



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF JUNE 25, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 25, 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. I. G. Burton III, and Mr. Rodney Smith with Ms. Rebecca Trifillis – Assistant County Attorney, and Mr. Lawrence Lank – Director.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of June 11, 2009 as amended. Motion carried 5 – 0.

### OLD BUSINESS

**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 discussed this application which has been deferred since June 11, 2009.

Mr. Johnson stated that he would move that the Commission recommend a denial of C/Z #1645 for Cellular Fish, LLC seeking a change of zone from GR General Residential to CR-1 Commercial Residential based on the record made at the public hearing and for the following reasons:

1. The orderly growth of the County does not justify creating the requested CR-1 zoned property and the permitted uses available under that zoning classification in the residential area where the property is located. The property is not immediately adjacent to other CR-1/C-1 zoned properties.
2. While an illustrative site plan was submitted as a concept, if the rezoning was approved, anything permitted in the CR-1 zoning would be permitted and out of character with the surrounding residential area.
3. The Applicant has not expressed a clear need for the change in zone to CR-1 in this location, or why B-1 or a Conditional Use would not be more appropriate for the site.

4. The parcel in question is not adequately sized for CR-1 zoning and the possible uses allowed in that district.
5. The parcel is approximately 0.5 acre in size. After any DelDOT dedication, along with the required 30-foot rear and 20-foot side setbacks, the developable area would be significantly reduced for such a small parcel.
6. Other zoning classifications beside CR-1 may be more appropriate since the property is adjacent to a B-1 zoned property and is surrounded by GR zoned property.

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 denied for the reasons stated. 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 discussed this application which has been deferred since June 11, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1646 for Overbrook Acres, LLC for a change in zone from AR-1 to B-1 Neighborhood Business based upon the record and for the following reasons:

1. The site is appropriate for a change of zone to B-1 Neighborhood Business. It is located on the west side of Delaware Route One at the intersection with Cave Neck Road.
2. The B-1 rezoning is consistent with the orderly growth of the County. There are a number of business and commercial uses located in the immediate vicinity on Route One and several properties are zoned C-1, to the north and south of the site along Route One.
3. B-1 zoning has more limited uses than CR-1 zoning, which will limit the intensity of any development on the property.
4. The uses permitted in the B-1 zone are appropriate due to the existing nature of the area and there are several residential communities along Route 88 who will utilize and be benefited by the retail and personal service uses permitted under the B-1 zoning.
5. The change in zone will not adversely affect neighboring or adjacent properties or communities.
6. The site will be served water by Tidewater Utilities, Inc. and sewer as part of a Sussex County operated sewer district.
7. The Delaware Office of State Planning Coordination stated that it had no objection to the proposed change of zone.
8. The change of zone is in accordance with the Comprehensive Plan Update.
9. Site plan approval for any use of the property will be subject to review and approval by 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 stated. Motion carried 5 – 0.

**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.

The Commission discussed this application which has been deferred since June 11, 2009.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2007-36 for John H. Ferris and others, based upon the record and for the following reasons:

1. 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.
2. The proposed subdivision density is less than the density permitted by the existing MR zoning, which permits 4 lots per acre. In this case, the density will be 2.93 lots per acre.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. The project will be served by central sewer provided by Sussex County.
6. This approval is subject to the following conditions:
  - a. There shall be no more than 7 lots within the subdivision.
  - b. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
  - c. The stormwater 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.
  - 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 stormwater management areas and erosion and sedimentation control facilities.
  - g. A system of street lighting shall be established.
  - h. A sidewalk shall be located on one side of all streets in the subdivision.
  - i. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinances, 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 Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to grant preliminary approval of Subdivision #2007-36 for the reasons and subject to the conditions stated. Motion carried 5 – 0.

