

MINUTES OF THE REGULAR MEETING OF OCCTOBER 10, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 10, 2013, 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. I.G. Burton, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. Shane Abbott – Assistant Director.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of September 26, 2013 as amended. Motion carried 5 – 0.

OLD BUSINESS

CONDITIONAL USE #1969 – MELVIN L. JOSEPH CONSTRUCTION CO., INC.

Application of **MELVIN L. JOSEPH CONSTRUCTION CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for excavation of a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.2 acres, more or less, lying east of Powell Farm Road (Road 365) approximately 0.5 mile north of Burbage Road (Road 353) (Tax Map I.D. #1-34-11.00-207.00).

The Chairman referred back to this application, which has been deferred since September 26, 2013.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1969 for M. L. Joseph Construction Co., Inc. for the expansion of an existing borrow pit based upon the record made at the public hearing and for the following reasons:

- 1) This application is for a 7.2 acre expansion of an existing borrow pit.
- 2) A need exists in the area for dirt, sand and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
- 3) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
- 4) As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.
- 5) Vegetated buffers will be established along the boundaries of this land and lands of other ownership.

- 6) The site is adjacent to an existing active borrow pit owned and operated by the Applicant. The existing pit pre-dates zoning, and is permitted as a legal non-conforming use. The Applicant has committed to reclaiming the existing pit area as part of this expansion, even though that is not legally required of the Applicant for this non-conforming use.
- 7) This recommendation for approval is subject to the following conditions and stipulations:
 - A. No materials shall be brought from off the site for processing, mixing or similar purposes.
 - B. Water or a water truck shall be available to control dust from road traffic when conditions require.
 - C. The only entrance to the pit shall be from Burbage Road. There shall not be any access via Powell Farm Road, and the portion of the site that fronts on Powell Farm Road shall be fenced or gated to prevent access.
 - D. Any roadway and entrance improvements required by DeIDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 - E. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 12:00 Noon on Saturdays. No Sunday hours shall be permitted.
 - F. No materials shall be stored on any access roads or within any buffer areas.
 - G. The access road shall be on the eastern edge of the property, as shown on the site plan.
 - H. No fuel shall be stored on-site.
 - I. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 - J. The borrow pit shall have 2:1 slopes and the slopes shall be seeded and planted to control erosion.
 - K. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
 - L. As proffered by the Applicant, the existing non-conforming borrow pit, known as the “Gibson Pit”, shall be reclaimed. The reclamation plan for the “Gibson Pit” shall be included with the reclamation plans for this Conditional Use.
 - M. The Applicant shall comply with all State and County erosion and sediment control regulations.
 - N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.
 - O. Every 5 years after the start of excavation, the Office of Planning and Zoning shall inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify their compliance with all regulations.
 - P. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
 - Q. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet

- from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
- R. The area of the old pit on the site that intrudes into the 50 foot buffer area shall be filled and landscaped to form part of the continuous buffer around the perimeter of the site.
 - S. As proffered by the Applicant, the Conditional Use shall expire 40 years from the date the Ordinance is adopted, if and when, by the County Council.
 - T. As proffered by the Applicant, after 20 years, the property owner shall complete at its expense an environmental resources and impact study, as that phrase is defined by DNREC or its successor agency. Upon confirmation by DNREC of the owner's compliance with the then-existing regulations, the permit shall continue for the remaining 20 year period that the Conditional Use is valid.
 - U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried 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.

Mr. Robertson reminded the Commission that the Commission has tried to maintain consistent conditions of approval on borrow pits, and that these recommended conditions of approval are consistent with other approved borrow pit applications.

SUBDIVISION #2013 – 8 – JACK LINGO ASSET MANAGEMENT, LLC

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, Sussex County, by dividing 34.65 acres into 97 lots (Environmentally Sensitive Developing District Overlay Zone) located south of Road 275 (Warrington Road) approximately 650 feet west of Old Landing Road (Road 274) (Tax Map 3-34-12.00-122.03).

The Chairman referred back to this application, which has been deferred since September 26, 2013.

