



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF AUGUST 12, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 12, 2010, 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. Rodney Smith, Mr. I. G. Burton, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Shane Abbott – Assistant Director.

Chairman Wheatley advised the Commission that C/Z# 1691 and C/U#1849 have been removed from the Agenda and will be rescheduled.

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

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 14, 2010 as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 22, 2010 as circulated. Motion carried 5 - 0.

### Old Business

C/U #1838 – application of **BRIAN L. WHITE AND LISA D. WHITE** to consider the Conditional Use of land in a GR General Residential District for a well drilling business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 6.0 acres, more or less, lying west of Road 279 (Camp Arrowhead Road) 390 feet north of Road 277 (Angola Road).

The Chairman referred back to this application, which has been deferred since July 8, 2010.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1838 for Brian L. White and Lisa L. White for a well drilling business based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.

2. As stated by the Applicants, most of the work associated with the Conditional Use occurs off site. As a result, with the conditions and stipulations placed upon it, the use will not have an adverse impact on the neighboring properties or community.
3. The use will provide a service to Sussex County residents that meet the need for well drilling services.
4. This use is an appropriate one within an agricultural residential district.
5. The Applicants reside on the premises, and it will maintain a predominately residential character and appearance.
6. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The hours of operation shall be from 7:30 a.m. to 5:00 p.m., Monday through Saturday, with the exception of emergencies.
  - B. There shall be no signage on the site advertising the business.
  - C. Any security lighting shall be installed on the buildings and shall be screened so that it does not shine on neighboring properties or roadways.
  - D. The area for a dumpster shall be screened from view of neighboring properties and roadways and the location of the dumpster shall be shown on the Final Site Plan.
  - E. Any outside storage shall be limited to racks for piping and a concrete pad for the storage of sand. The location of the pipe racks and concrete pad shall be shown on the Final Site Plan.
  - F. 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 4 votes to none, with Mr. Ross not participating, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

C/U #1840 – application of **JULIANE OLBER AND WILLIAM N. HEIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a screen printing, embroidery, vinyl sign business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 10,615 square feet, more or less, lying northeast of Route 24 (John J. Williams Highway) 275 feet southwest of Road 275 (Plantation Road).

The Chairman referred back to this application, which has been deferred since July 8, 2010.

Mr. Johnson stated that he has revisited the site; that he has concerns about the location of the site being off of Route 24 between Plantations Road and Mulberry Knoll Road; that the site is approximately 275 feet from the intersection of Route 24 and Plantation Road; that the site is the fourth dwelling from the intersection; that he has concerns about the safe vehicular ingress/egress to the site; that trees would have to be removed for additional parking; that the parcel would probably become smaller after dedication of additional right of way; and that the applicants may not be able to meet the parking requirements.

Mr. Smith advised the Commission that the site is in a residential area; that he has concerns about the proposed entrance; and questioned the best and highest use of the property.

Mr. Burton advised the Commission that he shares the same concerns as the others; that the problem is not the applicant's responsibility to fix; and that the dwelling is too close to Route 24.

Mr. Wheatley advised the Commission that the application needs to be measured against the Ordinance and Land Use Plan; that the entrance concerns are DelDOT's decision; that he is reluctant to put a small business owner out of business; that if the application were approved, it would be subject to site plan review and conditions could limit the hours of operation and number of employees; and that the use is similar to a home occupation.

Mr. Johnson advised the Commission that he supports small businesses; that he has concerns about the entrance and traffic; and that if the application were approved, additional applications could be forthcoming.

Mr. Johnson stated that he would move that the Commission recommend denial of C/U#1840 for Juliane Olber and William N. Hein for a screen printing and embroidery, vinyl sign business, based upon the record made at the public hearing and for the following reasons:

1. Mr. Johnson does not believe that the Application is consistent with the character of the surrounding property, which is entirely agricultural or residential.
2. The purpose of this Application would allow business use on an otherwise residential property. While there are some other very limited business uses along Route 24, those are oriented more to the Beebe Medical Campus and Route One or the area around the Love Creek Bridge. There are no similar uses between the intersections of Plantation Road and Mulberry Knoll Road.
3. Although the Applicants stated that the intended uses are limited, there are other locations that are currently zoned for business or commercial use that are available and better suited for the intended use.
4. The Applicants state that they intend to continue using the existing structure for the Conditional Use. With the configuration of that structure and its proximity to the Route 24 right of way, Mr. Johnson does not believe that adequate and safe entrances or exits and parking areas can be provided, particularly in an area of Route 24 that is already congested since this property is near the congested intersection of Route 24 and Plantation Road and that configuration of the property does not permit access in the rear for vehicular parking.
5. The Application does not promote the health, safety, convenience or general welfare of the neighborhood or community.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried 3 votes to 1, with Mr. Ross not participating, to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons stated. Motion carried 3 – 1 – 1. Vote by roll call: Mr. Johnson – Yea, Mr. Burton – nay, Mr. Smith – yea, Mr. Wheatley – yea and Mr. Ross – not participating.

