



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 18, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, November 18, 2010, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Vice-Chairman Smith presiding. The following members of the Commission were present: Mr. Rodney Smith, Mr. Michael Johnson, Mr. I. G. Burton, III, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

PUBLIC HEARINGS

C/U #1872 – application of **KIM SWANN** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 6,000 square feet, more or less, lying north of Admiral Road, 200 feet east of Route One and being Lot 14 within Tower Shores Subdivision.

The Commission found that on November 1, 2010 the Applicant provided the Commission with an Exhibit Packet which included a copy of the Minutes of the Board of Adjustment for their September 20, 2010 meeting in reference to a variance from the minimum lot size requirement for multi-family units, and a copy of the Tax Map of the Tower Shores Subdivision depicting the site location.

The Commission found that on May 21, 2010 DelDOT provided comments in the form of a memorandum that references that a traffic impact study is not recommended, and that the current Level of Service “C” of Route One will not change as a result of this application.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments in the form of a memorandum that references that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that on-site drainage improvements will be required; and that off-site drainage improvements will not be required.

The Commission found that on November 12, 2010 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum that references that the site is located in the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is \$4,515.00 per EDU; that the parcel is served with one 6-inch lateral located along the parcel frontage on Admiral Road; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the County requires that a Sussex County licensed plumber obtain a disconnection permit and properly disconnect the existing structures from sewer; that the disconnection requires inspection and approval from County personnel and shall be completed before undertaking site work, moving or demolishing the existing structures or issuance of a building permit for new construction; and that a concept plan is not required.

Mr. Lank provided the Commission with a map of the Tower Shores Subdivision depicting vacant lots, single family lots, multi-family lots approved as Conditional Uses, Multi-family lots approved by the Board of Adjustment, multi-family lots that existed prior to zoning jurisdiction, B-1 Neighborhood Business lots, and the application site.

The Commission found that Kim Swann was present with James Fuqua, Jr., Attorney with Fuqua, Yori & Willard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that a duplex structure is proposed; that the lot is a standard sized lot, 60-feet by 100-feet, in Tower Shores Subdivision; that the Board of Adjustment granted approval of a variance for the lot size to allow multi-family use of the lot on September 20, 2010; that a cottage exists on the site; that the cottage is not elevated to meet the Flood Zone requirements; that the cottage is one of a few homes that was not destroyed in the northeaster storm of 1962; that over the years the older single family homes have been removed and replaced by duplexes or condominiums; that to the west of the site are duplexes within the B-1 Neighborhood Business zoning; that to the east are duplexes and condominiums; that across Admiral Road are duplexes; that all of the duplexes in the subdivision are on similar lots to this site; that the character of the subdivision is multi-family use; that there will be no adverse impact on the neighborhood or community since the use is similar to the residential character of the subdivision; that all services in the area already serve the existing cottage and homes in the subdivision; that Tower Shores does have construction time limitations for outside construction one week after Labor Day to the first Tuesday after Memorial Day; that a container will be placed on the site for collection of debris during construction; and that only two single family structures still exist in the subdivision.

The Commission found that Mr. Fuqua submitted some suggested proposed Findings of Fact for consideration.

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. Ross stated that he would move that the Commission recommend approval of C/U #1872 for Kim Swann for a multi-family dwelling structure of 2 units based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use will have no significant impact upon traffic.
- 2) There are other, similar 2-unit multi-family structures with similar characteristics in the immediate vicinity.
- 3) The project will not have an adverse impact on the neighboring properties or community, and the Board of Adjustment approved a variance to allow this multi-family Conditional Use to proceed.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 1. Only 2 units shall be constructed upon the property.
 2. The development shall be served as part of a Sussex County Sanitary Sewer District.
 3. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. or shall be subject to the requirements of Tower Shores, if more restrictive.
 4. The Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Johnson, 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 4 – 0.

C/Z #1697 – application of **LAND TECH RECEIVER SERVICES, LLC** for an Ordinance to modify Condition No. 10 imposed on Ordinance No. 1573 for Change of Zone No. 1475, the application of Ribera-Odyssey, LLC, as amended by Ordinance No. 2018 for Change of Zone No. 1697, the application of Peninsula At Long Neck, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District-Residential Planned Community, to extend the time to construct and open for use the golf clubhouse and nature center facilities.