## PUBLIC HEARINGS

**C/Z #1647** – application of **SMI LONG NECK PROPERTIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural 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 south of Long Neck Road (Route 22), 484 feet east of Road 298, to be located on 2.7482 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the current Level of Service “D” of Route 22 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fort Mott loamy sand; that the Applicant will be required to follow recommended erosion and sediment 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 Office of State Planning Coordination, that because the proposed rezoning of a pre-existing commercial property is within the Environmentally Sensitive Developing Area it would be required to be seen through the PLUS process; that upon review of a preliminary site plan and with the description of the proposed future use, it is their opinion that the proposed future use will not exceed the existing use and therefore this project will not be required to be seen through the PLUS process; and that if the intended use of a commercial facility to support the existing marine business changes then it would be required to be reviewed by the County, it will also be required to be reviewed through the PLUS process.

The Commission found that James A. Fuqua, Jr., Attorney, submitted a copy of the tax map of the area showing the surrounding commercial and business zoning for the record.

The Commission found that on June 25, 2009 the County Engineering Department Utility Planning Division provided comments in reference to this project and referenced that this site is located in the Long Neck Sanitary Sewer District; that Parcel 310.01 has been allocated capacity for commercial uses and adequate capacity can be assumed for uses on that parcel; that the 6-inch lateral serving Parcel 310.01 may require an upgrade however, depending on the proposed use; that Parcel 310.00 was allocated 1.0 EDU reflecting a residential use on an AR-1 zoned parcel; that capacity may not be adequate for future commercial uses and sewer system upgrades could be required; that the current System Connection Charge Rate is \$3,413.00 per EDU for the period July 1, 2009 through June 30, 2010; that one 6-inch lateral is available for Parcel 310.01

and is located along the parcel's Long Neck Road frontage; that an 8-inch connection stub has been provided for Parcel 310.00 and is located at the north end of the Parcel's access easement along Long Neck Road; that conformity to the North Coastal Planning Study will be required; and that a concept plan is required.

The Commission found that Donald Short of SMI Long Neck Properties, LLC was present with James A. Fuqua, Jr., Attorney, of Fuqua and Yori, P.A. and that they stated in their presentations and in response to questions raised by the Commission that they are applying for CR-1 zoning to be compatible with the adjoining C-1 zoning on both sides of the project; that the current Comprehensive Plan Update depicts the site in the Environmentally Sensitive Developing District and as Highway Commercial; that SMI Long Neck Properties, LLC is a part of the Shorts Marine business; that the Shorts Marine business started in 1950 as a family business; that the core of the business is located directly across Long Neck Road on parcels 300.00, 301.00 and 302.00 where the existing offices, boat sales and display facilities exist; that the adjacent property is partially used by Shorts Marine for additional boat sales, display and storage; that the business also operates a canvas shop in Oak Orchard; that the business also operates several boat storage facilities in the area, i.e. Long Neck, Angola, Oak Orchard, etc.; that they propose to use this site as a similar use to the other Shorts Marine facilities; that 2 manufactured homes exist on the site; that one of the manufactured homes will continue to be occupied and the other may be used for security; that the immediate adjacent area is zoned C-1 General Commercial; that this application should be considered as an infill site; and that the intent of the use is for continuation of the adjacent existing use.

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/Z #1647 for SMI Long Neck Properties, LLC for a change in zone from AR-1 to CR-1 Commercial Residential based upon the record and for the following reasons:

1. The site is appropriate for a change of zone to CR-1 Commercial Residential. It is located on the south side of Long Neck Road.
2. The CR-1 zoning is consistent with the orderly growth of the County. There are a number of business and commercial uses located in the immediate vicinity on Long Neck Road and several properties are zoned C-1 General Commercial on either side and across Long Neck Road.
3. The uses permitted in the CR-1 zone are appropriate due to the existing nature of the area.
4. The change in zone will not adversely affect neighboring or adjacent properties or nearby communities.
5. The change in zone is in accordance with the Comprehensive Plan Update.
6. Site plan approval for any use of the property will be subject to review and approval by 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 this application be approved for the reasons stated. Motion carried 5 – 0.

