

MINUTES OF THE SPECIAL MEETING OF OCTOBER 16, 2008

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, October 16, 2008 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. Ben Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson, Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Johnson to amend the Agenda by switching Other Business Items 10 and 11.

Mr. Robertson explained that review of Items 10 and 11 need to be considered in the order as presented on the Agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the agenda s circulated. Motion carried 5 – 0.

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

CONSENT AGENDA

The Consent Agenda included:

Subdivision #2005 – 26 - - Ivy Branch Associates
Final – Pelican Point Phases 4 – 7 (formerly Stonewater Creek Phases 10-13)

This is the final record plan for a 360-lot cluster subdivision application. The Commission granted preliminary approval for 360 lots on April 13, 2006 and granted a revised preliminary approval for 360 lots on September 20, 2006. A one-year time extension was granted on October 17, 2007. Phase 4 contains 62 lots, Phase 5 72 lots, Phase 6 102 lots and Phase 7 124 lots. The final record plan complies with the subdivision ordinance and the conditions of approval and all agency approvals have been received.

Time Extensions

a. CU #1699 – Harry H. Isaacs, III

This is a request for a one-year time extension. The conditional use for a go-kart track was approved by the County Council on October 2, 2007. The Commission granted preliminary site plan approval on January 17, 2008. This is the first request for a time

extension. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until October 2, 2009.

b. Subdivision #2005 – 67 – Summer Hill Developments

This is a request for a one-year time extension. The Commission granted preliminary approval on October 18, 2006 and granted a one-year time extension on October 17, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until October 18, 2009.

c. Subdivision #2005 – 68 – Sandy Landing, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on November 20, 2006 and granted a one-year time extension on July 18, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until November 20, 2009.

d. 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 a one-year time extension on December 12, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until November 20, 2009.

e. Subdivision #2005 – 73 – Landlock, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on November 20, 2006 and granted a one-year time extension on November 14, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until November 20, 2009.

f. 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 a one-year time extension on November 14, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until January 18, 2010.

g. Subdivision #2005 – 86 – Dale Wheatley

This is a request for a one-year time extension. The Commission granted preliminary approval on February 22, 2007. This is the first request for an extension. If an extension is granted, it should be retroactive to the anniversary date of preliminary approval. If an extension is granted, preliminary approval will be valid until February 22, 2009.

h. Subdivision #2005 – 91 – Highland Development Corporation

This is a request for a one-year time extension. The Commission granted preliminary approval on February 20, 2007 and granted a one-year time extension on November 14, 2007. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until February 20, 2010.

i. Subdivision #2006 – 26 – Gravel Hill Properties, LLC

This is a request for a one-year time extension. The Commission granted preliminary approval on August 23, 2007 and granted a revised preliminary approval on November 14, 2007. This is the first request for an extension. If an extension is granted, preliminary approval will be valid until November 14, 2009.

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

OTHER BUSINESS

Shoreview Woods

CU #1666 – Final Site Plan – Route 9 and Road 258

Mr. Abbott advised the Commission that this is the final site plan for a 96-unit multi-family project; that the Conditional Use was approved on March 27, 2007; that the Commission granted preliminary site plan approval on November 14, 2007; that the site plan meets the requirements of the zoning code and the conditions of approval; that all agency approvals have been received; that a time extension is needed; and that if an extension is approved, it shall be retroactive to the anniversary date of approval and approval will be valid until March 27, 2009.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is valid until March 27, 2009. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a final with the condition that “ A notice to proceed with construction will not be issued for this project until the Artesian-owned Island Farm Regional Wastewater Facility is substantially under construction or another treatment and disposal facility has been approved by DNREC to service this project.” Motion carried 5 – 0.

Peninsula Lakes MR/RPC

CZ #1474 – Final Site Plan – Road 299

Mr. Abbott advised the Commission that this is the final record plan for 588 single-family lots; that the 72 multi-family units and recreation amenities are not a part of the final record plan and will be submitted at a later date; that 660 total units are permitted by the approved ordinance; that the final record plan is the same as the approved revised master plan that was approved by the Commission on April 14, 2007; that the final record

plan complies with the subdivision and zoning codes, and the conditions of approval; that the required landscaping plan has also been submitted and has been sealed by a certified landscape architect; and that all agency approvals have been received.

