



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF DECEMBER 7, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 7, 2006 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, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant 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.

### OLD BUSINESS

**C/U #1668** – application of **KARL M. KLINK III AND MELANIE KLINK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a country store and storage of overhead doors and parts to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 21,560 square feet, more or less, lying southwest of Route 20 (a.k.a. Road 382 and Amory Road), 150 feet northwest of Road 354.

The Commission discussed this application, which has been deferred since October 26, 2006.

Mr. Smith stated that he would move that the Commission recommend approval, with conditions, of C/U #1668 for Karl M. Klink III and Melanie Klink for only a country store based on the record made at the public hearing and for the following reasons:

1. The purpose of this application is to allow a Conditional Use to operate a country store and storage of overhead doors and parts facility on an otherwise agricultural-residential zoned property. While there are some businesses in this area, the applicants agreed that the majority of the area is used for either agriculture or residential uses. And the other businesses that do exist are for the sale of produce. While the use as a country store is consistent with the other existing uses, the use

as an overhead door warehouse or storage facility is not. For this reason, Mr. Smith is not recommending approval of that part of the application.

2. Mr. Smith believes that there are other locations that are currently zoned for business or commercial use that are available and better-suited for an overhead door warehouse or storage facility.
3. The use as a country store, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.

Minutes  
December 7, 2006  
Page 2

4. The application, limited to a country store, promotes the convenience and general welfare of the neighborhood.
5. This recommendation is subject to the following conditions:
  1. The use shall be limited to a country store only.
  2. Operation of the country store, as stated by the Applicant, shall be Wednesday to Sunday, 9:00 a.m. until 5:00 p.m. during the months of April through December.
  3. Type of goods offered for sale shall be consistent with a country/resort store operation, i.e. candles, furniture, crafts, nautical and agricultural related items.
  4. There shall be no parking allowed in the front yard setback.
  5. One sign, which may be lighted, shall be permitted. The sign shall not exceed 32 square feet in size on both facings.
  6. There shall be no outside display of items offered for sale, except that items for sale may be displayed on the porch of the store structure, under the porch roof canopy.
  7. Dumpsters for trash and/or recycling cardboard shall be screened from view by any neighboring properties.
  8. Security lighting shall be downward directed so as to not adversely affect neighboring properties.
  9. On-site water and septic shall be provided for use by store employees and patrons.
  10. Final site plan to be subject to review and approval of the Planning and Zoning Commission.

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

**C/U #1716** – application of **ANDREW LUBIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office park with medical, professional, and retail buildings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 25.3896 acres, more or less, lying southeast of Route 24, 1,300 feet southwest of Route One.

The Commission discussed this application, which has been deferred since October 26, 2006.

Mr. Johnson stated that he has reviewed the record and the Minutes and visited the site, and that this is a project that he had some concerns about since it appears to be a shopping center of sorts, and that his suggested conditions may correct that concern.

Minutes

December 7, 2006

Page 3

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1716, the application of Andrew Lubin for a medical and professional office complex based upon the record made at the public hearing and for the following reasons:

1. This project is directly adjacent to the Beebe Medical Campus, which is currently expanding along Route 24.
2. The close proximity to the Beebe Medical Campus will benefit the health, safety and welfare of Sussex County residents by providing accessible medical services.
3. The site adjoins the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and is in the North Coastal Planning Area. Wastewater capacity is currently available to provide service to up to 101,560 square feet of the project. System upgrades will be required before the County can provide additional sewer service to the project permitting the build-out of the project beyond 101,560 square feet by the developer.
4. The developer proposes to provide medical offices, which will ultimately consist of 8 condominium office complexes. Four additional buildings, possibly a bank, restaurant and two other retail sites are proposed adjacent to Route 24. The driveway and street system will be interconnected with that of the Beebe Medical Campus. All access to buildings is provided from the shared entranceway.
5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or the community, which is generally commercial in nature. These uses include the existing Rehoboth Mall, the Beebe Medical Campus, and another approved medical office complex.