**C/Z #1648** – application of **WILLIAM AND ELIZABETH JIRON** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, land lying east of U.S. Route 13, 2,585 feet north of Route 16, to be located on 1.208 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the property is adjacent to US Route 13 and is subject to the Department's Corridor Capacity Preservation Program; that the main goal of the Program is to maintain capacity of the existing highway; that according to the State Strategies the property is located within an Investment Level 3 area; that a commercial entrance for up to 200 vehicle trips per day would be acceptable; that the adopted corridor plan would construct a service road for future commercial uses adjacently south of this property; that at such time that the road is constructed, an extension to serve this property should be considered, and the 200 trips entrance limit would be removed when the connection is made; and that construction is not currently scheduled.

The Commission found, based on comments received from the Sussex Conservation District, that there are two (2) soil types mapped on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that on June 25, 2009 the County Engineering Department Utility Planning Division provided comments in reference to this application and advised that the site is not in a County operated and maintained sanitary sewer and/or water district; that the site is located in the Western Sussex Planning Area #1; that an individual on-site septic system is proposed; that the site is located north east of Greenwood and is not in an area where the County has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that William Jiron and Elizabeth A. Byers-Jiron were present and that Mrs. Jiron stated in her presentation and in response to questions raised by the Commission that they have filed their application to rezone from AR-1 to CR-1 Commercial Residential so that they may convert the dwelling on the premise to an office for a consulting business; that the business will be titled LBJCONSULTING SERVICES/SPARROWS POINT SERVICES RECYCLING CENTER OF EXCELLENCE (SPSRCE); that SPSRCE will be a woman owned business and will be comprised of retired Naval Engineering Duty Officers and prior enlisted (employees will have no less than one Masters Degree and many will have PhD's), Disabled American Veterans with certifications in a specialty field, i.e. Safety and Environment, a Business/Contracting Liaison/Program Manager and two part time administrative personnel, who will be employees of the SPSRCE; that employees will perform service virtually in their experienced fields and will bring education and talent to areas around the County where

expertise is required; that the home office of the business will be at this location; that this location will be a central repository of projects; that the management of the SPSRCE will be conducted on a daily basis at this location; that the site will house 3 or 4 employees; that work will be performed at remote areas but local to the service area requiring assistance; that her position as program manager will be to serve as a liaison/consultant supporting employees in the field on a daily basis; that the position will consist of arranging a yearly conference at a local site to bring employees together and provide the repository of current technology, and results of assigned projects; that a review will be maintained at this location, to ensure that the requested services are properly supported and employers are satisfied with the performance of the individual assigned; that the scope of work for an individual assigned at a remote location will be to: perform consulting services, providing the most current information available; to track and evaluate metrics enabling cost-benefiting determinations, and to provide recommendations for improving on site work and cost benefit results; that assignments that will be considered for service include, but are not limited to: Department of Navy: Ships Donation Inspection Program, which includes 48 ships across the County; Environmental and Safety Historical Information Program; and Federal Employees Compensation Program Act; telephone work; that she was advised by staff to submit to PLUS for review and went through the PLUS process in January 2008; that the site has adequate space for parking on site; and that she originally applied for a Conditional Use, but withdrew that application and reapplied for the change of zone.

The Commission found that Mrs. Jiron submitted a copy of a January 28, 2008 letter from the Office of State Planning Coordination in reference to the PLUS review process, and a copy of a brochure titled NAVSEA 04 NAVAL RESERVE PROGRAM, dated August 2000 for the record.

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

The Commission found that Willard Thompson, an area resident, was present and stated that he is not opposed to the use proposed; that he would prefer a Conditional Use so that the neighbors know what is intended; and that he is opposed to some of the other uses permitted in the CR-1 zone.

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

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

**C/Z #1650** – application of **CANNON ROAD INVESTMENTS, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1-RPC Agricultural Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying west of Route 5 (Indian Mission Road) and on both sides of Road 307 (Cannon Road), to be located on 134.565 acres, more or less.

