



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF MAY 25, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 25, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Robert Wheatley, Benjamin Gordy, Rodney Smith, Michael Johnson, 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 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of May 11, 2006 and the Minutes of May 17, 2006 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/Z #1607 – application of **MARINE FARM, LLC.** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to an AR-1 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.

The Commission discussed this application which has been deferred since May 11, 2006.

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

C/U #1678 – application of **MARINE FARM, LLC.** to consider the Conditional Use of land in an AR-1 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 Jintown Road (Road 285A), 1,000 feet northwest of Road 277.

The Commission discussed this application which has been deferred since May 11, 2006.

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

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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 discussed this application which has been deferred since May 11, 2006.

Mr. Johnson stated that he was not present during the public hearing, but he did listen to the tape recording and reviewed the record.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 1651 for Jeff Hamer and Oasis Property Development, L.L.C. based on the record and for the following reasons:

- 1) The proposed development is in accordance with the Comprehensive Plan Update in that:
 - a) It is located in the designated development district where future growth is directed.
 - b) The development will be served by Sussex County sewer and by a central water system.
 - c) The proposed density of 3.9 units per acre is consistent with nearby developments, both existing and proposed.
 - d) The site is consistent with the development patterns recognized in the State of Delaware proposed Strategies for State Policies and Spending and is located in the Environmentally Sensitive Developing Area.
 - e) The proposed development provides for passive and active recreation facilities as part of the residential development in that physical amenities will be provided including a swimming pool, pool house and tot lot.
 - f) The character of the area is appropriate for the proposed development. There are existing residential developments located nearby including a manufactured home development and a development approved for townhouses and duplexes. This provides for proper land use planning in the form of infilling.

- g) Adequate central water and County sewer facilities and capacities are available and that there will be no adverse impact on nearby properties and adequate utility services exist.
- h) Natural resources will be conserved and there will be no adverse environmental impact. A small area of Federal wetlands will be undisturbed. County sewer and central water will be provided and storm water management will be designed in full compliance with the requirements of all State and County agencies.

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- 2) This recommendation of approval shall be subject to the following conditions and stipulations:
 - 1. The maximum number of dwelling units shall not exceed 32.
 - 2. All entrance, intersection, roadway, and multi-modal pathway improvements required by DelDOT shall be completed by the developer in accordance with DelDOT's determination.
 - 3. Recreational facilities and amenities, including a swimming pool, shall be constructed and open to use by residents of the development within two (2) years of the issuance of the first building permit.
 - 4. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department's specifications and regulations. If upgrades in a pump station are required to service this development, the improvements shall be made by the developer at the developer's expense.
 - 5. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - 6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 - 7. Site plan review shall be subject to the approval of the Planning and Zoning Commission.
 - 8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
 - 9. The developer shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
 - 10. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill, on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
 - 11. No structure shall exceed 42 feet in height.
 - 12. A system of street lighting shall be provided by the developer and the location shall be shown on the final site plan.
 - 13. There shall be sidewalks fronting or accessing all properties on at least one side of each street within the development.

14. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
15. The developer will cooperate with the Division of Historical and Cultural Affairs concerning possible archaeological sites, and more specifically the “Avery’s Rest” archaeological site.

Motion by Mr. Johnson, seconded by Mr. Gordy 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.

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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 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 discussed this application which has been deferred since May 11, 2006.

Mr. Smith stated that he would move that the Commission recommend denial of Conditional Use No. 1653 for Robert Rahn to operate a plumbing business with parking area in a GR district, based on the record made at the public hearing and for the following reasons:

- 1) I do not believe that this application is consistent with the surrounding area.
- 2) The purpose of the application is to allow a plumbing business to operate on an otherwise residential property. This use would be out of character with the adjacent and surrounding properties.
- 3) Although the Applicant has stated that the intended use is limited and would occur while the property is also used as a residence, I believe that there are other locations that are currently zoned for business or commercial use that are available and better suited for the intended use.
- 4) The application does not promote the health, safety, convenience and general welfare of the neighborhood or community.
- 5) The proposed use, as a plumbing business, is not consistent with the purposes of the GR district as set forth in the County Zoning Ordinance.

