



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF JUNE 11, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 11, 2009 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Agenda as amended by noting the withdrawal of C/U #1782, the application of the Center for Neurology Properties, L.L.C. and to move Subdivision #2007-36, the application of John H. Ferris and Others, to be the first public hearing. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of May 20, 2009 and May 28, 2009 as amended. Motion carried 5 – 0.

### OLD BUSINESS

**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 discussed this application which has been deferred since May 28, 2009.

Mr. Smith stated that many years ago the developer deemed in restrictive covenants that future commercial use of this site may be applied for to the County.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1643 for Landh Investments, L.L.C. for a change in zoning from GR General Residential to B-1 Neighborhood Business based upon the record and for the following reasons:

- 1) The Applicant proposes a neighborhood business project to provide retail shopping and personal service uses to meet the needs of the neighboring areas. The proposed project is

in character with the nature of the area and is consistent with the purpose of the B-1 zoning and the Comprehensive Plan.

- 2) The proposed project was identified in the original subdivision, Hampden Park, as Parcel A reserved for commercial use.
- 3) 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.
- 4) The property will be served by Artesian Water Company.
- 5) 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.
- 6) This proposed business area lessens congestion on outlying roads and streets by providing for local business at the Route 20 and County Road 388 intersection so that the residents and visitors to the area may have their personal service needs met without the necessity of traveling to Route 54 or Route 26.
- 7) At this location, there exists a need for B-1 zoning to serve the local mixed use community.

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

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**C/Z #1644** – application of **BRIAN MCKINLEY** to amend the Comprehensive Zoning Map from a GR General Residential District to a GR-RPC General Residential District – Residential Planned 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 discussed this application which has been deferred since May 28, 2009.

Mr. Gordy stated that he would not be participating in the discussion or vote on this application since he was not present during the public hearing.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1644 for Brian McKinley for a change in zoning from GR General Residential to a GR-RPC based upon the record and for the following reasons:

- 1) The property is currently zoned GR General Residential. Under this application, the basis zoning and the density permitted in the GR Zoning will not change.
- 2) Central water and central sewer will be provided to the project.
- 3) With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. The project includes single family lots, townhouses and multi-family buildings, with a lower density than what is permitted in the GR Zone.
- 4) The project will not adversely affect the neighborhood or surrounding community and it is adjacent to an existing 628 unit manufactured home community.

- 5) According to the County's current Comprehensive Plan, the project is in an area designated as a mixed residential area.
- 6) The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
- 7) This recommendation is subject to the following conditions:
  - a. The maximum number of units shall not exceed 473 units, consisting of townhouses, multi-family units and single family lots.
  - b. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DeIDOT shall be completed in accordance with DeIDOT's requirements.
  - c. This RPC shall be served by central sewer.
  - d. This RPC shall be served by central water.
  - e. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
  - f. A system of street lighting shall be installed.
  - g. The Developer is directed to form a homeowner's association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
  - h. No wetlands shall be included within any individual lots.
  - i. As proposed by the Applicant, a 25 foot wide buffer shall be established around the wetlands. The lot lines shall be adjusted as necessary so that the buffer is outside of the lot lines (this only affects a small number of lots).
  - j. A 20 foot wide vegetated buffer shall be established along all areas of the development adjacent to lands used for agricultural purposes. This shall be shown on the Final Site Plan.
  - k. The Applicant has proposed to maintain as many existing trees as possible. These areas shall also be shown on the Final Site Plan.
  - l. As proposed by the Applicant, the construction of the RPC shall be phased over a 10 year period, with no more than 75 residential building permits to be issued within any calendar year.
  - m. Recreational facilities and community buildings shall be constructed and open to use by residents prior to the issuance of the 100<sup>th</sup> building permit.
  - n. A school bus stop shall be provided in coordination with the local school district. The location of the bus stop area shall be shown on the Final Site Plan.
  - o. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
  - p. The Master Site Plan and phasing site plans 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.
  - q. The Master Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
  - r. The Master Site Plan and each phase of the development shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with 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 and stipulations stated. Motion carried 4 – 0. Mr. Gordy did not participate in the vote.

