



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF SEPTEMBER 8, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 8, 2011, 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, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of August 25, 2011 as amended. Motion carried 5 - 0.

### OLD BUSINESS

C/U #1905 – application of **WEST REHOBOTH COMMUNITY LAND TRUST** to consider the Conditional Use of land in GR General Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 6,986.70 square feet, more or less, lying northeast of Dunbar Street, 100 feet northwest of Norwood Street within West Rehoboth subdivision.

The Commission discussed this application which has been deferred since July 14, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1905 for the West Rehoboth Community Land Trust for two (2) multi-family dwelling units based upon the record made at the public hearing and for the following reasons:

- 1) The property is located within a GR General Residential District. Multi-family dwellings are appropriate in this District where medium density residential uses are favored.
- 2) The proposed Conditional Use will have no significant impact upon traffic.

- 3) This project is consistent with the Sussex County Comprehensive Plan. One of the stated Goals of the Plan is to provide affordable housing options for the County's low and moderate income residents. This Conditional Use promotes that goal.
- 4) The project will not have an adverse impact on the neighboring properties or community, which currently has a variety of housing types including multi-family dwellings, single family homes and manufactured homes. There are also several business and commercial uses and zonings in the community, as well.
- 5) The Commission and County Council previously approved a similar application, C/U #1722, for a total of four (4) multi-family dwelling units in two (2) structures in the West Rehoboth Community. This recommendation is consistent with that prior approval.
- 6) Sussex County Engineering has confirmed that there are two (2) sewer laterals on the site which previously served two (2) manufactured homes that existed there. Any system upgrades will be the Applicant's responsibility.
- 7) This property, which is only 6,986 square feet in size, is not big enough under the County Zoning Code for two (2) units without a variance from the Board of Adjustment, and I understand there is a Variance Application pending before the Board. This recommendation is contingent upon the Board's approval of that Variance.
- 8) This recommendation for approval is subject to the following conditions and stipulations:
  - A. This recommendation is contingent upon the approval of a variance from the Sussex County Board of Adjustment to allow two (2) multi-family dwelling units on the subject property. If such a variance is not granted, this recommendation is null and void. This recommendation should not be viewed as making a determination as to whether a hardship or exceptional practical difficulty exists sufficient to grant a variance. Such determination is the responsibility of the Board of Adjustment.
  - B. Only two (2) units shall be constructed upon the property.
  - C. The project shall be subject to the approval of the Sussex County Engineering Department. The Applicant shall be required to design, fund and construct any upgrades to the County sewer system that are necessary to serve the two (2) units.
  - D. The building shall be designed to resemble a single family dwelling. An example of this would be a separation of the entrances so that no two (2) entrances are on the same side of the units.
  - E. At the time of site plan approval, the Applicant shall also submit front, side, and rear elevation drawings of the building to the Planning and Zoning Commission.
  - F. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The site plan shall include designated parking spaces that do not require a resident to back directly onto the adjacent street.

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

C/U #1906 – application of **CLINTON HOFFER** to consider the Conditional Use of land in GR General Residential District for school bus parking and maintenance repair shop to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 42,370 square feet, more or less, lying northeast corner of Indian Branch Road and Tramway Road 500 feet west of Route 82.

The Commission discussed this application which has been deferred since August 11, 2011.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1906 for Clinton Hoffer for a bus storage and maintenance facility based upon the record made at the public hearing and for the following reasons:

- 1) The proposed use is one that has been in existence for many years in this neighborhood. It has evolved from a home occupation where the property owners operated a single school bus for a school bus route at a local school district and has grown gradually over time to the point where it now requires a Conditional Use and can no longer be considered a home occupation.
- 2) There was testimony given during the public hearing that the use that has evolved is not objectionable and does not adversely affect the neighborhood.
- 3) The Indian River School District has issued a letter in support of this application.
- 4) The use, with the conditions and stipulations placed upon it will insure that the property is not overrun with school buses, vehicles, parts or other issues that would adversely affect neighboring properties.
- 5) The use as a school bus storage facility is consistent with the nearby identical use that has evolved across the street.
- 6) The use is a benefit to Sussex County, its residents and school systems by providing a local source of transportation for the public schools and their students.
- 7) This recommendation is subject to the following conditions:
  - A. The use shall be limited to a school bus storage yard for no more than 7 school buses operated by the Applicant and 2 school buses on site at any one time for maintenance.
  - B. The Final Site Plan shall show the location of all school bus parking, and parking for at least 6 employees. These parking areas shall also be clearly marked on the property, as well.
  - C. There shall not be any junked, untagged or inoperable school buses or other vehicles stored on the premises.
  - D. The hours of operation shall be 6:00 a.m. to 5:00 p.m., Monday through Saturday.
  - E. All bus repairs shall be performed inside the shop building that exists on the site.
  - F. There shall not be any outside storage of bus, van or automobile parts.
  - G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Burton abstaining.