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

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.

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 lots are suitable for individual on-site septic systems.

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Mr. Gordy stated that he would move that the Commission deny preliminary approval of Subdivision #2005 – 35 for MLK Partners, based upon the record and for the following reasons:

- 1) I am not satisfied that the subdivision complies with the requirements of the Subdivision Ordinance; including the items in Section 99-9C.
- 2) Most of the other land in the area of this project is used for active agricultural purposes, including a dairy farm and 3 poultry farms surrounding the project. This proposal would not be in character with the surrounding uses.
- 3) The project is along a part of Road 488 that is not suitable for a development such as this. Road 488 is a road with many curves and is narrow. In addition, the road is used frequently by farm equipment and large truck traffic. The subdivision is not compatible with this road.
- 4) The project, with its main entrance on a sharp curve on Road 488 does not allow for safe vehicular movement as is required by the Subdivision Ordinance.

Motion by Mr. Gordy, seconded by Mr. Burton, and carried unanimously to deny this application for the reasons stated. Motion carried 5 – 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 has been deferred since May 11, 2006; and that DNREC has issued a septic feasibility statement indicating that the lots are suitable for individual on-site septic systems.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 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 has been deferred since May 11, 2006; and that DNREC has issued a septic feasibility statement indicating that the lots are suitable for individual on-site septic systems.

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Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 38 for Jay F. Pratt, based upon the record and for the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
- 2) The proposed subdivision was approved in 1995 for 33 lots and it was sunsetted. The proposed number of lots has been reduced to 17 lots.
- 3) The proposed subdivision is in character with strip lots that are along County Road 562.
- 4) The proposed subdivision will not have an adverse impact on schools, public buildings and community facilities or area roadways and public transportation.
- 5) DNREC has indicated that the site is suitable for individual on-site septic systems and wells.
- 6) This recommendation is subject to the following conditions:
 1. Only 17 single-family lots shall be permitted.
 2. The applicant will maintain as many existing trees as possible and that there will be minimal grade changes.
 3. No lot lines will be within any wetlands.
 4. The entrance shall comply with DelDOT's requirements.
 5. On the final site plan, all buffers shall be indicated.
 6. On the final site plan, a bus stop, which was suggested, shall be indicated.
 7. The deed restrictions shall include the Agricultural Notice indicating that there are noises, odors, and dust associated with agricultural practices.
 8. The final site plan shall be subject to the review and approval of the Planning and Zoning Commission.
 9. Street naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 SECTION 162, RELATING TO THE NUMBER OF OFF STREET PARKING SPACES REQUIRED FOR MULTI-FAMILY DWELLINGS AND TOWNHOUSES.

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

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Mr. Gordy stated that he would move that the Commission recommend approval of the Ordinance Amendment to amend Chapter 115 Section 162 relating to the number of off street parking spaces for multi-family dwelling and townhouses, based on the record and 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 shall 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 a 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 a project or the commercial space within a project.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the recommendations stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1656 – application of **M. L. JOSEPH CONSTRUCTION** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a C-1 General Commercial District for the grinding of vegetative material and mulch storage to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 20.88 acres, more or less, lying on the east side of U.S. Route 113, approximately 1,000 feet north of the U.S. Route 113 and Road 432 (Stockley Road) intersection.

The Commission found that representatives of the application had submitted a packet of information that included a site plan; an aerial photograph; proposed conditions; and photographs of the existing storage of equipment on site, the existing storage buildings, the existing material storage area, the existing entrance on U.S. Route 113 and the scale,

other commercial uses in the area, and the area where tree and stump material will be stored until grinding.

