



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 6, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 6, 2012, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of November 15, 2012 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/Z #1719 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential to an AR-1 Agricultural Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.00 acres, more or less, on two (2) parcels, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) (part of Tax Map I.D. 1-34-9.00-21.00/24.00).

C/Z #1720 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.02 acres, more or less, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) (part of Tax Map I.D. 1-34-9.00-21.00).

C/U #1944 – application of **CASTAWAYS BETHANY, LLC** to consider Conditional Use of land in an C-1 General Commercial District, CR-1 Commercial Residential District, a MR Medium Density Residential District, and an AR-1 Agricultural Residential District for multi-family dwelling structures, a campground, and an outdoor amusement place, where permitted as conditional uses, to be located on a certain parcel of land lying and being in Baltimore Hundred,

Sussex County, containing 38.53 acres, more or less, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) (Tax Map I.D. 1-34-9.00-21.00 and 24.00).

Mr. Wheatley noted that C/Z #1719, C/Z #1720, and C/U #1944 were reviewed together as one public hearing on September 6, 2012 and that those parties in attendance were advised that each application would be considered separately when decisions are rendered.

Mr. Smith thanked the full Commission for participating in the public hearing process and discussion, and asked for open discussion between the members of the Commission.

Mr. Ross stated that he apologizes for missing the last meeting, that this is a very complex issue, that it is important to note that these three separate applications, while separate actions, are part of a single request for Conditional Use of a property; that the fact that these applications were combined into a single public hearing, without objection from anyone, is evidence of this; that representatives for the Applicant stated that the change of zone requests, C/Z #1719 and C/Z #1720, were specific to the application for C/U #1944; that in fact, Mr. Fuqua, Attorney representing the Applicant, stated that the requested change of zone was specifically to accommodate the Conditional Use request; that Ms. Mary Shriver-Fox, Attorney representing a "HOA coalition" argued at some length against the proposed use, C/U #1944, but made no similar dissenting arguments against either change of zone request; that likewise, citizen arguments against C/Z #1719, C/Z #1720, and C/U #1944 did not provide supporting evidence against the change of zoning requests, but provided considerable comment opposed to C/U #1944; that in his opinion, the record reflects both those opposed and the Applicant anticipate the ultimate acceptance or denial of C/U #1944 will determine the acceptance or denial of C/Z #1719 and C/Z #1720; that while we must act on each individual request, it is his opinion that to consider each request independently without consideration of the single request for Conditional Use is inappropriate; that it is his opinion that if any one of the three requests by the Applicant would put in jeopardy the public health, safety and welfare then all three request should be denied; that the Applicant would still have recourse to continue with the current plan to develop the property or submit a new application which would not put the public health, safety and welfare in jeopardy; that in reviewing the public's objection to the Castaway's application, which as stated previously was opposed to C/U #1944, the following claims were made: 1) The proposed use would have a negative effect on property values; 2) The proposed use was not in character with surrounding uses and was therefore incompatible; 3) Traffic created by the proposed project would create a public safety hazard; 4) Noise from the proposed project, specifically the water park, would negatively impact the quality of life of nearby residents; 5) The transient nature of the RV campground would increase crime and attract undesirable individuals to the neighborhood; that he would like to evaluate each of these starting with the first two as it seems logical to combine the first two objections, since any use that would negatively impact property values would be out of character with surrounding uses; that, as stated by the Applicant, there are two RV campgrounds, one RV Storage area and one RV sales business within proximity of the proposed use; that the Applicant also argued that there are a significant number of mobile homes, both single and double wide, in the immediate area as well as upscale housing developments, one of which is adjacent to the proposed site; that statements from the public confirm these facts; that most relevant to the decision are the two campgrounds;