6. The proposed development is consistent with the purposes of a conditional use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of the current and future citizens of Sussex County.
7. Any retail use shall be limited to pad sites located directly adjacent to Route 24. Such retail uses shall not be constructed in the First Phase. They only shall be included once there is sufficient sewer capacity to serve more than 101,560 square feet of space within the site.
8. This recommendation for approval is subject to the following conditions and stipulations:
  1. Water shall be provided by a public central water system.
  2. The project shall be served as part of the Sussex County West Rehoboth Sewer District in accordance with County Engineering Department standards.
  3. The project is to be developed in phases. Phase I shall be limited to 101,560 square feet of medical or professional office space based upon the current limited sewer capacity as outlined by the County Engineering Department. Any additional phases or expansions beyond 101,560 square feet of medical or professional office space is subject to review and subsequent approval of the County Engineering Department and the Planning and Zoning Commission.
  4. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
  5. 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. Monday through Saturday.
  6. The offices shall be limited to business, professional or medical care of other services incidental to such a use.
  7. Parking shall be in compliance with County ordinances.
  8. Any retail or restaurant uses shall be limited to the pad sites located directly adjacent to Route 24. Such retail uses shall not be constructed in the First Phase; they only shall be included once the First Phase is completed and there is sufficient sewer capacity to serve more than 101,560 square feet of space within the site.
  9. Any restaurant proposed for one of the pad sites shall not be of a "fast food" type and is not to have a drive-thru window.
  10. A shared "through road" to Old Landing Road shall be provided and open to public use along the boundary within the Beebe Medical Campus and shall be shown on the Final Site Plan.

Minutes

December 7, 2006

Page 4

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 stated. Motion carried 5 – 0.

## PUBLIC HEARINGS

**C/Z #1604** – application of **TERRANCE BABBIE** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying north of Route 16, 650 feet east of Route 22A and east of Milton, to be located on 3.0 acres, more or less.

Minutes  
December 7, 2006  
Page 5

The Commission found that prior to the meeting the Applicant had provided an Exhibit Booklet and that the Exhibit Booklet contained information on the Applicant/Developer; an Area Map; a Zoning Map; an Aerial Map; a lot survey; a wetlands delineation plan; copies of the Existing Land Use map, the Future Land Use Map, the Conservation and Recreation Plan Map, the Public Water Systems Map, the Public Wastewater Systems Map from the Sussex County Comprehensive Plan Update; copies of the Existing Zoning Map, the State Investment Strategies and Agricultural Districts Map, the Historic Resources Map for the Town of Milton's Comprehensive Plan; a copies of an aerial soils map; a letter from Citadel Engineering, Inc. in reference to septic feasibility for the site; a Site Evaluation Report from Eastern Shore Soil Services; a letter from Weber Well Drilling, Inc. in reference to the feasibility to construct a water well; a copy of a Service Level Evaluation Request to DelDOT and a DelDOT Support Facilities Report in response; letters from Del-Tex Properties, LLC, Dr. and Mrs. Sergio Huerta, MD, Colvett/Colvett,Jefferson, Urian, Doane & Sterner, P.A., Bonnie M. Benson, P.A., Williams Insurance Agency, Inc., and Karl Richeson Photography, Inc. in support of the application; two renderings of the site plan; and rendering and floor plans for the three proposed office buildings.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the current level of service "C" may change to a level of service "D" based on existing conditions with development under the proposed zoning with existing peak hour traffic plus site generated traffic and projected level of service with no highway improvements during the peak hour.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated and maintained sanitary sewer and/or water district; that the site is located within the North Coastal Planning Area; that conformity to the North Coastal Planning Study, or undertaking an amendment will be required; that the proposed change of zone is within

the Milton Annexation growth area; and that County Engineering Department currently has no schedule to provide service to this area.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam and Sassafras sandy loam; that the Fallsington soils have severe limitations; that the Sassafras soils have slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Fallsington soils are considered of Statewide Importance, Prime Farmland and Hydric; that the Sassafras soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Minutes  
December 7, 2006  
Page 6