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

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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 Borrow pit, Evesboro loamy sand, Johnston loam or silt loam, Kenansville loamy sand, and Rumford loamy sand; that the Evesboro, Kenansville and Rumford soils have slight limitations for development; that the Johnston soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that the Evesboro and Rumford soils are considered of Statewide Importance; that the Kenansville soils are considered Prime Farmland; that the Johnston soils are considered Hydric; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any on-site or off-site drainage improvements; and that the Applicant should check with the Army Corps. of Engineers for regulated wetlands.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County operated or maintained sanitary sewer and/or water district; that the proposed Conditional Use is within the boundaries of the Western Sussex Planning Area Study; that the study is currently in process with an expected completion time of Summer 2007; that the Engineering Department currently has no plans to extend sewer to this area; and that a concept plan is not required.

The Commission found that Kenneth Adams of M. L. Joseph Construction was present with J.C. Owens of Design Consultants Group, L.L.C. and that they stated in their presentations and in response to questions raised by the Commission that the site is zoned C-1 General Commercial and AR-1 Agricultural Residential; that the site has been used for storage of materials, equipment, and as a borrow pit since 1950; that material will be brought to the site for storage until grinding can be performed; that they propose to utilize approximately 4 acres of the site; that the material will be stored for 4 to 6 months; that the grinding of the material will take approximately 1 week; that Edward J. Kaye Construction, Inc. will provide the grinding services at the site and will haul the material off site; that materials will be received from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 noon on Saturdays; that grinding will only occur between the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday with no weekend grinding

activities; that a fire hydrant exists on the site; that a dry hydrant will be installed at the borrow pit site; that the existing entrance is adequate to serve all activities on the site; that the existing scales on the site will be utilized to weigh all loads of materials; that the materials will come from M. L. Joseph Construction and other contractors job sites; that the grinding of materials will be performed once on this site and then further processed at the Kaye Construction site; that the grinding machine is portable; that the new storage building on the site is used for hay storage; that the front of the site along U. S. Route 113 is zoned C-1 General Commercial; that the site is adjacent to a tractor sales and service facility on the south and the Pep-Up office and yard on the north along with other small

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commercial uses; that every load of material will be inspected prior to being stored; that construction materials will not be accepted; and that the U. S. Route 113 entrance is gated and will continue to be gated.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 1656 for M. L. Joseph Construction for the grinding of vegetative material and mulch storage based upon the record and for the following reasons:

- 1) The operation of the grinding of vegetative materials will be beneficial to the community through the recycling of materials where by the vegetative materials can be used for mulch, rather than filling up our landfill with tree stumps and trees.
- 2) There should be no adverse impact on neighboring property owners since there were no objections from neighboring property owners.
- 3) This recommendation is subject to the following conditions and stipulations:
 1. The hours of operation will be from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 Noon on Saturdays for the acceptance of materials to be stored.
 2. Grinding of materials may be performed from 7:00 a.m. to 5:00 p.m. Monday through Friday with no grinding on Saturdays.
 3. The facility will be closed on Sundays.
 4. Only tree stumps and tree materials from clearing activities will be accepted. There shall be no acceptance of construction waste for processing.
 5. A dry hydrant will be installed on the north end of the borrow pit for fire protection.
 6. The entrance that is currently gated shall continue to be gated when the facility is not in operation.

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

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C/U #1657 – application of **JOHNSON’S COUNTRY MARKET** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a produce market sales facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 32.924 acres, more or less, lying south of Route 20 (Zion Church Road), 1,290 feet west of Road 391.

The Commission found that the Applicants had submitted a survey and site plan for their proposed produce market sales facility.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “A” of Zion Church Road may change to Level of Service “B” when the site is fully developed.

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 sandy loam, Kenansville loamy sand, and Woodstown sandy loam; that the Evesboro and Kenansville soils have slight limitations for development; that the Fallsington soils have sever 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 any construction and to maintain vegetation; that the Evesboro and Fallsington soils are considered of Statewide Importance; that the Fallsington, Kenansville and Woodstown soils are considered Prime Farmland; that the Fallsington soils are also considered to be Hydric; that no storm flood hazard areas are affected; that the Bear Hole Tax Ditch may be affected; that on-site and off-site drainage improvements may be necessary because of the presence of poorly drained and moderately well-drained soils with seasonally high water tables; and that the Applicant should check with the Army Corps. of Engineers for regulated wetlands.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County operated and maintained sanitary sewer and/or water district; that the site is within the boundaries of the proposed Johnson’s Corner Sanitary Sewer District; that a public

hearing will be held on October 14, 2006 at 9:00 a.m. at the Roxana Fire Hall; and that a concept plan is not required.

