

## MINUTES OF THE SPECIAL MEETING OF JANUARY 23, 2003

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 23, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, and Mr. Abbott – Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Mr. Robertson described how the public hearings would be conducted.

### PUBLIC HEARINGS

Subdivision #2002-28 - application of **BUD BRIGHT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 49.89 acres into 50 lots, located south of Road 48, 150 feet east of Road 302.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on October 16, 2002 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

Mr. Abbott advised the Commission that no additional comments have been received since the Technical Advisory Committee meeting.

The Commission found that William Wright, Attorney, was present on behalf of the applicant and stated that the applicant has reviewed the agency comments and will comply with all of the agency recommendations.

The Commission found that Irene Tillman, a Real Estate Agent, was present in support of the application since she has worked with the developer in the past.

By a show of hands the Commission found that eight (8) Real Estate Agents were present in support.

The Commission found that there were no parties present in opposition.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a septic feasibility. Motion carried 5 – 0.

C/U #1471 - application of **JOSEPH AND ANNE PLEASANTON**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for manufacturing countertops to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 5.01 acres, more or less, lying west of Road 463, 1,650 feet north of Road 451.

The Commission found, based on comments received from the State Department of Transportation (DelDOT), that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation after completion of any construction; that Evesboro soils are considered on Statewide Importance; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that fifteen (15) letters in support of the application had been received.

The Commission found that Joseph and Anne Pleasanton were present and that Mr. Pleasanton stated in his presentation and in response to questions raised by the Commission that he started the business a few years ago; that he has lived on the site for approximately 10-years; that he has been operating the business for almost 3-years; that he presently has three (3) employees; that the business is operated from the 30' by 36' shop building; that he has several deliveries per week and that two (2) of the deliveries may be tractor trailers; that the tractor trailers back into the site at the entrance; that the shop is heated and air conditioned; that the business is in operation Monday through Friday with some morning Saturday hours and no Sunday hours; that he would like to erect a small unlighted real estate size sign at the entrance; that waste materials are stored in a dumpster and hauled away by Waste Management; that he has a building permit for a 12' by 16' storage shed; that he does not have a showroom and does not do any retail sales; that the retailers that he deals with have their own showrooms; that employees park behind the shop; that he utilizes dust collectors on his table saws and chop box; that some router work is necessary; that the shop is swept daily; that he recently purchased two (2) air cleaners for the shop that recycle the air six times per hour; that some work is performed outside due to the length of the lumber; that they typically do the outside work around lunch time so as not to disturb the neighbors; that the storage building can be completed within 30-days; that his maximum business hours would be from 8:00 a.m. to 8:00 p.m. weekdays and 8:00 a.m. to 1:00 p.m. Saturdays; and that he has no plans to expand the size of the shop on this site.



The Commission found that John Cierno of the eight people present in support of the application stated that he has no problems with the application.

The Commission found that William Staples, a neighbor, expressed some concerns about depreciation of his property values, truck noise, and expansion of the size of the shop.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following conditions:

- 1) One unlighted sign, not exceeding 32 square feet per side or facing, may be Permitted.
- 2) Business hours shall be from 8:00 a.m. to 8:00 p.m. weekdays and 8:00 a.m. to 1:00 p.m. Saturdays. There shall be no Sunday business hours.
- 3) The existing shop building shall not be expanded. Any proposed additions to the shop building shall require a new application for Conditional Use.
- 4) The material storage shed shall not exceed 12' by 16'. The shed shall be completed within 30-days of approval.
- 5) There shall be no deliveries after 6:00 p.m.
- 6) The number of employees shall not exceed three (3).
- 7) The dumpster shall be concealed from view from Road 463 and neighboring properties.
- 8) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

C/U #1472 - application of **CALDERA PROPERTIES, LP**, to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (48 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 12.58 acres, more or less, lying northwest of the intersection of Route 357 and Route 360.

