



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF SEPTEMBER 19, 2007

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, September 19, 2007 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:05 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. Richard Berl – Assistant County Attorney, Mr. C. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Mr. Abbott advised the Commission that Item 28. Rules of Procedure under Other Business has 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.

OLD BUSINESS

Cu #1697 - - application of **DANSK, L.L.C.** to consider the Conditional Use of land in a C-1 General Commercial District for a water park and miniature golf course to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.352 acres, more or less, lying north of Route 54, west of Virginia Avenue, approximately 350 feet west of Route One.

The Chairman referred back to this application which has been deferred since August 9, 2007.

Mr. Smith stated that he would move that the Commission recommend approval of CU #1697 for DANSK, L.L.C. for a water park and miniature golf course based upon the record and for the following reasons:

1. This application is for the expansion of an existing water park and amusement area that has operated for more than twenty years.
2. The property is already zoned C-1 General Commercial, which allows a variety of permitted uses that are similar in intensity, traffic, parking and other characteristics.
3. DelDOT has not objected to the proposed use.

4. The proposed use is consistent with existing uses in the area.
5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact upon the neighboring properties or community.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. There shall be 39 parking spaces on the property. These parking spaces shall be clearly marked on the Final Site Plan.
 - B. There shall be a stop sign located at the parking lot exit.
 - C. The Applicant shall clarify on the Final Site Plan the exact location of the DelDOT easement along Route 54.
 - D. A barrier between the project and Route 54 shall be clearly shown on the Final Site Plan. It shall be designed to adequately separate pedestrians and mini golfers in the project from the vehicle traffic on Route 54.
 - E. There shall be a boardwalk/pathway/sidewalk along the entire length of the project adjacent to Virginia Avenue for safe pedestrian access into the project and off of the Virginia Avenue right of way.
 - F. The restroom facilities serving the project shall be clearly shown on the Final Site Plan and shall be enlarged and sized to adequately serve the expansion of this project to include the renovated larger water park and new miniature golf course.
 - G. The park shall open no earlier than 10:00 a.m. and shall close no later than midnight.
 - H. All lighting serving the project, including the water slides, miniature golf and parking, shall be screened so that it shines only onto the project and not onto neighboring or adjacent residential properties.
 - I. As stated during the presentation, a concept plan for the project shall be submitted to the County Engineering Department for review.
 - J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy 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.

Subdivision #2005 – 60 - - application of **MANDRIN HOMES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 27.34 acres into 56 lots (Environmentally Sensitive Development District Overlay Zone), located west of Road 381, 3,860 feet north of Route 54, and south of Dirickson Creek.

Mr. Abbott advised the Commission that this application was deferred on August 11, 2006 pending verification that the site has been annexed into a Sussex County Sanitary

Sewer District; that on July 24, 2007 the Sussex County Council approved an expansion of the Fenwick Island Sanitary Sewer District to include this site; and that the application is for 56 lots.

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

Subdivision #2005 – 100 - - application of **D.K. PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 86.53 acres into 103 lots, located at the end of Dove Knoll Drive and Turtle Dove Drive within Dove Knoll Subdivision on the north side of Route One.

Mr. Abbott advised the Commission that this application was deferred on May 10, 2007; that each Commission member has received a copy of Mr. Berl's letter referencing the required 51% approval of the property owners; that on August 15, 2007 the Commission deferred action and left the record open for 15 days for written comments on Mr. Berl's letter; that the record for written comments closed on August 30, 2007; and that each Commission member was provided with copies of the written comments.

Mr. Johnson stated that he would move that the Commission deny Subdivision #2005 – 100 for D.K. Properties, L.L.C., for the following reasons:

1. This application is for a re-subdivision, calling into play Sussex County Subsection 99-13(A), which requires the Applicant to provide evidence that not less than 51% of the lot owners consent to the application.
2. The developer was advised by the 5/13/05 PLUC Comments of the 51% rule.
3. The Application for Subdivision #2005 – 100 was filed on November 28, 2005, and did not include the evidence required by the Code. Mr. Shane Abbott, Assistant Director of P & Z, wrote a letter to the Applicant on December 29, 2005 reminding the Applicant of that requirement.
4. It was not until March 29, 2007, more than a year later, that the Applicant, through counsel, submitted what was represented to be the consent of 60 lots. However, of those 60, one was undated, and 11 were dated after the application was filed on 11/28/2005 for re-subdivision. Therefore, with 57 votes necessary to meet the 51% threshold, the Applicant could not have had 51% when the application was filed.
5. During the week prior to the public hearing, the Planning and Zoning staff reviewed and counted the ballots that had been received. It was determined at that time that 6 of the 60 consents in the Applicant's package had voted both ways. Mr. Abbott's initial count showed 53 lots in favor and 59 lots opposed. Another count later in the week showed 51 in favor and 59 against. As of the date of the hearing, the count was 50 in favor and 62 opposed, which were the numbers Mr. Abbott recited at the hearing.