The Commission found that Keith Johnson was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this is a family project; that the farm has been in the family for 7 generations; that this is their seventh season for pumpkins and their sixth season for vegetables; that they propose to continue to sell produce that they grow and hope to sell produce and other products raised by others in their produce stand; that business hours are from 9:00 a.m. to 6:00 p.m. seven days per week from mid-April to October 31; that they will be open from October

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31 through Christmas on Thursday through Saturday; that they have minimal outside storage and displays; that most of their outside storage and displays are under the lean-to roofs; that they have been selling and hope to continue to sell crafts made by family members and others; that they have a security light and plan on adding one additional security light; that their closest neighbor is approximately 300 feet away; that any dumpsters will be stored behind the building; that they presently use a portable toilet and hope to connect to the County sewer when available; that central water is proposed to be provided by Artesian Water Company; that approximately 50% of their produce is purchased for resale during the normal season and 100% during the early and late seasons; that they sell primarily produce and flowers; that they have an existing greenhouse on another part of the farm; that they are planning on erecting a greenhouse on this site; that they would like to include landscaping materials in their sales; that they presently park in the front of the building; that they propose to add additional parking in the front yard and understand that they may not be allowed to park in the front yard setback; that they would also like to sell farm related crafts, ornamental gourds, wreaths, flower arrangements, crafts, farm related toys, jams, jellies, and bagged peanuts; and that they described in their application how they proposed to operate.

Mr. Lank advised the Commission that the application makes reference to produce sales, baked goods, jellies, a greenhouse, crabmeat, novelty and craft items, and in the future to add Christmas trees, pies, dressed meats, bulk goods, prepared foods, a corn maze, a pumpkin patch, and a u-pick area.

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

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

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 1657 for Johnson's Country Market for a produce sales facility to sell the types of items described by the Applicant during his presentation based upon the record and for the following reasons:

- 1) The proposed Conditional Use is similar to other uses in the vicinity of the property.
- 2) The use as a produce sales facility promotes local agriculture and is desirable for the general convenience and welfare of the area.
- 3) The project, with the conditions and stipulations placed upon it will not have an adverse impact on the neighboring properties or community.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 1. There may be a sign on the project not to exceed 32 square feet per side or facing.

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2. The hours of operation for the site shall be from 9:00 a.m. to 6:00 p.m. seven days per week.
3. There shall be no outside storage, other than agricultural products or landscape materials, on the premises. A trash dumpster, which shall be screened from view from neighboring properties, may be allowed.
4. Any security lights shall only be installed on the buildings and shall be directed downward and away from impacting neighboring properties.
5. The Applicant shall comply with all DelDOT requirements, including entrance permits. The Applicant is urged to relocate the parking spaces outside of the 40-foot front yard setback.
6. The site plan shall be subject to approval of the Planning and Zoning Commission.

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

C/Z #1594 – application of **RICHARD J. POPPLETON** to amend the Comprehensive Zoning Map from a GR General Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying on the western side of Central Avenue, 350 feet northeast of Harmon Street, and being more particularly described as Lot 24, Block 1, of the “George E. Shockley’s Land” Subdivision, to be located on 5,000 square feet, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service “B” of Road 273 shall 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 Sassafras sandy loam which has slight limitations for development; that the Applicant shall be required to follow recommended

erosion and sediment control practices during construction and to maintain vegetation; that the Sassafras soils are considered Prime Farmland soils; 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 County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion Area; that the sewer planning study assumption for the parcel is 1.0 EDU reflecting a residential parcel in a residential subdivision; that the Department opposes this rezoning because of the potential for increased wastewater flow from commercial

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uses; that the proposed commercial zoning and commercial use is not located on residential lands previously identified for commercial use; that the proposed use does not conform to the Comprehensive Plan Update; that the current system connection charge rate is \$3,716.00 per EDU; that the location and size of laterals or connections points shall have to be determined by the County Engineer; that the parcel is presently served by a 6-inch sanitary sewer lateral; that a lateral upgrade, at the property owners expense, could be required if the use changes; that conformity to the West Rehoboth Expansion Area Planning Study will be required; and that a concept plan is required.

