



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF SEPTEMBER 17, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, September 17, 2008 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Mr. Abbott advised the Commission that Other Business Items #1 Peninsula MR/RPC – Veranda Revised Parking and Driveways and #21 Bay City Mobile Home Park – Corrective Survey, have been removed from the Agenda.

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

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

The Consent Agenda included:

1. Subdivision #2006 – 28 - - Sussex Ventures, Inc.
Final – Meadow Ridge Estates

This is the final record plan for a 44-lot standard subdivision. The Commission granted preliminary approval for 44 lots on October 17, 2007. The final record plan complies with the Subdivision and Zoning Codes and the conditions of the preliminary approval. All agency approvals have been received.

2. Time Extensions

- a. CU #1624 – Design Consultants Group, LLC

This is a request for a one-year time extension. This conditional use for multi-family dwelling structures was approved by the County Council on November 2005. The Commission granted preliminary site plan approval on November 30, 2005. Since the file contains no previous request for a time extension, the use would have been required to be

substantially underway by November 15, 2006. This is the first request for a time extension. The engineering firm has provided copies of submittal letters to various agencies that range from 2007 to 2008. The file contains no agency approvals. Requests for extensions should have been submitted in 2006 and 2007. The Commission does have the authority to grant a maximum of 2, one-year extensions for conditional uses.

b. CU #1747 – Artesian Water Company, Inc.

This is a request for a one-year time extension. This conditional use for a regional water and wastewater treatment facility was approved by the County Council on July 17, 2007. This is the first request for a time extension. The Commission has the authority to grant a maximum of 2, one-year time extensions. If an extension is granted, it shall be retroactive to the anniversary date of approval and will be valid until July 17, 2009.

c. Subdivision #2004 – 39 - - Seneca Harbor Joint Venture

This is a request for a one-year time extension. The Commission granted preliminary approval on September 8, 2005 and granted one-year time extensions on August 16, 2006 and July 18, 2007. This is the third request for an extension. Approvals have been received from the Sussex Conservation District and DNREC. The engineer's letter states that they are in the process of review with Sussex County Engineering, DelDOT and Office of the State Fire Marshal. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and will be valid until September 8, 2009. If an extension is granted, it should also be stipulated that this will be the last time extension granted.

d. Subdivision #2005 – 53 - - Polly and Mark Yoder, Jr.

This is a request for a one-year time extension. The Commission granted preliminary approval on August 16, 2006 and granted a one-year time extension on October 17, 2007. This is the second request for an extension. The engineer's letter states that they are awaiting approval from DelDOT and Sussex County Engineering. If an extension is granted, it should be retroactive to the anniversary date of preliminary approval and would be valid until August 16, 2009.

e. Subdivision #2005 – 56 - - Reynolds Pond, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on October 18, 2006 and granted a one-year time extension on September 19, 2007. This is the second request for an extension. No approvals have been received to date.

f. Subdivision #2005 – 57 - - Blackwater Creek, Inc.

This is a request for a one-year time extension. The Commission granted preliminary approval on October 26, 2006 and granted a one-year time extension on November 14,

2007. This is the second request for an extension. The applicant's attorney's letter indicates that the final record plan for Phase 1 will be submitted in December 2008.

g. Subdivision #2005 – 60 - - Mandrin Homes

This is a request for a one-year time extension. The Commission granted preliminary approval on October 17, 2007. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until October 17, 2009.

h. Subdivision #2006 – 8 - - Francis and Mary Hazzard

This is a request for a one-year time extension. The Commission granted preliminary approval on June 20, 2007. This is the first request for an extension. If an extension is granted, it should be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until June 20, 2009.

i. Subdivision #2006 – 39 - - Henry James Johnson

This is a request for a one-year time extension. The Commission granted preliminary approval on November 29, 2007. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until November 29, 2009.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the items on the Consent Agenda. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2006 – 55 - - application of ALVANNAH R. DAVIS to consider the Subdivision of land in a GR, General Residential District in Cedar Creek Hundred, Sussex County, by dividing 13.63 acres into 8 lots, located west of Road 225, 733 feet south of Road 38.

