



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF APRIL 16, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 16, 2009 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Richard Berl – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Richard Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of March 26, 2009 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1770 – application of **STOCKLEY MATERIALS, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a 53.32-acre borrow pit expansion to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 94.89 acres, more or less, lying west of Road 317 and east of Road 318.

The Commission discussed this application which has been deferred since March 26, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1770 for Stockley Materials, LLC for the expansion of an existing borrow pit based upon the record made at the public hearing and for the following reasons:

1. This application is for a 53.32 acre expansion of an existing borrow pit on a 94.89 acre parcel of land.
2. A need exists in the area for dirt, sand and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
3. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.

4. The use of the project is of a public or semi-public character that will provide a source of fill dirt available to the entire County. This use is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.
5. Buffers will be established along all borders.
6. No parties appeared in opposition to the expansion of the pit, and several neighbors appeared in favor of it, along with numerous letters of support.
7. This recommendation for approval is subject to the following conditions and stipulations:
 1. No materials shall be brought from off the site for processing, mixing or similar purposes.
 2. Water or a water truck shall be available to control dust from road traffic when conditions require.
 3. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 4. The entrance to the borrow pit shall be from Road 318, at the site of the current pit entrance.
 5. The hours of operation for the business on this site shall only occur between the hours of 7:30 a.m. to 6:00 p.m. Monday through Friday and 7:30 a.m. until 2:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
 6. No materials shall be stored on any access roads or within any buffer area.
 7. There shall be no more than 150 loads of materials hauled from the site on any given day.
 8. No fuel shall be stored on-site for borrow pit operations.
 9. No dredging activities shall be permitted on the site.
 10. No dewatering activities will occur on site.
 11. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 12. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.
 13. Before any excavation begins in the expanded area, an Environmental Impact Study will be conducted and presented with the Final Site Plan.
 14. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. The Applicant shall notify the Office of Planning and Zoning in writing prior to April 1 of each year as to the status of the reclamation and reclamation plans for the following year.
 15. The Applicant shall comply with all State and County erosion and sediment control regulations.
 16. Markers and signs shall be placed at appropriate locations to designate pit areas.
 17. A buffer shall be maintained along the perimeter of all boundaries of at least 100 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees.
 18. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so

- that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
19. The Applicant shall also comply with all of the requirements set forth in Section 115-72B of the Sussex County Zoning Ordinance.
 20. It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).
 21. The excavation area shall not exceed 53.32 acres.

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 and stipulations stated. Motion carried 5 – 0.

C/Z #1636 – application of **MARK L. MUMFORD** 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 southwest corner of Route 9 and Church Street, west of Five Points, to be located on 0.259 acres, more or less.

Mr. Lank provided the Commission with a copy of a tax map of the general area of Belltown per the request of the Commission on March 26, 2009 and described the area of Belltown and the improvements on the lots according to the tax records.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z # 1636 for Mark L. Mumford for a change of zone from AR-1 to CR-1 based upon the record and for the following reasons:

1. The Applicant has not shown that the proposed change in zone is compatible with the County's Land Use Plan.
2. It is not appropriate to rezone a property that is only ¼ acre in size to CR-1, given the DelDOT commercial entrance requirements; parking requirements; stormwater management requirements; and commercial setback requirements that would affect the property if rezoned to CR-1.
3. The Applicant has not clearly stated the basis for the change in zone or what the potential or proposed use would be, particularly in light of the small size of the parcel and the limitations on the use caused by its small size.
4. While there may be commercial or business uses on the opposite side of Route 9, the property around this site is zoned AR-1. A change in zone to CR-1 with the uses permitted under that zoning district would not be consistent with zoning and uses of the surrounding property.

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 denied for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2008-24 – application of **GREGORY A. AND CHARLOTTE L. HASTINGS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 14.37 acres into 10 lots, (Cluster Subdivision), located south of Route 404, 2,700 feet west of Road 528.

Mr. Lank advised the Commission that the Technical Advisory Committee members were to respond to this application by February 19, 2009; that the Division of Soil and Water Conservation Drainage Program, the State Fire Marshals Office, the Natural Resources Conservation Service, State Health and Social Services, and the Department of Agriculture responded by February 19, 2009. The County Engineering Department comments were received February 25, 2009. DelDOT comments were dated February 19, 2009, but not received until March 24, 2009.

Mr. Lank advised the Commission that based on comments received from the State DNREC Division of Water Resources, dated April 13, 2009, and based on the information collected to date, it is the opinion of the Ground Water Discharge Section that the proposed subdivision as shown on the Plan would be feasible for individual on-site wastewater treatment and disposal systems in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, dated January 4, 1985, last amended on April 11, 2005.

