

MINUTES OF THE REGULAR MEETING OF JUNE 13, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 13, 2013, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:05 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with four (4) votes to approve the Agenda as revised by moving Other Business prior to Old Business. Motion carried 4 – 0. Mr. Smith was absent.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with four (4) votes to approve the Minutes of May 23, 2013 as amended. Motion carried 4 - 0. Mr. Smith was absent.

OTHER BUSINESS

DELF

Commercial Site Plan – Road 275-A

Chairman Wheatley turned the meeting over to Vice-Chairman Johnson and advised the Commission that he would not be participating in this discussion.

Mr. Abbott advised the Commission that this is a preliminary site plan for a 4,500 square foot warehouse/apartment building located on 26,179 square feet; that the site is zoned C-1; that 6 apartment units are proposed along with the warehouse; that the setbacks meet the minimum requirements of the zoning code; that 14 parking spaces are required and proposed; that 7 spaces are located within the front yard setback and are subject to site plan review; that there are other projects in the area with parking located within the front yard setback; that water will be provided by an on-site well and central sewer will be provided by Sussex County; that there are not any wetlands on the site; that DelDOT has issued a Letter of No Objection for the entrance location; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Burton, seconded by Mr. Ross and carried 3 votes to none to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 3 – 0. Mr. Wheatley did not participate and Mr. Smith was absent.

Vice-Chairman Johnson turned the meeting back over to Chairman Wheatley.

Heirs of Ruth Conrad

2 Parcels and 50' Easement – Road 471

Mr. Abbott advised the Commission that this is a request to subdivide a 43.378 acre parcel into 3 parcels; that 2 parcels will be accessed by an existing 50-foot easement that the owner proposes to extend; that the residual parcel has existing road frontage off of Road 471; that the residual parcel contains 28.88 acres; that Lot 3 contains 6.17 acres; that Lot 4 contains 6.96 acres; that lots 3 and 4 will have access from the 50-foot easement; that the 50-foot easement was approved by the Planning and Zoning Commission on September 22, 1993; that if the request is approved as submitted, this would make 3 parcels having access from the 50-foot easement; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Ross, seconded by Mr. Johnson and carried 4 votes to none to approve the request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 4 – 0. Mr. Smith was absent.

Caleb F. Sierra

2 Lots and 50' Easement – Road 547

Mr. Abbott advised the Commission that this is a request to subdivide a 4.306 acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing paved driveway; that Lot 1 will contain 1.176 acres and the residual lands will contain 3.13 acres; that both lots will have access to the 50-foot easement; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none to approve the request as submitted as a concept. Motion carried 4 – 0. Mr. Smith was absent.

Thomas Millard

2 Parcels and 50' Easement – Road 229B

Mr. Abbott advised the Commission that this is a request to subdivide a 5.472 acre parcel into 2 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that Lot B-1 will contain 4.680 acres and Lot B-2 will contain 0.792 acres; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson and carried 4 votes to none, to approve the request as submitted as a concept. Motion carried 4 – 0. Mr. Smith was absent.

Tall Pines Campground Discussion

Mr. Abbott advised the Commission that the Zoning Code provides for improvements on campsites that are intended to be manufactured for camping purposes only; that some of the campsites in this campground have metal roofs that have been built over top of their screen rooms; that some residents have canvas roofs; that building permits have been issued for some of the roofs; and that the residents of the campground would like to be permitted to build their own roofs.

The Commission discussed what is permitted by the Zoning Code.

The Commission took no action on this request.

Mr. Smith joined the meeting.

Sawgrass MR/RPC Revised Landscape Plan – Old Landing Road (Road 274)

Mr. Abbott advised the Commission that this is a revised landscape plan for this residential planned community; that the revision is for a new ornamental pond with a mix of coniferous and deciduous trees spaced at 50 to 70 foot intervals; that the previous approved plan was for Leyland Cypress trees which are not conducive to the area; that the proposed ornamental pond is to help alleviate drainage problems along Old Land Road and the site; that DelDOT and the Sussex Conservation District have sent letters voicing no opposition to the revised plan; and that the Commission was previously provided a copy of the revised site plan.

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

OLD BUSINESS

Subdivision #2013-1

Application of **BOARDWALK DEVELOPMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.52 acres into 35 lots, (Cluster Development), located north of Road 277 (Angola Road) approximately 2,200 feet west of Road 278 (Tax Map I.D. 2-34-12.00-13.01).