The Commission discussed this application.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2013-8, for Jack Lingo Asset Management, LLC, based upon the record made during the public hearing and for the following reasons:

- 1) The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects orderly growth of the County. The proposed subdivision is also within the County's Environmentally Sensitive Developing Area, and it is in an area that has developed with other similar single family communities.
- 2) As a cluster subdivision in the Environmentally Sensitive Developing Area, the project is permitted to have minimum lot sizes of 7,500 square feet. The 34.65 acre subdivision has

a proposed density of 2.45 units per acre. This includes 16 bonus lots under the County's Bonus Density Ordinance.

- 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.
- 5) The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
- 6) Central water and sewer will be provided.
- 7) The Applicant has addressed the superior design requirements of a cluster subdivision by voluntarily providing active and passive open space that includes an archaeological site; by providing amenities including a pool and pool house; by designing the project so that all lots have rear yards that face open space or buffer areas; and by providing sidewalks on both sides of all streets.
- 8) This preliminary approval is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 85. This includes 16 bonus lots, subject to the bonus density fee requirements contained in Section 115-25F of the Zoning Code.
 - B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The development shall be served by central water and sewer.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. 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.
 - E. A 20-foot forested or landscaped buffer shall be installed along the entire perimeter of the project. The Final Site Plan shall contain a landscape plan for these areas.
 - F. As stated by the Applicant, recreation areas shall be completed no later than the issuance of the 50th Building Permit for the project.
 - G. All entrances and roadway improvements shall be constructed in accordance with all of DelDOTs requirements.
 - H. Sidewalks shall be installed on both sides of all streets.
 - I. Street design shall meet or exceed Sussex County standards.
 - J. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - K. The location for a school bus stop shall be coordinated with the local school district's transportation manager. The location of the bus stop shall be shown on the Final Site Plan.
 - L. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.
 - M. A revised preliminary site plan depicting these conditions of approval or noting them shall be submitted to the Office of Planning and Zoning for approval.

N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously that Subdivision 2013-8 be approved as a preliminary for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

CONDITIONAL USE #1970 – MATTHEW A. CARR

Application of **MATTHEW A. CARR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.033 acres, more or less, lying east of Sand Hill Road (Road 319) and 0.3 mile south of Wilson Road (Road 244)(Tax Map I.D. 1-35-10.00-56.03).

The Commission found that the Applicant provided a survey of the site depicting the location of an existing metal building and approved driveway location.

The Commission found that DelDOT provided comments in the form of a memorandum, dated July 23, 2013, which references that a traffic impact study is not recommended and that the current Level of Service “B” of Sandhill Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated October 7, 2013, which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that a petition, containing three signatures, was received on October 8, 2013 in opposition to this application and referenced that the opposition is concerned that the land is currently zoned AR-1 Agricultural Residential; that the parcel is surrounded by farmed land, family homes, and parceled lots; that a change to permit an auto repair shop would adversely impact the adjacent properties as well as the entire area; that the use is an inappropriate use of land in an Agricultural Residential area and is incompatible with the rest of the neighborhood; that the rezoning would set a precedent for future requests; that the purchase of the adjoining lot would allow for expansion of the facility; that the use would alter the character of the neighborhood; that the use would negatively affect surrounding property values; noise pollution; environmental pollution; improper storage of waste materials: used rags, solvents, used oil, used antifreeze, waste wash water, hazardous chemicals, etc.; that the use poses a threat to the health and safety of the residents of the neighborhood; that the use could generate an excessive number of parked and inoperable vehicles, offensive odor emissions, and fire hazards.