that both campgrounds were in existence prior to most of the residential development in the immediate area; that their existence did not hinder the creation of nearby upscale residential developments nor deter homeowners there today from purchasing or building new homes; that this would indicate that the RV campground requested by the Applicant would not affect property values any more than the existing campgrounds, nor would it be out of character with area land uses already established; that the proposed water park is the second component of the requested Conditional Use; that the Applicant argued that the site is in a designated growth area, has access to sewer and water, is in an area targeted for tourism activities and that Sussex County ordinance governing the current zoning for a portion of the water park, C-1 General Commercial, permits the requested use, if approved, via a Conditional Use application; that the Applicant also made the argument that there are tourist related recreational activities in the area, camping, boating and beach related activities being the most obvious, but there are not uses comparable to the proposed water park in the immediate vicinity; that the question before the Commission is “Does the record reflect that this new proposed land use is appropriate for this site or not?”; that there are two key components to the proposed water park that he thinks are critical to reaching a purely land use position on this request: 1) Underlying zoning and applicable governing ordinance; 2) Does the proposed use align itself with the overall guidance of the County Comprehensive Plan with consideration given to the governing ordinance; that the Applicant provided documentation that the underlying zoning of the area proposed for use as a water park is C/1 absent the area within C/Z #1720; that within this zoning category amusement parks are permitted under Conditional Uses; that those opposed to the proposed use did not provide evidence of ordinance to the contrary; questioning if the proposed use aligns itself with the overall guidance of the County Comprehensive Plan with consideration given to the governing ordinance; that both the Applicant and those opposed provided opinions regarding Comprehensive Plan compliance; that the Applicant supported their position by showing the proposed water park is in a designated growth area, serviced by sewer/water and in a land use area targeted for tourism under the Sussex County Comprehensive Plan with underlying zoning which provides for permitting the proposed use via a Conditional Use; that the Applicant submitted a preliminary site plan depicting the areas for use which included a RV campground, multi-family units and a water park; that the opposition to the proposed use sited the Introduction and Future Land Use sections of the Comprehensive Plan to buttress their argument; that in addition Mary Shriver-Fox cited Section 115-172 H6 as evidence that the proposed water park was not an allowable use in a campground; that while he understands the oppositions reliance on Section 115-172 H6, which ordinarily only allows small retail businesses in campgrounds, that would only apply if the Applicant had just applied for a campground; that, in this case, the application is for a Conditional Use integrating an overall project that includes not only a campground, but also multi-family units and the water park; that since each one of these uses is specifically requested as a part of the Conditional Use, it is not appropriate to say that the water park component is automatically prohibited in the campground; that since the water park is being sought as part of the Conditional Use, the County has the ability to consider whether or not it is appropriate for this project on this site; that Section 115-172 H6 only provides that, without further approvals such as the Conditional Use sought in this case, anything beyond “small retail businesses” are not permitted in a campground; that Section 115-172 H6 really does not shed any light on whether or not the water park component should be approved or denied as part of this application; that, in his opinion, the argument regarding property values and compatibility has