The Chairman referred back to this application, which has been deferred since February 28, 2008.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 55 for Alvannah R. Davis, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned GR General Residential which permits single-family residential development. The proposed subdivision density of 8 lots on 13.63 acres of land is significantly less than the allowable density in this district.
3. The proposed subdivision will be consistent with the area 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 proposed subdivision will not adversely affect traffic on area roadways.
6. This recommendation is subject to the following conditions:
 - A. There shall be no more than 8 lots within the subdivision.
 - B. The storm water management system shall meet or exceed the requirements of the State and County.
 - C. All entrances shall comply with all of DelDOT's requirements.
 - D. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - E. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas showing all of the landscaping and vegetation to be included in the buffer areas.
 - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to approve this application as a preliminary for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2006 – 68 - - application of **DOVE ESTATES, LLC** to consider the Subdivision of land in an AR-1, Agricultural Residential District and a GR, General Residential District in Nanticoke Hundred, Sussex County, by dividing 73.20 acres into 111 lots, located south of Road 526A and west of Road 525.

The Chairman referred back to this application, which has been deferred since May 22, 2008.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 68 for Dove Estates, LLC, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision is on land zoned AR-1 and GR. The proposed density is less than the density permitted by the existing zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The subdivision is consistent with other developments in the area.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.

6. The project will be served by a central wastewater system in accordance with all State and County requirements.
7. This approval is subject to the following conditions:
 - A. There shall be no more than 111 lots within the subdivision.
 - B. The Applicants shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lots.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located on one side of all streets in the subdivision.
 - L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
 - M. As shown on the Preliminary Site Plan, there shall be a 50-foot buffer from all Wetland areas. Permanent markers shall be placed on the upland side of all wetland buffers.
 - N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2006 – 74 - - application of **DAVID L. AND CAROLYN D. WILSON** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Cedar

Creek Hundred, Sussex County, by dividing 35.99 acres into 30 lots, located west of U.S. Route 113, 910 feet north of Road 623.

The Chairman referred back to this application, which has been deferred since July 24, 2008.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 74 for David L. Wilson and Carolyn D. Wilson, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The subdivision is consistent with other developments in the area.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems.
7. This approval is subject to the following conditions:
 - A. There shall be no more than 30 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
 - H. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all

of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.

- I. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
- J. No wetlands shall be included within any lots.
- K. A system of street lighting shall be established.
- L. Sidewalks shall be located on one side of all streets in the subdivision.
- M. There shall be a 50-foot buffer from all wetland areas. Permanent markers shall be placed on the upland side of all wetland buffers.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2006 – 75 - - application of **TULL GROUP, LLC** to consider the Subdivision of land in an AR-1, Agricultural Residential District and a GR, General Residential District in Northwest Fork Hundred, Sussex County, by dividing 139.98 acres into 222 lots, located northeast of Road 590, 2,300 feet northwest of Road 583.

The Chairman referred back to this application, which has been deferred since July 24, 2008.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 75 for Tull Group, LLC, based upon the record and for the following reasons:

- 1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
- 2. The proposed subdivision density is less than the density permitted by the existing zoning. GR zoning permits 4 lots per acre with central sewer and this project has a density of only 1.71 lots per acre.
- 3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4. The subdivision is near the Town of Greenwood and is within the Town's Future Annexation Area.
- 5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- 6. The project will be served by a community wastewater system in accordance with all State and County requirements.
- 7. This approval is subject to the following conditions:
 - A. There shall be no more than 222 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water

management facilities, erosion and sedimentation control facilities and other common areas.

- C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
- G. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
- I. No wetlands shall be included within any lot lines.
- J. A system of street lighting shall be established.
- K. Sidewalks shall be located on one side of all streets in the subdivision.
- L. As proposed by the Applicant, there shall be walking paths throughout the subdivision.
- M. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications.
- N. Within 2 years of the issuance of the first residential building permit, the developer shall construct all of the recreational amenities.
- O. There shall be permanent markers along the upland boundaries of all wetland areas.
- P. It is suggested that the applicant reconfigure the entrance so that it is not directly across the County Road from an existing home, to prevent headlights and traffic from heading directly towards the home.
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2006 – 35 - - application of **2416 JOPPA ROAD, LLC** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 109.45 acres into 56 lots, located north of Road 553, 1,820 feet west of Road 558 and 900 feet east of the Delaware/Maryland State Line.

The Chairman referred back to this application, which has been deferred since August 28, 2008.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 35 for 2416 Joppa Road, LLC, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for individual on-site septic systems.
6. This approval is subject to the following conditions:
 - A. There shall be no more than 55 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
 - H. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.