6. At the close of the public hearing the Commission deferred its decision and requested a report from staff and legal counsel, in order to obtain additional information as to the 51% rule. That report was received and reviewed. At the 8/15/2007 meeting, the matter was deferred again and the record was left open for public written comments in reference to Assistant County Attorney Richard Berl's 7/23/2007 advisory letter to P & Z Commission. Responses were received from the developer's legal counsel and parties opposed to the re-subdivision.
7. The Code clearly places the burden on the Applicant to provide evidence that 51% of the owners consent at the time of the application for re-subdivision. In this instance, it does not appear that the Applicant met the burden.
8. It should be further noted that of the votes submitted in favor of the proposed amended plan, the owners of the 41 undeveloped lots are in essence the development entity, DK Extension L.L.C. Of the 71 lot owners of the developed Dove Knoll development, at most 19 (27%) or perhaps as few as 9 (13%) lot owners were in favor of this proposed amended plan.
9. From the petitions signed and submitted to the P & Z Commission, public hearing testimony, and letters sent to the P & Z Commission prior to or at the Public Hearing, and in written response to Mr. Berl's advisory letter dated 7/23/2007, the overwhelming majority of individual home owners in Dove Knoll are opposed to the proposed Amended Plan.
10. Regardless of the 51% of the owners' consents issues, I would still recommend that the P & Z Commission deny Subdivision #2005 – 100, DK Properties, L.L.C. based upon the record and for the following reasons:
 - A. The proposed amended plan is a 250% increase from the approved 41 lots to 103 lots, for a net increase of 62 lots.
 - B. These additional 62 lots and associated impervious surfaces would be placed in an environmentally sensitive area which consists of forest and wetlands that are the headwater riparian wetlands associated with Pot Hook Creek and Wolfe Glade. This area is in an excellent well-head and recharge area. This surrounding area is rated as excellent or good recharge areas. Furthermore all the land surrounding Pot Hook Creek has been identified as critical.
 - C. Contrary to the developer's statement that there will be no or little impact on the wetlands, their preliminary plan indicates otherwise as there are no proposed buffers from the wetlands and extensive clearing of existing forest would occur. Nearly 50% of the existing forest would be cleared outright in addition to future clearing by lot owners as part of the construction/development process.
 - D. DNREC has strongly recommended that the applicant preserve the existing natural forested buffer adjacent to the wetlands in their entirety. DNREC has requested a minimum 100-foot buffer from the

- E. The developer has proposed to increase the building set back on lots adjacent to the wetlands by an additional 10 feet for a maximum building set back of 30 feet, with no buffer. In recent years, the P & Z Commission has typically required a minimum 50-foot buffer from wetlands. This has apparently been disregarded.
- F. Pedestrian travel and safety for the existing residents of Dove Knoll is of concern. While the developers are proposing sidewalks on 1 side of the streets in the proposed amended area (note PLUS recommended sidewalks on both sides), there are no sidewalks in the existing developed area, nor are any proposed. There are no sidewalks proposed in the existing developed area to either the proposed school bus shelter in the proposed amended area, nor to the adjoining shopping/entertainment center. Thus the current residents will be subject to considerable more traffic as the proposed amended area travels through the existing developed area. By the developers application to PLUS, the project will generate 1,708 daily vehicle trips. However no provision is being made for safe pedestrian travel within the existing developed area, let alone any provision for safe pedestrian or bicycle travel to adjoining areas.
- G. In response to the cutting of the forested area, the Developer has proposed tree-lined streets. Tree lined streets are an inadequate replacement of the benefits provided by forested areas, not only ecologically, but more importantly to the abundance of wildlife that resides in, on and near this property.
- H. The developers are proposing 2 separate HOAs, governed under significantly different community covenants and restrictions. This could prove to be cumbersome and burdensome to manage. Furthermore, once the developer is done with the proposed amended area and is no longer a party to the HOAs, this is likely to become a source of conflict as has been seen in other developments with 2 HOAs.
- I. While the developers have proposed to essentially cover all the HOA expenses of the existing HOA for the next 10 years, who or what will determine the original HOAs financial responsibilities later, i.e. what portion of the overall communities' expenses for open space, utilities, SWM, community management, etc., etc.

