



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF MAY 11, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 11, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:05 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Robert Wheatley, Benjamin Gordy, Rodney Smith, and I.G. Burton with Vincent Robertson – Assistant County Attorney, Lawrence Lank – Director, 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 circulated. Motion carried 4 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of April 27, 2006 as circulated. Motion carried 4 – 0.

### OLD BUSINESS

**Subdivision #2005-27** – application of **BURCAP PARTNERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 29.37 acres into 30 lots, located at the southeast corner of the intersection of Route 5 and Road 234B.

Mr. Abbott advised the Commission that this application has been deferred since April 6, 2006; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on site septic systems.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 27, for Burcap Partners, based upon the record and for the following reasons:

1. The subdivision meets the purpose and requirements of the Subdivision Code and protects the orderly growth of the County. And, the items listed in Section 99 – 9C of the Code have been favorably addressed.
2. The density is less than the maximum density permitted by the existing AR-1 zoning.
3. The subdivision is integrated into the existing terrain and surroundings.

4. The subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on site septic systems.
7. A homeowners' association will be created to maintain streets, open space, storm water management areas and street lighting.
8. This recommendation is subject to the following conditions:

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1. There shall be no more than 30 lots within the subdivision.
2. A forested buffer shall be established along the western property line.
3. The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas. The proposed Restrictive Covenants must be supplied to the County Attorney prior to Final Site Plan Review.
4. The storm water management system shall meet or exceed the requirements of the State and County, including specifically the direction of the County Engineering Department.
5. All entrances shall comply with all of DelDOT's requirements. Also, an area for a school bus stop shall be established near the entrance to the project with parking for at least 4 cars.
6. A system of street lighting shall be provided by the Applicant, and the location of the streetlights shall be shown on the final site plan.
7. The Restrictive Covenants shall include the Agricultural Use Protection Notice, and an additional notice regarding the nearby asphalt plant:

“ This property is located near an existing asphalt paving operation. The paving operation may involve noise, dust, truck traffic, offensive odors, and other annoyances associated with the business. The use and enjoyment of the property is expressly conditioned on acceptance of any annoyance or inconveniences which may result from such normal uses and activities.”

8. The Applicant shall maintain as many existing trees as possible. The location of all remaining trees shall be shown on the Final Site Plan.
9. Street naming and addressing shall be subject to the review of the Sussex County Mapping and Addressing Department.
10. No lots shall contain any wetlands.
11. 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. Gordy and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-35** – application of **MLK PARTNERS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 44.87 acres into 46 lots, located south of Road 488, 960 feet west of U.S. Route 13.

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Mr. Abbott advised the Commission that this application has been deferred since April 27, 2006; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on site septic systems.

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

**Subdivision #2005-36** – application of **BETTY D. BLACK** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 11.03 acres into 11 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 319, 1,560 feet south of Road 242.

Mr. Abbott advised the Commission that this application has been deferred since April 27, 2006; and that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on site septic systems.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 36 for Betty D. Black, based upon the record and for the following reasons:

1. The subdivision meets the purpose of the Subdivision Code and protects the orderly growth of the County. It also meets the requirements of the Subdivision Code including the items listed in Section 99-9C.
2. The subdivision density is less than the maximum density permitted by the existing AR-1 zoning.
3. The subdivision is integrated into the existing terrain and surroundings.
4. The subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. A homeowners' association will be created to maintain streets, open space, storm water management areas and street lighting.
7. This recommendation is subject to the following conditions:

1. There shall be no more than 11 lots within the subdivision.
2. The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
3. The storm water management system shall meet or exceed the requirements of the State and County. In addition, the Development shall not cause increased water runoff

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onto neighboring or adjacent properties. The location of the storm water management system shall be shown on the Final Site Plan.

4. All entrances shall comply with all of DelDOT's requirements. Also, an area for a school bus stop shall be established.
5. The Restrictive Covenants shall include the Agricultural Use Protection Notice.
6. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

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

**C/U #1649** – application of **RONALD W. MORGAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a garage and parking of trucks and trailers to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.54 acres, more or less, lying west of Route 213, 416 feet south of Route 625.