The Commission found that a letter was received from the West Rehoboth Community Land Trust, Inc. in opposition to this application and referencing that the Trust is working to achieve a goal of re-vitalizing the community through a program of affordable housing; that this application is a part of the residential community and that the Trust opposes the rezoning since it represents the ability to make use of a wide array of activities that could be intrusive in a residential area; and that the Trust requests that only a Conditional Use application be allowed.

Mr. Lank advised the Commission that this lot is a part of four lots that were downzoned from C-1 General Commercial to GR General Residential in 1997 to allow for the placement of manufactured housing on the four lots.

The Commission found that Richard Poppleton was present and stated in his presentation and in response to questions raised by the Commission that he proposed to rezone the property back to C-1 General Commercial; that C-1 zoning conforms to the zoning in the neighborhood; that C-1 zoning surrounds the site; that the entire area south of Hebron Road is C-1 General Commercial; that the site was zoned C-1 prior to 1997; that he has received letters in support of his application; that warehousing adjoins his property and exists in the area; that a cell tower is almost immediately adjacent to his site; that he also owns a vacant lot in the West Rehoboth Subdivision; that approximately 40 sites exists around the site that are zoned C-1 General Commercial; that Envirotech has a warehouse on one of the four lots that were rezoned in 1997; that he has owned this site for approximately one year; and that he presently has no plans for use of the site.

There was a consensus of the Commission that the use of the referenced Envirotech site needs to be verified.

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

The Commission found that Minnie Smith-Burton, Brenda Milburn and Pete Keenan were present in opposition to this application and referenced concerns that the community opposes the rezoning of residential lots to commercial; that there are too many warehouses in the community; that the community needs more time to develop affordable

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housing; that warehouses attract traffic; that the residents of the area want more housing, not warehousing; that the future of the area is the children; that the community needs playgrounds, street lighting, and a residential character, not commercial; and that the residents are trying to create a viable community.

The Commission found that Minnie Smith-Burton submitted a letter with her comments.

The Commission found that there were eight (8) parties present in opposition.

Mr. Robertson stated that the documents that the Applicant attempted to submit into the record should not be a part of the record since they were not submitted in advance.

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

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

Subdivision #2005-39 – application of **B & W VENTURES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 29.11 acres into 20 lots, located south of Road 215 (Slaughter Neck Road), 1,600 feet west of Route One.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on October 19, 2005 and that the report will be made a part of the record for this application; and that the applicant's engineers have submitted a revised plan reducing the number of lots to 16 lots.

The Commission found that Heidi Balliet; Attorney, and Judy Schwarzt, P.E. with George, Miles and Buhr were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the plan has been reduced from 20 lots to 16 lots; that the site is zoned AR-1; that the minimum lot size is 0.75-acre; that there is a small amount of wetlands on the site that will not be

disturbed; that on-site septic and wells are proposed; that there is only one street proposed in the subdivision; that the entrance to the site is off of Slaughter Neck Road; that there is open space provided for recreational uses; that the project will have streetlights; that the design of the project complies with all codes and regulations; that the applicant will comply with all of the recommendations made by the Technical Advisory Committee; that the site is located in a low density area; that the largest lot size is three acres; that the dwellings will be subject to an architectural review board; that only on-site stick built homes will be permitted; that agricultural buffers have been provided; that there is a need for this type of housing in the area; that the area is residential and agricultural; that the development will be a complement to the area; that no adverse impacts are anticipated;

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that the wetlands located on lot 15 will not be disturbed and will be deed restricted; that note 13 on the preliminary plan is required by DelDOT; that the proposed turn around meets the requirements of the Office of the State Fire Marshal; that if the turn around were not provided, the street would be over 2,000 feet in length; and that the turn around eliminates 2 cul-de-sacs that were originally proposed.

