



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF OCTOBER 9, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 9, 2008 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Richard Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of September 17, 2008 as amended and to defer action on the Minutes of September 25, 2008. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2007-4 – application of **LACROSSE HOMES OF DELAWARE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 90.11 acres into 82 lots, located at the southwest corner of the intersection of Road 620 and Road 617.

The Commission discussed this application which has been deferred since September 11, 2008.

Mr. Burton stated that he has some concerns about this application and that he would appreciate any comments that the Commissioners may have on the application.

Mr. Johnson stated that he has some concerns relating to the size of the project and its location; that there appears to be too many lots utilizing septic systems; that he is concerned about the closeness to Abbott's Mill and Abbott's Mill Nature Center which is utilized by school age children and traffic; that safety is of a major concern due to the bridge at the Mill; and that he questions the possible impact by the number of septic systems on water quality.

Mr. Smith stated that he would like more time to revisit the application due to his concerns about the DelDOT comments and surrounding roads.

Mr. Wheatley agreed and added that he is aware of accidents on both sides of the bridge; that additional time is warranted; and that the Commission needs to verify compliance with the Ordinances.

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

Subdivision #2007-9 – application of **THOMPSON SCHELL, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 196.20 acres into 256 lots, (Cluster Development) located south of Route 16, 2,500 feet east of Route One.

The Commission discussed this application which has been deferred since September 25, 2008.

Mr. Burton stated that he would move that the Commission grant preliminary approval for Subdivision #2007-9 for Thompson Schell, LLC based on the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 zone. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. A subdivision on this site will not have an adverse impact on the neighboring properties or community.
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. I am satisfied that this project is a superior design under the Subdivision Ordinance. It is a superior design because it preserves large amounts of open space, particularly along the Broadkill River. Also, all buffers exceed 50 feet, and in most areas they are increased to 150 feet. This also preserves existing trees, and the developer has proposed reforestation throughout the project.
6. The design addresses the requirements of Section 99-9C of the Code.
7. The subdivision will have no more than 256 lots on 195.63 acres. This results in a density that is less than the maximum density permitted in the AR-1 zone.
8. The subdivision will be served by central water and sewer.
9. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 256 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.

- D. All entrances shall comply with all of DelDOT's requirements, 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 stormwater management areas and erosion and sedimentation control facilities.
- G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- H. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. 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.
- I. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan. The Final Site Plan shall also show areas where reforestation will occur.
- J. No wetlands shall be included within any lot lines.
- K. A system of street lighting shall be established.
- L. Sidewalks shall be located on one side of all streets in the subdivision.
- M. There shall be walking paths throughout the subdivision as proposed by the developer.
- N. 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.
- O. Within 2 years of the issuance of the first residential building permit, the developer shall construct all of the recreational amenities.
- P. As proposed by the Applicant, there will be a 50-foot buffer from all wetland areas. The buffer area shall be depicted on the Final Site Plan. In addition, all required silt fencing shall be installed on the upland side of these buffer areas.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of Subdivision #2007-9 for Thompson Schell, LLC for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2007-10 – application of **RITA LYNN, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 64.199 acres into 53 lots, located southeast corner of the intersection of Road 224 and Road 38.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2007-10 for Rita Lynn, Inc. 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 of 0.82 lots per acre is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for individual on-site septic systems.
6. This approval is subject to the following conditions:
 - A. There shall be no more than 53 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, 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 stormwater management areas and erosion and sedimentation control facilities.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
 - H. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose including lands now owned by Bryon Jefferson. There shall also be a buffer installed along Fleatown Road and the adjacent property at the northern corner of the site to screen that residential lot. 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.
 - I. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - J. No wetlands shall be included within any lot lines.
 - K. A system of street lighting shall be established.
 - L. As provided by the Applicant, there shall be a 100-foot buffer from the stream and a 100-foot buffer from all wetland areas. In addition, all required silt fencing shall be installed on the upland side of these buffer areas.
 - M. A hunting notice similar to the Agricultural Use Notice shall be included on the Final Site Plan and within the Restrictive Covenants governing the subdivision.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of Subdivision #2007-10 for Rita Lynn, Inc. for the reasons and with the conditions stated. Motion carried 5 – 0.