The Commission discussed this application which has been deferred since April 27, 2006.

Mr. Burton stated that he would move that the Commission recommend denial of C/U #1649 for Ronald W. Morgan for a garage and parking of trucks and trailers based on the record made at the public hearing and for the following reasons:

- 1) I do not believe that the application is consistent with the character of the surrounding property, which is mostly rural and agricultural.
- 2) The purpose of this application is to allow a Conditional Use for a trucking operation with a potential for 20 employees and at least 20 trucks and 30 trailers. That is a significant increase from the 5 trucks and 12 trailers that are presently operated by the Applicant. This intensive use would be out of character with the adjacent and surrounding properties.
- 3) I believe that there are other locations that are currently zoned for business, industrial or commercial use that are better suited for the intended use, and the truck traffic that would go along with it.

- 4) The application would substantially increase truck traffic on County Road 213, which is a narrow road, and it does not promote the health, safety, convenience and welfare of the area.

Motion by Mr. Burton, seconded by Mr. Gordy 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 4 – 0.

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**ORDINANCE AMENDMENT – AN ORDINANCE TO AMEND CHAPTER 115 SECTION 162, RELATING TO THE NUMBER OF OFF STREET PARKING SPACES REQUIRED FOR MULTIFAMILY DWELLINGS AND TOWNHOUSES.**

The Commission discussed this Ordinance Amendment which has been deferred since March 23, 2006.

Mr. Gordy made a motion that the Commission should recommend approval of this Amendment relating to the number of off-street parking spaces for multi-family dwellings and townhouses, with the following recommendations:

- 1) The words “bedroom” and “efficiency units” should be specifically defined in the Ordinance or some other method of calculating additional parking spaces above the two spaces per unit should be used.
- 2) The method of reducing parking spaces for projects that have more than 50 or 200 units should be clarified.
- 3) Any space on the project recovered as a result of a reduced number of parking spaces should be utilized as open space only and should not increase the number of residential units within the project or the commercial space within a project.

The motion died for the lack of a second.

Motion by Mr. Smith, seconded by Mr. Burton and carried with 3 votes to defer action so that the full Commission can consider the Ordinance Amendment. Motion carried 3 – 1 with Mr. Gordy opposing the motion.

**ORDINANCE AMENDMENT – AN ORDINANCE TO AMEND CHAPTER 115, ZONING, ARTICLE XI, PART ONE, RELATING TO PERMITTED USES AQND TO CLOSE THE EXISTING C-1 DISTRICT; PART TWO, SECTION 3, TO CREATE A NEW CR-1 DISTRICT; PART THREE, ARTICLE X, TO AMEND THE B-1 DISTRICT RELATING TO CONDITIONAL USES; AND PART FOUR, ARTICLE XX TO AMEND THE HEIGHT, AREA AND BULK REQUIREMENTS.**

The Commission discussed this Ordinance Amendment which has been deferred since March 23, 2006.

Mr. Smith made a motion to defer action on this Ordinance Amendment. Mr. Burton seconded the motion. Mr. Wheatley and Mr. Gordy opposed the motion. The motion was defeated due to the lack of a majority. Vote was 2 – 2.

The Commission discussed the need to make a decision on the Ordinance Amendment.

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Mr. Gordy stated that he would move that the Commission make a recommendation to the Sussex County Council that the Council not adopt the proposed Ordinance to close the existing C-1 District and create a new CR-1 District and stated that he does not support an Ordinance that potentially allows 20 units per acre in a new zoning district.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with a recommendation that the Ordinance Amendment be rejected for the reasons stated. Motion carried 4 – 0.

#### PUBLIC HEARINGS

**C/Z #1607** – application of **MARINE FARM, L.L.C.** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to an AR-1-RPC Agricultural Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying southwest of Jimtown Road (Road 285A), 1,000 feet northwest of Road 277, to be located on 19.84 acres, more or less.