The Commission discussed this application which has been deferred since May 9, 2013.

Mr. Johnson stated that he would move that the Commission grant preliminary approval for Subdivision #2013 – 1 for Boardwalk Development, LLC 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. It is also in an area that has developed with other subdivisions, including Bay Ridge Woods, Angola-By-The-Bay, Angola Beach and Estates, to name a few.
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. Johnson is satisfied that this project is a superior design under the subdivision ordinance. It is a superior design because it maximizes the open space within the development. 47% of the acreage will be maintained as open space.
6. The design addresses the requirements of Section 99-9C of the Code.
7. The subdivision will have no more than 35 lots on 17.52 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 35 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 potential school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - H. Sidewalks shall be located on one side of all streets in the subdivision. In addition, walking trails will be provided throughout the subdivision and shall be shown on the Final Site Plan.
 - I. 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.
 - J. 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.
 - K. The Restrictive Covenants shall include the agricultural use protection notice, the wetlands disclosure notice and a hunting notice.

- L. 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.

Subdivision #2013-2

Application of **VESCO, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, for a 30 lot expansion of a preliminary approved 183 lot cluster subdivision for a total of 213 lots on 162.95 acres, located east of Road 277 (Robinsonville Road), 400 feet south of Road 287 (Kendale Road)(Tax Map I.D. 2-34-6.00-90.00).

The Commission discussed this application which has been deferred since May 9, 2013.

Mr. Johnson advised the Commission that he would move that the Commission grant preliminary approval of Subdivision #2013 – 2 for Vesco, LLC based upon the record made at the public hearing and for the following reasons:

1. This is a 30 lot expansion to a preliminarily approved 183 lot cluster subdivision for a total 213 lots. The additional lots represent infill where multi-family homes were originally proposed but denied by the Commission. At the time of that denial, the Commission suggested that single family lots might be a more appropriate design for this area of the project.
2. The applicant has stated that the intent of this application is to provide affordable housing in lieu of the multi-family units.
3. The additional lots will keep the density of the project within the permitted density for the AR-1 zoning district. The proposed density is approximately 1.4 lots per acre.
4. The additional lots will not adversely affect area roadways, public facilities, neighboring properties, or the community.
5. The additional lots are in accordance with the purpose and standards of the Sussex County Subdivision Code.
6. This preliminary approval is subject to the following conditions:
 - A. The total number of lots for the entire project (i.e. Subdivision #2008 – 8 and Subdivision #2013 – 2) shall be increased from 183 to 213, amending the original conditions “A” of Subdivision #2008 – 8 from 183 lots to 213 lots.
 - B. The remainder of the conditions of approval contained in the Preliminary Site Plan approval for Subdivision #2008 – 8 shall remain in effect, and shall apply to this preliminary approval for Subdivision #2013 – 2. For purposes of clarification, the statement contained in Condition “M” of the Preliminary approval for Subdivision #2008 – 8 regarding the relocation of the clubhouse/community center was a recommendation and not a requirement. The remaining conditions of the preliminary approval for Subdivision #2008 – 8 are:

- 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. Agricultural buffers shall be provided as required by Ordinance. 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. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lots. As proffered by the Applicant, the minimum distance from the 404 wetlands will be 40 feet.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located fronting on all lots and on at least one side of all streets in the subdivision and connecting with amenities and the paved multi-modal pathway fronting the property as shown on the Preliminary Site Plan.
 - L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, and designed in accordance with the Sussex County Engineering Department and DNREC specifications.
 - M. All amenities and recreation areas shall be completed within the project prior to the issuance of the 50th residential building permit within the project. The amenities include the swimming pool, tennis courts, clubhouse/community center and tot lots. The clubhouse/community and swimming pool should be more centrally located to be more accessible for all residents and to reduce any possible impact on the environment.
 - N. 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 the Plan.
 - O. The Final Site Plan for each phase of the project shall be subject to the review and approval of the Planning and Zoning Commission.
- C. Amend condition of approval "N" for Subdivision #2008 – 8 to read "This Preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of approval on it, including buffers from all wetlands. This revised Plan shall be subject to the review and approval of the Planning and Zoning Commission."

