

MINUTES OF THE REGULAR MEETING OF JUNE 11, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 11, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Ms. Janelle Cornwell – Planning and Zoning Manager.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 21, 2015 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/Z #1768 – Convergence Communities

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR-RPC (Medium Density Residential District – Residential Planned Community) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 49.66 acres, more or less. The property is located north of Road 361 (Muddy Neck Road) east and south of Ocean Way Estates Subdivision, west of Assawoman Canal, and also north of the Ocean View Beach Club Community in the Town of Ocean View with access from Nantasket Ave, Old Orchard Ave, Ocean Beach Ave, and Gooseberry Ave (911 Address: None Available) Tax Map I.D. 134-17.00-12.00.

The purpose of this agenda item is to announce receipt of information regarding amenities.

Mr. Lank advised the Commission that a public hearing was held on April 9, 2015 and that the Commission had deferred action and left the record open for review of the amenities; that James Fuqua, Esquire, provided a letter on May 12, 2015 referencing the amenities proposed and advising that the proposed development will utilize amenities to be constructed in the Ocean View Beach Club, also owned by the applicant and located adjacent to the site; that once the applicant obtained a contract on this site, they up scaled the amenity design in the Ocean View Beach Club to accommodate owners in both developments; that the amenities to be constructed in the Ocean View Beach Club shall include: a fitness center; a spa featuring sauna/steam and massage rooms; men/women's luxury locker rooms; multi use room (great room/activity room); indoor lap pool; outdoor pool; multi use sport court; billiards/card room/library; and community trails and gardens; and that in addition to the shared amenities, the site itself will contain proportionally distributed open space for park areas and tot-lots and will provide right-of-way access for the Assawoman Canal Trail.

Mr. Lank added that on April 9, 2015 the motion to defer action and to leave the record open included a comment that the record open for 14 days for further comments, meaning that once announced that the comments had been received, written comments can be received in reference to those comments received until June 25, 2015.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to leave the record open for written comments through June 25, 2015. Motion carried 5 – 0.

C/Z #1770 – TD Rehoboth, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 114.4821 acres, more or less. The property is located on the northeast side of Route One (Coastal Highway) across from Route 88 (Cave Neck Road) (911 Address: None Available) Tax Map I.D. 235-23.00-1.00.

Mr. Wheatley described the purpose of the Planning and Zoning Commission in considering applications, and specifically noted that the Commission only makes a recommendation on Change of Zone applications and Conditional Use applications to the Sussex County Council, who will make the final decision.

The Commission discussed this application which has been deferred since April 23, 2015 for further consideration.

Mr. Burton stated that he has given this application a lot of thought; that the applicant's presentation and the oppositions presentation were very professionally presented; and that he is prepared to make a motion on the application, but would first like to hear any comments from the Commissioners.

Mr. Johnson stated that Mr. Burton and the Commission are faced with a very difficult decision; that he has concerns about the size of the project and the location; that he questions if the location is appropriate for such a use; that he is concerned about some of the other permitted uses that could be placed in a CR-1 zoning classification; that he realizes that the Commission is only making a recommendation; that he is concerned about what might happen to the local roads in the area; and that the only positive in the application is that it will take time to develop the site.

Mr. Ross stated that the site is in a Growth Area, which are established to accommodate growth; that the commercial use will enhance public transportation; that traffic on Route One is going to increase with or without the project; that the original 1970 approval of the Zoning Map and Zoning Ordinance zoned significant amounts of farmland fronting on Routes 13, 113, and 14, now Route One, commercial to provide ample inventory of land available for this use; that that was a long time ago and this is a good time to add additional commercially zoned lands; that the original County Comprehensive Plan was prepared by the State Planning Office and set us on the path that we are on today; that we may like or dislike the results but guiding commercial development to arterial roads was established; that having this additional commercial land available will hopefully take some pressure off requests for smaller parcel re-zonings; that the

concerns about the Great Marsh and neighboring properties can be addressed during the site plan review process; that maybe the site will eventually have 850,000 square feet of retail space, but his instincts tell him that significant buffering for the Great Marsh and adjoining properties must be considered; that it is implausible to him that business owners locating in this project would not want to offer shuttle services between nearby communities and coordinate with DART to make the commercial center a greater success; that he thinks that anyone that chooses to locate in the Route One corridor should expect high volumes of traffic and increasing traffic and diversity of commercial uses; that the County is a desirable place to live and that desirable places to live experience growth; and that his opinion on this project is not only in conformance with the letter of our County rules, it is in keeping with the long ago established strategy for orderly growth of the County.