The Commission found that on April 6, 2009 the Applicant provided a revised preliminary site plan and an Exhibit Booklet that contains a project summary, a site data table, consideration of Chapter 99 Subdivision Ordinance criteria, proposed findings of fact, a copy of the deed, a declaration of covenants and restrictions, Technical Advisory Committee comments, a copy of the application, site photographs, aerial photo overlay, a FEMA Flood Insurance Rate map, a soil map and description, a soil feasibility study, a DelDOT entrance approval letter, and 5 maps and renderings.

Mr. Lank advised the Commission that the site plan and Exhibit Booklet are a part of the record for this application.

Mr. Lank provided the Commission with an Opposition Booklet from Lewis W. Briggs, II, received April 9, 2009 and included a summary of his comments on this application, hi-lited concerns on agency comments submitted, and comments that agencies made and that he addressed during the public hearing process for Subdivision #2006-72, the original subdivision application for this site.

The Commission found that Gregory Hastings was present with David Weidman, Attorney, and Ken Christenbury, P.E. of Axiom Engineering, LLC and that they stated in their presentations and in response to questions raised by the Commission that the project is a planned low-density residential cluster subdivision for single-family stick-built or modular homes on lots of less than $\frac{3}{4}$ acre; that the two (2) existing mobile homes are proposed to be retained on $\frac{3}{4}$ acre lots; that they are proposing to create 10 lots; that they had originally proposed a standard lot subdivision for 13 lots; that a public hearing was held, the application was then withdrawn, and this application was re-filed; that the revised plan included a shorted cul-de-sac length and the

required forest buffers; that a detailed soils investigation was performed; that the soil report indicated that the soils to the rear of the project were more suitable for septic, therefore the road length was extended; that all 10 lots have soils that are suitable for on-site wastewater disposal; that individual wells are proposed; that the street is 1,400 feet long and that they are requesting a waiver in the length of the street; that sufficient space is available near Lots 4 and 10 to provide a turn-around or cul-de-sac eliminating the need for a waiver; that on-site stormwater will be diverted to 3 stormwater management ponds; that the ponds will be designed in accordance with the Sussex Conservation District, the DNREC Drainage Section, and the County Engineering Department; that this plan is superior to the original plan submitted; that 40% of the site will remain in common area; that the density is 0.7 dwelling per acre; that they have responded to the Chapter 99-9C criteria in Tab 3 of the Exhibit Booklet and summarized some of the responses; that the subdivision is designed in accordance with the Subdivision Ordinance; that there shall be no more than 10 lots developed, including the 2 mobile home lots; that the subdivision will not have an adverse impact on the neighboring properties or community; that the subdivision will not cause any adverse impact upon traffic in the area; that DelDOT has issued an approval for the project entrance as proposed; that the site's design has only negligible impacts on wetlands, since wetlands are limited to the Tax Ditch; that all runoff will be subject to Best Management Practices; that the Applicant shall form a homeowner's association to be responsible for the maintenance of streets, buffers, stormwater management facilities, and other common areas; that the stormwater management system shall meet or exceed Federal, State and County requirements; that the streets will be designed and built to County specifications; that there shall be a forested buffer between all lots and surrounding agricultural lands; that a bus stop shall be located, as necessary, in accordance with the local school district's transportation manager; that they will submit to the County Mapping and Addressing Department for subdivision and street naming; that they disagree with the opposition letter received from Lewis W. Briggs, II by stating: that the subdivision plan is substantially different from the original plan submitted in 2006; that part of the site is in a designated Flood Plain, a Zone "A"; that Zone "A" are approximate line locations since no topographic information was available at the time of the creation of the FEMA maps; that the surveyor/engineer has to make a determination as to the elevation required for construction; that the back half of the project is designation Zone "A"; that the rear portion of the land drops off from 34-feet to 28-feet; that the front half of the project is designated as a Zone "X", lands which are not required to have flood insurance; that they will be submitting to FEMA for a Letter of Map Amendment after determining the elevation requirement; that they will also be applying for a reduction in the width of the Tax Ditch easement; that the shorter street creates soil problems for the creation of areas for septic; and that they would like to erect a privacy fence to replace part of the forested buffer due to a septic system that exists for one of the mobile homes.

Mr. Lank advised the Commission that since the street length exceeds 1,000 feet the subdivision plans shall be required to include another cul-de-sac or turnaround in a central location of the subdivision, or another application will be required to be filed for the subdivision including a request for a waiver in the length of the cul-de-sac since the advertisement for this subdivision did not include a request for the waiver.

The Commission found that Mr. Christenbury stated that they would provide the additional cul-de-sac in the design of the subdivision.