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In reference to **C/Z #1661** and **C/Z #1662**, the applications of Wayne Baker, Mr. Burton stated that he would like to make some comments on both of the applications prior to making motions, and stated that as you know, both of the applications have received a lot of attention, and that he has given them a lot of thought; that most of the concerns are centered around the possible uses of the property if it is rezoned to Heavy Industrial, and that he was concerned about that at first, too; that he has looked further into what is permitted versus what would still require another public hearing before the Board of Adjustment, and that he is a lot less concerned; that if the property is rezoned, the uses that would be allowed without further review include uses permitted in the Light Industrial District, and banks, clinics, data processing centers, farms, general business sales, heliports, hotels and motels, testing or research labs, nurseries or greenhouses, parking garages, private clubs, professional offices and restaurants; that none of these uses are objectionable to him on this property, and that he would likely vote to approve any of them individually if such an application was before him as a Conditional Use; that all of the rest of the possible uses still require a further hearing before the Board of Adjustment if they are potentially hazardous uses, or even if there is any doubt about whether they are potentially hazardous uses; that given the interest that these applications have received, he suggest that even the slightest doubt about a proposed use should require the Applicant to appear before the Board of Adjustment for approval of the use; that at the Board of Adjustment, the public gets an opportunity to participate and comment again upon the specific proposed use, and the Board of Adjustment can approve the use, deny it, or approve it with its own conditions on the particular use; and that after considering all of this, he is going to make motions on the applications.

Mr. Johnson agreed with some of Mr. Burton's comments and referenced specifically the possible rail spur; that Route 30 is a designated truck route; that the applications have the support of the State and County Economic Development Offices; and jobs will be created.

Mr. Smith agreed with the comments of Mr. Burton and Mr. Johnson and referenced specifically the rail spur and the truck route; that the Board of Adjustment will perform additional review of some of the uses as required by the Zoning Code; and that the rezoning offers job opportunities.

**C/Z #1661** – application of **WAYNE BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 30, 2,300 feet north of Road 319 and south of railroad, to be located on 9.03 acres, more or less.

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

Mr. Gordy stated that he would not be participating in the discussion on this application.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1661 for Wayne Baker for a change of zone from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District based upon the record made at the public hearing and for the following reasons:

- 1) The location is appropriate for HI-1 zoning. The property is located along Route 30, which is a designated truck route, and DelDOT is not opposed to the rezoning. It is also adjacent to an existing rail line with a proposed spur line accessing the property. The property currently has a Conditional Use for an existing fuel storage, sale and transfer facility. On the other end of the site there is a large State Emergency Operations Tower.
- 2) HI-1 zoning is appropriate, since the Zoning Code states that the purpose of the District is “to provide for a variety of industrial operations, but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the District”.
- 3) The rezoning will promote the local economy, and will create jobs in the area for Sussex County residents.
- 4) The Applicant has stated that there are few other properties available for industrial uses in Sussex County.
- 5) The property is in a developing area according to the County’s Comprehensive Land Use Plan.
- 6) The Office of State Planning Coordination does not object to the rezoning.
- 7) While a HI-1 zone has many possible uses, there are only a limited number of uses that are permissible without a further hearing in front of the County Board of Adjustment. These include uses permitted in the LI-2 District, Banks, Clinics, Data Processing Centers, Farms, General Business Sales, Heliports, Hotels, Research Labs, Nurseries and Greenhouses, Private Clubs, Professional Offices, and Restaurants. All of these potential uses are appropriate for this location.
- 8) Under the HI-1 zoning, if any other possible use is “potentially hazardous” or if there is any doubt as to whether it is potentially hazardous, there will be another public hearing on the particular use before the Board of Adjustment. The Board of Adjustment cannot approve the particular use unless it finds that the public’s health and welfare will be protected and that there are safeguards to protect area waters, property and people. If the Board of Adjustment decides to approve such a use, it can also add its own conditions and limitations to address the particular use.
- 9) The HI-1 zoning, with the safeguard of having further hearings limiting potential uses, will not adversely affect the neighboring or adjacent properties.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0, with Mr. Gordy not voting.

**C/Z #1662** – application of **WAYNE BAKER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying west of Route 30, 1,200 feet north of Road 319 and 300 feet south of railroad, to be located on 19.02 acres, more or less.

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

Mr. Gordy stated that he would not be participating in the discussion on this application.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1662 for Wayne Baker for a change of zone from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District based upon the record made at the public hearing and for the following reasons:

- 1) The location is appropriate for HI-1 zoning. The property is located along Route 30, which is a designated truck route, and DelDOT is not opposed to the rezoning. It is also adjacent to an existing rail line with a proposed spur line accessing the property. The property currently has a Conditional Use for an existing fuel storage, sale and transfer facility. On the other end of the site there is a large State Emergency Operations Tower.
- 2) HI-1 zoning is appropriate, since the Zoning Code states that the purpose of the District is “to provide for a variety of industrial operations, but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the District”.
- 3) The rezoning will promote the local economy, and will create jobs in the area for Sussex County residents.
- 4) The Applicant has stated that there are few other properties available for industrial uses in Sussex County.
- 5) The property is in a developing area according to the County’s Comprehensive Land Use Plan.
- 6) The Office of State Planning Coordination does not object to the rezoning.
- 7) While a HI-1 zone has many possible uses, there are only a limited number of uses that are permissible without a further hearing in front of the County Board of Adjustment. These include uses permitted in the LI-2 District, Banks, Clinics, Data Processing Centers, Farms, General Business Sales, Heliports, Hotels, Research Labs, Nurseries and Greenhouses, Private Clubs, Professional Offices, and Restaurants. All of these potential uses are appropriate for this location.
- 8) Under the HI-1 zoning, if any other possible use is “potentially hazardous” or if there is any doubt as to whether it is potentially hazardous, there will be another public hearing on the particular use before the Board of Adjustment. The Board of Adjustment cannot approve the particular use unless it finds that the public’s health and welfare will be protected and that there are safeguards to protect area waters, property and people. If the Board of Adjustment decides to approve such a use, it can also add its own conditions and limitations to address the particular use.
- 9) The HI-1 zoning, with the safeguard of having further hearings limiting potential uses, will not adversely affect the neighboring or adjacent properties.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0, with Mr. Gordy not voting.

**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.

Mr. Gordy stated that he would move that the Commission grant preliminary approval for Subdivision #2007 – 26 for D.M. Properties of Bethel, Inc. based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
5. Mr. Gordy is satisfied that this project is a superior design under the subdivision ordinance. It is a superior design because it preserves a substantial amount of open space and existing forested areas. These areas will be subject to a conservation easement for perpetual preservation. The developer has also voluntarily designed the project with 50-foot buffers from all wetlands.
6. The design addresses the requirements of Section 99-9C of the Code.
7. The subdivision will have no more than 390 lots on 260.69 acres. This results in a density that is less than the maximum density permitted in the AR-1 zone.
8. The subdivision will be served by central water and sewer.
9. This preliminary approval is subject to the following:
  - A. There shall be no more than 390 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The storm water 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 Department.
  - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
  - G. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. 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 areas.

- H. The developer shall maintain as many existing trees as possible. As stated by the Applicant, the forested areas shall be maintained through a conservation easement. The undisturbed forested and conservation easement areas shall be shown on the Final Site Plan.
- I. No wetlands shall be included within any lots.
- J. A system of street lighting shall be established.
- K. Sidewalks shall be located on one side of all streets in the subdivision.
- L. There shall be walking and bike paths throughout the subdivision as shown on the Preliminary Site Plan.
- M. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- N. The developer shall construct all of the recreational amenities on or before the issuance of the 80<sup>th</sup> residential building permit.
- O. As proposed by the Applicant, there shall be a 50-foot buffer minimum from all wetland areas.
- P. The on-site cemetery shall be preserved and maintained by the Homeowners' Association.
- Q. All silt fencing shall be located on the interior of all buffer areas to avoid disturbance of those areas.
- R. As proposed by the Applicant, a rolling berm shall be installed along Phillips Hill Road and Scotland Road with native species used for landscaping. The landscaping and berms shall be identified on the landscape plan submitted with the Final Site Plan.
- S. 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. Staff shall approve the revised plan upon confirmation that the conditions of approval have been depicted or noted on it.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

**Subdivision #2007-29** – application of **SPRING BREEZE ASSOCIATION** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 113.93 acres into 167 lots, (Cluster Development), located south of Road 280-B, 1,985 feet west of Road 288.

Mr. Johnson advised the Commission that he has reviewed the record for this application and will be participating in any discussion and possible action.



Mr. Smith advised the Commission that he would not be participating in this application since he was absent when the public hearing was held.

Mr. Burton stated that he would move that the Commission grant preliminary approval for Subdivision #2007 – 29 for Spring Breeze Association based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
3. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
4. Mr. Burton is satisfied that this project is a superior design under the cluster subdivision ordinance. It is a superior design because it creates a 300 foot undisturbed buffer from the County's landfill property, there are voluntary 50-foot buffers from all wetlands. 62 percent of the woodlands will not be disturbed, and there will be a 50-foot wooded buffer around the entire perimeter of the project.
5. The design addresses the requirements of Section 99-9C of the Code.
6. The subdivision will have no more than 167 lots on 113.03 acres. This results in a density of 1.47 units per acre that is less than the maximum density permitted in the AR-1 zone.
7. The subdivision will be served by central water and sewer.
8. This preliminary approval is subject to the following:
  - A. There shall be no more than 167 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The storm water 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 Department.
  - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
  - G. As proposed by the Applicant, there shall be a 50-foot forested buffer around the entire perimeter of the project. The Final Site Plan shall contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas. All silt fencing shall be on the interior side of buffer areas to prevent disturbance.
  - H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be clearly shown on the Final Site Plan.
  - I. No wetlands shall be included within any lots.