Mr. Smith stated that he agrees that there is a need to care for the Great Marsh and that buffers will be needed; that this application opens up a new area to the north for commercial development; and that the application was well represented.

Mr. Burton stated that he would move that the Commission recommend denial of C/Z #1770 for TD Rehoboth, LLC based upon the record made during the public hearing and for the following reasons:

- 1) I do not believe that it is appropriate to rezone this 114 acres of AR-1 Agricultural Residential land to CR-1 Commercial Residential land.
- 2) The rezoning of this large tract of land is inconsistent with the surrounding zoning and uses of property in the area. While there is some C-1 General Commercial zoned land nearby, it is nowhere near the size of this proposed parcel. The only other commercial-zoned properties in the area typically range in size from only one (1) acre to 12 acres.
- 3) The parcels to the north and east have a land use designation of a Low Density Area under the Sussex County Comprehensive Plan, and at least one parcel is in Agricultural Preservation. Rezoning of this 114 acre tract would not provide an appropriate transition between commercial, agricultural and residential uses that exist in this area.
- 4) While the Sussex County Comprehensive Plan identifies this location as being in a Developing Area, that does not require the property to be rezoned to CR-1 Commercial Residential. Instead, under the Plan, AR-1 Agricultural Residential, B-1 Neighborhood Business, a variety of residential zoning districts, and CR-1 are all appropriate if the circumstances and the location support the change in zone. Here, I believe that the existing AR-1 Agricultural Residential zoning is the most appropriate zoning classification for this property at this time given the location of the property and its surroundings. This is completely supported by the County's Comprehensive Plan.
- 5) There was substantial testimony and other evidence presented during the public hearing in opposition to this application, stating concerns about new traffic generated in this area from such a large tract of commercially zoned land, that so much commercial acreage is not compatible with the nearby Great Marsh, a significant environmental feature of eastern Sussex County; and that the proposed commercial zoned land is not compatible

with the uses and zoning districts on neighboring and adjacent land; and other reasons from the opposition. I found these reasons to be compelling.

- 6) There is nothing in eastern Sussex County that would compare to the size and scale of this 114 acre rezoning. The original Zoning Map for Sussex County only contemplated commercial zoning to a depth of 600 feet along Route One, in an area that was thought to be destined for commercial growth. This application proposes a new area of CR-1 land 2,800 feet in depth from Route One, and it is not part of an existing commercial corridor. The size and scale exceeds anything else that exists along Route One since zoning was established, and it is inappropriate for this location.
- 7) The applicant referenced the Commission's 2009 recommendation of denial in C/Z #1690 for LT Associates, a CR-1 rezoning outside of Lewes. In that decision, the Commission noted that Route One could be a more appropriate location for commercial zoning. The LT Associates application was only for 45.77 acres and approximately 320,000 square feet of commercial space. That decision also referenced the existing commercial projects along Route One at 140,000, 210,000, and 240,000 square feet. Here, the applicants are seeking to rezone 114 acres for approximately 840,000 square feet of commercial space, or about two and a half times the acreage and commercial space of the LT Associates application. Comparing the other projects identified in the LT Associates recommendation, this rezoning could result in about four (4) times the commercial space of other large commercial developments on Route One. The LT Associates decision should not be interpreted to mean that a project this large and unprecedented size is appropriate for this location along Route One.
- 8) While there was a great deal of discussion about a planned overpass to serve the Route One and Cave Neck Road intersection, including proposed contribution by the developer, that information should not weigh into any decision whether or not to approve this application. Such an overpass would be subject to DelDOT's design, review and approval, and the funding and construction of it would only come if and when a Final Site Plan for a project on this site is approved and construction starts. There is no guarantee when either would occur, so the proposed overpass should not be given much weight in considering whether to grant or deny this rezoning application.
- 9) This application does not satisfy the purpose of the County Zoning Ordinance, since it does not promote the orderly growth of Sussex County. If approved, it would allow an unprecedented rezoning of 114 acres, with 2,800 feet in depth from Route One, in an area where no similar commercial uses or zoning of similar size and scale exist. This large of a commercially zoned tract of land is not an orderly or logical transition from neighboring and adjacent uses, especially in this Environmentally Sensitive Area in close proximity to the Great Marsh.
- 10) The project is not located next to an existing major road where a general mixture of similar commercial and service activities currently exist as contemplated by the "Purpose" clause of the CR-1 Commercial Residential Zoning District. According to the applicant's own information, the nearby uses only include "auto repair, a self-storage facility, a farm market, a real estate office, a day care facility, a guidance service facility, an antique store, a tire and bike business, a piano and keyboard store, a medical