The Commission found that Matthew Carr was present and stated in this presentation and in response to questions raised by the Commission that the site was previously used as a sign business, Landford Sign Company; that he does not anticipate any difference in activities; that he purchased the property in January 2013; that septic already exists on the property; that he will comply with all waste regulations, and that he has no objection to a condition requiring the use of a licensed waste hauler; that he currently is working for a dealership and is proposing to work part time doing mechanical work on vehicles; he is will be disposing of materials and fluids properly; that he is not in business on the site at this time; that the entrance is shown on the site plan; that customer parking is proposed in front of the existing building; that if a farmer approached him and asked for repair of a piece of farm equipment, he would assist; that the existing building has a concrete floor and is insulated; that he intends to perform all repair work indoors; that there are no immediate neighbors; that he does not anticipate any noise issues; that he is proposing to start the business, part-time, with hours of 4:00 p.m. through 7:00 p.m. Monday through Friday and from 8:00 a.m. through 12:00 Noon on Saturdays; that he anticipates operating part-time for one or two years; that his full-time hours will be from 8:00 a.m. through 5:00 p.m.; that he only intends to perform auto repair work, no retail; that he has no intent to store more than 4 vehicles outside, other than personal vehicles; that he can store 5 vehicles inside of the shop; that no towing service is proposed; that vehicles waiting for repair can be stored behind the building; that he may perform some welding and fabrication; that the building is now 55 feet long and includes his residence; that he has no immediate need for signage, but he may want signage in the future, and that he would like to be able to light the sign; that pole lights already exists on the site; that the sign post for the original sign shop still exists; that he also owns Lot 1 immediately adjacent to this lot, and plans to build a dwelling on that lot in the future; and that this application is for an auto repair shop, not an auto body shop.

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

The Commission found that Patricia Huff was present in opposition to this application and expressed concerns that she lives approximately 400 feet from the site across Sandhill Road; that four residential lots have been created across from the site; that the Lankford home is located in the wooded area behind the site and is now for sale; that Lot 3, adjacent to the site, is also for sale and that Applicant, if he purchases the property, could expand his business further; that property values could be negatively impacted; that she is concerned about signage; that she has environmental concerns about waste oils, fluids, greases, etc.; that the site is located in a rural area and would be out of character with the area.

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

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

CHANGE OF ZONE #1736 – JUDITH B. DEMENO, TRUSTEE

Application of **JUDITH B. DEMENO, TRUSTEE** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.24 acres, more or less, lying north of Route 9, 1,800 feet west of Road 281 (Josephs Road) and 1,400 feet east of Road 290 (Cool Spring Road)(Tax Map I.D. 3-34-10.00-199.00).

The Commission found that the Applicant submitted a survey/site plan and an Exhibit Booklet for consideration, and that the Exhibit Booklet contains a copy of the Application form; a copy of the deed to the property; a copy of Beers Atlas for the area; a copy of an information sheet and map for Conditional Use No. 229, approved August 27, 1974 for a gift shop, and Conditional Use No. 245, approved December 3, 1974 for an addition to the gift shop for this site; a copy of the septic permit for the site, dated June 19, 2002; a copy of the Service Level Evaluation Request, map, and Support Facilities Report from DelDOT, dated July 23, 2013; a map of surrounding commercial properties; a USGS map of the area; a soils classification map of the area; a copy of the State Strategies and Investment Levels Map depicting the site in an Investment Level 4 and just outside of an Investment Level 3; a copy of the PLUS comments, dated September 25, 2013, with responses; a letter from Community Bank referencing that Conditional Use applications can be problematic and that banks prefer that zoning be in place prior to loan settlement; and suggested proposed Findings of Fact.

The Commission found that DelDOT provided comments in the form of a memorandum on July 23, 2013 which references that a traffic impact study is not recommended, and that the current Level of Service “E” of Route 9 will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated October 4, 2013, which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Judy Demeno was present with Gene Bayard, Esquire with Morris James Wilson Halbrook & Bayard, LLP, and that they stated in their presentation and in response to questions raised by the Commission that according to the State Strategies Map the site is located in an Investment Level 4 area, just outside of an Investment Level 3 area; that the site has been used historically as a business use since 1974 as York’s Antiques and York’s Refinishing; that the character and trend of development along Route 9 in this area has been going toward business and commercial uses; that Ms. Demeno purchased the property from Harlan York in 2005; that she has been in the retail clothing business for over 25 years; that the site contains approximately 1.2 acres of land and is improved by a farmhouse, a garage, a garage with a second story, and a clothing shop; that all of the buildings have been used for the previous business uses; that she is proposing to lease the home for a day spa; that the property has been fully developed; that there are no wetlands on the property; that she sent letters to 6 or 8