Mr. Lank advised the Commission that James Fuqua, Jr., Attorney with Fuqua, Yori & Willard, P.A. had submitted an Exhibit Booklet on November 12, 2010 and that the submittal was late based on the Rules and Procedures of the Commission.

Mr. Robertson was presented with a copy to review while Mr. Lank summarized any comments received.

The Commission found that the County Engineering Department Utility Planning Division submitted comments in the form of a memorandum on November 12, 2010 and that the comments reference that this site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is \$3,472.00 per EDU; that conformity to the North Coastal Planning Study will be required; that this proposal is to modify Condition #10 of C/Z #1475 to extend the time to construct and open for use the golf clubhouse and nature center facilities; that approval of a time extension would not have a significant impact on the

sewer system and the County Engineering Department does not object to the proposal; and that a concept plan is not required.

The Commission found that the Sussex Conservation District submitted comments in the form of a memorandum on October 26, 2010 and that the comments reference that there are three soil types at this location; that the Applicants will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; that no storm flood hazard areas or tax ditches are affected; and that it will not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that the Department has received 70 letters/e-mails in support of this amendment, and no letters in opposition.

Mr. Robertson stated that the requirement for submittal of an exhibit booklet can be waived by the Commission if proof of good cause is established, and that if the Commission rejects the request the exhibit booklet can still be submitted into the record for the County Council public hearing.

Mr. Fuqua responded that this is an application to modify a Condition of Approval, not a new application; that the Exhibit Booklet contains the presentation and photographs; that there was a mix-up on the submittal date under the 10-day rule; and that he can read the report in the Exhibit Booklet or summarize it if he can submit it for consideration.

Mr. Smith, as Vice Chairman, stated that he will not allow submittal of the Exhibit Booklet, but that it would be part of the record before County Council.

The Commission found that Chuck Munn of Land Tech Receiver Services, LLC was present with Mr. Fuqua and that they stated in their presentation that they were present on behalf of Land Tech Receiver Services, LLC; that Jim Anderson and Tom Henson are also present should there be any questions; that in November 2002 "The Peninsula" project was approved; that sales began in May 2004; that all amenities have been built except for the clubhouse and the nature center; that since 2007 the national economy has impacted this project; that there have been no developer sales since January 2008; that in February 2008 Ribera-Odyssey, LLC applied to modify this Condition and received approval in December 2008 that the clubhouse construction begin within 2 years and be completed within 3.5 years; that the real estate market died during 2008 and 2009; that sales within the project started in May 2004, during the peak of the real estate market, and during that period, significant monies were expended to generate real estate prospects; that sales were brisk and pricing was at the top of the market; that approximately 425 lots, homes and condominiums had been sold since the opening of sales and January 2008, representing approximately 30% of the total properties to be developed in the project; that roads, water, sewer and storm drainage to serve over 1,200 home-sites were installed, and over \$48,000,000.00 was expended to build an impressive array of amenities, which include a signature golf course, driving range, artificial hitting stations, practice greens and chipping areas, golf pro shop, outdoor pool, indoor pool, indoor heated spa, a wave pool, an outdoor heated spa, a health and fitness center with locker rooms and saunas, massage rooms, an exercise equipment room, an aerobics room, a children's playroom, a dining grill with seating for 44 people indoors