- J. A system of street lighting shall be established.
- K. As stated by the Applicant, sidewalks shall be located on both sides of all streets in the subdivision.
- L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- M. As proposed by the Applicant, there shall be a 50-foot buffer from all wetlands. A landscape plan for all buffers shall be included in the Final Site Plan, and all silt fencing shall be on the interior side of the buffer to prevent disturbance.
- N. Amenities shall include a pool house, pool, basketball court and a 150-foot by 300-foot multi-purpose sport field. All amenities shall be started at or before the issuance of the 60<sup>th</sup> building permit and shall be completed prior to the issuance of the 120<sup>th</sup> building permit.
- O. As stated by the Applicant, the wetland buffers shall be permanently marked with signage.
- P. 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. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not participating, to approve this application as a preliminary, for the reasons and with the conditions stated. Motion carried 4 – 0 – 1.

**Subdivision #2007-30** – application of **TIMOTHY RAMEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 33.72 acres into 29 lots, located south of Road 472, 1,600 feet east of Road 62.

Mr. Smith advised the Commission that he would not be participating in this discussion since he was absent when the public hearing was held.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 30 for Timothy Ramey, based upon the record and for the following reasons:

- A. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
- B. The proposed subdivision is substantially less than the density permitted by the existing AR-1 zoning. The density is approximately .68 lots per acre.
- C. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.

- D. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- E. The project will be served by central sewer in accordance with all State and County requirements.
- F. This approval is subject to the following conditions:
  - 1. There shall be no more than 29 lots within the subdivision.
  - 2. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - 3. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
  - 4. 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.
  - 5. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - 6. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
  - 7. A 30-foot forested Agricultural Buffer shall be provided along the perimeter of the project, except where it is adjacent to the existing strip lots. 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 areas.
  - 8. No wetlands shall be included within any lots.
  - 9. A system of street lighting shall be established.
  - 10. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
  - 11. As proposed by the Applicant, there shall be a 50-foot buffer from all wetland areas.
  - 12. The area identified as Residual lands shall be considered as Open Space, and any further subdivision of the project shall require a public hearing.
  - 13. 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. Staff shall approve the revised plan upon confirmation that the conditions of approval have been depicted or noted on it.
  - 14. The Final Site Plan shall be subject to the review and approval of the Planning and Commission.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Smith not participating to approve this application as a preliminary, for the reasons and with the conditions stated. Motion carried 4 – 0 – 1.

**Subdivision #2007-31** – application of **SUSSEX VENTURES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 28 acres into 28 lots, (Cluster Development), located north of Road 485A, and east of U.S. Route 13.

Mr. Smith advised the Commission that he would not be participating in this discussion since he was absent when the public hearing was held.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 31 for Sussex Ventures, Inc. based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation.
4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
5. Mr. Gordy is satisfied that this project is a superior design under the subdivision ordinance. It is a superior design because it preserves a significant amount of open space that allows for passive recreation and creates a buffer between houses. 9 acres, or 32% of the site, will remain as open space.
6. The design addresses the requirements of Section 99-9C of the Code.
7. The subdivision will have no more than 28 lots on 28 acres. This results in a density that is much less than the maximum density permitted in the AR-1 zone.
8. This preliminary approval is subject to the following:
  - A. There shall be no more than 28 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The storm water 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 Department.
  - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
  - G. A 30-foot forested Agricultural Buffer shall be shown along boundaries on any land used primarily for any agricultural purpose. 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 areas.

- H. As proposed by the Applicant, an asphalt walking path shall be provided throughout the community.
- I. 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. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Smith not participating, to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

**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. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 33 for H & H Investments, c/o Thomas Head, based upon the record and for the following reasons:

- A. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
- B. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
- C. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- D. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- E. DNREC has indicated that the site is suitable for individual on-site septic systems.
- F. This approval is subject to the following conditions:
  - 1. There shall be no more than 25 lots within the subdivision.
  - 2. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - 3. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
  - 4. 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.
  - 5. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

6. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
7. A 30-foot forested Agricultural Buffer shall be provided as shown on the Preliminary Site Plan. 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 areas.
8. No wetlands shall be included within any lots.
9. A system of street lighting shall be established.
10. Sidewalks shall be located on both sides of all streets in the subdivision.
11. The Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Plan either depicting or noting the conditions of this approval. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton 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 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.