The Commission found, based on comments received from DelDOT, that the Department has reviewed this project (48 units) and the adjoining project (160) units; that a traffic impact study will not be required for two reasons: 1) The proposed use will generate 34% less traffic than the current zoning/use allows; 2) the traffic generated by 208 units does not meet the traffic impact study volume warrant of 2,100 average daily trips; this proposal generates 1,219 trips; that the Department will require improvements to Road 357 as part of the development; i.e. road widening from the northern limit to the intersection with Road 360 and the improved road will have a consistent road section with shoulders and dedicated



turn lanes for each entrance; and that the Department request that the County allows the Department to review and comment on the site plan prior to its approval.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fill land and Rumford loamy sand; that Rumford soils have slight limitations for development; that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction; that the Rumford soils are considered of Statewide Importance; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State is not opposed to the Conditional Use of this property; that the State would like to offer comments for the County to consider when reviewing the project:

- 1) While DelDOT has no objections to this proposal, they will require improvements to Cedar Neck Road. The County's support in requiring those improvements would be appreciated.
- 2) The central water system must provide water for fire protection in accordance with State Fire Prevention Regulations. The site plan must show main sizes and fire hydrant locations.
- 3) The Department of Education suggests that the developer be required to present information on the proposal to the Indian River School District so that they can be aware of the impacts this proposal may have on the District.
- 4) This property has a high probability for archaeological resources. Ground disturbances could effect any resources that remain. If the developers have any questions or if anything is found during construction, the developers can contact the State Historic Preservation Office.
- 5) The Department of Natural Resources and Environmental Control has noted that there are three inactive Leaking Underground Storage Tank sites near the proposal. The developer should be aware that should any petroleum contaminated soil be discovered during construction, the Underground Storage Tank Branch must be notified as soon as possible. According to the Natural Resources Conservation Service soil survey some of the soils are both well to somewhat well-drained upland soils that are, generally, considered to have few limitations for development; some of the soils have irregular soil permeability rates, broader drainage class range, i.e. moderately well-drained to poorly drained, and severely altered by human activity including grading, clearing, and/or miscellaneous construction activities, and some are considered to have severe limitations for development. The soils found on this site also contain mostly sandy surface and subsurface horizons. Sandy soils have rapid permeability and little or no phosphorus or nitrogen adsorption capacity, compared to finer-texture soils. Therefore, such soils are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed. These impacts are intensified in soils containing shallow water tables. The applicant should be reminded that they should avoid construction/filling activities in those areas containing wetland associated hydric soils, as they are subject to regulatory provisions of the Federal Clean Water Act 404 program and that tidal wetlands are subject to even more stringent regulatory protection under the



DNREC State Tidal Wetlands Act. Tidal wetlands cannot under any circumstances be filled or mitigated. The Inland Bays are designated as Waters of Exceptional Recreational or Ecological Significance (ERES Waters) that shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State. Both non-point and point nutrient sources in these waters may be subject to control through Best Management Practices which may include establishment of vegetated buffers adjacent to watercourses, or maintaining existing natural riparian buffers. Buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment. The information sheets provided state that the developer intends to obtain public water from Sussex Shores Water Company. Records indicate that the site is not within the service area of any public water utility. Sussex Shores Water Company will need to file an application for a Certificate of Public Convenience and Necessity with the Public Service Commission. The construction of any wells will require well permits from the Water Supply Section. Public wells must be located at least 150-feet from the outside perimeter of the project and from all sources of pollution. Should well pointing (dewatering) be needed during any phase of the construction, dewatering well permits must also be obtained before the points are installed. Potential contaminant sources may exist in the area. They recommend that water supplies be tested prior to consumption. The developer should allow up to four weeks for processing well construction permits in this area.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the project should be subject to review by the Technical Advisory Committee; that the roads should be designed, constructed and inspected in accordance with the street design requirements of the Subdivision Code; that the streets should be curbed and utilize a closed pipe drainage system for the multi-family areas as construction of multi-family projects destroys earthwork and finished grades of drainage swales, which typically occur after the roadways have been completed and accepted by the County; that sidewalks and streetlights should be provided for all multi-family areas; and that adequate safety features should be provided that would not require pedestrians to walk within the streets or in the dark to access their units and community areas.

