the most “unique aspect” of the applications are their response to regional planning issues. These applications are “working in concert to achieve a more Livable Delaware”.

Mr. Johnson stated that he was quite concerned about the cumulative impact of these applications coupled with other projects previously approved by the County as well as other projects in close proximity being considered by the City of Lewes. The cumulative impact of all of these projects can have a negative impact on roads and other infrastructure; vehicular, bicyclist, and pedestrian safe travel, natural resources, wildlife, beaches, Cape Henlopen State Park, Cape Henlopen School District, the City of Lewes, and “A Way of Life”.

From a historical development perspective, the following represents the progression of developments in the County bordering on Gills Neck Road:

1988 – Wolfe Runne	82 Units
1999 – Wolfe Pointe	188 Units
2006 – Hawkseye	162 Units
Cadbury	212 Units
Breakwater	185 Units

For a total of 559 units in 2006 and a total of 829 approved units.

Before the Commission in 2008 are applications for:

Senators	242 units
Governors	472 units

For a total of 714 more housing units.

This is a total of 829 County approved housing units, with 714 additional units being requested. If all of these housing units were to be approved, they would represent 1543 housing units which have travel access only by a 1.3 mile stretch on Gills Neck Road. This represents more than 1 housing unit per 4.5 linear feet of Gills Neck Road.

Add to these figures, the possibility of the City of Lewes approving 600 more housing units in the proposed “Showfield” development also on Gills Neck Road and the proposed 521,000 square foot of commercial space in the “Townsend Village Center”, the cumulative impact becomes obvious.

Therefore, Mr. Johnson stated that he has developed motions for each application separately as required by the Code, based upon their records, but also in accord with “regional planning issues” and working in concert to achieve a more “Livable Delaware”, as purported by the Applicant.

In reference to: **Subdivision #2006-52** – application of **L.T. ASSOCIATES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 119.14 acres into 242 lots, (Environmentally Sensitive Developing Area Overlay Zone), located southeast of Road 267, and south of Hawkseye and Wolfe Runne Subdivisions.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2006-52 for L.T. ASSOCIATES, LLC for 229 lots instead of the 242 requested lots based upon the record and for the following reasons:

1. With the conditions and stipulations placed upon it, the proposed subdivision at a density of 2 units per acre generally meets the purpose and requirements of the Subdivision Ordinance in that it protects the orderly growth of the County. It is located within the Environmentally Sensitive Developing Area according to the 2003 Comprehensive Land Use Plan Update.
2. The land is zoned AR-1 which permits low density single family residential development at a density of approximately 2 lots per acre. This is consistent with the maximum density of existing subdivisions along the outer curve of Gill’s Neck Road and the historical trend of development in this area. The density of only 2 units per acre is also

appropriate given the cumulative impact on roadways and traffic in the area from the existing developments along Gill's Neck Road.

3. The Applicant has advised that approximately 36.24 acres of the site will remain open space; and that 98% of the existing wooded area will be preserved.
4. The Subdivision will include amenities such as a bathhouse and pool area that will serve the future residents of this property.
5. The Applicant has adequately addressed the items set forth in Section 99-9C of the Subdivision Ordinance.
6. The proposed subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
7. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 229 lots within the subdivision. This represents 2 units per acre at 114.75 acres, which is the acreage of this project according to information supplied by the Applicant. While this is a reduction in the number of proposed lots, from a density calculation based upon 20,000 square foot lots, it will also allow the project to be reconfigured to provide open space adjacent to more individual lots, which has been a goal of the Commission for subdivisions such as this with smaller lots.
 - B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, multi-modal paths, buffers, stormwater management facilities, recreational facilities, and other common areas.
 - C. The project shall be connected to the County's Central Sewer, and central water shall be provided. The developer shall comply with all County requirements for connection to the County Sewer System.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County, and shall be designed and maintained using Best Management Practices to maximize groundwater recharge.
 - E. All entrances and road improvements shall comply with all of DelDOT's requirements.
 - F. There shall be an easement granted for the Regional Bikeway. All bike lanes or multi-modal lanes that are contiguous to roadways within the project shall be striped or adequately marked to distinguish those areas from automobile traffic.
 - G. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street and street lighting. There shall also be interconnectivity with the adjoining properties. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design for the project.
 - H. The entire perimeter shall be surrounded by a 30 foot vegetated buffer. The vegetation to be included in this buffer shall be shown on the Landscape Plan submitted as part of the Final Site Plan Review.
 - I. All amenities, including the pool and bathhouse, shall be constructed and open to use by residents within 2 years of the issuance of the first residential building permit.