been won by the Applicant; that the public also had considerable concerns about traffic and safety; that actually, the work “considerable” may be an understatement; that those opposed to the proposed use cited increased traffic, pedestrian safety, emergency vehicle movement and cycling safety as reasons for a recommendation for denial; that the Applicant provided a letter from the State of Delaware Department of Transportation, dated May 21, 2012, which in part states “...therefore, we would not object to the County considering this proposal if the developer were to provide a letter confirming their projected trip generation and affirming their decision to pay the fee if the County approves their application and their project moves forward”; that it is critical for all to understand that the entrance and road safety related issues are the responsibility of the State of Delaware Department of Transportation; that it is generally not known that Sussex County does not own any public roads; that, in fact, DelDOT was the primary author of the Mobility Element within the current Sussex County Comprehensive Plan; that the Delaware Department of Transportation manages millions of trips per year on roadways throughout the State of Delaware; that with acceptance of the project by this agency, he believes a recommendation for denial for this reason would not stand the challenge of a legal appeal; that the fourth major concern, noise from the proposed project, specifically the water park, would negatively impact the quality of life of nearby residents; that Ms. Mary Shriver-Fox cited Title 7 Chapter 71 Section 7101A from the Delaware Code; that he believes that this is a very legitimate concern and should be addressed; that, specifically, he thinks reference to this Section of the Delaware Code should be made a part of the conditions of use; that he thinks that the amusements within the water park should be restricted to the amusements presented by the Applicant during the public hearing and that no new amusements or expansion of amusements should be allowed without a public hearing before the Planning and Zoning Commission; that, finally, there were a number of concerns about the transient nature of the occupants within the RV campground as it pertains to crime and character of individuals; that he does not think there is any basis for this assertion; that he believes that the Conditional Use application C/U #1944 should be approved for the following reasons: 1) The site is located in the environmentally sensitive developing area, a designated growth area; 2) The site is served by central sewer and water; 3) The Conditional Use is appropriate given the locations proximity to Sussex County’s tourism center, where tourism is the targeted economic driver; 4) The Conditional Use promotes tourist related economic development and is consistent with the character of zoning and development in the area; 5) DelDOT has indicated that there will be no negative traffic impact by the proposed development since the Conditional Use applied for is similar to the traffic impact of the currently approved use of the site; 6) Approval with appropriate conditions will minimize any potential negative impact; and 7) The Applicant has established a record which supports approval of the application; and that in being consistent with the record established during the public hearing, and having reached this conclusion regarding the Conditional Use request, it is also his opinion that both change of zoning requests should be approved.

Mr. Burton stated that he has spent a lot of time on these applications, and that the Commission has to review each application separately when making decisions.

Mr. Smith stated that Mr. Ross has spent a lot of time preparing his statement; referenced DelDOT and other agencies; that he paid a lot of attention to residents in opposition; that he

supports discussion; and acknowledged that the Commission must look at each application separately.

Mr. Johnson stated that he agrees with some of the points stated by members of the Commission; that he has been an RV owner for many years; that he takes exception to references to the two RV campgrounds in the area; that those two campgrounds do not compare to this application or the type of rental method proposed; that the Commission needs to look forward, not to the past; that the developer wants it all, not one of the three applications; and that the use intended will impact the area.

Mr. Wheatley thanked the Commission members for their statements.

Mr. Ross added that he visited the site multiple times and the two existing RV parks.

Mr. Smith stated that he is concerned about the change of zoning to AR-1, since there is no AR-1 zoning in the area, and that the land is currently zoned consistently with the development in the area.

Mr. Johnson stated that all recent development in the area has been for year round single family and multi-family projects; that the developing trend of the area is single family and multi-family; and that there have been no recent applications for RV campgrounds in the area.

In reference to C/Z #1719

Mr. Smith stated that he would move that the Commission recommend denial of C/Z #1719 for Castaways Bethany, LLC for a re-zoning from MR to AR-1 based upon the record made at the public hearing and for the following reasons:

- 1) This re-zoning is part of an overall project to allow a campground, multi-family cottages and a water park. The re-zoning is necessary to accomplish this goal, since a campground is not permitted as a residential use in an MR zone.
- 2) The re-zoning is entirely inconsistent with the neighboring zoning classifications. The entire Cedar Neck Road area is zoned GR, MR or commercial. Re-zoning this parcel to AR-1 would create a stand-alone area of AR-1 land of only 5 acres in size.
- 3) The proposed change in zone and the overall project do not promote the overall health, safety, convenience and general welfare of the neighborhood or community.
- 4) The Applicant did not proffer any evidence to support why this land should be rezoned AR-1, other than because it needs to be that way for the proposed project. However, the re-zoning must stand on its own merits, and the AR-1 zoning would survive whether the proposed C/U project is approved or expires. There is no basis in the record or in the County Comprehensive Plan for the re-zoning to AR-1.
- 5) In the Applicant's materials, they made the representation that "the site is not currently farmed and has not been tilled for a decade or longer". Such a statement supports a continuation of the MR zoning, which is more consistent with this property's historical use and the uses and zonings of all of the neighboring properties.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 -2 with Mr. Ross and Mr. Wheatley opposing the motion.

The vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Smith – yea, Mr. Ross – nay, and Mr. Wheatley – nay.

In reference to C/Z #1720:

Mr. Robertson advised the Commission that action being taken on C/Z #1720 does not hinge on the action just taken on C/Z #1719 and that the question before the Commission is if this request is appropriate zoning for the property.

Mr. Johnson stated that there was no testimony on only this application.

Mr. Robertson stated that there were details given about the area included in the application for the zoning change from MR to CR-1 and that surveys submitted depicted the area of each application.

Mr. Johnson stated that the Commission is considering what is appropriate for the property.

Mr. Ross stated that denial of C/Z #1719 impacts the Conditional Use application, and added that C/Z #1720 adds approximately 1.0 acre of commercial to an existing commercial zone.

Mr. Smith stated that he would move that the Commission recommend denial of C/Z #1720 for Castaways Bethany, LLC for a re-zoning from MR Medium Density Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) The proposed re-zoning is to change land that is currently zoned MR to a CR-1 zoning classification.
- 2) While there are several nearby properties with a commercial zoning classification, they were all zoned that way prior to the adoption of the current Comprehensive Plan.
- 3) CR-1 zoning is not appropriate for this location since the County Zoning Code states that the primary purpose of such zoning is to provide for retail shopping and personal miscellaneous service activities, and that such uses should be along major arterial roadways. In this case, the Applicants are not seeking to re-zone the property for retail shopping or personal miscellaneous service activities, and the project is not located along a major arterial roadway. The purpose of the CR-1 zoning district is not served by this application.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 -2 with Mr. Ross and Mr. Wheatley opposing the motion.

The vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Smith – yea, Mr. Ross – nay, and Mr. Wheatley – nay.

In reference to C/U #1944:

Mr. Robertson stated that this application is predicated on the rezoning applications, and advised the public that the Commission only makes a recommendation to the Sussex County Council, and that the Council has the final vote.

Mr. Robertson also advised that while the recommendations on the zoning changes affect the recommendation on the Conditional Use, the Commission should still present any reasons it has for or against the application so that there is a complete record and County Council can consider all of the reasons for the Commission's decision.

Mr. Smith stated that he would move that the Commission recommend denial of C/U #1944 for Castaways Bethany, LLC for multi-family dwelling structures, a campground and an outdoor amusement place, where permitted as Conditional Uses, based upon the record made at the public hearing and for the following reasons:

- 1) Because this Commission has recommended denial of the underlying zoning that is necessary to support the proposed Conditional Use project, it must be recommended that this Conditional Use be denied.
- 2) The proposed use is not consistent with the surrounding properties or uses, which are all residential or related to residential. While there are campgrounds in the area, they predate the Comprehensive Plan and trends in the area. For example, the Key Box 5 RV or mobile home park was recently redeveloped as single family condominium units. The limited commercial zonings and uses all relate to the residential nature of the area, providing services such as grocery stores, restaurants and other small retail shops.
- 3) Although the Applicant stated that the intended project will be regulated by conditions placed upon it through the Conditional Use process, I believe that there are other locations along major arterial roadways that are more appropriate for the project.
- 4) No parties other than the Applicant and its representatives appeared at the public hearing in favor of the application.
- 5) The application, if approved, would be detrimental to the health, safety and general welfare of neighboring property owners, and pedestrians and motorists in the area.
- 6) This property is in the Environmentally Sensitive Developing District under the County's Comprehensive Plan. Under the County's Plan, permitted uses are listed as a range of housing types, including single family houses, townhouses, and multi-family units, and careful mixtures of houses with light commercial uses such as retail and office uses. The proposed use as a transient campground and water park is not consistent with the Sussex County's Comprehensive Plan for this area.
- 7) The proposed use as a water park, with the accompanying traffic, noise, lighting and water slides and other amusement structures, is not compatible with the existing residential uses that surround the property and which exist up and down Cedar Neck Road.