C/Z #1666 – application of **BEAVER PROPERTIES, LLC** 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 Cedar Creek Hundred, Sussex County, land lying east of Old State Road (Road 213) one-quarter mile north of Milton-Ellendale Highway (Route 16) and north of the Town of Ellendale, to be located on 101.6 acres, more or less.

The Commission discussed this application which has been deferred since September 25, 2008.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1666 for Beaver Properties, LLC for a change of zoning from GR General Residential to a GR-RPC based upon the record and for the following reasons:

1. The property is currently zoned GR General Residential. Under this application, that basic zoning and the density permitted in a GR Zone will not change.
2. The County Engineering Department has indicated that adequate wastewater capacity is available for the project. Central water will also be provided.
3. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. It permits a design that duplicates the grid layout of the Town of Ellendale. It also incorporates Moderately Priced Housing Units.
4. The project will not adversely affect the neighborhood or surrounding community and it is consistent with growth patterns of the adjacent Town of Ellendale.
5. According to the County's current Comprehensive Plan and the Town's Plan, the project is in a Growth Area.
6. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
7. This recommendation is subject to the following conditions and stipulations:
 - A. The maximum number of lots shall not exceed 405 units with 399 of those units being in Sussex County. There shall be 233 single family lots and 172 townhouses. 60 of those units shall also be Moderately Priced Housing Units spread evenly throughout the project.
 - B. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
 - C. The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - D. The RPC shall be served by central water.
 - E. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - F. There shall be sidewalks on both sides of all streets within the RPC.
 - G. A system of street lighting shall be installed.

- H. The Developer shall form a homeowner's association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- I. There shall be active and passive recreational amenities provided. The location and description of the active amenities shall be subject to the review of the Commission and shown on the Final Site Plan.
- J. A 50-foot wide bermed and vegetated buffer shall be established along the railroad. This shall be shown on the Final Site Plan.
- K. Upon completion of development, all site fences shall be removed from the site.
- L. A school bus stop shall be provided with parking for at least 12 vehicles. The location of the bus stop area shall be shown on the Final Site Plan.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- N. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O. The Final Site Plan shall include a landscape plan for all of the open space and buffers areas, showing all of the landscaping and vegetation to be included in those areas.
- P. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1746 – application of **JCBB, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to amend Conditional Use No. 1321 (Ordinance No. 1361) to allow an office, showroom, and an artisans/artists space to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 36,000 square feet, more or less, lying south of Route 9, 730 feet east of Main Street (Route 5), Harbeson.

The Commission discussed this application which has been deferred since September 25, 2008.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1746, the application of JCBB, LLC to amend C/U #1321 (Ordinance No. 1361) to allow an office, showroom and an artisans/artists space in addition to the previously approved contractors office and equipment storage based on the record and for the following reasons:

1. This application is for utilization of unused space in the existing building for more effective use of the building.
2. The additional uses requested, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. The additional uses requested will make more efficient utilization of the building and will complement the current uses.
4. The proposed use is for the general convenience and welfare of the County.

5. The current and proposed uses are similar in nature to nearby commercial and conditional uses.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. All of the stipulations imposed by C/U #1321 (Ordinance #1361) shall still apply.
 - B. No additional signs are permitted, rather the existing 32 square foot sign may need to be altered in order to advertise the additional uses.
 - C. Any outside displays shall not be located in the front yard setback.
 - D. The hours of operations for the businesses located on the property shall be Monday through Saturday from 8:00 a.m. to 6:00 p.m. with some Sunday hours for occasional exhibits.
 - E. Where there are no structural changes proposed, then a Final Site Plan review by the Planning and Zoning Commission shall not be required.