In summation, the current individual home owners purchased their homes with a certain understanding of the community size, with limited amenities, with limited HOA expenses, and with extensive natural areas. There have not been sufficient justifications provided by the developer which would warrant such significant changes as propagated

in the proposed amended area. To the contrary, the proposed amended area could have a detrimental impact on the natural resources of the proposed amended area and perhaps a significant impact on the residents of the existing area.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to deny this application for the reasons stated. Motion carried 5 – 0.

Subdivision #2006 – 27 - - application of **O.A. NEWTON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 95.24 acres into 137 lots, (Cluster Development), located north of Road 404, 1,900 feet west of Road 525.

Mr. Abbott advised the Commission that this application was deferred on August 23, 2007; that DNREC has issued a septic feasibility statement indicating that the site is suitable for a community septic system; and that DelDOT has issued a Letter of No Objection for the entrance location.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2006 – 27 for O.A. Newton based upon the record and for the following reasons:

1. The project complies with the Sussex County Subdivision Code. It is zoned AR-1 and meets the purposes and requirements of that District.
2. The project is in close proximity to the Town of Bridgeville, so the residents will be able to utilize the amenities available in that Town. The Town has no objection to the project.
3. The development is designed in accordance with the Cluster Development Ordinance. The proposed clustered design is superior to a standard subdivision. For instance, clustering has been used to preserve open areas and increased buffers. The lots are adjacent to open space. There are also natural walking paths promoting interconnectivity within the project.
4. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.
5. The applicant has proposed 131 lots within the project, which is a permissible density within an AR-1 subdivision on the land.
6. The project will not adversely affect neighboring or adjacent properties.
7. The lots will be served by central water and sewer, in accordance with Federal, State and County requirements.
8. The project will create opportunities for people on the western side of the County to purchase more affordable homes.
9. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 131 lots within the subdivision.

- B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, buffers, storm water management facilities, open space, and other common areas.
- C. The storm water management system shall meet or exceed the requirements of the State and County. The system shall be operated using Best Management Practices to provide groundwater recharge.
- D. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT.
- E. Street lighting shall be provided in the project.
- F. The subdivision shall be served by a central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with the Sussex County Engineering Department specification and in conformity with all DNREC regulations.
- G. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- H. A school bus shelter with parking for at least 8 vehicles shall be provided on the Final Site Plan. The developer shall coordinate and cooperate with the local school district's transportation manager to establish the school bus stop area. The location of the bus stop area shall be shown on the Final Site Plan.
- I. The developer shall construct at least 2 tot lots in the project. And, if all of the area set aside on the Preliminary Plan for wastewater disposal is not needed, the remaining area shall be used for active play areas such as ball fields.
- J. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- K. All agricultural buffers shall be provided. As stated by the Applicant, they shall be at least 50 feet wide. A landscape plan for the buffers signed by a Licensed Delaware Landscape Architect shall be included with the Final Site Plan.
- L. Lots 1 through 5 and 103 through 107 shall be moved further from Route 404 to allow a greater landscaped buffer between the road and the lot lines.
- M. Walking paths must be included throughout the entire project, not just the northern portion, as was shown on the Preliminary Plan.
- N. Open space shall be inserted between lots 125 – 131 and lots 120 – 124.
- O. The Final Site Plan shall reflect that the Applicant and Homeowners' Association shall grant access to Sussex County to inspect monitoring wells on the site or to inspect the adjacent property owned by the County.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

The Commission discussed condition L and questioned if a certain distance should be stipulated, questioned if sidewalks should be provided for safe pedestrian travel and a community feel for the number of homes proposed; that the developer has owned the lands for a long period, and that not many amenities are proposed.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a concept for the reasons and with the conditions stated. A revised preliminary site plan shall be submitted for consideration under Old Business at a future meeting of the Planning and Zoning Commission. Motion carried 5 – 0.