The Commission found that a letter was received from J. Carlton Wells & Sons, Inc. in opposition to this application and that the letter referenced that the site is surrounded completely by agriculture land including their farm that is directly across the road from the property; that their farm, which is permanently preserved in the farmland preservation program, serves as a home base for a 5,000 acre grain and dairy operation; that there is considerable amount of tractor traffic and other slow moving vehicles year round creating not only traffic issues but also creating a large amount of dust; that their entire milking herd is located on their property which requires them to haul and spread approximately 2.5 million gallons of manure along this road annually; that the manure smell can be overwhelming at times; that they want everyone to understand that their farm is an ongoing family operation and has been for over 100 years; that they are not moving and do not want to hear any complaints from the proposed store owners and patrons; that they know from their years of farming experience that agricultural operations do not mix well with residential and commercial properties; and that making a commercial type property such as is proposed with the number of patrons involved will be disastrous with many problems down the road, including complaints from dust landing on vehicles and from the odors associated with the dairy operations.

The Commission found that Terrance Babbie was present with Gene Bayard, Attorney, and stated in their presentations and in response to questions raised by the Commission that the site is in a developing area according to the County Comprehensive Plan Update; that the site contains 3 acres and is vacant; that the site is surrounded by a dwelling to the east, a lot for sale to the west, agricultural to the north and agricultural to the south across Route 16; that 122 square feet of wetlands exists on the site; that the rear is bordered to a tree line; that the site is suitable for an LPP or Mound septic system according to the soil report; that Weber Well Drilling, Inc. has reported that it will be no problem drilling a well on the site; that the DelDOT report relates to a 60,000 square foot building project; that they have reduced their project to less than 30,000 square feet; that the principle purpose of the application is to create a location for an office for the Applicants

construction business; that the Applicant would then build offices for professional services and possibly some small retail; that the Applicant presently leases space in the Town of Milton; that he employs 4 employees and has 3 company vehicles; that no building materials will be stored on the site; that he proposes to create an architectural building theme similar to the buildings in Milton; that stormwater management will be maintained on-site; that a DelDOT storm drain does exist on the site; that several letters of interest were received and copies in the Exhibit Booklet; that B-1 Neighborhood Business rezoning was chosen and allows for retail shopping and personal service uses; that odors and dust are normal impacts anywhere in the County; that all trees on the site will be saved; and that they can and will provide references in leases to the Agricultural Protection Notice.

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

Minutes

December 7, 2006

Page 7

The Commission found that Thomas Lynch, Richard Smith, Thomas Smith, III and Susan Lynch were present in opposition and expressed concerns about the negative impact on property values; the type of uses permitted; noise control; clientele; business hours; dumpster noise; traffic, run-off; questioning where the septic and well would be located; that other commercial and business use sites already exist that are more suitable; that a poultry farm exist to the west of the site; that the use will cause complaints about the farming practices on the adjoining properties; that the farms have been handed down from generation to generation; and that the site is located in an agricultural and residential area close to the Town of Milton.

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

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

**C/U #1722** – application of **WEST REHOBOTH COMMUNITY LAND TRUST** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (4 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 17,500 square feet, more or less, lying southwest of Burton Street, 550 feet northwest of Hebron Street and 110 feet southeast of Duffy Street within West Rehoboth Subdivision, and being more particularly described as Lots 13 and 14 in West Rehoboth Subdivision.

Mr. Lank provided the Commission with a copy of the site plan submitted by the Applicants.

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 Hebron 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 in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that the system design did not consider redevelopment of this parcel into multi-family dwellings at higher density; that the parcel is located in a residential subdivision of single-family lots; that the project exceeds system design assumptions for the area; that the project is at a density of 9.96 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 9.96 units per acre because of the overall detriment to the treatment plant; that proposals that exceed planning study assumptions

Minutes

December 7, 2006

Page 8

increase existing line 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 they recommend against exceeding 4.0 EDUs per acre; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$3,199.00 per EDU; that each lot (2 lots total) is served with one 6-inch lateral along its frontage on Burton Avenue; that the Engineering Department requires that no more than two units be connected at each lateral; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that Downstream sewer line and pump station deficiencies have been identified in some parts of the sewer system that serve this parcel; that others are undertaking upgrades to those parts of the system and the schedule for completion of upgrades is not known at this time; that the Engineering Department will not approve issuance of a building permit for the project until those and any additional upgrades have been completed; and that a concept plan is required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations for development; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that Sassafras soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that a letter was received from David J. Weidman, Attorney, on behalf of the Applicants, and that the letter provided a background and applicable law references in reference to the proposed use.



