

MINUTES OF THE REGULAR MEETING OF JANUARY 30, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 30, 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.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of January 16, 2003 as circulated.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of January 23, 2003 as circulated.

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

PUBLIC HEARINGS

Subdivision #2002 – 34 - - application of **ROBERT W. CLAGG** to consider the Subdivision of land in a GR General Residential District in Seaford Hundred, Sussex County, by dividing 7.81 acres into 2 lots, located 150 feet south of Road 553 and 1,250 feet west of Road 554.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed this application on November 13, 2002 and that the report will be made a part of the record for this application.

The Commission found that Thomas Clagg was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that 2 lots are proposed; that the 1.75 acre parcel will be for his father who is going to build a new home on the lot; and that there will not be any further subdivision of the property.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the application as a preliminary.

Motion carried 5 to 0.

C/U #1477 -- application of **CARL M. FREEMAN COMMUNITIES, LLC**, to consider the Conditional Use of land in a MR-RPC Medium Density Residential District-Residential Planned Community for a public utility (water) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.10 acres, more or less, lying north of Route 54 and 1,150 feet west of Route 20.

The Commission found that the applicants submitted a booklet of information for the record and that the booklet included a location and tax map, a water plant site plan with approximate area of disturbance, a tank description and structural stability report from Tidewater Utilities, Inc., a memo regarding vulnerability assessment from Tidewater Utilities, Inc., four (4) photo illustrations of a tank on the site, a letter of support from the Office of Drinking Water for Delaware Health and Social Services, a letter of support from the Roxana Volunteer Fire Company, proposed conditions, a table of location and characteristics of existing elevated water tanks in eastern Sussex County, and a plat of location of existing elevated water towers in eastern Sussex County.

Mr. Lank provided copies of comments received to date for the Commissions review from the Office of State Planning Coordination, the Sussex Conservation District, the Sussex County Engineering Department Planning and Permits Division, and a letter in support of the application from the Bay View Estates Property Owners Association, Inc.

The Commission found, based on the comments received from the Office of State Planning Coordination, that the State has no objections to this proposal, but asked that the County consider the following: the applicant will have to obtain an entrance approval for access to the proposed facilities and that because this is part of a larger development, DelDOT asks that Tidewater's engineers contact DelDOT's Subdivision Manager for Sussex County; that because most of the Americana Bayside development would be located on the opposite site of Route 54, they expect that Tidewater will want to extend a significant water line under Route 54 and that if the County grants this Conditional Use, Tidewater's engineer's should contact DelDOT to determine what lines DelDOT will permit in what locations; that the State Historic Perservation Office has noted that this area is currently under review in accordance with Section 106 of the National Historic Preservation Act; that there are a number of archaeological site located in the area and if the applicant have any questions they should contact the State Historic Preservation Office; that according to the NRCS soil survey update, the soils in the vicinity of the proposed construction are mapped as Askecksy and Ingleside; that Askecksy is a poorly drained wetlands associated soil that has severe limitations for development; that Ingleside is a somewhat well-drained upland soil that has few limitations for development; that most of the proposed project occurs within the Askesksy soil map unit; that the DNREC staff review finds that this area does not contain lands identified either on the Delaware Natural Areas Inventory, or as a State Resource Area; that the site is a forested tract surrounding the headwaters of Roy Creek, a tributary of Assawoman Bay; that DNREC recommends that the development of water wells, storage

and treatment facilities should be accomplished with as little impact as possible to Roy Creek and its forested buffer; that DNREC files indicate that there is one active Leaking Underground Storage Tank site located near the proposed project; that the applicant should contact the Public Service Commission in reference to a certificate of public convenience and necessity; and that the applicant should be aware that well pointing (dewatering) may be necessary to facilitate construction on the site and that if well pointing is needed, the well points must be constructed by a licensed well driller and a permit must be obtained prior to construction of the points.

The Commission found, based on the comments received from the Sussex Conservation District, that the soils are mapped as Osier loamy sand and Rumford loamy sand; that the Osier soils have severe limitations; that the Rumford soils have slight limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction; that the farmland rating of both soils types is considered of Statewide Importance; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained soils with a seasonally high water table; and that wetlands may be present on the site.