The Commission found that on June 12, 2009 the Applicants submitted an Exhibit Booklet which contains a listing of the project team, an executive summary, a project overview with a

boundary survey, an overview of current site conditions, and references to the Preliminary Land Use Service, references to compliance with zoning regulations in relation to the AR-1 zoning and the RPC overlay zoning, an area vicinity map, a zoning map, current site plan, a DelDOT letter, a map of the State Strategies area (Investment Level 4), a map of developed and protected lands, a portion of the Land Use Plan Map, an Open Space Management Plan, a boundary survey, an aerial photograph, a soils map, a quadrangle map, a flood map, a groundwater recharge map, a copy of the original PLUS plans cover sheet, a copy of the January 29, 2008 PLUS comments, a TMDL analysis chart, a response to PLUS from McCrone, Inc., proposed Findings of Fact and Conditions, a color rendering of the project, and a resume for Jason Palkewicz, Professional Engineer.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed the project and submitted comments on or before May 18, 2009, and that the Committee comments are a part of the record for this application.

The Commission found that the Sussex Conservation District provided comments on June 22, 2009 and referenced that there are eight (8) soil types on the site; that the Developers will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that off-site drainage improvements may not be required; and that on-site drainage improvement will not likely be required.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on June 25, 2009 and referenced that the project is not located in a County operated and maintained sanitary sewer and/or water district; that the project is located in the North Coastal Planning Area; that the project proposes to develop with a central community wastewater system; that conformity to the North Coastal Planning Area Study will be required; that the Division recommends that the wastewater system be operated under a long-term contract with a capable wastewater utility that meets TMDL limits for Delaware's Inland Bays; that the Division recommends that they have a wastewater utility provider prior to approving the project; that the proposed project is located outside of the Inland Bays Planning Area where the County expects to provide sewer service; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a review of the treatment and disposal system by the Engineering Department is required; that disposal fields should not be counted as open space; that wastewater disposal fields should be clearly identified on recorded plots; that if the County ever provides sewer service and the project has a CPCN, it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owners expense; that if the County ever provides sewer service and the project does not have a CPCN, it is required that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owners expense; and that a concept plan is not required.

The Commission found that on June 25, 2009 the Office of State Planning Coordination provided a response to the response received from McCrone, Inc. and referenced that in the Office's original letter it was noted that the project is within an Investment Level 4 area; that because of its location, the State objects to the development of this property; that the State does



not argue that there have been many subdivisions approved in this Investment Level 4 area by the County; that even in the County's most recent Plan Update, this area was not put in a growth area by the County; that the Office is not aware of the specifics surrounding the infrastructure upgrades by DelDOT or others in this area; that this is an area not planned for development by the State; that money spent to upgrade infrastructure in this area pulls funds for improvements in areas where the State and County have identified growth areas; regarding, the privately funded improvements, the State will be called on to maintain the roads in the area when this development is built out and the developer has moved on; that State taxpayers will fund the school bus transportation as well as police, fire and emergency services in the area; that because there are already many subdivisions in an area, does not mean that it is appropriate to approve additional subdivisions or more density; that it is the Office's understanding that there is already a subdivision approved for this property, however, if this application is approved, it could mean additional density on this property; that it appears that the first subdivision was approved on this site before the PLUS process was in place; that since the Strategies has identified this area as a Rural or Investment Level 4 area since 1999, the Office would have objected to the development of this property due to its location; that when this application for rezoning from AR-1 to AR-1-RPC was seen in 2007, the State objected to the development of this site and at this time the Office must continue to object to the development of this parcel or any additional density that the owner may seek; that the DNREC Fish and Wildlife Service has offered additional comments in reference to the response from McCrone, Inc. as follows: that ecologically, a 50-foot buffer is considered inadequate for protecting water quality and providing wildlife habitat; that scientific evidence supports the need for at least a 100-foot buffer to adequately protect water quality and the function and integrity of wetlands; that in addition, buffers along water courses and around wetlands provide critical habitat for wildlife, most importantly species that spend the majority of their life cycle in the uplands using wetlands only during brief breeding periods; that riparian buffers also serve as a travel corridor for wildlife and provides nesting, foraging, and breeding habitat; that the small woodlot that occurs on this property is actually part of a larger forest block that provides wildlife habitat and a travel corridor; that the current development as well as Pelican Point 4-7 will result in clearing and fragmentation of this entire forest block; that this response does not specifically address recommendations that were brought forth and indicates that the developer is not going to implement those recommendations or make changes that will minimize forest loss; that as stated in the original comments, DNREC recommends that the Applicant consider omitting Lots 1 – 10 and minimize forest loss on other lots with existing trees; that if possible, working with the adjacent developer to reduce clearing for lots associated with Pelican Point 4 – 7, could result in protection of this forest; that this response does not address the recommendation to avoid tree clearing while many bird species and other wildlife are nesting, specifically April 1 through July 31; that this recommendation would only protect those species during one breeding season; and that once trees are cleared the result is overall loss of habitat.