The Commission found that 10 letters in support of the application were received from the Honorable Peter C. Schwartzkopf, State Representative, the Honorable F. Gary Simpson, State Senator, the Honorable George H. Bunting, Jr., State Senator, Gina Miserendino of the Sussex Housing Group, Ken Smith, Director of the Delaware Housing Coalition, Howard Menaker, Miriam Zadek, Ada Loper, Robert B. Wright and Samuel R. Cooper.

The Commission found that 29 letters in opposition to the application were received from Robert H. Paul of Neighborhood Housing Redevelopment, L.L.C., John Neubauer and John Clark, Wilson Catts, Rina Pellegrini and JoAnn Seppelt, Michael and Gloria Brandon, Joel S. Campbell, Don Shingler, Dave Williams, Irene W. Morris, Ethelene Jones, Pastor Gail Savage, Carol Hazzard, Richard F. Lynam, Gwen Harris, Constance

Minutes

December 7, 2006

Page 9

Robertson, Stephanie Shelton, Brenda Melbourne, William W. Magruder, Sharon Whitman, Cora V. Miller, Martin and Ada Burton, and four (4) unreadable names.

The Commission found that David J. Weidman, Attorney, was present on behalf of the Applicants and stated that the Applicants propose to construct two duplex buildings and that each unit is to be purchased by income-qualified individuals who meet the guidelines of the Land Trust; that the Land Trust is designed to develop and construct affordable housing to benefit households who are at or below 80% of the median income for Sussex County residents; that the Land Trust will own the land and will lease it to the owners of the improvements thereon through long term renewable and inheritable leases; that the use is legally permissible that it is a needed use; that it complies with the Comprehensive Plan; that it provides affordable housing; and that the site is in a historic black community of people that work in the Rehoboth area.

The Commission found that Mr. Weidman and Roxy Sturgis, Executive Director of West Rehoboth Community Land Trust, Inc. stated in their presentations and in response to questions raised by the Commission that some community members propose to preserve what they have; that the community is split by people that want to sell and people that want the stay in the community; that the Applicants have spent two years dealing with banks, agencies and others to establish moderate housing opportunities for low-income residents; that the area is adjacent to the Canal Corkran multi-family project; that some residents have been pressured to sell their property; that the use is of a semi-public character; that public officials support the application; that the units will be 2-story 1,600 square foot units with 3 bedrooms and 1.5 baths; that three parking spaces will be provided per unit; that there is a need for affordable housing; that the infrastructure is already in place; that this is the first community land trust in Delaware; that the plan to provide decent, safe and affordable housing; that the area is a good location for jobs and services; that they are saddened that there is any opposition; that they have held open forums to provide information on the proposal; that the community has utilized the

County Community Development Office in the past for Block Grant funding; that the support that the Land Trust has received is amazing by the number of national supporters; that West Rehoboth residents will be given priority consideration; that each unit will have a garage; that they have housing counselors that would screen the applicants; that the closest multi-family project is adjacent to the West Rehoboth Subdivision behind the Car Wash; that the parcel could be developed with two single family homes since the parcel contains two recorded lots; and that the site plan can be altered to relocate the parking and building to conform to the setbacks.

Mr. Lank advised the Applicants that the parking needs to be redesigned since vehicles cannot back out into a street at a multi-family structure, and that the front setback needs to be a minimum of 30 feet from the front property line.

Minutes  
December 7, 2006  
Page 10

The Commission found that Mable Granke was present in support of the application and stated that condominiums are adjacent to West Rehoboth Subdivision between the entrance and the car wash and between the site and Route One; that if the number of units is reduced it will not be feasible to develop the site due to the cost; and that funding can be made available through private donations to the Land Trust and grants.

Mrs. Granke submitted the original letters in support from Samuel R. Cooper and Ada Loper.

The Commission found that Isabell Ortiz was present and not sure whether she was in support or concerns and stated that the adjacent properties are improved by single family dwellings, multi-family projects, a storage facility; that she is concerned that a precedent may be set for further applications; that the subdivision was originally zoned for single family lots; and that she questions if multi-family use will have any impact on the single family community.