The Commission found, based on the comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is available for the project; that the applicant will be required to follow the pretreatment ordinance for further requirements; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$2,389.00 per EDU; that the location and size of laterals or connection points will be determined by the Engineering Department during the Ordinance No. 38 process; and that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required.

The Commission found, based on a letter from Daniel J. Grimm of the Bay View Estates Property Owners Association, Inc. that the Bay View Estates Subdivision supports the application.

The Commission found that James Fuqua, Attorney, Steve Smith of Carl M. Freeman Communities, LLC, Liz Brown and Chuck Hauser of Davis, Bowen & Friedel, and Gerald Esposito of Tidewater Utilities, Inc. were present and stated in their presentations and in response to questions raised by the Commission that the central water facility will be operated by Tidewater Utilities, Inc.; that the Americana Bayside community was approved for 1,700 residential units with a stipulation that central water be provided; that the site is a part of the Americana Bayside MR-RPC Medium Density Residential District – Residential Planned Community; that 10,100 square feet of a 4.1 acre parcel will be utilized for the

facility; that the facility will contain a water tower, water treatment building, a generator, and a well site; that the 150-foot tall 300,000 gallon tower will be constructed of steel, will have five legs, will have a diameter of 45-feet, and will be lettered with a logo or the name of the Americana Bayside project; that security lighting will be provided; that the design and construction of the facility will comply with the American Water Work construction design requirements; that the tank and water system will conform to all federal laws and monitoring regulations; that there may be one employee on the site per day checking and monitoring the system; that supplies will be delivered once every 10 to 14 days; that a 6-foot high security fence will surround the 10,100 square foot site; that no negative impact is anticipated on existing wells in the area; that conceptual photographs in the booklet exhibit how the tower may appear from different views; that test wells were drilled at the site for water quality and water quantity; that a main water treatment site is proposed at another location within the residential planned community and will be applied for at some later date; that the tower can be utilized by other users in the area; that Tidewater Utilities, Inc. has been approved to be the water provider for the project since they purchased the Sea Colony Water Company; that this proposal is similar to other water towers in eastern Sussex County; that existing water towers have not been reported to have any negative impacts on property values; that the site is located in a developing area in an area to be served by central sewer; that the Office of State Planning Coordination has voiced no objections to the application; that letters of support have been received from the Delaware Health and Social Services and the Roxana Volunteer Fire Company; that the Sound Methodist Church has voiced no opposition; that a need exist in the area for central water for consumption and fire protection; that the site is adjacent to wetlands, but does not encroach into the wetlands; that preliminary studies indicate that the site is suitable for the facility; that several wells were drilled with the deepest drilled to a depth of 400-feet and the shallowest drilled to 65-feet; that the wells drilled were 6 to 8-feet in diameter; that the wells were drilled in July 2002; that they found water at 12-feet below grade; that the facility will be monitored by electronic controls and alarms; that a security alarm system will be provided if found to be necessary; that research was performed to establish if there are any historic references to tower damages during natural disasters; that the research indicated that there has been little to no damage reported to tanks during storms and that there is no documented evidence of any collapsed tanks; and that they have no objection to antennas being placed on the tower by the County, the State, or the local fire company.

The Commission found that Mr. Fuqua suggested the following conditions:

- 1) Maximum capacity of Tower shall be 300,000 gallons
- 2) Maximum height of Tower shall be 150-feet
- 3) Lighting at the Tower shall be limited to normal security lights and safety lights required by the F.A.A. on the Tower
- 4) The Tower shall be painted a sky neutral color and lettering shall be limited to identification of the Development "Bayside" and the Water Company "Tidewater"
- 5) The water facility shall be surrounded by a security fence at least (6) feet in height

- 6) Structural design and operation of the water facility shall comply at a minimum with a WWA/standard D 100-96
- 7) Applicant has offered to allow placement of antenna on the Tower by the State or County at no charge
- 8) Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission

The Commission found that Ed Chason, an adjoining landowner, was present in opposition and stated that the tower should be located across Route 54 on the development site, rather than 40-feet from his property line; that the facility will depreciate his property values; that his 60-foot deep well went dry last summer; that his old well had a lot of rust; that his new well is 100 to 120-feet deep and has very clear water; that he does not necessarily object to the facility, only the tower; and that his home is 150 to 200-feet from the tower location.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action so that the Commission can review the booklet and other correspondence submitted.

