

## MINUTES OF THE REGULAR MEETING OF AUGUST 7, 2014

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 7, 2014, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

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

Mr. Abbott advised the Commission that Page 3 should read Other Business and not Old Business.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of July 17, 2014 as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of July 24, 2014 as amended. Motion carried 5 – 0.

### OLD BUSINESS

#### **Conditional Use #1991 – Cool Spring, LLC/Highway One**

Application of **COOL SPRING, LLC/HIGHWAY ONE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a facility for outdoor entertainment events with temporary camping facilities during events only to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1,057.6 acres, more or less, land lying north of Road 302A (Avalon Road), west of Road 48 (Hollyville Road), south of Road 47 (Johnson Road), and east of Road 296 (Lawson Road) (911 Address: 23430 Hollyville Road, Harbeson, Delaware) (Tax Map I.D. #2-34-15.00-22.00 and 2-34-9.00-34.00).

The Chairman referred back to this application, which has been deferred since the July 10, 2014 meeting.

The Commission expressed concerns that there was not a significant record in advance for something of this size; that the file did not have much information for the public in regards to a site plan layout and design; that during the public hearing, only general information was provided, not specific information; that the County Code requires a detailed preliminary site plan when applying for a conditional use; that without reviewing a detailed site plan, it is difficult to determine any potential negative impacts on the immediate and surrounding areas; that the presentation made during the public hearing lacked sufficient detail; that the Commission recommendation is a land use decision; that the applicant did not create a record of support for this application; that a detailed site plan is needed; that the project could be a benefit to the County; that this application created a lot of interest both for and against; that the proposed

project could possibly work with conditions placed upon it; that the County has lost the Pumpkin Chunkin event; that the Ordinance is very clear in regards to the criteria that needs to be submitted to evaluate an application; and that the presentation lacked substance.

Mr. Johnson stated that he would move that the Commission recommend denial of Conditional Use #1991 for Coolspring, LLC/Highway One, based upon the lack of a sufficient record made during the Planning and Zoning Commission public hearing.

Mr. Johnson stated that the applicant did not supply a site plan with detail required by Section 115-220 of the Sussex County Code. Information required by that Code Section includes the location of all proposed buildings and structures, with setbacks and heights shown; the location of parking and loading areas; and it must be signed and sealed by a Delaware Surveyor or Engineer. The only depiction of the project that the applicant provided was an aerial photograph with some very general information shown on it. Without the detail required in Section 115-220, Mr. Johnson does not believe that the Commission has enough information to understand the project, how it relates to the area, and whether it is an appropriate use.

Mr. Johnson stated that there were many components of the use that discussed generally during the hearing, but few details were offered. For example, it is unclear where the campground portions of the use would be located; how that would be laid out; how close they would be to neighboring properties or roadways. Although the use is proposed to be temporary, the applicant did not substantiate how the proposed land use conforms with the Comprehensive Land Use Plan as supported and defined by Chapter 115 of the County Code.

Mr. Johnson stated that it may be that this project is an appropriate land use that will benefit Sussex County. But, based on the lack of information in the record before the Planning and Zoning Commission, that determination cannot be made. As a result Mr. Johnson recommends denial of Conditional Use Number 1991 based on the insufficient record presented to the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried 4 votes to 1, with Mr. Smith opposed, to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated. Motion carried 4 – 1.

#### **Subdivision #2014-2 – Showfield, LLC**

Application of **SHOWFIELD, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 132.05 acres into 166 lots, located northwesterly side of Road 267, adjacent to Breakwater RPC (Tax Map I.D. #3-35-8.00-46.00, 51.00, and 53.02).

The Chairman referred back to this application, which has been deferred since the July 24, 2014 meeting.