Mr. Lank advised the Commission that DelDOT comments were not requested for the rezoning.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam, Fallsington loam, Johnston loam or silt loam, Sassafras sandy loam, and Woodstown loam; that the Fallsington and Johnston soils have severe limitations for development; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Fallsington soils are considered of Statewide Importance, Prime Farmland, and Hydric; that the Johnston soils are considered Hydric; that the Sassafras soils are considered Prime Farmland; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; that it may

be necessary for some on-site and off-site drainage improvements because of the increased impervious area and the presence of soils with a seasonally high water table; and that there may be regulated wetlands on the site and that the Applicant should check with the Army Corps. of Engineers for required permits.

The Commission found that a letter was received from Michael R. Tyler, President of the Citizens Coalition, Inc. in opposition to this application and the application for Conditional Use No. 1678 and stated that the Conditional Use is for a good cause, but questioning the need and ramifications of the applications and their possible negative impact on the historic Jimtown community as well as on the sensitive environment where

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it is proposed; that the site is in the Environmentally Sensitive Developing Area; that the plan should comply with buffer restrictions (at least 100-feet) to protect Goslee Creek and surrounding woodlands; that they question whether this application has gone before the Office of State Planning Coordination and if DNREC has reviewed the plan; that with parking for 60 vehicles and a large stable building slated to be in this rural woodland, how will the natural areas be protected; questioning what is the plan for handling and filtering of run-off; that they believe that this is just one way that the developers are continuing to steam roll the Jimtown community for the sake of misplaced land use and profit; and asked that the County take the appropriate steps to ensure protection of the environment, the Goslee Creek watershed and most important, the people of Jimtown and their historic rural community. Attached to the letter was a copy of a letter sent to the Editor in reference to the original application for the Marine Farm.

The Commission found that the Applicants were represented by James Fuqua, Attorney, Frank Kea, Jason Palkewicz of McCrone, Inc., and Georgia Truitt and Kelly Smith of the Southern Delaware Therapeutic and Recreational Horseback Riding, Inc. (SDTRHR, Inc.) and that they stated in their presentations and in response to questions raised by the Commission that they plan to combine all submittals for C/Z #1607 and C/U #1678 into one presentation; that they had submitted an Exhibit Booklet earlier in the week for distribution to the Commission in reference to the use of the property; that they are submitting revised site plans to correct a reference to an enclosed arena and a copy of the original layout of the Marine Farm for comparison; that the original proposal intended development of this area for 20 home sites and a street; that the Commission recommended that the 20 home sites and the street be removed; that the plans were amended; that the County Council imposed a condition of approval that the 20 home sites and the street be removed from the plan; that the SDTRHR, Inc. provides riding sessions for children and adults with special needs; that the 20 acres was not going to be utilized for the residential planned community so the Applicants offered the site to the SDTRHR, Inc.; that they propose to amend the MR-RPC to an AR-1-RPC to allow the use since the use is not permitted in a MR District; that the site is in a growth area, the Environmentally Sensitive Developing Area; that sewer service will be provided to the site; that central water will be provided by Tidewater Utilities, Inc.; that there will be one

entrance from Route 285A; that they anticipate that there will be only 10 or 12 users at any one time working with staff; that the 20 acre site gently slopes down to the stream; that the site plan indicates a 15 stall barn, an indoor arena, living quarters for a staff resident, an outdoor arena, fencing around the pasture land, a parking lot with downward lighting and landscaping; that a buffer of existing trees along Road 285A will probably be utilized; that they are submitting exhibits of the elevations of the buildings and a rendering; that the maximum number of horses at the facility will be 15; that storage of manure and hay will be provided in the service area indicated on the site plan; that activity hours are proposed from 9.00 a.m. to 9:00 p.m.; that they would like to erect a sign at the entrance; that security lighting can be switched off at 10:00 p.m. if requested;