and 90 people outdoors, eight tennis courts, a basketball court, a volleyball court, 10 miles of walking, biking and nature trails, a fishing pier, boardwalk and kayak launch dock, a community garden, a bay beach and community dock, and a self service community Post Office; that efforts to restructure the project ultimately failed, and on October 14, 2009, the lender filed a motion with the Chancery Court of Delaware to appoint a receiver to manage the project and to preserve and protect its values; that Land Tech Receiver Services, LLC was appointed by the Chancery Court to manage the project; that Land Tech representatives came in to investigate the project and found that the project design included 31 stormwater management ponds; that the ponds had been constructed, but were not inspected by the Conservation District and that no record drawings had been prepared; that in excess of \$1.4 Million in Letters of Credit had expired; that additional Letters of Credit had been issued to guarantee completion of certain roads and sewer infrastructure in excess of \$2.8 Million and that most of these had expired; that there was no active sales program; that the builder program had ceased; that the Club was operating at a deficit in excess of \$2 Million per year; that the fishing pier and boardwalk on the Indian River Bay had been damaged and was unusable as a result of a storm in Spring 2009; that the kayak launch was built, but not accessible since it was not connected to the boardwalk; that State of Delaware subaqueous land lease fees were unpaid since 2005; that the previously approved clubhouse zoning matter was out of compliance since no site plan had been filed and no guarantee of financial assurance had been provided; that the Peninsula Community Association was functioning; that dues were being collected and bills were being paid; that there was no functioning HOA Board of Directors, no meetings had been held and no records were being maintained for the Board; that new laws had been passed in Delaware requiring that a homeowner sit on the HOA Board, and none had been appointed; that Land Tech Receiver Services, LLC immediately made payment of past due taxes and sewer fees for over \$300,000.00; that the kayak launch area has been completed by providing connection to the boardwalk; that all of the storm water management ponds have been inspected by the Conservation District and surveyed by the Project Engineer; that record drawings have been prepared and submitted to the Conservation District for review and approval and punch lists have been issued; that all ponds have been repaired and accepted by the Conservation District, and a small Letter of Credit has been left in place to guarantee any needed repairs that might occur from project construction efforts; that with regards to roads and sewer, the Contractor has completed asphalt surface paving in portions of the Conservancy and Veranda phases where home construction is substantially complete, as well as the majority of Lakeside Village and all of Lakeside phases; that sewer in these areas has been inspected, punch lists prepared and completed, all for the purpose of garnering acceptance of the roads and sewer system and eliminating or reducing the Letters of Credit; that the total required Letters of Credit have been reduced to just over \$750,000 and all will be in place with the County this month; that payment of the Delaware subaqueous land fees are now current; that they have relaunched the sales and marketing program to begin construction of a single family series of homes in the Marina Bay neighborhood; that a number of necessary facility repairs have been completed at the Club; that revenue generation and cost reduction efforts have reduced the current annual Club deficit to just over \$1 Million; that the clubhouse zoning matter still remains unresolved; that in reference to the nature center, the initial phase, including 3 separate boardwalks, a floating dock for kayak launching and a parking area, has been completed; that the second phase will include a small screened gathering area, rest rooms, kayak storage and an outside deck that will tie into the boardwalks; that this phase has not been built; that the facility is planned to be owned by the

HOA and maintained through HOA assessments; that the community is close to the point where it can support the nature center within the current HOA budget, without any increase in HOA fees; that an estimated cost to construct the remaining phase is \$150,000.00 to \$200,000.00; that in reference to the proposed permanent clubhouse, preliminary plans, a site plan and cost estimates have been completed, and they estimate that the permanent clubhouse, fully furnished, will cost around \$5 Million; that the clubhouse is planned to include dining capacity of just over 200, with additional seating on outdoor terrace, a full commercial kitchen, offices, coolers and freezers, flexible meeting space separable from the dining room via partitions, an entry foyer, restrooms, coat room, bridal room, substantial storage areas, a bar with seating for 30 plus with an outdoor terrace, golf cart storage for 85 carts, locker rooms, a renovated and expanded golf pro shop and office, office space for staff and a staff conference room, golf bag storage and additional parking; that the club has some 475 members; that through a reduction in operating costs, the club is on track to reduce the operating deficit in 2010 to just over \$1 Million; that the operation of a new clubhouse at this time would only further increase the operating deficit of the club by an estimated \$1.1 Million per year; that the Receiver and the lender are anxious to eliminate club operating deficits, so these additional deficits would have a direct impact on member dues, coming close to doubling the dues from their current level; that this is not desirable at this time; that the real estate market in The Peninsula would literally be priced out of the market when compared to the competition; that original projections called for a significantly higher percentage of full golf members; that the actual number is less than 20%, with about 30% social membership and 50% sport membership; that this results in a lower level of dues and usage to support club operations; that the clubhouse could not be built today without a significant increase in dues to all members; that the new clubhouse should be constructed when the number of members makes operating the entire facility, with the new clubhouse, economically viable; that Land Tech Receiver Services, LLC and Troon, the golf course management company, have worked closely together in an effort to reduce the current operating deficit of the club while not significantly affecting the overall level of service; that a minimum level of 750 members, with at least 250 of those being full golf members, or a total level of 950 members, even if there are not 250 full golf members, is required to make club operations economically viable; that they are proposing to amend Condition No. 10 as follows:

A. Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.

