



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 28, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 28, 2009 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III 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 circulated. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 14, 2009 as corrected. Motion carried 4 – 0.

OLD BUSINESS

C/U #1779 – application of **JIM AND CARLA CLARK** to consider the Conditional Use of land in a GR General Residential District for a spa (massage, facials, etc.) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 12,750 square feet, more or less, lying southeast of John J. Williams Highway (Route 24) 200 feet northeast of Bay Farm Road (Road 299).

The Commission discussed this application which has been deferred since May 14, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1779 for Jim and Carla Clark for a day spa based upon the record made at the public hearing and for the following reasons:

1. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
2. The use as a day spa, providing massages, facials, and similar services, will benefit nearby Sussex County residents.
3. The location along Route 24 is appropriate for this limited type of Conditional Use and is in an area that has developed with other Conditional Uses and commercial/business uses.
4. This recommendation for approval is subject to the following conditions and stipulations:
 - a. There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side.

- b. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or Route 24.
- c. The hours of operations shall be from 10:00 a.m. to 7:00 p.m. Monday through Saturday and 1:00 p.m. through 7:00 p.m. on Sunday.
- d. Although the project is located on Route 24, the adjoining properties are residential and the front yard is limited in size. Therefore, no more than 4 parking spaces shall be allowed in the front yard. The remaining required parking shall be relocated to the rear of the premises. The Applicant shall supply a means of accessing the rear parking as part of the Site Plan approval process. The required parking shall be depicted on the Final Site Plan.
- e. The Final Site Plan shall be subject to the Applicant receiving entrance approvals from DelDOT and any applicable approvals from the Sussex Conservation District for stormwater management and erosion and sedimentation control.
- f. The Final Site Plan shall contain the location of all trash or dumpster storage areas, which shall be screened from the view of neighboring and adjacent properties. A landscape plan for the project shall be included with the Final Site Plan.
- g. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

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 4 – 0.

Subdivision #2007-26 – application of **D.M. PROPERTIES OF BETHEL, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 260.69 acres into 390 lots, (Cluster Development), located north and south of Road 472, west of Road 434 and west of Road 438.

The Commission discussed this subdivision application which has been deferred since May 14, 2009.

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

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND”, TO ALLOW FOR THE STAFF APPROVAL OF MAJOR SUBDIVISIONS CONTAINING 3 OR FEWER LOTS TO BE LOCATED ALONG A NEW STREET.

The Commission discussed this Ordinance Amendment which has been deferred since May 14, 2009.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration due to Mr. Gordy’s absence so that the full Commission can discuss and vote on this Ordinance Amendment. Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #1835 – application of **APPEL-TUCKER-REYNOLDS V.F.W. POST NO. 2931** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a VFW post (private club) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 10.00 acres, more or less, lying east of Road 607 (VFW Road) across from intersection with Road 608.

The Commission found that on May 18, 2009 the Applicant submitted an Exhibit Booklet which contains a reference to the purpose of the application, a site description, references to the existing conditions, photographs, site considerations relating to zoning, conformity to the surrounding area, the availability of central water and sewer utilities, accessibility to major roadways, environmental concerns, that they were not required to go through the PLUS process, conclusions, a site plan, a location map, an aerial photograph, existing land use map, protected lands map, a portion of the State Strategies for Policies and Spending Map, an approved Site Evaluation for Septic, the DelDOT Support Facilities Report, a Fire Protection Plan Review Report, a portion of the Flood Insurance Rate Map of the area, a soils investigation report from JCM Environmental, letters from DNREC in reference to tax ditches, and suggested proposed Findings of Fact.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service “A” of Ellendale Forest Road and VFW Road will not change as a result of this application; and that the Department has issued a letter, dated May 21, 2009, referencing that they have no objection to the entrance location.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Western Sussex Planning Area #1; that an individual on-site septic system is proposed; that the proposed project is located west of Ellendale and is not in an area where the County has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found, based on a letter received from the Sussex Conservation District, dated May 22, 2009, that a sediment control and stormwater management plan approval has been issued for the project.