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that SDTRHR, Inc. may have 2 or 3 special events per year; that they provide limited horseback riding lessons; that they had contacted the Office of State Planning Coordination as were advised that an application was not necessary; that all building are proposed to be a minimum of 100-feet from any wetlands; that the closest home to the site is approximately 500-feet away; that they do not anticipate any negative impact on the Jimtown community; that Ms. Truitt and Ms. Smith are volunteers and North American Riding for the Handicapped Association certified instructors for SDTRHR, Inc.; that the SDTRHR program was founded in 1988 and operated on the Marine Farm for 14 years until 2002; that the program operates part-time from Pam An Stables north of Road 285; that the program relies on donations from the community, grants and fundraisers to support the program and care for the horses and operates with a small group of volunteers; that the program's mission is to provide equine-assisted therapy promoting the physical, emotional and educational growth of children and adults with special needs in the community; that they presently serve approximately 25 participants per week whose ages run from 4 to 51 years old; that disabilities include cerebral palsy, muscular dystrophy, autism, attention deficit and hyperactivity disorder, learning challenges, mental retardation and depression; that referrals to the program come from physicians, schools, physical therapists, social workers and through word of mouth in the community; that the program provides children and adults the opportunity to learn how to communicate with and control an animal 10 times their size in a safe, therapeutic environment; that they will be submitting suggested findings and conditions for consideration; that they will be submitting letters in support of the use; that the site design and the nature of the buildings should not impact the area; that there should be no negative impact on the environment; that the use is of an agricultural nature; that security will be maintained by an on-site resident; that the program presently operates with one horse that they own and one that is leased; that they are not planning a public boarding stable; that riding sessions last from ½ to 1 hour; that the horses are presently boarded at Pam An Stables; that the site is completely wooded; that all activities will be conducted on the 20 acre site; and that the fundraising events will be family events.

For the benefit of the record Mr. Lank read the legal description of the Conditional Use since it was being discussed.



**C/U #1678** – application of **MARINE FARM, L.L.C.** to consider the Conditional Use of land in an AR-1-RPC Agricultural Residential District – Residential Planned Community for a recreational/therapeutic equestrian facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19.84 acres, more or less, lying southwest of Jimtown Road (Road 285A), 1,000 feet northwest of Road 277.

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Mr. Fuqua provided copies of a revised site plan, a copy of the original site plan for the Marine Farm, and letters from Sally W. Fintel of the Sussex Consortium and Angie and Barry Sipple in support of the proposed use.

The Commission found that Gail Shaffer was present in support of the proposed use and stated that her brother-in-law is challenged and has been riding since October of 2005; that this speech and coordination has improved; that he loves the horses; and his sense of direction has improved; and that other children using the program have also improved.

The Commission found that Debbie Layton was present in support of the proposed use and stated that her son is physically disabled; that he has been involved in the program since 1999; that he loves the activities; and that there is a need for this type of activities.

The Commission found that Michael Miller was present in opposition to the application and stated that he has nothing against the program and believes in their success story; questioned what was the intended use of the site when the 20-home sites and road were removed from the plans; that the use is being moved into an area of an existing neighborhood; that the use would be better suited across Road 285 from the Marine Farm site; questioned the definition of a special event; questioned the number of special events; questioned who is paying for the project; expressed concerns about the negative impact on the neighborhood, that no farms exists along Jimtown Road; that the horse manure will cause odors; that the stream running through the site may be negatively impacted; that the use is not appropriate at this location; that Pam An Stables exists across Road 285; questioning if any other lands are available in other areas; and stating that the site could have been made into a park for the Jimtown residents; and that the use should be located in the area of the Marine Farm project, not in an existing neighborhood.

The Commission found that Mr. Fuqua, in response to questions raised by the Commission, stated that the County Council decision referenced removal of the 20 lots and the road access only, not a specific use of the site; that the utility design of the Marine Farm has adequate capacity to serve the Jimtown residents; that there are agricultural uses in the area; that the State DNREC requires a nutrient management plan;

that they realize that the Jimtown area is a neighborhood; that the developers never offered the site to the residents of Jimtown for a park; that the developers have offered their assistance to SDTRHR, Inc. in development of the facility; and that the site is an appropriate and desirable location for the use.