B. The nature center shall be constructed and open for use by May 30, 2011.

C. Construction of the clubhouse shall commence no later than the date that The Peninsula Golf and Country Club attains 950 members or 250 full golf members whichever occurs first. All membership deposits paid after the effective date of this amended condition shall be placed in an escrow account created pursuant to The Peninsula Golf & Country Club Escrow Account for Membership Deposits dated the 3rd day of June, 2010, and modified on August 18th, 2010 (The Escrow Agreement) to assure construction of the clubhouse. In addition, Land Tech Receiver Services, LLC, (The Receiver) has confirmed that the sum of \$867,789 has already been deposited in said escrow account and that The Receiver shall deposit an additional sum of \$580,000 in said escrow account within seven days of the effective date of this amended condition. All funds deposited in said escrow account shall be released only in accordance with the terms of the Escrow Agreement.

D. The Receiver shall provide semi-annual reports to the Sussex County Planning and Zoning Director indicating the number of Club Members and full golf members commencing seven days after the effective date of this amended condition.

and continued by stating that this proposal is in everyone's best interest; that the 70 letters in support, received to date, should show the homeowners interest in the development of the project; that the economy is in a great decline; that the current Applicants are not the original developers; that they believe the proposed amended condition is an appropriate remedy; that the project should survive if the amendment is approved, and the approval of the amendment is critical to the success of the project; that the project is a beautiful unique community which has been hit by hard times and the amendment will benefit the homeowners, the lender, the County, businesses in the area, and will help in the operation of the community; that there are three levels of club membership: "Social" with an initiation fee of \$7,500 and monthly dues of \$150, "Sport" with an initiation fee of \$25,000 and monthly dues of \$210, and "Full Golf" with an initiation fee of \$47,500 and monthly dues of \$420; that dues will probably double if they are required to build the clubhouse immediately; that currently there are approximately 475 members of which 275 are "Sport" members, 100 are "Social" members, and 100 are "Full Golf" members; that they believe that the 950 member level will be achieved in 3 to 4 years, depending on the success of sales; that construction of the clubhouse will take 12 to 16 months; that they believe that the amendment represents some give and some take by everyone; that The Peninsula home owners are being delayed with regard to the clubhouse completion date, but they are avoiding significant increases in club dues; that given the level of development in the community today, the owners do have an impressive array of amenities to enjoy until the permanent clubhouse is constructed; that the bank is able to achieve an acceptable economic solution that allows it to maintain club operations and focus funds and efforts on sales of new real estate and bringing in new owners to the community and club; that the County will benefit by maintaining property values in this high end community and continue to provide significant tax revenues, and with many second home owners, there is a reduced burden on County services for these owners; that with sales projections annually for homes and home-sites in excess of \$35 Million, tax revenues will increase as new owners move into the community; that someone has to build these homes that will be sold, so this effort creates new jobs and there is a resultant positive impact in spending in the local economy from both workers and owners; that there are many failed projects that we have seen firsthand; that many lenders would have shut the doors given the circumstances at the Peninsula – a \$56 Million loan in default, a sales operation dead in the water for two years, a dreadful resort market and a club requiring additional infusion of \$2 Million per year; that The Receiver, in cooperation with Wells Fargo, wants to ensure that the Peninsula community thrives in the months and years ahead, but this requires that good business decisions are made and that the restart of the sales and marketing operations is successful; that approval of this amendment is essential to allow the project to continue to move forward; that they communicate regularly with the homeowners; that the Discovery Center building was reopened in May 2010 after renovation; that several builder/developers, e.g. Miller/Smith, NV Homes, Echelon, etc. are building in the project and now own some sections of the project; that the project contains a mixture of single-family detached dwellings, single-family detached condominiums, townhouses, and villas; that they are hoping to break even this year and for a strong sales year in 2011; that The Receiver has to give the Chancery Court quarterly reports on the status of the project; that some of the units have been sold at auction; that in excess of 300 homes have been built to date; that membership to the club are limited to owners in the project; that they have no intent to open membership

outside of the project; that \$200,000 is being set aside for construction of the nature center; that the clubhouse is proposed to contain 18,000 square feet; that the 2008 amendment required a performance bond and the bond was not provided; that the escrow account is an interest bearing account and is an insured account; that the intent is to connect the clubhouse to the existing amenities buildings to tie the buildings together; that some of the owners prefer the original location overlooking the golf course and driving range; that memberships relate to units, whether individual or family; that they will submit a copy of the escrow agreement for Counsel's review; that all initiation fees go into the escrow account; that the escrow account will remain in effect until the clubhouse is built or a bond is created to replace the escrow; and that all escrow account activities are reported to the Chancery Court.