The Commission found that David Tidwell, Project Coordinator for the Applicant, Shannon Carmean, Attorney from Sergovic & Ellis, P.A., and Steve McCabe, P.E. from George, Miles & Buhr, LLC, were present and stated in their presentations and in response to questions raised by the Commission that they have applied for a Conditional Use to construct and expand to use of this site for their VFW Post; that the site contains approximately 10 acres and is improved by an existing 900 square foot building used for VFW events; that they propose to replace the existing building with a 3,280 square foot one-story building; that the existing building is intended to be converted to a storage building; that the VFW Post building will be utilized as a private club facility; that a private club is a listed Conditional Use; that the use meets the purpose of a Conditional Use since it is a semi-public use and meeting place; that the use meets the purpose of the Comprehensive Plan in a Low Density Area which permits non-residential uses; that the site has been utilized for a VFW Post for many years; that they are not aware of any former

complaints about the use; that Sussex County Mapping and Addressing has acknowledged the history of the use at this location by naming the road "VFW Road"; that the site is surrounded by agricultural lands and wooded lands; that there should be no negative impact on traffic; that there will not be any disturbance of 2.4 acres of wetlands; that the improvements will meet or exceed the needs of the members of the VFW Post; that the proposed improvements will be an improvement for public safety by providing modern conveniences, handicap accessibility, and adequate parking; that DelDOT has approved the entrance location; that the Office of the State Fire Marshal has approved the site plan; that the Sussex Conservation District has approved the site for maintenance with Best Management Practices; that the original building has a non-conforming septic system; that a LPP Septic System is proposed subject to receipt of an approval from DNREC; that the VFW Post was chartered in Georgetown in 1947; that the members have a need for more space; that the Veterans serve the community by having social functions and raising money for return to the community; that the VFW Post presently has 140 members; that the existing building is out-dated with poor heating and no handicap accessibility; that the general drainage of the area is to the tax ditches; that they cannot create any more runoff than the runoff that already exists; that a larger kitchen facility is proposed; that the existing sign will remain and hopefully it can be replaced in the future with a larger sign; that they would like a flexibility in the hours; that they may in the future want to change their hours to accommodate the membership; that hours from 9:00 a.m. through 1:00 a.m. would be acceptable seven (7) days per week; that the facility is not open to the general public unless they are guests; that a small bar will be available; and that the seating capacity of the building is limited to 120 seats.

The Commission found that Thomas Brown, Louise King, Ruth Kaifer, Kristin Carmen, Chris Kaifer, Gary McCrea, and Thomas Crowell were present in opposition to this application and expressed concerns about the conditions of the VFW Road and the lack of shoulders and its poor condition for more traffic; that they are concerned about increased traffic and traffic accidents; noise; alcoholic beverages; the loss of the peace and quiet that presently exists; activities other than meetings; the safety of pedestrians, cyclists, and horseback riders; the impact on wildlife in the area; gambling and slot machines; rental of the facility to outside users; trash; the business hours; that there will be no benefit to the area residents since the use is a private club; questionable police patrols; children safety; disruption of their way of life; and that if the use is approved stipulations should be imposed that restrict the hours.

The Commission found that Mr. Tidwell responded that the VFW Post would like to provide slot machines; that the facility will not be rented out to outside users; that the VFW Post was chartered in 1947; and that the VFW Post has utilized this site since the 1950s.

The Commission found, by requesting those in attendance to raise their hands, that 21 parties were present in support and 9 parties were present in opposition.