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

PUBLIC HEARINGS

Subdivision #2007-11 – application of **DONALD K. MILLER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 64.79 acres into 5 lots, located south of Road 480, 620 feet west of Road 489.

Mr. Lank provided the Commission with copies of the subdivision plan.

Mr. Lank provided the Commission with copies of the County Tax Map of the area showing the proposed lots and lots previously approved from the parcel.

Mr. Lank advised the Commission that the Technical Advisory Committee did not review this application since the lots are strip lots facing a State road.

The Commission found that Donald K. Miller was present on behalf of Buttonwood Corporation and stated in his presentation and in response to questions raised by the Commission that these 4 lots are the last lots proposed by the developers; that he has received approval from DelDOT for the 4 lots; that Lots 21 and 22 will have combined entrances; that Lots 23 and 24 will have individual entrances; that the developers sell lots, not lot/home packages; that there are no deed restrictions; and that he does not believe that DelDOT has jurisdiction to enforce dedication of additional rights-of-way for frontage not being divided.

The Commission found that there were no parties present in support of or in opposition to this Subdivision.

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

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007-11 for Donald K. Miller based upon the record and for the following reasons:

1. The four (4) proposed lots comply with the requirements of the Subdivision Ordinance.
2. These lots are just a continuation of several existing lots along County Roads 480 and 489. These lots will not adversely affect neighboring or adjacent properties.
3. This preliminary approval is subject to the following conditions:
 - A. The Applicant shall comply with all of DelDOT's requirements.
 - B. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to grant preliminary approval of Subdivision #2007-11 for Donald K. Miller for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2007-12 – application of **RONALD SHARP** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 4.90 acres into 3 lots, located northwest of Road 210, 360 feet northeast of Road 209.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of July 18, 2007 will be made a part of the record for this application and that the Applicants submitted an Exhibit Booklet and revised Site Plan on September 26, 2008; and that the Exhibit Booklet and revised Site Plan are now a part of the record.

The Commission found that Ronald Sharp was present with Mark Davidson of DC Group and that they stated in their presentations and in response to questions raised by the Commission that there are no PLUS comments in the Exhibit Booklet; that the site is located in an Investment Level 4 according to the State Strategies; that the parcel was originally laid out into 4 parcels; that the Applicant purchased Parcel "A" and has obtained the approval of the other landowners of the 4 parcels to allow him to subdivide his parcel; that this subdivision is a standard subdivision; that street lighting will be provided; that a DelDOT approved entrance will be provided; that the Applicant will retain Lot "C" of the original lots; that entrance approval has been granted; that two (2) 25-foot wide cross access easements are proposed to serve Lots "A" and "B" which exist and are located adjacent to the entrance per the suggestion of DelDOT; that stormwater management will be located in the open space area beside the entrance; that the site has excellent recharge; that they just received site evaluation approvals from DNREC for gravity septic systems; that there are no wetlands on the site; that the site is not located within a flood plain; and that they are proposing and requesting permission that they be allowed to locate the 30-foot buffer within the lot lines.

The Commission found that Mr. Davidson provided a written response to 99-9C of the Subdivision Ordinance, rather than respond to each line item of 99-9C.

The Commission found that Mr. Davidson provided copies of the Site Evaluations for each lot for the record.

The Commission found that there were no parties present in support of or in opposition to the subdivision.