neighbors and has not received any responses; that there should not be any negative impact on the neighborhood; that there should not be any negative impact on property values; that Tab 4 of the Exhibit Booklet contains references to the approval for the gift shop (Conditional Use No. 229) and the expansion or addition to the gift shop (Conditional Use No. 245); that the Exhibit Booklet contains a letter from Community Bank which references conditional uses v. rezoning; that they disagree with the Investment Level 3 and 4 boundaries on the Strategies Map based on the amount of commercial and business development that has existed along Route 9; that the site is area surrounding the site includes several, if not many, business and commercial uses, i.e. computer repair shop, appliance store, antique stores, Moose Lodge, roofing company, landscaping, fencing, and building supply business; model home sales office, gun shop, commercial dog kennels, furniture repair, cabinet shop, soup kitchen, etc., a mix of commercial and conditional use sites; that B-1 Neighborhood Business zoning is permitted in Low Density Areas according to the Comprehensive Land Use Plan; that it appears that the PLUS comments have ignored the Comprehensive Land Use Plan and the trend of development in the area; that the use is consistent with the Comprehensive Land Use Plan; that this property has been used commercially for 40 years; that the existing clothing business is being moved to Milford; that there is not intent to subdivide the property; and that the property is not for sale, it is intended to be leased for the day spa.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of Change of Zone No. 1736 for Judith B. Demeno, Trustee, for a change in zone from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

- 1) The site is appropriate for a change of zone to B-1 Neighborhood Business. It is located on the north side of Route 9, which is appropriate for small businesses that are allowed under the B-1 zoning.
- 2) The B-1 rezoning is consistent with the orderly growth of the County. There are a number of businesses and commercial uses located in the vicinity along Route 9, including several properties that are zoned C-1 General Commercial.
- 3) The change of zoning will not adversely affect neighboring or adjacent properties or nearby communities.
- 4) Although the State has objected based on the location of the property being in an Investment Level 4 area, the site is almost adjacent to an Investment Level 3, and the Investment Level 4 designation does not appear to take into account development trends along Route 9.
- 5) The rezoning is consistent with the historical use of the property, including a gift shop approved as a conditional use in 1974.
- 6) The change of zone is consistent with the Sussex County Comprehensive Land Use Plan.
- 7) Site Plan approval for any use of the property will be subject to the review and approval of the Planning and Zoning Commission.

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

SUBDIVISION #2013-5 – GULFSTREAM GLEN COVE, LLC

Application of **GULFSTREAM GLEN COVE, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 8.84 acres into 17 lots, (Environmentally Sensitive Developing District Overlay Zone) and a waiver from the forested buffer requirements, located 500 feet west of the intersection of Road 352 (Windmill Road) and Road 353 (Burbage Road)(Tax Map I.D. 1-34-12.00-374.01).

Mr. Abbott advised the Commission that the Technical Advisory Committee Review of June 14, 2013 for this application is a part of the record; and that the restrictive covenants were submitted on May 24, 2013.

Mr. Robertson advised the Commission that he has reviewed the restrictive covenants and has found them to be acceptable.

The Commission found based on written comments received from Tom Ford, an adjoining property owner, that he has concerns about access to Lots 2 and 3 of the strip lots along the County Road and request that the street design of the entry road maintain clear access to Lots 2 and 3 for driveway improvements such as rolled curbing if applicable; and that if reference to the 30-foot tax ditch easement, the preliminary plan inaccurately depicts the easement from the boundary line whereas it should be from the top of the ditch bank and that this affects the lot size throughout the site plan.