- J. The existing forested areas that will be preserved shall be clearly shown on the Final Site Plan.
- K. There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.
- L. An area for a school bus stop shall be established with the coordination of the local school district. The location of the bus stop area shall be shown on the Final Site Plan.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- N. The Final Site Plan shall contain the review and approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to grant preliminary approval of Subdivision #2006-52 for L.T. Associates, LLC for the reasons and with the conditions stated. Motion carried 5 – 0.

In reference to: **C/U #1772** - application of **L.T. ASSOCIATES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (472 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 186.56 acres, more or less, lying south of Road 267 (Gills Neck Road) approximately 1,000 feet southeast of Road 268 (Kings Highway).

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use #1772 for L.T. ASSOCIATES, LLC for 258 multi-family units instead of the requested 472 units based upon the record and for the following reasons:

1. Mr. Johnson's motion is for recommendation of approval of 258 units only, which is based upon a density of 2 units per acre over 129 acres of uplands. As submitted, this application for 472 units exploits wetlands that were originally all a part of one parcel that has been repeatedly subdivided for different projects, and the wetlands wrap around portions of at least three other subdivided developments. A good portion of these wetlands have no development or recreational value to this project. They can't be built on, are barely contiguous to this project and are of no direct benefit to this project or its residents. Therefore, they should not be included in the density calculations for this project.
2. Given the cumulative impact of current and future developments in this area, Mr. Johnson does not feel it is appropriate to recommend additional density under the Density Trade Ordinance, Ordinance No. 1920. Instead, more open space and active or passive recreation area should be preserved in this area, rather than using increased density here to acquire open space somewhere else. While the Bonus Density Trade Ordinance is a good program, this particular location is not suitable given the cumulative effect of the development occurring in the immediate vicinity.

3. Two (2) units per acre based upon the uplands acreage associated with this site promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County. It is also more consistent with the maximum density of existing developments on the outer curve of Gills Neck Road.
4. There has been strong public opposition to this project and the cumulative effects of the ongoing development of the adjacent properties, with one the specific concerns on the additional traffic that would be generated. These concerns are legitimate and self evident, given the existing traffic conditions along Kings Highway without the project. For these reasons, a density of 258 units, as opposed to the 472 sought by the applicant, would be appropriate.
5. Although DelDOT's report on the applicant's TIS (Traffic Impact Study) identifies a comprehensive set of suggested road improvements that would be required by this developer if the project was approved, the report also confirms that these improvements alone are not sufficient to correct all of the current traffic deficiencies or the traffic impacts associated with the application. The Applicant has also stated that DelDOT's current Capital Plan does not allocate any funds towards improving Kings Highway in the vicinity of this site. For this reason, only 258 units, and not 472 units, is appropriate and will mitigate the traffic impacts of the development on neighboring and adjacent roadways.
6. With the recommended stipulations and conditions, the adverse impact on neighboring and adjacent properties will be minimized.
7. The project will be benefited by on-site amenities including a playground/tot lot; paved multi-sport court; pool and poolhouse; and walking, jogging and bike paths.
8. The project will be served by central water and sewer, and the County Engineering Department has indicated that there is appropriate capacity for the connection to a County operated sewer system.
9. This recommendation is subject to the following conditions:
 - A. There shall be no more than 258 multi-family units within the project. The construction of the project shall be phased with no more than 60 residential building permits being issued within any given calendar year.
 - B. The Applicant shall form a condominium association to be responsible for the maintenance of streets, roads, multi-modal paths, buffers, stormwater management facilities, recreational facilities and other common areas.
 - C. The project shall be connected to the County's Central Sewer, and central water shall be provided.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County, and shall be designed and maintained using Best Management Practices to maximize groundwater recharge.
 - E. All entrances and road improvements shall comply with all of DelDOT's requirements.
 - F. Any bike lanes or multi-modal lanes that are contiguous to roadways within the project shall be striped or adequately marked to distinguish those areas from automobile traffic.
 - G. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street and street lighting. There shall also be interconnectivity with

the adjoining properties. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design for the project.