The Commission found that James Harmon, Ornia Kemp, Lucinda Allen, and Roselyn Allen Echols were also present in opposition and expressed concerns that the use is not feasible in Jimtown due to traffic increases, possible odors, dust, allergies and the negative impact on the neighborhood; that a wooded site is not an appropriate location for a horse farm; that development activities have already caused wild animals to come onto

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their properties, i.e. deer, groundhogs, bald eagles, etc.; that the use will impact the enjoyment of their peaceful neighborhood; that the woodlands and wetlands need to be preserved; that the public record indicates that the developers agreed to keep the area natural; that a jurisdictional determination of the wetlands should be provided and certified; that the use should be located in the area where homes are being built; that TMDL's need to be recalculated; that the density needs to be recalculated; that the developers are circumventing the original ordinance by donating the land to another use; that there was not suppose to be a roadway connection to Jimtown Road; and that two different uses cannot occupy one site.

The Commission found that Ms. Echols submitted two (2) aerial photographs of the area that were obtained from DNREC.

The Commission found that Mr. Fuqua stated, in response to questions raised by the Commission, that the wetlands have been delineated and are depicted on the site plan; that at least 100-feet of buffer has been established from the wetlands line; and that a fence will be erected along the wetlands line.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action on C/Z #1607 for further consideration.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action on C/U #1678 for further consideration.

**C/U #1651** – application of **JEFF HAMER/OASIS PROPERTY DEVELOPMENT, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for single-family detached condominiums (32 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 8.21 acres, more or less, lying west of Route 273 (Country Club Road), 220 feet north of the entrance to “Three Seasons” Camping Resort.

The Commission found that the Applicants had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contains a Narrative Description, aerial photographs and location maps, an aerial inset with the project and showing the surrounding area, site plans, an entrance plan concept, conceptual elevations of the homes proposed, DelDOT comments, a copy of an approved concept plan from the County Engineering Department, willing and able to serve letters, a wetlands investigation report, a groundwater recharge map, and a project team summary.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Country Club Road may change to a Level of Service "B".

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The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington loam, Sassafras sandy loam, and Tidal marsh, salty; that the Evesboro and Sassafras soils have slight limitations for development; that the Fallsington and Tidal marsh soils have severe limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Fallsington, and part of the Sassafras soils are considered of Statewide Importance; that the Fallsington and part of the Sassafras soils are considered Prime Farmland; that the Fallsington and Tidal marsh soils are considered Hydric; 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, based on comments received from the Office of State Planning Coordination, that the site is in a Level 2 area according to the Strategies for State Policies and Spending document; that while the Office normally supports projects in Level 2 areas, they had significant concerns relating to an archaeological site on the property; that the State Historic Preservation Office opposed the development of the site for that reason; that after reviewing a letter from John Murray of Kercher Engineering and an updated site plan, it appears that the developers have addressed many of the issues we had regarding the development of this property, including using the "Better Models for Development in Delaware" publication to redesign the community; that the State appreciates the willingness of the developer to address these issues; that the State continues to remain concerned about the loss of the Avery's Rest Archaeological site; that the Avery's Rest Site is listed on the National Register of Historic Places and dates to the 17<sup>th</sup> Century; that it is a highly significant site in Delaware's history; that the new site plan has large open space areas and it might be possible for the developers to work with the Division of Historic and Cultural Affairs to avoid disturbing the site; that the State respectfully asks that the County consider the importance of this archaeological site and require as part of the Conditional Use application that either the open space area of the plan be moved to include the archaeological site or that the site be surveyed and documented by the Division of Historic and Cultural Affairs before development occurs;

that the developers should also be aware that many historic farmsteads has small family cemeteries associated with them; that an early historic site not far to the east of this development had burials on it; and that unmarked human remains are protected by State law. The comments had attachments which included letters from Curtis Ricketts of Oasis Property Development, LLC and John Murray of Kercher Engineering, Inc., and a copy of the February 28, 2005 PLUS report.