equipment store, and a mortgage company office”. All of these are small businesses on relatively small tracts of land. Not one of them compares to the 114 acre rezoning to CR-1 and the size and scale of what could be built there. And they do not take into account the predominantly agricultural uses in the immediate vicinity including an Agricultural Preservation District.

- 11) For the reasons I have outlined in this Motion, I also do not believe that this rezoning application promotes the considerations established by Section 6904 of Title 9 of the Delaware Code. It does not promote the health, safety, morale, convenience, order, prosperity or welfare of the present and future residents of Sussex County.
- 12) As such a large commercial tract, it would not lessen the congestion of streets or roads; instead it would increase traffic in an area where traffic is already heavy, particularly in the summertime.
- 13) Although the applicant has proposed a very large unified shopping center, the Commission should not focus on just that purpose. Instead, since this is a rezoning, the Commission and County Council must look at what could be possible under a CR-1 rezoning of the 114 acres. These could include any mixture of many of the following permitted uses: indoor amusement places; boat and trailer sales facilities; car washes; hotels; lumber yards; manufactured home sales lots; tire sales shops; metal shops; garages; restaurants; and all sorts of retail uses. While the proposal presented during the public hearing may be considered acceptable to some people, it has no real bearing on this application. I am concerned that once rezoned, the development possibilities that would exist under CR-1 for this large of a tract of land would be inconsistent with the surrounding properties, including agricultural and residential uses. It could be a large stand-alone tract of a variety of unrelated, but permitted, commercial uses built at various times that do not offer a reasonable, orderly or logical transition from the neighboring properties or the Low Density Area to the North of this property.
- 14) For all of these reasons, I do not believe that rezoning this 114 acre tract of land, which is unprecedented in size and scale for a single commercial rezoning in Sussex County, is appropriate. As a result, I move that we recommend denial of this application.

Motion by Mr. Burton, seconded by Mr. Johnson, to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion defeated 2 votes by 3 votes.

The vote by roll call: Mr. Burton – yea; Mr. Johnson – yea; Mr. Ross – nay; Mr. Smith – nay; and Mr. Wheatley – nay.

Mr. Ross stated that he would move that the Commission recommend approval of Change of Zone No. 1770 for TD Rehoboth, LLC from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) The property is located in the Environmentally Sensitive Developing Area (the “ESDA”) according to the Sussex County Comprehensive Plan. The ESDA is a Developing Area, or Growth Area, under the Plan where commercial zoning such as this can be located. According to the Comprehensive Plan, retail and office uses can be appropriate for this

area, but larger shopping centers should be confined to selected locations with access to arterial roads and central sewer and water facilities. This property is located along Route One, which is a major arterial road, and it will be served by central water and sewer. So, it is right where the Comprehensive Plan and the ESDA direct it to be.