- H. The entire perimeter shall be surrounded by a 30 foot vegetated buffer. The vegetation to be included in this buffer shall be shown on the Landscape Plan submitted as part of the Final Site Plan Review.
- I. All amenities shall be constructed and open to use by residents of the project within 2 years of the issuance of the 1st residential Building Permit.
- J. The existing forested areas that will be preserved shall be clearly shown on the Final Site Plan.
- K. There shall be at least a 50 foot buffer from all wetlands. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.
- L. An area for a school bus stop shall be established with the coordination of the local school district. The location of the bus stop area shall be shown on the Final Site Plan.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- N. The Final Site Plan shall contain the review and approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Smith and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated. Motion carried 4 – 1 with Mr. Gordy opposed to the motion.

In reference to: **C/Z #1630** – application of **L.T. ASSOCIATES, LLC** 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 at the southeast corner of the intersection of Road 267 (Gills Neck Road) and Road 268, to be located on 68.30 acres, more or less.

Mr. Johnson stated that he would move that the Commission recommend denial of Change in Zone No. 1630 for L.T. Associates, LLC, based upon the information contained in the record and for the following reasons:

1. Mr. Johnson does not believe that the Application is consistent with the character of the surrounding property. While there are some limited commercial zoning and uses in the area along King's Highway, they are very small in comparison to the size and scope of what has been proposed under this application, and most of the commercial uses in the area are either limited Conditional Uses, or small B-1 or small C-1 Zones.
2. The current Comprehensive Plan defines this property as within the Environmentally Sensitive Developing District Overlay Zone. According to the Plan, commercial uses in these areas "should be limited to neighborhood shopping and businesses to serve the

rapidly expanding population. Village scale shopping centers are the preferred location for these services.” Neighborhood shopping and village scale commercial uses are more consistent with the purpose and limitations of the B-1 Neighborhood Business District, not a large scale regional shopping center with a possibility of approximately 521,000 square feet of commercial space. For example, neighborhood shopping is described in the B-1 section of the Zoning Code as being limited to 75,000 square feet. This application proposes almost seven times the commercial space.

3. The purpose of the CR-1 District is to provide sufficient space in appropriate locations for a wide variety of Commercial and miscellaneous service activities generally serving a wide area and located along major thoroughfares where a general mixture of service activities now exist. This application is not consistent with the stated purpose of the CR-1 District, since:
 - a) Neighborhood shopping and village scale shopping promoted in the Environmentally Sensitive Developing Area are not the same thing as a wide variety of commercial and miscellaneous service activities referenced in the purpose of the CR-1 District;
 - b) Neighborhood or village scale shopping generally serves an immediate area or vicinity, not a wide area according to the purpose of the CR-1 District; and
 - c) There is not currently a general mixture of service activities along Kings Highway or Gill’s Neck Road.
4. While there are some regional or large scale shopping centers or commercially-zoned properties in the Environmentally Sensitive Developing Area, most, if not all of these are either smaller than what has been proposed by the Applicant, pre-dated the establishment of the Environmentally Sensitive Developing Area Overlay Zone or are along more appropriate major thoroughfares where a true mix of service and commercial uses already exist and are more easily accessible.
5. The purpose of the Environmentally Sensitive Developing Area is “to recognize that the Inland Bays of Sussex County are a major resource of the County and must be protected from insensitive development of the surrounding area.” Mr. Johnson is not satisfied that this project is compatible with this purpose, given the traffic that would be generated by a large scale regional destination commercial area. Also, the impervious area necessary just for the parking required for a 521,000 square foot group of commercial buildings would not be consistent with the purposes of the Environmental Sensitive Developing Area, the ground water recharge associated with the property or the fact that it is nearly across from the City of Lewes well head area.
6. Even if the proposed location was an appropriate location for uses within a CR-1 Zone, Mr. Johnson is not satisfied that the Applicant has established a need for rezoning the property to CR-1 or the square footage of commercial space that could possibly be constructed if the re-zoning occurred, particularly in this area.
7. Although DelDOT’s report on the Applicant’s TIS (Traffic Impact Study) identifies a comprehensive set of suggested road improvements that would be required by the Developer if the project was approved, the report also confirms that these improvements alone are not sufficient to correct all of the current traffic deficiencies or the traffic impacts associated with the application. And the applicant has stated that DelDOT’s current capital plan does not allocate any funds towards improving King’s Highway in the vicinity of the site. These deficiencies include failures at several important

intersections such as Kings Highway at Clay Road, Kings Highway at Gills Neck Road and Delaware Route 1 at Dartmouth Drive. These roadway deficiencies will also be detrimental to the operation of the Cape May Lewes Ferry, the Cape Henlopen State Park, the Cape Henlopen High School and downtown Lewes.