Mr. Robertson advised the Commission that the original intent of this Ordinance Amendment was to help reduce the number of public hearings necessary for one, two and three lot subdivisions; and that after reviewing the possible time frame to process these types of subdivisions the staff had expressed concerns that it may even take longer to go through this process than to just apply for a major subdivision.

Mr. Wheatley noted that longer process time does not reduce the workload; and that it was necessary to bring forth the Ordinance Amendment for discussion, but it does not seem appropriate in its present form.

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 denied based on the record. Motion carried 5 – 0.

## PUBLIC HEARINGS

**Subdivision #2007-36** – application of **JOHN H. FERRIS AND OTHERS** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex

County, by dividing 2.39 acres into 7 lots, located southeast of Road 350, approximately ½ mile north of Road 349.

Mr. Abbott advised the Commission that this application was filed on December 3, 2007; that the Technical Advisory Committee review of January 31, 2008 will be made a part of the record; that DelDOT issued a Letter of No Objection for the entrance location on September 15, 2008; that restrictive covenants were submitted on May 27, 2009; that an Exhibit Booklet containing an application, site maps, Technical Advisory Committee comments, Assessment Division, restrictive covenants, DelDOT letter, Public Works Division Comments, wetlands investigation and proposed findings of facts and conditions of approval was submitted on May 28, 2009 and that a revised preliminary plan was submitted on June 1, 2009.

Dennis Schrader; Attorney, Ken Christenbury; P.E., and John Ferris; applicant were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is located north of Millville; that 7 lots on 2.39 acres are proposed; that the zoning is Medium Density residential which permits 4 lots per acre with central sewer; that the proposed subdivision is a standard subdivision with 10,000 square foot minimum lots; that the subdivision is a low density project; that the site is located in a Level 2 based on the State's Strategies Map; that restrictive covenants have been submitted; that DelDOT has issued a Letter of No Objection for the entrance location; that sewer will be provide by the County through the North Millville Expansion of the Bethany Beach Sanitary Sewer District; that Tidewater Utilities will provide central water; that the proposed subdivision is compatible to other uses in the area; that a wetlands investigation has been performed and there are no wetlands on the site; that the proposed dwellings will be stick-built dwellings; that manufactured homes are not permitted; that the proposed density is 2.93 lots per acre; that a homeowners' association will be formed; that the streets will be private and built to Sussex County specifications; that sidewalks could be provided on one side of the streets; that there is an adequate outfall for run-off with the road side swale; and that the applicant has not been in contact with adjoining property owners.

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

Laura Hufford, an adjoining property owner, was present in opposition to this application and advised the Commission that her parcel contains 1.8-acres; that the parcels in the immediate area are larger than the proposed lots; and that she has concerns about property values being negatively impacted.

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

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action so that the Commission may ponder this application. Motion carried 5 – 0.

**C/U #1836** – application of **REHOBOTH BEACH FILM SOCIETY** to consider the Conditional Use of land in a MR Medium Density Residential District for a private club to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 11,033 square feet, more or less, lying at the northwest corner of Paynter

Land and Truitt Avenue within Truitt's Midway Development, which is south of Route 24 and west of Route One, and being Lot 42 and part of Lot 43.

The Commission found that on June 1, 2009 the Applicant provided an Exhibit Booklet which contains information about the Film Society, a Tax Map of the Truitt's Midway Development depicting the zoning, a Tax Map of the general area at Midway intersection, aerial photographs, photographs of the lot, the improvements on the lot, and the general area, copies of Minutes of the County Council for March 31, 2009, a letter from James D. Griffin, Esquire, referencing private clubs, and a letter from Fuqua and Yori, P.A. withdrawing the original change of zone for the site.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard area or tax ditch is 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 Utility Planning Division, that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is not available for the project; that the sewer planning study assumption for the parcel is 1.0 EDU, reflecting homes on residential parcels in a residential subdivision; that the Department has concerns that the proposed use has the potential for increased wastewater flow from the Conditional Use; that the proposed use is not located on residential lands previously identified for non-residential use by Planning and Zoning; that the current system connection charge rate is \$4,132.00 per EDU; that the location and size of lateral and connection points will be determined by the County Engineer; that the parcel is served with one 6-inch sanitary sewer lateral; that a 6-inch lateral is adequate for a Conditional Use in the existing structure; that if additions are proposed, a lateral upgrade, at the property owner's expense, could be required; that if the existing structure is removed, it must be properly disconnected requiring a disconnection permit, disconnection by a County licensed plumber and inspection by the County; that conformity to the North Coastal Area Planning Study will be required; and that a concept plan is not required.