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

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2007-12 for Ronald Sharp based upon the record and for the following reasons:

1. The Applicant is seeking 3 lots on 4.9 acres that is significantly less than the density permitted in the AR-1 District.
2. These lots are consistent with others in the immediate area.
3. The subdivision generally conforms to the requirements of the Subdivision Ordinance.
4. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 3 lots.
 - B. The Applicant shall comply with all of DelDOT's requirements.
 - C. A homeowners' association shall be established for the perpetual maintenance of the roadway, buffers, and stormwater management areas.
 - D. 30-foot Agricultural Buffers shall be installed along adjacent properties used for agricultural purposes. The Final Site Plan shall also contain a landscape plan for the buffer areas.
 - E. Street lighting shall be provided.
 - F. Entrances shall be available for the existing lots along the entrance to this subdivision. It is suggested that any access easements from these lots take into account a contribution for the maintenance of the roadway.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of Subdivision #2007-12 for Ronald Sharp for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1749 – application of **ROBIN ERTHAL AND LYNDA LAKE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (10 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.0 acre, more or less, lying at the northeast corner of Holland Glade Road (Road 271) and Kelly Drive, the entrance to Henlopen Keys' Subdivision.

The Commission found that the Applicants submitted an Exhibit Booklet on September 25, 2008 and that the Exhibit Booklet contained a listing of the project team, site maps, site data, site layout and additional renderings, site photographs, and supporting information.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Holland Glade Road will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the West Rehoboth Expansion Area; that the sewer system design did not consider redevelopment of each parcel into multi-family dwellings at a higher density; that the system design assumption is 4.0 EDU per parcel for

residential zoned parcels of one acre or more; that the proposed project exceeds system design assumptions for the area; that the proposed project has a density of 10.0 units per acre; that approval of projects at an increased density in this area has the potential to cause significant capacity issues in this drainage area and limit options for other property owners; that approval of projects at densities greater than design assumptions has a negative impact on sewer system capacity; that the Engineering Department does not support the density of 10.0 units per acre because of the overall detriment to the treatment plant; that in addition, proposals that exceed planning study assumptions increase existing deficiencies and hasten the need to perform upgrades; that further evaluation at the developer's expense is required to determine what upgrades are required to serve the proposed project; that the developer should contact the Engineering Department for additional information regarding performing the evaluation; that all required upgrades would be completed by the developer and would be at the developer's expense; that some upgrades may be cost prohibitive; that the Department recommends against exceeding 4.0 EDUs per acre; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that Parcel 337 is served with one 6-inch lateral, which is not adequate; that installation of an 8-inch lateral is required; that conformity to the North Coastal Planning Study will be required; that downstream sewer line and pump station deficiencies have been identified in some parts of the sewer system that serve these parcels; that the Department will not approve issuance of a building permit for the project until those and any additional required upgrades have been completed; that the County recently adopted new road standards; that the standards become effective January 1, 2009 and will apply to this project; and that a concept plan is required.

The Commission found, based on a letter written by Michael Tyler for the Citizens Coalition, Inc., that the Coalition opposes this application and recommends denial as presented since: 1) according to the purpose of a Conditional Use in the AR-1 District such uses are "generally of a public or semipublic character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment and site plan"; 2) the application on one acre at the requested high density of 10 units will have a considerably negative effect on the existing community which has been traditionally rural in character and further, because it is in the Environmentally Sensitive District which in the Comprehensive Plan Update states "should allow 2 homes per acre"; 3) A parcel of land nearby of nearly 190 acres owned by the State and designated as permanent open space is actively farmed; that this land acts as a buffer for the popular Junction and Breakwater Trail and contributes to the diverse yet rural character of the community; that the multi-family site application at the density requested violates this character; 4) Holland Glade Road retains a wooded view corridor and has its share of traffic created by development, shopping, Epworth Church and the Little League Fields; that adding a 10-unit development on a small parcel will create considerably more traffic and pose more risk to the health, safety and welfare of its residents and neighbors; that they realize that the property can be developed at the current rate of two units per acre, which would be acceptable; that Mrs. Patricia Fraser, who has lived on Holland Glade Road for nearly four generations, believes reducing the density on this site is critically important for the entire community; and that as the Conditional Use Ordinance notes, we request that the Commission exercise good planning judgment regarding this site and this community.

