MINUTES OF THE REGULAR MEETING OF JUNE 21, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 21, 2012 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. I.G. Burton, III, Mr. Martin Ross and Mr. Rodney Smith 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 4 – 0.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the Minutes of June 7, 2012 as amended. Motion carried 4 – 0.

OLD BUSINESS

C/U #1930 – application of **PENN CENTRAL, LLC** to consider the Conditional Use of land in a B-1 Neighborhood Business District for a multi-family structure (3 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8,030 square feet, more or less, lying at the southeast corner of Pennsylvania Avenue (Road 51) and Bennett Road, and being Lot 3, Block 1, of Sussex Shores (Tax Map I.D. 1-34-13.15-159.00).

The Chairman referred back to this application, which has been deferred since May 10, 2012.

Mr. Smith advised the Commission that he was not at the public hearing however he did listen to the public hearing and watched the website; and that he would not be participating in this discussion unless there is a tie vote.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1930 for Penn Central, LLC for a multi-family dwelling structure of no more than 3 units based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.

2. There are other Multi-Family structures in the immediate vicinity. These include 2 six unit multi-family buildings immediately to the south of this site. On the opposite side of Bennett Road there are several business uses, and there are business and multi-family uses across Pennsylvania Avenue from the site.
3. There was no indication in the record that the project will have an adverse impact on traffic, the neighboring properties or community.
4. No parties appeared before the Commission with any opposition to the project.
5. While the County Engineering Department expressed concerns about the proposed density and its effect upon the capacity of the sewer system, the developer will have to comply with any County Engineering Department upgrades or requirements during the development process.
6. This recommendation for approval is subject to the following conditions and stipulations:
    A. No more than 3 units shall be constructed upon the property.
    B. This recommendation for no more than 3 units is also contingent upon the approval of that number of units from the Sussex County Board of Adjustment. Such a variance is not required if only 2 units are constructed.
    C. The development shall be served as part of a Sussex County Sanitary Sewer District, and the developer shall comply with all County Engineering Department requirements for connections and possible upgrades to the system necessary for service to these units.
    D. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur during the hours between 8 am and 6 pm, Monday through Saturday.
    E. The units shall be served by central water.
    F. All entrances shall be designed and completed in accordance with DelDOT regulations.
    G. The Final Site Plan shall include a landscape plan. The large pine trees along the southern boundary of the property shall be depicted on the Final Site Plan and retained on the site.
    H. The Final Site Plan shall identify all parking areas and spaces for the multi-family units.
    I. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Burton and carried 3 votes to none, with Mr. Smith not participating, 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 3 – 0 – 1.

Subdivision #2012 – 1 – application of **RALPH E. AND BETTY F. MARVEL** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 3.89 acres into 5 lots, and a waiver from the street design requirements and a waiver from the forested buffer requirements, located on the easterly side of Road 346 (Holt's Landing Road) 847 feet north of Route 26 (Vines Creek Road) (Tax Map I.D. 1-34-11.00-142.00).

Mr. Abbott advised the Commission that this application was deferred on March 22, 2012 pending receipt of a septic feasibility statement from DNREC; and that DNREC has issued a non-binding statement indicating that the site is suitable for individual on-site septic systems.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2012 – 1 for 5 lots for Ralph and Betty Marvel, 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 5 lots on 3.89 acres of land is less than the allowable density.
3. The proposed subdivision is basically infill, since it is surrounded by other similar residential development. It will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. Given the relatively small size of the subdivision, a waiver from the County Street Design requirements is appropriate.
7. A waiver from the buffer requirements is also appropriate. The small number of lots, the configuration of the parcel, and the nature of the surrounding properties support such a waiver in this particular case.
8. This preliminary approval is subject to the following conditions:
    A. There shall be no more than 5 lots within the subdivision.
    B. The storm water management system shall meet or exceed the requirements of the State and County.
    C. All entrances shall comply with all of DelDOT's requirements.
    D. There shall be a recorded Agreement governing the maintenance of the roadway and also any required storm water management areas.
    E. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
    F. The Final Site Plan shall be subject to the review and approval of Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 4 – 0.

PUBLIC HEARING

Subdivision #2012 – 3 – application of **HARBOUR HOMES, LLC, c/o DAVID GREEN** to consider the Subdivision of land in an AR-1, Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 7.98 acres into 3 lots, located west of Road 290 (Cool Spring Road), 3,550 feet north of Road 280 (Stockley Road) (Tax Map I.D. 2-34-5.00-38.00).