The Commission found that Barbara Merriwether was present in support of the application and stated that the use creates a starting point in the West Rehoboth Community; that the streets are not up to standards, are inadequate and need repairs; that the use will create an improvement for a community that needs improving; that some lots have been commercially improved with warehousing; and that the area needs to be revitalized.

The Commission found that Brenda Melbourne was present and spoke in opposition to the application and questioned how these units could be considered affordable housing; that the lots should remain single family lots; that approval of this application could create a precedent for additional applications; that residents of West Rehoboth work in the area; that it is proposed that the buyers will own the units and the Land Trust will own the land; that the buyers will also have to pay land rent; that the subdivision was

established as a black community for working people; that currently approximately ½ of the lots are owned by African Americans; that area residents know that children live in the area, that strangers do not, and that the safety of the children in the area needs to be considered; and that some heavy trucking activities exist in the area due to the warehousing and construction activities.

The Commission found that Mr. Wiedman, in response to questions raised by the Commission, stated that the Land Trust was designed to develop and construct affordable housing to benefit households who are at or below 80% of the median income for County residents; that people will be buying a unit on a long term lease lot; that the units can be sold to income qualified buyers; that the land leases have specific requirements on transfer of ownership of the units; and that the land leases are controlled by the Land Trust.

Minutes  
December 7, 2006  
Page 11

The Commission found that Robert Paul was present and spoke in opposition to the application and stated that he is in the business of renovating homes; that he questions the prices units will sell for; that no one in West Rehoboth can afford to purchase a unit; that many studies have been performed in past years and that the studies have shown that multi-family uses in single family communities will negatively impact the community; that the lots are small and narrow will not parking allowed on the street; that people park in their yards; that multi-family uses may decrease property values on the single family homes; that the homes in the community are small cottage type structures; that multi-family use is out of character within the subdivision; that a precedent will be set for additional applications; that all letters in opposition are residents in the community; and that the general character of the subdivision is single family.

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.

**Subdivision #2005-81** – application of **BETHANY RIDGE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 104.32 acres into 227 lots, (Environmentally Sensitive Developing District Overlay Zone), located north of Road 349, 1,600 feet east of Road 348.

Mr. Lank advised the Commission that the applicants submitted on Exhibit Booklet on December 4, 2006 and the booklet will be made a part of the record.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of June 21, 2006 will be made a part of the record.

The Commission found that James Fuqua; Attorney, Richard Boyle with Natelli Communities, and Tom Ford with Land Design, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 227 single family lots are proposed; that the applicant has a signed contract with Raymond Banks to purchase the property; that Mr. Banks has since passed away; that the heirs of Mr. Banks have a law suit pending in the Court of Chancery; that this site was the subject site of a residential planned community in 2003; that the Commission recommended that the residential planned community be approved in January 2004 however the County Council denied the application; that this project has been designed utilizing the cluster option ordinance that was not adopted prior to the previous application being filed; that the site is zoned AR-1 and 7,500 square foot lots are permitted; that the proposed density is 2.17 lots per acre which is permitted; that the site