The Commission found that Curtis Ricketts of Oasis Property Development, LLC was present with James Fuqua, Attorney, and John Murray of Kercher Engineering, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the site is located in the Environmentally Sensitive Developing Area

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according to the Comprehensive Plan Update and in an Level 2 area according to the Strategies for State Policies and Spending document; that the site is adjacent to some lots along County Club Road, in close proximity to the Silver View Manufactured Home Community, Kinsale Glen, the Rehoboth Beach Yacht and Country Club, and adjacent to the recently approved Seasons multi-family and single-family project, the former Three Seasons Campground; that the project will be served by a Sussex County operated sanitary sewer district; that the proposed project complies with the Sussex County Planning Study which has adequate capacity to serve this project of 3.9 units per acre; that the project plans have been conceptually approved by County Engineering; that central water will be provided by Tidewater Utilities, Inc.; that the site had previously be farmed; that wetlands have been delineated; that a condominium association is proposed; that the homes are anticipated to be offered for sale at \$800,000; that there should be minimal impacts on traffic; that a divided entrance is proposed; that streets will be private and built to County specifications; that a pool and poolhouse will be provided; that a dog walk area is proposed; that the plans have been revised several times due to comments received from PLUS and DelDOT; that the project will be served by a primary street and that parking will be to the rear of the units; that they have met with the Office of the State Fire Marshal and were informed that they have adequate driveway space if central water and fire protection are provided on the site; that the project will be gated and the local fire department will be provided with access codes; that sidewalks will be provided along streets and drives and to all units; that there should be no adverse impact on the community; that they have incorporated some of the "Better Models for Development in Delaware" concepts into the design; that landscaping and/or fencing are proposed around the perimeter; that they anticipate that the residents will walk or bicycle to the pool area; that the amenities will be available for use by the residents within the project within 2 years of issuance of the first building permit; that they are planning on offering 3 or 4 different home models, similar to the Village of Kings Creek project; that the entrance design will include sidewalks; and that the alleys may be reduced in width if acceptable to the Office of the State Fire Marshal, since secondary fire lanes can be 16-foot wide.

The Commission found that Mr. Fuqua submitted a letter from the Delaware Historical and Cultural Affairs thanking the developers for meeting with them and in appreciation of their cooperation in allowing their staff to access and recover what information they can from the site prior to beginning construction.

The Commission found that Mr. Fuqua submitted some suggested Findings and suggested conditions of approval for consideration by the Commission.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action.

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**C/U #1652** – application of **KEN AND JOAN GILLAM** to consider the Conditional Use of land in a GR General Residential District for boat storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.88 acres, more or less, lying east of Route 390A, 400 feet south of Route 390.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service of Road 390A will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Pocomoke sandy loam; that the Evesboro soils have slight limitations for development; that the Pocomoke soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the both soil types are considered of Statewide Importance; that the Pocomoke soils are considered Prime Farmland and Hydric; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for on-site and off-site drainage improvements because of the presence of very poorly drained soils with a seasonally high water table; and that there may be regulated wetlands on site and that the Applicant should check with the Army Corps. of Engineers for required permits.

The Commission found that a letter was received from Dino Iacchetta in opposition to this application expressing concerns that his plan, subject to the outcome of this request, was to build a residential home that will be in accordance with the upscale homes currently in the neighborhood; that upon learning of the Applicant's intent, his perception is that the value of the property, neighborhood and any subsequent residential construction will be negatively impacted; and urging the Commission to reject the request and preserve the ascetic view and stated use of this residential property.