Mr. Abbott advised the Commission that this is a 3-lot strip subdivision; that the parcel has met the by-right maximum number of lots, that DelDOT has issued a Letter of No Objection; that Lot 1 will have a single access from Road 290 and that Lots 2 and 3 shall have a combined access; and that the Commission was previously provided a copy of the subdivision plan.

The Commission found, based on comments received from the Sussex County Engineering Department Utility Planning Division that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the site is located in the North Coastal Planning Area; that on-site septic systems are proposed; that conformity to the North Coastal Planning Study is required; and that the proposed project is not in an area where Sussex County currently plans to provide sewer service and that a sewer concept plan is not required.

David Green was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that individual on-site septic evaluations have been approved by DNREC; that the on-site septic systems will be low-pressure pipe systems; that basic deed restrictions will be established and recorded; that the minimum size of the dwellings will be 1,600 square feet; that DelDOT has issued a Letter of No Objection for the entrance locations; that there will be a written maintenance agreement for the entrance for Lots 2 and 3; that an environmental assessment has not been performed; that there are no wetlands on the site; and that this was determined by a soil scientist.

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

At the conclusion of the public hearings, the Chairman referred back to this application.

Mr. Smith stated that he would move that the Commission grant preliminary and final site plan approval of Subdivision #2012 – 3 for Harbour Homes, LLC, 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 3 lots on 7.98 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.

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. No conditions are necessary, as all of the lots have direct access to Cool Spring Road, and that a homeowners' association and storm management areas are not required.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve this application as a preliminary and as a final for the reasons stated. Motion carried 4 – 0.

OTHER BUSINESS

Sea Cliff
CU #1791 Site Plan – Road 336 (Piney Neck Road)

Mr. Abbott advised the Commission that this is a site plan for an on-site water distribution storage tank and associated buildings; that this Conditional Use was approved on July 15, 2008 with 8 conditions of approval; that the conditions of approval are noted on the site plan; that the Commission approved a temporary site for this project on April 10, 2008; that this application received a time extension under the blanket extension ordinance and is valid until January 1, 2013; that a 30-foot by 60-foot control building and a 31-foot diameter, water storage tank, not exceeding 29-feet in height is proposed; that 2 parking spaces are provided; that the site is surrounded by a chain-link fence; that the setbacks meet the minimum requirements of the Zoning Code; that the required landscaping consists of 14 willow oaks, 11 red maple and 11 holly trees; that the southern and eastern boundary will be screened by existing forested areas; that additional plantings will be added if needed; 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 and landscaping plan.

Motion by Mr. Smith, 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 4 – 0.

Royal Farms Store No. 171
CU #1927 Site Plan – Routes 13 and 24

Mr. Abbott advised the Commission that this is a site plan for a 5,786 square foot convenience store with gas pumps located on 9.50 acres; that the site is zoned AR-1 and C-1; that the conditional use was approved on April 17, 2012 with 6 conditions; that as required by the approved ordinance, the conditions of approval need to be noted on the final site plan; that all of the structures meet the minimum requirements of the zoning code except the gas canopy that fronts U.S. Route 13 for the C-1 portion of the site; that this needs to be revised, or the developers need to obtain a variance from the Board of Adjustment; that 34 parking spaces are required and 75 are proposed; that a portion of 8 spaces are located within the front yard setback along Route 24 and are subject to site

plan review; that on-site septic and well are proposed; that a privacy fence is proposed along the lands, now or formerly owned, by Carolyn O'Neal; that ingress/egress is off of Route 24 with a right in and right out off of U.S. Route 13; that the landscaping plan contains 148 plantings consisting of canopy trees, understory trees, evergreen trees and shrubs; that the Applicant's engineers are requesting that the landscaping along Route 13 and Route 24 for the conditional use portion be deleted; that since the condition originated at the Commission level, the Commission may amend this condition; that a variance would be required from the Board of Adjustment to delete the buffer in the C-1 portion of the site; that if preliminary approval is granted, it should be with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals, that the canopy fronting U.S. Route 13 be revised to meet the C-1 setback or a variance being obtained from the Board of Adjustment and the final site plan include the conditions of approval noted on it; and that the Commission was previously provided a copy of the site and landscaping plan.

Mr. Ross expressed concerns about the planting along Route 13 and Route 24, especially at the intersection of the 2 roads; that the site plan shows that the property should be one zoning classification; that if the intersection were ever widened, trees would be at the edge of the right of way or be required to be moved; that the Applicants have provided sufficient landscaping and a fence along Carolyn O'Neal's land; and that he likes the right and left turn lanes on Route 24.