Mr. Robertson reminded the Commission that previous public hearings were held for the rezoning of this site; that during the public hearing process before the County Council the question was asked if this type of use could be considered a private club, since it is for a non-profit organization; and that James Griffin, County Attorney, determined that the use could be considered a private club, which allowed for a Conditional Use application, rather than a change in zoning.

The Commission found that Fritz Schranck and Sue Early of the Rehoboth Beach Film Society were present with James Fuqua, Attorney, and stated in their presentation and in response to questions raised by the Commission that they appeared before the Commission on March 12, 2009 to rezone the property to B-1 Neighborhood Business; that they request that the Minutes of March 12, 2009 be made a part of the record for this application; that on March 31, 2009 the definition of a private club was discussed and the County Attorney determined that the use could be



considered a private club, and that a private club is a permitted Conditional Use in the MR Medium Density Residential District; that on March 12, 2009 the neighbors were objecting to the rezoning, not the intended use by the Film Society, and that they had a fear of a precedent being set for further rezoning applications; that they offer the following proposed conditions of approval: 1) the property shall be used exclusively as the administrative office of the Rehoboth Beach Film Society or use as a single family residence; 2) the building shall maintain the style and appearance of a single family residential structure; 3) one unlit sign, not exceeding eight (8) square feet in size identifying the Rehoboth Beach Film Society shall be permitted; and 4) hours during which the office shall be open to the public shall be 8:00 a.m. to 6:00 p.m. Monday through Friday; that they will have 2 full-time employees and 1 part-time employee; that they are proposing to expand the paved parking area for additional spaces and submitted a sketch on the expansion; that the definition of a private club is a listed definition in the Zoning Code; and that the IRS recognizes the Rehoboth Beach Film Society as a non-profit organization.

The Commission found that Mr. Fuqua submitted their suggested proposed Findings of Fact and proposed Conditions of Approval for the record.

Mr. Lank advised the Commission that the site plan has not been reviewed to determine the required number of parking spaces.

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 C/U #1836 for Rehoboth Beach Film Society for a private club based upon the record and for the following reasons:

- 1) The Rehoboth Beach Film Society is a non-profit private club providing social, educational and recreational activities.
- 2) The Applicants proposed administrative office is of a public or semi-public character and is desirable for the general convenience and welfare of County residents.
- 3) While the proposed site is located on a lot in a medium residential development, several business and commercial uses exist directly in front of the site across Truitt Avenue.
- 4) With the conditions imposed on the approval, the Conditional Use will not adversely affect uses or values and will enable the Film Society to provide a service beneficial to County residents and visitors.
- 5) This recommendation of approval is subject to the following conditions:
  - a) The property shall be used exclusively either as the administrative office of the Rehoboth Beach Film Society or as a single family residence.
  - b) The building shall maintain the style and appearance of a single family residential structure.
  - c) One unlit sign, not exceeding eight (8) square feet in size, indentifying the Rehoboth Beach Film Society shall be permitted.
  - d) Hours during which the office shall be open to the public shall be 8:00 a.m. to 6:00 p.m. Monday through Friday.

- e) The Final Site Plan shall be subject to the review and 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 stated. Motion carried 5 – 0.

**C/U #1782** – application of **CENTER FOR NEUROLOGY PROPERTIES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for medical office buildings to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 7.34 acres, more or less, lying at the northeast corner of Road 288A and Route 24.

Mr. Lank advised the Commission that this application was withdrawn on June 2, 2009.

**C/Z #1645** – application of **CELLULAR FISH, LLC** to amend the Comprehensive Zoning Map from a GR General Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying west of Route 24, 420 feet north of Road 299, to be located on 22,500 square feet, more or less.

The Commission found that on June 1, 2009 the Applicant submitted an Exhibit Booklet which contains a project description, an illustrative site plan, a plan data summary, a PLUS process waiver request letter and a PLUS exemption letter, a DelDOT Support Facilities Report, a Phase One Environmental Assessment Report, and photographs.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “E” of John J. Williams Highway will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that based on a review of the Preliminary Site Plan, dated September 17, 2007, the future use of the site does not exceed the existing use and therefore this project will not be required to be seen through the PLUS process.