The Commission found that Ken and Joan Gillam were present and stated in their presentations and in response to questions raised by the Commission that Mr. Gillam works on his own boats; that he purchases old boats, repairs them, and then sells them from another location; that he has requested a Conditional Use for storage of boats; that there are six (6) boats on site, three (3) are his, and three (3) belong to other owners; that he has had as many as 10 or 12 boats on the premise at one time in the past; that there is a lack of available space for boat storage in the area; that he is only on the site part-time to work on his boats since he cannot work on boats in the residential neighborhood where he lives; that he does not have electric on the site, but does utilize a generator; that he plans on storing boats during winter months; that there will not be any RV, trailer or camper storage in the facility; that normal hours are anticipated to be from 8:00 a.m. to 5:00 p.m. seven (7) days per week; that he anticipates that 75% of the boats to be stored will be pontoon boats; that he does not propose to install security lighting; that the

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perimeter will be fenced and landscaped if required; that he owns three (3) trailers for hauling boats; that he owns and operates "Affordable Marine"; that a manufactured home community adjoins the site and a horse farm is across the road from the site; that boats will be handled and delivered by staff, not the boat owners; and that the site will not be utilized for a daily storage use, only for winter storage.

The Commission found that the Applicants provided a revised sketch of the layout of the project and photographs of the site and area.

The Commission found that Tom and Patricia Cassat were present in opposition to the application and expressed concerns that they purchased adjoining property and are building a dwelling; that the proposal impacts their investment; that they are opposed to a commercial activity; that they have concerns for the safety of their two children; that they do not want to live next to a junk yard; that the applicant recently cleaned up the site; and that there are 11 boat storage facilities within 6 miles.

The Commission found that Luke Hebner was present in opposition and stated that he plans on building a dwelling across from the site within the next year and opposes the appearance of a chain link fenced storage facility full of pontoon boats; and that he opposes the appearance of boat storage.

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

Mr. Wheatley stated that he does not feel that this use is appropriate in a residential area; that other purchasers have purchased their property thinking of residential uses in the area; and that the site is a part of a four (4) lot subdivision.

Mr. Smith stated that he would move that the Commission recommend denial of C/U #1652 for Ken and Joan Gillam for a boat storage facility based on the record of the public hearing and for the following reasons:

- 1) The Applicant has not demonstrated that there is a public need for the proposed use, and this area is not well suited for the proposed use.
- 2) The application is not consistent with the character of the surrounding properties.
- 3) The application is not of a public or semi-public character, and it is not essential for the general convenience and welfare of the community.

Motion by Mr. Smith, seconded by Mr. Gordy 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 4 – 0.

**C/U #1653** – application of **ROBERT RAHN** to consider the Conditional Use of land in a GR General Residential District for a plumbing business with parking area to be located

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on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.56 acres, more or less, lying south of Route 302A, ¼ mile northwest of Route 48.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “A” of Road 302A will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which have slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soil type is considered of Statewide Importance and Hydric in small depressions; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for on-site and off-site drainage improvements.

The Commission found that a note was received from Casimir S. Alkanowski opposing the application and expressing concerns that the application may lower his property values and become an eyesore due to the sight of trucks and equipment and new and old refuse from job sites laying around for the public to see.

Mr. Lank advised the Commission that the Applicant received a violation for the activity in August of 2004.

The Commission found that Robert Rahn was present with Rowan Glidden of George William Stephens, Jr. and Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the Applicant lives on the site and

started operating the business from a detached garage; that the property is surrounded by a wooded area; that additional screening is proposed based on the proposed site plan; that the dwelling and garage are setback off of Avalon Road; that the driveway was recently paved; that adequate space is available for employee parking on the site; that approximately half of the employees drive company vehicles home; that no customers come to the site; that the business operates from 7:00 a.m. to 3:30 p.m. weekdays only, with no weekend hours; that most materials are delivered to job sites; that there is no retail business conducted on premises; that the Applicant will continue to live on the premises; that they do not anticipate any impacts on the neighborhood; that the general area is zoned GR with manufactured home developments; that the only outside storage will be vehicles and a trailer for hauling a trencher; that all materials are stored inside of the garage; that the Applicant purchased the property with the intent of operating the business; that he has 14 full-time employees; that the business has 8 trucks and 1 trailer; that some deliveries are delivered by UPS; that there are no large truck deliveries; that he does not propose to erect any signs since all of the business trucks are lettered; and that

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he has no objection to restrictions on signage or the number of trucks stored on the site.