Motion by Mr. Ross seconded by Mr. Smith and carried unanimously to approve the site plan as a preliminary with the stipulations that final site plan approval shall be subject to the staff receiving all agency approvals; that the conditions of approval be noted on the final site plan; that the canopy fronting on U.S. Route 13 be moved to meet the setback requirements or obtain a variance from the Board of Adjustment; and that the landscape plantings along the Conditional Use portion of the site may be deleted. Motion carried 4 – 0.

A & A Farms, Inc.
CU #1079 Revised Site Plan – Road 525 (Coverdale Road)

Mr. Abbott advised the Commission that this is a revised site plan for the addition of a 100-foot by 160-foot storage building; that the proposed building meets the minimum setback requirements of the zoning code; that the Conditional Use is for a borrow pit that is in operation and asphalt batch recycling plant that was approved by the Board of Adjustment; that since the site is an approved conditional use, the Commission needs to approve the site plan; that the site plan can be approved as submitted, or the Commission can require an amended conditional use application if the Commission feels it is necessary; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the revised site plan as submitted. Motion carried 4 – 0.

Hickman Village Lot 8

Commercial Site Plan – Commercial Lane

Mr. Abbott advised the Commission that this is a commercial site plan for a 5,600 and 4,000 square foot warehouse buildings; that the setbacks meet the minimum requirements of the zoning code; that 13 parking spaces are proposed; that warehousing does not require parking spaces; that on-site septic and well are proposed; that the site is not located in a flood zone and there are no wetlands on the site; 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.

Steve Adkins, Surveyor, was present and advised the Commission that all agency approvals have been obtained.

Motion by Mr. Ross, seconded by Mr. Smith 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 4 – 0.

Americana Bayside MR/RPC
Site Plan – Route 54

Mr. Abbott advised the Commission that this is a revised site plan for the placement of a dumpster pad in Phase 1A of the Americana Bayside residential planned community; that the proposed enclosure is 10-feet by 8-feet and will be screened on three sides with a wooden fence and typical screening plants that are utilized throughout the project; that the proposed dumpster site is at the end of Founders Avenue; that since the project is a residential planned community, the Commission may modify the setback requirements; and that the Commission was previously provided a copy of the site plan, a letter from the developers explaining the request, and photographs of other dumpsters in the project.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised site plan as submitted. Motion carried 4 – 0.

Americana Bayside MR/RPC
Revised Site Plan Phase 4 – Route 54

Mr. Abbott advised the Commission that this is a revised site plan for a temporary parking field on Lot 213A; that the Commission approved this lot for a 12-unit condominium building per the approved Phase 4 site plan; that 31 spaces are proposed; that the temporary parking lot will be for the convenience of the Sun Ridge Pool Complex users; that the temporary parking will be removed when the developer begins construction on the 12-unit building; and that the Commission was previously provided a copy of the site plan.

Doug Brown, V.P. with Carl Freeman Associates, was present and advised the Commission that the current market dictates when construction of the condominium building will commence; that at this time there is not a market for 3-story multi-family

dwelling units; that the developers have contacted the property owners and they want something done with the lot; and that they will come back to the Commission after a certain period of time if they intend to keep the parking lot as a permanent amenity.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the temporary revised site plan with the understanding that if the parking area becomes a permanent fixture, the developers will come back to the Commission for site plan approval. Motion carried 4 – 0.

Subdivision #2008 – 1 – Albert J. Bierman
Revised Preliminary

Mr. Abbott advised the Commission that this application received preliminary approval for 8 lots on August 27, 2009 with 9 conditions of preliminary approval; that Phase 1 was for the 4 lots that have septic feasibility statements; that the revised plan reduces the site from 8 to 6 total lots; that at the public hearing on August 13, 2009, it was stated that there are no wetlands on the site; that with the revised plan, there are wetlands on individual lots but there is buildable upland areas on each lot; that typically the Commission prohibits wetlands from being on the individual lots; that also at the public hearing, 2 people spoke in opposition to this application; that the Commission may approve the revised plan as submitted, deny it as submitted or even require another public hearing; and that the Commission was previously provided a copy of the revised site plan, a letter from the Applicant's surveyor, a copy of the minutes of the August 13, 2009 meeting and the preliminary approval letter with the conditions of approval.

Mr. Ross advised the Commission that there is nothing in the Code or State law prohibiting wetlands on individual lots; and that only State Tidal wetlands are prohibited from being on individual lots.