Mr. Johnson stated that he would move that the Commission grant preliminary approval for Subdivision #2014 – 2 for Showfield, LLC, based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing District. The Applicant is seeking lots with a minimum area of 13,000 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
3. The subdivision will not adversely impact schools, public buildings, area roadways or public transportation,
4. The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
5. Although the current zoning permits approximately 264 total lots at 2 units per acre, this design only seeks approval of 166 single family lots at 1.25 units per acre.
6. The design favorably addresses the requirements of Section 99-9C of the Code.
7. The developer has gifted approximately 1.1456 acres via a permanent easement to DelDOT for the extension of the Junction and Breakwater trail along the western property line.
8. The subdivision will be served by central water and sewer.
9. The project will include active and passive recreational uses, including a swimming pool, 3.38 acres of recreational open space and 2 restored barns for the community.
10. This preliminary approval is subject to the following:
  - A. There shall be no more than 166 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 using Best Management Practices.
  - D. All entrances and roadway improvements shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
  - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
  - G. A 20 foot forested Buffer shall be shown along boundaries of the project. The Final Site Plan shall also contain a landscape plan for all of the buffers 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. A system of street lighting shall be established.
  - J. As stated by the Applicant, sidewalks shall be located on one side of all streets in the subdivision.
  - K. As stated by the applicant, the project shall include a swimming pool, pool house and 3.38 acres of open space for recreation. The swimming pool and pool house shall be open

to use by residents on or before the issuance of the 75<sup>th</sup> residential certificate of occupancy.

- L. Two existing barns on the property shall be restored and open to community use.
- M. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- N. As stated by the applicants, there shall be a 50 foot buffer from all wetland areas.
- O. 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.
- P. 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.

## **PUBLIC HEARINGS**

### **AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I BY AMENDING THE DEFINITIONS OF “DWELLING”, “DWELLINGS, SINGLE FAMILY”, “DWELLING, MULTI-FAMILY”, AND “FAMILY”.**

Mr. Robertson advised the Commission that this proposed Ordinance Amendment has been a collaborative effort that has its start from several different points; that the recent campground applications pointed out what was an unintended distinction between manufactured homes and dwellings under the Code about separation distances; that a review of State, and Federal Law and directives from HUD and others about fair housing, including the recent fair housing training that the County has participated in; that the Ordinance has been prepared by the County Attorneys with input from Brandy Nauman, County Fair Housing Coordinator and the County’s Community Development Office, Delaware State Housing Authority and Office of the State Planning Coordination; that both offices have commended the County’s efforts; that the language in the Ordinance is based on Federal Law for the definition of a dwelling and State Law for groups that can reside in a dwelling; that the County had to be careful about creating unintended consequences of the Ordinance change; that whenever there is a change like this, you have to review all sections of the code to try and avoid it having unanticipated effects on other areas of the Code; that this Ordinance brings manufactured homes back into the definition of dwelling; that there is no distinction for zoning purposes between a “dwelling” and a “manufactured home”, mobile home, etc.; that putting that into the context of campgrounds, this means that in future campground conditional applications, the camp sites must be 400 feet from the nearest dwelling, whether it is a stick-built home, a Beracah-style home, or a single wide or double wide manufactured home; that the definition of dwelling is based on Federal Law; that it is also included in the Consent Decree that was agreed upon; that for zoning purposes, the term “family” has given way to a more broad definition of who can live together in a dwelling; that this amendment takes the separate definition of family out of the zoning code and it states who

can live in a dwelling as follows: 1 or 2 peoples related by blood or marriage, with any number of their children, natural foster or step; 2 single parents/guardians with any number of their children, natural, foster or step; a group of no more than 4 unrelated people; a group residential facility licensed by the State of Delaware serving 10 or fewer individuals with disabilities on a 24 hour basis, as the term disability is defined under State law; 1 or 2 elderly or disabled persons who own a dwelling plus 1 or 2 people related by blood or marriage and their children; that a single family dwelling would be one of these groups and a multi-family dwelling would be 2 of these groups; that it should be noted that the next step in this process will be an Ordinance to establish a means for determining reasonable accommodations for persons with disabilities and others; that under the principles of fair housing, it may be appropriate to vary these requirements in a given situation to address an individual's particular needs; that legal staff have had extensive discussions about that and are going to work towards a set of standards that the County can apply to the situation; and that it is likely that will be the next ordinance that you see in this process.