- 2) The parcel is located adjacent to Route One, a major arterial roadway. This arterial road along with Route 13 and Route 113 have been targeted for major commercial uses since the original County Land Use Plan was adopted in 1970. Since then the County adopted a requirement in its Zoning Ordinance that commercial uses greater than 75,000 square feet must locate on arterial roadways such as these. This historical fact is exemplified by the plethora of commercial zonings small and large along these arterial roadways, especially the Route One corridor from Rehoboth Beach north.
- 3) This property is also in a Developing Area and Growth Zone according to the current Land Use Plan. As a result, these are areas where the County and its residents should anticipate the possibility of growth and development such as this application.
- 4) Just because this property is in a Developing Area and Growth Area under the Land Use Plan does not automatically mean that a rezoning such as this must be approved. It must be appropriate for the area, and when the Land Use Plan and the Code both state that that can be an appropriate location for such zoning, this includes the area beyond the immediate boundaries of the project. This property, along one of the largest arterial roads in the County, and located at the north end of the County's main commercial corridor, is an appropriate location for this rezoning and it will provide regional commercial opportunities for residents, visitors and business.
- 5) The applicant has prepared a Traffic Impact Study. DelDOT's Corridor Capacity Preservation Program Manager had no objection to the proposed development as long as the applicant enters into agreements with DelDOT prior to entrance plan approval for the construction of intersection and roadway improvements. This will occur prior to any development of the property.
- 6) The applicant has also been in discussions with DelDOT about necessary roadway and entrance improvements that will be required when development occurs on this property. This includes an overpass at the Cave Neck Road and Route One intersection. This work will be a traffic improvement at this intersection that will be a benefit to Sussex County residents and visitors.
- 7) Once rezoned to CR-1, the development of this parcel will have a positive economic impact upon Sussex County. Employment opportunities will be created during construction and then during the commercial uses that can operate on the site.
- 8) This is an appropriate location for a large scale commercially zoned property. It is centrally located in eastern Sussex County, and with the opportunities provided by such a large tract, can serve regional retail needs of citizens over a large area. Sussex County has grown significantly since any large commercial areas have been created, and it is appropriate to establish a new regional commercial area to serve the past, present and future growth of the County. This is just like what the County did in the early 1970s when it created large areas of commercial zoning in areas that were still farmland at the time.

- 9) By rezoning such a large tract of land, it provides one location for many different types of commercial uses, which discourages the scattered development of additional new commercially zone properties up and down Route One, Route 9, or other roadways in eastern Sussex County. It also provides opportunities for enhancement of public transportation efforts.
- 10) The proposed CR-1 zoning meets the purposes and requirements of the Sussex County Zoning Code, the Comprehensive Plan and Title 9 of Delaware Code, since it promotes the health, safety, morale, convenience, order, prosperity and welfare of the present and future residents of Sussex County. It will provide benefits that include retail and service businesses at an appropriate location consistent with the direction of the Comprehensive Plan. Significant employment opportunities in both the construction and operation of the businesses, substantial economic benefit as a result of tax revenue, salaries to employees and the secondary impact on the Sussex County economy, water and sewer utility service provided by regulated public utility companies, substantial contributions toward the Cave Neck Road and Route One intersection, protection of the tax base through real estate and transfer tax revenue and job creation and protection of non-urban areas by permitting this rezoning in a designated “Growth Area” under the County’s Comprehensive Plan.
- 11) Any future use of the property shall be further regulated by the County and all appropriate State Agencies, including DelDOT, DNREC, the Sussex Conservation District, and others through the Final Site Plan review process.
- 12) Through the site plan review process, the County will continue to have an opportunity to scrutinize and regulate any development plan for this property, including appropriate buffers from the Great Marsh, the size of any commercial use, the appropriate transition and buffers from neighboring and adjacent properties and other factors. Any developer of this property, in the design of the site plan, must be prepared to take these considerations into account, since they will be heavily scrutinized by Sussex County and the Planning and Zoning Commission during the site plan review process.

Mr. Smith asked Mr. Ross to again read Reason #5 and Reason #12 into the record.

Mr. Ross again read Reason #5 and Reason #12.

Motion by Mr. Ross, seconded by Mr. Smith, and carried three (3) votes to two (2) to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons stated. Motion carried 3 – 2.

The vote by roll call: Mr. Burton – nay; Mr. Johnson – nay; Mr. Ross – yea; Mr. Smith – yea; and Mr. Wheatley – yea.

PUBLIC HEARINGS

C/U #2017 – Eli and Victoria Zacharia

An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,500 square feet, more or less. The property is located northwest of John J. Williams Highway (Route 24), 365 feet southwest of Spencer Lane, the entrance into Harts Landing Subdivision (911 Address: 20336 John J. Williams Highway, Lewes) Tax Map I.D. 334-18.00-7.00.

Mr. Lank advised the Commission that the applicant provided a survey/site plan with his application for two residential units, and that the survey/site plan depicts the existing improvements on the property.

Mr. Lank advised the Commission that on February 18, 2015 DelDOT provided comments in the form of a Support Facilities Report referencing that the Level of Service “E” of John J. Williams Highway will not change as a result of this proposed application.

Mr. Lank advised the Commission that on June 9, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that there is one soil type on this property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after construction; that there are no storm flood hazard areas affected; that no off-site drainage improvements will be required; that it may be possible that on-site drainage improvements will be required; and that no tax ditches are affected.

