



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE SPECIAL MEETING OF NOVEMBER 12, 2009

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, November 12, 2009 in the County Council Chambers, Sussex 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. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson and Mr. Marty Ross along with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director and Mr. Shane Abbott – Assistant Director.

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

### CONSENT AGENDA

Mr. Johnson requested that item H on the Consent Agenda be removed and discussed under Other Business.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the Consent Agenda as amended. Motion carried 5- 0.

The Consent Agenda included:

**Subdivision #2005 – 49** - - application of **GULFSTREAM LAND, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 47.26 acres into 90 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north and south of Road 363, 1,320 feet east of Road 384.

This is a final record plan for an 88-lot cluster subdivision. The Commission granted preliminary approval for 90 lots on November 20, 2006 and granted one-year time extensions on August 15, 2007 and April 22, 2009. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. All agency approvals have been received.

**Subdivision #2007 – 21** - - application of **LAURENCE S. CORDREY REV. TRUST** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Indian River Hundred, Sussex County, by dividing 77.40

acres into 7 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 297, 835 feet east of Route 30.

This is a final record plan for a 7-lot standard subdivision. The Commission granted preliminary approval for 7 lots on November 20, 2008. The final record plan complies with the subdivision and zoning codes and the conditions of preliminary approval. On October 19, 2009 the Sussex County Board of Adjustment granted variances for the minimum lot width of lots 3, 4, 5, 6 and 7. All agency approvals have been received.

**Subdivision #2007 – 23** - - application of **EVERETT AND CATHERINE WARRINGTON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred, Sussex County, by dividing 27.98 acres into 9 lots, located at the northeast corner of the intersection of Road 563 and Road 562. This is the final record plan for an 8-lot strip lot subdivision. The Commission granted preliminary approval for 9 lots on December 18, 2008. The final record plan complies with the subdivision ordinance and all agency approvals have been received.

#### Time Extensions

##### a. C/U #1704 – PMP Associates

This is a request for a one-year time extension. This conditional use for health care and medical offices was approved on January 8, 2008. The Commission granted a one-year time extension on December 17, 2008 and granted preliminary site plan approval on September 17, 2008. This is the second request for an extension and the last that the Commission has the authority to grant. The Commission was previously provided with a copy of the letter requesting an extension.

##### b. C/U #1705 – The Commonwealth Group

This is a request for a one-year time extension. This conditional use for warehousing, mini storage and contractor's condominiums was approved on October 2, 2007. The Commission granted a one-year time extension on December 17, 2008 and granted preliminary site plan approval on May 14, 2008 and granted final site plan approval on April 22, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until October 2, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

##### c. C/U #1713 – Keith Smith

This is a request for a one-year time extension. This conditional use for commercial storage buildings was approved on April 1, 2008. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of

preliminary approval and approval will be valid until April 1, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

d. C/U #1750 – John Gilman, Percy, Inc.

This is a request for a one-year time extension. This conditional use for athletic fields and related parking was approved on October 28, 2008. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until October 28, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

e. C/U #1752 – Michael Orndorff

This is a request for a one-year time extension. This conditional use for multi-family dwelling structures was approved on December 18, 2007. The Commission granted a one-year time extension on November 12, 2008 and granted preliminary site plan approval on July 16, 2008. This is the second request for an extension and the last one that the Commission has the authority to grant. If an extension is granted, approval will be valid until December 18, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

f. C/U #1792 – Tidewater Environmental Services, Inc.

This is a request for a one-year time extension. This conditional use for a regional wastewater treatment and disposal facility was approved on December 9, 2008. This is the first request for an extension. If an extension is granted, approval will be valid until December 9, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

g. C/U #1807 – Tidewater Environmental Services, Inc.

This is a request for a one-year time extension. This conditional use for public utilities (Water and Wastewater) was approved on December 2, 2008. This is the first request for an extension. If an extension is granted, approval will be valid until December 2, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

h. Subdivision #2004 – 46 - - Caldera Properties – Long Neck I, L.L.C.

This item was removed from the Consent Agenda and placed at the end of Other Business.

i. Subdivision #2005 – 18 - - J.K.C., L.L.C.