Motion carried 5 – 0.

C/Z #1485 -- application of **PIERCE HARDY LIMITED PARTNERSHIP** to amend the Comprehensive Zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 620 feet south of Route 26, 750 feet west of Route 17, to be located on 8.387 acres, more or less.

The Commission found that the applicants submitted a booklet of information for the record and that the booklet included an existing site plan, a proposed site plan depicting expansion of the site, an aerial photograph of a similar facility, a declaration of restrictions reserving a wooded buffer, a statement explaining the application and its compliance with ordinances and the 2002 Comprehensive Plan Update, a report outlining the expected efficiency of an expanded facility, a study on noise, a traffic report, a deed and copy of a contract for lands sought to be rezoned, a wetlands study, a building permit, site plan and certificate of occupancy for a building on the original parcel, and a proposed finding of fact.

The Commission found, based on comments received from 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 and Fallsington sandy loam; that the Evesboro soils have slight limitations; that the Fallsington soils have severe limitations; that the applicants will be required to follow recommended erosion and sediment control practices and to maintain vegetation after completion of an construction; that the Evesboro

soils are considered of Statewide Importance; that the Fallsington soils are considered of Statewide Importance and Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained soils with a seasonally high water table.

The Commission found that a letter was received from Gerald W. Hocker, State Representative for the 38th District, expressing concerns about traffic and the past neglect of the roads in the area.

The Commission found that John Sergovic, Attorney, Joe Hardy, Christina Torres and Bob Bossard of 84 Lumber, Richard Polk and Dawn Riggi of Davis, Bowen & Friedel, Inc., and Joe Connor, Realtor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they have applied for the expansion of the site to accommodate the needs of their existing and future customers; that their customer base is primarily contractors; that they propose to alter the existing layout of the buildings and the traffic movements and to expand the facility by design alterations to improve access and use; that the present site includes a 13,000 square foot building containing retail and storage space, two 8,000 square foot storage sheds, a 4,000 square foot storage shed, and a 6,000 square foot storage shed; that the present site is served by a joint access with the funeral home located east of the site; that they propose to maintain the existing entrance, relocate the existing entrance gate, and to remove 1,000 square feet of the 4,000 square foot storage shed to improve the parking layout, improve circulation on the site and to eliminate the stacking of vehicles waiting to get into the site; that they propose to located a new entrance to the west of the building for tractor trailer deliveries; that the new entrance drive will stack at least four tractor trailers waiting to get into the site; that the two existing 8,000 square foot storage sheds will be relocated to the expansion area to the rear; that they propose to build an 18,000 square foot indoor storage area and a new 8,000 square foot storage shed; that no wetlands exists in the area of proposed construction; that some small pockets of wetlands exists in the wooded area of the site; that a sound analysis was done to test noises from the site; that the analysis indicated that the majority to the noise in the area is from traffic on Route 26; that sound levels were minimal 150-feet from the site; that the storage shed to the rear of the existing property was permitted in error since that portion of the site was not rezoned from AR-1 Agricultural Residential to C-1 General Commercial when the original rezoning was approved; that the existing entrance creates a problem with tractor trailer cueing; that the new tractor trailer entrance and drive will allow for storage of tractor trailers on the site rather than along Route 26 or adjacent property; that DelDOT was asked to review the site's problems for a solution and that the concept of the new tractor trailer entrance was DelDOT's recommendation; that the tractor trailer entrance is an entrance only, not an exit; that the expansion area will allow for trucks to delivery materials to the rear of the site, turn around, and then maneuver through the site to exit at the existing entrance location; that the turning radius is adequate