Mr. Lank advised the Commission that on June 9, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the property is located in the Goslee Creek Planning Area; that the parcel has not been provided with a sewer connection point; that the project is not capable of being annexed into a County operated sanitary sewer district at this time; that conformity to the North Coastal Area Planning Study will be required; that when the County provides central sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

The Chairman asked if anyone was present on behalf of the applicant.

No one responded or appeared.

There was a consensus of the Commission to continue this application at the end of the public hearings.

At the conclusion of the public hearings, the Chairman again asked if anyone was present on behalf of the applicant.

No one responded or appeared.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the lack of any record of support since no one appeared on behalf of the application. Motion carried 5 – 0.

C/U #2018 – David Clark Lankford

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a sporting goods business to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 11,473 square feet, more or less. The property is located at the southwest corner of Tharp Road (Road 534) and Brown Street and at the northwest corner of Charles Street and Brown Street (911 Address: 9636 Tharp Road, Seaford) Tax Map I.D. 331-6.00-89.00.

The Commission found that the applicant provided a survey/site plan with his application, and that the survey/site plan depicts the existing improvements on the property.

The Commission found that on March 16, 2015 DelDOT provided comments in the form of a Support Facilities Report referencing that the Level of Service “A” of Tharp Road could change to a Level of Service “B” based on this proposed application.

The Commission found that on June 9, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that there is one soil type on this property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after construction; that there are no storm flood hazard areas affected; that no off-site drainage improvements will be required; that it is not likely that any on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that on June 9, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that the property is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the City of Seaford Growth and Annexation Area; that a sewer connection point is not available; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the Western Sussex Planning Study will be required; and that a concept plan is not required.

The Commission found that on June 5, 2015 a letter was received from Robert Harding and Betty Harding in opposition to this application due to a past history of numerous problems on the applicant’s property, such as parking of trailers, vehicles, motor homes, barking dogs, ATVs running the street, and vehicles tags lacking compliance with State law.

The Commission found that David Clark Lankford was present and stated in his presentation and in response to questions raised by the Commission that he takes care of his property; that he has resided on the property for 11 years; that he is now disabled; that he would like to establish a small sporting goods shop in his garage; that he will have to add a residential type door and do interior renovations; that he has been in business in the City of Seaford for five (5) years; that his

driveway runs from Tharp Road through to Charles Street; that he does not anticipate any more than 3 to 4 customers at any one time; that he will be maintaining a small inventory in a small space, selling firearms, hunting accessories, and hunting clothes; that he is willing to amend his site plan by removing the fenced-in area to provide additional parking; that a taxidermy shop is in close proximity; that the area is predominantly residential/agricultural; that he is not aware of any commercial zoning in the area; that he is not certain that any conditional use sites exist in the area; that the only signage that he desires would be to direct customers where to park; that business hours would be from 10:00 a.m. to 6:00 or 7:00 p.m. Tuesday through Saturday; that the business will be registered in his wife's name; that the site is large enough to provide adequate parking; that he already has a gun safe, and will probably have to provide another safe; that the property will have security alarms and lighting; that he will be installing bars on the inside of the windows; that he and his wife will be operating the business; that their son will be assisting on occasion; that he will not be doing any gun repair work; and that the septic system is located within the fenced area.

The Commission found that Mark Allen, owner/operator of Brown Street Properties, LLC, was present and spoke in support of the business, and stated that the applicant has progressively improved the property; that he has no objection to the application; that the use is similar to other small home businesses; and that he knows that conditional use application can have restrictive conditions placed on the application.

The Commission found that Richard Wayne Truitt, Doug Hearn, Cynthia Savers, and Any Cavallini were present in opposition to this application and expressed concerns about traffic and parking; that there is no way to drive through from Tharp Road to Charles Street; that there are no shoulders along either street; that Tharp Road is heavily traveled; that adults and children walk the streets in this residential area; that a gun shop would create a new element in this pleasant neighborhood; that the applicant has lived here for several years, but his vehicles are still registered in Maryland; that there are 3 or 4 dogs that bark at all hours; that a large motorhome is always parked on the site; that they do not want to live next to a gun shop; that the shop should remain in the City of Seaford; that vacant stores are available in the City of Seaford; that adequate parking is not available on this site; that the lot is small and cannot accommodate the additional parking; that gun shops are difficult to insure; that most insurance companies will not insure a gun shop in a residential home; that traffic will increase; that the use would create a disruption of a quiet neighborhood; and that the safety of the children in the area is a concern.