Minutes  
December 7, 2006  
Page 12

is located in the Environmentally Sensitive Developing District Overlay Zone; that the site is in a growth area; that 75% of the site is cleared pasture and 25% is wooded; that approximately 70% of the wooded area will be preserved; that the project contains 34 acres of open space; that there are no wetlands on the site; that the wetlands have been delineated and the Army Corps of Engineers has issued a jurisdictional determination that is found in Tab 4 of the Exhibit Booklet; that there are no rare or endangered species located on the site; that a soil test has been conducted; that a Phase 1 environmental assessment study has been performed; that Tidewater Utilities will provide central water to the site and has issued a willing and able to serve letter that is located in Tab 8 of the Exhibit Booklet; that Sussex County will provide central sewer to the project; that sewer capacity is available for 4 EDU's per acre; that DelDOT did not require a traffic impact study for this project since one was done for the previous application in 2003; that the applicant will contribute to all required improvements by DelDOT; that this project was reviewed through the PLUS process and the applicants responded to the comments and the comments are found in Tab 2B of the Exhibit Booklet; that services will be provided by Delaware Electric Cooperative, Mediacom, and Verizon; that police protection is provided by the Delaware State Police and is close to the Town of Ocean View; that fire protection is provided by the Millville Fire Department; that the developers will donate a portion of each first time sale of a lot to the local fire department; that the site is located in the Indian River School District; that shopping and services are located nearby on Route 26; that a homeowners' association will be established to collect dues and assessments for maintenance of the project; that the project is located in a Level 3 area based on the State Strategies Map; that there is a pending subdivision application located across the street from this site; that the site drains to Blackwater Creek with a little drainage toward Collins Creek; that the project has been designed to protect natural features; that there will be a minimum 100 foot buffer along Road 349; that paths have been provided throughout the site; that 3 wet ponds are proposed for the storm water management design; that interconnectivity has been provided to the adjoining parcels; that the passive recreation includes a bus shelter/gazebo, water features, woodlands,

walking, jogging and bicycle paths, and open fields with meadows; that the active recreation includes a community clubhouse and garden facility, multi-purpose courts open areas for volleyball and Frisbee, and tot lots with appropriate age related apparatus; that sidewalks will be provided on both sides of all streets; that over 24,000 linear feet of sidewalks is proposed; that the average lot size is 10,300 square feet; that the items referenced in Subsection 99-9C of the subdivision code have been addressed and are found in Tab 3 of the Exhibit Booklet; that the subdivision is an appropriate use and complies with all regulations; that the opposition needs to be based on the project and not the pending law suit; that the active recreational area contains 2 acres; that a minimum 30-foot buffer is provided around the perimeter of the site; that 3 school bus shelters are proposed; that the entrance location is across from a proposed subdivision entrance; that the applicants will provide a hunting disclosure notice in the restrictive covenants; that the streets will be private and built to County specifications; that the storm water

Minutes

December 7, 2006

Page 13

management is included in the open space calculations; that the applicants will permit the State Historic Preservation Office to inspect the site; that Tab 9 of the Exhibit Booklet contains a summary of the project; and submitted proposed conditions of approval and findings of fact into the record.

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

The Commission found that Raymond Banks, Jr., Rachel Mershie; Attorney, and Anna Volkman were present in opposition to this application and advised the Commission that run-off from the project will come onto adjoining lands; that farming operations occur in the area; that there is a pending lawsuit and a decision on this application should not be made until the lawsuit is decided; that the site drains into wetlands on adjoining properties; that the opposition should be able to see the plans; that some residents did not receive notices about the hearing; that there is bald eagle nesting in the area; that residents hunt in the area and on adjoining parcels; that traffic will become worse than it already is; that the project will cause negative environmental impacts to the area; and the project will have negative impacts to wildlife in the area.

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.

**Subdivision #2005-82** – application of **JAMES AND MARY BETH PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 32.94 acres into 41 lots, (Cluster Development), located west of Route 30, 2,400 feet north of Road 48.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on June 21, 2006 and that the report will be made a part of the record for this application; and on August 9, 2006 the applicants submitted a revised preliminary plan.

The Commission found that Jim Parker and Ken Christenbury, P.E. with Axiom Engineering were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they propose to subdivide 33 acres into 41 single-family lots; that the wooded areas on the site will be preserved; that a buffer will surround the entire perimeter of the site; that an entrance with a landscaped island is proposed; that there are 3 different storm water management areas proposed; that the ponds will be wet ponds; that there is a recreational area around one of the ponds; that a basketball court and tot lot are proposed; that streetlights are proposed; that all mail

Minutes  
December 7, 2006  
Page 14

boxes will match; that a bus shelter can be provided at the entrance to the site; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; that 66% of the lots will have gravity systems and that 34% of the lots will have low pressure pipe systems; that a letter addressing the items referenced in Subsection 99-9C of the subdivision code has been submitted; that deed restrictions have been submitted; that the dwellings will be stick built only with a minimum square footage of 2,000 square feet; that the foundations will be stone or brick; that no sidewalks are proposed at this time due to the lots being a minimum of ½ acre; that all streets will meet all requirements and there will not be any safety concerns for children; that this is the first cluster application the developer has applied for; that forested buffers are proposed; that the size of the storm water management areas may be reduced once all of the engineering is completed; that the buffers will be planted with Leyland Cypress and berms; that parking will be provided for the school bus shelter; that the seller of the property has retained an out parcel and is building a new home on the parcel; that access to the out parcel will be from the internal subdivision street; that 3.78 acres of forested areas will be retained outside of the proposed lots; and that the woods to the north may be considered a State Resource Area.