- I. A Hunting Notice, similar to the Agricultural Use Protection Notice, shall be included on the Final Site Plan and in the Restrictive Covenants.
- J. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
- K. No wetlands shall be included within any lots.
- L. Sidewalks shall be located on both sides of all streets in the subdivision.
- M. There shall be a 50-foot buffer from all State wetland areas that may be delineated during the development and approval process.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Mr. Smith advised the Commission that he would not be participating in the discussion for Items 6 through 9.

C/Z #1649 - - application of **RODNEY W. SMITH** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, land lying southwest of Zoar Road (Road 48), 1,000 feet south of Sussex Pines Road (Road 324), to be located on 39.73 acres, more or less.

The Chairman referred back to this application, which has been deferred since August 14, 2008.

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1649 for Rodney W. Smith to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential to CR-1 Commercial Residential, based upon the record and for the following reasons:

- 1. CR-1 zoning is appropriate, since the Sussex County Zoning Code states that the purpose of such zoning is to provide for retail, shopping and personal and miscellaneous service activities and those activities should be located along arterial roadways where a general mixture of commercial and service activity now exists. In this case, the project near U.S. 113 and along Zoar Road falls within the stated purpose of the CR-1 District. It is also close to the existing residential and commercial areas in the Town of Georgetown.
- 2. The property is located adjacent to neighboring institutional, religious and business uses, and will be complimentary to those uses.
- 3. The property is in a Developing Area according to the Sussex County Comprehensive Land Use Plan.
- 4. The change in zone will be appropriate because it will enable this project to be developed with a varied blend of alternative housing designs and complimentary commercial neighborhood business and retail uses, that will be part of a small planned community.

5. The Developer will be required to comply with all requirements established by DelDOT and any other Federal, State and/or local agencies.
6. The commercial uses will reduce the number of vehicle trips required by residents of this project and the surrounding neighborhoods, since the commercial uses will limit trips on both Zoar Road and U.S. Route 113 by residents of the area who may otherwise have to travel further for their shopping and housing needs.
7. The project will not have an adverse affect on neighboring properties or the community.

Motion by Mr. Burton, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not voting, to forward this application to the Sussex County Council with the recommendation that it be approved for the reasons stated. Motion carried 4 – 0 – 1.

C/U #1781 - - application of **RODNEY W. SMITH** to consider the Conditional Use of land in a CR-1 Commercial Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39.73 acres, more or less, lying southwest of Zoar Road (Road 48), 1,000 feet south of Sussex Pines Road (Road 324).

The Chairman referred back to this application, which has been deferred since August 14, 2008.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1781 for Rodney W. Smith for multi-family dwellings based upon the record made at the public hearing and for the following reasons:

1. The property is in an area where other residential, religious, institutional and business development has occurred. The project is consistent with those developments, and will essentially be an infill development in this area of Zoar Road and U.S. Route 113.
2. This project has been accepted into the Sussex County Moderately Priced Housing Unit Program. It will provide a designated number of moderately priced units that will benefit residents of Sussex County, and will generally provide affordable housing for nearby State employees and other businesses that are close by this project.
3. The project is in a Development District according to the Sussex County Comprehensive Development Plan. It is also in close proximity to the Town of Georgetown, and central water and sewer will be provided by the Town of Georgetown.
4. With the stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
5. This recommendation for approval is subject to the following conditions:

- A. The maximum number of residential units shall not exceed 124 multi-family units. 13 of those units shall be Moderately Priced Housing Units in compliance with Chapter 72 of the Sussex County Code.
- B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- C. The project will be served central sewer through the Town of Georgetown.
- D. The project shall be served by central water system from the Town of Georgetown providing adequate drinking water and fire protection as required by applicable regulations.
- E. Storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
- F. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- G. 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 am and 6 pm, Monday through Saturday.
- H. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
- I. The Final Site Plan for the development shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Gordy and carried 4 votes to none, with Mr. Smith not voting, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

C/U #1742 - - application of **PINE ACRES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an expansion of existing manufactured home park/campground by adding 24 campsites to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.0 acres, more or less, lying south of Dogwood Lane (the access road into Leisure Point Resort), 2,900 feet north of Long Neck Road.

The Chairman referred back to this application, which has been deferred since August 14, 2008.

Motion by Mr. Gordy, seconded by Mr. Burton and carried 4 votes to none, with Mr. Smith not voting, to defer action for further consideration. Motion carried 4 – 0 – 1.