The Commission found, based on comments received from the Sussex Conservation District, that there are 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 no storm flood hazard areas are affected; that no 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 Utility Planning Division, that the site is located within the Long Neck Planning Area; that Ordinance 38 construction will be required; that the current system connection charge rate is \$3,252.00 per EDU; that sewer service has not been extended to this parcel at this time; that the site is located in the Long Neck Sanitary Sewer District; that the application proposes a retail building of 4,620 square feet; that connection to the system will be mandatory; that annexation

into the Long Neck Sanitary Sewer District is possible following completion of certain administrative procedures; that planning study assumptions have allocated 2.0 EDUs to the parcel and capacity is adequate for the proposed use; that the proposed project could receive sewer service following an extension of sewer lines to the parcel, by the developer; that an extension of sewer lines to the parcel would be at the developer's expense; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept plan must be submitted to the Engineering Department for review and approval prior to the request for annexation; that one-time system connection charges will apply; and that a concept plan is required.

The Commission found that William Baker of Cellular Fish, L.L.C. was present with Roger Gross, Professional Engineer, of Merestone Consulting, Inc. and that Mr. Gross stated in his presentation and in response to questions raised by the Commission that they are applying for CR-1 Commercial Residential on approximately 0.5 acre; that they did submit an illustrative site plan for the purpose of display and realize that it is only conceptual and that if the rezoning is approved anything permitted in the CR-1 zoning would be permitted; that retail use of the property is proposed; that submittal through the PLUS process is not required; that they did receive a waiver from PLUS since the proposed use would not be anymore impacting that the pre-existing use, an auto repair shop; that the site is located in an Investment Level 2 according to the State Strategies; that the site is located in a mixed residential area and within the Environmentally Sensitive Developing Area according to the County Comprehensive Land Use Plan; that the use is compatible to the non-residential uses listed in the Environmentally Sensitive Developing Area; that the site is adjacent to residential lots to the west and south; that a retail business exist to the north; that they realize that the building setback on the south side of the lot is 20-feet due to the residential lot and that the rear setback is 30-feet for the same reason; that the photographs in the Exhibit Booklet reference commercial uses within 1,000 feet of the site; that sewer capacity is available from the County when available; that sewer connection is approximately 500-feet away and that they realize that connection will be at the cost of the developer; that Tidewater Utilities, Inc. will provide central water for drinking and fire protection; that B-1 and C-1 zoning exist to the north and in close proximity; that since DelDOT may require a dedication of right-of-way along Route 24 they hope that the Commission will be flexible to allow parking in the front yard; that Envirotech Environmental Consulting, Inc. has reviewed the site and performed a Phase One Environmental Assessment due to the existence of the previous automotive repair shop with tanks; that the site has been cleared and the tanks have been emptied; that they have not yet designed the site plan for stormwater management ; that infiltration could be in the design; that the realize that the Sussex Conservation District and DelDOT approvals are required; and that stormwater management could be placed in the rear.

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

Mr. Johnson stated that the area is rapidly becoming commercial or business and that he is concerned about rezoning to CR-1, rather than B-1.

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

**C/Z #1646** – application of **OVERBROOK ACRES, LLC C/O FRED A. CHAPPELL** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying at the southwest corner of the intersection of Route One and Route 88, to be located on 4.71 acres, more or less.

The Commission found that on June 1, 2009 the Applicant provided the Commission with an Exhibit Booklet which contains correspondence regarding the application, aerial photographs, Tax Map/Zoning Map, PLUS comments and the Applicant's response to the PLUS comments.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the property is adjacent to Route One, and is therefore subject to the Corridor Capacity Preservation Program; that the main goal of the program is to maintain the capacity of the existing highway; that DelDOT's plans for the intersection of Route One and Cave Neck Road include prohibiting left turns from eastbound Cave Neck Road onto northbound Route One and improving the acceleration lane for the right turn from eastbound Cave Neck Road onto southbound Route One; and that right-turn in and out access on Route One would conflict with the acceleration land previously mentioned and therefore would not be permitted.

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

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that it is unknown, at this time, if Ordinance 38 construction will be required; that the current system connection charge rate is \$4,132.00 per EDU; that the parcel is served with an 8-inch stub and a 6-inch lateral; that conformity to the North Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer system is mandatory; that the sewer planning study assumption for the parcel is 4.0 EDUs per acre (18.84 EDUs total) reflecting the AR zoned parcel; that the proposed development should not exceed a total of 18.84 EDUs; that a proposal that exceeds 18.84 EDUs could require that downstream upgrades be completed by the developer to increase the capacity of certain pipe lines and pump stations; that required upgrades would be at the developer's expense; that the Department opposes this rezoning because of the potential for increased wastewater flow from commercially zoned parcels; that the proposed commercial zoning and commercial use is located on residential lands not previously identified for commercial use by Planning and Zoning; that the County Engineer must approve the sewer connection point; and that a sewer concept plan must be submitted to the Department for review and approval prior to plan submittal.