Ronald Sutton, P.E. with Civil Engineering Associates and Bo Harris, developer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this proposal is for 17 lots with an Environmentally Sensitive Developing District Overlay cluster subdivision; that the site is zoned AR-1 and contains approximately 8.84 acres; that the site is located in the Town of Millville's short term annexation area; that the developer decided to build the project within the County's jurisdiction; that according to the State Strategies Map for Spending, the site is located in an Investment Level 2; that the site is bordered by a Tax Ditch on 3 sides; that the tax ditch easement has been reduced from 40 feet to 30 feet by a court order; that the developer is requesting a waiver from the forested buffer requirements due to the tax ditch easement; that the buffer area is proposed to be a grass area since the DNREC Drainage Section does not want any tree plantings within their easement area; that the site contains 2.97 acres or 34% open space; that the intent of the subject site was for future development; that the project will be served by County sewer and central water will be provided by Tidewater Utilities; that the lots range in size from 8,655 square feet to 14, 661 square feet; that the Code permits the minimum lot size to be 7,500 square feet; that the proposed recreation will have a tot lot and benches; that the developer will comply with all storm water management regulations; that all DNREC requirements will be met; that the project will be constructed following the existing terrain of the property; that there is a small pocket of wetlands

on the site that will not be disturbed; that the site is not located in a flood plain; that there are no rare or endangered species on the site; that buffers from the wetlands will range from 10 to 24 feet; that there are no known historical features on the property; that the developer will retain the forest lands on the west side of the site; that the forest lands will be cleared for the siting of the homes and streets in the eastern section of the site; that a small buffer will be provided; that sidewalks are proposed on one side of the streets; that the developer has met with DeIDOT and they found the entrance location to be acceptable and that a traffic impact study was not required due to the number of lots proposed; that the project was not reviewed by PLUS due to the number of lots proposed; that the project will not have any negative impacts on schools, roads, waterways, or the surrounding area; that the requirements of Section 99-9C have been addressed in the presentation; that the project was originally intended to be a cluster subdivision however the site did not meet the minimum 10 acres requirement and was readvertised as an Environmentally Sensitive Developing District Overlay Zone application; that a Phase 1 Environmental Assessment Report was not prepared since the project is less than 50 lots; that the restrictive covenants have been submitted; that the proposed homes will be between 2,000 square feet and 4,000 square feet with attached garages; that the homes will be priced in the \$400,000 to \$500,000 range and will be marketed towards retirees or second home owners; that the tax ditch needs to be cleaned out and straightened; that the tax ditch flows in 2 directions; that the site is also surrounded by single-family residences on the other side of the tax ditch; that by cleaning the ditch, drainage in the area will improve; that the existing culvert at the entrance is sized properly; that the applicant has met with the Tax Ditch Manager and that the cleaning will consist of dipping and hauling; that the ditch was cleaned approximately 15 years ago; that the developer will try to maintain as many trees as possible; that the ends of the culvert have deteriorated and need to be replaced; that the average buffer from the wetlands will be around 15 feet; that a wetlands delineation has been performed; that the wetlands on the site are non-tidal; that the forested buffer cannot be planted within the tax ditch easement; that a grass buffer can be provided; that if a forested buffer is required; the number of lots will be reduced; that there will not be any disturbance to the wetlands; that the developer will provide access to Lots 2 and 3 that are owned by Mr. Ford; that the surrounding lots are large lots that were created prior to central sewer becoming available in the area; that the proposed homes would be 100 to 130 feet from the existing homes in the area; and that no new trees will be planted in the tax ditch easement.

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

Eric Huovinen, Rhett Dumont, Paul Schmer, Brian Thomas and Mark McCormcik, adjoining property owners, were present in opposition to this application and advised the Commission that when their lots were developed, the developers had to follow all regulations; that there should be a forested buffer required; that the project could negatively impact surrounding property values; that all homes in the area a minimum of 3,200 square feet with attached garages; that the adjoining lots are larger lots and the smaller lots will not be in character with the area; that the project will require tree removal and possible grade changes; that there will be impacts to the wetlands in the area; that an architectural review committee should be required; that the tax ditch has been in place since the 1950's; that the owners were not notified of the reduction of the tax ditch; that the sidewalks will be located within the right of ways and will cause more run-off; that the area is full of full time residents; that there are numerous wells in the area that could be

impacted; questioned whether or not a hydrology study has been completed; expressed concerns about impervious impacts to surrounding properties; that the distance between homes will be closer than the adjoining properties; that mounds of dirt are in the area due to the amount of construction in the area; that trees have already been cut down; that the area has a lot of wetlands; that there could be negative impacts to Whites Creek from fertilizers used on lawns; that there are drainage problems in the area; and expressed concerns about the proposed density.