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

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.

**Subdivision #2005-84** – application of **JOHN AND DEBRA PULLI** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred,

Sussex County, by dividing 4.35 acres into 3 lots, located south of Road 280, 1,865 feet southeast of Road 290.

Mr. Abbott advised the Commission that the applicants submitted an Exhibit Booklet on December 4, 2006 which will be made a part of the record for this application; that the applicants have submitted the required 51% of no objection from the property owners; that a letter from Woodgate in support has been received and that letter from Sabrina Hill, Tiffany Derrickson and Norma Lee Burton Derrickson in opposition have been received and that all of the letters will be made a part of the record.

The Commission found that James Fuqua; Attorney, and John and Debra Pulli 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 proposing to subdivide a 4.35 acre parcel into 3 lots; that the applicants have owned the property for 9 years; that the

Minutes

December 7, 2006

Page 15

applicants will retain lot 1 with the existing dwelling located on it; that access to lots B and C will be from Woodgate Drive; that Woodgate Subdivision was approved in August 2004; that Woodgate Drive is adjacent to this site and is already built; that the 2 new lots will be 0.75 acres and 1.33 acres; that on-site well and septic are proposed; that lots B and C will be subject to the restrictive covenants of Woodgate Subdivision; that Sussex Meadows was a strip subdivision and that 20 out of 21 owners support the proposed subdivision; that the restrictions of Sussex Meadows were amended to allow for the resubdivision of Lot 15 and are recorded in Deed Book 3219 Page 305 in the Office of Recorder of Deeds; that the 3 letters in opposition to this subdivision are from the Derrickson family and that they oppose all development in the area; that a septic feasibility statement from DNREC has not been received yet; and submitted photographs of the site.

The Commission found that Tim Mahoney, developer of Woodgate was present in support of this application.

The Commission found that Richard Owens, owner of Lot 21 of Sussex Meadows, was present in opposition to this application and stated that the original deed restrictions prohibit the re-subdivision of the lots; that the restrictions were amended when he was out of town; that the applicants have never contacted him about their intentions; that he is the only lot owner not agreeing to the re-subdivision; that the new subdivision will invade his privacy; that the new dwellings will be located within 150 feet of his house; that he planted Leyland Cypress along his property line for a buffer in 1998; that the applicants will be gaining monetary assets; that the project will negatively impact his property values; that he has made many financial expenditures to his property; and submitted 2 photographs.

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 pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

**Subdivision #2005-85** – application of **ERNEST H. HOSSE, III** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 31.70 acres into 21 lots, (Cluster Development), located south of Route 18, 0.9 mile northwest of Road 529.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of June 21, 2006 will be made a part of the record and that on December 4, 2006 the applicants submitted and Exhibit Booklet that will be made a part of the record.

The Commission found that Ernest Hossee, III, David Rutt; Attorney, and R.B. Kemp