C/U #1907 – application of **JACOB KABINO/5-J'S SANITATION** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a porta-toilet storage and service to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 7.0 acres, more or less, lying west of Road 269A (Simpler Road) 1,850 feet north of Route 47 (Johnson Road).

The Commission discussed this application which has been deferred since August 11, 2011.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1907 for Jacob Kabino/5-J's Sanitation Service for a portable toilet facility based upon the record made at the public hearing and for the following reasons:

- 1) This property is suitable for this type of use. It is on a large tract of land and the location of the portable toilet storage area is surrounded by trees and is not visible from any adjacent properties.
- 2) The Applicant will continue to reside upon this property where his business operates.
- 3) The portable toilets are only stored on this property when not in use. There is no dumping of the toilets and the wastewater in them is pumped and hauled to a licensed wastewater treatment facility by a licensed waste hauler. The use will have no impact upon the neighboring properties or the environment.
- 4) The use provides a service to Sussex County businesses and residents. The Applicant has stated that he provides portable toilets to construction sites, parks, marinas, and other events throughout Sussex County.
- 5) No parties appeared in opposition to the application and several parties appeared in favor of it, including the next door neighbor.
- 6) This recommendation is subject to the following conditions:
  - A. The use shall be limited to the storage and cleaning of portable toilets only.
  - B. No portable toilets shall be dumped on the site. They must be pumped and the wastewater hauled to a licensed wastewater treatment facility.
  - C. The location of storage areas for portable toilets, structures and vehicles associated with the use shall remain screened from view by the vegetation that exists on the site.
  - D. The areas designated for storage of portable toilets and the vehicles that haul them shall be clearly shown on the Final Site Plan.
  - E. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Wheatley abstaining.

C/U #1908 – application of **GREEN'S BUS SERVICE** to consider the Conditional Use of land in GR General Residential District for storage of transportation school vans to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 3.44 acres, more or less, lying northwesterly corner of Indian Branch Road and Tramway Road 750 feet west of Route 82 and being Lot 10 in John C. Hudson subdivision.

The Commission discussed this application which has been deferred since August 11, 2011.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1908 for Green's Bus Service for the storage of school transportation vans based upon the record made at the public hearing and for the following reasons:

- 1) The proposed use has been in existence for many years in this neighborhood. It has evolved from a home occupation where the property owners operated a school bus route for a local school district as a home occupation. The use has grown gradually over time to include multiple school transportation vans and employed drivers so that it now requires a Conditional Use and can no longer be considered a Conditional Use.
- 2) There was testimony given during the public hearing that the use that has evolved is not objectionable and does not adversely affect the neighborhood.
- 3) The use, with the conditions and stipulations placed upon it will insure that the property is not overrun with school vans, automobiles, parts and other issues that would adversely affect neighboring properties.
- 4) The use as a school transportation van storage facility is consistent with the school bus service that has evolved across the street.
- 5) The use is a benefit to Sussex County, its residents and school systems by providing a local source of transportation for the public schools and their students.
- 6) This recommendation is subject to the following conditions:
  - A. The use shall be limited to a school transportation van storage yard.
  - B. There shall be no more than 15 vans on the property at any time.
  - C. The Final Site Plan shall show the location of all van parking, and parking for 10 employees. These parking spaces shall be clearly designated on the property, as well.
  - D. There shall not be any junked, untagged or inoperable vans or other vehicles on the premises.
  - E. No maintenance shall be permitted on the site.
  - F. The hours of operation shall be 6:00 a.m. to 5:00 p.m., Monday through Saturday.
  - G. There shall not be any outside storage of bus, van or automobile parts.
  - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Burton abstaining.