Mr. Robertson stated that Mr. Munn has met with County Engineering staff, Assessment staff, and Planning and Zoning staff about fees and taxes due and all have been brought current.

John Gee, a resident in The Peninsula, stated that he was present in support of the amendment; that he owns two properties in the project; that he is on the Board for Troon, the Board for the HOA, and an Ex-officio member on three other Associations within the project, and is here representing the interest of the owners in support of the amendment with 57 letters/e-mails in support; that he has found that in the last 6 months The Receiver has performed in the best interest of the homeowners; that they have moved forward with making some of the improvements for the nature center, i.e. the parking lot has been established, plumbing is in place, the sidewalks have been leveled and they are ready to start construction; that they have encouraged outside interest in the use of the golf course with the help of Troon to increase revenue at the golf course; that financial matters are being checked daily; and that there are 100 full-time members checking on the project regularly.

Mr. Gee submitted the referenced 57 letters/e-mails at the conclusion of the public hearing.

Charles Munz, a resident in The Peninsula, stated that he was present in support of the amendment; that some of the homeowners in the project are retirees; that if the clubhouse is required to be built immediately it will put a financial burden on the homeowners; that there are not enough full-time residents to support a clubhouse of this size; and that more membership is needed prior to construction.

The Commission found that Richard L. Abbott, Attorney with the Abbott Law Firm, was present on behalf of Dennis and Carolyn Silicato, submitted a memorandum in opposition, and stated that his memorandum referenced that the deadline set by County Council was ignored for years and that an extension was not sought until after breach of the condition of approval; that the original deadline to build the clubhouse passed in 2005; that in November 2007 the County demanded that the developer immediately build the clubhouse; that nothing happened; that this effectively constitutes an unapproved 3-year extension of time; that in December 2008 the County Council adopted Ordinance No. 2018 which extended the time to construct the clubhouse and nature center; that construction was required to commence by December 9, 2010 and be substantially completed by June 6, 2011; that the Ordinance also required site plans and performance bonding guaranteeing completion of the buildings no later than April 9, 2009; that this became another 3-year extension of time; that this proposed Ordinance is requesting an

unlimited time extension; that if membership goals are not met the clubhouse may never be built; that the Code provides that the County Council may, as a condition of RPC approval, adopt a schedule of construction and require safeguards which guarantee completion of the development plan; that Condition No. 10 was a schedule of construction and was imposed to insure timely completion of the amenities, including the clubhouse; that his clients object to the proposed amendment because hundreds of homeowners relied that a clubhouse would be built; that there has been no guarantee of completion of the clubhouse; that no hardship exists since Wells Fargo has plenty of money to build the clubhouse; that the Planning and Zoning Commission should recommend against the requested third extension of time because it would lead to an extension that would never end and potentially allow the clubhouse to never be built; that when the original developer marketed the properties, written and glossy marketing materials were provided that promised that a clubhouse would be built as soon as 350 club memberships were in place; that under the Declaration of Covenants, Conditions, and Restrictions for The Peninsula, all purchasers must become members of the Club; that 350 units were sold, therefore 350 memberships were in effect, at least 2 – 3 years ago, and the clubhouse is not yet built, creating a broken promise; that now The Receiver, on behalf of Wells Fargo, is asking for more time based on a false threat that if the clubhouse is built the existing 470 plus unit owners will have to bear the additional financial burden to pay for operations, maintenance, and upkeep of the clubhouse; that the Declarations provide that a *pro rata* share of costs will be paid by all owners in the project; that the large majority of the costs of operating the clubhouse will actually have to be borne by Wells Fargo; that the extension of time is really a government bailout; that if the County gives Wells Fargo one day past the December 9, 2010 deadline to start construction of the clubhouse, it is just handing out another Big Government Bailout to a Big Bank; that Wells Fargo already received a \$25,000,000,000 government bailout from the Federal government in 2008/2009; that the request should be denied and construction should start immediately; that The Receiver has not presented any clubhouse building plans or construction cost estimates; that no surety has been offered to guarantee construction of the clubhouse; that the County should deny the request unless they submit construction plans, cost estimates, and adequate security; that The Receiver was appointed by the Delaware Court of Chancery to oversee the project; that it has been made well aware both by the County and Mr. Abbott of its obligation to post surety and commence construction in accordance with the Ordinance enacted by County Council on December 9, 2008; that The Receiver and Wells Fargo have flaunted the law, ignored their legal obligations, and done nothing in an intentional effort to manufacture the need for the extension requested; that without adequate assurances in place, they will never build the clubhouse; that they did not commence construction as they knew that they were legally required to do over a year ago; that they cannot be trusted; that their request should be denied; that if there should be an extension granted, it should be for no more than 90 days and be conditioned upon the submission within 30 days of surety in the amount of no less than \$5,000,000 to insure construction of the clubhouse by the newly imposed deadline; otherwise, the County will be sending a message to all developers that the County is ready to give out governmental bailouts.