The Commission discussed the proposed amendment and questioned impacts on group homes such as the ones located between Rehoboth and Dewey Beach in the forgotten mile area; that some campsites are occupied full time; that campers and not recreational vehicles; that with manufactured homes being classified as dwellings, there could be effects on assessments; and that campground owners may have fair housing issues.

James Truitt, Jr. advised the Commission that he is shocked at the proposed Ordinance; that the amendment is based on the fair housing settlement; that there are a lot of problems with the ordinance amendment; that someone may have as many foster children that they want; that Kent and New Castle County have no limits in their codes; that in some homes in Rehoboth Beach Yacht and Country Club, there are 10 to 12 people living in group homes; that there would be too many people per acre; that the amendment will create traffic, septic and safety problems; that DNREC guidelines for septic systems are based on the number of bedrooms per home; that the County can't enforce the existing ordinances; that the minimum size for a manufactured home is 400 square feet; that the State of Florida where he resides part time has no such Ordinance; that families are being paid by the government to raise foster children; made reference to different classes of people and number of people; that the ordinance amendment should have been reviewed by the public prior to the scheduling of a hearing; that the proposed ordinance is an indirect taking of land; that the cost of enforcement to the County is not good; and questioned if HUD and the Department of Justice have reviewed the Ordinance.

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

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

### **Conditional Use #1992 – W. Ralph Brumbley**

Application of **W. RALPH BRUMBLEY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a vendor (lunch truck) to sell foods and beverages to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 16,820.70 square feet, more or less, land lying northeast of Route One (Coastal

Highway) across from Route 5 (Union Street Extended) (911 Address: 12209 Coastal Highway), Milton, Delaware) (Tax Map I.D. #2-35-7.00-44.00).

The Commission found that DelDOT provided comments in the form of a letter and Support Facilities Report on May 1, 2014 which references that a traffic impact study is not required; that the subject property is adjacent to Delaware Route One, and is therefore subject to the Department's Corridor Capacity Preservation Program; that the main goal of the Program is to maintain the capacity of the existing highway; that Delaware Route One is a controlled access highway; that according to the Office of State Planning Coordination's Strategies for State Policies and Spending document, the property is located within a Level 4 Investment Area; that in this area, State policies will encourage the preservation of a rural lifestyle; and that the property owner can develop a rights-in/rights-out access to Delaware Route One for a site generating an average of 40 vehicle trips per day.

The Commission found that Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum indicating that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the site is in the North Coastal Planning Area; that on-site septic system is proposed; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the proposed use is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that W. Ralph Brumbley was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he owns the adjoining manufactured home park; that the proposed vendor truck will serve the residents of the park and transient customers; that he has cleaned up the park; that there is plenty of room for parking; that he may set up 10-foot by 20-foot tents for customers; that the existing day care building is not in use at this time; that the vendor truck will be located near the exit of the manufactured home park; that the use will be a benefit to the residents of the park; that the use would open at 6:00 a.m.; that coffee, cold beverages, doughnuts, pizzas, snacks and sandwiches are served; that he has no intentions of operating a barbeque; that the Board of Health has granted a license to operate; that the business would be open six days per week; that there are three other vendors in the area; that it could be possible to provide picnic tables also; and submitted three photographs of the site.

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

The Commission found that Harry Holtgrewe was present and advised the Commission that the vendor truck should be located inside the fenced area; that the cross over from Route One is supposed to be closed in the future; and that the use could create safety issues.

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.

**Conditional Use #1993 – Davis J. Bosco**

Application of **DAVID J, BOSCO** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a paint ball park to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 5.1345 acres, more or less, land lying east of Road 600 (Saint Johnstown Road) 1, 760 feet north of Road 597 (Tuckers Road) (911 Address: 14639 Saint Johnstown Road, Greenwood, Delaware) (Tax Map I.D. #4-30-8.00-9.02).

The Commission found that DelDOT provided comments in the form of a Service Level Evaluation Report indicating that a traffic impact study is not required; and that the existing Level of Service will not change as a result of this application.