- D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Ross and carried 3 votes to 2, with Mr. Burton and Mr. Smith opposing the motion, to approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 3 – 2.

Conditional Use #1951

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a RV resort and campground, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 162.424 acres, more or less, lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284)(Tax Map I.D. 3-34-12.00-16.00, Part of).

The purpose of this Agenda item for Conditional Use #1951 is the announcement of receipt of the Traffic Impact Study from DelDOT, based on the Commissions deferral after the public hearing on January 24, 2013.

Mr. Lank provided the Commission members with a copy of the Traffic Impact Study for their review and consideration.

Mr. Lank noted that by announcing receipt of the Traffic Impact Study Report the record will remain open for written comments for 15 days, the close of business (4:30 p.m.) on June 28, 2013, and that no action is necessary by the Commission at this time.

Change of Zone #1725

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to amend the Comprehensive Zoning Map from GR General Residential District to AR-1 Agricultural Residential District, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 74 acres, more or less, lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284)(Tax Map I.D. 3-34-12.00-16.00 Part of).

The purpose of this Agenda item for Change of Zone #1725 is the announcement of receipt of the Traffic Impact Study from DelDOT, based on the Commissions deferral after the public hearing on January 24, 2013.

Mr. Lank provided the Commission members with a copy of the Traffic Impact Study for their review and consideration.

Mr. Lank noted that by announcing receipt of the Traffic Impact Study Report the record will remain open for written comments for 15 days, the close of business (4:30 p.m.) on June 28, 2013, and that no action is necessary by the Commission at this time.

PUBLIC HEARINGS

Change of Zone #1730 Two Farms, Inc.

Application of **TWO FARMS, INC.** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District and a C-1 General Commercial District to a CR-1 Commercial Residential District, to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 9.4596 acres, more or less, lying southeast corner of U.S. Route 13 and Route 24 (Tax Map I.D. 3-32-1.00-100.00 & 101.00).

The Commission found that DelDOT provided comments on March 14, 2013 referencing that the Department would normally recommend that a traffic impact study be completed before any decision is made on a rezoning application; that a traffic impact study had already been performed by the Applicant's engineer, and has been reviewed by the Department; and that based on that review, the Department recommends that the County proceed in processing this rezoning application.

The Commission found that on June 7, 2013 the Sussex County Engineering Department Utility Planning Division provided a memorandum referencing that this site is located within the Western Sussex – Laurel Growth Area; that an on-site septic system is proposed at this time; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Garth Jones, Professional Engineer with the Becker Morgan Group, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that they have received preliminary approval for the site plan for Conditional Use No. 1927; that the Commission and the Sussex County Council suggested that they should have considered applying for rezoning when they received approval for Conditional Use No. 1927; that the small corner portion of the site is zoned C-1 General Commercial and the remaining acreage is zoned AR-1 Agricultural Residential; that the C-1 portion is improved with a repair shop; that the AR-1 portion is improved with an auction facility; that the parcels have recently been combined into one parcel; that they are planning on constructing a new Royal Farm Convenience Store and gasoline islands on the site; that the auction facility will continue to be operated; that they are ready to submit for final approval of the site plan; that the site is in close proximity to other commercial zoning and uses, and industrial zoning; that the site is located in a growth area for the Town of Laurel; that the State Strategies indicate that the site is located in an Investment Level 2; that there should be no negative impacts on property values or the community; and that all conditions for Conditional Use No. 1927 have been met or have been approved as amended.

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. Ross stated that he would move that the Commission recommend approval of Change of Zone No. 1730 for Two Farms, Inc. for a change of zone from AR-1 Agricultural Residential and C-1 General Commercial to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

- 1) This application consolidates the entire subject property into one consistent zoning district.
- 2) This entire property has historically been used for commercial purposes.
- 3) CR-1 Commercial Residential zoning for this site is appropriate given its location at the intersection of U.S. Route 13 and Delaware Route 24. There are also other commercially and industrially zoned properties in the area of the intersection.
- 4) The location is in a Developing Area according to the Sussex County Comprehensive Plan.
- 5) The site currently has a commercial site plan that was preliminarily approved by the Commission. At the time of that approval, the Commission suggested that uniform CR-1 zoning for this entire site would be appropriate.
- 6) The rezoning will have no adverse impact on neighboring properties, roadways, public facilities or the community.