The Commission found that a letter was received from Liz Phelps in opposition to the project due to the impact on public safety; since Cedar Neck Road is a two lane road overloaded in summer by seasonal residents and hazardous due to utility poles being located to close to the right-of-way; since there are no regular State Police patrols in the area; due to the inability of Road 360 and Central Avenue in Ocean View to quickly evacuate the current number of residents on Cedar Neck; since Road 360 floods routinely during storms; since current traffic backs up on Central Avenue for several blocks in summer from the traffic light on Route 26; since the normal congestion on Route 26 will preclude the timely evacuation of the residents of Cedar Neck; and since planning and funding for needed road improvements is not going to be done in the foreseeable future.



The Commission found that the applicants had submitted a booklet of information for the record and that the booklet included letters from Environmental Consultants International Corporation on both applications, the Lakes at Old Mill and the Courts at Old Mill; letters from the Office of State Planning Coordination on both applications; a letter from Sussex Shores Water Company offering central water service to both projects; letters from Verizon offering telephone service to both projects; a letter from Mediacom offering cable/internet service to both projects; letters from Conectiv Power Delivery offering electrical service to both projects; a statement of findings and conclusion relating to environmental site assessments; a letter from DelDOT in reference to both projects; a letter from the Army Corps of Engineers in reference to wetlands on the site; an economic analysis referencing both projects; an assessment of nutrient impacts; and an endangered species and cultural resource review with letters from Atlantic Resource Management, Inc., the United States Department of the Interior - Fish and Wildlife Service, and the State DNREC Natural Heritage Program.

The Commission found that James Fuqua, Attorney, was present with Dan McGreevy and Martin McGreevy, the applicants, and Ross Harris of ECI.

The Commission found that Mr. Fuqua stated that he will present testimony on both projects since they are similar and contiguous; that C/U #1472, the Courts at Old Mill, proposes development of 48 multi-family units on approximately 13 acres within the GR General Residential District; that C/U #1473, the Lakes at Old Mill, proposes development of 160 multi-family units on approximately 40 acres within the mix of GR General Residential District and C-1 General Commercial District on the site; that the sites are near or adjacent to the Salt Pond RPC project, Murray's Estates Subdivision, Bethany Lakes Subdivision, Lynn Lee Village Mobile Home Park, and Pine Tree Campground; that the majority of the lands west of Road 357 are zoned GR General Residential; that the majority of lands east of Road 357 are zoned MR Medium Density Residential; that the only exceptions seem to be lands that have been rezoned to C-1 General Commercial; that the developers are working with the Pine Tree Campground owners discussing the property line; that the Courts at Old Mill proposes 12 - 4-unit buildings with access from one entrance off of Road 357; that the Lakes at Old Mill proposes 114 condominium units and 46 townhomes with access from one entrance off of Road 357; that recreational facilities will be provided at the Lakes at Old Mill site for both projects with tennis courts and a swimming pool; that the Old Mill Restaurant will be converted into a community/recreational center; that the two projects will be connected by pedestrian walkways, not vehicle access; that central water will be provided for consumption and fire protection; that sewer will be available from the County; that the sanitary sewer system is now under construction in the Cedar Neck area; that the projects are being developed at less density than the maximum permitted by the existing zonings on each parcel; that DelDOT has advised that 30% less traffic will be generated by these proposals than development under current zonings; that the nearest intersection, Road 357 and Road 360 are signalized; that the sites are close to shopping areas and recreational uses;



that no environmental impacts have been found from prior use of the sites; that no endangered or threatened species or archaeological sites have been found on the sites; that some wetlands exist on the Lakes at Old Mill site and that the wetlands delineation's have been approved by the Army Corps of Engineers; that a nutrient assessment has concluded that there should be a significant reduction in nitrogen and phosphorous by conversion to a development; that the project will have a position economic impact on the area and the County; that the sites are within Development Districts according to the 1997 Comprehensive Plan; that the entire area is zoned for up to 4 units per acre; that the C-1 General Commercial areas can be developed at 12 units per acre; and that State agencies have voiced no objections to the applications.