Subdivision #2006 – 28 - - application of **SUSSEX VENTURES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 61.17 acres into 44 lots, located east of Road 550, ½ mile south of Route 20.

Mr. Abbott advised the Commission that this application was deferred on August 23, 2007; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; and that DelDOT has issued a Letter of No Objection for the entrance location.

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

Subdivision #2007 – 17 - - application of **SEASIDE BAPTIST CHURCH, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 4.99 acres into 2 lots, located west of Road 277 (Robinsonville Road), 125 feet north of Gosling Creek Road with Gosling Creek Subdivision.

Mr. Abbott advised the Commission that this application was deferred on August 23, 2007 to allow Mr. Robertson time to review the easement from Gosling Creek to the buyer for compliance.

Mr. Johnson stated that he would move that the Commission grant preliminary approval to Subdivision #2007 – 17 for Seaside Baptist Church, Inc. based upon the record and for the following reasons:

1. This is a two-lot subdivision to establish one residential lot with the other lot used as a church. It is in compliance with the requirements of the Subdivision Ordinance and both lots will exceed $\frac{3}{4}$ of an acre in size.
2. The new lot at the rear of the property will have access via the existing subdivision known as Gosling Creek.
3. The Homeowners' Association for Gosling Creek has represented to the Sussex County Office of Planning and Zoning that more than 51% of those eligible to vote in that subdivision have approved the inclusion of the new

4. The subdivision, creating essentially one new residential lot, will not adversely affect any neighboring or adjacent properties.
5. This preliminary approval is subject to the following conditions:
 - A. The Applicant must confirm that access is granted across the Gosling Creek Drainage Easement within the Gosling Creek Subdivision to provide access to the new residential lot, and that the access will not interfere with drainage within that easement area.
 - B. The Final Site Plan shall be subject to staff approval after staff has received all appropriate agency approvals.

Motion by Mr. Johnson, 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 #2004 – 57 - - application of **BLUE RIBBON PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential and GR General Residential District in Broad Creek Hundred, Sussex County, by dividing 38.64 acres into 30 lots, located south of Route 20, approximately 1,030 feet west of Road 485.

Mr. Abbott advised the Commission that this is the final record plan for a 30-lot standard subdivision known as Deep Creek; that the Commission granted preliminary approval for 30 lots on October 13, 2005 and granted a one-year time extension on January 18, 2007; that the final record plan complies with the 2 conditions of approval and the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2004 – 58 - - application of **NORRIS NIBLETT** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Dagsboro Hundred, Sussex County, by dividing 33.29 acres into 12 lots, located north of Road 472, 2,782 feet east of Road 432.

Mr. Abbott advised the Commission that this is the final record plan for an 11-lot standard subdivision known as Cross Key Village; that the Commission granted preliminary approval for 12 lots on October 13, 2005 and granted a one-year time extension on October 18, 2006; that the final record plan complies with the conditions of approval and the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision 32005 – 25 - - application of **NORTHERN OAK ESTATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 13.72 acres into 13 lots, located north of Road 231 (Reynolds Pond Road), 1,266 feet northwest of Route 5.

Mr. Abbott advised the Commission that this is the final record plan for a 13-lot standard subdivision known as Northern Oak Estates; that the Commission granted preliminary approval for 13 lots on October 18, 2006; that the final record plan complies with the conditions of approval and the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve this application as a final. Motion carried 5 – 0.

Subdivision #2006 – 33 - - application of **BETHANY SHORT PROPERTIES, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 20.08 acres into 49 lots, (Environmentally Sensitive Developing District Overlay Zone), located west of Route One, 3,500 feet north of Fred Hudson Road (Road 360).

Mr. Abbott advised the Commission that this is the final record plan for a 49-lot environmentally sensitive development district overlay zone subdivision known as Watermark; that the Commission granted preliminary approval for 49 lots on February 20, 2007; that the final record plan complies with the conditions of approval and the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve this application as a final. Motion carried 5 – 0.