The Commission found that the representatives of the application continued by stating that DNREC has forwarded a feasibility statement that states that the site is suitable for septic systems; that the purpose of the AR-1 district provides for low-density single-family residential development; that they intend to comply with all County and State Codes; that the project team has designed this project to conform to 99-9C of the Subdivision Code; that they are proposing 8 additional residential sites; that they conform to the Cluster Development Option of the Zoning Code; that buffers are proposed for those lots not already wooded; that wooded lots will be buffered by preservation of existing woodlands; that open space has been increased over and above the original plans; they intend to maintain as much existing forest as possible; that silt fencing will be located on the inside of the buffers; that the site is not within the Inland Bays Pollution Control Strategy area; that the proposed minimum square footage for a dwelling is 1,500 square feet except for the existing mobile homes; that they now realize that they must apply to the Board of Adjustment to be allowed to retain the 2 mobile homes on $\frac{3}{4}$ acre lots; and that the Final Site Plan will include a Certified Wetland Delineation from the Army Corps. of Engineers.

The Commission found that Richard Rockemann and Jay Cadle were present in opposition to this application and stated that they do not see much difference between this application and the application filed in 2006; that most of the property owners purchased 5 acre lots; that they are concerned about property values; that traffic is a major concern due to traffic backups during summer months on Route 404; and that the need is questionable due to the number of vacant homes in the County and the number of foreclosures taking place.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action on this subdivision application for further consideration. Motion carried 5 – 0.

C/U #1773 – application of **DAVIS, BOWEN & FRIEDEL, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a convenience store with gas pumps and car wash to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 4.047 acres, more or less, lying at the northwest corner of U.S. Route 113 and Route 16.

The Commission found, based on comments received from DelDOT, dated July 24, 2007, that a Traffic Impact Study is not recommended; that the Corridor Capacity Preservation Program will permit the property owner to develop a rights-in access along U.S. Route 113; that the site's main access shall be developed along Route 16; that significant improvements will be needed at this intersection to accommodate other planned developments, such as Isaac's Glen and Elizabethtown; that because they will contribute to the increase in traffic there, the Department recommends that the Developer be required to enter into a signal agreement for this intersection and to dedicate right-of-way along their Route 16 frontage, as needed, to permit the construction of a second westbound lane there; that while the Department can, as necessary, address these items through the plan approval process, it would also be appropriate for the County to include them in the Conditional Use approval; that the existing Level of Service "B" of U.S. Route 113

could change to a Level of Service "C"; that the existing Level of Service "B" of Route 16 could change to a Level of Service "C"; that additional comments received by FAX from DelDOT, dated April 15, 2009, advises that the Developer has made an effort to work with DelDOT to arrive at an acceptable access concept for the proposed development; that there has been tentative agreement on a site access concept plan; that several things will be required prior to the Department issuing a Letter of No Objection; that these include the need for the Developer's engineer to use the concept plan as a basis for a detailed site plan acceptable to DelDOT; that the Developer is aware of the fact that all costs associated with the required entrances and off-site improvements will be borne by the developer; and that DelDOT will require that the Developer agree to remove the rights out egress from the site on to U.S. Route 113 if in DelDOT's assessment operational conditions degrade and the egress becomes a safety concern in the future.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains 3 soil types; that the Developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be likely that off-site drainage improvements will be required; and that it is very likely that on-site drainage improvements will be required.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that this site is located in the Ellendale Sanitary Sewer District; that Ordinance No. 38 construction is not required; that additional System Connection Charges will be required; that the current System Connection Charge Rate is \$6,848.00 per EDU; that the parcel is served with a duplex grinder pump located near the westerly end of the parcel's frontage on Route 16; that the duplex grinder pump and 1.5 inch force main that currently serves the parcel may not be adequate for the proposed use and upgrades could be required; that any needed upgrades would be at the property owner's expense; that additional information is required before a capacity determination and EDU assessment can be made and needed upgrades identified; and that a concept plan is required.

The Commission found that John Kemp of Royal Farm Stores was present with Zac Crouch, P.E., of Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that everyone should be familiar to the site since it was recently occupied by a DeLux Dairy Market; that the market and gas islands have been removed; that the original market utilized a septic system and a well, and did not have an stormwater management facilities; that the proposed project includes a new convenience store, gas islands and a car wash; that the project will utilize County sewer, a private well, and will be required to install on-site stormwater management facilities; that ingress/egress will be available on Route 16 and ingress/egress on U.S. Route 113; that according to DelDOT, the U.S. Route 113 egress could be terminated if the Department determines that egress becomes a problem in the future; that they have designed the site as if it were zoned commercial to create greater setbacks; that no wetlands exists on the site; that the Office of the State Fire Marshal has granted approval of their plans; that they would like to be able to utilize the standard Royal Farm Store advertising signage; that the business will be open 24 hours per day; that they have provided landscaping buffers to the west and the north; that the car wash utilizes approximately 12 gallons of water per wash and that the car wash water is recycled; and that the use should not cause any negative

impact on the neighboring properties or community since it is a replacement of the same type of use.