C/Z #1688 – application of **HARRY CASWELL, INC.** to amend the Comprehensive Zoning Map from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying north of Road 297 (Mount Joy Road) 0.8 mile east of Route 30, and west of Oak Street, a subdivision street, to be located on 22.66 acres, more or less.

The Chairman referred back to this application, which has been deferred since July 8, 2010.

Mr. Johnson stated that this application is basically a cluster type subdivision and that with stipulations placed upon it, the project could become viable.

Mr. Smith stated that with the residential planned community overlay designation, the project will be more restrictive than a standard subdivision.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1688 for Harry Caswell, Inc., based upon the record and for the following reasons:

1. This property is currently zoned GR General Residential, and has had that zoning classification for many years. Under this application, the basic zoning and the density permitted under the GR zone will not change.
2. The project density is significantly less than the density permitted by the existing GR zoning.
3. The project will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The project will not adversely impact schools, public buildings, community facilities or area roadways and public transportation.
5. The project will be served by a community wastewater system in accordance with all State and County requirements.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior living environment through design ingenuity while protecting existing and future uses including the preservation of open space. And essentially, this is a clustered design subdivision with minimum lot sizes of at least 7,500 square feet. Because the property is zoned GR, the cluster option under the AR zoning is not available.
7. The Applicant has favorably addressed the items in Section 99-9C of the Subdivision Code.
8. This recommendation is subject to the following conditions:
  - A. There shall be no more than 37 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.

- D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- G. A Buffer shall be shown along all boundaries. The Final Site Plan shall contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- 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. Sidewalks shall be located on both sides of all streets in the subdivision.
- K. 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.
- L. As stated by the Applicant, the homes shall be either modular or stick-built on-site. No Mobile Homes shall be permitted.
- M. As required by DelDOT, access to the project shall be from Oak Street. The Developer and then the Homeowners' Association shall improve and maintain Oak Street from the entrance to the development to Oak Street's intersection with Mount Joy Road.
- N. The Developer, and then the Homeowners' Association shall improve, clean up and maintain the portion of the parcel that fronts Mount Joy Road unless/until this area is deeded to someone else.
- O. 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. Smith, and carried 4 votes to none, with Mr. Ross not participating, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

C/U #1847 – application of **BRIAN D. BUTLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for automotive metal fabrication/welding to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 2.06 acres, more or less, lying southeast of Sandhill Road (Road 569), 1,700 feet southwest of Route 404 (Seashore Highway).

The Chairman referred back to this application, which has been deferred since July 22, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/U# 1847 for Bryan D. Butler for an automotive metal fabrication and welding shop based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. The Applicant has stated that in addition to automotive repairs, he performs welding and repair work on farm equipment, which is a benefit to area agriculture.
4. The use will provide a service to Sussex County residents to meet the expanding need for metal fabrication and welding services.
5. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The Final Site Plan shall show all required parking areas.
  - B. There shall not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars or agricultural equipment.
  - C. No vehicles for sale will be displayed on the premises.
  - D. The only repair work allowed in the shop will be for automobiles, trucks and farm equipment.
  - E. The shop will only be operated between the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday, and 8:00 a.m. until noon on Saturday.
  - F. There may be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
  - G. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.
  - H. The Final Site Plan shall specifically show the area that is the subject of the Conditional Use, which that area shall be, at least  $\frac{3}{4}$  of an acre in size.
  - I. The area for a dumpster shall be relocated to the rear of the garage building and shall be screened from view. The location of the dumpster area shall be shown on the Final Site Plan.
  - J. As stated by the Applicant, all customer vehicles will be stored inside at night.
  - K. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Burton and carried 4 votes to none, with Mr. Johnson not participating, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

Subdivision #2009-5 – application of **JOHN NOVOSEL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 152.35 acres into 160 lots, (Standard and Environmentally Sensitive Developing District Overlay Zone), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 277, across from Road 277B.

The Chairman referred back to this application, which has been deferred since July 22, 2010.