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

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #1835 for Appel-Tucker-Reynolds VFW Post #2931 based upon the record and for the following reasons:

1. A VFW Post on this site will not have an adverse impact on the neighboring properties or community. The site has historically been used as a VFW Post. This Conditional Use will permit the construction of a new building on the site and the old building will be used for storage.
2. The County has previously recognized that the VFW is in use and is a known feature of the community, since the road has been named "VFW Road".
3. The proposed use meets the purpose of Conditional Uses by devoting approximately 10 acres to semi-public use and allows VFW members to have a place to congregate, hold meetings, and conduct the affairs of the VFW. The VFW activities that benefit the community and County include Patriotic Ceremonial Activities and Charity Fundraising events.
4. Other community organizations will use the facility for meetings, including the Georgetown-Ellendale VFW, the Georgetown-Ellendale Ladies Auxiliary, and the Sussex County Chapter of the Vietnam Veterans of America.
5. This Conditional Use shall be subject to the following:
 - a. There is currently lighting on the property. Any additional lighting shall be screened so that it does not shine on roadways or adjacent properties.
 - b. One lighted sign shall be permitted, not to exceed 32 square feet per side.
 - c. The parking shall meet or exceed the requirements of the Zoning Code.
 - d. The property is not to be rented by any outside groups that are not affiliated with a veteran's organization.
 - e. All entrances shall comply with all of DelDOT's requirements.
 - f. The hours of operation shall be limited to 9:00 a.m. through 1:00 a.m. seven (7) days per week.
 - g. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/Z #1643 – application of **LANDH INVESTMENTS, L.L.C.** to amend the Comprehensive Zoning Map from a GR General Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the southwest intersection of Road 388 and Road 382, to be located on 1.848 acres, more or less.

The Commission found that on May 18, 2009 the Applicant provided the Commission with an Exhibit Booklet which contains a color rendering of the site plan, a color rendering overlay on an aerial photograph of the area, a reduced copy of the proposed site plan, a tax map of the area depicting zonings, an aerial photograph and photographs of businesses in the area, a portion of the Comprehensive Land Use Plan Future Land Use Map showing the area, a reference to permitted uses in the Environmentally Sensitive Developing Area, a response to the PLUS comments, a copy of a letter from DelDOT referencing that a Traffic Impact Study is not required for this application, a soils map and soils references, a letter from DNREC in reference to tax ditches, surveys of easements to the proposed pump station and the pump station area, a copy of the Statement of Reservations, Restrictions, Taxes, and Assessments for Hampton Park

Subdivision, a copy of the Tax Map for Hampton Park Subdivision, and a copy of the proposed site plan.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing Level of Service "C" of Zion Church Road may change to a Level of Service "D"; and that the existing Level of Service "A" of Road 388 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that there are two (2) soil types on this site; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that the District asks that the Applicant abide by all State and Federal wetlands laws; that no storm flood hazard areas are affected; that it may not be necessary for any off-site drainage improvements; that on-site drainage improvements depend on the scope of the project; and that no tax ditches are affected.

The Commission found that the PLUS comments are referenced as a part of the Applicant response to PLUS in the Exhibit Booklet.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Johnsons Corner Sanitary Sewer District; that wastewater capacity is available to the project; that Ordinance #8 Construction will not be required; that the current system connection charge rate is estimated to be \$3,600.00; that sewer service is not available at this time; that conformity to the South Coastal Area Planning Study – 2005 Update and the Preliminary Engineering Report for the Johnson's Corner Sanitary Sewer District will be required; that the developer has agreed to convey a site for a regional pump station within the development; that because of the parcel's proximity to the pump station site, capacity is expected to be adequate for development of allowable uses on the parcel if the B-1 rezoning request is approved; that connection to the sewer system is mandatory; that the design schedule indicates sewer service could be available to the parcel as early as the summer of 2010; that the County requires design and construction of the collection and transmission system to meet County Engineering Department's sewer standards and specifications; that the County Engineer must approve the connection point; and that a sewer concept plan must be reviewed and approved prior to any sewer construction.