8. There has been strong public opposition to the project, focusing partly on the additional traffic that would be generated by it and the cumulative impact of the existing projects along Gills Neck Road that have been approved or applied for but not yet completed. These concerns are legitimate and self evident, given the existing traffic conditions along Kings Highway without this project. Another concern expressed by the public is the proximity of the proposed commercial center nearly across the street from the new Cape Henlopen High School. A new project of this size and scale is not well suited to such a location for safety reasons, and because it will not be compatible with the traffic generated by the high school and its athletic, educational and community activities and uses. For these reasons, the proposed project is not compatible with the existing roadways in the area and does not promote safe vehicular travel on neighboring roads.
9. The proposed project does not meet the purpose of the Zoning Ordinance, since it does not promote the orderly growth of the County. It would establish a large scale regional destination shopping center where no similar commercial uses of the same size and scale exist. 521,000 square feet of commercial space, with the necessary parking and other impervious areas, is not a logical transition from neighboring and adjacent uses, especially in this Environmentally Sensitive Developing Area which has severe limitations on safe pedestrian and vehicular travel.

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

PUBLIC HEARINGS

C/U #1732 – application of **MABETHSON, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for the storage of dump trucks, delivery trucks, and materials related to a plumbing and HVAC business to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.4187 acres, more or less, lying on the northerly side of Estella Street 250 feet west of Route 347 (White Neck Road) and being Parcel A of the “James Robinson Subdivision”.

Mr. Lank advised the Commission that this application was withdrawn on March 26, 2008.

C/Z #1619 – application of **THOMAS AND CHERYL HICKS** 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 Indian River Hundred, Sussex County, land lying north of Route 23 (Long Neck Road) 0.25 mile east of Road 298 (Banks Road), to be located on 18,220 square feet, more or less.

Mr. Lank referenced that the Commission had previously received a copy of an Exhibit Booklet, which is a part of the record for this application, and that the Exhibit Booklet contained: a copy

of a portion of the County Tax Map showing the area around the site and the zonings of each parcel; photographs of the site and the surrounding area; a copy of the survey of the property showing the location of the existing dwelling; a copy of the DelDOT Support Facilities report which references that a traffic impact study was not recommended and that the Level of Service “D” of Long Neck Road will not change as a result of this application; a copy of the area around Long Neck Road as depicted on the 2003 County Comprehensive Plan Update - Future Land Use Map and referencing the Guidelines for Non-residential Use; a copy of the area around Long Neck Road as depicted on the proposed 2007 Draft of the County Comprehensive Plan Update and referencing the Permitted Uses; and a copy of the area of Long Neck Road as depicted on the State Priority Funding Areas Map.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is currently located within the Long Neck Sanitary Sewer District; that the sewer planning study assumption for the parcel is 1.0 EDU reflecting a residential zoned parcel less than one acre; that the Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses; that the proposed commercial zoning is not located on residential lands previously identified for commercial use by the County Planning and Zoning Department; that the proposed use does not conform to the Comprehensive Land Use Plan; that it is unknown, at this time, if Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,716.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer; that the parcel is served with one 6-inch sanitary sewer lateral; that a lateral upgrade, at the property owners expense, could be required if the use changes; and that conformity to the North Coastal Planning Study will be required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fort Mott loamy sand; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that a storm flood hazard area could be affected; that it may not be necessary for any on-site or off-site drainage improvements; and that no tax ditches are affected.