Mr. Smith advised the Commission that the opposition expressed valid concerns about drainage and flooding in the area; that DNREC is trying to put together a program to clean out ditches in the immediate area to help with the drainage and flooding concerns; that a representative of the application indicated that the developers are willing to work with area residents and the

appropriate agencies to help alleviate these problems and that the area will be improved once this program begins.

Mr. Ross advised the Commission that the older developments in the area have contributed to the drainage and flooding problems and that this application will help reduce the problem.

Mr. Wheatley advised the Commission that he does not want this project to cause any negative impacts to the existing residents in the area and for this development not to create or make the problems worse in the area.

Mr. Smith stated that he would move that the Commission grant preliminary approval for Subdivision #2005 – 9 for John Novosel, 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 AR-1 zoning. It is also partially within a Development District according to the County Comprehensive Land Use Plan Update.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The subdivision is consistent with other developments in the area.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. The project will be served by a central wastewater system and is within a Sussex County Sewer Planning Area.
7. This approval is subject to the following conditions:
  - A. There shall be no more than 160 lots within the subdivision.
  - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices. The Developer has recognized that there may be existing drainage issues in the area. Development of the property shall not impact storm water or run-off on adjacent properties to a greater extent than pre-development conditions and the Developer shall cooperate with the Sussex Conservation District to address drainage issues in the area.
  - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
  - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- G. A 30-foot forested buffer shall be shown along all boundaries of the subdivision. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas. The buffer area shall include as much existing vegetation as possible.
- H. The developer shall maintain as many existing trees as possible throughout the development. The undisturbed forested areas shall be shown on the Final Site Plan.
- I. No wetlands shall be included within any lots.
- J. A system of street lighting shall be established.
- K. As stated by the Applicant, sidewalks shall be located on both sides of all streets in the subdivision.
- L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- M. The developer shall construct all of the recreational amenities on or before the issuance of the 50<sup>th</sup> Building Permit.
- N. As stated by the Applicant, there shall be a 100-foot buffer from all Wetland areas.
- O. All silt fencing shall be located on the upland side of all wetland areas.
- P. The Final Site Plan and Restrictive Covenants shall contain the Agricultural Use Protection Notice.
- Q. The Final Site Plan and the Restrictive Covenants shall contain a Notice similar to the Agricultural Notice that hunting activities occur on neighboring and adjacent properties.
- R. The Final Site Plan and Restrictive Covenants shall include the following notice:

“THIS PROPERTY IS LOCATED IN THE VICINITY OF LAND USED AS AN AIRSTRIP. THERE MAY BE FREQUENT FLIGHTS OVER THIS SUBDIVISION THAT WILL GENERATE NOISES ASSOCIATED WITH AIRCRAFT IN FLIGHT OR AIRCRAFT ENGINES OPERATING. THE USE AND ENJOYMENT OF EVERY LOT AND PARCEL IN THIS SUBDIVISION IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF ANY ANNOYANCE OR INCONVENIENCE WHICH MAY RESULT FROM SUCH NORMAL AIRPORT USES AND ACTIVITIES.”

- S. The Developer shall coordinate with the Postal Service for the location of a central mailbox location.
- T. 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.
- U. 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. Ross and carried 4 votes to none, with Mr. Johnson not participating, to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

## PUBLIC HEARINGS

C/Z #1691 – application of **LINDER & COMPANY, INC. C/O ANDREA FINEROSKY** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying northeast of Old Mill Road (Road 349) and 450 feet northwest of Railway Road (Road 350), to be located on 34 acres, more or less.

Mr. Wheatley advised the Commission that this application is being rescheduled for a future date.

C/U #1849 – application of **LINDER & COMPANY, INC. C/O ANDREA FINEROSKY** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 48.3595 acres, more or less, lying at the northwesterly corner of Railway Road (Road 350) and Old Mill Road (Road 349).

Mr. Wheatley advised the Commission that this application is being rescheduled for a future date.

C/U #1850 – application of **INLAND BAYS, LLC** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less, lying north of Route 360 (Fred Hudson Road), 1,360 feet east of Route 357 (Cedar Neck Road).

The Commission found that on August 2, 2010 the Applicants provided an Exhibit Booklet for the Commission to consider which included a presentation outline, references to land use and zoning, a land utilization plan, civil engineering, a copy of the PLUS comments and responses, environmental information, and traffic information.