The Commission found, based on a memo written by Mable Granke, that the concerns put forward by long-time resident Mrs. Patricia Fraser and abutting land owner are valid and deserving of your consideration; that this site is zoned AR-1 and has developed as large lot single family homes, remains in active farming on land protecting the bikeway; that the proposed density on less than one acre of land with 10 units and 30 parking spaces is totally out of character with the surrounding area; that this is an environmentally sensitive area, therefore density five times the established AR-1 zoning is building to the maximum without regard to the community; that in designated environmentally sensitive areas stormwater management and drainage plans require careful consideration; that the purpose of the Conditional Use zoning as to the proposed use of land cannot be judged to be for the public good; and requesting denial of the application.

The Commission found that 11 additional letters were received in opposition to the application from Charles N. Valenti, Tom and Elaine Kennedy, Patricia A. R. Fraser, Thomas W. Resh and Jeffrey R. Meyers, Lynn R. DeCoursey, James R. Duckett, Vivian A. Fisher, William J. Raucci, John Bunce and John Hart, Frank and Nancy Starr, and Scott Kessler and that the letters in summary referenced concerns about the narrowness of Holland Glade Road, the impact on the neighborhood, the change of use from single family residential use, parking and traffic, the type of development proposing condo-type use with concentrated housing and parking in a small space, emergency evacuation concerns, noise, setbacks, drainage, the impact on wells in the area, sewer capacity, lighting, congestion, rental issues, trash, and aesthetics.

The Commission found that Robin Erthal and Lynda Lake Hertrich were present with Doug Warner and Matthew Peterson of Element and stated in their presentations and in response to questions raised by the Commission that the property was purchased as an investment; that they understood that the area was zoned for multi-family use; that they propose to build 10 multi-family units on the property; that they met with Mr. Lank and with representatives of the County Engineering Department prior to filing their application; that the buildings are proposed to appear as large single family homes with buffers; that parking is planned in the interior of the parcel between the buildings; that the zoning is MR; that the site is located in an Investment Level 3 according to the State Strategies; that the site is located in a mixed residential class according to the Comprehensive Plan; that multi-family use fits with other activities in the area; that County sewer is available; that the site is currently improved with a single family home and a storage building; that there are no wetlands on the site; that the site is not located within a Flood Plain; that all of the units are proposed to face internally with garages; that the focus of the design is landscaping; that stormwater management is proposed as underground infiltration; that the site is surrounded by trees; that access will be subject to DelDOT approval; that no change in the Level of Service is anticipated by DelDOT; that Best Management Practices will be incorporated into the development of the project; that the site has been allocated 4 EDUs; that the developers are willing to make the improvements to the sewer system; that the Exhibit Booklet contains responses to 99-9C of the Subdivision Code; that they have not calculated or compared this project to the density in the area; that they originally heard from the County Engineering Department that an additional 6 units may impact the sewer system; that they have not yet received DelDOT approval for the entrance; that there is space available for a bus stop on the site; that they have not yet met with the Fire Marshal's Office; that trash bins will be provided by

individuals; that the only signage will be an entrance sign; that minimal lighting will be provided; and that the units are proposed to not exceed 2 stories with a maximum height of 35-feet.

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

The Commission found that Will Gallen, Frank Starr, Jeremy Fisher, Sherie Kincaid, Joseph Gottschell, Scott Kessler, Patricia Rust Frasier, and John Futcher were present in opposition to this application and expressed concerns that trees cannot be planted in a right-of-way easement; that the parcel has already been divided into two lots; noise; traffic; the density proposed; hazardous conditions; the impact on views; the impact on water wells; power surges and failures; that the use is not compatible; that City of Rehoboth wells are already impacting private wells; that a precedent may be set; that the area is predominantly single family dwellings and agriculture; that the County Council saw fit in the approval of Canal Point to require that units adjacent to Henlopen Keys be single family units, not multi-family units; that farms in the area have been dedicated to agricultural preservation; that the trees on the site plan are actually located on a neighboring property; that central water is available from the City of Rehoboth; and that Mr. Futcher owns the referenced 27-foot wide right-of-way easement.