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

Subdivision #201303 Rocks Bethany, LLC

Application of **ROCKS BETHANY, LLC** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 2.33 acres into 5 lots, and a waiver from the Forested Buffer requirement, located on the east side of Delaware Route One, north of Gum Road, a private road within Sussex Shores Subdivision (Tax Map I.D. 1-34-13.00-142.00 & 143.00).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of May 16, 2013 was previously provided to the Commission and that the Report is a part of the record for this application; that on June 3, 2013 the applicants submitted an Exhibit Booklet containing Subdivision Considerations, PLUS Review and the Applicant's Response to the PLUS comments and a Rare, Threatened and Endangered Species Correspondence, that the Commission has received a copy of the Exhibit Booklet and that the Booklet is a part of the record; and that the Commission was previously provided a copy of the Preliminary Site Plan.

James Fuqua, Attorney, Jeff Clark of Land Tech Land Planning, LLC and Nicholas Roack, Partner, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the applicants submitted an Exhibit Booklet as previously stated; that the proposal is to convert 2 parcels into 5 single-family lots; that the project is located east of Route One north of Bethany Beach across from the Bethany Beach Maintenance Yard; that currently there are 2 single family homes located on the 2 lots; that there are residential uses located to the north and the Sussex Shores Subdivision to the south; that the beach and ocean is to the east of the project; that there would be 5 lots located on 2.33 acres; that

the existing homes will remain and will be located on lots 4 and 5; that 3 new lots are proposed to the north side of the proposed subdivision street; that the site is located in the Environmentally Sensitive Developing Area based on the Comprehensive Land Use Plan; that the site is zoned MR, Medium Residential and 10,000 square foot lots are permitted with central sewer; that the minimum lot width is 75 feet and the minimum lot depth is 100 feet; that the project will comply with all requirements of the Subdivision Code; that the proposal conforms to other uses in the area; that the project will be served by Sussex County sewer and public water will be from the Sussex Shores Water Company; that adequate sewer capacity is available according to the Sussex County Engineering Department; that the site is located in the Bethany Beach fire protection area and is also located in the Indian River School District boundary; that the project will not cause any negative impacts to traffic; that the proposed subdivision street will be private and built to Sussex County standards; that a homeowners' association will be established and there will be an architectural review committee; that the proposed dwellings will be similar to what is located in the area; that a 10-foot beach access will be provided for Lots 1 through 3; that Lots 4 and 5 already have beach access; that a 20-foot buffer will be provided along Route One and along Lots 1 through 3; that the applicants are requesting a waiver from the buffer requirements for Lots 4 and 5 and along the south side of the proposed subdivision street; that the existing natural growth will remain; that the plans could be revised to include a 10-foot buffer along the north side of the project and a 10-foot buffer along Gum Road; that Dune Road is a 50-foot right of way with 20-feet pavement; that Section 99-33 of the Subdivision Code allows for waivers; that the use of the gate near Lots 4 and 5 will not be increased for usage by the owners of Lots 1 through 3; that the project will not have any impacts to the existing dune or beach; that a small wetland area exists along the north side of Lot 1 and the buffer area; that the restrictive covenants will include the wetlands disclosure notice for Lot 1; that the applicants met with the State through the PLUS process and submitted a response to the comments provided by PLUS; that according to a DNREC visit to the site, there is the possibility of the Bethany Beach Fire Fly on the site; that there are no dune swales, rare or endangered species or plants on the site according to the DNREC visit conducted on May 30, 2013; that the items referenced in Section 99-9C of the Subdivision Code are addressed in the Exhibit Booklet which is a part of the record; that the small isolated wetland area on Lot 1 and the buffer contains approximately 1,900 square feet; that the property owner is permitted to apply for a Nationwide Permit from the Army Corps of Engineers to fill up to 1/10 of an acre; that any proposed dwelling for Lot 1 will not encroach onto the wetland area; that Dune Road is off set with the existing crossover on Route One and the cross over may need to be relocated at the applicant's expense; that if the project is approved, the applicants would proceed with construction immediately; that the applicants will comply with all of FEMA's requirements; that the wetland area on Lot 1 will be marked and posted for identification; that the wetlands already exist on the existing parcel and will remain on Lot 1; that the access gate has been used since the 1960's; that the buffer could be revised to provide 10 feet on both the north and south boundary of the site; that there is not any need for any variances; and submitted the proposed Findings and conditions: 1.) The proposed subdivision is in compliance with the purpose and requirements of the subdivision ordinance in that it represents orderly planned residential growth in the County, 2.) The land is zoned MR (Medium Density Residential) which permits single family residential development on 10,000 square foot lots, 3.) The proposed subdivision is basically infill, since the nature of the area is similar type residential development. It will be consistent with the area and will not adversely affect nearby uses or