The Commission found that DelDOT comments were received on August 17, 2009 and referenced that a traffic impact study was not recommended and that the current Level of Service “C” of Fred Hudson Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on August 6, 2010 and referenced that the property is located in the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that Ordinance 38 construction is required; that the current System Connection Charge Rate is \$4,515.00 per EDU; that a connection point for the proposed project has been provided and is located along the parcel’s northern boundary; that conformity to the South Coastal Area Planning Study Update

2005 will be required; that the project is within the boundary of the Cedar Neck Expansion Area and connection to the sewer system is mandatory; that the proposed project is within sewer system design and planning study assumptions and sewer capacity can be assumed; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements and procedures; that the County Engineer must approve the connection point; and that a sewer concept plan must be submitted for review and approval prior to any sewer connection.

The Commission found that a letter was received from the Office of State Planning, dated January 18, 2010, which references that this project is within a Level 3 according to the Strategies for State Policies and Spending; that this site has significant environmental issues that create challenges to develop the parcel to its maximum potential as presented; that the site is located in the Environmentally Sensitive Developing area; that the Comprehensive Plan Update notes that development can be accommodated within the Environmentally Sensitive Developing Area provided special environmental concerns are addressed; that the responder for the Applicants noted that the site plan has been revised several times in an effort to minimize the impact to 404 delineated wetlands; that a new site plan was not included with the response letter, but the site plan on file shows that the developer is planning a road, a walking path and lots within the 404 wetlands; that the County should consider the environmental impacts of such a disturbance in the wetlands and request that the developer revise the site plan to eliminate these crossings; that DNREC noted that subaqueous lands were detected and a jurisdictional determination by DNREC was recommended; that the developer response refers only to the wetland delineation performed by a wetland expert; that DNREC noted that a wetland delineation cannot determine the extent of State regulated subaqueous lands on the property; that the County should require the developer to meet with DNREC for an official subaqueous land jurisdictional determination before the site plan moves forward.

The Commission found that three letters have been received from residents with concerns about the project. The letters received were from Martin J. Hutt, Dana and Beverly Linden, and Jeff and Laurel Rupprecht. Mr. Abbott provided the Commission with copies of the letters.

Mr. Wheatley advised the Commission that he would not be participating in the review of this application and turned the meeting over to Vice-Chairman Smith.

James Fuqua, Attorney; Gordon Mead with Davis, Bowen & Friedel, Inc.; and Dave McCarthy with Inland Bays, LLC were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that an Exhibit Booklet was previously submitted into the record; that this is a conditional use application for 48 multi-family units located on 11.96 acres; that the site is located on the north side of Fred Hudson Road approximately ¼ mile east of Cedar Neck Road; that the applicants have owned the property since 1998; that this application is very similar to a previous application that was recommended for approval by the Commission in January of 2004 and subsequently approved by the County Council on January 27, 2004; that the applicants received two, one-year time extensions from the Commission and that the approval expired in 2007 due to the down turn in the real estate market; that the owners are now trying to revive this project; that 48 multi-family units are still proposed; that the site is zoned MR Medium Density Residential and that a rezoning is not being sought;