C/U #1807 - - application of **TIDEWATER ENVIRONMENTAL SERVICES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for public utilities (water and wastewater) to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 13.228 acres, more or less,

lying northwest of Road 462 (Trussum Pond Road) approximately 1.8 miles southeast of Road 461 (Old Stage Road).

The Chairman referred back to this application, which has been deferred since August 14, 2008.

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1807 for Tidewater Environmental Services, Inc. for a regional water production and wastewater collection, treatment and disposal facility based upon the record and for the following reasons:

1. The proposed use of the subject property as a water and sewage treatment plant is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.
2. The proposed conditional use is for this facility to be available to serve projects and customers within the applicant's planning and certificated areas as may be required by the Public Service Commission.
3. The Applicant has applied for and/or acquired Certificates of Public Convenience and Necessity to serve certified parcels in the region and has or will have its tariffs approved by the Public Service Commission.
4. This Application is appropriate at the subject site because it is in an area of development where regionalized water production and wastewater collection, treatment and disposal are not otherwise available to all properties or projects.
5. Approval of this Application will provide a regionalized water production and wastewater collection, treatment and disposal facility and it will safely serve the communities and will not harm the environment.
6. The proposed regional sewerage treatment plant aspect of this Application and its collection and disposal systems will be reviewed and approved by DNREC and will be designed and constructed in accordance with all other applicable federal, state and county requirements, including those mandated by DNREC and other agencies having jurisdiction over the use.
7. This recommendation is subject to the following conditions:
 - A. All improvements for collection, treatment, and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Sussex County Engineering Department and the Delaware Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site.
 - B. The Applicant shall submit to the Sussex County Engineering Department a regional plan that shows all the areas and/or subdivisions to be served by the wastewater treatment and disposal facility. The plan shall include technical support that demonstrates that capacity exists at the treatment and disposal facility to serve the areas and/or subdivisions.

- C. The facility shall not receive sanitary waste for treatment and disposal from any property or parcel that is located within the Sussex County Sewer Planning Area or Sewer District.
- D. All improvements for central water production, including wells, pumps, and storage facilities, shall be constructed and maintained in accordance with the requirements of the Delaware Department of Health or any other governmental agency with jurisdiction over the use of the site, or any modification to it.
- E. One lighted sign shall be permitted on the site, not to exceed 32 square feet in size.
- F. With the exception of emergency generators that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.
- G. Any security lighting shall be screened so that it does not shine onto neighboring properties or County roads.
- H. The elevated water tanks shall be painted sky neutral to blend in with the horizon.
- I. There shall be vegetated buffers of at least 30 feet from all property lines and any lagoons, Rapid Infiltration Basins or similar structures and they shall be located at least 100 feet from any dwellings.
- J. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

Motion by Mr. Gordy, seconded by Mr. Burton and carried 4 votes to none, with Mr. Smith not voting, to forward this application to the Sussex County Council with the recommendation that it be approved for the reasons and with the conditions stated.
Motion carried 4 – 0 – 1.

C/U #1743 - - application of **JOHN AND MICHELLE BEAVER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for motor vehicle service, restoration, towing, and sales to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.0 acres, more or less, lying east of Road 277 (Robinsville Road), 1,130 feet north of Road 277A (Harts Road).

The Chairman referred back to this application, which has been deferred since August 28, 2008.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1743 for John and Michelle Beaver for a family owned and operated classic/antique/replica motor vehicle service, restoration, towing and sales business 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. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.

3. This recommendation for approval is subject to the following conditions and stipulations:
 - A. There will not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.
 - B. No vehicles for sale will be displayed outside on the premises. All vehicles for sale and repair shall be stored inside.
 - C. The only repair work allowed in the shop will be for classic/antique/replica automobiles. All repair work is to be performed indoors.
 - D. The normal business hours will be between the hours of 9:00 am until 5:00 pm Monday through Friday with "appointment only" hours on Saturday or Sunday.
 - E. There will be no non-relative employees working on the premises.
 - F. There shall only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
 - G. Towing service is only for purposes of towing classic/antique/replica vehicles for minor repairs and delivery of said vehicles. No other commercial towing service is permitted.
 - H. There will be no bodywork performed.
 - I. The dumpster is to be screened from adjoining properties by fencing.
 - J. The site plan shall be subject to 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 it be approved for the reasons, and with the conditions and stipulations stated. Motion carried 5 – 0.