The Commission found that Mayor Delores Price of Ellendale was present and spoke in support of this application and stated that the Town supports the use; that the use will be an economic benefit to the Town; that the site is located in a Town growth area; and questioned if the site will be impacted by the future overpass proposed by DelDOT in their long-range plans for U.S. Route 113.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1773 for Davis, Bowen & Friedel, Inc. for a convenience store with gas pumps and a car wash based upon the record and for the following reasons:

1. This site is appropriate for a convenience store, gas pumps and car wash since it is at the intersection of U.S. Route 113 and Route 16. This is a major intersection of two well traveled roadways in Sussex County.
2. This site is the same location where a convenience store previously existed for many years, and the application is basically a redevelopment and improvement of the site.
3. The project will not have an adverse impact on traffic or neighboring properties.
4. The use is a public or semi-public use that will benefit the health, safety and welfare of residents and visitors in Sussex County.
5. The neighboring Town of Ellendale is in support of this project.
6. This recommendation is subject to the following conditions:
 1. All lighting shall be screened downward and away from neighboring and adjacent properties.
 2. Any trash dumpsters shall be screened from view.
 3. The stormwater management system shall meet or exceed the requirements of the State and County.
 4. All entrances shall comply with all of DelDOT's requirements.
 5. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1776 – application of **MARK SCHAEFFER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mini-storage facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 8.05 acres, more or less, lying north of Route 9, 500 feet west of Route 5 at Harbeson.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service "E" of Route 9 will not change as a

result of this application; that DelDOT has been working with the Developer since 2007 in the review of this site; that DelDOT has reviewed the site plan and has no objections to the entrance location; that DelDOT has not authorized the commencement of entrance construction; that the site shall have access from the existing entrance along Route 9; and that the entrance shall be improved and the entrance plan shall be developed in accordance with the Department's rules and regulations prior to entrance approval.

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

The Commission found that this application was reviewed through the PLUS process on October 31, 2007; that the building square footage submitted to PLUS was 85,921 square feet; that the PLUS response from the Office of State Planning Coordination is a part of the record; and that according to the record the Developer has not yet responded to PLUS.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that a letter expressing some concerns about this application has been received from Thomas and Carolyn Klein and references landscaping, screening and buffering, curb appeal, lighting, parking, signage, a residential unit and office, septic, outside storage, and compliance with DelDOT requirements. The letter also stated that they do not oppose granting 6 storage buildings, and that the site plan on file showing 17 storage buildings does not meet the intent of the AR-1 zoning district and should not be approved.

The Commission found that a letter expressing some concerns about this application has been received from Alva and Jeanette Wagner and references that they are concerned about the site plan originally filed with the application containing 17 storage buildings; that they do not oppose the revised site plan showing 6 buildings; and suggesting that consideration be given to the preservation of the natural habitat, vegetative buffers/landscape screening, outside storage, and the height of the buildings; that they are concerned about their property value, future expansion of the site, the need for additional landscaping along their property line, and concerns about the impact of the wetland area and their property due to the stormwater management pond location.

Mr. Lank provided the Commission with copies of both letters.

The Commission found that Mark Schaeffer was present and stated in his presentation and in response to questions raised by the Commission that he has reviewed the letters from Mr. and Mrs. Klein and Mr. and Mrs. Wagner and offers the following conditions: 1) Landscape buffer – met with Mrs. Wagner and have purchased buffer trees she suggested and should be installed