This is a request for a time extension. The Commission granted preliminary approval on February 23, 2006 and granted one-year time extensions on May 16, 2007, March 19, 2008 and March 18, 2009. The applicant's attorney is requesting an extension until December 31, 2010. This is the fourth request for an extension. A new engineering firm has taken over the project. The Commission was previously provided with a copy of the letter requesting an extension.

j. 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 one-year time extensions on November 14, 2007 and September 17, 2008. This is the third request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and preliminary approval will be valid until October 26, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

k. Subdivision #2005 – 71 - - Delaware Land Associates

This is a request for a one-year time extension. The Commission granted preliminary approval on November 20, 2006 and granted one-year time extensions on December 12, 2007 and October 16, 2008. This is the third request for an extension. If an extension is granted, preliminary approval will be valid until November 20, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

l. Subdivision #2005 – 79 - - Paradise Property

This is a request for a one-year time extension. The Commission granted preliminary approval on January 18, 2007 and granted one-year time extensions on November 14, 2007 and October 16, 2008. This is the third request for an extension. If an extension is granted preliminary approval will be valid until January 18, 2011. The Commission was previously provided with a copy of the letter requesting an extension.

m. Subdivision #2006 – 10 - - Lacrosse Homes of Delaware, Inc.

This is a request for a one-year time extension. The Commission denied this application on June 28, 2007. The applicants appealed that decision to the County Council and the County Council reversed the Commission's decision and granted preliminary approval on December 16, 2008. This is the first request for an extension. If an extension is granted preliminary approval will be valid until December 16, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

n. Subdivision #2006 – 42 - - Glen Jones

This is a request for a one-year time extension. The Commission granted preliminary approval on November 29, 2007 and granted a one-year time extension on December 17,

2008. This is the second request for an extension. If an extension is granted preliminary approval will be valid until November 29, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

o. Subdivision #2007 – 8 - - Cornerstone Developers

This is a request for a one-year time extension. The Commission granted preliminary approval on December 17, 2008. This is the first request for an extension. If an extension is granted preliminary approval will be valid until December 17, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

p. Subdivision #2007 – 9 - - Thompson Schell, L.L.C.

This is a request for a one-year time extension. The Commission granted preliminary approval on October 9, 2008. This is the first request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until October 9, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

q. Subdivision #2007 – 14 - - Bob Brooks

This is a request for a one-year time extension. The Commission granted preliminary approval on November 13, 2008. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until November 13, 2010. The Commission was previously provided with a copy of the letter requesting an extension.

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

#### OLD BUSINESS

Prior to making recommendations on C/Z #1687 and C/U #1845, the applications of Rick Banning, the Commission discussed the two applications.

Mr. Johnson stated that he is in favor of the Affordably Priced Rental Unit Program; that he is in favor of reclamation of the Brownfield, the Jackson Pit; that he is concerned about the density proposed, 11.78 units per acre; that projects in the area have been developed at approximately 4 units per acre; that he is concerned about the location of the project; that he is concerned about pedestrian and bicyclist safety; that it was pointed out in 2003 that traffic concerns exists along Plantation Road; that there are no projects nearby with a density this high except along Route One; that he is concerned that a vacant acreage property which adjoins the site would apply for the same density and that it may be considered that a precedent has been set; and that a 20% density bonus, 16 units, may be reasonable over the 80 units originally approved.

Mr. Smith stated that the Commission is required to listen to both the support for an application and the opposition to an application; that since a Conditional Use has been applied for conditions can be placed on the application, i.e. protection of grave sites, etc.; that he is concerned about the environment; that the site needs to be cleaned up; that he questions impacts on property values if the Brownfield is not cleaned up; that it should have been reported in real estate transactions that the Brownfield exist; and that he is concerned that an elected official expressed comments and concerns about DelDOT and DNREC causing the appearance that the Commission may not be properly representing the residents of the area.

Mr. Ross stated that the Affordably Priced Rental Unit Program offers incentives for density bonus and expeditious action for the process of applications; that the Program opens opportunities for mass transit services; that the public hearing record showed concerns for higher density; and that some lower number of units should be considered.