The Commission found that Tim Willard, Attorney from Fuqua and Yori, P.A., was present with Virgil Bullis, Real Estate Consultant, and Ken Christenbury, P.E. from Axiom Engineering, LLC and that they stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to develop the site with a permitted use in the B-1 Neighborhood Business District; that the tax map depicting zoning in the area shows the mixed zoning of the area; that the site was originally Parcel "A" of the Hampton Park Subdivision and that the restrictions of Hampton Park reference the intent to rezone this parcel in 1975; that the restrictions reference that each lot or given land area located in Hampton Park shall be used solely and exclusively for residential purposes, except for the proposed commercial areas designated as Parcel "A" and Parcel "B" on said plot of Hampton Park, and that Hampton Park is hereby established as a restriction development or neighborhood for single family detached

dwellings, except for the proposed commercial areas designated as Parcel "A" and Parcel "B" on said plot; that the conceptual site plan shows approximately 13,000 square foot of retail buildings; that the area is unique with its mixed uses and zonings; that the site is in close proximity to the intersection of Route 20 and Route 54; that the mixed uses in the area include farmland, GR zoning, business and commercial uses, and Conditional Uses; that a medical facility was recently approved southeast of the site along Route 20; that the site is located in the Environmentally Sensitive Developing Area; that the site is located in a sewer district; that the area is developing; that a need exists for small business uses to serve the general area; that this type of use is permitted in the Environmentally Sensitive Developing Area according to the Comprehensive Land Use Plan, which references that retail and office uses are appropriate and that careful mixtures of homes with light commercial and institutional uses can be appropriate to provide convenient services and to allow people to work close to home; that the site has adequate space for parking, loading, buildings and landscaping; that DelDOT did not require a traffic impact study; that the Applicant is working with the County Engineering Department to donate lands for a regional pump station; that adequate capacity is available for sewer; that the easements have been finalized for the pump station and access; that Mr. Bullis has spoken to several small businesses and there is interest in leasing space in the project; that landowners in the subdivision were made aware of the intent to rezone this Parcel when they settled on their property by referencing the deed restrictions; that the County will maintain the pump station once constructed; and that the pump station will serve this project as well as the regional area.

The Commission found that Mr. Willard submitted some suggested proposed Findings of Fact which include: 1) this is an application to amend the Comprehensive Zoning Map from GR General Residential to a B-1 Neighborhood Business District for 1.85 acres, more or less, in Baltimore Hundred located on the south west side of the intersection of Road 388 and Road 382; 2) the property is owned by and the Applicant is LANDH, LLC, a Delaware limited liability company; 3) the Applicant proposes a plan for approximately 12,000 square feet of local business, retail and service use on 1.85 acres; 4) the subject property is located on Delaware Route 20 which is classified by DelDOT as a major collector road; 5) the proposed site for the neighborhood business project is located in an area of mixed uses: commercial, residential, agricultural and business activity centrally known as Roxana; 6) the Sussex County Comprehensive Plan identifies the property for future land use as General Residential in the Environmentally Sensitive Developing Area; 7) the Applicant has responded appropriately to the PLUS comments; 8) the Applicant proposes a neighborhood business project to provide retail shopping and personal service uses to meet the needs of the neighboring area. The proposed project is in character with the nature of the area and is consistent with the purpose of B-1 and the Comprehensive Plan; 9) the proposed project was identified in the original subdivision, Hampton Park, as Parcel "A" reserved for commercial use; 10) the Applicant has provided easements for a County sewer pumping station and sewer may be available for the project. The project is included in the sewer expansion region; 11) the property will be served by Artesian Water; 12) this proposed neighborhood business area meets the general purpose of the Zoning Ordinance by promoting the orderly growth, convenience, order, prosperity and welfare of the County; 13) this proposed business area lessens congestion on outlying roads and streets by providing for local business and at the Route 20 and Road 388 intersection so that residents and visitors to the area may have their personal service needs met without the necessity of traveling

to Route 54 or Route 26; and 14) at this location, there exists a need for B-1 to serve the local mixed use community.