The Commission found that Vance Daniels, Claudia Harris and David Legates were present on raised questions about the type of housing proposed; questioned whether the project will affect Carolyn Williams driveway; questioned why no open space is required; that there are drainage problems in the area; that there is a private rifle range on the adjoining property and that future property owners need to be aware of the range.

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

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer this application for further consideration and receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

Subdivision #2005-40 – application of **PAUL S. AND DORIS T. BARRON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 21.88 acres into 22 lots, located east of Road 465A, 381 feet north of Route 24.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on October 19, 2005 and that the report will be made a part of the record for this application; that this application received preliminary approval for 22 lots on May 24, 2001; that the Commission granted a one-year time extension on June 10, 2002; and that the applicant let the preliminary approval expire.

The Commission found that Donald Miller; Surveyor, and Norris Niblett were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site was previously approved for 22 lots in 2001; that

this application is the same as the previous plan; that 22 lots on 21 acres are proposed; that the streets will be private; that on-site septic and wells are proposed; that the site is not located in a flood plain; that there are not any wetlands located on the site; that the dwellings will be stick built with a minimum 1,200 square feet with at least an attached one car garage; that the site is presently cleared land; that there is a cemetery on the site and that access to the cemetery is provided; that the cemetery will be maintained by a homeowners' association; that the proposed lots will be in character with other lots in the area; that restrictive covenants have been submitted; and that the applicants have not met with the State Historic Preservation Office.

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The Commission found that Furman Sessom raised questions about having to join a homeowners' association.

Mr. Robertson advised Mr. Sessom that he would not be a part of the homeowners' association.

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

Mr. Gordy stated that he would move that the Commission grant preliminary approval for Subdivision #2005 – 40 for Paul S. and Doris T. Barron, based upon the record and for the following reasons:

- 1) The proposed subdivision meets the requirements of the Subdivision Ordinance in that it protects the orderly growth of the County.
- 2) The proposed subdivision is generally in character with strip lots that are in the area.
- 3) The proposed subdivision is the same as the one approved as a preliminary as Subdivision #2001 –13. That the original preliminary approval had expired.
- 4) The proposed subdivision will not have any adverse impact on schools, public buildings and community facilities or area roadways and public transportation.
- 5) DNREC has indicated that the site is suitable for individual on-site septic systems and wells.
- 6) This recommendation is subject to the following conditions:
 1. Only 22 single-family lots shall be permitted.
 2. All entrances shall comply with DelDOT's requirements.
 3. The final site plan shall show any Agricultural Buffers that are required.
 4. The deed restrictions shall include an Agricultural Protective Notice indicating there are noises, odors, and dust associated with agricultural practices.
 5. Final site plan approval shall be subject to the review of the Planning and Zoning Commission.
 6. Street naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve this application as a preliminary, for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2005-41 – application of **KEITH PROPERTIES** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 22.01 acres into 6 lots, located at the end of Nature's Walk Way within Fenwick Shoals Subdivision on the south side of Route 54, east of Fenwick Farms Subdivision.

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Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on October 19, 2005 and that the report will be made a part of the record for this application; that letters were received from Stan Randall, Barbara Friedman and the Sussex Conservation District and that these letters will be made a part of the record; and that on May 22, 2006 the applicant's attorney submitted a packet containing declaration of restrictions, a phase 3 site plan, 2 letters from the Corps of Engineers, and letters from Sussex County Engineering Department, Division of Water Resources, Fire Marshal, DelDOT, Sussex County Assessment Division, Sussex Conservation District, Artesian Water Company, and Delaware Health and Social Services and that these letters will be made a part of the record.

Mr. Robertson advised the Commission that these 6 lots were a part of a previous subdivision application and that the 6 lots were not approved due to wetland concerns.