Mr. Sutton responded that a hydrology study was not conducted; that Tidewater Utilities will provide central water to the project; that Tidewater's well is from a different aquifer; and that the closet building restriction line will be at least 100 feet from any of the existing dwellings.

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

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to defer action and to leave the record open for the applicant to submit a revised preliminary plan addressing the concerns of the tax ditch authority in regards to the tax ditch easement and the forested buffer requirement and after announcement upon receipt of this to leave the record open for 15 days for written comments. Motion carried 5 – 0.

OTHER BUSINESS

Ship Shape Marine CU #1952 Site Plan – Road 473

Mr. Abbott advised the Commission that this is a site plan for a boat storage facility located on 2.36 acres; that the site is zoned AR-1 Agricultural Residential and this conditional use was approved on March 19, 2013 with 13 conditions; that the conditions of approval are noted on the site plan; that ingress/egress to the site is located off of Messick Road and not Route 20; that the setbacks meet the requirements of the zoning code; that no new improvements are proposed; that all agency approvals have been received; that final site plan approval may be granted; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with final site plan approval being subject to the staff receiving a revised final site plan indicating that the fence is a minimum of 7 feet in height and the location of the gate being shown on the final site plan. Motion carried 5 – 0.

Americana Bayside MR/RPC Final Site Plan – Sea Grass Bend

Mr. Abbott advised the Commission that this is the final site plan for the Sea Grass Bend portion of the Americana Bayside MR/RPC; that the Commission granted preliminary site plan for 55 units on August 23, 2012; that the 13 conditions of approval for CZ #1701 are noted on the site plan; that the final site plan is for 55 units broken down as follows: 14 single-family homes, 23 townhome style units and 18 duplex style units; that the proposed setbacks for the single-family

and duplex units are 20 feet front yards, 10 feet side yards and 5 feet rear yards; that the setbacks for the townhome units are 20 feet front and side yards and 15 feet rear yards; that there is a 50 foot buffer from the tidal wetlands and a voluntary 25 foot buffer from the non-tidal wetlands; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

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

**Americana Bayside MR/RPC
Preliminary Site Plan – Village C – Phase 1**

Mr. Abbott advised the Commission that this is a preliminary site plan for 135 units located on 57.61 acres for this section; that 104 single-family patio homes, 19 single-family village homes and 12 single-family duplex homes are proposed; that 11 single-family homes are on lots that have a minimum lot area of 6,000 square feet with a minimum lot width of 60 feet; that the Board of Adjustment granted a variance for this on July 12, 2004; that 93 single-family patio homes are on lots with a minimum lot area of 5,000 square feet with a minimum lot width of 40 feet; that the Board of Adjustment granted a variance for this on September 9, 2013; that since the project is a residential planned community, the applicants are requesting 5 foot front and side yard setbacks and 10 foot rear yard setbacks; that there is a 20 foot garage setback; that the project will be served by county sewer and Tidewater Utilities will provide central water; that since the project is a residential planned community, only preliminary approval can be considered; that final approval would be subject to the review and approval of the Commission upon receipt of all agency approvals; and that the Commission was previously provided a copy of the site plan.

Jim Fuqua, Attorney, advised the Commission that this is a new phase for this project; that there is a market demand for traditional neighborhoods therefore the smaller setback requests; that the design will enable to project to be developed with smaller streetscapes; that the actual dwellings will be 15 feet from the right of way with 10 foot porches setting back 5 feet from the right of ways; and that there are other areas within the project that have 5 foot front and side yard setbacks.

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

**Coastal Way Exchange, LLC
Preliminary Commercial Site Plan – Route One and Road 268**

Mr. Abbott advised the Commission that this a commercial site plan for 5,000 square feet of retail spaces located on 17,623 square feet; that the site is zoned C-1 General Commercial; that the setbacks meet the requirements of the zoning code; that the site plan indicates that the maximum building height is 42 feet; that ingress/regress to the site is off of Road 268; that 25 parking spaces would be required however the Board of Adjustment granted a variance for the

number of parking spaces that are required; that 19 spaces are required and provided per the approved variance; that the Board of Adjustment also granted a variance from the 20 foot highway corridor overlay zone buffer; that the variances are now valid until December 14, 2014 since the Board of Adjustment granted a one-year time extension on October 7, 2013; that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the project will be served by an on-site well; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson expressed concerns about the variances being granted; that there was 1 business on the site and that there are now essentially 4 businesses on the site.