Mr. Burton stated that a need was shown for this type of project in the area; that he is also concerned about the density applied for; that the number of units should be lower; and that the site should be cleaned up.

Mr. Wheatley agreed that the density needs to be reviewed; that in order to better serve the people that live in the area creates a need for affordable homes for employees; and questioned if language could be included in conditions that would add to the number of affordable units.

Mr. Robertson advised the Commission that the percentage of affordable units could not be reduced by the Planning and Zoning Commission.

Mr. Wheatley stated that the intent of his question was to establish that the project does not become fully subsidized; and that he wants to be assured that property values are preserved.

Therefore, in reference to:

**C/Z# 1687** – application of **RICK BANNING** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Plantation Road (Road 275), 710 feet southeast of Shady Road (Road 276), to be located on 18.33 acres, more or less.

The Chairman referred back to this application, which has been deferred since August 27, 2009.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1687 for Rick Banning for a change of zone from AR-1 Agricultural Residential to MR

Medium Density Residential based on the record made at the public hearing and for the following reasons:

- 1) The land is in the Environmentally Sensitive Developing District according to the County's Comprehensive Land Use Plan. MR zoning is appropriate in this area according to the Plan.
- 2) The MR zoning is appropriate for the site since it is in the immediate vicinity of other MR zoned lands and will be consistent with the zoning and uses on neighboring properties, which include commercial sites, townhouse style homes, multi-family dwellings, and single family homes.
- 3) The property is within a Sussex County Sanitary Sewer District and will receive sewer service from Sussex County.
- 4) The property has central water available to it through Tidewater Utilities, Inc.

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

**C/U #1845** – application of **RICK BANNING** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.33 acres, more or less, lying northeast of Plantation Road (Road 275), 710 feet southeast of Shady Road (Road 276).

The Chairman referred back to this application, which has been deferred since August 27, 2009.

Mr. Johnson stated that it appears that the Commission agrees that there is a need to preserve and protect the gravesites; to protect the cemetery at the Israel United Methodist Church; that there is a need to clean up the Brownfield, the Jackson Pit; that there is a need to provide affordable housing in the area; and that he did not see or hear a density that would make the project happen.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1845 for Rick Banning for multi-family rental apartments based upon the record made at the public hearing and for the following reasons:

- 1) The property is in an area where commercial uses and other residential development has occurred, including townhouse, multi-family and single family developments. The project is consistent with those developments, and will provide a transition between the C-1 and Commercial uses along Route One and the Plantation Road area. Nearby subdivisions have a density of 4 units per acre or less.
- 2) The project will be served or benefitted by amenities that are on-site. These amenities include a swimming pool, clubhouse and tot lot.
- 3) The project is in a Development District according to the Sussex County Comprehensive Land Use Plan.

- 4) The Applicant has applied for, and received permission to participate in the Sussex County Affordably Priced Rental Unit Program.
- 5) The project site has been previously used as a borrow pit for sand and gravel. It was known as the Jackson Pit. The pit was later used as an unpermitted landfill for domestic trash. The removal and disposal of solid waste from the Jackson Pit site has received Brownfield Certification and been qualified by DNREC for grant funding, although there is no guaranteed funding available. Cleaning up the Jackson Pit will benefit the environment and provide for the health and safety of the inhabitants of the project and the surrounding area.
- 6) With the stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 7) This recommendation for approval is subject to the following conditions:
  - a) The maximum number of residential units shall not exceed 96 units. This number is based on the MR density of 4.356 units per acre (80) units with a density bonus of 20% (16 units) in accordance with the Affordably Priced Rental Unit Program.
  - b) The removal, disposal and monitoring of waste from the Jackson Pit, located on the project site, shall be in compliance with all DNREC requirements.
  - c) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements.
  - d) The Swimming Pool and other amenities shall be constructed and open to use by the residents within 1 year of issuance of the first building permit for the project.
  - e) The project shall be served by central sewer as part of a Sussex County Sanitary Sewer District.
  - f) The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
  - g) Stormwater 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.
  - h) The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along both sides of all streets.
  - i) The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape plan.
  - j) Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
  - k) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Departments.