The Commission found that Mr. Warner responded to some of the concerns and advised the Commission that the Applicant is willing to landscape the 27-foot right-of-way easement to improve landscaping in the area; that they are proposing a community well to serve the project, not 10 individual wells; and that The Grande, Canal Point, and Rehoboth Crossing are projects that contain multi-family units which are located in close proximity to this site.

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

Mr. Johnson stated that he would move that the Commission recommend denial of C/U #1749 for Robin Erthal and Lynda Lake to consider the Conditional Use of land for multi-family dwelling structures (10 units) and 18 parking spaces on a 1-acre parcel based upon the record and for the following reasons:

- 1) The property that is the subject of this application is not suitable for the type of multi-family development that has been proposed under the Conditional Use.
- 2) The proposed 10-unit multi-family project is out of character with the adjoining community. The surrounding properties in the immediate vicinity of the project consist primarily of single family homes.
- 3) The proposed density of 10.31 units/acre is not suitable for this 1-acre parcel and its AR-1 zoning, and is out of character for the immediate area. Other projects in the vicinity are approximately 4 units/acre, and have an existing zoning such as Medium Density Residential, General Residential, or High Density Residential that permit such higher density, unlike the AR-1 density for this property.
- 4) The Sussex County Engineering Department is opposed to the density proposed and County sewer is allocated to only 4-EDUs for this 1-acre parcel.

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

C/U #1750 – application of **JOHN GILMAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for athletic fields and related parking to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.25 acres, more or less, lying east of Pyle Center Road (Route 20), 800 feet northwest of Roxana Road (Route 17).

The Commission found that on September 29, 2008 the Applicant provided an Exhibit Booklet and that the Exhibit Booklet contained an overview site plan, references to compliance with the Comprehensive Plan, an introduction, a revised Site Evaluation Report, a wetlands delineation approval letter, a copy of the deed to the property, a modified business plan, an interior layout of the building, a description of the fitness equipment, a overview map, proposed Findings of Fact, and an affidavit from Laf Erickson, Soil Scientist.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “B” of Road 382 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Roxana Planning Area; that an on-site septic system and portable toilets are proposed; that the proposed athletic fields are not in an area where the County has a schedule to provide sewer service at this time; that when the County provides sewer service, it is required that the on-site system and portable toilets be abandoned and that a connection be made to the central sewer system; and that a concept plan is not required.

The Commission found that letters in opposition to this application have been received from Paul A. Trionfo, William Wilgus, and Craig and Aneta Spilman and that the letters expressed concerns referencing that the use is not an appropriate use of the property at this location; that the adjacent properties are residential and agricultural in use; that the proposed use would interject a substantial commercial enterprise into the middle of an area that has neither the desire or the need for it; that the area is a quiet residential community; that the Applicant has already developed the property for commercial use before applying for approval; that the Roxana area is already well served by several terrific community resources, i.e. the Pyle Center Sports Complex, a Little League Soccer Facility, a new high school with state of the art athletic fields, and a full service fitness center in Ocean View; that the request does not foster or is consistent with Roxana’s community atmosphere or environment; that Roxana is a small close knit unincorporated residential town that does not enjoy the protection of nearby incorporated towns when it comes to development; that Roxana is characterized by 3 churches, a Volunteer Fire Company, private homes and small working farms; that the use will produce significantly increased traffic on an already overtaxed two land Route 20; that the proposed parking lot is evidence of the amount of daily traffic that will enter and exit this business each day; that the use exits onto a sharp curve in the road; that runoff is a major concern; that the Applicant deforested

the parcel and built the pole building home and large amounts of debris filled the tax ditch; that there are State and County records of cited violations by officials for filling these ditches with tree stumps, tree limbs, old cinder blocks, dirt and construction debris; that the Applicant encroached onto adjacent property during the deforestation and took out mature trees without approval from the adjoining property owner; that the proposed fitness center does not fit Roxana and this neighborhood, nor is there a community need; that there are many commercial areas nearby in which this business venture will fit well; and requesting denial of the application.