The Commission found that Thomas Hicks was present with Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that Mr. Hicks’ family purchased the property in 1969; that family members have lived on the site fulltime since 1977; that they are requesting B-1 Neighborhood Business zoning; that the site is surrounded by commercial properties and zoning; that they propose to utilize the site for retail shopping or service uses; that the site is not appropriate for residential use; that the commercial uses in the area include bait and tackle sales, boat sales and storage, shopping centers, restaurants, a car wash, etc.; that there are no other dwelling in close proximity along Long Neck Road; that the site is located in an Environmentally Sensitive Developing Area according to the 2003 Comprehensive Plan Update and that the Guidelines for Non-Residential Use references that uses should be limited to neighborhood shopping and businesses to serve the rapidly expanding population; that neighborhood shopping uses will be limited due to the size of the parcel; and that the Applicant realizes that he must comply with the Code.

The Commission found that Mr. Willard submitted proposed Findings of Fact.

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 would move that the Commission recommend approval of C/Z #1619 for Thomas and Cheryl Hicks seeking a change of zoning from AR-1 to B-1 based on the record made at the public hearing and for the following reasons:

1. There is generally a need for the limited type of uses and services that the Applicant could use on this property under B-1 zoning. The orderly growth of the County does justify creating the requested additional B-1 zoned property and the permitted uses available under the zoning classification in the area where the property is located.
2. I believe that the application is consistent with the character of the surrounding property.
3. Approval of this application should not lead to significantly increased traffic and trucking activity on the property and in the vicinity of it.
4. The property is located in a County operated or maintained sanitary sewer district. The owner will be required to comply with all requirements of the County Engineering Department regarding the use of the property.
5. There are a number of other properties zoned either C-1 or B-1 scattered in the general Long Neck area where this property is located. The application is essentially in-fill.
6. The property will not have an adverse impact on neighboring properties or the community.

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

C/Z #1654 – application of **PENINSULA SQUARE, LLC** 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 Indian River Hundred, Sussex County, land lying at the southwest corner of Route 24 (John J. Williams Highway) and Road 299 (Autumn Road), to be located on 30.00 acres, more or less.

Mr. Lank referenced that the Commission had previously received a copy of an Exhibit Booklet, which is a part of the record for this application, and that the Exhibit Booklet contained: an area map depicting the site; a narrative; a copy of the PLUS review comments and response; a copy of a No Objection Letter to the entrance location from DelDOT; and a site plan.

Mr. Lank advised the Commission that the Department had also received copies of the PLUS comments included in the Exhibit Booklet and the DelDOT letter of “No Objection”.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Long Neck Planning Area; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that there is no service to this parcel at this time; that the project is capable of being annexed into

the Long Neck Sanitary Sewer District; that conformity to the North Coastal Area Planning Study will be required; that this application proposes a rezoning of 30-acres from AR-1 to CR-1 for a proposed Drive Thru-Pharmacy and boat storage and sales; that a previous proposal was to construct a 14,564 square feet pharmacy on a 2-acre portion of the larger parcel; that a portion of the parcel is in the Environmentally Sensitive Developing Area and the Inland Bays Planning Area for sewer service; that the study for the Inland Bays Planning Area for sewer service is near completion; that the study will specify options for sewer service and make a recommendation; that a 600-foot wide strip of frontage of the parcel along Route 24 is in the Environmentally Sensitive Developing Area; that sewer service for that portion of the site is contained in the planning area for the Long Neck Sanitary Sewer District and that connection to the system is required; that sewer lines have not been extended to the parcel at this time, and the County does not have a set schedule to do so; that the developer at his expense will be required to install pipelines from the project to an approved connection point; that in addition, it appears that improvements will be necessary to the regional transmission system; that improvements to the regional transmission system would also be at the developer's expense; that the scope of said improvements will be specified at a later date; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a sewer concept plan must be submitted to the Engineering Department for review and approval prior to a request for annexation into the District and design of the sewer system; that the study has considered the parcel's AR-1 zoning and allocated 4.0 EDUs per acre in considering sewer service to the portion of the parcel within the Environmentally Sensitive Developing Area; that the portion of parcel in the Environmentally Sensitive Developing Area Is estimated to be approximately 14.64 acres; that the concept plan to be submitted must address sewer service to the entire portion of the parcel within the Environmentally Sensitive Developing Area and must be in accordance with overall plans for sewer service for the area; that all cost associated with extending sewer service will be the sole responsibility of the developer; and that one-time system connection charges will apply.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains five (5) soil types; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that a storm flood hazard area may be affected; that no tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Darin Lockwood was present on behalf of Peninsula Square, LLC with Dennis Schrader, Attorney, and Tom Bartosiewicz of Meridian Consultant Engineers and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to rezone the property from AR-1 to CR-1 for the purpose of erecting a 14,654 square foot pharmacy, to expand the existing boat storage and to offer boat sales; that a shopping center may be proposed in the future; that according to the PLUS comments the State voiced no objections to development of the site; that according to the DelDOT comments the Department has no objections to development of the site; that DelDOT did not require a traffic impact study; that sewer service will be provided by Sussex County; that public central water will be provided by Tidewater Utilities, Inc.; that there are no wetlands on the site; that the current boat storage operation was approved for Short's Marine; that the Lloyd Saunders property has a Conditional Use for a plumbing business; that there are other business and