OTHER BUSINESS

Auto Works

Commercial Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a preliminary site plan for an auto body repair shop located on 2.08-acres; that the site is zoned C-1; that a 9,375 square foot building and a 4,500 square foot building are proposed; that there is an existing 1,176 square foot garage on the site; that the setbacks meet the requirements of the zoning code; that 43 parking spaces are required and 50 are provided; that 8 spaces are within the front yard setback and are subject to site plan review; that the site plan references a 20-foot landscaped buffer but does not show a landscaping plan; that on-site septic and well are proposed; and that if preliminary approval is granted, final approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals with a landscaping plan being submitted.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to approve the plan as a preliminary as submitted. Final approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals and a landscaping plan being submitted. Motion carried 5 – 0.

Millsboro Medical Center
CU #1663 Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for a medical facility; that this item was deferred on August 15, 2007 for parking calculations; that the conditional use was approved by the County Council on August 8, 2006; that the Commission granted a one-year time extension on August 15, 2007; that a 2-story, 19,873 square foot building is proposed; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that the site plan indicates that 12 doctors and 40 employees are proposed; that 68 parking spaces are required and 108 are provided; that a portion of 9 spaces are located within the front yard setback and are subject to site plan review; that access to the site is from a cross access easement from the adjacent Royal Farms site; that the 8 conditions of approval are referenced on the site plan; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Mr. Johnson questioned if a landscape plan has been submitted; raised concerns about cars backing out into the cross access easement; and that only preliminary approval can be considered since a condition of approval requires all agency approvals.

Mr. Abbott advised the Commission that a landscaping plan was not required in the conditions of approval and that the only roads that require a landscape plan are Route 1, 13 and 113.

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

Allegheny East Conference of 7th Day Adventists
Preliminary Site Plan – Road 485

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2,378.80 square foot church located on 1.83 acres; that the site is zoned C-1; that the setbacks meet the requirements of the zoning code; that the site plan indicates that there are 72 seats in the church; that 18 parking spaces are required and 20 spaces plus 2 additional handicapped spaces are provided; that the 2 handicapped spaces are located within the front yard setback and are subject to site plan review; that the proposed driveway and parking lot are proposed to be stone; that on-site septic and well are proposed; that the site plan indicates that the manufactured home on the site will be removed at the

completion of construction; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

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

Power & Love Outreach Ministries, Inc.
Preliminary Site Plan – Road 305

Mr. Abbott advised the Commission that this is a preliminary site plan for a 39,950 square foot church, a 7,700 square foot building and a 2,400 square foot garage for bus parking located on 21.65 acres; that the site is zoned AR-1; that the project will be built in 2 phases; That phase 1 will be the 7,700 square foot church building with seating for 300 and the garage; that phase 1 requires 75 parking spaces and 151 spaces are provided; that phase 2 will be the 39,950 square foot church and 250 parking spaces; that the total parking required is 325 spaces and 331 are provided; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Mr. Johnson questioned the location of the storm water management pond and whether or not it could be relocated to the rear of the site.

No one was present on behalf of this site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for further consideration and for the staff to contact the applicant about a possible alternative plan with the storm water management area being relocated. Motion carried 5 – 0.

Word of Hope Church, Inc.
Preliminary Site Plan – Route 30

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2,450 square foot church with a 1,575 square foot future expansion located on 1.19 acres; that the site is zoned AR-1; that the setbacks meet the requirements of the zoning code; that the site plan indicates that the church will seat 50 people; that 13 parking spaces are required and that 33 are provided; that on-site septic and well are proposed; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Mr. Johnson questioned the location of the storm water management area.

Mark Davidson of DC Group, L.L.C. was present and advised the Commission that approximately $\frac{3}{4}$ of the site drains to the front; that the pond is located at the lowest point of the site; that the septic system will be an elevated sand mound and that there is only a small area for the septic system; that the pond will only be 12 inches deep and that there are no other outfalls available.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the site plan as submitted as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Baywood GR/RPC
Phases 7 – 9 – Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this is a preliminary site plan for 132 single family lots and 40 townhouse units; that this phase contains 44.65 acres; that the site is zoned GR/RPC; that the townhouse units are made up of 5, 5-unit buildings, 3, 4-unit buildings and 1, 3-unit building; that the maximum building length is 165-feet with a minimum 40-foot separation between buildings; that each unit has a detached 2 car garage and 1 off-street parking space; that the proposed setbacks for the single family lots are 10-feet from all lot lines; that central water and sewer are provided; that the site plan is similar to the approved master plan; and that the site plan is suitable for preliminary approval.