The Commission found that Mark Handler and Randy Mitchell of Cannon Road Investments, LLC were present with Dennis Schrader, Attorney, of Wilson, Halbrook & Bayard, P.A. and Holly Hearne, P.E., Jason Palkewicz, P.E. of McCrone, Inc., and Rob Allen of Handler/Mitchell submitted a smaller version of the site plan rendering, an aerial photograph of the area, a smaller version of the approved subdivision plan for Phase 1 – 3 of Pelican Point, and a smaller version of the proposed RPC plan for the area of Phase 1 – 3 of Pelican Point, and stated in their

presentations and in response to questions raised by the Commission that the AR-1 zoning of the area provides for a density of 2 units per acre; that the site is currently plotted for a subdivision; that they are requesting RPC zoning to allow 84 single family dwellings and 168 single family attached dwellings (2 unit buildings) with a density of 1.87 units per acre; that Phases 4 – 7 of Pelican Point is a cluster subdivision; that the overall density of Pelican Point Phases 1 – 7 will still be less than 2 units per acre; that according to the State Strategies the site is designated in an Investment Level 4 area; that Artesian Water Company, Inc. will provide central water and central sewer to the project; that the existing lots in the subdivision contain approximately 20,000 square feet; that the proposed single family lots will contain approximately 13,000 square feet; that the lots within the cluster portion of Phase 4 – 7 contain approximately 7,500 square feet; that the varying size of lots provides the Developer with a variety of lot sizes to offer for sale; that smaller lots provide for smaller homes; that the RPC will provide an additional 50 acres of open space over the 20 acres offered in the original plans; that buffer widths vary and that there will be an average buffer of 100-feet around wetlands; that sidewalks are proposed on one side of all streets; that the street layout is the same as the original project; that they are working with DelDOT on entrance plans; that the project is in compliance with the AR-1 and RPC regulations; that the real estate market suggest changes; that as developers of Stonewater Creek Community they have had some difficulty in selling homes in the last couple of years; that they have reduced the minimum home size down from 2,800 square feet to 1,800 square feet due to the market; that homes are being offered at \$199,000 and some in the upper \$300,000 range; that by shrinking down lot sizes it allows for reduced lot sizes and reduced cost; that the attached single family homes should be easier to sell; that they will be required to make infrastructure improvements to Route 5, Cannon Road and Townsend Road; that this project will be similar to the Independence project to the north of this site; that the attached single family homes will be similar to Millschase community and Sterling Crossing community; that the current covenants and restrictions will remain in effect and could be subject to some changes as a result of changes in Delaware Law; that the proposed Findings of Fact and proposed Conditions are offered in Tab 19 of the Exhibit Booklet; that the site was originally a part of Stonewater Creek; that the development was revised to create two separate subdivisions, one on the east side of Route 5 (Stonewater Creek) and one on the west side of Route 5 (Pelican Point); that recreational amenities are to be located in Phase 4 – 7; that in summary: that the wetlands are buffered; the road configuration have not changed; that the site is now in agricultural use; that this project will start prior to Phase 4 – 7; that design superiority is established by the additional open space, the same DelDOT approved road access points, and that there is no way to demonstrate that this project will negatively impact the surrounding area.

