

MINUTES OF THE REGULAR MEETING OF MAY 22, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 22, 2014, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 4:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended by removal of Tidewater Environmental Services, Inc. from Other Business. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of April 24, 2014 as corrected. Motion carried 5 – 0.

OTHER BUSINESS

Tidewater Environmental Services, Inc.
C/U #1792 – Amended Conditions

Mr. Lank advised the Commission that this application had been removed from the Agenda by the Applicant.

The Villages of Five Points MR/RPC
Amended Conditions – Savannah Road

Mr. Abbott advised the Commission that the Villages of Five Points Owners' Association and Old Towne Pointe, LLC, the developers of the Villages of Five Points are requesting that anyone using the open space fields, pavilion and restrooms within the Villages of Five Points development be required to pay for costs associated with the usage of these amenities even though they are open to public use; and that the Commission was previously provided copies of information that was submitted by the Owners' Association's attorney.

Mike Smith, Esquire, present for the Villages of Five Points Owners' Association, John Sergovic, Esquire, present for Old Towne Pointe, LLC, and John Gilbert, a resident in the Villages of Five Points, were present on behalf of this request and stated in their presentations and in response to questions raised by the Commission that they would like to amend Conditions of Approval #8 and #10; that the soccer field and pavilion are open to public use currently; that the property owner's association should be able to control what entities utilize the fields; that both attorneys have drafted an agreement to be filled out prior to usage of the fields, etc.; that past organizations have caused some problems with trash, parking, and open fires; that the homeowners' association wants to manage who uses the amenities; that the proposed agreement could help recoup expenses if anything is damaged; that the developer will turn the project over to the property owners at some point in time; that anyone wishing to use the amenities will be

required to fill out an agreement form that has to be approved by the property owner's association; and that they are requesting that Conditions of Approval #8 and #10 be revised to read as follows:

8. Applicant will reconfigure "soccer" field (use of the term "soccer" herein is for identification purposes only, and not as a limitation or permitted uses of the subject area) by the following changes: A) Remove 8 unit condominium building (reducing density from 594 units to 586 units); B) Reorient existing field to true north/south; C) Introduce a soccer pavilion with bathrooms, storage and weather shelter (see Revision Plan); Note: Soccer field and pavilion will be opened for the [to public] use and enjoyment of those approved by the Villages of Five Points Property Owners Association, Inc. after submission of a properly completed Common Area Usage, Release of Liability and Indemnification Agreement, in the form attached hereto and incorporated herein by references; and

10. Applicant will provide the following recreational facilities: A) 8 tennis courts (one court every 75 units), B) 2 outdoor swimming pool facilities (first pool facility @ 80 units, second pool after 40 units of East Village), C) Multi-use field and soccer pavilion completed within 3 years of the first residential building permit issued for West Village. This area will be open to those approved by the Villages of Five Points Property Owners Association, Inc. after submission of a properly completed Common Area Usage, Release of Liability and Indemnification Agreement, in the form attached hereto and incorporated herein by reference [public]....

Motion by Mr. Burton, seconded by Mr. Ross, and carried four (4) votes to one (1), with Mr. Smith opposed, to amend the conditions of approval as stated. Motion carried 4 – 1.

Subdivision #2005 – 42 – Wilkinson Development, LLC
Woodridge Subdivision – Revised Preliminary and Amended Condition

Mr. Abbott advised the Commission that this 188-lot cluster subdivision received final approval from the Commission on December 17, 2008; that the developer is requesting to revise the final record plan due to market conditions; that the revisions to the plan include the elimination of Ashland Drive and a portion of Deep Woods Road allowing for the relocation of the recreational fields to a more centralized location next to the proposed clubhouse; that the proposed on-site wastewater will now be pumped to an approved off-site facility and not require the on-site facility along the southeast property line; that the pump station will also be relocated to a more central location to allow for a close connection to Artesian's regional force main on Deep Woods Road; that some of the lots have been made wider and deeper; that 57.7 acres of passive and active open space is now provided; that the proposed streets will be constructed to current County specifications and standards; that except for Lots 133, 167, 184, 88 and 53, all lots abut open space; that since construction has not commenced, no lots have been conveyed or transferred; that the developer is requesting to amend the condition requiring the clubhouse and swimming pool being open to the residents prior to the issuance of the 50th residential building permit to be open to the residents prior to the issuance of the 75th residential building; that this approval is valid until January 1, 2016; and that the Commission was previously provided a copy of the revised plan.