The Commission found that John Gilman was present with John Sergovic, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that a previous application in 2003 had been filed for a 40,000 square foot building (post office distribution center); that the Commission recommended denial of that application and that the Applicant withdrew the application before the County Council scheduled meeting; that the 2003 Comprehensive Plan references that the site is located in a Rural Community District; that the Applicant is a fitness expert and plans to provide fitness training on the site; that the current Comprehensive Plan Update references that the site is located in a Low Density Area and that non-residential uses would permit service uses; that the State is upgrading Route 20 and that service businesses are developing along Route 20; that a fitness center is a service business; that the proposed post office distribution center is being located on another site in Roxana; that the County recently approved a professional center south of Roxana; that due to the condition of the soils on the land the site is only suitable for 3 dwellings; that the fitness center with apartment are proposed in the front portion of the site and the playing fields are proposed to the rear; that the intent is to serve the adult community since children utilize the little league fields and soccer facility; that summer camps for youth instruction in football, soccer and softball are proposed; that 50-parking spaces are proposed; that the membership of the fitness center will be limited since the first phase of septic is based upon an 1,800 gallon capacity septic system; that the fitness center will not generate much traffic or parking needs; that porta-toilets are not intended at this time due to State regulations; that a waiver would be needed for the use of porta-toilets; that restrooms will be added to the fitness center building with access from outside; that no lighting is proposed on the athletic fields; that no alcoholic beverages will be permitted; that the hours of operation will be from 6:00 a.m. to 9:00 p.m.; that a 20-foot wide buffer is proposed around the perimeter of the site; that white pines are proposed to be planted in the buffer; that 1,000 plants have already been planted; that 80% of his clients are anticipated to be from ages 42 to 62; that he hopes to serve some of the students from Indian River High School; that there are 2 similar fitness gyms in close proximity, one being 8 miles away and the other 5 miles away; that the project will be phased; that the athletic fields could be utilized from dusk to dawn; that the site plan for the athletic fields are flexible enough to allow movement of fields for different sports; that the shell of the building is constructed; that a condo-type apartment is proposed on the second floor; that the pole type construction of the building is being built to commercial codes in anticipation of approval and will allow for the residential unit; that photographs have been taken of businesses within ½ mile of the site and a listing of the business uses is attached; that a 32 square foot indirectly illuminated sign is proposed; that there will be no lighting on the athletic fields; that the parking lot for the fields will be crusher run; that the septic system has been installed for the first phase of the project; that a linen service may be hired to eliminate the need for washing towels; that the front entrance to the building will have a lounge and reception area with a wet bar for juices and health foods; that minimal security is

needed; that there will not be any advertising on the fences on the athletic fields; that the number of employees will be based on the need; that the maximum number of employees will not exceed ten (10); that the Applicant will offer personal training sessions; that the septic system will be monitored to control membership in the fitness center; that they may have a concession facility near the athletic fields; and that tournaments may be held on weekends when the site is fully developed.

The Commission found that the Applicant submitted an additional Exhibit Booklet containing a list of business uses in the area, a map, and photographs of some of the businesses.

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

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

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

C/Z #1664 – application of **HKS 3, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying southeast of Piney Neck Road (Road 336), approximately 400 feet southwest of Hudson Road (Road 336A), to be located on 79.30 acres, more or less.

The Commission found that on September 25, 2008 the Applicants provided an Exhibit Booklet that contained references to the project team, site data, an MPHU acceptance letter, an MPHU booklet, an Environmental Assessment and Public Facility Evaluation Report, a 99-9C response letter, a willing to serve letter from Tidewater Utilities, Inc. for water service, a wetlands delineation report, a Phase I Environmental Site Assessment Summary, copies of the PLUS application, comments and responses, and Technical Advisory Committee comments.