- 8) Traffic concerns along Cedar Neck Road are self-evident. It is a narrow two lane road with no shoulders and very small sidewalks or bike paths along it. I am not satisfied that this road can support the number of large RVs and travel trailers that will be coming and going from the campground on a transient basis. All the RVs, travel trailers and vehicles will create a potentially unsafe condition for the increased pedestrian traffic that will be created by the project, if approved. The Applicant has also not provided sufficient detail about how to safely get pedestrians from its site to the grocery store across Cedar Neck Road, even though the Applicant acknowledges that there will be a significant number of people who will be walking back and forth.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 -2 with Mr. Ross and Mr. Wheatley opposing the motion.

The vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Smith – yea, Mr. Ross – nay, and Mr. Wheatley – nay.

C/U #1946 – application of **CLEAN DELAWARE, LLC** to consider Conditional Use of land in an AR-1 Agricultural Residential District for land application of class “B” sanitary waste, non-sanitary food processing residuals, and potable water iron residuals, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 259.08 acres, more or less, lying on both sides of Road 201 (McColley Road) and north of and across Road 202 (Shockley Road)(Tax Map I.D. 3-30-3.00-7.00 and 3-30-4.00-1.00, 1.01 to 1.04, 1.08 to 1.16, 19.00 and 21.00).

The Commission discussed this application which has been deferred since November 15, 2012.

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

C/U #1948 – application of **SHARON L. SHERWOOD AND VAN SHERWOOD** to consider Conditional Use of land in an AR-1 Agricultural Residential District for professional office use, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.03 acres, more or less, lying northeast of Route One, 150 feet southeast of Millcreek Court, a private street in Millcreek Manor Subdivision at 16649 Coastal Highway (Tax Map I.D. 3-34-1.00-7.01).

The Commission discussed this application which has been deferred since November 15, 2012.

Mr. Burton state that he would move that the Commission recommend approval of C/U #1948 for Sharon L. Sherwood and Van Sherwood for professional offices based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property.

- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 3) The use of the property for small professional offices will not generate a significant increase in traffic or noise.
- 4) The site, with direct frontage on Route One, is no longer reasonably useable as a residence, according to the Applicant's testimony.
- 5) The Applicants stated that they intend to maintain the residential appearance of the property.
- 6) This recommendation for approval is subject to the following conditions and stipulations:
 - A. The use of the property shall be limited to small scale professional offices, such as doctors, lawyers, artist studios, accountants or similar uses.
 - B. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
 - C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties. There shall be no more than two offices on the property
 - D. No outside storage shall be allowed on the premises.
 - E. A 6-foot tall screening fence shall be installed along the northern boundary line of the property.
 - F. Hours of operation shall be limited to 9:00 a.m. to 5:00 p.m. five (5) days per week.
 - G. The parking shall comply with all Code requirements for the particular use of this property. The Final Site Plan shall clearly show all required parking, and the parking areas must be clearly marked on the site.
 - H. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Smith, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0 with Mr. Johnson not voting.

Subdivision #2005 – 78 application of **COOL SPRING MEADOWS** 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 215.23 acres into 226 lots (Cluster Subdivision), located north and south of Road 280, 2,900 feet east of Road 292 (Tax Map I.D. 2-34-5.00-30.00 & 2-34-5.00-33.00).