Mr. Johnson advised the Commission that the amenities are in a more centralized location; that amending the condition from the 50th residential building to the 75th residential building permit is a reasonable request; and that no amenities are being deleted.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the revised plan as a revised preliminary and to amend the condition of approval requiring the amenities to being open to the residents prior to the issuance of the 50th residential to the amenities being open to use by the residents prior to the issuance of the 75th residential building permit. Motion carried 5 – 0.

Subdivision #2005 – 64 – Palisades Land, LLC
The Estuary – Revised Preliminary Phase 1

Mr. Abbott advised the Commission that this subdivision received preliminary approval from the Commission for 1,052 lots on 739.69 acres on September 28, 2006; that the Commission granted a revised approval for 739 lots on 458.00 acres on March 17, 2010 due to the loss of 2 tracts of land from the original application; that on October 28, 2010 the Commission granted final approval for Phase 1A which contained 22 lots; that on November 21, 2013 the Commission reviewed a revised plan for Phase 1 and deferred action and indicated that they would prefer to see what the total plan would look like; that this revised plan is for 631 lots on 432.42 acres; that Phases 1B through 1D are for 259 lots; that Phase 2 is for 105 lots; that Phase 3 contains 97 lots; and that Phase 4 contains 148 lots for a total of 631 lots; that one central entrance for both the north and south sides is proposed off of Camp Barnes Road; that an entrance off of Double Bridges Road has been eliminated; that 4 cul-de-sac streets have been added; that the Commission needs to determine if the proposed revisions warrant an amended application; and that the Commission was previously provided copies of the revised plan.

James Fuqua, Esquire, Steve Marsh, P.E. with George Miles and Buhr, LLC, and Ed Launay, Soil Scientist, were present on behalf of this request and advised the Commission that 2 large tracts of land have been removed from the original application; that the proposed number of lots is 631 on 432 acres; that the proposed density is 1.61 lots/acre; that the wetlands delineation expired and has been redone and submitted to the Army Corps of Engineers for approval; that lots have been removed from wetland areas; that there are no wetlands on any of the lots; that the revisions are for Phase 1 at this time and that the entire plan has been submitted; that the applicants have a court order change for the tax ditch right-of-way; and that the revised plan has eliminated some streets.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve Phase 1 as a revised preliminary. Motion carried 5 – 0.

Rommel Office and Warehouse
Commercial Site Plan – Nassau Commons – Route 9

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 1,780 square foot office and a 6,380 square foot warehouse located on 0.92 acres; that the site is zoned

C-1 General Commercial; that the setbacks meet the minimum requirements of the zoning code; that the maximum building height is 42 feet; that 20 parking spaces are required and 30 spaces are proposed; that the parking currently exists as part of the Nassua Commons commercial area; that on-site well and county sewer are proposed; that there are no wetlands on the site and the site is not located in a flood zone; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned if there is a shared parking agreement in place.

Mr. Lank advised the Commission that the Board of Adjustment granted variances for the setbacks in the area and that the parking design was presented during that time.

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

Shoal Harbor

Revised Site Plan – Rehoboth Avenue

Mr. Abbott advised the Commission that this is a revised site plan for the swimming pool and pool house; that when the Commission approved the preliminary site plan on December 6, 2012 the proposed swimming pool scaled approximately 35 feet by 75 feet and included a pool house; that this was the same when the staff granted final approval on May 6, 2013 upon receipt of all agency approvals; that the developers are now proposing a swimming pool that is approximately 20 feet by 30 feet with an 18 foot by 28 foot pool house; that the pool and pool house are in the same area as the previously approved plan; that the developers provided the staff with an illustrative rendering that was a part of the sales brochure and it states that all dimensions are approximate; that the staff has received 12 emails opposed to this request from unit owners in the project; and that the Commission was previously provided a copy of the revised site plan.