tomorrow; 2) Lighting – No elevated lighting; 3) That the entrance will be shared and granted to Compass Point location and built to DelDOT requirements. This will include paving and improving Compass Point parking area and that the improvements shall be made at the time of construction of the entrance. The costs of the improvements are to be borne by the Applicant; that condition #3 was in response to a memo from Compass Point Associates which referenced that Compass Point Ventures, LLC is not opposed to the proposed improvements shown on the site plan prepared by Miller-Lewis, Inc. for the referenced project with the condition that the improvements to Compass Point be made at the time of entrance construction and that the cost will be borne by the Applicant for Harbeson Mini-Storage; that septic will be located in the upper left hand corner ; that a well will be located near the climate control building; that he would like to request a 20' by 55' office with a apartment above for security; that the office/apartment will be located at the entrance into the storage area; that the office will allow for full-time management on site; that the existing entrance will be enhanced; that they will be closing the existing entrances to create one entrance to serve both Compass Point and this project; that they will be planting Magnolia Trees along the Wagner property line as requested by Mrs. Wagner; that there will not be any overhead lighting; that the only lighting will be on the buildings; that there should be no negative impact on property values, the neighboring properties or the community; that they will comply with all Codes; that the project is adjacent to Compass Point, a professional office, another professional office to the west, and a warehouse across Route 9; that the site is presently occupied by the produce stand; that he has tried to talk to all of the neighbors and heard no major objections; that he has not yet responded to PLUS, but will respond immediately; that access to the site will be by key card access through a gated entry; that the site will be fenced along the paved drives around the buildings; that the fencing will be decorative at the entrance and chain-link type fencing elsewhere; that access for the tenants with key cards will be 24 hours per day; that normal business hours for the office will be Monday through Friday from 8:00 a.m. to 5:00 p.m., Saturday from 9:00 a.m. to 1:00 p.m., with no Sunday hours; that he would like to have some outside storage of RV vehicles to the rear of the 4 buildings; that he would like a lighted sign in compliance with Code and would prefer not to be limited to a 32 square foot sign; that the unit mix within the buildings has not been determined; that the 6 pre-fabricated buildings are designed with break-down walls so that room sizes can be adjusted; that he has developed similar facilities at other locations; that there is a need for this type of facility in the area due to the number of residential units in the area; and that according to the septic analysis a standard septic system can be permitted.

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

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

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to leave the record open for a response from PLUS and then for 10 business days after receipt of a PLUS response for written comments. Motion carried 5 – 0.

C/Z #1639 – application of **TODD BARIGLIO** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the

southwest corner of Cedar Grove Road (Road 283) and Plantation Road (Road 275), to be located on 4.711 acres, more or less.

The Commission found that on April 6, 2009 the Developer submitted an Exhibit Booklet that contains an Executive Summary which includes a reference to the project team, general information, project data, and an environmental analysis, 16 exhibits including a copy of the application, an aerial photograph, a boundary and topographic map, a concept sketch plan, a State Investment Strategies map, an existing land use map, a future land use map, a public water systems map, a public wastewater systems map, a soils map, a Tidewater Utilities, Inc. ability to serve letter, a DelDOT Service Level Evaluation and response, a DelDOT Intersection Improvement Agreement, a DelDOT letter of intent, PLUS comments and a response to PLUS, and proposed Findings of Fact.

Mr. Lank advised the Commission that the Department received copies of the referenced DelDOT comments and PLUS comments and that they are part of the record for this application.

The Commission found, based on comments received from the Sussex Conservation District, that there are 4 soil types on this parcel; that the Developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any off-site drainage improvements; and that on-site drainage improvement may be required.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Goslee Creek Planning Area; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that service has not been extended to the area at this time; that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that conformity to the North Coastal Area Planning Study will be required; that connection to the sewer system is mandatory; that annexation into the District is possible following completion of certain administrative procedures; that the project could receive sewer following an extension of sewer lines to the parcel and completion of certain downstream upgrades by the developer or others; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; and that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation into the District.

The Commission found that Todd Bariglio and Tony Bariglio were present with Dennis Schrader, Attorney, from Wilson, Halbrook, & Bayard, P.A., and Michael Riemann, P.E., from Becker Morgan Group, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to rezone 4.711 acres at the southwest corner of the intersection of Plantation Road and Cedar Grove Road from AR-1 to B-1; that the site is currently owned by Christ Church; that several business uses exist along Plantation Road, i.e. Lowe's, a beauty shop, a borrow pit, a propane farm, etc.; that several business uses exists along Cedar Grove Road, i.e. dog kennels, a small engine repair facility, and an automobile repair service; that professional offices are proposed; that central sewer is