C/U #1810 - - application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional water facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 74.61 acres, more or less, lying east of Route 30, 0.6 mile south of Reynolds Pond Road (Road 231).

The Chairman referred back to this application, which has been deferred since August 28, 2008.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1810 for Artesian Water Co., Inc., for a regional central water facility based upon the record and for the following reasons:

1. The proposed use of the subject property as a regional central water facility is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.

2. The regional water facility with the stipulations and conditions placed upon it will not have any adverse impact upon the County, its residents, or the environment.
3. The regional water facility is appropriate for this site because it is in an area of residential development where central water is not otherwise available.
4. The site has been approved by Conditional Use #1724 as a regional wastewater treatment plant and disposal site with Rapid Infiltration Beds.
5. The proposed use is subject to the review and approval of the Public Service Commission, and the Applicant has applied for or will apply for Certificates of Public Convenience and Necessity to serve the region.
6. This recommendation is subject to the following conditions:
 - A. The treatment plant buildings shall appear to be agricultural buildings.
 - B. All improvements for collection, treatment and disposal of water shall be constructed and maintained in accordance with the requirements of the Department of Health, P.S.C., DNREC and any other governmental agency with jurisdiction over the use of the site.
 - C. With the exception of emergency generators that may be located on the site, all of the equipment needed in the operations of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.
 - D. Any security lighting shall be screened so that it does not shine onto neighboring properties or County Roads.
 - E. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

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

OTHER BUSINESS

Peninsula MR/RPC

Veranda – Revised Parking and Driveways – Road 299

This item was removed from the Agenda on September 17, 2008.

Swann Cove MR/RPC

Preliminary Site Plan – Phases 6 and 7 – Route 54

Mr. Abbott advised the Commission that this is the preliminary record plan for phases 6 and 7 of the Swann Cove MR/RPC; that Phase 6 contains 34 single-family lots located on 10.27-acres; that Phase 7 contains 30 single-family lots located on 11.32-acres; that the proposed setbacks for these phases are the standard MR setbacks of 30-10-10; that the streets will be dedicated to public use; that sidewalks are provided on both sides of the streets; that Sussex County will provide central sewer and Artesian Water Company will

provide central water; that the preliminary plan complies with the subdivision and zoning codes and the conditions of approval; that these are the last 2 phases of the project; and that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals since the project is a residential planned community.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals.
Motion carried 5 – 0.

Bethany Bay AR-1/RPC

Revised Master Plan Sections 1.1, 1.3, 1.5 and 3.1 – Road 350

Mr. Abbott advised the Commission that this is a revised plan for the Bethany Bay development; that Section 1.5 proposes 3 new detached single family dwelling units; that there is a 20-foot building separation between dwellings; that Section 3.1 proposes 12 condominium units and Section 1.3 proposes 82 new units; that all of the buildings have the minimum 40 foot building separation for the multi-family units; that Section 1.3 provides 178 parking spaces, Section 1.5 provides 6 parking spaces and Section 3.1 provides 24 parking spaces; and that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals since the project is a residential planned community.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the revised master plan and Sections 1.1, 1.3, 1.5 and 3.1 as a preliminary with the stipulation that final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals. Motion carried 5 – 0.

Bayview Landing HR-1/RPC

Lot 217 – Revised Front Yard Setback – Route 54

Mr. Abbott advised the Commission that this is a request to revise the front yard setback from 30-feet to 27.98 feet; that a porch was built larger than what was proposed; that since the project is a residential planned community, the Commission may alter the setbacks; that normally when the setbacks are not the standard setbacks, it is for the entire community not just certain parcels although it has been done in the past for Southampton and The Peninsula; and that the builder also has the opportunity to apply to the Board of Adjustment for a variance.

The Commission discussed the lot being located on a cul-de-sac on an interior street and also that this has been done in other residential planned communities in the past.

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

Fenwick Medical Complex

CU #1704 Site Plan Road 383 (Route 20)

Mr. Abbott advised the Commission that this is a preliminary site plan for a 102,000 square foot medical complex located on 33.04-acres; that the site is zoned GR; that the conditional use was approved by the County Council on January 8, 2008 with 13 conditions; that the conditions are referenced on the site plan; that there are 6 buildings proposed; that Phase 1 will be buildings 1 and 2 and Phase 2 will be buildings 3 to 6; that the setbacks meet the requirements of the zoning code; that 495 parking spaces are required and 510 spaces are provided; that central sewer will be provided by Sussex County Council; that central water will be provided by Artesian Water Company; that dumpsters are located adjacent to each building; that a required landscape plan has been submitted; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Gordy 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 5 – 0.