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

Breakwater MR/RPC
Revised Setbacks – Road 267

Mr. Abbott advised the Commission that the developers of this project are requesting to modify the setbacks for the fee simple multi-family lots for this project; that the recorded plan has a front and rear yard aggregate of 40 feet with side yard setbacks of 20 feet; that the developers are requesting to revise front and rear yard aggregate to 30 feet with 5-foot side yard setbacks; that since the project is a residential planned community, the Commission has the authority to modify the standard height, area and bulk requirements; and that if the Commission is favorable to the request, final approval could be subject to the staff receiving a revised approval from the Office of the State Fire Marshal.

Mr. Johnson questioned why the developers want to modify the setbacks.

No one was present on behalf of this request.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to deny the request for a lack of a record. Motion carried 5 – 0.

Subdivision #2006 – 9 – RW Durham & Associates
Revised Preliminary

Mr. Abbott advised the Commission that this application received preliminary record plan approval for 116 lots on June 20, 2007 and the Commission granted a one-year time extension on June 18, 2008; that the revised plan has been reduced to 90 lots and the right of way area has been redesigned; that the entrance is still located off of Road 506; that a circular street has been added to the center of the project and a future interconnection has been added to the northwest side of the site; that the right of way area has been reduced from 14.13 acres to 12.31 acres; that 8 lots will be strip lots off of the County Roads; that the staff is raising a question if the Commission feels that this is a substantial enough revision to require a new public hearing; and that there were six people who spoke in opposition to the application at the May 10, 2007 public hearing.

Motion by Mr. Gordy, seconded by Mr. Smith and carried 4 votes to 1, with Mr. Johnson opposed, to approve the revised plan as a preliminary. Motion carried 4 – 1.

Peninsula MR/RPC
Veranda – Revised Parking and Driveways – Road 299

Mr. Abbott advised the Commission that this is a revised site plan for parking for 134 multi-family units for the Veranda at The Peninsula; that the office received a complaint about parking spaces not meeting the 10' x 20' requirement; that the staff contacted the developers and a revised plan was sent in; that 402 parking spaces are required; that 456 total spaces are provided; that 250 spaces are 2-car garages, 9 spaces are single car garages, that there are 98 surface parking spaces; that there are 78 front load driveway spaces and 13 rear load driveway spaces; that 43 driveway spaces are less than 20 feet in depth; that these spaces are not included in the total number of spaces; that there are 448 10' x 20' parking spaces; that there is a surplus of 54 parking spaces; that the developers have also installed reserved parking signs for individual units; and the Commission was provided copies of letters from the developer and engineer, and the residents of the project.

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

KGH Property Development, LLC
2 Parcels – Round Pole Bridge Road (Road 257)

Mr. Abbott advised the Commission that this is a request to subdivide a 14.94 acre parcel into 2 lots; that Parcel 1 contains 3.47 acres of which 1.61 acres is upland area; that Parcel 2 contains 11.47 acres of which 3.20 acres is upland area; that the State and 404 wetlands have been delineated and a 50-buffer is provided from the State Wetlands; that the 2 parcels will have separate entrances as approved by DelDOT; and that DNREC has approved one septic system to serve the 2 lots.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to approve the 2 lots as a concept. Motion carried 5 – 0.

Americana Bayside MR/RPC
Performing Arts Center – Route 54

Mr. Abbott advised the Commission that the developers of this project requested to be placed on the agenda to explain their plans for The Joshua M. Freeman Performing Arts Center at this project; that the developers are requesting that this area be exempt from the permitted 170,000 square feet of commercial area; that the proposed center includes a 450 seat theater, 50,000 to 60,000 square foot building, classrooms, storage area, receiving/back stage area, rehearsal/lesson rooms, retail/concessions space to serve indoor/outdoor performances and kitchen and gallery space.