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

Preserves at Jefferson Creek MR/RPC
Revised Record Plan – Road 363

Mr. Abbott advised the Commission that this is a revised record plan for a 138-unit residential planned community; that the plan previously received final approval by the Commission on May 17, 2006; that the same number of units are proposed, 50 single-family detached dwellings and 88 multi-family units; that the revised plan is to show the delineated wetlands that has changed from the previous plan; that the Army Corps of Engineers has issued a jurisdictional determination for these wetlands as mapped; that there are less wetlands than previously thought; that the 17 conditions of approval are referenced on the site plan; that the street design has been altered; and that the jurisdictional determination is valid for 5 years.

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

Bay Forest Club MR/RPC
Revised Record Plan – Road 347

Mr. Abbott advised the Commission that this a request to revise the final record plan; that there are 3 revisions to the plan; that the first revision is in the geometry of the storm water management pond and the alignment of Bay Forest Drive; that the storm water management pond has been made larger and the curvature of Bay Forest Drive has been deleted making this section a straight road with a traffic calming device added; the second revisions is for the relocation of Lot 176; that this is necessary since the developers have provided an interconnecting road with the Byewood Subdivision; that the developers are both projects; the interconnection road and Lot 176 are now located to the east of Lot 1; that the last revision is for the location and building foot prints for the cottages along Indigo Bunting Court and minor revisions to Indigo Bunting Court; that the revised plan is for 12 units compared to the previously approved 14; that there is still a 10-foot building separation between the cottages; and that the revised plan is suitable for preliminary approval.

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

Bethany Bay AR-1/RPC
Sections 1.3a, 1.2B1 and 1.4a – Preliminary Site Plan

Mr. Abbott advised the Commission that this is a preliminary site plan for the remaining phases of Bethany Bay AR-1/RPC; that Section 1.3a proposes 24 multi-family units located in 4 buildings; that each building contains 6 units and there are 9, 2-car garages proposed; that 48 parking spaces are required and 68 are proposed; that this project was originally approved when parking requirements were 2 per unit; that Section 1.2B1 contains 36 multi-family units located in 6 buildings along with 15, 2 car garages; that 72 parking spaces are required and 103 spaces are provided; that Section 1.4a contains 36 multi-family units located in 6 buildings along with 22, 2 car garages; that 72 parking spaces are required and 128 are proposed; that the building lengths, building separation distances and setbacks meet the requirements of the zoning code; that this will bring the total number of units to 549 and 550 are permitted by the approved ordinance; that central sewer is provided by Sussex County; and that the site plan is suitable for preliminary approval.

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

Pelican Point Subdivision
Phase 1 – 3 Final and Phases 4 – 7 Time Extension

Mr. Abbott advised the Commission that this is the final record plan for Phases 1 through 3 and a time extension for Phases 4 through 7 for the Pelican Point Subdivision; that this subdivision was formerly known as Stonewater Creek Phases 7 through 13; that the Commission approved the separation of this subdivision from Stonewater Creek on

September 20, 2006; that Phase 1 contains 52 lots, Phase 2 contains 70 lots and Phase 3 contains 42 lots; that the final record plan is the same as the preliminary plan and complies with the conditions of approval and the subdivision ordinance; that all agency approvals have been received; that Phases 1 through 3 are suitable for final approval; that Phases 4 through 7 received preliminary approval on September 20, 2006; that the record plan has been submitted to all agencies for approval and the applicant's are awaiting DelDOT's approval; and that this is the first request for an extension.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve Phases 1 through 3 as a final. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve a one-year time extension for Phases 4 through 7. Motion carried 5 – 0.

The Marina at Peppers Creek Final Record Plan

Mr. Abbott advised the Commission that this is a final record plan for a 122-lot cluster subdivision application; that the Commission granted a revised preliminary approval for 122 lots on July 18, 2007; that the final record plan is the same as the preliminary plan and complies with the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Burton and 4 votes to none, to approve the record plan as a final. Motion carried 4 – 0. Mr. Burton was absent.