Coolspring Community Center
CU #1740 Site Plan – Road 291

Mr. Abbott advised the Commission that this is a site plan for a community center; that the conditional use was approved on July 29, 2008 with 10 conditions; that the site plan is the same as what was submitted for the public hearing; that the 10 conditions of approval are referenced on the site plan; that access to the site is from West Meadowview Drive; that 29 parking spaces are provided; and that all agency approvals have been received.

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

Woodlawn Memorial Park
CU #1798 Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a site plan for a 2,767 square foot crematorium; that the conditional use was approved on August 12, 2008; that the setbacks meet the requirements of the zoning code; that 2 parking spaces are provided adjacent to the building; and that all agency approvals have been received.

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

KGH Property Development, LLC
3 Lots – Road 257 (Round Pole Bridge Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 14.93-acres parcel into 3 lots along Road 257; that this request was deferred on May 14, 2008

pending receipt of a revised plan verifying the accuracy of the wetlands delineation and calculations for the upland areas of the proposed lots that Ed Launay, Wetlands Scientist, has signed off on the wetlands delineation; that the proposed Lot 1 contains 0.78-acres, Lot 2 2.68-acres and Lot 3 11.47-acres; and that DelDOT has issued a Letter on No Objection.

Gary Cuppels, Surveyor, with ECI, advised the Commission that the 3 lots will be served by one septic system and that according to DNREC regulations, this serves as a community system.

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

Baxter Farms, Inc.
3 Parcels and 50' Right of Way – Road 48

Mr. Abbott advised the Commission that this is a request to subdivide 81.32 acres into 3 lots; that Lot 1 will contain 40.66 acres with 609.96 feet of road frontage; that Lot 2 will contain 20.33 acres with 153.81 feet of road frontage; that Lot 3 will contain 20.33 acres with 50 feet of road frontage; that the aerial photograph does not show a lane, driveway, etc. where the proposed 50-feet of road frontage for Lot 3 is; and that the request can be approved as submitted or require the owner to apply for a variance from the Board of Adjustment.

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

E.J. Chalabala
2 Parcels and 50' Right of Way – Road 228A

Mr. Abbott advised the Commission that this is a request to create a 5.0-acre parcel with access from a 50-foot easement/right of way out of a 36.16-acre parcel; that the existing parcel has access from an existing 25-foot easement; and that the owner proposes to create a 5.0-acre parcel and widen the easement to 50-feet across his lands to serve as access to the 5.0-acre parcel.

E.J. Chalabala advised the Commission that the proposed lot is located on the highest portion of the site.

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

Stephen and Angela Wallo
3 Lots and 50' Easement – Road 258

Mr. Abbott advised the Commission that this is a request to subdivide 7.96 acres into 3 lots and create a 50-foot easement to serve as access for the lots; that Lot 1 will contain

0.83-acres, Lot 2 0.83-acres and Lot 3 3.34-acres; that the residual land contains 2.96-acres and will retain access from an existing driveway off of Road 258; that the owner proposes to create the 50-foot easement over an existing driveway; that DeIDOT has issued a Letter of No Objection; that the request can be approved as submitted or require an application for a major subdivision; and that if the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

RWR9, LLC

Lot on 50' Right of Way – Route 9

Mr. Abbott advised the Commission that this is a request to subdivide 5.67 acres into 4 lots; that Lots 1 through 3 are strip lots off of Route 9 and will contain 1.40-acres, 1.48-acres and 1.39-acres; that the residual land contains 1.40-acres and has an existing dwelling located on it; that access to the residual land is proposed to be from an existing 50-foot right of way; that DeIDOT has issued a Letter of No Objection; that the residual lands would be the fourth lot having access from the right of way; that it has been the policy of the Commission to only allow 3 lots having access from a right of way without a public hearing; and that a public hearing should be required for the residual lands.

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

Arnold and Evelyn Smith

Lot and 50' Easement – Road 46

Mr. Abbott advised the Commission that this is a request to subdivide a 1.0-acre lot with access from a 50-foot easement out of a 17.46-acre parcel; that the owner proposes to create the 50-foot easement over an existing paved driveway; and that the request may be approved as submitted or an application for a major subdivision can be required.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept. Motion carried 5 – 0.