commercial uses in the immediate area, which include several groceries, another pharmacy, shopping centers and independent shops; that the proposed expansion of the boat storage and sales facility is proposed to have a stone/gravel surface since the use is considered to be temporary; that a wetpond is proposed to provide stormwater management; that they should have access to a manhole for connection to the existing sewer system at the intersection of Route 24 and Road 299; that entrance locations have been approved by DelDOT; that the 60-foot extension to the rear of the parcel is for forested buffering and possible outfall, if necessary; that all runoff from the site is proposed to be directed toward the wetpond; that a traffic light exists at the intersection of Route 24 and Road 299; that the entrance proposed on Route 24 will be a rights-in and rights-out only; that they have been working with DelDOT and the Office of State Planning Coordination for over 3 years; that the proposed pharmacy is a Rite-Aide Pharmacy with a drive-thru; that the site is located in an area of Route 24 where several subdivisions, multi-family projects, and commercial uses exist; that the proposal is consistent with the Comprehensive Plan Update and with the State Strategies; that if the rezoning is approved the site plan submitted to the Commission will include a landscape plan; that the site plan will not have any parking in any setbacks; that the existing trees along the fence of the existing boat storage area will remain as long as the boat storage area is utilized for that purpose; that a mobile home type office will be utilized for the boat sales; that the existing entrance serving the boat storage area will be abandoned; that the boat storage will be a locked facility; that they are expanding the boat storage area by approximately 5-acres; and that there will not be any lighting on the boat storage area since it will be fenced.

The Commission found that Mr. Schrader submitted proposed Findings of Fact for consideration.

Mr. Lank advised the Commission that it will be necessary that an application be filed with the County Board of Adjustment for consideration of a mobile home type structure to be used for the sales business.

The Commission found that Laura Hudson was present questioning the impact on the access to her property.

The Commission found that Mr. Lockwood advised them that she has a legal right-of-way and that her access will improve and will not be impacted negatively.

The Commission found that Lloyd Saunders was present and questioned the impact on his view from his property.

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.

Subdivision #2006-62 – application of **JOSEPH A. BLACK** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 43.52 acres into 37 lots, located west of Road 249, 1,895 feet north of Road 248A.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of April 18, 2007 will be made a part of the record for this application, that an Exhibit Booklet was submitted on March 17, 2008; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems.