that the permitted density in this zoning district with central sewer is 4.356 units per acre; that according to the 2007 Land Use Plan Update, the site is located in an Environmentally Sensitive Developing Area and a mixed residential area; that these districts permit multi-family dwelling as appropriate housing; that central sewer and water will serve the site; that according to the State's Strategy for Spending Map, the site is located in a Level 3 area; that Sussex Shores Water Company will provide central water to the site and the site is located in the Cedar Neck expansion Area of the Bethany Beach Sanitary Sewer District; that a connection point is provided in the Bethany Lakes Subdivision; that DelDOT did not require a traffic impact study being performed; that a Condominium Association will be established for the maintenance of streets, roads, buffers, recreation area and other common areas; that fees will be required; that electric will be provided by Delaware Electric Cooperative; that phone service will be provided by Verizon; that the site is located within the Indian River School District; that fire protection is provided by the Millville Fire Company which is approximately 2.3 miles from the site; that Tab C of the Exhibit Booklet depicts an aerial photograph of the area and that this application is an in-fill site; that the site adjoins Bethany Lakes Subdivision to the north and west; that the Salt Pond development is located across from Fred Hudson Road; that the Salt Pond development is a mix of multi-family and single family homes; that there are other multi-family developments in the area such as Bayside at Bethany Lakes, Sunset Harbor and Cedar Bay; that at the intersection of Fred Hudson and Cedar Neck there is a new Harris Teeter grocery store that will provide shopping in the area; that there are new developments in the area since the original approval of this application; that the site plan has been revised to provide a loop road throughout the development and removed a road away from the Bethany Lakes Subdivision; that recreational amenities will include a pool, clubhouse and tennis court; that 149 parking spaces are required and that 192 are proposed; that there are minor encroachments into the wetland areas; that the majority of the development will occur on the western side of the site to preserve the wetlands and as many forested areas as possible; that there is a minimum 50-foot buffer from the subaqueous lands that are on the adjoining lands owned by the Nature Conservancy; that the developers will meet with DNREC about this buffer; that the Army Corps of Engineers has approved the wetlands delineation and has issued a jurisdictional determination; that there will be wetlands mitigation at a rate of 2.5/1; that 2 storm water management ponds are proposed but that the one located near the northeast corner of the site may not be needed due to new technology; that this application is a re-submittal of a previously approved plan; that there are nine parking spaces near the recreational amenities that are adequate since the community is small and residents will be able to walk or bike to the amenity area; that sidewalks are proposed on one side of all streets near the townhomes; that construction on Bethany Lakes began in 2004; that the storm water management pond will be a wet pond and will also serve as an aesthetic feature due to the proposed location; that the developers are not aware of the Nature Conservancy being interested in purchasing the land; that there could be a central mailbox location near the entrance to the development; that there are 9.16 acres of forest lands on the site; that 5.42 acres or approximately 40% will be retained; that a wetland crossing is proposed for the road to the amenity area; that there are minimal buffers from the wetlands for the dwelling structures; that the site plan meets the requirements of all agencies; that there are no setback buffers from Federal Wetlands; that the streets will be built to County specifications; that one unit would be lost if a 20-foot buffer were to be required around the perimeter of the site; that there is an existing buffer along the western boundary of the site; and submitted proposed findings of fact, conditions of approval and the previously approved site plan into the record.

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

Ellen Passman, Dana Linden and Beverly Linden, all residents of Bethany Lakes Subdivision spoke in opposition to this application and expressed concerns about the loss of forest lands; that the location of the amenity area could be relocated to prevent the loss of trees; that since they are not experts, they rely on various agencies for technical review and comments; that there could be possible flooding of the site and that run-off could occur on adjoining properties; that there should be a fence along the adjoining properties to prevent trespassing; and that more buffers are needed.

At the conclusion of the public hearings, the Commission discussed this application Motion by Mr. Smith, seconded by Mr. Ross and carried 4 votes to none, with Mr. Wheatley not participating, to defer action for further consideration. Motion carried 4 – 0 – 1.

C/Z #1692 – application of **FRANK J. EMMI, JR.** 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 northwest of Route 24 (John J. Williams Highway), 850 feet west of Love Creek, to be located on 0.51 acres, more or less.

The Commission found that DelDOT provided comments on August 11, 2009 and referenced that a traffic impact study was not required, and that the current Level of Service “E” will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on August 6, 2010 and referenced that the site is located in the Angola Neck Planning Area; that wastewater capacity is not available at this time; that that System Connection Charge Rates have not yet been determined; that the proposed use will use an on-site system; that when the County provides sewer service, a connection to the system is mandatory; that the county does not have a firm schedule to provide sewer service at this time; and that a concept plan is not required.

Frank Emmi, Jr. was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that his property is the only property along Route 24 that is not commercially zoned from Pelican Landing to Love Creek Bridge; that there is a marina across Route 24 from this site; that his property is the only residential use in the area; that there are non-conforming commercial uses in the area; that his site is approximately 850 from Love Creek; that the site could possibly be a real estate or lawyer’s office or possible small retail or services; that he may sell the property in the future; that he would like to conform to the zoning in the immediate area; and that there are not many options due to the size of the site.

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

Mr. Robertson reminded the Commission that there was a B-1 application in the immediate area that was very controversial and that those applicants made a record to support the application;

that this application for a CR-1 district with no intended use and legally in deference to the applicant, a record has not been made for the type of use that the applicant wants to establish or for a rezoning to CR-1.

Mr. Robertson and staff stated that the property is surrounded by AR-1 zoned lands, not commercially zoned lands as stated by the Applicant. Instead there are several uses that are legally non-conforming on the AR-1 lands since they pre-date the Zoning Code.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1692 for Frank J. Emmi, Jr., based upon the hearing record and lack of a record establishing the need for the appropriateness of a CR-1 zone for this parcel especially noting the limited size of the parcel; and that it is further recommended that should Mr. Emmi seek a re-application under a different zoning classification, that the application fee be waived provided the re-application for a different zoning classification be filed within six months.

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied for the reasons, and with the conditions stated. Motion carried 5 – 0.

Meeting adjourned at 8:25 p.m.