Donald Smith

3 Lots and 50' Right of Way – Road 541

Mr. Abbott advised the Commission that this is a request to subdivide 18.56-acres into 3 lots; that Lot 1 will have access from an existing driveway off of Road 541; that Lots 2 and 3 will have access from an existing 50-foot right of way off of Road 541; that the proposed lots 2 and 3 would be the second and third lots having access from the right of

way; and that if the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Lewis D. Adkins and Cheryl A. Yarema
3 Parcels and 50' Right of Way – Road 66

Mr. Abbott advised the Commission that this is a request to subdivide a 7.45-acre parcel into 4 lots and create a 50-foot right of way to serve as access to 3 lots; that Lots 1 through 3 contain 1.51-acres, 1.45-acres and 2.13 acres; that the lots will have access from the 50-foot right of way; that the owner proposes to widen an existing 20-foot lane to a 50-foot right of way; that the residual lands contain 2.36-acres and will have access from Road 66; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept with the stipulation that any further subdivision of the site will require an application for a major subdivision. Motion carried 5 – 0.

Chairman Wheatley turned the meeting over to Vice-Chairman Gordy.

Bill Hudson
2 Lots and 50' Right of Way – U.S. Route 13A

Mr. Abbott advised the Commission that this is a request to create a lot and a 50-foot right of way to serve as access to the 2 lots; that the aerial photograph does not show a lane, driveway, road, etc.; and that the request should be denied as submitted and be required to go through the major subdivision process.

Motion by Mr. Johnson, seconded by Mr. Smith and carried 4 votes to none, with Mr. Wheatley absent, to deny the request as submitted. Motion carried 4 – 0.

Rolland E. Vincent
3 Lots and 50' Right of Way – Road 496

Mr. Abbott advised the Commission that this is a request to create 3, 2.0-acre lots with access from a 50-foot right of way; that the owner proposes to extend an existing 50-foot right of way to serve as access to the proposed lots; and that if the request is approved as submitted, it should be stipulated that any further subdivision will require an application for a major subdivision.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Wheatley absent, to approve the request as submitted as a concept with the stipulation

that any further subdivision of the site will require an application for a major subdivision.
Motion carried 4 – 0.

Marylou Dickson
3 Lots and 50' Easement – Route 24

Mr. Abbott advised the Commission that this is a request to create 3 lots along Route 24; that 2 of the lots will contain 1.0-acres and the other 1.50-acres; that the remaining 15.36-acres will have access from an existing 50-foot easement that was approved by the Commission in the past year; and that this would be the second parcel having access from the 50-foot easement.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, with Mr. Wheatley absent, to approve the request as submitted as a concept. Motion carried 4 – 0.

Herola Family, LLC
4 Lots and 50' Right of Ways – Route 24

Mr. Abbott advised the Commission that this is a request to create 4 lots along Route 24 and a 50-foot right of way for the residual lands; that this site was the subject of a conditional use application for a medical complex and retail and was presented that there would be 4 different uses along Route 24; that each of the 4 lots meets the requirements for road frontage along a numbered road; that access to the residual lands for the medical center complex would be from the 50-foot right of way; and that DelDOT has issued a Letter of No Objection.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, with Mr. Wheatley absent to approve the 50-foot right of way and residual land as submitted as a concept. Motion carried 4 – 0.

Subdivision #2006 – 52 - - LT Associates
Clarification of Conditions of Approval

Mr. Abbott advised the Commission that condition of approval K reads “There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.” that the applicant’s attorney sent a letter stating that wetlands are only defined in the subdivision ordinance under 115-193 and that definition encompasses only state wetlands as defined in 7 Del. C. Subsection 6603; and that the ordinance only defines wetlands as state wetlands.

Dennis Schrader, Attorney, was present and advised the Commission that Delaware Code Chapter 7 Section 6603 references State Wetlands only and that the motion only referenced wetlands.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to none, Mr. Wheatley was absent, to defer action. Motion carried 4 – 0.

Bay City Mobile Home Park
Corrective Survey – Road 22

This item was removed from the Agenda on September 5, 2008.

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold a special meeting on Thursday, October 16, 2008 at 3:00 pm.

Mr. Johnson stated that he would like to invite a representative from the Center for the Inland Bays to present a power point presentation at the October special meeting in reference to buffers. The staff will contact the Center for the Inland Bays to schedule this.

Meeting adjourned at 4:50 pm.