The Commission found that Steve McCabe, P.E. and David Myers, P.E. with George, Miles and Buhr, L.L.C. and Joseph Black were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for 35 lots and a residual parcel for the applicants; that the subdivision plan is for the applicant's retirement funds; that 0.75-acre lots with on-site septic and water are proposed; that the streets will be built to Sussex County specifications; that the applicants have owned and farmed the property since 1977; that there are presently 7 poultry houses on the site; that the applicants have been working on the design of this project for 4 years; that they have built a new home on the residual parcel that overlooks the pond; that all of the proposed homes will be required to be similar to the applicants which has a country theme; that the Exhibit Booklet features photographs of the subject site; that the proposed density is 0.83 lots per acre; that the project complies with the Land Use Plan in that this is a low density single-family residential development; that the site is in an investment Level 4 based on the State's Strategies Map; that PLUS review was not required since the development is less than 50 lots; that the developer has met with DelDOT officials and no road improvements will be required; that the site is 1.25 mile from the Town of Milton; that the large lot sizes are in character with the area; that the site was previously established as an Agricultural Preservation District but has since been removed and that there are 2 letters in the Exhibit Booklet advising that the site has been removed from this program; that the project will enhance the area since the poultry houses will be demolished; that a revised plan was submitted back in June of 2007 that addressed the comments made by the Technical Advisory Committee; that 25% of the site will remain as open space; that there are 10.86-acres of open space; that there are no wetlands on any individual lot; that 30-foot agricultural buffers will be provided on the east and west side of the property boundaries; that a 10-foot landscaped buffer will be provided along Shingle Point Road; that the 17 items referenced in Section 99-9C of the Subdivision Code have been addressed and are in written form in the Exhibit Booklet; that there are 12 plus acres of trees on the site and that approximately 30% of the forested area will be removed; that sidewalks, streetlights and a community center are not planned since the project has larger lots and is located in a rural area; that the Office of the State Fire Marshal has approved the site plan; that there will be no negative impacts to the Cape Henlopen School District; that the project will have a positive effect on the area; that the site is located in the Milton Fire Department fire service jurisdiction and police protection will be provided by the Delaware State Police; that an engineered plan has not been submitted to the Sussex Conservation District yet; that the developer has had 2 meetings with the District; that there is a drainage divide that runs north and south; that 1/3 of the site drains towards the front and the remainder drains to the rear; that the proposed storm water management pond will be a wet pond; that DelDOT is requiring right of way dedication for multi-modal paths; that a traffic impact study was not required; that none of the lots has direct access to Road 249; that all of the street names have been approved by Sussex County Mapping and Addressing; that a buffer from the wetlands varied from 5 to 100 feet; that the lot lines end at the 404 wetlands line; that there are larger size lots adjacent to the wetlands; that there is adequate room to provide a 50-foot buffer from the wetlands; that the residual lot will be subject

to the homeowners' association; that a stub road has been provided to the adjacent property to the east; that a bus shelter could be established; that there will be no mass grading of the site; that minimal disturbance is anticipated; that there are no known rare or endangered species on the site; that the developers are willing to let the State inspect the site; that the dwellings will be stick built; that an actual minimum square footage has not yet been determined; that lots 10 through 13 and lots 1 through 6 are through lots; that Waples Branch is a perennial stream; that approximately half of the site is in an excellent recharge area; that lots 19, 22, 23 and 36 could have greater rear yard setbacks; and submitted proposed restrictive covenants and a letter in support from an adjoining property owner.

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

The Commission found that Gary Collins of Georgetown was present in opposition to this application and questioned how many wells are proposed; that by demolishing the poultry houses, the water supply will be contaminated; that each home would add 3 vehicles per home to the already existing traffic; and that there are over population problems.

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

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

Subdivision #2006-63 – application of **DEEP BRANCH ROAD, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 202.37 acres into 303 lots, (Cluster Development), located at the northwest corner of the intersection of Road 317 and Road 315.

Mr. Abbott advised the Commission that the Technical Advisory Committee review of April 18, 2007 will be made a part of the record; and that on March 13, 2008, the applicants submitted an Exhibit Booklet, an Appendices Booklet and a Traffic Impact Study Report that are all a part of the record.

The Commission found that James Fuqua, Attorney, and Eric Wall of Morris and Ritchie Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 303 single-family lots are proposed; that the proposed density is 1.5 lots per acre; that the project has been designed utilizing the AR-1 Cluster Ordinance; that the wetlands on the site will remain undisturbed; that central water will be provided by Tidewater Utilities and central sewer will be provided by Tidewater Environmental; that DNREC has issued a septic feasibility statement that was submitted as Tab E of the Exhibit Booklet; that there are shopping and services in the surrounding area; that a homeowners' association will be established; that the streets will be private and built to Sussex County specifications; that there are 2 entrance proposed; that the entrances will be landscaped; that the wetlands on the site have been delineated; that sidewalks on both sides of all streets and streetlights are proposed; that the shade trees are also proposed along the streets; that a school bus shelter will be provided; that the amenities will include a community center, swimming pool, tennis court, multi-purpose court and 2 tot lots; that the tot lots will be on the north and south