The Commission found that J.C. Owens with DC Group, Richard and Brian Keith, developers, and Kelly Pearson with Envirotech were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that Phase 1 is completed; that Phase 2 is currently under construction; that the 6 lots are phase 3; that all of the lots exceed 10,000 square feet; that central sewer and water will be provided; that the applicants have received all agency approvals; that the Corps of Engineers has approved the wetlands in a jurisdictional determination; that the Corps of Engineers has also approved the wetland mitigation plan; that the wetland mitigation must be performed by 2007; that as a part of the mitigation, over 400 trees are being planted; that in previous applications a jurisdictional determination was never approved by the Corps of Engineers; that the mitigation has doubled what was previously there; and that the developers are saving as many trees as possible.

The Commission found that Stan Randall, President of Fenwick Farms Homeowners' Association was present in support of this application and stated that the developers have done a nice job on the development and that they are good neighbors.

The Commission found that Carl Alesi, Pete Keenan, Gail Lednum and Claudia Alesi were present in opposition to this application and stated that they object to the wetlands being impacted and mitigated; that the wetlands have decreased in the area; that there are going to be negative impacts to the Inland Bays; that there has been a deforestation of the site; that the project has created a fragmentation of forest land; that run-off drains into the existing lagoons and causes pollution; that there has been a loss of wildlife habitat in the area; and that there is construction operations going on as late as 10 p.m.

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

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

Subdivision #2005-42 – application of **WILKINSON DEVELOPMENT, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 120.20 acres into 214 lots, (Cluster Development), located east of Road 290 (Cool Spring Road), 2,000 feet north of Route 5.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on October 19, 2005 and that the report will be made a part of the record for this application; and that the applicants submitted an exhibit booklet and revised preliminary plan that will be made a part of the record.

The Commission found that Gene Bayard; Attorney, Steve Wilkinson; Developer, Kevin Burdette and Keith Rudy with McCrone, Inc., and Daniel Barbado with Artesian Water Company were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that there are some wetlands on the site; that the surrounding area is being developed with single family subdivisions; that there are commercial uses and a church in the area; that the Solid Waste Authority has a transfer station in the area; that the site adjoins an agricultural preservation district to the east and south; that 15 to 16 lots abut the agricultural lands and that there will be a deed restricted 10-foot no cut zone on these lots; that central sewer and water will be provided by Artesian Water Company; that the sewer will be treated; that the original plan that was submitted to PLUS is found in Tab 10; that the average lot size is 10,600 square feet; that 51% of the site is open space; that the proposed density is 1.56 lots/acre; that the amenities include walking trails throughout the site, tot lots and a playground, a community building and pool, park areas, and ball fields; that 188 lots are proposed; that the streets will be private; that sidewalks and streetlights will be provided; that the lots will be moderately priced; that lot/home packages will range up to \$300,000.00; that there is adequate room for a school bus shelter at the entrance to the site; that the items referenced in Section 99-9C have been addressed; that extensive buffers have been

provided; that none of the lots have access to County roads; that there are no known historical features located on the site; that the lots have been designed to feature wooded and pond views; that this project is more environmentally designed than other projects in the area; that the soils are fair to good for ground water recharge; that the applicant will comply with all of the recommendations made by the Technical Advisory Committee and PLUS; that DelDOT has approved the traffic impact study and that no negative impacts are expected; that the local school district and fire department have no concerns; that the area is growing with development; that this project provides more open space than a standard subdivision; that the development consists of 7 different neighborhoods; that a home owners' association will be established; that sidewalks will be installed on both sides of all streets; that DelDOT will require minor improvements; that no spray

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irrigation is proposed; that there is not any noise associated with the treatment plant; that the propane tank farm, septic area and central water system are all located together; and that although the State advises that the area is a Level 4, the area is being developed.

The Commission found that Bill Tobin was present and raised concerns about the way the project has been handled; that some site work has been done; and that the streets and lots have been laid out.

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

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

Meeting adjourned at 9:30 p.m.