James Fuqua, Esquire, and Josh Mastrangelo, one of the developers, were present on behalf of this request and advised the Commission that the original pool size was not 35 feet by 75 feet; that all 28 units within the project have been sold; that 12 owners are opposed to the request and that more than half of the owners are not; that the proposed pool measures approximately 20 feet by 30 feet; that there were disclaimers in the sales brochure; that the developer is still going to provide a pool; that the pool meets the 40 foot setback along Rehoboth Avenue; that the developer feels that this is a better plan; that the revised plan was necessary because of the storm water management design; that the foundation for the pool has been dug; that this project is not a subdivision, therefore amenities are not required; that the developer is trying to create an overall amenity package; and the dispute between the owners and the developer is a contractual dispute that should not be resolved by the Commission.

Mr. Abbott advised the Commission that the actual size of the pool on the preliminary and final site plan was approximately 22 feet by 46 feet.

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

Brian Dale Butler
CU #1847 Site Plan – Road 569 (Sand Hill Road)

Mr. Abbott advised the Commission that this is a site plan for a metal fabrication and welding shop located on an area containing 0.861 acres; that the site is zoned AR-1 and the conditional use was approved on December 7, 2010 with 10 conditions; that the conditions of approval are noted and depicted on the site plan; that the setbacks meet the minimum requirements of the zoning code; that 6 parking spaces and proposed; that existing on-site septic and well will be utilized; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

Sara Kay I. Phillips
CU #1974 Site Plan – Route 9 (Savannah Road)

Mr. Abbott advised the Commission that this is a site plan for a small beauty salon within an existing dwelling located on 0.767 acres; that the site is zoned AR-1 and the conditional use was approved on January 14, 2014 with 6 conditions of approval; that the conditions of approval are noted on the site plan; that the site plan complies with the conditions of approval; that 4 parking spaces are proposed in front of the existing structure; that a handicapped ramp and stairway are being added; that the existing well and septic will be utilized; that final approval could be considered since all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

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

APD #2014 – 7 – Jerry C. Dukes
Recommendation to Delaware Agricultural Lands Preservation Foundation

Mr. Abbott advised the Commission that this is a proposed Agricultural Preservation District located in Nanticoke Hundred; that the site is located off of Dusty Road and Tyndall Road; that the site includes Tax Map I.D. 2-31-22.00-1.00, 2.00, 3.00, 5.00 and 6.00 and 2-31-19.00-21.01 and 21.02; that the total acreage is 477.05 acres; that 420.11 acres are for crop lands, 47.60 acres of forested land, 7.34 acres of structures and 2 acres for dwellings; that there is a poultry operation on the site; that the purpose of this request is for a recommendation to the Delaware Agricultural Lands Preservation Foundation; and that the Commission was previously provided information that was submitted by the Foundation.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved. Motion carried 5 – 0.

APD #2014 – 8 – James and Una Lee Burton
Recommendation to Delaware Agricultural Lands Preservation Foundation

Mr. Abbott advised the Commission that this is a proposed Agricultural Preservation District located in Dagsboro Hundred; that the site is located off of Hickory Hill Road; that the site is identified as Tax Map I.D. 2-33-4.00-7.00; that the total acreage is 210 acres; that the type of farm operation is timber; that the purpose of this request is for a recommendation to the Delaware Agricultural Lands Preservation Foundation; and that the Commission was previously provided information that was submitted by the Foundation.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved. Motion carried 5 – 0.