available and mandatory from the County; that Tidewater Utilities, Inc. will provide public water; that the site is located in an Investment Level 3 according to the State Strategies; that the site is located in the Environmentally Sensitive Developing Area, a growth area, according to the County Comprehensive Plan, where retail and office uses are appropriate, and where a careful mixture of homes with light commercial and institutional uses can be appropriate to provide for convenient services; that the location is at or near the City of Lewes and the City of Rehoboth; that residential and business uses are considered permitted in this area; that the intersection of Plantation Road, Cedar Grove Road and Postal Lane are off-set and need re-alignment; that there has been extensive growth in this area; that the intended use will be complementary to the Beebe Medical Facility on Route 24; that B-1 uses should be acceptable since they are primarily neighborhood business uses; that a Sussex County regional pump station exists across Plantation Road from the site; that the intended office complex contains 45,000 square feet and is proposed to provide for professional/medical offices in a campus atmosphere; that they are proposing to build a LEED Platinum certified building on a sustainable environmentally designed and constructed site; that the campus will produce its own and uses less water, sewer, and energy; that the use should be a benefit to the area; that the Applicant intends to comply with all Sussex Conservation District requirements and to utilize green technology to the extent feasible for stormwater management; that current options include the potential for underground infiltration and groundwater recharge; that the project is located in the Inland Bays Watershed, and as a result, must comply with TMDL requirements regarding phosphorous and nitrogen reductions; that by utilizing green technology and Best Management Practices, this project will comply with the TMDL criteria outlined by DNREC; that the Applicant is in discussions with DelDOT to construct a shared stormwater management facility which can serve the proposed development as well as the future road improvements to Cedar Grove Road; that since they are proposing to connect to the Tidewater Utilities, Inc. water system, any increased water usage associated with this project will not create an adverse affect on public or private water systems since the Applicant intends to incorporate green technology into the design of the facility such as a rainwater collection system for re-use as on-site irrigation, which will reduce the demands on the water system; that in reference to wastewater treatment and disposal, the Applicant will be connecting to the County system and intends to incorporate green technology systems into the design of the facility such as waterless urinals, dual flush toilets, and gray water recycling systems, pending approval by DNREC; that DelDOT did not recommend a traffic impact study; that the Applicant has met with DelDOT and is intending to make a proportionate financial contribution toward the improvements with the realignment of Cedar Grove Road; that 10-feet of right-of-way will be dedicated along Plantation Road; that the Applicant will sign a signal agreement with DelDOT for the intersection of the realigned Cedar Grove Road and Plantation Road; that there are no known endangered or threatened species listed for the site; that there are no tidal or non-tidal wetlands on the site; that in accordance with LEED criteria, the project is intended to limit proposed impervious cover to a minimum; that some parking will be provided under the building to reduce the amount of impervious coverage; that pervious pavement and pervious pavers are proposed for some areas of parking as well as walkways and plaza's to reduce stormwater runoff and increase groundwater recharge; that all infrastructure, including private drives and utilities, will be constructed by the Applicant at his expense; that the project will provide economic benefit to the County through increased employment opportunities, increased assessments, and permitting and connection fees; that the project will also generate employment for contractors and material suppliers for the construction phase; that since this

project is to be a LEED Certified project, extensive use of local and regional material suppliers will be utilized and therefore provide an economic benefit to the local area and immediate region; that the Cape Henlopen School District will benefit from the increase in the tax revenues; that there will be no recreational facilities on the site; that no historic or cultural resources exist on the site; that the site is currently vacant; that the Applicant acknowledges that the site is near an existing cemetery; that there is a vacant parcel which separates the site from the Ebenezer Cemetery; that the Applicant will permit the Office of Historical and Cultural Affairs to document the site prior to construction; that sufficient landscaping will be provided; that the proposed rezoning is in conformance with the adopted Comprehensive Land Use Plan since B-1 zoning is appropriate in Low Density Areas; that if successful in achieving LEED Certification it could be argued that this project will consist of one of the most environmentally friendly facilities in the County; and that in a July 15, 2008 letter from DelDOT, the Applicant was advised that DelDOT has a project to build the referenced intersection realignment funded for design in 2009 and construction in 2010.

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

The Commission found that Mary Shockley, Brooks Freeman, and Jeff Dailey were present in opposition to this application, expressing concerns and stated that Plantation Road does not have a commercial setting as depicted by the speakers; that there is no need to change agricultural land to business use; that DelDOT talks about realignment; that traffic will backup; that if the intersection becomes signal lighted, it will still be a problem due to more traffic and more backups; that the residents of the area have a fear of a precedent being set for more rezoning; that there are more appropriate locations on Route One and Route 24 for this type of project; that the use is out of character with the agricultural community; that DelDOT needs to finalize their plans for realignments and new roads in the area; that there is no need for commercial uses on Plantation Road; that this area has not yet seen the impact for developments already approved in the area that have not completed development; that in the past this area received a seasonal impact and that now it receives a year-round impact; that a Conditional Use may not get objections, but rezoning is a concern; that Plantation Road has already been cursed by being labeled an Alternate Route; that Postal Lane and Cedar Grove Road should not be in a growth area for commercial uses; and that the best remedy is to deny this application.

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

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to leave the record open for a response from PLUS and then for 10 business days after receipt of a PLUS response for written comments. Motion carried 5 – 0.

C/Z #1681 – application of **SHIPBUILDERS, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a GR General Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying west of Road 213 (Old State Road) and southeast of Road 641 (Sharons Road) and also 118 feet south of Wild Cherry Street, to be located on 141.086 acres, more or less.