Michele Freeman and Tom Haverstadt were present and gave a brief presentation explaining their proposal for a performing arts center that will be non-profit for the Americana Bayside project.

The Commission discussed the proposal.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action so that Mr. Robertson may review the request further. Motion carried 5 – 0.

The Estates at Sea Chase
CU #1774 Site Plan – Road 274

Mr. Abbott advised the Commission that this is a site plan for a 500 square foot (20' x 25') pool house with 5 parking spaces; that the proposed building will be located 14.7-feet from Mediterranean Drive; that the proposed building is similar to the one that the developer built at the Woods at Seaside; that a resident of the community has submitted a letter expressing concerns about the design of the building; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Richard Diesinger was present and advised the Commission that he lives in the community and expressed concerns about the design of the building and submitted copies of the letter that he submitted to the staff; and advised the Commission that the plans that he agreed to are not what has been submitted to the Commission.

Mark Dunkle, Attorney, was present and advised the Commission that the Attorney General's Office has reviewed and agreed to the plans; and that the plans that were submitted to their office will be submitted to the Commission for review.

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

Bay City Mobile Home Park
Corrective Survey – Road 22

Mr. Lank summarized a written report on the Bay City Mobile Home Community, which is attached as Exhibit "A".

The Commission discussed who would pay for surveys, monumentation, etc.

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

Subdivision #2006 – 52 - - L.T. Associates
Clarification of Conditional of Approval

Mr. Abbott advised the Commission that Condition of Approval K reads, "There shall be at least a 50-foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan Review."; that the applicant's attorney has sent a letter advising that 115-193 references the Delaware Code and that the Code only makes reference to State Wetlands.

Mr. Johnson passed out and read a statement as attached as Exhibit "B".

Motion by Mr. Johnson, seconded by Mr. Burton and carried 4 votes to 1, with Mr. Wheatley opposed to amend the condition to read "There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall provide for the existing naturally vegetated area be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area. The design of the buffer shall be shown as part of the Landscape Plan submitted as part of the Final Site Plan Review." Motion carried 4 – 1.

Center for the Inland Bays
Presentation

Ed Lewandowski, Executive Director and Chris Bason from the Center of Inland Bays gave a power point presentation on how buffers work and provided copies of "Recommendations for an Inland Bays Watershed Water Quality Buffer System"

ADDITIONAL BUSINESS

There was a consensus of the Commission to hold s special meeting on Wednesday, November 12, 2008 at 3:00 p.m. for Old Business and Other Business items.

Meeting adjourned at 4:40 p.m.

**Sussex County
Planning & Zoning Commission**

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MEMORANDUM

TO: Planning and Zoning Commission

FROM: Lawrence Lank
Director of Planning and Zoning

REF: Bay City Mobile Home Community

DATE: October 16, 2008

I've tried to prepare a written summary of my review of the revised survey of Bay City Mobile Home Park for discussion this afternoon during the Special Meeting of the Commission.

This agenda item is a report from staff on the comparison of a recent survey performed by Coast Survey, Inc. to original surveys prepared by Isaac Bennett and modified by Walter Todd, both being Land Surveyors. Mr. Bennett passed away many years ago.

Previously the Commission has been made aware of the problems within the Park.

On March 6, 2008, David Baker, County Administrator, wrote to Bay City Limited Partnership and advised that as of March 7, 2008 the Sussex County Board of Assessment and the Planning and Zoning Department would cease issuing building permits and placement permits on lots within Bay City, unless proof could be provided that the issuance of a building permit or placement permit is necessary for public health or public safety benefit. This included placement of new manufactured homes or accessory structures, such as sheds or gazebos, as well as improvements or additions to existing manufactured homes/mobile homes. The letter referenced that County records indicate that there are numerous violations in the park for violations in front, side or rear setback, and maximum lot coverage, in addition to numerous open building permits or placement permits that could not be checked because they are in violation of County Code Chapter 115 Section 115-172 G. (4) and (7) which requires that the developer provide the County with a survey by a licensed Delaware Land Surveyor showing the corners of each site visibly marked and numbered by permanent markers. Without doing so, it is impossible for inspectors to determine where the property lines are located to allow inspectors to determine that a manufactured home/mobile home or other structures meet setback requirements. The letter also advised that if the Partnership failed to take action to correct these violations within 90 days, the County would be left with no alternatives but to take whatever legal action available to alleviate the problem. In effect, a moratorium was placed on issuance of permits in Bay City.