The Commission found that Mr. Fuqua submitted a copy of the tax maps of the area with the commercial areas designated.

The Commission found that Mr. Harris described the site plans for both projects; that a 10-slip boat marina has been approved by the State DNREC near the entrance to the lagoon off of Whites Creek; and that cross access easements have been agreed upon with Sussex Shores Water Company for pedestrian access connecting the sites.

The Commission found that Mr. Fuqua presented suggested conditions that could be placed on the projects since the applications are for Conditional Uses and added that since the Lakes at Old Mill is partially zoned C-1 General Commercial it could have been used for many other uses that would impact Road 357; that no negative impact is anticipated on property values; that the projects comply with the State and County Plans; that the site are appropriate for development; and that the owner of the Old Mill Crab House has stated that he will establish another restaurant in the area.

The Commission found that Mr. Fuqua and Mr. Harris, in response to questions raised by the Commission stated that the man-made stormwater pond north of the existing restaurant will be filled and that stormwater management will be relocated to another portion of the sites; that the 10-slip marina permit was originally issued to the present owner and will be transferred to the applicants; that other multi-family uses in the area are located in the Salt Pond RPC, on Road 358, and on Yacht Basin Road; that Lynn Lee Village Mobile Home Park and Pine Tree Campground have higher densities than those proposed; that economically the projects will create higher property values than the mobile home park or the campground; that proposed condition #4 should reference Cedar Neck Sanitary Sewer District; and that proposed condition #5 should reference Conditional Use.

The Commission found that the proposed conditions for C/U #1472, with the corrections referenced above, include:

- 1) The maximum number of residential units shall not exceed 48.



- 2) All entrance, intersection, roadway, and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- 3) Recreational facilities, e.g. tennis courts, swimming pool, and community buildings shall be constructed and open to use by the residents of both C/U #1472 and C/U #1473 within two (2) years of the issuance of the first building permit.
- 4) The development shall be served as part of the Sussex County Cedar Neck Sanitary Sewer District.
- 5) The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- 6) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
- 7) Site plan review for each phase of development shall be subject to approval by the Planning and Zoning Commission.
- 8) The interior street design shall be in accordance with or exceed Sussex County street design requirements. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design.
- 9) A 50-foot buffer shall be provided from the State wetland line.
- 10) No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

The Commission found that the proposed conditions for C/U #1473, with the corrections referenced above, include:

- 1) The maximum number of residential units shall not exceed 160.
- 2) All entrance, intersection, roadway, and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- 3) Recreational facilities, e.g. tennis courts, swimming pool, and community buildings shall be constructed and open to use by the residents of both C/U #1472 and C/U #1473 within two (2) years of the issuance of the first building permit.
- 4) The development shall be served as part of the Sussex County Cedar Neck Sanitary Sewer District.



- 5) The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- 6) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
- 7) Site plan review for each phase of development shall be subject to approval by the Planning and Zoning Commission.
- 8) The interior street design shall be in accordance with or exceed Sussex County street design requirements. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design.
- 9) A 50-foot buffer shall be provided from the State wetland line.
- 10) No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