The Commission found that on April 2, 2009 the Developer provided an Exhibit Booklet for this project which contains a presentation outline, data sheets, a boundary survey, a site plan, and 8 exhibits, including a site plan color rendering, maps, a PLUS response, references to compliance with Chapter 99-9C, responses to Technical Advisory Committee comments, a traffic impact study, agency letters, and willing and able to serve letters.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains 8 different soil types; that the Developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that a tax ditch may be affected; that it is not likely that off-site drainage improvements will be required; and that on-site drainage improvements will be required.

The Commission found, based on comments received from the Office of State Planning Coordination, dated December 9, 2008, that the project was reviewed by PLUS on March 4, 2008 and on September 24, 2008; that the Developers responded on November 6, 2008 to the PLUS comments; that the project is located in Investment Levels 2, 3, and 4 according to the Strategies for State Policies and Spending; that because the majority of the project is within Levels 2 and 3 and the Town of Ellendale is working to annex the project, the State has no objections to the proposed project provided it is in compliance with all local ordinances and regulations; that after reviewing the response from the Developer, the State DNREC has noted that they have noted that every effort would be made to minimize deforestation and subsequent impacts to the wildlife habitat; that two forested tracts at the north end of the site consisting of 21 acres have been retained as well as a 20 acre forested tract at the south end; that DNREC appreciates the forest retention, but notes that the 20 acre area on the north end of the site will be bisected by an access road and possibly stormwater facilities; that the forested area on the south end of the site is mapped as wetland forest and may not be developed; that this development will result in the loss of 24 acres of wildlife habitat; that both of the forested areas should be placed in a form of permanent conservation so that they are truly preserved and are not impacted in the future for expansion or other purposes that will result in additional forest loss.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that this site is located in the Ellendale Sanitary Sewer District and Planning Area; that wastewater capacity is available for this project; that the current System Connection Charge Rate is \$6,848.00 per EDU; that the proposed project will connect to an existing manhole in Old Stage Road (Road 213); that Parcels 33 and 34 must be annexed into the Sewer District; that conformity to the Ellendale Technical Memorandum and the Preliminary Study for Ellendale's Treatment and Disposal Options will be required; that Parcels 115 and 122 of the project are within the boundary of the Sewer District and connection to the sewer system is mandatory; that the remaining parcels adjoin the existing Sewer District and that the County will consider annexing the parcels into the Sewer District following completion of certain administrative procedures; that the project is within planning study and design assumptions for sewer service; that the Department recommends that the Developer contact the Town of Ellendale for annexation into the Town; that the County requires design and construction of the collection and transmission system to meet Engineering Department requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept

plan has been submitted and approved by the Engineering Department; that conformity to the Ellendale Technical Memorandum and the Preliminary Study for Ellendale's Treatment and Disposal Options is required; that annexation of the additional land must be completed prior to submittal of construction drawings for review; and that one time system connections charges will apply.

The Commission found, based on comments received from the County Community Development and Housing Division, that the Developer has received approval from the County Council and their Department to participate in the Moderately Priced Housing Unit Program for this project; that the Department gives consent that this project may move forward with expedited review; that the approval is based on the Developer's commitment to provide 45 moderately priced housing units and to comply with the regulations of Ordinance #1821.

The Commission found that this application was represented by John Paradee, Attorney, and Zac Crouch, P.E., of Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the site is in a Developing Area according to the County Comprehensive Land Use Plan; that a density of 2.11 dwelling units per acre is proposed, which is less than the allowable density for the current zoning of AR-1 and GR; that this application complies with the Zoning Ordinance and the Subdivision Ordinance, more specifically 99-9C; that 40 acres of the site are intended to be preserved by permanent conservation easement; that the project has been accepted into the County Moderately Priced Housing Unit (MPHU) program, which allocates affordable housing; that the project will be a restricted residential development and will not adversely affect nearby uses or property values; that the project will not adversely impact schools, public buildings and community facilities, or area roadways and public transportation; that Artesian Water Company will provide central water to the project; that a Sewer Concept Plan has been approved by County Engineering; that off-site road improvements, as required by DelDOT, will be constructed at the expense of the Applicant; that the proposed DART bus stop located at the entrance on South Old State Road has been approved by the Delaware Transit Authority; that the Milford School District Transportation Department has reviewed the school bus stop locations and will incorporate them into their scheduled bus routes; that the subdivision name and road names have been approved by County Addressing; that the application site consists of 4 parcels being combined for development; that according to the State Strategies the site is located in Investment Levels 2, 3, and 4; that the site is not located in a Flood Zone; that they are working with the County Community Development and Housing Division in developing the project as a MPHU project; that their concept approval from the County Engineering is subject to this rezoning; that 36 acres of woodlands will be preserved; that the park area in the northeast corner of the project was located there to provide recreational and park activities for the project and the residents of the Town of Ellendale; that they have submitted letters for annexation to the Town of Ellendale; that they are waiting for the Town of Ellendale new Comprehensive Plan approval from the State so that the annexation process can proceed; that street lighting and sidewalks are planned on both sides of all streets; that they have set aside an area for centralized recreation that includes a tot-lot, a clubhouse and swimming pool; that gravity sewer is anticipated since a pump station location has already been approved by County Engineering; that they will comply with all DelDOT requirements; that the Army Corps. of Engineers has issued a letter of delineation and jurisdictional determination for the wetlands on the site; that they are planning on maintaining a