On March 14, 2008 Richard E. Berl, Jr., Assistant County Attorney, and myself met to discuss Bay City and the moratorium with Mr. and Mrs. Paul Olivia, the developers. Mrs. Susan Isaacs, Chief Zoning Inspector, was also in attendance. The purpose of this meeting was to discuss the moratorium. We reviewed the plots of the old and new sections of the Park. The developers were advised by staff that we need accurate boundaries of lots in order to determine setbacks and lot coverage issues. In review of the plots it appeared that the new section could possibly be released upon confirmation that individual lot surveys could be completed. In the older section, it appeared that at least 50% of the lots were in a position where lot surveys could be created as there appeared to be corner markers in many instances, as well as metes and bounds descriptions of streets. It was also determined that in the older section, originally surveyed by Isaac Bennett and revised and amended by Walter Todd, that it must be surveyed to verify lot line locations or corrections/changes. The developer agreed to contact Coast Survey, Inc. to research the plots, the park and prepare surveys.

On a later date, Dean Pettyjohn, Zoning Inspector II, inspected the newer section and found some lot markers were actually plastic pipe, which was not acceptable for locating lot corners. Therefore, the developers were advised that we needed surveys of all of the lots within the Park, both the old and newer sections.

After several discussions on the phone and in at the office counter with representatives of Coast Survey, Inc. we finally received surveys depicting all of the lots within the Park. These surveys were originally scheduled to be reviewed by the Commission on September 17, 2008, but were removed from the agenda to allow more time for staff to review the details of the surveys.

The surveys have been placed on today's agenda for your consideration of the staff review. The Commission may accept the surveys as revised preliminary plans (in concept), ask for additional information, reject the plots as submitted, or defer action for further consideration.

The survey contains five (5) sheets of lot layouts.

In summary and In reference to Sheet 1 of 5 (old Section):

Lots 1 – 4 depict changes in the width and depth of Lots 1 – 3 and expanded width and square footage on Lot 4. These lots were reviewed by the Commission on April 19, 2007 when the developer requested to enlarge the lots. Action was deferred on April 19, 2007. On October 17, 2007 the Commission denied the request due to the fact that inadequate information had been provided to the staff, that there were conflicts with existing plots, and since a wetland delineation had not been completed. The wetlands line is now depicted.

Some of the street layouts have changed based on the survey. The streets originally were laid out with straight lines. The survey depicts the streets with minor crooks and bends, i.e. Sequoia, Mahogany, Fern, Juniper, Bamboo, Walnut and South Canal Streets.

Previously I had received a survey from Walter Todd, dated March 19, 2008, that depicted that all lot corners were marked and monumented with iron rebar for Lots 234 – 247 on South Canal Street. On this survey there have been minor changes in corner lot dimensions and 1.0 square foot in the lot calculation (Coast vs Todd). Mr. Todd also references that all of the streets around Lots 234 – 247 as South Canal Street. The Coast survey depicts South Canal Street and North Canal Street.

Lots 35 and 38 on Walnut Street have been enlarged or reconfigured, as have lots 50, 51, and 54 – 59 on Circle Drive. Lot 53 no longer exists. Lots 47 and 48 have been enlarged in depth along Circle Drive. Lot 124 has been enlarged at the corner of Circle Drive and Fir Street. Lots 112 – 120 have been revised along Mahogany and Fir Streets, mostly on Lots 115 – 117 and Lot 120 at the intersections. Lot 104 has been enlarged along Circle Drive. Lots 82 – 97 have been altered at a minimum by width changes. Lot 89 has been enlarged on the corner of Circle Drive, Berry Street, and Sequoia Street. Lot 00 and 143F have been enlarged in depth and square footage. Several of these lots did not have dimensions or square footages referenced on the Isaac Bennett survey.