Mr. Abbott advised the Commission that this is the final record plan for a 226-lot cluster and standard subdivision application; that this application received preliminary approval for 226 lots on December 14, 2006 and time extensions on December 17, 2008, December 16, 2009, February 3, 2011 and August 9, 2011; that the preliminary approval is valid until January 1, 2013; that the Commission amended conditions on October 25, 2012 in reference to sidewalks being installed on one side of all streets within the subdivision; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

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

Subdivision #2006 – 52 - - application of **L.T. ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 119.14 acres into 242 lots, (Environmentally Sensitive Developing District Overlay Zone), located southeast of Road 267 and south of Hawkseye and Wolfe Runne Subdivision (Tax Map I.D. 3-35-12.00-3.00 portion).

Mr. Abbott advised the Commission that this is the final record plan for Phase 2 of the Senators Subdivision; that Phase 2 contains 118 cluster lots; that the Commission granted preliminary approval for the entire project on March 27, 2008 and granted one-year time extensions on May 20, 2009 and March 17, 2010; that the Commission granted final record plan approval for Phase 1 on April 14, 2010; that Phase 2 complies with the subdivision and zoning codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve Phase 2 as a final. Motion carried 5 – 0.

OTHER BUSINESS

Massey's Landing MR/RPC
Final Record Plan – Road 22 (Long Neck Road)

Mr. Abbott advised the Commission that this is the final record plan for a 120-unit residential planned community; that the Commission granted Master Plan approval on November 14, 2007; that 48 single-family lots and 72 units (36 duplexes) are proposed; that the final record plan is the same as the master plan; that the final record plan complies with the zoning and subdivision codes and the conditions of the preliminary approval; and that all agency approvals have been received.

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

Shoal Harbor
Preliminary Multi-Family Site Plan – Rehoboth Avenue

Mr. Abbott advised the Commission that this is a preliminary site plan for a 28-unit multi-family project located on 2.34 acres; that the site is zoned C-1; that 28 units are permitted by the zoning code; that there are 2, 8-unit buildings, 1, 5-unit building, 1, 4-unit building and 1, 3-unit building proposed; that 56 parking spaces are required and provided including a 1 car garage for each unit; that a swimming pool, clubhouse and landscape areas with seating are proposed; that the setbacks, building lengths and separation distances meet the minimum requirements of the zoning code; that ingress/egress to the site is located off of Church Street; that the project will be served by central sewer and water; that the site is not located in a flood zone; that the final site

plan needs to contain a wetlands note; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and the required wetlands notice; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this site plan as a preliminary with the stipulations that final site plan approval shall be subject to the staff receiving all agency approvals and the final site plan containing the appropriate wetlands statement. Motion carried 5 – 0.

Tidewater Utilities, Inc.
CU #1791 Determination of Substantially Underway

Mr. Abbott advised the Commission that this conditional use for a central drinking water facility was approved on July 15, 2008; that the Commission granted preliminary site plan approval on June 21, 2012 with the condition that final site plan approval shall be subject to the staff receiving all agency approvals; that the facility is located in the Sea Cliff residential planned community; that on April 10, 2008 the Commission approved the use of a temporary water plant for this project; that the temporary plant is operational; that the applicant's engineers are requesting that the use be consider substantially underway with the temporary tank; that the permanent facility will serve the Sea Cliff project development as well as off-site customers; that State Fire Prevention regulations require water service/fire protection once 50 dwellings are constructed, that there are currently 12 homes built in the Sea Cliff development; and that the Commission was previously provided a copy of the letter detailing this request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously that the approved use is substantially underway. Motion carried 5 – 0.