The Commission found that Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum indicating that the site is not located in a current or proposed County operated and maintained sanitary sewer district; that the site is located in the Western Sussex Planning Area #1; that use of an on—site septic system is proposed; that conformity to the Western Sussex Planning Study or undertaking an amendment will be required; that the proposed use is not in an area where Sussex County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that David Bosco was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the use will be conducted on the north side of the site to the left of the dwelling located on the property; that the barns and accessory buildings will not be used; that typically they can average 10 to 15 players per time; that the proposed parking area is adjacent to the existing driveway; that the hours of operation will be from 11:00 a.m. to 6:00 p.m. on Saturdays and Sundays; that no lighting is required; that there will not be any negative impacts to any neighbors as the surrounding property is family owned; that he would like to have a 4-foot by 8-foot sign to identify the use; that there are 3 employees; that the use will occur in the field near the barns; that safety netting will be provided; that inflatable bumpers are used along with wooden spools and pallets; that no junk cars are used; that port-o-johns will be provided; that the use is regulated by a Paintball Association for insurance requirements; that retail sales are internet driven; and that he has a retail license.

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

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

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

### **Change of Zone #1755 – Bunting-Gray, LLC**

Application of **BUNTING-GRAY, LLC** an Ordinance to modify Condition No. 1 and delete Conditions No. 2 and No. 15 imposed on Ordinance No. 1532 for Change of Zone No. 1460, the application of Bunting-Gray, LLC for “The Refuge at Dirickson Creek”, a MR-RPC Medium Density Residential District – Residential Planned Community, to increase the maximum number of allowable dwelling units from 343 to 355, of which no more than 68 units shall be multi-

family units, and to eliminate the B-1 Neighborhood Business uses permitted by Ordinance No. 1532 on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.3494 acres, more or less, land lying north of Route 54 (Lighthouse Road) 0.6 mile east of Road 381 (Old Mill Bridge Road) (911 Address; None Available) (Tax Map I.D. #5-33-12.000-674.00).

Mr. Abbott provided the Commission with a copy of the approved Ordinance No. 1532 for Change of Zone #1460; and advised the Commission that the applicants submitted an Exhibit Booklet on July 28, 2014 that is a part of the record for this application.

The Commission found that the Office of State Planning provided comments in the form of a letter dated June 27, 2014 and indicated that the project was reviewed and approved by Sussex County in April 2002; that it has not been reviewed by the Preliminary Land Use Service; that the original approval for this project was 343 residential units (287 single family lots and 56 multi-family units) and 3.43 acres of commercial development; that it is noted that the approved square footage of commercial was not identified in Ordinance No. 1532; that since the original approval, the developer has built 287 single family units and changed the proposed number of multi-family units to 48; that the developer is seeking to eliminate the B-1 Neighborhood Business and resulting commercial structure and increase the number of multi family units to 68, a net result of 12 additional multi-family units; that after reviewing the project area, it appears that the parcel is within a Level 3 area according to the Strategies for State Policies and Spending; that 12 units does not meet the requirements for a PLUS review; that the Office of State Planning Coordination does not require a PLUS review for the modification of the site plan as noted; that the State is concerned about the removal of the commercial development; that the residents of the attached subdivision bought their lots with the understanding that there would be neighborhood commercial to perhaps support the residents of the community; that the State feels it would be important to consider the wants and needs of the existing residents before making a final decision on this modification to the existing project; and that the State asks that these conditions with the exception of number 1 remain as conditions to this development.