In summary and in reference to Sheet 2 – 5 (Old Section):

The lots to the right (south) of Main Street are basically the same except for alterations to Lots 41 – 45B on Canal Street, Lots 154 – 157A on South Cedar Street which have dimensional changes and side line realignments; Lot 162A on South Maple Street, Lots 174 on Orange Street, Lots 192 and 193 on South Cherry Street which have been redesigned and enlarged along road frontage and corners.

The lots to the left (north) of Main Street have been altered. Lots 62 – 64 are now Lots 62 and 63 since Lot 64 encroached into Bayview Drive. Side yard angles have changed on Lots 65 – 81. Lot 133 has changed shape and enlarged along Main Street. Some of the lots have gained square footage due to the reconfiguration along Bayview Drive. Lot 126 has been enlarged along Bayview Drive. Lots 141 and 144C have been altered and realigned based on the layout of Holly Street, Bayview Drive and the lagoon.

In summary and in reference to Sheet 3 – 5 (Old Section):

These lots are similar in shape and dimension. Lot 199 has been enlarged at the corner of Plum Street and Holly Street. The side line between Lots 200 and 200A on Persimmon Street has been altered increasing the square footage and width of Lot 200. Lot 218A on Orange Street has been enlarged in depth and square footage. Lot 223 on Apple Street has been enlarged by dimension and square footage. Lot 208 on the corner of Persimmon Street and Holly Street has been enlarged in width and square footage. Lots 214, 215, 231 and 9 have been altered at the corners of Holly Street intersections. Lots 232, 233 and 230B on Apple Street and Main Street have been altered and realigned.

In summary and in reference to Sheet 4 – 5 (New Section):

Minor corrections in square footage and dimensions to corner lots due to specific data on corner radii have been provided. Lots 7 – 10 Block "G" have been deleted and the cul-de-sac on 8th Street has been relocated due to the existence of wetlands according to Coast Survey, Inc. All of the remaining lots are typically the same.

In summary and in reference to Sheet 5 – 5 (New Section):

Minor corrections in square footage and dimensions to corner lots due to specific data on corner radii. All of the remaining lots are typically the same.

Again, the purpose of this review is to determine if the surveys are satisfactory to replace the original surveys prepared by Isaac Bennett and expanded and altered by Walter Todd.

If the Commission is favorable the approval should be "in concept only" until all lot corners are monumented. Once the monumentation is completed. The plots showing the monumentation should be presented to the Commission for final approval as amended. Then the staff will notify the County Administrator that the surveys have been found to be acceptable and the moratorium may be relaxed. If the moratorium is relaxed or lifted, the developer or the tenants in the Park will be required to provide "as built" lot surveys showing the lots, monumentation, all improvements on the lots and neighboring lots, square footages, dimensions, and proposed improvements so that the staff may determine if Board of Adjustment action will be necessary for any variances in setback, spacing or lot coverage. A letter from the developer acknowledging approval of proposed improvements shall also be required prior to the issuance of any permits.

RE: Subdivision #2006-52 LT Associates
Clarification of Conditions of Approval

Condition of Approval K.

The Condition of Approval states in part: "There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel." This part is straight forward and obvious in my intent that the buffer is to be from all wetlands. I did not purposefully differentiate between the types of wetlands and my basis for this will be addressed in detail later.

The reference to Section 115-193 is for purposes of defining "the design of the buffer" and was not and is not intended to define the type of wetlands involved, ie. "State Wetlands." More specifically Section 115-193 defines "Buffer Zone- An existing naturally vegetated area or an area purposely established in vegetation which shall not be cultivated in order to protect aquatic, wetlands, shoreline and upland environments from man-made encroachment and disturbances. The "buffer zone" shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area."

The reference to Section 115-193 for design purposes only is further made obvious in the same sentence "and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review."