The Commission found that Brian Lynch, Wayne Magee, and Pat Magee, residents of the area, were present in opposition to this application and stated that there is no need for the use intended due to the businesses in the area and in close proximity, i.e. Food Lion, Harris Teeter, sub-shop, antiques, etc.; that Deer Run Road is inadequate for truck traffic (deliveries); traffic concerns and accidents; speed limits, presently 50 m.p.h. are being exceeded; parking lot lighting impacting neighbors; concerns about the possibility of increased crime; that area roadways are narrow with no shoulders and in need of repair; the negative impact on the residential character of the area; that negative impact on property values by creating commercial zoning in a residential area; concerns for the safety of children, pedestrians, cyclists, and horseback riders on Deer Run Road; that the economy will not support the proposed use at this time; and that the use will impact the residential lifestyle and create a hardship on the neighborhood.

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

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

C/Z #1644 – application of **BRIAN MCKINLEY** to amend the Comprehensive Zoning Map from a GR General Residential District to GR-RPC General Residential District – Residential Planning Community for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, land lying northeast of Airport Road (Road 488) 2,800 feet northwest of Fire Tower Road (Road 479), to be located on 140.21 acres, more or less.

The Commission found that on May 15, 2009 the Applicant provided the Commission with an Exhibit Booklet which contains an introduction, references to 99-9C of the Subdivision Ordinance, a series of Site Plans, PLUS comments and a response, a Wetlands Delineation Report by Ten Bears Environmental, LLC, a Traffic Impact Study review letter from McCormick Taylor for DelDOT, a Rare, Threatened, and Endangered Species Investigation report from Environmental Consulting Services, Inc. with a series of maps, aerials and photographs, letters from Tidewater Utilities, Inc., Tidewater Environmental Services, Inc., Delaware Electric Cooperative, Inc., Verizon, and Sharp Energy offering utility service, and a draft declaration of restrictions.

The Commission found that the Technical Advisory Committee members submitted comments on or before January 31, 2008 in reference to their agency concerns and that the comments received are a part of the record.

The Commission found, based on comments received from the Sussex Conservation District, that there are 9 soil types on this property; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the District asks that all State and Federal wetlands laws be followed; that no storm flood hazard areas are affected; that a tax ditch may be affected; that it may not be necessary for any off-site

drainage improvements; and that it is highly likely that on-site drainage improvements will be required.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Western Sussex Planning Area; that conformity to the Western Sussex Planning Area Study will be required; that the project proposes to develop using a central community system by Tidewater Utilities; that the Division recommends that the wastewater system be operated under a long-term contract with a capable wastewater utility; that the County required design and construction of the collection and transmission system to meet County sewer standards and specifications; that a review and approval of the treatment and disposal system by the County Engineering Department is required and plan review fees will apply; that disposal fields should not be counted as open space; that wastewater disposal fields should be clearly identified on recorded plots; that the site is not in an area where the County expects to provide sewer service at this time; that if the County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developers and/or owners expense; that if the County ever provides sewer service and the project does not have a CPCN, it is required that the treatment system be abandoned and a direct connection made to the County system at the developers and/or owners expense; and that a concept plan is not required.

The Commission found that the Office of State Planning Coordination provided comments on the PLUS review of this project on September 17, 2007; that Vista Design, Inc. responded to the PLUS comments; and that in the final comments received from the Office of State Planning Coordination in reference to the PLUS comments, Connie Holland, Director, stated that in their original letter, the State objected to the development of this parcel because of its location in a Level 4 area according to the Strategies for State Policies and Spending; and that the Vista Design, Inc. response to the Office comments does not change their opinion that this site should not be allowed to be developed at this time because of its location.

The Commission found that a petition was received in opposition that contains 15 signatures in opposition.