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

There were concerns expressed by the Commissioners that the area is predominantly residential, especially on the interior streets; that it has been established that there is significant public opposition; that the sale of firearms in a residential subdivision should be a concern; that parking appears to be an issue; and that parking may not be adequate.

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

C/Z #1775 – Charles R. Auman, Jr.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) and a GR (General Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 12,394 square feet, more or less. The properties are located at the northeast end of the dead-end of Lighthouse Road (Road 203) 1 mile north of Cedar Beach Road (Route 36) (911 Address: None Available) Tax Map I.D. 330-5.00-7.04 and 8.00.

The Commission found that the applicant provided a survey of his properties with his application and a cover letter from Timothy Willard, Esquire of Fuqua, Yori and Willard, P.A. referencing that the property has been used as a commercial fishing wholesale business as a non-conforming use for many years, and that the applicant is only trying to bring the property up to the proper zoning code so that if he wants to improve or expand the facility he can do so.

The Commission found that on June 1, 2015 the applicant provided an Exhibit Booklet which includes references to the Zoning Ordinance for construction of pre-existing uses, the purpose of the Marine District, and the purpose of the Light Industrial District; a series of aerial photographs; a survey of the properties; a portion of the zoning map and the tax map; references to the DuPont Nature Center; references to the DNREC Cedar Creek Boat Ramp; references to the Cedar Creek Marina and Storage Facility; a photograph of the Coastal Launch Service; photographs of the Delaware Bay Launch Service and one of their boats; photographs of That's Right Fresh Seafood Co. vehicles and a portion of the site; a copy of the DelDOT Support Facilities Report, dated January 7, 2015; and suggested proposed Findings of Fact for consideration.

The Commission found that on January 7, 2015 DelDOT provided comments in the form of a Support Facilities Report referencing that the Level of Service "A" of Lighthouse Road will not change as a result of this proposed application.

The Commission found that on June 9, 2015 the Sussex Conservation District provided comments in the form of a Memorandum referencing that there is one soil type on this property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after construction; that there are no storm flood hazard areas affected; that no off-site drainage improvements will be required; that no on-site drainage improvements will be required; and that no tax ditches are affected.

The Commission found that on June 9, 2015 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum referencing that that property is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Charles Auman was present with Timothy Willard, Esquire with Fuqua, Yori and Willard, P.A. and that they stated in their presentation and in response to questions raised by the Commission that Mr. Auman is a commercial fisherman/waterman that catches and packages seafood products on site; that the property is unique since it sits where the Cedar Creek and the Mispillion River meet; that the use is non-conforming in nature; that the old cinder block building has been replaced with a pole building; that the business is titled “That’s Right Fresh Seafood, Co.”; that the State has appraised the site and determined that it is a mixed residential/commercial area; that the property is appropriate for CR-1 Commercial Residential zoning; that the properties are small and limit the possible activities that can occur on the site; that the rezoning will not impact the non-conforming use; that CR-1 zoning was chosen due to the permitted similar types of uses; that M Marine zoning was not chosen due to the limited size of the property; that the nearby Cedar Creek Boat Ramp is one of the largest in the area; that DelDOT had no negative comments; that fishing has been very intensive due to the weather which has created a situation where it appears that four (4) fishing seasons are all happening at once; that there are two (2) parcels that can be combined into one parcel is necessary; that parking has not been an issue; and that the only intent of this application is to bring the zoning of the site into conformity with the use.

Mr. Willard summarized the Exhibit Booklet presented and the suggested proposed Findings of Fact offered.

Mr. Auman affirmed Mr. Willard’s presentation and comments.

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. Burton stated that he would move that the Commission recommend approval of Change of Zone No. 1775 for Charles R. Auman, Jr. for a change in zone from AR-1 Agricultural Residential and GR General Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) The property is currently used as a seafood packing and wholesale company. It has been used for these purposes for many years.
- 2) There are several commercial and marine uses in the area. Rezoning this property to CR-1 Commercial Residential will be consistent with these nearby uses.
- 3) The existing use is more compatible with a CR-1 Commercial Residential zoning than the current agricultural and residential zoning of AR-1 Agricultural Residential and GR General Residential. Therefore, the rezoning is appropriate.
- 4) The rezoning will not affect neighboring or adjacent properties, traffic or area roadways.
- 5) No parties appeared in opposition to the rezoning application.
- 6) Any change in use of this property will still require site plan review and approval by the Sussex County 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 stated. Motion carried 5 – 0.