Seasons at Bethany CU #1488 – Substantial Construction

Mr. Abbott advised the Commission that the staff has received a request from the applicant's engineer and attorney to consider an alternative to the term "substantial construction"; that this conditional use was approved on June 3, 2003; that the Commission granted one-year time extensions on August 26, 2004 and April 21, 2005; that the Commission granted the maximum allowed time extensions that are permitted by the zoning code; that the County Council granted a one-year time extension on April 25, 2006 and granted a six month time extension on May 15, 2007; that the use needs to be substantially under construction by December 3, 2007; that the Commission granted preliminary site plan approval on December 14, 2006; and that Chapter 99 defines substantial construction but Chapter 115 does not.

Jim Fuqua and Mark Cropper, Attorneys, Jeff Clark of Land Tech and Debbie Melson were present and advised the Commission that 1/3 of the site is zoned commercial; that all agency approvals have been received; that there is not a need for a further time extension; that site work has not commenced; that the project has been bid; that the applicants are considering selling the project and have concerns that a future purchaser

may want to revise the site plan; that the project has been delayed due to an estate settlement; that the estate has been settled; and questioned whether a bond could be submitted guaranteeing the completion of the work defined in substantial construction.

Mr. Smith raised concerns about setting precedence.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to defer this request until the October 2007 special meeting so that Mr. Robertson may participate. Motion carried 5 – 0.

Robert Carey and Blaine and Tiffany Short
Lot and 50' Right of Way – Road 567B

Mr. Abbott advised the Commission that this is a request to create a 1.5-acre lot with access from a 50-foot right of way; that the owner proposes to create the 50-foot right of way over an existing driveway; that the 1.5-acre lot will be given to the owner's daughter and son-in-law; and that the request may be approved as submitted or require an application for a major subdivision.

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

Byard and Phyllis Layton
Parcel and 50' Right of Way – Road 78

Mr. Abbott advised the Commission that this is a request to create a 9.96-acre parcel with access from a 50-foot right of way out of a 34.76-acre parcel; that the owner proposes to create the right of way over an existing driveway and give the 9.96-acre parcel to his son; that there is an existing dwelling located on the 9.96-acre parcel; and that the request may be approved as submitted or require an application for a major subdivision.

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

Donna Wilkerson and Brenda Lee Klein
2 Lots and 50' Right of Way – Road 348

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot right of way; that each lot will contain 1.18-acres; the proposed right of way will also serve as access to a landlocked parcel; that DelDOT has issued a Letter of No Objection; that the Commission approved this request as submitted on May 17, 2006 but the survey was not recorded; and that the request may 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 of the property will require an application for a major subdivision.

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

Cavan Construction
3 Lots and 50' Right of Way – U.S. Route 13

Mr. Abbott advised the Commission that this is a request to create 3 lots and residual land with access from a 50-foot cross access easement; that lots 1 through 3 will contain 2.91-acres and the residual land will contain 25.76-acres; that the site is zoned C-1 and AR-1; that the request may 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 of the property will require an application for a major subdivision.

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

Charles N. and Carolyn G. Jackson
2 Parcels and 50' Right of Way – Road 46

Mr. Abbott advised the Commission that this is a request to create 2 lots with access from a 50-foot right of way and enlarge an existing parcel; that Lot 1 will be increased in square footage; that the 2 proposed lots will contain 1.08-acres and 2.80-acres; that the owner proposes to create the right of way over an existing driveway; that the request may 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 of the property will require an application for a major subdivision.

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

Ross H. and Edith T. Rogers
2 Parcels and 50' Right of Way – Route 54

Mr. Abbott advised the Commission that this is a request to create a 1.25-acre lot with access from a 50-foot right of way out of a 4.61-acre parcel; that DelDOT has issued a Letter of No Objection; that the proposed right of way does not show an existing driveway, lane, etc.; and that the request may be approved as submitted or require an application for a major subdivision.

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

Drew R. and Margaret L. Naylor
3 Lots and 50' Right of Way – Route 9

Mr. Abbott advised the Commission that this is a request to create 3 lots with access from a 50-foot right of way; that the owner proposes to create the right of way over an existing stone and clamshell driveway; that the proposed lots will contain 0.79-acres, 0.83-acres, and 3.38-acres; that this request was approved by the Commission on October 22, 1987 but was never recorded; that the request may 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 of the property will require an application for a major subdivision.