Warren Sumlin
CU #1722 Site Plan – Burton Avenue

Mr. Abbott advised the Commission that this is a preliminary site plan for multi-family dwelling structures; that the conditional use was approved no January 30, 2007; that the Commission granted 2 time extensions and the application was extended by Ordinance No. 2209 which was adopted on August 9, 2011; that the site is zoned GR General Residential; that Option "A" is a site plan for 2 single family dwellings on 2 lots; that each lot contains 8,750 square feet; that Lot 13 is for 2, 24-foot by 49-foot dwellings; that Lot 14 is for a 20-foot by 46-foot dwelling and a 23-foot by 56-foot dwelling; that each lot contains 4 parking spaces; that the setbacks meet the minimum requirements of the zoning code; that Option "B" is a site plan for a duplex on each lot; that the dimensions of the structure for Lot 14 are the same as Option "A"; that the proposed duplex on Lot 13 is 27-feet by 48-feet; that each lot contains 4 parking spaces; that the setbacks meet the minimum requirements of the zoning code; that the project will be served by central sewer and water; that the required parking for both options is located within the front yard setback and are subject to site plan review; that the application was approved with 7 conditions; that since the conditions of approval originated at the Commission level, the Commission has the authority to amend the conditions if they so choose; that if preliminary approval is granted, final

site plan approval could be subject to the staff receiving all agency approvals; that representatives of the application advised the staff that Option “A” is the preferred option; that the staff has received 4 letters/e-mails in opposition to this application; and that the Commission was previously provided with copies of the site plan.

Mr. Wheatley advised the Commission that the intent of this Conditional Use is to provide for affordable housing and that 4 units are still proposed.

Mr. Lank advised the Commission that the allowable density remains the same based on the Conditional Use approval.

The Commission discussed the Options “A” and “B” and there was a consensus of the Commission that a public hearing should be held if Option “A” was to be considered; that public hearings would be required; that the fees could be waived and the application could be expedited; and that the Commission could support Option “B” which is closer in similarity to the original site plan that was reviewed during the public hearings.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve Option “B” as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals, and to delete Condition of Approval #5 requiring the applicant to submit front, side and rear elevation drawings of the buildings. Motion carried 5 – 0.

Harold E. Dukes, Jr.
Preliminary Commercial Site Plan – Route 9

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 7,800 square foot warehouse building with offices to be located on 1.79 acres; that the site is zoned C-1 General Commercial; that this site was previously used as a model home sales lot; that the setbacks meet the minimum requirements of the zoning code; that 17 parking spaces are required and 33 spaces are provided; that the project will be served by on-site septic and well; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

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

Float – Ors
CU #1007 Revised Site Plan – Route 54

Mr. Abbott advised the Commission that this is a revised site plan for the expansion of retail area; that this conditional use for retail sales of nautical items, i.e. crab floats, crafts and related items was approved on June 30, 1992; that the owners are proposing to expand the existing business to include a proposed building containing 4,200 square feet and the conversion of an existing dwelling (1,600 square feet) in Phase 2; that the proposed setbacks meet the minimum

requirements of the zoning code and that the required parking is met; that central sewer and an on-site well serve the site; that the staff is questioning if an amended conditional use application is required; that the conditions of approval do not prohibit any further expansion of the site; that the proposed additions will be used for additional retail and storage space; that if the revised site plan is approved, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the revised site plan.

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

Subdivision #2007 – 45 – Deerfield Meadows, LLC
Deerfield Meadows – Amended Conditions

Mr. Abbott advised the Commission that this item was deferred at the April 26, 2012 meeting; that this is a request to delete condition of approval L. which states “As stated by the Applicant, a 5-foot asphalt-walking path will be provided across each lot through an easement”; that the Commission granted preliminary approval for this 40-lot cluster (0.50-acre) subdivision on August 13, 2009; that this project received an extension until January 1, 2013 by Ordinance No. 2208; that the developers are proposing to add a gazebo and picnic area in lieu of the walking paths; that this project has not received final approval therefore no lots have been sold or conveyed and construction has not commenced; and that the Commission was previously provided a copy of the letter from the applicant’s engineer detailing this request.

Motion by Mr. Ross, seconded by Mr. Smith and carried 4 votes to 1, with Mr. Johnson opposed, to delete the condition requiring a 5-foot asphalt walking path across the individual lots through an easement. Motion carried 4 – 1.

ADDITIONAL BUSINESS

Mr. Lank presented the Commission with the list of dates for the Commission’s meeting for 2013.

Meeting adjourned at 7:50 p.m.