The Commission found that Sussex County Engineering Department Utility Planning Division provide comments in the form of a memorandum indicating that the site is located in the Fenwick Sanitary Sewer District; that based on available information, it appears there is adequate wastewater capacity available; that Ordinance No. 38 is required; that there are no System Connection Charge credits available; that it is likely additional System Connection Charges will be required; that the current System Connection Charge Rate is \$5,500.00 per EDU; that the proposed project must install offsite gravity sewer and connect to an existing manhole in Leisure Drive near the project's entrance; that conformity to the South Coastal Area Planning Study, 2005 Update or undertaking an amendment will be required; that the applicant proposes a modification of conditions associated with a previous change of zone approval to remove B-1 business uses and construct 12 residential units in place of the commercial; that the project is within the boundary of the Fenwick Island Sanitary Sewer District and connection to the sewer system is mandatory; that the Sussex County Engineering Department has no objection to the proposed modification and deletion of conditions so long as sewer service is in accordance with



an approved sanitary sewer concept plan; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department 's standards and procedures; that the Sussex County Engineer must approve the connection point; that all costs associated with extending sewer service will be the sole responsibility of the developer; that an approved sanitary sewer concept plan is required, and that an updated pump station upgrade study is required as well.

The Commission found that David C. Hutt, Esquire, provided a letter indicating that he represents the Refuge at Dirickson Creek Owners Association and reviewed the application submitted by Bunting-Gray, LLC seeking to modify and delete certain conditions of CZ #1755; that the Association understands that the purpose of these proposed modifications is to eliminate the B-1 Neighborhood Business area originally proposed for the Refuge at Dirickson Creek and to substitute twenty (20) townhouse units in place of that commercial area; that the Board members asked that he write to the Planning Commission and confirm that the applicants met with the Association and explained their proposal; that as reflected in the materials provided to the Commission by the applicants, the Association's position is that the changes being proposed by the applicants require the amendment of its Declaration of Reservations, Restrictions, Covenants and Easements record in Deed Book 2977, Page 307, et seq; that in response to the Association's position, the applicants informed the Board that they would propose a condition as part of their zoning request which provides them six (6) months to acquire the requisite number of votes to amend the Declaration if the proposed modifications to CZ #1755 are approved; and that the Board agrees with this process and will provide information to the applicant as requested as it seeks to obtain from the Association for amendments to the Declaration.

Shannon Carmean Burton and John Sergovic, Esquires, Coleman Bunting a partner in Bunting Gray, LLC and Mike Wigley with Davis, Bowen and Friedel, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are proposing to amend condition #1 and to delete conditions #2 and #15 of Ordinance No. 1532; that the applicants have owned the property for over 10 years; that no one wants to buy and rent the commercial area for commercial uses since there is an adjoining shopping center to the west of this site; that there is not a need or demand to serve the residents of the Refuge at Dirickson Creek; that the original application was approved in 2002; that 3.43 acres of commercial area was set aside; that a total of 56 townhouse units are permitted; that the developers have only built 48 units; that they propose to build 20 additional units with a net increase of 12 units; that the site is in a developing area; that the proposed use is compatible to the area; that the proposed density is 1.91 units per acre; that 4 buildings with 5 units is proposed; that the revised plan doubles the amount of open space; that a 60-foot setback is proposed from Route 54 that the buildings will be 2 story with garages; that 3 parking spaces per unit are proposed; that access to the site will be from Leisure Drive; that there is no direct access to Route 54; that a concept plan has been submitted to the County Engineering Department; that the site is located within the Fenwick Island Sanitary Sewer District; that Artesian will provide central water to the site; that the site is within the Roxana Volunteer Fire Company fire protection area; that the fire department substation is 0.2 miles from the site; that the storm water management concept has been approved by the Sussex Conservation District; that the applicants