## PUBLIC HEARINGS

C/Z #1709 – application of **DANIEL T. AND DALE S. BOINES** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to B-1 Neighborhood Business District to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.13 acres, more or less, lying southwest of Route One and northwest of Pondview Drive, northwest of Red Mill Pond, and 170 feet southeast of Best Lane and being Lots 1A, 2, 3, and 4 of Red Mill Manor.

The Commission found that the Applicants provided an Exhibit Booklet on August 26, 2011 which contains a color rendering of the site plan; a Table of Contents; a listing of the project team; qualifications of Pennoni Associates, Inc. and Mark Davidson, Douglas Barry, R. Stephen McCabe, and Gregory Rishel of Pennoni Associates, Inc.; a Plan View of the proposed project; an Elevation View of the proposed project; an aerial map depicting the location of area

commercial properties; a copy of the rezoning application form and survey/site plan; a copy of deeds to the property with related survey; DelDOT information and correspondence relating to Best Lane being designated as a Suburban Street with State maintenance; copies of portions of the Sussex County Comprehensive Plan Update 2008 in reference to Investment Level 1 of the State Strategies, Permitted Uses in the Environmentally Sensitive Developing Area, Recommended Densities and Uses in the Environmentally Sensitive Developing Area, copies of the Future Land Use Plan Map, the State Strategies Map, and Zoning in the area; copies of the Zoning Ordinance, Chapter 115, relating to 115-194.3 ES-1 Environmentally Sensitive Development District Overlay Zone; DelDOT comments, dated April 6, 2011 and April 15, 2011, relating to this application; a series of maps and aerials; an Environmental Assessment Report for the project; a copy of the Applicant's application for Preliminary Land Use Service (PLUS) review; a Willing and Able to Serve letter from Tidewater Utilities, Inc. for public water and fire protection; suggested proposed Findings of Fact for consideration; a copy of an email in reference to a presentation by the Applicants to the Red Mill Manor Homeowners Association; a survey of the property; and a site plan for the project.

Mr. Lank advised the Commission that DelDOT comments, dated April 6, 2011 and April 15, 2011, are included in the Exhibit Booklet.

The Commission found that the County Engineering Department Utility Planning Division submitted comments on September 7, 2011 in the form of a memorandum which references that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available for the project, as submitted in the rezoning plan for the PLUS review, indicating three proposed office buildings having a combined total of 7,258 square feet; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,590.00 per EDU; that Parcel 25 is served with a 8-inch lateral located near the parcel's southernmost corner; that conformity to the North Coastal Area Planning Study will be required; that the sewer planning study assumption is 1.0 EDU per parcel or 4.0 EDUs total, reflecting four residential parcels in a residential subdivision; that the proposed use shown on the rezoning plan equates to slightly more than 7.0 EDU; that the proposed project adjoins a Sussex County pump station and will be served directly from that pump station; that the proposed B-1 zoning and proposed use connecting at that location, is expected to have minimal impact on downstream infrastructure; that three of the parcels were not accessible during sewer construction and were not provided with sewer service; that the rezoning plan indicates that the parcels could be served by an extension of sewer from the adjacent pump station; that installation of sewer to the proposed buildings could be undertaken by the developer in accordance with County requirements and procedures; that installation of sewer would be at the property owners expense; that the County Engineer must approve the sewer connection point; and that a concept plan is not required.

Mr. Lank submitted two (2) letters that were received in support of this application and nine (9) letters that were received in opposition to this application.