side of the project; that on-street parking will be provided near the community center; that approximately 10 miles of walking and jogging trails and sidewalks are proposed; that there are 3 different size types of lots; that the lots range in size from 8,750 square feet to 11,250 square feet; that all of the lots are adjacent to forested open space except for the lots that are located near the community center core; that village greens are proposed; that the wastewater treatment plant and spray irrigation site are located on the southern portion of the site; that there are 3 storm water management ponds proposed; that these ponds will be wet ponds with fountains; that there are large buffers of open space that average 100-foot in width; that buffers are also proposed along the roads; that the proposed buffers will remain forested; that the existing 2 triangular parcels that are across the roads from the site are a part of the project and will remain forested, that these parcels were created when the county roads were built; that 50% of the forested areas will remain; that 115 acres or 57% of the site will be open space and this is referenced in Tab 8; that there are other single-family developments in the area; that the site is located in an Investment Level 4 based on the State Strategies Map; that the site is in close proximity to a Level 3; that the project is located adjacent to the future annexation area of the Town of Georgetown's Land Use Plan; that the Comprehensive Land Use Plan has this site in a Low Density Area;; that detached single-family dwellings are proposed; that the maximum density permitted using the cluster option is 1.5 lots per acre; that the requirements of the cluster ordinance are a part of the record found in the Exhibit Booklet; that the items referenced in Section 99-9C of the Subdivision Code are found in Tab 8 of the Exhibit Booklet; that Open Space Management requirements are found in Tab 6 of the Exhibit Booklet; that wetlands will be buffered; that an airport use notice is provided in the restrictive covenants; that there are no plans for this project to provide central sewer to other projects in the area; that the spray irrigation will be performed in the forested areas; that the proposed storm water management ponds are located at the lowest points on the site; that the treatment plant building will have the appearance of an agricultural building; that there are no specific dwelling types at this time; that the price range of the dwellings will start around \$300,000.00; that restrictive covenants will prohibit the use of all terrain vehicles in the development; and submitted proposed findings of fact and conditions of preliminary approval.

The Commission found that no parties spoke in support of this application.

The Commission found that Gary Collins, Mike Mason, Richard Cox, Teresa Rogers, Aycorch, John McTear, Elliott Reece, Dean Johnson, Robert Clobes, Roseanne Natria, Bill Goins, Wayne Gibson, George Cohee, Michael Clobes, Charlotte Clobes and Jim Orr, area residents, were present in opposition to this application and stated that the questions asked seems as if the project will go through, that the site is located in a Level 4 area; that the State agencies do not support this application; questioned the impact of the State's comments; that there is a sharp curve along Peterkins Road, that the project will have a negative impact to the already heavily traveled roads in the area; that these types of projects are creating over population in the County; that there are more wetlands on the site than what are shown; that there is not adequate infrastructure for a project of this size; that traffic has increased in the area since the new Sussex Central High School opened; raised questions about Park Avenue being taken into consideration, if a rare and endangered species study has been conducted since there is wildlife in the area; that a project this size will cause an increase in crime and have demands on the State Police; that hunting occurs on adjacent properties; that there is heavy truck traffic in the area; raised concerns about the types

and cost of homes as most in the area range from \$450,000.00 to \$750,000.00; that the spray irrigation location is close to Peterkins Branch; that the number of homes proposed will ruin the quality of life in the area; that there are drainage problems in the area; that there is a tax ditch on the site; that property values will decrease; that the size of the lots is out of character with the immediate area since the smallest lot in the area is 1.25-acres; that there are many lots already available for sale in the area; that there will be negative impacts to the local school districts; that there will be a loss of forest land; and that wells have already been dug on the site.

The Commission found by a show of hands that there were 4 people present in support of and 40 people present in opposition to this application.

Mr. Fuqua responded that the wetlands have been delineated by a qualified professional and that they stand by the wetland delineation; that the Traffic Impact Study was performed in accordance with DelDOT requirements; that a rare and endangered species study has not been done; that the lot sizes are based on what is permitted by the county's ordinances; that the project creates open space; that the spray irrigation will be 1,000 feet from Peterkins Branch; that the developers can only do what DelDOT requires; that an environmental impact study was done; that the buffers from the wetlands are not required; that property values will not be negatively impacted; and that they will investigate whether there are any tax ditches on the site.

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 and to leave the record open for clarification if the ditch on the site is part of a tax ditch from the staff and for further consideration. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that the next meeting will be for the purpose for a public hearing on the Comprehensive Plan Update and that the meeting is scheduled for April 3, 2008 at 6:00 p.m. at the Cheer Center in Georgetown.

Meeting adjourned at 10:15 p.m.