are the developers of the existing residential planned community known as The Refuge at Dirickson Creek; that the subject property is identified in the rezoning approval by Ordinance No. 1532 whereby CZ #1460 was approved subject to certain conditions, including but not limited to the following (1) Conditions No. 1 which provides that the maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units; (2) Conditions No. 2 which provides the maximum area of commercial development shall be one acre per 100 dwelling units; and (3) Condition No. 15 which provides that there shall be no direct access from the commercial area onto Route 54, except from the existing entrance location serving the site; that to date, the subject property remains undeveloped; that Ordinance No. 1532 allows 56 multi-family units however only 48 units have been constructed; that the development is governed by the Declaration of Reservations, Restriction, Covenants and Easements for the development; that the subject property is identified as the commercial area and as such has separate rights from other lots and units in the development; that it is the position of the Association that the Declaration must be amended in order to change the use allowed on the site; that to change the use, a 2/3 vote must be obtained from the total number of lots and units; that trying to obtain the 2/3 vote may be difficult; that the applicants are requesting a six month time frame to obtain the necessary votes; that if the application is approved and they cannot obtain the 2/3 vote, the applicants request that the conditions revert back to those approved in Ordinance No. 1532; that the site is in an Environmentally Sensitive Developing Area; that a range of housing types are permitted in this district; that the applicants are seeking a downzoning from the approved commercial use area; that the proposed use complies with the Zoning Code; that the project is located along the Route 54 corridor where similar densities exist; the revised plan creates more open space; that DelDOT did not require a traffic impact study; that the Office of State Planning Coordination did not require PLUS review; that the Applicant's request to conditionally modify Condition No. 1 and to delete Conditions Nos. 2 and 15 imposed by Ordinance No. 1532 for Change of Zone 1460, to increase the allowable dwelling units from 343 to 355, of which no more than 68 units shall be multi-family units, and to eliminate the B-1 Neighborhood Business uses permitted by Ordinance No. 1532 is appropriate legislative action, subject to the condition that any approval shall be conditioned upon the applicant's ability to obtain the requisite number of votes of the Association members, lot owners and unit owners in the Refuge to amend the Declaration within six (6) months of adoption of the Ordinance by County Council approving this application; that in the event that this conditions is not satisfied within six (6) months of adoption of the Ordinance by County Council, the conditional amendment to Ordinance No. 1532 shall be void and Condition No. 1, as originally adopted, and Conditions No. 2 and 15, as originally adopted, shall be reinstated; that by deleting the commercial area, there will be less impervious area; that open space will double; that 277 single family lots have been sold and 48 multifamily have sold; that out of 315 property owners, 122 owners are in support of the change and 70 are opposed; that the Applicants feel that six months is enough time to obtain the owners' approval to amend the Declaration; that all owners were notified of the pending revisions; that the current market and demand contributed to the proposed revisions; that if the request is approved, 20 more owners will contribute to the homeowners' association; that the existing amenities will also be available to new owners; that 12 additional townhouses are proposed; that the Declaration and Restrictions will be amended if a 2/3 vote

agrees to the change; that the proposed units will look the same as the existing units and submitted an architectural rendering of the design; that the new units' owners will become members of the homeowners' association; and that if the applicants do not obtain the approval of the County, there is no need to try to obtain approval from the homeowners' association.

The Commission found that Janet Marshall was present in support of this application and advised the Commission that the proposed units would fit in better than commercial use of the site.

The Commission found that no parties appeared in opposition to this application.

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

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

### **Change of Zone #1756 – Delmarva Power & Light Company**

Application of **DELMARVA POWER & LIGHT COMPANY** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 13.57 acres, more or less, land lying southwest of Handy Road (Road 337) and southwest of U.S. Route 113 (DuPont Highway) (911 Address: None Available) (Tax Map I.D. #2-33-5.00-135.00, 136.00, 137.01, and part of 125.00).

Mr. Abbott advised the Commission that the applicants submitted an Exhibit Booklet on July 28, 2014 and that the booklet is a part of the record for this application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report dated February 28, 2014 that a Traffic Impact Study is not required at this time; that based on criteria for requiring a Traffic Impact Study addressed in Section 2.3.1 of the Standards and Regulations for Subdivision Streets and State Highway Access, are that a development generates more than 400 trips per day or 50 trips during a weekly peak hour; that while it seems that the above criteria could be met, they presently cannot predict the site's trip generation with enough accuracy to make a TIS useful; that they recommend that this rezoning application be considered without a TIS and that the need for a TIS be evaluated when a subdivision or land development plan is proposed; that the subject property is adjacent to U.S. Route 113 and thereby subject to the Department's Corridor Capacity Preservation Program; that given the site's limited amount of frontage along U.S. Route 113, direct access to the corridor would not be feasible; and that the site can gain access to Handy Road.