The Commission found that Heidi Gilmore, Attorney with Tunnell and Raysor, P.A., was present on behalf of Daniel T. Boines and Dale S. Boines, who were also present, with Douglas D. Barry, Professional Engineer, and Mark H. Davidson, Office Principal, with Pennoni Associates, Inc. and that they stated in their presentations and in response to questions raised by the

Commission that the Applicants are proposing an application for B-1 Neighborhood Business so that they can develop the site with professional and medical offices; that they applied for rezoning, rather than a Conditional Use, since conditional use zoning is not supported by financial institutes; that they realize that they are not submitting a formal site plan, but they may refer to the conceptual site plan for reference; that they are requesting that the Exhibit Booklet be made a part of the record for this application; that several B-1 and C-1 zonings and uses exist in close proximity; that there are several Conditional Use applications in close proximity; that the two (2) lots immediately adjacent to the site are zoned B-1 Neighborhood Business; that DelDOT has not voiced any major objections; that all improvements required by DelDOT will be complied with by the Applicants; that the site is very restrictive due to the limitations of the site, access, depth, etc.; that B-1 zoning is consistent with the uses in the area; that the intended use is consistent with the recent land uses and development trends in the area; that the site is located in Level 1 according to the State Strategies, which references that it is the State's intent to use its spending and management tools to maintain and enhance community character, to promote well-designed and efficient new growth, and to facilitate redevelopment; that the proposed use conforms to the purpose of B-1 zoning; that the proposed use conforms to the Comprehensive Land Use Plan; that the adjoining two (2) lots to the north, which are also owned by the Applicants, are improved with an office building; that the site is located within the Environmentally Sensitive Developing Areas which reference that they are areas that can accommodate development provided special environmental concerns are addressed, and that retail and office uses are appropriate; that other business uses in close proximity include, but are not limited to Beach Babies Day Care and Delaware Guidance Services; that they are hoping to improve the site with three (3) additional office buildings; that the buildings are planned to maintain a residential character in appearance to blend in with the residential housing within Red Mill Manor, the adjacent subdivision; that according to DelDOT, Best Lane has been dedicated to public use since 1978; that they are submitting a corrected site plan that depicts that Best Lane is dedicated to public use, rather than being depicted as a private street; that the existing parking along Best Lane will be relocated to the interior of the site; that since the site is located within the Environmentally Sensitive Developing District Overlay Zone they have prepared an Environmental Assessment Report which references: stormwater and the use of bio-retention facilities; groundwater recharge and excellent infiltration; a nutrient budget to meet TMDLs; that central water will be provided by Tidewater Utilities, Inc.; that central public sewer will be served by Sussex County with connection to a pump station by easement; that there are no endangered species reported on the site; that the site is not in a flood plain; that 40% of the site will remain in open space; that buffering will be provided; that there are no historic uses impacting the site; that the existing four (4) EDUs are adequate to serve the project; that the only access to the site will be from Best Lane, a public street maintained by DelDOT; that they did present their application to PLUS for review, and that they have not yet received any written comments; that the proposed B-1 area meets the purpose of the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; that DelDOT suggested sidewalk interconnection between Pondview Drive and Best Lane, but there are no sidewalks intended; that there are no deed restrictions within Red Mill Manor subdivision; and that the units would be rented for medical and professional office space.

The Commission found that Pat Campbell-White, Realtor, was present and stated that she finds it difficult to locate four (4) residential dwellings on the site due to the swale along Route One, stormwater issues, well locations and the limited access; that there are a few single family homes along Route One and that some of the homes along Route One have been converted to business and commercial uses; that neighboring residential units will benefit by the central water with fire protection capabilities; that financing is difficult for Conditional Uses; that the more objectionable uses permitted in B-1 zoning will not work well on this site due to the existing limitations and Codes; that the site is appropriate for B-1 zoning; that there are, admittedly, other locations with vacant units and units in need of improvements; that she reviewed the petition in opposition and found that only six (6) of the signers live in close proximity; and that there is no access intended to Pondview Drive.

The Commission found that Patricia Kelly, a resident of Red Mill Manor, was present in support of this application and referenced that she does not object to the application as long as there is no access to Pondview Drive; that it is very difficult to see vehicles coming south on Route One from the entrance at Pondview Drive; that the Homeowners Association of Red Mill Manor maintain Pondview Drive; and that she realizes that families will not want to live along Route One at this location.

The Commission found that Grace Bonney, a resident living on Best Lane, was present in opposition to this application and referenced that she is concerned about the many uses permitted in B-1 zoning; that the uses and traffic will impact Best Lane intersection with Route One; and that her primary concern is traffic and safety hazards since the Police have identified this area as one of the worst in the area.