- l) The Applicant shall cooperate with the local school district's transportation manager to establish school bus stop areas. The areas for school bus stops shall be shown on the Final Site Plan.
- m) The Applicant shall comply with all of the requirements of the Sussex County Affordably Priced Rental Unit Program, but participation in this program shall not exceed 30% of the total residential units available.
- n) The location of the cemetery and native American burial grounds shall be determined in cooperation with the D.S.H.P.O. and it shall be delineated on the Final Site Plan. There shall be a 40 foot landscaped buffer from the delineated boundary of the cemetery.
- o) The recreation area shall be relocated to a more centralized area of the project.
- p) Vinyl fencing shall be installed between this project and the adjacent Eagle Point development. The location and type of fencing shall be shown on the Final Site Plan.
- q) The Final Site Plan for the development shall be subject to review and approval of the Planning and Zoning Commission.

Mr. Wheatley stated that we need to get the Brownfield cleaned up and affordable rental units created, and suggested that no more than 160 units be created.

Mr. Smith stated that, based on his approximate calculations, if you delete the access area from the calculation the number of units would be reduced and would probably equal close to 160 units.

Mr. Ross suggested increasing the setback from Eagle Point to 50 feet with landscaping.

Mr. Johnson disagreed with the suggested 160 units and asked for a vote.

Mr. Johnson's motion did not receive a second.

The motion died for the lack of a second.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1845 for Rick Banning for multi-family rental apartments based upon the record made at the public hearing and for the following reasons:

- 1) The property is in an area where commercial uses and other residential development has occurred, including townhouse, multi-family and single family developments. The project is consistent with those developments, and will provide a transition between the C-1 and Commercial uses along Route One and the Plantation Road area.
- 2) The project will be served or benefitted by amenities that are on-site. These amenities include a swimming pool, clubhouse and tot lot.
- 3) The project is in a Development District according to the Sussex County Comprehensive Land Use Plan.

- 4) The Applicant has applied for, and received permission to participate in the Sussex County Affordably Priced Rental Unit Program.
- 5) The project site has been previously used as a borrow pit for sand and gravel. It was known as the Jackson Pit. The pit was later used as an unpermitted landfill for domestic trash. The removal and disposal of solid waste from the Jackson Pit site has received Brownfield Certification and has been qualified by DNREC for grant funding. Cleaning up the Jackson Pit will benefit the environment and provide for the health and safety of the inhabitants of the project and the surrounding area.
- 6) With the stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 7) This recommendation for approval is subject to the following conditions:
  - a. The maximum number of residential units shall not exceed 160 units.
  - b. The removal, disposal and monitoring of waste from the Jackson Pit, located on the project site, shall be in compliance with all DNREC requirements.
  - c. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements.
  - d. The Swimming Pool shall be constructed and open to use by the residents within 1 year of issuance of the first building permit for the project.
  - e. The project shall be served by central sewer as part of a Sussex County Sanitary Sewer District.
  - f. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
  - g. Stormwater 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.
  - h. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along both sides of all streets.
  - i. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape plan and an architectural rendition.
  - j. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
  - k. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Departments.
  - l. The Applicant shall cooperate with the local school district's transportation manager and DART to establish school bus stop areas and DART stop areas. The areas for school bus stops and/or DART stops shall be shown on the Final Site Plan.

- m. The Applicant shall comply with all of the requirements of the Sussex County Affordably Priced Rental Unit Program, but participation in this program shall not exceed 30% of the total residential units available and a minimum of 70% market priced units.
- n. The location of the cemetery shall be determined in cooperation with the D.S.H.P.O. and it shall be delineated on the Final Site Plan. There shall be a 40 foot landscaped buffer from the delineated boundary of the cemetery.
- o. The recreation area shall either be relocated to the center of the project or there shall be speed bumps or some similar traffic calming devices and signs located in the vicinity of it.
- p. Six (6) foot high fencing shall be installed between this project and the adjacent Eagle Point development and maintenance of it shall be included in the maintenance agreement. The location and type of fencing shall be shown on the Final Site Plan.
- q. There shall be a 50 foot landscaped buffer from the delineated boundary of Eagle Point development.
- r. The Final Site Plan for the development shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 1, with Mr. Johnson opposed to the motion.