Minutes

December 7, 2006

Page 16

and Charles Adams, Surveyors with Adams-Kemp Associates, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application to subdivide 31 acres into 21 lots; that the largest lot is lot 14 which has an existing dwelling located on it; that the smallest lot is lot 21 which is a little over 23,000 square feet; that approximately 1/3 of the site is either open space or forested area; that a 30-foot agricultural buffer is provided; that a homeowners' association will be established; that the streets will be private and maintained by the developer and homeowners' association; that on-site septic and wells are proposed; that the street names have been approved by the Sussex County Mapping and Addressing Department; that a wetlands delineation has been conducted; that the Department of Agriculture has approved the forested buffer; that the applicant has planted over 600 trees on the site; that the applicant will comply with all recommendations made by the Technical Advisory Committee; that a bike path easement will be provided along Route 18; that the project will not cause any change in the terrain of the site; that landscaping has been provided; that there are no wetlands on the site; that there are no historical features on the site; that the open space areas will be provided walking trails; that there are no scenic views or objectionable features; that none of the dwellings will have basements and flooding will not be an issue; that there is adequate room for a bus shelter if one is required; that DelDOT did not require a traffic impact study; that the project will not cause any adverse impacts; that sidewalks will be installed when the dwellings are completed; that the site is adjacent to a nursery owned by the applicant's daughter; that Elmer's Market is in close proximity to the site; that the site is located in the Indian River School District; that the existing dwelling on lot 14 will be subject to the restrictive covenants; that the storm water management located in the front of the Briggs property is the applicant's daughter; that this storm water management pond will handle the run-off between lot 9 and Route 18; that if any wetlands are found on the site, adequate buffers will be provided; that all dwellings will exceed 2,500 square feet; and that the storm water management ponds will be wet ponds.



The Commission found that Colleen Briggs and Don Moore was present in support of this application and stated that the storm water management pond located along Route 18 is in front of her property; that the pond will be landscaped; that she is not opposed to the location of the pond; that the development will be a nice addition to the community; that property owners need to be made aware of hunting activities in the area; and that the project's design protects the agricultural uses in the area.

The Commission found that Judy Phifer, Barbara Hall and Mary Lukaszewski, area residents, were present in opposition to this application and stated that the land in the area is go for farming; that the area is rural and quiet and should remain that way; that there are extensive hunting activities on adjoining properties; that this segment of Route 18 is dangerous and traffic will become more of a problem; that the subdivision is out of character with the area since most of the parcels in the area are large acreage tracts;

Minutes

December 7, 2006

Page 17

that the closest fire department is 7 miles away; that there is a problem with telephone service in the area; that there are no services available in the area; that the site is not located in a growth zone; that there are speeding problems in the area along Route 18; that the plan does not comply with Livable Delaware; that previous deed restrictions prohibited re-subdivision of the property; and that there are better locations for development than this.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

**Subdivision #2005-86** – application of **DALE WHEATLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 27.65 acres into 34 lots, (Cluster Development), located west of Road 598, 600 feet north of Road 611.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of June 21, 2006 will be made a part of the record and that the applicants submitted an Exhibit Booklet on December 4, 2006 that will be made a part of the record.

The Commission found that Dale Wheatley and Mark Davidson and JC Owens with Design Consultants Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 34 single-family lots on 27.65 acres are proposed; that the project was designed utilizing the cluster option ordinance; that the site was timbered several years ago; that the drainage runs towards Road 598; that this is the lowest point on the site; that the proposed density is 1.23 lots per acre; that single-family dwellings are proposed; that a 30-foot forested

buffer around the site is proposed; that walking paths will be provided; that DelDOT did not require a traffic impact study; that an additional 5 –feet of right of way is being dedicated to widen Road 598 and to provide for multi-modal uses; that DelDOT is requiring a site analysis for the entrance; that recreational uses will be provided; that the Exhibit Booklet addresses the items referenced in Subsection 99-9C of the subdivision code; that there are not any wetlands located on the site; that none of the dwellings will be built within any floodplains; that Best Management Practices will be utilized; that sidewalks will be provided on at least one side of all streets; that on-site septic and well are proposed; that DNREC has not issued a septic feasibility statement yet; that streetlights will be provided; that the entrance location may be required to be relocated; that the project will create positive impacts on the area; that the existing vegetation and new plantings will be utilized for the buffers; that the restrictive covenants will prohibit the use of all terrain vehicles in the subdivision; and that the poultry houses on the adjoining parcels are at least 50-feet from the property lines.

Minutes  
December 7, 2006  
Page 18

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

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC. Motion carried 5 – 0.

#### ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that a Special Meeting of the Commission is scheduled for December 14, 2006 at 3:00 p.m. for consideration of Old Business and Other Business items.

Mr. Abbott provided the Commission with copies of all comments received in response to the DelDOT comments on the Traffic Impact Study for Baywood, L.L.C., Subdivision #2005-72.

Meeting adjourned at 11:10 p.m.