David Hutt, Attorney, advised the Commission that the DelDOT entrance plan approval has been submitted to the staff and that the entrance plan does require sidewalks that will be located within the right of way.

Motion by Mr. Ross, seconded by Mr. Smith and carried 4 votes to 1, with Mr. Johnson opposed, to approve the site plan as submitted as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 1.

**Frank, Jr. and Barbara A. Azzollini
2 Parcels & 50' Easement – Road 562**

Mr. Abbott advised the Commission that this is a request to subdivide an 8.20 acre parcel into 2 parcels with access from a proposed 50 foot easement; that the parcels will contain 4.20 acres and 4.0 acres; that the owner is proposing to create the 50 foot easement; that the proposed easement will be located inside an 80 foot tax ditch easement; that in speaking with the DNREC Drainage Section, they advised the staff that they will not permit an access easement to be located within the tax ditch easement; that they did advise that the owners may apply to have the tax ditch easement reduced by a court order; that an aerial photograph does not depict a road, lane, etc. where the proposed easement would be located; that the request should be denied as submitted, and required to go through the major subdivision process; and that the Commission was previously provide a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to deny the request as submitted. Motion carried 5 – 0.

**Subdivision #2004 – 8 – Spring Breeze Associates
Revised Preliminary – Spring Breeze 1**

Mr. Abbott advised the Commission that this is a revised preliminary plan for a 176-lot cluster subdivision; that this application received final record plan approval on December 12, 2007 and was recorded on January 11, 2008; that substantial construction must commence by January 1, 2016 under the time extension ordinance; that the revised plan is still for 176 lots; that on the revised plan, 2 cul-de-sac streets have been eliminated and lots have been added along Long

Palm Way and the clubhouse and pool have been relocated to a different area along Barefoot Circle; that the proposed on-site sewer and treatment disposal area has been removed and Artesian will now provide sewer treatment at an off-site facility; that the reconfiguration of the lots and open space will result in a decrease of road impervious area, an increase in open space and an increase in woodland preservation; that the streets are designed to meet current County specifications; that sidewalks are provided on both sides of all streets; that the Commission has to determine if the revisions warrant a new public hearing; and that the Commission was previously provided a copy of the approved plan and a copy of the revised plan.

Zach Crouch, P.E. with Davis, Bowen and Friedel, Inc. advised the Commission that the revised preliminary plan eliminates the need for the on-site wastewater disposal system; that by eliminating the on-site system, 18 acres of woodlands will be preserved; that the overall concept is still the same; and that wastewater disposal will be treated at an off-site system.

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

Lewes Transit Center Preliminary Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a preliminary/concept plan for the State of Delaware Transit Center located on 6.73 acres; that the site is zoned C-1 General Commercial; that 2 buildings totaling 15,692 square feet are proposed; that the setbacks meet the requirements of the zoning code; that 263 total parking spaces are proposed; that there are 2 fuel storage tanks on the site; that there are no wetlands on the site; that the site will be served by central sewer and water; that the final site plan needs to show the landscaping for the required 20 foot highway corridor overlay zone buffer; that a right in and a right out are proposed off of Route One; that only preliminary/conceptual approval should be considered; that final approval would be subject to the Commission's review and approval upon receipt of all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

ADDITIONAL BUSINESS

Mr. Lank advised that Commission that a Summit Invitation is offered to the Commission for participation in a Planning for Complete Communities in Delaware scheduled for November 4, 2013 in Dover, and asked the Commission to advise Robin Griffith, Clerk of the County Council, as soon as possible if they can attend. Mr. Lank added that the County would be paying the registration fee for those Commissioners that attend.

Meeting adjourned at 9:10 p.m.