property values, 4.) The proposed subdivision will not adversely impact schools, public buildings and community facilities, 5.) The proposed subdivision will not adversely affect traffic on area roadways, 6.) The items listed in Section 99-9C of the subdivision ordinance have been properly addressed, 7.) A modification of the buffer requirements is appropriate due to unusual conditions which would result in hardship. This is a small subdivision converting two existing lots into five lots. Proposed Lots 4 and 5 are the remainder of the two existing lots which already have been improved with existing single family dwellings. Both the northern and southern boundaries have an existing natural buffer which will be permanently preserved with a ten foot buffer. These conditions justify a modification, and 8.) This preliminary approval is subject to the following conditions:

- A. The maximum number of lots shall not exceed (5) five.
- B. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of Dukes Dune Road, buffers, storm water management facilities, and other common areas.
- C. The storm water management system shall meet or exceed the requirements of the State and County and Best Management Practices shall be used in the maintenance of the system.
- D. The subdivision shall be provided sewer service as part of the Bethany Beach Sanitary Sewer District and public water by Sussex Shores Water Company.
- E. The Applicant shall comply with all entrance improvements required by DelDOT.
- F. Road naming addressing shall be subject to the review and approval of the Sussex County Mapping and addressing Department.
- G. Pursuant to Sussex County Code Section 99-6(H) the deed to Lot 1 shall contain the following disclosure, "This site contains regulated wetlands. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware.
- H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- I. A ten foot wide permanent natural buffer will be maintained along the southern boundary of the property from Route 1 to the western boundary of Lot 5 and along the northern boundary of the property adjacent lot Lots 1, 2 and 3. A twenty foot buffer will be maintained adjacent to Route 1. From Dukes Dune Road to the northern boundary of the property.

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

Robert Witsil, Attorney, representing Sussex Shores Beach Association was present with Martin Bond, a resident of Sussex Shores Subdivision in opposition to this application and advised the Commission that Gum Road is a small roadway and they do not want any additional traffic into the Sussex Shores development; that the best alternative for the buffer waiver is to switch the 20-foot buffer from the north side to the south side so that there will be a 20-foot buffer from Sussex Shores; that the residents were not pleased with the plan originally submitted; that there is no longer a need for the gates for the existing 2 residences; that a continuous fence along the

common boundary line and Sussex Shores should be provided; and submitted written comments and photographs into the record.

Albert Michaels, Mark Daisey and Criag Williams, residents of Sussex Shores Development were present in opposition and advised the Commission that the gate agreement was between the Rock's family, Phil Short and Mr. Michaels father; that they are opposed to the gate continuing to be utilized; that they are opposed to any waivers from the buffer requirements; that all other developments have buffers; that the applicants should be required to follow all regulations; that if a 10-foot buffer is planted, it will ruin and eliminate the existing natural vegetation; that the cross over to Route One is directly across from Gum Road; and that the Code should be enforced.

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

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

Subdivision #2013-6 Cannon Road Investments

Application of **CANNON ROAD INVESTMENTS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 142.019 acres into 254 lots, (21 lot expansion to a previously approved 223 lot preliminary approved application #2010-6), located on the east and west side of Cannon Road (Road 307) with the intersection on the southwesterly side of Indian Mission Road (Route 5)(Tax Map I.D. 2-34-16.00- P/O 19.00 and 2-34-17.00-358.00 – 381.00).

Subdivision #2013-7 Cannon Road Investments

Application of **CANNON ROAD INVESTMENTS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 95.197 acres into 189 lots, (as an expansion to a previously approved 177 lot preliminary Subdivision application #2003-47), located on the southwesterly side of Townsend Road (Road 303) approximately 450 feet southwest of Avalon Road (Road 303-A)(Tax Map I.D. 2-34-16.00- P/O 21.00).