Janet Bowden
Lot and 50' Easement – Road 92

Mr. Abbott advised the Commission that this is a request to subdivide a 2.21 acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that both of the lots will exceed 1.0 acre; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

The Estate of Betty F. Sharp, Trustee
3 Parcels and 2 50' Right of Ways – Route 14 (Rehoboth Boulevard)

Mr. Abbott advised the Commission that this is a request to subdivide a 41.73 acre parcel into 3 parcels with access from 50 foot right-of-ways; that Parcel 1 will contain 19.43 acres, Parcel 2 9.43 acres and Parcel 3 12.87 acres; that there is an existing 50 foot right of way that will serve as access for Parcels 2 and 3; that a proposed 50 foot right of way will serve Parcel 1; that the purpose of this subdivision is to settle an estate; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

OLD BUSINESS

Change of Zone #1746 – Seaside Communities, RDC, LLC

Application of **SEASIDE COMMUNITIES, RDC, LLC** to amend Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to MR/RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.516 acres, more or less, land lying northeast corner of Route 24 (John J. Williams Highway) and Tanglewood Drive, a private street providing access to Briarwood Estates Subdivision (Tax Map I.D. 3-34-18.00-40.00).

The Commission discussed this application which has been deferred since February 13, 2014.

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1742 for Seaside Communities, RDC, LLC for a change in zone from AR-1 to MR/RPC based upon the information contained in the record and for the following reasons:

- 1) The proposed MR/RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the Comprehensive Land Use Plan.
- 2) Under the current AR-1 Zoning with the cluster option, the site could be designed and developed to 81 lots. The developer is apparently seeking the MR-RPC zoning designation to accomplish a development of single-family style condominium units. The RPC density should remain consistent with the prior density.
- 3) The development of this site at 81 units is consistent with the densities of surrounding RPCs and other developments, including Hart's Landing, Briarwood Estates, and the Retreat at Love Creek.
- 4) The project is within a Developing Area according to the Sussex County Comprehensive Land Use Plan.
- 5) Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.
- 6) Central water will be provided to the project.
- 7) With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity. This development, in a single family condominium format achieves this goal. The design also retains a great deal of open space and protects wetlands.
- 8) DelDOT has performed a study of the area where this development is located and has determined specific road entrance and intersection improvements in the area, including additional lanes, intersection and roadway improvements, bus stops and other improvements. The developer will be required to contribute to the overall costs of these area roadway improvements in addition to actual roadway improvements along Route 24 near the development and its entrance. All of these improvements will be beneficial to Route 24.

- 9) This recommendation is subject to the following conditions:
- A. The maximum number of residential units shall not exceed 81 units.
 - B. Site Plan review shall be required for each phase of development.
 - C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
 - D. As proffered by the Applicant, recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These recreational facilities shall include a tot lot, swimming pool, and bath house.
 - E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
 - F. The MR/RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the Applicant, the street design shall include sidewalks on both sides of the streets and street lighting.
 - I. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
 - J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
 - K. The Applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities, and other common areas.
 - L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The wetland areas shall be clearly marked on the site with permanent markers.
 - M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

Change of Zone #1746 – Castaways Bethany Beach, LLC

Application of **CASTAWAYS BETHANY BEACH, LLC** to amend Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.45 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of).

The Commission discussed this application which has been deferred since April 24, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1746 for Castaways Bethany Beach, LLC for a change of zone from C-1 General Commercial to MR Medium Density Residential based upon the record made during the public hearing and for the following reasons:

- 1) This is a “down zoning” resulting in a significant reduction in the type of permitted uses for the land. The permitted residential density is also much lower under the MR zoning classification than it was under C-1 zoning, which permits up to 12 residential units per acre.
- 2) The rezoning is necessary for the Applicant to achieve MR zoning across the entire parcel so that a uniform development plan with a Residential Planned Community overlay can be achieved.
- 3) The rezoning will not adversely affect nearby uses or properties.
- 4) The rezoning will be consistent with other area zoning classifications and uses, which do include GR and MR zoned properties.
- 5) The site is located in the Environmentally Sensitive Developing Area under the County Code and the County Comprehensive Land Use Plan. The rezoning to MR is consistent with the purposes and goals of this area, and permitted housing types include single family, townhouse and multi-family type units.
- 6) MR zoning is appropriate since the site will be served by central water and it is a part of an existing Sussex County Sewer District.
- 7) The rezoning is consistent with the stated purposes of the MR zone.

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

Change of Zone #1747 – Castaways Bethany Beach, LLC

Application of **CASTAWAYS BETHANY BEACH, LLC** to amend Comprehensive Zoning Map of Sussex County from a MR Medium Density Residential District to a MR/RPC Medium Density Residential District – Residential Planned Community to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.80 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of).