In the matter of "at least a 50 foot buffer from all wetlands existing on any adjacent parcel", this condition was predicated on the vast information provided by DNREC through the PLUS process along with other information that is part of the record. The following are representative examples of this information.

“This project is located directly adjacent to sensitive headwater wetlands associated with the Lewes-Rehoboth Canal and the greater Inland Bays watershed, greatly increasing the probability of harmful impacts to surface and groundwater quality to all waters within the Inlands Bays watershed and making it more difficult for the State to achieve future required TMDL nutrient reductions.”

“This project is located adjacent to receiving waters of Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/or restored to the maximum extent practicable, to their natural conditions.”

“The applicant is strongly advised to consider the use of appropriate BMPs and Best Available Technologies (BATs) to ensure compliance. Examples of BMPs or BATs that should be used to significantly reduce nutrient loading from this project include practices that prevent or mitigate or minimize created surface imperviousness, maintenance of recommended wetland buffer widths...”

“In order to protect rare species, unique communities, and water quality, the forested riparian buffer along Pot Hook Creek should be left intact (at least 100 feet in width, preferably 300 feet). Lot lines and infrastructure currently within this buffer zone should be either eliminated from the site plan or relocated.” “This includes lots 29-38, 45, 46, 47,” (This represents 13 lots).

The applicant stated in their section titled “Subdivision Considerations”:

“Section 2. Minimal use of Wetlands and floodplains

a. Wetlands – No regulated wetlands (Federal or State wetlands) are present on this site. All wetlands that border the site and are a part of the same Tax Parcel shall be preserved and protected in their natural state.”

Empirical evidence substantiates that to effectively protect wetlands, natural vegetative buffers are essential. In addition these wetlands are all part of 1 migrating unit. They are impacted by rising sea levels and the low level of ground. Essentially there will be an ongoing migration of state wetlands into 404 wetlands. The distinction between the wetlands will become further blurred over time. Impacts on 404 wetlands will result in impacts on state wetlands, natural wetlands, the Inland Bays watershed and the natural environment.

The basis for the Condition of Approval for a minimum 50 foot buffer from all wetlands is based on the overwhelming recommendations made in the PLUS review. The 50 foot buffer from all wetlands is considerably less than the buffers recommended by DNREC, “at least 100 feet, preferably 300 feet.”

Furthermore, the Condition of Approval for a 50 foot buffer from all wetlands does not pose a special hardship or reduction in the number of lots approved for this cluster subdivision. A review of the Preliminary Site Plan with the 50 foot buffer superimposed, indicates that approximately 13 lots are impacted. The approval by the P & Z commission was for a reduction of 13 lots. Thus the applicant merely has to redesign the subdivision to account for the reduction in the # of lots while providing for the Condition of Approval 50 foot buffer from all wetlands.

The end result of the redesign of the project with the inclusion of the 50 foot buffers from all wetlands is the creation of a "cluster sub-division" which is of a superior design that provides additional safeguards for the ERES and incorporates BMPs and BATs to reduce TMDLs. Whereas this project was applied for as a "Cluster Subdivision" under the County's Cluster Subdivision Ordinance, the Commission has some discretion via its "Conditions of Approval" in determining and approving a project that is considered "superior in design" to a standard subdivision and will "protect adjacent properties and the natural environment. The inclusion of the Condition of Approval for the provision of 50 foot buffers from all wetlands is not unreasonable and further protects the environment and the County.

The basis for the Condition for Approval is predicated by Section 115-25 F. Review procedures for cluster development. It is imbedded in Section 115-25 F. (3)(a), (b) & (c). And furthermore is stated clearly in Section 115-25 F. (4), "The Sussex County Planning and Zoning Commission may add conditions to the approval of any cluster development to protect adjacent properties and the natural environment."

Based upon the record and for the above referenced reasons in order to clarify Condition for Approval K, I move that Condition K. be re-stated as follows:
There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall provide for the existing naturally vegetated area be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area. The design of the buffer shall be shown as part of the Landscape Plan submitted as part of the Final Site Plan Review.