The Commission found that Dale Truitt, a resident living on Best Lane, was present in opposition, submitted photographs, an aerial photograph, a petition in opposition to the application with approximately 100 signatures in opposition, and written comments, and expressed concerns that the use is not acceptable; that the use will not be an asset to the community; that the site could be used residentially, as it was originally intended; that historically the County approved the subdivision of Red Mill Manor; that Ray McCabe was permitted to build the sample home and offices at the corner of Route One and Best Lane; that Best Lane was built and maintained by the Best family; that development continued with the construction of Beach Babies, Delaware Guidance Center and Paynters Mill; that 20 of 24 residents living on Best Lane are opposed to this application; that the lots were purchased as residential lots; that the site should be developed as originally intended, as residential lots, not rezoned; that the Best Lane intersection is already limited by a school bus shelter, mail boxes, and a large swale/culvert; that this intersection is considered one of the most dangerous along Route One; that there are numerous empty commercial units in the general area; that no need has been shown for the additional office units; that trash trucks will have to pull into the access road and then back out into Best Lane; that the safety of children and residents in the area is a major concern; that the County has the authority and the responsibility to reject this application; that minimal jobs will be created by this project; that children play outside of the fenced in area in the grassy lot at the day care center; that people currently mistake the pump station lane for the Beach Babies access; that on occasion the shoulder along Best Lane and the County pump



station lane is used for parking by the real estate office in the existing B-1 District; and that the existing parking area for the real estate office is not currently adequate to serve the use.

The Commission found that Tommy Givens read a letter of opposition from Joanne Chiappetta. The letter is a part of the packet of nine (9) letters received in opposition.

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 #1710 – application of **ROBERT BROWNING AND BRADLEY DAVIS** to amend Comprehensive Zoning Map from MR Medium Density Residential District to B-1 Neighborhood Business District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.38 acres, more or less, lying northeast corner of Cedar Neck Road (Road 357) and Fred Hudson Road (Road 360).

The Commission found that the Applicants provided an Exhibit Booklet on August 26, 2011 which contains a Table of Contents; a copy of the rezoning application form and related transmittal from GMB George, Miles & Buhr, LLC; a copy of the Preliminary Land Use Service (PLUS) application form; a copy of the January 18, 2011 comments from the Office of State Planning Coordination on the PLUS review; a copy of the response to the PLUS review from GMB George, Miles & Buhr, LLC; a copy of an email response from the Office of State Planning Coordination advising that they no longer provide a final response letter; a portion of the Zoning Map depicting the site and surrounding area; an aerial photograph depicting the site and surrounding area; a color rendering overlay on an aerial photograph depicting the site plan; copies of deeds and existing surveys of the two parcels relating to this application; a copy of the FIRM Flood Insurance Rate Map of the site and surrounding area; a copy of the school district map of the area; stormwater information on the site; a copy of the Service Level Evaluation Request from the Planning and Zoning Department to DelDOT; a copy of the Support Facilities Report, dated January 21, 2011, and a letter from DelDOT, dated January 24, 2011; utility information on the site; and suggested proposed Findings of Fact for consideration.

Mr. Lank advised the Commission that DelDOT comments, dated April 24, 2011, are included in the Exhibit Booklet.

The Commission found that the County Engineering Department Utility Planning Division submitted comments on September 7, 2011 in the form of a memorandum which references that the site is located in the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project, as long as the parcel does not exceed a total of 9.52 EDUs; that the current System Connection Charge Rate is \$4,697.00 per EDU; that each parcel is served with a 6-inch lateral along their easterly property line near their northeastern property corner; that conformity to the South Coastal Area Planning Study 2005 Update 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 6-inch laterals may not be adequate for the proposed commercial use and a lateral upgrade may be required; that installation of a 8-inch

lateral upgrade would be at the expense of the property owners; 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; that a sewer concept plan must be submitted for review and approval prior to any sewer connection; that the County requires that a County licensed plumber obtain a disconnection permit and properly disconnect the existing structures from sewer; and that the disconnection requires inspection and approval by County personnel and shall be completed before undertaking site work, moving or demolishing the existing structures, or issuance of a building permit for new construction.

Mr. Lank submitted one (1) letter that was received in support of this application and fifty-three (53) letters that were received in opposition to this application.