50-foot wide buffer from the Tax Ditch; that they may apply for reduction of the width of the Tax Ditch maintenance easement from the Tax Ditch Company; that the layout reflects the layout of the Town of Ellendale by establishment of a traditional block layout; that they have addressed the Technical Advisory Committee, the PLUS, and 99-9C comments in the Exhibit Booklet; that approximately 54% of the site is preserved as open space; that they have shown an area in the southerly wooded portion of the site for a possible elevated storage tank and water facility, which would be the subject of a separate Conditional Use application by a public utility, if necessary; that the swimming pool, tot-lot and other recreational amenities will be constructed upon completion of 75% of the project; that the first phase of construction will start on Old State Road near the County pump station; that they have not proposed a parking area at the recreation park; and that a multi-modal path will be constructed along Old State Road.

The Commission found that Mayor Delores Price of the Town of Ellendale stated that the Applicant has not officially made application for annexation into the Town, and that the County should give consideration to the Town since the Town and County have a Memorandum of Understanding for projects in and around the Town.

The Commission found that Don D'Aguila, Chairman of the Planning Commission for the Town of Ellendale, stated that this application should be before the Town of Ellendale, not the County, and that annexation should be mandatory since the use will impact the Town whether it is annexed into the Town or not; that the impact on the Town is detrimental if not annexed; that the Town has annexed Mr. D'Aguila's property at the corner of Route 16 and Old State Road; and that the Town has a pending 2nd Resolution for annexation of the Ingram's Village project north of Town.

The Commission found that Jeff Dailey, a resident of Milton, stated that the recreational park needs a parking area and that the swimming pool and clubhouse should be built in the first phase of construction.

The Commission found that Mr. Crouch, in response to the comments from Mayor Price and Mr. D'Aguila, submitted an April 11, 2005 letter on behalf of Shipbuilders, LLC to the Town of Ellendale, requesting placement on a May 2005 agenda for discussion of the possibility of annexation; a copy of the Town of Ellendale Meeting Agenda for May 3, 2005 showing Shipbuilders, LLC on the agenda; a May 12, 2005 letter on behalf of Shipbuilders, LLC to the Town requesting annexation; a February 8, 2006 letter from the Town to Zac Crouch, on behalf of the Applicant, to appear before the Town Planning Commission on February 21, 2006; a letter from Mr. Crouch advising the Town that he would appear on said date; a copy of the Ellendale Planning Commission Regular Meeting Agenda for February 21, 2006 showing Shipbuilders, LLC on the agenda; a copy of the February 5, 2008 Minutes of a Town of Ellendale meeting referencing a presentation by John VanSickle of Davis, Bowen & Friedel, Inc. on Shipbuilder's Square Development; a letter from John VanSickle to the Town requesting placement on the agenda for February 19, 2008; a copy of the Town of Ellendale Planning Commission Regular Meeting agenda for February 19, 2008 with a hand written reference to the project after a report from Bill Bell; a copy of the Town of Ellendale Town Council Meeting agenda for March 4, 2008 referencing William (Bill) Bell again; and a March 17, 2008 letter from the Town of Ellendale thanking Mr. VanSickle for his interest in annexation of the project into the Town and

advising that the Town Council, March 4, 2008, voted to accept the request for inclusion into the Town of Ellendale. The last letter advised the Applicant that Parcel 33.00 is not in the study area of the Comprehensive Plan of Ellendale and that the Plan will need to be amended. The letter also referenced that the Applicant has not completed an Annexation Request form and that the Town would like for the Applicant to update their maps and to complete an Annexation Request form, and that the Town looks forward to working with the Applicant and hope for a timely processing of the project.

The Commission found that Mr. Crouch added that the Applicant wants to be annexed into the Town of Ellendale; that the Applicant will annex into the Town once an agreement can be reached with the Town; and that they have been waiting for annexation since 2005.

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

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

Meeting adjourned at 10:30 p.m.