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

Mr. Robertson asked how the application was advertised.

Mr. Lank advised the Commission that the title of the Ordinance is the basis of the advertisement.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to leave the record open for 10 days after receipt of the restrictive covenants and the escrow agreement to allow for Counsel's review and to defer action for further consideration. Motion carried 4 – 0.

OTHER BUSINESS

Subdivision #2005 – 71 – Delaware Land Associates Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval for 49 lots on November 20, 2006 and granted one-year time extensions on December 12, 2007, October 16, 2008 and November 12, 2009; that this is the fourth request for an extension; that the Commission deferred this request on September 12, 2010 after requesting a more detailed letter from the applicants; that the applicants have advised the staff that this site is the subject of a civil action filed by the State of Delaware; that all agency approvals have been received except for DelDOT; that the civil action should go to trial in early 2011; and that the Commission was previously provided a copy of the request.

Mr. Johnson questioned if the Commission can take any action since legal action is pending. Mr. Robertson advised the Commission that the circumstances in this matter are outside of the applicant's control and that the Commission could grant an extension if it chooses to do so.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a six (6) month time extension, which will become effective the date that a decision is rendered in Civil Action No. 5009-MG by the Court of Chancery. Motion carried 4 – 0.

Seaside Plaza Overflow Parking Site Plan – Road 270A

Mr. Abbott advised the Commission that this is a site plan for overflow parking; that the site is zoned C-1 and contains 0.64-acres; that the Sussex County Board of Adjustment granted a special use exception for off site parking on September 13, 2010; that 34 parking spaces and a 4,850 foot square foot storm water management pond is proposed; that ingress/egress to the site is off of Parsonage Road; that DelDOT has issued a Letter of No Objection; that a 6-foot high fence is proposed along the northeast boundary line for screening purposes; 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 and an aerial photograph of the site.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Carolyn A. Mullens and James A. Downes
2 Lots – Warren's Way

Mr. Abbott advised the Commission that this should be 2, 2-lot subdivisions; that this is a request to subdivide a 5.57-acre parcel into 2 lots and a request to subdivide a 1.75-acre parcel into 2 lots; that the 5.57-acre parcel will be subdivided into a 2.19-acre parcel with an existing dwelling located on it and a 3.38-acre parcel; that the 1.75-acre parcel will be subdivided into a 0.93-acre parcel and a 0.82-acre parcel; that all of the lots will have access from Warren's Way, which is a private road, that DelDOT has issued a Letter of No Objection; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Johnson, seconded by Mr. Ross and carried unanimously to approve the 2, 2-lots as submitted with the stipulation that any further subdivision of the lots will require an application for a major subdivision. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Mr. Lank asked for a consensus from the Commission on the Public Hearing Schedule for 2011.

By consensus roll call vote, the Commission approved the schedule. Mr. Ross – yea, Mr. Burton – yea, Mr. Johnson – yea, and Mr. Smith – yea.

The Commission discussed possible additional business for future meetings.

Mr. Johnson stated that he feels that there is a need for the Commission to discuss intergovernmental coordination and sub-regional districts, and the Nanticoke Watershed and the requirements of EPA.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to include a discussion of Sub-Regional Planning under Other Business for the December 9, 2010.

Meeting adjourned at 9:10 p.m.