**Subdivision #2009 – 4** - - application of **ROGER C. TWADDELL** to consider the Subdivision of land in an AR-1 Agricultural Residential District I Cedar Creek Hundred, Sussex County, by dividing 1.86 acres into 2 lots, and a waiver from the street design requirements, located at the northwest end of a 50' private road west of Road 228A, 1,150 feet south of Road 38.

The Chairman referred back to this application, which has been deferred since October 8, 2009.

Mr. Abbott advised the Commission that they were provided with a revised copy of a survey depicting the proposed 50-foot easement located entirely on Mr. Twaddell's property.

Mr. Burton advised the Commission that he would not participate in this discussion since he was absent when the public hearing was held.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2009 – 4 for Roger C. Twaddell, 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 AR-1 which permits low density single family residential development. The proposed subdivision density of 2 lots on 1.96 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values and the neighbors have stated that they do not oppose the subdivision.
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 2 lots within the subdivision.
  - B. It is appropriate to grant the street design waiver to allow the existing crusher run to remain. The final site plan shall contain a note that the maintenance of the roadway must be shared among the properties and such a statement shall be included in the deeds to the properties.
  - C. All entrances shall comply with all of DelDOT's requirements.
  - D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 4 votes to none, with Mr. Burton not participating, to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0 – 1.

#### OTHER BUSINESS

##### Swann Cove MR/RPC Final Record Plan – Phases 4 – 7 – Route 54

Mr. Abbott advised the Commission that this is the final record plan for Phases 4 through 7 of the Swann Cove MR/RPC; that the Commission granted preliminary approval for phases 4 and 5 on August 20, 2008; that Phase 4 contains 54 single-family lots, Phase 5 contains 32 single-family lots; that the Commission granted preliminary approval for Phases 6 and 7 on September 17, 2008; that Phase 6 contains 34 single-family lots and Phase 7 contains 30 single-family lots; that the final record plans are the same as the preliminary plan and comply with the Subdivision and Zoning Codes; and that all agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve these Phases as a final. Motion carried 5 – 0.

##### Metz Campground C/U #1681 Site Plan – Road 249

Mr. Abbott advised the Commission that this is a preliminary site plan for a 193-unit campground with amenities and future boat and RV storage; that this conditional use was approved on June 5, 2007 with 16 conditions; that the Commission granted one-year time extensions on June 18, 2008 and June 17, 2009; that the use needs to be substantially underway by June 5, 2010; that the design is similar to the plan that was submitted during the public hearing; that the 16 conditions of approval need to be referenced on the final site plan; that Phase 1 contains the campsites and cabins and amenities; that Phase 2 is for 30 future campsites and boat and RV storage; that if preliminary approval is granted, final approval could be subject to the review and approval of the staff upon receipt of all agency approvals and the 16 conditions of approval being referenced on the site plan; and that the Commission was previously provided with a copy of the preliminary site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals and the 16 conditions of approval being referenced on the final site plan. Motion carried 5 – 0.

Americana Bayside MR/RPC  
Lot 359 – Revised Front Yard Setback

Mr. Abbott advised the Commission that this is a request to revise the front yard setback for Lot 359; that the approved site plan permits 20-foot front yard setbacks; that the dwelling was built at 19.4-feet from Wild Rose Circle; that the builder is requesting that the setback be amended; that since the project is a residential planned community, the Commission may modify the setback requirements; that Lot 359 is a corner lot and the surveyor has advised that the encroachment is not visible and conforms to the appearance of the other dwellings in the area; and that the Commission was previously provided with a copy of a survey and a letter explaining this request.

Mr. Smith advised the Commission that he visited the site and concurs with the remarks referenced in the surveyor's letter.

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

CJH Ventures, L.L.C.  
3 Lots and 50' Easement – Road 274

Mr. Abbott advised the Commission that this is a request to subdivide a 23.0-acre parcel into 3 parcels and create a 50-foot easement to serve as access to the parcels; that Parcel A will contain 9.0-acres, Parcel B will contain 2.0-acres with an existing dwelling and Parcel C will contain 12.0-acres; that the 50-foot easement will be created over an existing lane; that the request can be approved as submitted or an application for a major subdivision can be required; 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; and that the Commission was previously provided with a sketch drawing of the request.