The Commission found that Tiffany Derrickson, George Hudson, Gerald Brock, and Russell Pierpont were present in opposition to this application and expressed concerns about protection of the N and M Burton Farm Agricultural Lands Preservation District; traffic on Route 5 and Stevenson Road; increased traffic created by the additional units proposed; that all traffic from the project should be directed to Route 5, not Stevenson Road; that the property owners in Stonewater Creek across Route 5 from this project looked into the zoning in the area prior to purchasing; that homes should be similar to the homes in Stonewater Creek and Independence; that they are concerned about the depreciation of home values by the creation of attached homes and cluster homes in a single family detached homes area; the taxing of the infrastructure, i.e. police, fire, EMS, etc.; that home values should be maintained; that the lowering of home prices

will attract summer people that do not maintain their properties; that the residents of Stonewater Creek purchased their property thinking that the sewer treatment and disposal system at Stonewater Creek was for Stonewater Creek, not a regional area; that they hope that the stormwater management design for this project is better than Stonewater Creek, since drainage and flooding problems still exist; and that the recreational facilities, pool and tennis courts in Stonewater Creek will be impacted by this project.

The Commission found that Ms. Derrickson submitted a copy of her comments for the record, and copies of correspondence between Ms. Derrickson and Randy Mitchell, Carolann Wicks, Secretary of the Department of Transportation, Peter C. Schwartzkopf, State Representative, and F. Gary Simpson, State Senator, in reference to the project and Stevenson Road.

The Commission found that Mr. Mitchell responded that they have been working with Ms. Derrickson and her mother and DelDOT in reference to Route 5, Stevenson Road and Townsend Road, and that the final decision on access and road closures will be up to DelDOT; and that there were never any amenities proposed in the original Phases 1 – 3 of Pelican Point; that the amenities were always proposed in Phases 4 – 7 to serve the entire project; and that people from Pelican Point will not be authorized to use recreational facilities in Stonewater Creek.

The Commission found that Mr. Schrader responded that Artesian Water Company has been certificated to provide central sewer service to the projects in the area.

The Commission found that Mr. Palkewicz responded that stormwater management plans have been approved for the original subdivision project at this location.

The Commission found that Rob Allen responded that some inconsistency have resulted from grading changes on some of the lots as construction was taking place; that they are working with County Engineering Public Works Division and the Sussex Conservation District on problem areas; that the Stormwater Creek project is bonded; and that the bonding cannot be released until the project is in compliance with all regulations.

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

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

**Subdivision #2007-37** – application of **CEDAR CREEK PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 88.44 acres into 192 lots, (Cluster Development and Environmentally Sensitive Developing District Overlay Zone), located south of Route 9, both sides of Road 285, and ¼ mile west of Route One.

Mr. Lank advised the Commission that this application was filed on December 6, 2007; that the Technical Advisory Committee reviewed the project and submitted comments on or before January 31, 2008 and that the Committee comments are a part of the record for this application; that revised site plans were received on February 6, 2009; that additional revised site plans and

Exhibit Booklets were received on June 12, 2009; and that the Office of State Planning Coordination responded to the Applicants response to the PLUS comments on June 22, 2009.

The Commission found that the Exhibit Booklet contains a listing of the project team, a preliminary subdivision sketch rendering, site data, qualifications of Mark Davidson, copies of the application form and preliminary site plans, a copy of proposed covenants, conditions and restrictions, copies of deeds to the property, a property line survey, references to compliance with 99-9C of the Subdivision Code, references to compliance with the Environmentally Sensitive Developing District Overlay Zone (115-194.3 of the Zoning Code), PLUS comments and responses, an Environmental Assessment Report, a series of maps, approval letters from the State Department of Agriculture and the County Addressing Department, proposed Findings of Fact, and suggested conditions of approval.