The Commission found that Robert Browning and Bradley Davis were present with William Scott, Attorney with Scott and Shuman, P.A., and James Willey, Professional Engineer with George, Miles & Buhr, LLC and that they stated in their presentations and in response to questions raised by the Commission that they are proposing the rezone the property from MR Medium Density Residential to B-1 Neighborhood Business to develop the site for retail and/or office use; that no users have been identified for the site at this time; that there are several B-1 Neighborhood Business and C-1 General Commercial properties in the general area, along with several approved Conditional Use sites for commercial purposes; that the conceptual plans depict two (2) 9,500 and 9,000 square foot buildings with related parking, setbacks and landscaping; that the site is located in the Environmentally Sensitive Developing District Overlay Zone and is located in the Environmentally Sensitive Developing Area, an area located adjacent to fast growing areas within the County impacted by environmentally sensitive features and targeted for growth under the 2008 Sussex County Comprehensive Plan; that retail and office uses such as those permitted in a B-1 Neighborhood Business District are permitted uses and appropriate for inclusion in the Environmentally Sensitive Developing Areas; that the site is located in an Investment Level 3 under the State Strategies, which is designated as an area appropriate for growth and development; that there are no wetlands on the site; that there is no timber of any value on the site; that there have been no endangered species found on the site; that offices, multi-family dwelling structures, a shopping center, restaurants, retail projects, and storage facilities, along with other business and commercial uses exist in close proximity to the site; that the site is immediately adjacent to a Harris Teeter grocery and the clubhouse, pool and recreational facility for the Bethany Lakes subdivision; that they went through the Preliminary Land Use Service (PLUS) and received favorable comments; that the PLUS comments are a part of the record in the Exhibit Booklet; that no cultural or historic features were found on the site; that the Conceptual Site Plan represents the maximum amount of retail possible on the site; that they will comply with all DelDOT requirements; that water will be supplied by Sussex Shores Water Company; that sewer service will be provided by Sussex County; that according to DelDOT the future development of this site will not significantly increase area traffic; that DelDOT will probably require an entrance/exit on Cedar Neck Road and a right-in only entrance on Fred Hudson Road; that the Applicants may also be required to participate in the cost of future traffic control devices for the intersection; that rezoning of the property should provide jobs, an increased tax base, and a positive impact on the area; that the future development of the site should not have a negative impact on the property values of surrounding properties; that

rezoning the property will not alter the essential character of the neighborhood or the surrounding area; that B-1 zoning is appropriate since the purpose of the zoning is to provide primarily for retail shopping and personal service uses, to be developed as a unit or in individual parcels, to serve the needs of a relatively small area, primarily nearby rural, low-density or medium-density residential neighborhoods; that the rezoning will be consistent with the trend of development in the area; that there are two residential homes currently on the site; that they did not apply for a Conditional Use since they do not have a firm intent for the use of the site; that financial institutes have advised that it is difficult to finance conditional use applications; that the existing tenant has been instructed to remove business activities from the site; that the existing dwellings will be removed from the site if the rezoning is approved; that the site could be developed with 5 to 7 single family lots or 12 to 14 multi-family units; and that they realize that commercial development of the site is limited to the available EDUs permitted by County Engineering.