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

Five Points Square  
3 Lots and 50' Easement – Road 276

Mr. Abbott advised the Commission that this is a request to subdivide a 6.86-acre parcel into 3 lots and create a 50-foot easement to serve as access to 2 of the lots; that the site is zoned C-1; that Lot C will contain 0.89-acre, Lot D will contain 0.88-acre and the residual lands will contain 5.09-acres; that the 50-foot easement will serve as access to Lots C and D; that the residual lands have a commercial retail building located on it; that the 50-foot easement will be created over an interior driveway; that the subdivision request is due to the separation of a corporation; that the request can be approved as submitted or an application for a major subdivision can be required; 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; and that the Commission was previously provided with a sketch drawing of the request.

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

Joseph M. Malfitano, Trustee  
Lot and 50' Easement – Road 580

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 129.54-acre parcel; that the owner proposes to create the 50-foot easement over an existing gravel drive; that DelDOT has issued a Letter of No Objection for the easement; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a sketch drawing of the request.

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

Donna Tate – Steinbiss  
2 Lots and 50' Right of Way – Road 544

Mr. Abbott advised the Commission that this is a request to subdivide a 3.06-acre parcel into 2 lots and create a 50-foot easement to serve as access; that Lot 1 will contain 1.0-

acre and the other will contain 2.0-acre; that the owner proposes to create the easement over an existing driveway; that the request can be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a sketch drawing of the request.

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

Deborah M. Clements  
3 Lots and 50' Easement – Road 321

Mr. Abbott advised the Commission that this is a request to subdivide a 6.22-acre parcel into 3 lots with the lots having access from a 50-foot easement; that the owner proposes to create the easement over an existing entrance; that Lot A will contain 1.70-acres, Lot B 1.47-acres and Lot C 1.61-acres; that the request may be approved as submitted or an application for a major subdivision can be required; 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; and that the Commission was previously provided with a sketch drawing of the request.

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

Mike and Kelli Meoli  
Mulberry Knoll – Revised Parcel F

Mr. Abbott advised the Commission that this is a request to subdivide a 6.71-acre parcel into 3 lots with access from existing private streets; that Lot 1 will contain 32,675 square feet, Lot 2 2.52-acres and Lot 3 3.07-acres; that DelDOT has issued a Letter of No Objection and approved site evaluations have been submitted for the lots; that the request may be approved as submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a sketch drawing of the request.

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

Joseph Reed  
Mulberry Knoll – Revised Parcel G

Mr. Abbott advised the Commission that this is a request to subdivide a 9.02-acre parcel into 2 lots with access from an existing private street; that Lot G1 will contain 4.09-acres and Lot G2 will contain 4.93-acres; that DelDOT has issued a Letter of No Objection and approved site evaluations have been submitted; that the request may be approved as

submitted or an application for a major subdivision can be required; and that the Commission was previously provided with a sketch drawing of the request.

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

Subdivision #2004 – 46 – Caldera Properties – Long Neck I, L.L.C.  
Time Extension

This item was removed from the Consent Agenda and placed at the end of Other Business.

This is a request for a one-year time extension. The Commission granted preliminary approval on November 19, 2005 and granted one-year time extensions on May 16, 2007, November 14, 2007 and November 12, 2008. This is the fourth request for an extension. The Commission stipulated that the extension granted on November 12, 2008 would be the last extension granted. The owners are trying to sell the project and that the original applicant is no longer involved in the project.

The Commission discussed the request.

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

#### ADDITIONAL BUSINESS

Mr. Lank advised the Commission that he has attempted to complete the 2010 schedule for Regular meetings and the 2010 schedule for Special Meetings and has determined that due to the holidays in November 2010 it will be necessary that the Commission meet on a Wednesday, instead of a Thursday. The dates for Regular meetings in November should be the 10<sup>th</sup> and the 18<sup>th</sup>. Mr. Lank added that there was nothing irregular about the remaining months scheduling.

There was a consensus of the Commission to agree with those dates.

Meeting adjourned at 4:45 p.m.