Mr. Robertson advised the Commission that some larger lot subdivisions have been permitted to have wetlands on the lots; that during the public hearing, the applicants stated that there were not any wetlands on the site; that the opposition referred to wetlands being on the site; and that the site plan now contains approximately 70% of wetlands despite the applicant's testimony during the public hearing; that the use of wetlands on the site are one of the 17 items that the Commission must consider when reviewing subdivision applications; and that in its' motion, the Commission will need to address whether this is a material change or not.

Don Miller, Surveyor, was present and advised the Commission that a new wetlands delineation was performed; that his company has taken over the project from the original engineer; that now only 6 lots are proposed and that the residual lands will be the subject of a future application; and that there is ample buildable areas on each of the lots even with wetlands being located on them.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

Harry Faust
2 Lots on 50" Easement – Road 280 (Stockley Road)
Mr. Abbott advised the Commission that this is a request to subdivide a 4.25-acre parcel into 2 lots with access from an existing 50-foot easement; that Lot A will contain 0.75-acre and Lot B will be approximately 3.5-acres; that the request may be approved as submitted or an application or a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0.

Brett Reily
3 Lots and 50' Easement – Road 308 (Cordrey Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 3.82-acre parcel into 3 lots with access from a 50-foot easement; that the owner is proposing to create the easement over an existing driveway; that Lot A will contain 1.15-acres, Lot B 1.31-acres ad Lot C 1.36-acres; 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 a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0.

Dawn's Country Market
CU #1864 Site Plan – Route 88

Mr. Abbott advised the Commission that this is a site plan for a farmer's market and related sales; that the Conditional Use was approved on November 9, 2010 with 14 conditions; that the conditions of approval are noted on the site plan; that the setbacks for the proposed buildings meet the minimum requirements of the zoning code; that on-site septic and well are proposed; that 31 parking spaces are depicted and there is an area for overflow parking; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals and the final site plan indicating the total square area of retail sales so that the required parking calculations can be verified; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Burton, seconded by Mr. Ross to approve the site plan as a preliminary with the stipulation that the final site plan shall include the total square area of sales to determine the required parking calculations and that final approval shall be subject to the staff receiving all agency approvals.

Vote by roll call: Mr. Ross – yea, Mr. Smith – nay, Mr. Burton – yea, and Mr. Wheatley – nay. The motion died for lack of three affirmative votes.

Chick-Fil-A
Commercial Site Plan – Route One
Mr. Abbott advised the Commission that this is a site plan for a 4,736 square foot fast food restaurant located on 13.09-acres; that the restaurant site is located on a 0.95-acre leased site from the K-Mart site; that the site is zoned C-1; that the setbacks meet the minimum requirements of the zoning code; that for this site and the K-Mart site, 610 parking spaces are required and 611 spaces are proposed; that central sewer will be provided by Sussex County and central water by Tidewater Utilities; that ingress/egress to the site is from the adjacent controlled intersection between this site and the Ruby Tuesday site; that the landscape plan includes 184 new plantings for the 20-foot landscape buffer and parking lot; that DelDOT has issued a Letter of No Objection; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provide a copy of the site and landscape plan.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approvals shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

ADDITIONAL BUSINESS

Comprehensive Plan Report

Mr. Robertson summarized his report to the Governor's Advisory Council on Planning on the status of the Comprehensive Plan Update referencing the 23 possible Ordinance Amendments for the implementation of the Plan and the 10 Elements of the Quality of Life Act; that the Report had previously been provided to the Commission for their review; that State Law has changed requiring the Plan to be updated every ten years and in its place an annual report being sent on the status of the Plan; and that the statute says that the Report comes from the Planning Agency, which in this case is the Planning and Zoning Commission, so it is necessary for the Commission to directly authorize it to be sent to the Governor; and that the Commission is not charged with recommending action to the County Council, it actually has to take the action; and that since the Plan is a County document, the Council should support forwarding it also.

Mr. Robertson stated that each of the 23 Ordinances were considered and gave examples of that consideration for several of the Ordinances that were not adopted; and he also briefly described the various elements discussed in the Report.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously that the Commission forward the Report to the Governor's Advisory Council on Planning to the Governor, and that the Commission recommend that County Council support forwarding the Report to the Governor. Motion carried 4 – 0.

Attached is a copy of the Report.

Mr. Lank advised the Commission that a tentative date for a workshop with the Commission, staff and County Engineering Department could be on July 18, 2012 at 3:00 p.m. for the purpose of discussing sidewalks and possibly a presentation on the Community Viz. There was a consensus of the Commission that this date is appropriate.

Meeting adjourned at 7:27 p.m.