Dennis Schrader, Attorney, requested that the two applications be presented together with the understanding that each application has to be voted on separately.

The Commission agreed to hear both hearings together and acknowledged that each application will be voted on separately.

Mr. Abbott advised the Commission that Subdivision #2013 – 6 is for a 21 lot expansion to an previously preliminarily approved 233 cluster subdivision application; that Subdivision #2013 – 7 is for a 12 lot expansion to a previously approved 177 lot cluster subdivision application; that the Commission was previously provided with copies of the revised preliminary plans; and that the applicants submitted proposed findings of fact and conditions of approval for each application.

The Commission found that based on comments from the Sussex County Engineering Department that both applications are not located in a County operated and maintained sanitary sewer district; that the applicant proposes to add 21 lots to an approved 233 lot subdivision and add 12 lots to an approved 177 lot subdivision; that the projects are developing with a private central community wastewater system; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications; that plans for these phases and the additional lots have not been approved and treatment plant capacity must be addressed; that a review and approval of the treatment and disposal system by the Sussex County Engineering Department is required and plan review fees may apply; that disposal fields should not be counted as open space; that wastewater disposal fields should be clearly identified on recorded plots and separated from lot areas; that if Sussex County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owner's expense; that if Sussex County ever provides sewer service and the project does not have a CPCN, it is required that the treatment system be abandoned and a direct connection made to the County system and the developer's and/or owner's expense; that Sussex County recently acquired more than two thousand acres of adjacent and nearby land for wastewater spray irrigation and other wastewater treatment systems and uses associated with industrial sites; that each future deed for parcels in the proposed developments should note that the developments adjoins future wastewater treatment facilities and that industrial type uses on those lands should be anticipated; and that a concept plan is not required.

The Commission found that Dennis Schrader, Attorney, and Frank Kea with Solutions, IPFM were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that an error was found in the actual boundary survey of the sites; that the site was surveyed by two different surveyors with two different results; that no revisions are proposed to any of the recreation areas, open space areas, and water and sewer service; that the overall proposed density is still less than 2 lots per acre; that application #2013 – 6 is for a 21 lot expansion to an already approved but not constructed 233 lot cluster subdivision; that application #2013 – 7 is for a 12 lot expansion to an already approved but not constructed 177 lot cluster subdivision; that there will not be any change to the interior street designs of the previously approved plans; that sidewalks are proposed; that the new designs provide for more open space and recreation areas; that more land has been added for more lots; that the entire expansion encompasses 18 acres that were found in error from the previous plans; that a corrective boundary survey has been performed; that the lands to the south are County owned; that the park areas have been extended; that the developers will maintain as many existing trees as possible; that the revised plans comply with the subdivision code; that adjacent property owners did not lose any lands from the corrective surveys; that the applicants are utilizing available lands that they did not know that they owned; that there are no title issues with the ownership of the land; that all adjoining property owners are in agreement with the corrective boundary survey; and submitted proposed conditions of approval based on the previous approvals with the exception of the number of lots now proposed.

The Commission found that no parties appeared in support of these applications.

Tiffany Derrickson, Norma Lee Burton Derrickson and five property owners within the Stonewater Creek Subdivision were present in opposition to this application and advised the Commission that they do not agree with the applications; that they have other concerns about conditions of approval such as the entrance locations; that existing property values will be negatively impacted; that the developers should be required to go by the originally approved plans; that the developers and builders in the project keep revising what was previously approved; raised questions about the size of and costs of the proposed homes; that there are numerous drainage problems in the area; that false representation is occurring; that the project needs a berm along Indian Mission Road; that residents of Stonewater Creek have been sold a bill of goods; that the increase in lots will cause more traffic to a congested area; that a traffic impact study should be required; that this is an increase in density; that the traffic in the area needs to be improved; that planted buffers need to be enforced; that the site is in a Level 4 area according to the State of Delaware; that they have stormwater runoff concerns; that there is an agricultural operation that adjoins the project; that people dump trash along the roads in the area; that the design calls for no active open space areas; and that there is only one entrance into Stonewater Creek.

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

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action on Subdivision #2013 – 6 for further consideration. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action on Subdivision #2013 – 7 for further consideration. Motion carried 5 – 0.

Meeting adjourned at 9:30 p.m.