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

The Commission found that Art Sundberg was present in opposition to the application and stated that the area is residential; that the garage is two story; that he is opposed to the storage of materials and vehicles; that the site looks commercial with the parking of lettered trucks on the site; and that there are no commercial or business uses in close proximity.

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.  
Motion carried 4 – 0.

**Subdivision #2005-37** – application of **DURWOOD BENNETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 9.85 acres into 10 lots, located north of Road 84, 250 feet northwest of Road 363.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on September 21, 2005 and that the report will be made a part of the record for this application; that the applicant's engineers submitted an Exhibit Booklet on May 4, 2006 and that it will be made a part of the record; that a septic feasibility statement for a community disposal system has been received; and that restrictive covenants have been submitted.



The Commission found that Jennifer Penozza with Green Stone Engineering, and Durwood Bennett and Steve Parsons, partners, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 10 lots are proposed on 8 acres; that the site is located in a low density area; that a 50-foot buffers surrounds the site; that there are not any wetlands located on any of the lots; that on site wells are proposed; that a community septic system has been approved for 5 lots; that after the improvements are constructed, DNREC will reconsider their position on the other 5 lots; that the applicants will follow the recommendations of the Technical Advisory Committee; that the site is well drained and has a positive outfall on all 4 sides; that the streets will be private and built to County specifications; that the entrance design has been submitted to DelDOT for review and approval; that DelDOT did not require a traffic impact study; that there are no Delmarva Fox Squirrels located on the site; that the trees on site will remain undisturbed; that there will not be any open storm water management ponds; that the buffers are located within the lot lines; that the

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dwelling will be stick built and contain a minimum of 2,100 square feet; that the lots will be sold individually; that the developers will comprise the architectural review committee until the project is turned over to a homeowners' association; that the restrictive covenants have been submitted and approved; and that central sewer and water is not available to the site.

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

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

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

**Subdivision #2005-38** – application of **JAY F. PRATT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred, Sussex County, by dividing 24.18 acres into 17 lots, located west of Road 562, 879 feet north of Road 566.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on September 21, 2005 and that the report will be made a part of the record for this application; that DelDOT has issued a Letter of No Objection for the entrance location; that the applicant has submitted proposed Restrictive Covenants; and that letters from Robert Hunsberger and Allen and Bernice Parsons were received in opposition to this application; and a petition with 8 signatures in opposition to this application was received.

The Commission found that Jay Pratt and Martin Cosgrove; Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this site was originally approved for 33 lots in 1995; that that subdivision was subject to the sunset provisions of the Subdivision Code; that this application has been reduced to 17, 0.75-acre lots; that lot 7 has been revised to meet the minimum lot size of 0.75-acre; that most of the site is a field; that there is a small amount of woodlands on the site and that the developer will maintain as many existing trees as possible; that there will not be any disturbance to the wetlands on the site; that none of the lots are located within the wetlands; that there is another 15 lot subdivision in the area; that the area contains trip lots along the County Roads; that there is an open space proposed between the road and the proposed lots; that there are not any historical features on the site; that minimal grading is anticipated; that a 30-foot forested buffer with 2 rows of leyland cypress trees has been planted; that no objectionable features will be permitted; that the first lot is setback 300 feet from the County Road; that on site

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septic and wells are proposed and have been approved by DNREC; that the site is currently mowed; that the site is not economically feasible for agricultural uses since it is small; that no runoff problems will occur; that a bus shelter can be erected at the entrance to the development; that the dwellings will start in the \$200,000.00 to \$250,000.00 price range; that there are 3 new dwellings in the immediate area; that there will not be any adverse impacts to the school district; that the applicant resides on an adjoining property; that the applicant has owned the land since May 2005; that manufactured homes will not be permitted; and that it is very rare to see any bald eagles in the area.

The Commission found that Barbara Dickerson was present in support of this application and advised the Commission that she has built 3 new homes in the area and hopefully will be building the homes for this development if it is approved.

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

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

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

Meeting adjourned at 9:55 p.m.