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

Arthur G. Backus
4 Lots and 30' Right of Way – Route 30

Mr. Abbott advised the Commission that this is a request to create 4 lots with access from a 30-foot right of way; that this request was deferred on July 18, 2007; that the proposed lots will contain 0.90-acres, 0.80-acres, 1.10-acres and 1.69-acres; that the owner proposes to create the right of way over an existing driveway; that the minimum width for a right of way is 50-feet; that it appears that there is enough room to make the right of way into a 50-foot easement; that the request may 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.

Mr. Backus advised the Commission that the lots are for his children; and that the easement or right of way will be a minimum of 50 feet.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the request as a concept with the stipulations that the easement/right of way be a minimum of 50 feet and that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

Donald E. and Lisa A. Smith
3 Lots and 50' Right of Way – Road 492

Mr. Abbott advised the Commission that this is a request to subdivide a 6.77-acre parcel into 3 lots with access from a 50-foot right of way; that the lots will contain 2.72-acres,

1.18-acres and the residual land will contain 2.87-acres; that the owner proposes to create the 50-foot right of way over an existing woods road; that DeIDOT has issued a Letter of No Objection; that the request may 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 of the property will require an application for a major subdivision.

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

William H. and Dolores B. Lane
Lot and 50' Right of Way – Noble Road

Mr. Abbott advised the Commission that this is a request to 2.01-acre lot with access from a 50-foot right of way; that the owner proposes to create the right of way over an existing dirt road; that the 2 existing parcels will be made larger; that DeIDOT has issued a Letter of No Objection; that the request may 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 of the property will require an application for a major subdivision.

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

Subdivision #2004 – 41 - - William B. Warrington
Time Extension

Mr. Abbott advised the Commission that the staff has received a request for a time extension; that the Commission granted preliminary approval for 15 lots on August 11, 2005 and a one-year time extension on August 16, 2006; that this is the second request for an extension; and that if an extension is granted, it should be retroactive to the anniversary date of preliminary approval and will expire on August 11, 2008.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to grant a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval will expire on August 11, 2008. Motion carried 5 – 0.

Subdivision #2005 – 40 - - Paul and Doris T. Barron
Time Extension

Mr. Abbott advised the Commission that the staff has received a request for a time extension; that the Commission granted preliminary approval for 22 lots on May 25, 2006; that this is the first request for an extension; that a new engineering firm has taken

over the project; and that if an extension is granted, it should be retroactive to the anniversary date of the preliminary approval and will expire on May 25, 2008.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to grant a one-year time extension retroactive to the anniversary date of the preliminary approval. Preliminary approval will expire on May 25, 2008. Motion carried 5 – 0.

Subdivision #2005 – 56 - - Reynolds Pond, L.L.C.
Time Extension

Mr. Abbott advised the Commission that the staff has received a request for a time extension; that the County Council reversed the Commission's denial of this application on July 18, 2006; that the Commission granted preliminary approval for 1,630 lots on October 18, 2006; and that this is the first request for an extension.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to grant a one-year time extension. Preliminary approval will expire on October 18, 2008. Motion carried 5 – 0.

Subdivision #2005 – 61 - - Delmarva Woodlands Alliance 3, L.L.C.
Time Extension

Mr. Abbott advised the Commission that the staff has received a letter for a time extension; that the Commission granted preliminary approval for 43 lots on September 14, 2006; that this is the first request for an extension; and that if an extension is granted, it should be retroactive to the anniversary date of the preliminary approval and will expire on September 19, 2008.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of the preliminary approval. Preliminary approval will expire on September 14, 2008. Motion carried 5 – 0.

LT Associates, L.L.C.
CU #1655 – Time Extension

Mr. Abbott advised the Commission that the staff has received a request for a time extension; that the Conditional Use was approved on September 19, 2006; that this is the first request for an extension; and that the Commission has the authority to grant a maximum of 2, one-year time extensions.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension. This extension is valid until September 19, 2008. Motion carried 5 – 0.

Rules of Procedure

Possible Amendments

This item was removed from the agenda at the beginning of the meeting.

ADDITIONAL BUSINESS

The Commission was reminded of the Land Use Plan Update workshops on September 25, 2007 at Rehoboth Convention Center and on September 26, 2007 at Laurel Fire Hall. Both workshops will begin at 6:30 p.m.

There was a consensus of the Commission to hold a special meeting on Wednesday, October 17, 2007 at 3:00 p.m. for Old and Other Business items.

Meeting adjourned at 5:45 p.m.