Mr. Lank advised the Commission that the Technical Advisory Committee comments and responses were requested to be provided no later than June 20, 2008.

Mr. Lank advised the Commission that according to DelDOT, the department has reviewed the scope of study for the project traffic impact study and that the scope of study letter is acceptable as submitted.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Dagsboro Frankford Sanitary Sewer District; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$5,828.00 per EDU; that sewer service has not been extended to the area at this time; that conformity to the Dagsboro/Frankford Planning Study will be required; that connection to the sewer system is mandatory; that the project is in a recent expansion area and that sanitary sewer service has not been extended to the parcels; that the County does not have a schedule to extend sewer service; that the developer will be required to construct a regional

pumping station and forcemain to the existing treatment plant; that an opportunity exists to share a portion of the forcemain cost with a nearby project; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity at the treatment plant; that the County requires design and construction of the collection and transmission system to meet County Engineering requirements and procedures; that the County Engineer must approve the connection points; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; that all cost associated with extending sewer service will be the sole responsibility of the developer; that the County recently adopted new road standards; and that these standards become effective January 1, 2009 and will apply to this project.

The Commission found that on March 18, 2008 the Sussex County Council approved the project to participate in the MPHU program.

The Commission found that Doug Warner and Matthew Peterson of Element were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the Applicants are applying for MR-RPC and providing moderate income housing based on the MPHU Program; that according to the Comprehensive Plan Update the site is located in an Environmentally Sensitive Developing Area; that the project was accepted into the MPHU Program by the Sussex County Council on March 18, 2008; that 27 of the 150 units will be MPHU units; that the units will be scattered throughout the project; that all levels of pricing meet the MPHU guidelines; that responses have been provided in the Exhibit Booklet in reference to 99-9C of the Subdivision Code; that an Environmental Assessment Report is also in the Exhibit Booklet; that the site contains farmland, woodlands, and wetlands; that the net development area equals 36.9 acres of the 79.3 acre property and excludes all right-of-ways and wetlands; that the rezoning could allow up to 214 units, but they are only applying for 150 units; that the units will be mixed with single-family dwellings, townhouse units, and duplex units; that amenities will be centrally located; that sidewalks will be on both sides of all streets; that streets will be private and constructed to County specifications; that 236 parking spaces are required and 262 are proposed; that the project will be served by one entrance; that the stormwater management facilities will have a tidal outfall; that the facility will be designed with swales and bio-swales and will be designed and maintained using Best Management Practices; that they will comply with all requirements of the Sussex Conservation District; that County sewer is available and that they will comply with all requirements of the Engineering Department; that central water will be provided by Tidewater Utilities, Inc.; that amenities will include both passive and active recreational areas; that the recreational amenities have not yet been determined due to the MPHU Program; that the Exhibit Booklet contains Homeowners Association documents and PLUS comments and responses; that the site is close to the Town of Dagsboro and the communities of The Landings at Pepper Creek, Sea Cliffs, Pepper Creek Point, General Green, and others; that the MPHU units take up 18% of the units in the project and include 5 single-family homes, 9 townhouse units, 4 duplex units, and 9 condominium units; that phasing will include all of the unit types in Phase 1; that Pepper Creek is considered a taxable ditch and will not be impacted by the project; that recreational uses may include athletic fields and possibly a pool; that wetlands boundaries can be marked with signage; that the closest home in the project is approximately 240-feet from Piney Neck Road; that adequate space exist at the entrance to provide a bus stop; that the density equals 4.1 unit per acre; that there will be no disturbances

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within 50-feet of any wetlands; that the elevation of uplands is 9-feet about the wetlands line; and that the final response from PLUS has not been received.

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

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

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

Meeting adjourned at 9:30 p.m.