The Commission found that Mark Culp, owner of an adjacent bed and breakfast, Faith Fitzgerald, Hope Orhelein, Sarah Fitzgerald, Michael Megee, Candice Casey, Kathaleen McCormick, and Michael Lewis spoke in opposition to parts of both applications and expressed concerns about construction and hauling hours, especially before and after normal daylight hours; that if the projects are approved they should have restricted hours; that Road 357 is in need of improvements, i.e. pavement, shoulders, etc.; concerns about existing traffic and increases in traffic; that single family homes would be preferred; evacuation; the density; that a dwelling between the projects should be on historic registry; that arrowhead have been found on the sites; that wetlands will probably be impacted by residents walking on the wetlands; that the wetlands boundary should be fenced; that the proposed use is out of character with the immediate neighborhood; concerns about stormwater runoff from pavement and roof tops; concerns about impacts on the residents docks in Lynn Lee Mobile Home Park lagoon by the marina near the entrance at Whites Creek; questioning how boats will maneuver within a 40-foot wide lagoon; and concerns about lighting and vehicle lights impacting neighboring residents.

At the conclusion of the public hearings the Commission discussed this application.



Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action.  
Motion carried 5 – 0.

C/U #1473 - application of **CALDERA PROPERTIES, LP**, to consider the Conditional Use of land in a GR General Residential District and a C-1 General Commercial District for multi-family dwelling structures (160 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 40.74 acres, more or less, lying west of Route 357 and 1,000 feet north of Route 360.

Mr. Lank advised the Commission that the DelDOT, Sussex Conservation District, Office of State Planning Coordination, and County Engineering Department Public Works Division comments received referencing this application were basically the same as the comments read into the record on C/U #1472.

Mr. Lank added that the letter from Liz Phelps in opposition to C/U #1472 also referenced this application.

Mr. Lank added that a letter from Pine Tree Campsite, previously sent to the Commission, is made a part of the record.

The Commission found that a letter has been received from Kevin W. Sagers in opposition to this application and stating that he has no objections to the development of the site or the requested density, but that his concerns lay with the set backs, specifically the bordering Pine Tree Campsites; that his family owned Pine Tree Campsites from the late 1960's until January 2002 and that he has enjoyed personal relationships with many of the tenants in the campground; that the tenants have always enjoyed having an empty or farmers field next to them; that it seems unfair and unnecessary to put high density housing adjacent to a campground without some sort of barrier; that his father and the neighboring land owner agreed to put up a small fence at the field's edge; that the campground maintained the fence and surrounding area; and that he suggest that a minimum 30-foot wide buffer be provided along the campsites including fencing and landscaping.

The Commission found that a letter has been received from Kathleen R. Lewis, in opposition to this application and expressing her concerns that the proposed 160-units is very high density in this area; that traffic, noise, light pollution and other factors will negatively impact this quiet community; that concentration of multi-family dwellings is uncharacteristic for this area and does not blend in with the community and would be detrimental to the area; that neighboring properties should be given adequate buffered areas to separate from the development; that there are four units proposed in the northwest corner behind the campground that are crowding a pristine wetland area and will require removal of trees and groundcover that support wildlife; and that the wetlands along Whites Creek should be spared.



The Commission found that James Fuqua was present on behalf of this application and stated that since he presented testimony and evidence on this application with C/U #1472 that he would incorporate the testimony into this public record; that he and the applicants will consider the concerns expressed by the opposition; that he agrees that construction activities can be impacting on neighbors and that the applicants will give consideration to the concerns and try to address this issue; that the applicants picked these sites since both sites are located in areas where the County and the State suggest development and since central sewer and central water are available; that the use intended will be an asset to the area; that the opposition has suggested reducing the density, but density is important to reduce sprawl; that they are asking from density that is less than the density permitted; that they are not encroaching onto wetlands; and that they will continue to work with the Pine Tree Campsites owners to resolve their concerns.

The Commission found that William Tomlinson, who works and lives at Pine Tree Campsites, spoke in opposition to this application and expressed concerns that the application does not blend in with the community area; and that he is concerns about crime, trash, density, traffic, and the intended change in the character of the area.

The Commission found that Mike Megee spoke in opposition to this application by adding that even on paper it appears that the project will create a lot of traffic and noise.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action. Motion carried 5 – 0.

Meeting adjourned at 9:16 p.m.