The Commission found that Paul Carey was present on behalf of Cedar Creek Properties, LLC with Heidi Balliet, Attorney from Tunnell & Raysor, P.A., William Graves, Dean Graves, and Ann Stubbs and others from the Frances B. Graves Trust, property owners, and Mark Davidson of Design Consultants Group, LLC, and that they stated in their presentations and in response to questions raised by the Commission that they are not proposing any increases in the density allowed; that they have amended the subdivision from 192 lots down to 185 lots on the 88.44 acres; that they have provided 39.38 acres of open space; that central water will be provided by Tidewater Utilities, Inc. and central sewer will be provided by Sussex County; that developing the project will generate jobs for Sussex County residents; that there should be no negative impact on the economy; that the agencies have not voiced any objections to the project; that sidewalks are proposed on both sides of all streets; that the amenities will include a clubhouse, swimming pool, and tot lots; that street lighting will be provided; that the site is in an emerging growth area; that the homes will be custom built; that the Homeowners' Association will include an Architectural Review Committee; that the project is across from the Vineyards at Nassua project, and close to Henlopen Landing, the Plantations, the Reserve at Lewes Landing, Millchase Condominiums, etc.; that there should be no adverse impact on property values; that the plans are in compliance with the Comprehensive Plan Update; that the project is in compliance with Section 99-9C of the Subdivision Code and the Environmentally Sensitive Developing District Overlay Zone of the Zoning Code; that 147 lots are proposed between Route 9 and Beaverdam Road; that 38 lots are proposed south of Beaverdam Road; that they are proposing a central boulevard from Route 9 to Beaverdam Road with two (2) traffic circles; that they are proposing to erect some silos within the subdivision to maintain an agricultural appearance; that there will appear to be a bridge between the stormwater management ponds; that 1.15 acres of wetlands exists on the property and will be left undisturbed; that the site is not located within a flood plain; that approximately 10% of the 9.0 acres of woodlands will be disturbed; that green technologies will be utilized in designing the project; that they intend to plant a lot of landscaping; that the project will not exceed TMDL limitations and will reduce nitrogen; that 4.5 miles of sidewalks will be provided and a 15-foot easement is being dedicated to DelDOT for a multi-modal path; that they will be working with the Cape Henlopen School District for approval of a location for a bus stop; that all roads will be private; that no lots will have frontage along the central boulevard; that the project will be phased; that the homes are anticipated to contain 1,500 to 2,200 square feet of living area; that they have made presentations to the PLUS agencies twice; that they have been working on this project since 2004; that the

silos will be 42-feet in height and that they may request a variance so that the one silo in the middle of the project be higher; and that they are proposing that the clubhouse and amenities will be built by the end of Phase One.

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.

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

**Subdivision #2007-38** – application of **RALPH PICARD** to consider the Subdivision of land in a GR General Residential District in Little Creek Hundred, Sussex County, by dividing 76.62 acres into 166 lots, located south of Road 515, approximately 2,150 feet east of Road 501.

Mr. Lank advised the Commission that this application was filed on December 11, 2007; that the Technical Advisory Committee reviewed the project and submitted comments on or before February 28, 2008 and that the Committee comments are a part of the record for this application; that the Office of State Planning Coordination responded to the Applicants response to the PLUS comments on March 19, 2009; that the Applicant submitted Exhibit Booklets on June 12, 2009; that prior to this meeting the Department received 4 letters in support of this application from Randy Hill of Callaway, Farnell & Moore, Inc., Virgil Bullis of Coldwell Banker, Gordon Ramey of Century 21, and D.C. Kuhns of Prudential Gallo; that a petition containing 41 signatures was submitted in opposition; and that letters in opposition were received from the Town of Delmar, the Delmar School District; Country Grove Homeowners Association; and Beatrice Wilson.

The Commission found that the Applicants Exhibit Booklet contains a listing of the project team for this project, an executive summary, site analysis data and table, references to compliance with the Zoning Code, references to compliance with Section 99-9C of the Subdivision Code, proposed Findings of Fact and Conditions, photographs of the site and area, copies of the deed to the property, a copy of the application form for the subdivision, copies of the PLUS application, comments, and responses, copies of the Technical Advisory Committee comments, a series of maps, charts and tables, a soils report and soils feasibility response, a letter from DelDOT referencing that a Traffic Impact Study would not be required, willing to serve letters from utility companies, copies of proposed covenants, conditions and restrictions, copies of the original PLUS submittal plots, copies of the subdivision submittal for this application, a color rendering of the subdivision, and a copy of the subdivision rendering overlaid on an aerial photograph of the area.