The Commission found that Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum advising that the site is not located in a County owned and operated sanitary sewer district; that the site is located in the Town of Millsboro Growth Area; that there are no System Connection Charge credits available; that an onsite septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the North Coastal Planning Study is required;

that the parcel is not in an area where Sussex County will provide sewer service; that the applicants need to contact the Town of Millsboro for information relating to sewer service; and that a concept plan is not required.

The Commission found that John Green submitted a letter in support of this application dated August 6, 2014.

The Commission found that Shannon Carmean Burton, Esquire, Chuck Moore with Delmarva Power and Light and Matt Drew, P.E., with AWB Engineers were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application to amend the Zoning Map from an AR-1 and C-1 district to a CR-1 district; that the applicants are proposing to expand their district office and need additional room for storage of vehicles and materials; that an Exhibit Booklet was submitted; that the rezoning application is for 4 parcels total; that the district office has been in use since 1971; that the other parcels were purchased in 2002, 2007 and 2013; that the site will be used as one parcel; that they propose to continue to use the property and not offer it for sale; that there are not opposed to combining the parcels into 1 but prefer to keep them as separate parcels; that there is an existing entrance off of Route 113; that the site is located within an area identified by the Sussex County Comprehensive Plan Update June 2008 as a growth area and specifically a Town Center district; that smaller scale, low impact industrial uses are permitted; that the rezoning is appropriate and compatible to the area; that the proposed rezoning is in character with surrounding zoning; that there will not be any detrimental impacts to adjoining properties or the area; that U.S. Route 113 is a major arterial roadway which supports CR-1 zoning; that a Traffic Impact Study was not required at this time; that the applicants went through the Preliminary Land Use Service; that the site is in an Investment Level 2 according to the State; that there are no known archaeological sites on the subject site; that there are no regulated wetlands on the site; that the applicants responded to the PLUS comments; and that the proposed rezoning is an appropriate Legislative action.

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

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

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

## **OTHER BUSINESS**

### **Sandbar Village**

Revised Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised site plan for 31 garage units within an existing 177 unit multi-family project; that the site is zoned C-1 and is located on 13.25 acres; that the Commission originally approved the multi-family site plan on August 12, 2004 and that the staff granted final approval on June 16, 2005; that the 31 garage spaces are where original parking spaces were proposed; that there are 5 buildings proposed; that the setbacks meet the

requirements of the zoning code; and that the Commission was previously provided a copy of the site plan.

Ring Lardner, P.E. with Davis, Bowen & Friedel, Inc. was present and advised the Commission that access to the maintenance garage will be from the sidewalk located to the rear of the building; that the 31 garage spaces will replace approved parking spaces; that additional parking has been provided; that when the project was originally approved, there was more parking provided than required by Code; and that the Office of the State Fire Marshal and Sussex Conservation District have granted approvals.

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

### **Sea Cliff MR/RPC**

Revised site Plan – Phase 1 – Road 336

Mr. Abbott advised the Commission that this is a revised site plan for Phase 1 of the Sea Cliff MR/RPC; that the approved Phase 1 plan is for 94 single-family lots; that the revised plan is for 62 single-family lots; that the revised plan changes the street layout; that the Commission needs to determine if an amended application is required; that construction has not begun and that no lots have been conveyed or transferred; and that the Commission was previously provide a copy of the revised site plan and a portion of the approved Phase 1 site plan for comparison.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the revised site plan as a preliminary. Motion carried 5 – 0.

### **Charles F. and Cristy Greaves**

Commercial Site Plan

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a retail store located on an 18,429 square foot parcel that is zoned CR-1; that the structures were existing prior to the site being zoned CR-1; that 8 parking spaces are provided; that 6 spaces are within the front yard setback and are subject to site plan review; that ingress/egress to the site is from the adjoining parcel; that existing on-site septic and well are proposed; that there are no wetlands on the site and the site is not impacted by a flood plain; 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. Johnson, and carried unanimously to approve the site plan as submitted as a preliminary and with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Meeting adjourned at 9:20 p.m.