Prior to introduction of Subdivision #2004-52 and Subdivision #2004-53, the Chairman asked the developer, Preston Dyer, if it was his intent to present both applications in one presentation.

Preston Dyer responded that he would like to present both applications in one presentation and acknowledged that he realizes that the Commission will be making a decision on each application individually.

There was a consensus of the Commission to consider both application in one public hearing. Mr. Wheatley advised those present that the Commission would be making decisions on each application individually.

Subdivision #2004-52 – Holland Mills Subdivision

Walker Road Development, LLC is requesting to revise the approved final record plan to consider the deletion of the sidewalks throughout the development. The subdivision is zoned AR-1. The Subdivision is located on the south side of Walker Road, approximately 1 mile west of Hudson Road. Tax Map #'s 235-26.00-8.00, 8.01 & 235-26.00-183.00 through 235-26.00-318.00.

Subdivision #2004-53 – Anthem Subdivision

Holland Mills Development, LLC is requesting to revise the approved final record plan to consider the deletion of the sidewalks throughout the development. The subdivision is zoned AR-1. The subdivision is located on the north side of Walker Road, approximately 1 mile west of Hudson Road. Tax Map #'s 235-26.00-7.00, 7.01 & 235—26.00-336.00 through 235-26.00-487.00.

The Commission found that on June 1, 2015 the applicant submitted a subdivision plan and an Exhibit Booklet depicting the issue of the sidewalks for both Holland Mills and Anthem subdivision.

The Commission found that Preston Dyer, developer, Mark Davidson of Pennoni Associates, and Scott Dailey of Capstone Homes were present and stated to the Commission their arguments for the elimination of the sidewalks throughout the two subdivisions; that the sidewalks were not constructed at the time the houses were constructed as the developer determined that the sidewalks would not be within the right-of-way; that while the sidewalks were shown on the record plan that was approved by the Planning Commission, the type of road construction changed from curb and gutter to streets with swales; that the new road construction required swales on either side of the streets that would place the sidewalks within an easement on the property owners parcels of land as there would not be adequate space to place sidewalks within the right-of-way; that the developer realized the issue early on in the process and meant to bring

the application back before the Planning Commission prior to now; that the builder was told by the developer that the sidewalks were no longer required and did not build them.

The Commission found that Dale Miller, Robert Heart, Gertrude Smith, Adeline Heart, Yvonne Simon, Hugh Bosedo, Theresa Polson, Floria Cassio, Jim Ludwig along with other property owners within the Holland Mills Subdivision expressed their opposition to the construction of sidewalks since they did not know that the sidewalks were required, that they have spent time and money on landscaping and/or irrigation systems that would have to be removed from their yards; that the sidewalks would be very close to their houses; that the sidewalks would interrupt their driveways; and that the surveys of their dwellings and lots did not show the sidewalks.

The Commission found that there were no parties present in support of or in opposition to the application for Anthem Subdivision.

At the conclusion of the public hearings, the Commission discussed the applications.

In reference to Subdivision #2004-52 – Holland Mills Subdivision

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer this application. Motion carried 5 – 0.

In reference to Subdivision #2004-53 – Anthem Subdivision

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer this application. Motion carried 5 – 0.

OTHER BUSINESS

Double R Holdings

C/U #1855- Final Site Plan – Plantation Road (Road 275)

Ms. Cornwell advised the Commission that this is a Final Site Plan for the construction of three (3) professional office buildings for a total of 24,303 SF with site improvements to be located along Plantations Rd. just south of Craig Blvd. The property is zoned AR-1 (Agricultural Residential District). The site plan is part of the Conditional Use (CU #1855). The Conditional Use was recommended for approval by the Planning Commission at their October 14, 2010 meeting. The Conditional Use was granted approval by the County Council at their meeting of December 7, 2010. Parcel ID: 334-12.00-53.03. Staff is in receipt of the other reviewing agencies.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Final Site Plan. Motion carried 5 – 0.