The Commission found that Mr. and Mrs. Fred Chappell of Overbrook Acres, L.L.C. were present with James Fuqua, Attorney, of Fuqua and Yori, P.A. were present and that Mr. Fuqua stated in his presentation and in response to questions raised by the Commission that they are applying for rezoning from AR-1 to B-1; that the rezoning was originally filed in 2007 by B.B.C. Properties; that B.B.C. Properties withdrew their contract on the property and that the Applicants desire to continue with the application; that a conceptual site plan was submitted by B.B.C. Properties and that they realize that the site plan is only conceptual; that they do not have any specific use planned at this time; that B-1 zoning is appropriate at this location since the purpose of this district is to provide primarily for retail shopping and personal service uses, to be developed either as a unit or in individual parcels, to serve the needs of a relatively small area, primarily nearby rural, low-density or medium-density residential neighborhoods; that the parcel is ideally situated to serve the community and the general area since the parcel is adjacent to a Residential Planned Community and other developments in the area; that DelDOT referenced in their PLUS comments that the parcel is located in an Investment Level 3 as defined by the State Strategies and is an area recognized by the State for anticipated future growth; that DelDOT has also noted that dedication of additional right-of-way along both Route One and Route 88 will be required and that certain other improvements will be required along both Route One and Route 88; that central water will be provided by Tidewater Utilities, Inc.; that public sewer will be provided by the County; that the acreage is cleared land being tilled; that the parcel has been owned by the Applicant's family since 1950; that the parcel is not located in a well-head protection area or a recharge area; that B-1 zoning is consistent in both the 2003 and the 2008 Comprehensive Land Use Plans; that State agencies have reviewed the proposal; that the Office of State Planning Coordination has voiced no objections to this application; that they may provide cross access easements to the 3 smaller parcels to the south; that the site is in close proximity to other commercial properties, i.e. an antique store, office space, motel, to the south and west of Route One a Conditional Use for Delaware Guidance Services, a large day care center to the south, an auto repair, bike shop, retail and office space to the east of Route One, farm produce, self storage, heating and air business, and auto repair to the north, and a small B-1 type business center within the adjacent RPC community; that the E-mails in opposition express concerns about the close proximity to Paynters Mill RPC; that the property line is 220-feet from the closest building within Paynters Mill RPC; that the site has adequate space for screening, landscaping, berms, etc, to provide buffering from Paynters Mill; that some of the concerns relate to a fear of a precedent being set for a larger project east of Route One; that the site is appropriate for B-1 zoning since it is on Route One and Route 88 in close proximity to other commercial and business uses and zoning, and since they received no negative objections from State agencies; that it is noted that the Commission has recently recommended denial of several other B-1 applications and that those applications were stand alone projects with no nearby similar zoning or uses and were not near major roadways and were out of character with their surroundings; that there are numerous business uses in this area; that the businesses will serve the needs of the residents in the area; that this site is probably not appropriate for residential use due to the location at the intersection of Route One and Route 88; that B-1 zoning is the most restrictive commercial zoning in the County; that they are willing to provide service roads to access other parcels; that pedestrian access is probable; that vehicular cross access easements may be required by DelDOT; that traffic will increase in this area, whether it is from B-1 use or residential use of the parcel; and that the small business section in Paynters Mill contains approximately 1.5 acres of the RPC.

The Commission found that Mr. Fuqua submitted some proposed Findings of Fact.

The Commission found that Thomas P. Robinson was present in support of this application and stated that the use will serve the homes, existing and approved in the area of Cave Neck Road.

The Commission found that Denise Laux, Lowell Fleischer, Jack Thomas, Frank Long, Don Smith, Denise Marine, Linda Sealtiel; Judi Sateli, and Delores Damone was present in opposition and expressed concerns about air and noise pollution; the loss of the agricultural view; that they do not want to look at dumpsters, loading areas, and other commercial activities; traffic and safety concerns; that with or without the rezoning they will still have to go to Milton, Lewes or Rehoboth to get groceries, gasoline, etc.; the entrance location on Cave Neck Road; changes in the traffic pattern proposed by DelDOT; that the rezoning is not a service to the area; increased traffic congestion; that the highway infrastructure is inadequate and cannot serve the needs presently or in the future; that buffering is needed; that some store fronts in the area are vacant; that the Paynters Mill business units have only 2 occupied units; that a cross access easement serving other parcels creates more traffic on Cave Neck Road; that traffic gridlock is probable at the entrance; and that a traffic light may be needed, but will it improve traffic conditions.

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.

Meeting adjourned at 9:00 p.m.