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

The Commission found that Jim Gallant, President of the Bethany Lakes Board of Directors, and Michael Donahue, Mark Lefcowitz, Tom Storch, and Michael Silverman, residents of Bayside at Bethany Lakes, and Frank Hurley were present and spoke in opposition to this application and expressed concerns that the area is saturated with business and commercial uses from the Harris Teeter to the Hocker's IGA store; that the residents of the area do not know how this site will be developed; that a lot of the uses permitted in B-1 Neighborhood Business are not compatible to the area and will not enhance the area; that the traffic report from DelDOT was not current and was based on a count in 1997; that there is no need for additional retail in the area; that the additional traffic will result in more backups at the intersection and cause more difficulty for the entrances into other projects in the area; that the adjacent community of Bethany Lakes is not being protected with landscaping, fencing and other buffering to shield homeowners from sight, noise, and other types of pollution that such zoning could create; that the current MR Medium Density Residential zoning should be maintained; that the Applicants purchased the site knowing that the property is zoned MR and should expect no more than that zoning; that the Applicants have not shown that there is a need for this rezoning, since they have no intended use planned; that traffic safety for motorists, cyclists, and pedestrians, especially children, is a major concern; that the intersection is dangerous now and could be worsened by rezoning this site; that the developers do not live on the site; that there is no community good established by this rezoning; that there is no positive merit to this application for the residents of the area; that residents should have had more time to consider this application; that rezoning of this site takes away the residential character of the adjacent development and the developments across Cedar Neck Road; that residents purchased their properties knowing that this site was also residential; that additional retail creates more concerns for the residents of the area; that the rezoning will not only impact traffic along Cedar Neck Road, but it will add more traffic to Fred Hudson Road, which is already inundated with traffic and backups from Cedar Neck Road to Route One; that the Harris Teeter project site has two pad sites that have not been developed which will create even more traffic that will impact the area; that there are no multi-modal facilities in this area; that there are no shoulders along either roadway; and that the residents are losing the quiet residential character of the area by additional rezonings.

Mr. Lank advised the Commission that the Harris Teeter is located on land within the Salt Pond Residential Planned Community that has been designated for business use for many years.

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

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

## OTHER BUSINESS

### Panera Bread Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a commercial site plan for a 5,050 square foot restaurant; that the setbacks meet the requirements of the Zoning Code; that 78 parking spaces are required and that 90 spaces are proposed; that 15 spaces are within the 60-foot front yard setback and are subject to site plan review; that adjoining sites have parking within the front yard setback; that Sussex County will provide sewer service; that Tidewater Utilities will provide central water; that there are no wetlands on the site; that DelDOT has issued a Letter of No Objection; that ingress/egress to the site is from Brian Drive, with no direct access to Route One; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the final site plan shall be required to include the required 20-foot landscape buffer landscaping plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the site plan as a preliminary. Final site plan approval shall be subject to staff receiving all agency approvals and the Final Site Plan shall depict the required 20-foot landscape buffer and landscaping plan. Motion carried 5 – 0.

### Subdivision #2005-91 – Highland Development Corp. Ferry Cover Subdivision – Amended Condition

Mr. Abbott advised the Commission that this item was deferred at the August 25, 2011 meeting; that this is a request to modify Condition of Approval #10 which states “Within one (1) year of the issuance of the first residential building permit, the Developer shall construct a community swimming pool and community center, trails and community pier with no more than four (4) boat slips.”; that the Developer is requesting that Condition of Approval #10 be amended to read “Before the issuance of the two hundred fifty eighth (258<sup>th</sup>) residential building permit, the Developer shall construct a community swimming pool and community center, trails and community pier with no more than four (4) boat slips.”; that 391 total lots are approved for this project; that if the condition is modified, the amenities would be constructed prior to 66 percent of the homes being built within the project; that no lots have been sold since final approval has not yet been granted; and that the preliminary approval is valid until January 1, 2013.

Mr. Robertson suggested that the Commission needs to maintain some consistency when amending Conditions of Approval.

Mr. Abbott advised the Commission that recently the Commission has amended some Conditions of Approval for project that reflected 50%, not 66%.

The Commission found that Richard De Mitt, a principal with Highland Development Corp, the developers, was present and advised the Commission that Final Plans have been submitted to all agencies; that Condition of Approval #10 creates a major impact on the development of the site; that he would like to be able to develop the project with multiple lots per year, but that the current economy has impacted all developments; and that he would have no objection to reducing his request to 50%, rather than 66%.

The Commission discussed this request, and took no action for or against the request.

Phillip S. and Ada A. Messia  
2 Lots and 50' Right-of-Way – Road 307

Mr. Abbott advised the Commission that this is a request to subdivide 5.26 acres into two (2) lots and a 50-foot right-of-way; that one parcel will contain 2.79 acres and has an existing dwelling on it; that the other parcel will contain 2.47 acres; that the owners are proposing to create the 50-foot right-of-way over an existing driveway; that DelDOT has issued a Letter of No Objection; and that this request was originally approved by the Commission on April 16, 2008, but was never recorded.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the requested subdivision as a concept. Motion carried 5 – 0.

Meeting adjourned at 10:00 p.m.