The Commission discussed this application which has been deferred since April 24, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1747 for Castaways Bethany Beach, LLC for a MR/RPC Medium Density Residential – Residential Planned Community based on the record made during the public hearing and for the following reasons:

- 1) The RPC permits the development of 45 single family lots to be part of a mixed use residential development.
- 2) The site currently is approved for 143 residential units. The total number of lots and units for the entire project will be limited to 75. This is a significant reduction in density.
- 3) The RPC designation will allow the development of this property in a way that is consistent with nearby communities.
- 4) The proposed MR/RPC project meets the purpose of the Zoning Ordinance by promoting the orderly growth of the County. It is also in the Environmentally Sensitive Developing District according to the Comprehensive Land Use Plan. This type of RPC residential use is permitted under this designation.
- 5) With the conditions placed upon this project, the RPC designation is appropriate for this parcel, since the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
- 6) The RPC will be served by central water and Sussex County sewer.
- 7) This recommendation is, however, subject to the following conditions:
 - A. There shall be no more than 45 lots within the RPC.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - G. A 20 foot forested Agricultural buffer shall be shown along the perimeter of the entire residential development, including the area covered by Conditional Use #1986. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.
 - H. No wetlands shall be included within any lots.
 - I. The subdivision shall be served by Sussex County sewer.

- J. As proffered by the Applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 50th residential building permit for the entire project, including Conditional Use #1986.
- K. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.
- L. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The Staff shall approve the revised Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

Conditional Use #1986 – Castaways Bethany Beach, LLC

Application of **CASTAWAYS BETHANY BEACH, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.56 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of)).

The Commission discussed this application which has been deferred since April 24, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 1986 for Castaways Bethany Beach, LLC for Multi-Family Dwelling Structures based on the record made during the public hearing and for the following reasons:

- 1) This Conditional Use permits the development of 30 multi-family units to be part of a mixed use residential development.
- 2) The site currently is approved for 143 residential units. The total number of lots and units for the entire project will be limited to 75. This is a significant reduction in density.
- 3) The Conditional Use will allow the development of this property in a way that is consistent with nearby residential communities and it is consistent with the prior approvals for multi-family units on this parcel.
- 4) The Conditional Use will be served by central water and Sussex County sewer.
- 5) The Conditional Use will not adversely affect adjacent properties, roadways or other public facilities.
- 6) This recommendation is, however, subject to the following conditions:
 - A. There shall be no more than 30 units within the Conditional Use area.
 - B. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.

- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- G. A 20 foot forested Agricultural Buffer shall be shown along the perimeter of the entire residential development, including the area covered by Change of Zone #1747 for the RPC portion of the development. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.
- H. The project shall be served by Sussex County sewer.
- I. As proffered by the Applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 50th residential building permit for the entire project, including the RPC portion of the development covered by C/Z #1747.
- J. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.
- K. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The Staff shall approve the revised Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.
- L. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

Conditional Use #1987 – Brian and Kelly DeLeon

Application of **BRIAN AND KELLY DELEON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a cross fit training gym to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.5 acres, more or less, land lying southwest of Route 30 (Gravel Hill Road) 1,605 feet southeast of Route 47 (Springfield Road) (Tax Map I.D. 2-34-8.00-51.00).

The Commission discussed this application which has been deferred since May 8, 2014.

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 1987 for Brain and Kelly DeLeon for a Conditional Use to operate a Cross Fit Training Gym based upon the record made during the public hearing and for the following reasons:

- 1) This use originally started out as a home occupation with no employees. It has grown over time to include several trainers besides the Applicant. The number of clients has increased as well. Still, it primarily remains a home-based business.
- 2) While much of the property will be used for outdoor training purposes at times, the bulk of the use is limited to a pole barn which is on the property.
- 3) The Applicant resides on the property and will continue to reside there throughout the use. The property is also surrounded by members of the Applicant's family.
- 4) The use is limited in scope and will have little or no impact on neighboring properties, traffic, roadways or community facilities.
- 5) The use promotes the health, safety, welfare and general convenience of Sussex County and its residents.
- 6) There were no parties that appeared in opposition to the Application.
- 7) This recommendation is subject to the following conditions:
 - a. The use shall be limited to the hours of 5:30 a.m. to 7:00 p.m. Monday through Friday, and 8:30 a.m. to noon on Saturday and Sunday.
 - b. One lighted sign not to exceed 32 square feet per side shall be permitted.
 - c. Any security lights shall be downward screened so that they do not shine on neighboring properties or communities.
 - d. Parking shall comply with Sussex County parking regulations. All parking spaces shall be clearly marked on the Final Site Plan as well as the site itself.
 - e. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with four (4) votes, to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated. Motion carried 4 – 0. Mr. Johnson abstained.

Change of Zone #1750 – BLN, LLC

Application of **BLN, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 14,400 square feet, more or less, land lying southeast of Route 9 (Lewes Georgetown Highway) 0.6 mile west of Road 321 (Park Avenue) (Tax Map I.D. 1-35-15.00-83.00).

The Commission discussed this application which has been deferred since May 8, 2014.

Mr. Johnson stated that he would be abstaining.

Mr. Smith stated that he would move that the Commission recommend denial of Change of Zone No. 1750 for BLN, LLC for a change in zone from AR-1 Agricultural Residential to CR-1

Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) The Applicant has stated that there are no specific plans for the use of the property that would require a CR-1 zoning. Instead, the sole reason for the rezoning appears to be to sell the property and maximize the return. This is not a sound basis for a rezoning.
- 2) I am concerned that the rezoning will have an adverse effect on neighboring and adjacent properties. With the exception of Sports at the Beach to the rear, the property is surrounded by residential uses along Route 9. While there are some commercial and business zonings and uses along Route 9, they are separated from this site by residential properties. As a result, the rezoning to CR-1 would create a standalone parcel that is not compatible with the adjacent properties. Also, Sports at the Beach is a Conditional Use limited to a sports facility and not all of the permitted uses in a CR-1 Commercial Residential District.
- 3) I am not satisfied that the Applicant established a record sufficient to support the rezoning to CR-1. Although the property is small in size, there are many diverse and intensive commercial uses that could occur on the property. They could include a small car sales lot, fast food restaurant, car wash or other potential uses. These uses that are permitted under CR-1 are not compatible with the existing residential uses on adjacent properties.
- 4) I am not satisfied that this standalone 14,400 square foot parcel is appropriate to be rezoned to CR-1. Such a small parcel would not conform to the purpose of a CR-1 zoned property as providing “Sufficient space and appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area...”
- 5) In summary, I am not satisfied that the Applicant has made an adequate record to support a change in zone from AR-1 to CR-1 for this 14,400 square foot parcel of property.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that this application be denied for the reasons stated. Motion carried 4 – 0. Mr. Johnson abstained.

Subdivision #2012 – 4 Main Street Homes at Sussex, LLC

Application of **MAIN STREET HOMES at SUSSEX, LLC** to consider the Subdivision of land in an MR Medium Density Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 19.71 acres into 32 lots, located at the end of Fairway Drive within Old Landing Development, approximately 1,950 feet west of Road 274 (Old Landing Road). Tax Map I.D. #3-34-18.00-83.14.

Mr. Abbott advised the Commission that this is the final record plan for a 32-lot standard subdivision application; that the Commission granted preliminary approval for 32 lots on January 10, 2013 with 9 conditions of approval; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2014 – 1 Charles H. Guy, IV

Application of **CHARLES H. GUY, IV** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 41.59 acres into 83 lots (Cluster Development) located south of Road 279A (Waterview Road) 530 feet east of Road 279 (Camp Arrowhead Road). Tax Map I.D. #2-34-12.00-part of 22.00.

Mr. Abbott advised the Commission that this application was deferred at the May 8, 2014 meeting for further consideration.

Mr. Johnson advised the Commission that he has not had a chance to review the record on this application.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to defer action to allow Mr. Johnson an opportunity to review the record. Motion carried 5 – 0.

Meeting adjourned at 6:05 p.m.