The Commission found that Brian McKinley was present with James Fuqua, Attorney with Fuqua & Yori, P.A., Andrew Hayes of Fore Site Associates, Inc., and Betty Tustin of Traffic Group and that they stated in their presentations and in response to questions raised by the Commission that the site is southeast of Seaford; that they are proposing 473 residential units including 212 townhouses, 79 condominium/multi-family units, and 189 single family lots with a density of 3.38 units per acre; that the project will be phased over 10 years; that the site is already zoned GR General Residential, therefore this is not a rezoning application, it is an application for an RPC overlay; that the purpose of the GR zoning is to provide for medium-density residential use, including mobile homes; that the GR zoning permits lots sizes for a density of 4.35 dwellings per acre; that the RPC with calculation deductions of roads yields 3.38 units per acre or 547 units; that this application proposed 437 units; that no commercial use is intended; that the project will be served with central water and central sewer; that streets will be private and built to meet or exceed County specifications; that sidewalks will be placed on both sides of the streets; that street lighting will be provided; that the main entrance will be from

Airport Road and a secondary entrance will enter through an existing easement; that a central amenity complex will be created with a swimming pool, tennis court, multi-purpose court, community center, tot lots, and trails; that a bus stop area will be created and shall be subject to the review and approval of the Seaford School District; that a Homeowners Association will be established; that the site design yields 39.8% of open space; that wooded wetlands will not be disturbed; that the criteria of 99-9C of the Subdivision Ordinance has been responded to in the Exhibit Booklet; that the PLUS response that the site should not be developed since it is in an Investment Level 4 area is only an opinion of the State; that the statement is contrary to the County Comprehensive Land Use Plan and Zoning Ordinance; that the use conforms to the Comprehensive Land Use Plan and the Zoning Ordinance since the site is located in a mixed residential area according to the Future Land Use Map in the Comprehensive Land Use Plan and since the site is zoned GR General Residential which provides for a mixture of residential uses; that the Comprehensive Land Use Plan references that the Mixed Residential Areas mainly consist of existing residential development and lands where residential developments are proposed under the current General Residential and Medium Density Residential zoning districts; that these areas already exist in current zoning and are scattered throughout the County; that the following major guidelines should apply to future growth in Mixed Residential Areas: Permitted Uses – the full range of housing types are appropriate in these residential areas, including single-family homes, townhouses and multi-family units. Non-residential development is not encouraged; Densities – the current densities in these areas range from a maximum of 4 units per acre for single-family detached housing to a maximum of 12 dwelling units per acre for multi-family housing; Infrastructure – central water and sewer facilities are strongly encouraged. If central utilities are not possible, densities should be limited to 2 units per acre; that the site shares boundaries with Cool Branch Village, a 628 manufactured home community, which was established in 1988; that the site consists of 3 tax parcels to be combined; that an equestrian training facility exists on the site; that minimal wetlands and a tax ditch exists on site; that the site contains 83.9 acres of woodlands; that the bulk of the density is planned to be located on areas that have already been cleared; that the training track is proposed to become a part of the street system with the amenities in the center of the track area; that 9 stormwater management ponds are proposed, but may be reduced in number; that the majority of the site is buffered by woodlands; that the project is designed to preserve open space; that the project proposes less density than that which is permitted; that the use is an appropriate development for this location due to the existing zoning and the Comprehensive Land Use Plan designation as a Mixed Residential Area; that an on-site investigation of the wetlands by Ten Bears environmental, LLC found 2.5 acres of wetlands on the site; that no wetlands will be impacted since they are proposing a 25-foot wide buffer around the buffers; that the buffer is not required by any Code; that there will be no discharge of wastewater on the site since all wastewater will be transmitted to an existing or planned central wastewater treatment facility owned and operated by Tidewater Environmental Services, Inc.; that the layout does encroach onto a portion of the existing tax ditch right-of-way and that they are requesting to reduce the right-of-way of the tax ditch; that the size and location of the stormwater management ponds are subject to the Sussex Conservation District; that they have not yet budgeted what it might cost to maintain all streets, amenities, or facilities by the homeowners association; that the main construction access is proposed to be at the main entrance location; and that the main entrance is located at the existing location of the horse farm entrance which is utilized by farm equipment and vehicles with horse trailers.