The Commission found that Dennis Schrader, Attorney, of Wilson, Halbrook & Bayard, P.A. and Frank Kea of Blue Water Development, LLC were present on behalf of Rantz Farm, LLC and stated in their presentations and in response to questions raised by the Commission that the site contains 76.62 acres of which 36.18 acres are proposed lots, 11.01 acres are proposed streets, 5.9 acres are wetlands, and 11 acres are set aside for wastewater treatment and disposal; that the

site is zoned GR General Residential which permits manufactured homes at 4 units per acre; that they are proposing a subdivision, not a manufactured home park with leased lots; that a standard subdivision containing 149 lots are now proposed, rather than the 166 advertised; that the Comprehensive Plan Update depicts this area as a Low Density Area; that the State Strategies depicts this area in an Investment Level 4 area; that private streets are proposed; that central water is proposed by Tidewater Utilities, Inc. and central sewer is proposed by Tidewater Environmental Services, Inc. ; that the project has been designed to avoid natural features; that the site has two natural outfalls; that the wastewater disposal area has been found acceptable to DNREC; that the 5.9 acres of wetlands will not be disturbed; that compliance to Section 99-9C has been responded to in the Exhibit Booklet; that a Homeowners Association will be formed; that the wastewater treatment and disposal area soils are the best soils on the site; that 50% of the woodlands will be preserved; that they can change the covenants that no lots shall be clear-cut; that they anticipate a minimum square footage of from 1,000 to 1,500 for living space in custom built homes with a minimum price of \$150,000; that space is available at the entrance for a bus stop; that no lots will include any wetlands; that Meadow Branch is a channelized stream (tax ditch); that a minimum 50-foot buffer will be maintained from the Branch; that the wastewater treatment building will appear to be an agricultural building; and that the entrance is proposed on the outside of the curve and provides adequate site distance.

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

The Commission found that Wayne Elliott, Robert Coleman, Rick Culver, Chris Walter, Rob Jones, Katherine Wilson, Brad Adkins, Betty Robertson, Toni Matello, Margaret Bolen, Lisa DeWitt, William Bolen, Karen Walter, and John Cocron were present and spoke in opposition to this application and expressed concerns about the impact on the quality of life for the existing residents in the area; that the area is primarily agricultural or dwellings on larger lots; that the number of lots/homes will be a major impact on the area; that the project will negatively impact the Meadow Branch; that they realize that the property is zoned GR; that DelDOT has no plans for improving the roads in the area; that the roadway is narrow; that if the roads are not improved the project will destroy the roads; that if you tour the area you will see that the area is primarily agricultural in character; that the type of homes has not been addressed; that the use is out of character; that manufactured homes will be out of character; that Meadow Branch floods its banks during heavy rainfall; that review of the agency comments indicates that the State is opposed to this application; that the area roadways cannot handle the traffic that will be generated, estimated to be approximately 1,600 vehicles per day; that the entrance location is unsafe due to the curve; that nutrient management is a trade-off; that the property should be left in its natural state; that some of the residents purchased their properties to be in a rural or farming area; that 17 homes have been built in the area over the last 7 years; that the project is in an area split by the Delmar and Laurel School Districts; that some of the area residents have a fear of increased crime and drug use; that the area residents oppose manufactured homes; that the history of Bacon Switch should be considered; that there are 4 homes being built in Country Grove from 1,800 to 3,000 square feet; that 10 of these lots will be in Laurel School District and the remaining lots in Delmar School District; that the students will have a right of choice of school district since the entrances to the project are each located in a different district; that the minimum square footage of living area in Country Grove is 1,600 square feet; that the Country Grove homeowners' have prepared a petition containing 45 signatures in opposition; that the

residents have a fear of depreciation of property values; that the residents are concerned about police response time; that one of the residents purchased their property from the Rantz family and had a condition on their deed that their home had to be custom built; and that they question when the homeowners would have to take over the project for maintenance.

The Commission found that Mr. Adkins submitted the referenced petition from Country Grove with 45 signatures.

The Commission found that Mr. Schrader stated that when 75% of the lots are sold and the required improvements are completed the project will be turned over to the homeowners' association.

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

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

Meeting adjourned at 10:20 p.m.