Millsboro Self Storage

Preliminary Site Plan – Route 113 and Handy Road

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of seven (7) storage buildings for a total of 52,800 SF and one (1) 493 SF existing building to be utilized as the office with site improvements. The property is bounded by S. DuPont Blvd. to the east, Handy Rd. to the west, and Dickerson Rd. to the north. The site plan indicates several parking spaces located within the front yard setback that requires Planning Commission approval. The site is in compliance with the setbacks and the landscape buffer for the Combined Highway Corridor Overlay Zone along DuPont Blvd. The proposed billboards require a Special Use Exception from the Board of Adjustment and are not subject to the approval of the site plan. A parcel consolidation plan will be recorded prior to Final Site Plan approval to combine the six (6) parcels of land into one (1) parcel of land. The property is zoned C-1 (General Commercial District). The property is 6.04 +/- acres. Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the Planning and Zoning Commission. Motion carried 5-0.

Lewes Car Wash

Preliminary Site Plan – Marsh Road (Road 278)

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of a 4,368 SF car wash with site improvements. The property is located west side of Five Points Square north of Marsh Rd. The site is in compliance with the setbacks. The site plan indicates several parking spaces located within the front yard setback that requires Planning and Zoning Commission approval. The property is zoned C-1 (General Commercial District). Parcel ID: 334-6.00-26.04. The property is 0.87 +/-ac. Staff is in receipt of DelDOT and Sussex Conservation District approvals and is awaiting approval from the other reviewing agencies.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the Planning and Zoning Commission. Motion carried 5-0.

Refuge at Dirickson Creek

Commercial Site Plan – Route 54

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the construction of twenty (20) townhouses. The property is located within the Refuge at Dirickson Creek MR-RPC development located off of Lighthouse Rd. The townhouses will be located on the former commercial parcel within the development. The revision of the MR-RPC to remove the commercial parcel and increase the number of dwellings was approved by the Planning and

Zoning Commission at their meeting of August 21, 2014 and by County Council at their meeting on May 15, 2014. The proposed plan for the twenty (20) townhouses is in compliance with the amended Ordinance for the MR-RPC and zoning. The site plan indicates several parking spaces located within the front yard setback that requires Planning and Zoning Commission approval. The property is zoned MR (Medium Density Residential District) and is an RPC. Parcel ID: 533-12.00-674.00.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to staff with agency approvals. Motion carried 5-0.

Double J Properties, LLC

Parking Expansion – Route 24

Ms. Cornwell advised the Commission that this is a preliminary Site Plan for the construction of a 4,346 SF building addition, parking lot expansion and site improvements. There is an existing medical office building located on the site. With the addition the building will be 24,995 SF. The site will have 162 parking spaces. The 162 parking spaces exceeds the required number of parking spaces. The property is zoned C-1 (General Commercial District). Parcel ID: 334-12.0-127.03. The property is located on John J. Williams Hwy. (Rt. 24). Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to staff receipt of agency approvals. Motion carried 5-0.

Lester R. & Raymond L. Miller

Relocating Existing 50' Easement – Route 16 & Route 32

Ms. Cornwell advised the Commission that as part of a Lot Line Adjustment plan the existing 50' easement is proposed to be relocated from the west side of parcel 530-9.00-53.00 to the east side of the parcel for the creation of a 50' private street. The property is zoned AR-1 (Agricultural Residential District) The property is located on the south side of Hickman Rd. west of Delaware Dr. Parcel ID: 530-9.00-53.00 & 53.01.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the relocation of the existing 50' easement. Motion carried 5-0.

BLN, LLC

2 Parcels & 50' Easement – Route 18

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one (1) lot, a residual lot with a 50 ft. easement. The minor subdivision will create a 3.951 +/- acre parcel with the required 150 ft. of road frontage and a 9.210 +/- acres parcel with access along the 50 ft. easement. The 50 ft. easement covers the existing entrance into the site. The easement

will then cut across the property going west and then run along the west property line. The property is located on the north side of Seashore Hwy. (Rt. 18). The property is split zoned. A portion of the property is zoned C-1 (General Commercial District) and the remainder is zoned AR-1 (Agricultural Residential District). The proposed lot is located in the AR-1 portion of the property. Parcel ID: 231-6.00-6.00. The property is 13.162 +/- acres. This application was deferred on April 9th and on May 7, 2015 to allow the Planning and Zoning Commission time to review the application.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the minor subdivision off of a 50' easement and that any further subdivisions of the property shall require a public hearing. Motion carried 5-0.

Meeting adjourned at 10:10 p.m.