The Commission found that Mr. Fuqua submitted some suggested proposed Findings of Fact and suggested proposed Conditions of Approval.

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

The Commission found that Marian Wilkinson was present in opposition, submitted the petition with 15 signatures in opposition, and stated that she has had to pay for the road easement improvements; that she is concerned about the major increases in traffic; that Cool Branch has already caused increases in traffic; that she is concerned about the safety of the children in the area; trash; debris; trespassing; noise; the negative impact on the wildlife in the area; maintenance of the tax ditches; poor police response time; the safety of pedestrians walking along Airport Road; objecting to the use of Danny Drive, the access easement to the acreage, being used as access to a major project; that the use is out of character with the area; and questioning the need for the project since Cool Branch has not been completed.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration and to allow Mr. Gordy to participate in the decision if he so desires. Motion carried 4 – 0.

Subdivision #2007-33 – application of **H & H INVESTMENTS, C/O THOMAS HEAD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 27.45 acres into 25 lots, located northwest of Road 283, 1,300 feet northeast of Road 284.

Mr. Abbott advised the Commission that the record includes the Technical Advisory Committee Report of January 31, 2008 and a DelDOT Letter of No Objection received on May 6, 2008.

John Barwick of Karins and Associates was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 25 single-family lots are proposed; that the site is located near Cedar Grove and Plantations Road; that all lots are a minimum of 0.75-acres; that central sewer is not available to the site however the site is in a sewer study area; that Tidewater Utilities will provide central water; that a 30-foot forested buffer surrounds three sides of the site; that DNREC has issued a septic feasibility statement; that streetlights with sidewalks on both sides of all streets will be provided; that the site contains 27.45 acres; that DelDOT has issued a Letter of No Objection for the entrance location; that a school bus stop could be at the end of the subdivision street and Cedar Grove Road; that revised restrictive covenants will be submitted; that the open space is around the buffer and storm water management areas; that the dwellings will be similar to the ones in Aydelotte Estates; and submitted a statement addressing the items referenced in Section 99-9C.

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

Subdivision #2007-34 – application of **VICTORIA AND SAM CONSTANTINO** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 1.79 acres into 2 lots, located west of Murphy Circle, north of Route 54 and being Lot 11 within Fenwick Island Estates Subdivision.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since no new improvements are proposed; that the request is to subdivide an existing lot within Fenwick Island Estates into 2 lots; and that the owners have provided proof that 19 out of 24 (79%) property owners are aware of and agree with the application.

Charles Coffman, Surveyor, Victoria Garzione and Sam Constantino were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicants propose to subdivide Lot 11 into 2 lots; that the property is currently owned by a brother and sister; that the subdivision will allow the sister to build her dwelling on the new lot; that the existing dwelling will remain on the adjoining lot; that the subdivision will not have an adverse impact on the adjacent lots or subdivision; that all of the existing lots are almost an acre in size; that the proposed lot will be compatible with other lots in the development; that sewer and water is provided by the Town of Selbyville; that the roads were replaced as they were once the sewer and water was installed; and that they know of no opposition to the request.

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.

Mr. Smith stated that he would move that the Commission grant preliminary and final approval of Subdivision #2007 – 34 for Victoria Garzione and Sam Constantino, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. It is part of an existing subdivision known as Fenwick Island Estates.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 2 lots on 1.79 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values. It will result in 2 lots of similar size as what currently exists in Fenwick Island Estates.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.

6. The Office of Planning and Zoning has confirmed that 79% of the property owners of Fenwick Island Estates have consented to the subdivision.

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

Meeting adjourned at 9:15 p.m.