for tractor trailers to enter the site from either direction; that DelDOT has provided a letter of no objection to the revised concept; that the highest and best use of the site is commercial based on the number of commercial uses in the immediate area; that the site is not desirable for residential use due to the number of commercial uses in the immediate area; that they anticipate no negative impacts on property values; that the business has expanded due to the growth in the area; that staff has doubled, that the number of delivery trucks has tripled; that the volume of business was not anticipated when the facility was originally built; that the business receives 10 to 15 truck deliveries per day; that they acknowledge that tractor trailer parking along Route 26 was hazardous to the neighbors and customers and that this is one of the reasons for their application; that the new buildings will provide for more storage of materials allowing for fewer truck daily deliveries; that they anticipate that they can have all of the improvements completed within 60-days of receipt of all approvals and permits; that some of the complaints have related to late night activities while staff was preparing orders for next day deliveries; that the expansion will allow for normal business hours; that there will not be a milling shop building for making molding, etc.; that the millwork building referenced during the original public hearings several months ago is a storage building for the storage of millwork, i.e. molding, trim, doors, windows, etc.; that approval of this application will allow an existing corporate provider to serve it's customers in an area that is a core commercial center; that a 25-foot buffer is proposed along adjacent properties; that the applicant will bear full maintenance of the existing entrance improvements; that the entrance improvements will benefit the funeral home; that no additional fork lifts are proposed; that the site does need to be improved; and that the company has 435 stores with 8,000 employees.

The Commission found that Edward Lynum, a resident and employee living across Route 26 from the site, spoke in support of the expansion since the relocation of the truck entrance will eliminate the parking of trucks along Route 26 over-night which has kept him awake at night.

The Commission found that Pat Hamm, Brenda and Roger Brasure, Cheryl Hammond, Brenda Bove, Keith Parsells, and Duncan Cornell, all residents of the area, spoke in opposition to the application and expressed concerns about the site becoming a distribution center for area 84 Lumber stores; truck traffic and noise; the expansion of traffic created by the expansion of the business; impacts on infrastructure, i.e. stormwater, roads, water and wastewater; the lack of acceleration and deceleration lanes; lack of roadway improvements; traffic; lack of visual and sound barriers; the narrowness of Route 26; that the septic serving the site will be under the proposed truck access; parking on properties owned by others; that ponding attracts mosquitos; maintenance of tax ditches; loss of wildlife; loss of trees; that the existing gate is in an easement area; damages to adjoining properties; trash and debris from the site; that truckers will not move their vehicles to allow access to the funeral home; that the operation of the existing facility has established that the operators do not want to be

good neighbors; that the property does not have enough frontage for the size of the business and should relocate; and questioning if DelDOT would approve this type of project based on today's standards.

The Commission found that the opposition submitted photographs of tractor trailers parking on property not owned by the applicants, businesses in the area, the entrance to the site, residential and farm uses in the area, and the existing septic location on the site; a tax map marked with business uses in the area; copies of petitions in opposition to the application containing approximately five pages of signatures; a letter from Bruce and Lois Dolby in opposition; and a copy of the letter from Gerald Hocker, State Representative.

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

Motion carried 5 – 0.

C/Z #1486 -- application of **DAVID RITTER** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying 270 feet south of Route 22 (Long Neck Road), 0.2 mile east of Road 298 and east of Julia's Lane, being Lots 2 and 3 within Julia's Place Subdivision, to be located on 1.83 acres, more or less.

The Commission found that the applicants submitted a booklet of information for the record and that the booklet included photographs of the site, County Council Minutes and Ordinance for rezoning of the adjoining lands, tax maps showing zoning, photographs of commercial activities in the immediate area, DelDOT letters, a letter from the applicant to DelDOT, proposed deed restrictions, support letters from other businesses and neighbors, and sections of the Comprehensive Plan.

The Commission found, based on comments received from DelDOT, that the Department has reviewed the application and corresponded with the applicant and has agreed that if the applicant creates a deed restriction to limit the use of the site for boat storage with the condition that those restrictions were alterable only with DelDOT's consent, the Department would not recommend that the County require a traffic impact study before rezoning the site to C-1 General Commercial.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which has slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that the farmland rating of the soil type is of Statewide

Importance; that no storm flood hazard area 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 has no objections to this proposal based on DelDOT comments; that it has been noted that there is low probability for archaeological sites within the area; that there is a potential historic building on the north side of Long Neck Road; that the State asks that the County require the applicant to consider any visual effects to the potential historic building and provide landscape buffers, if needed; that the DNREC has noted that there is one inactive leaking underground storage tank site located near the project and that should any petroleum-contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible; and that public water service is currently provided to the site by the Public Water Supply Company, owned by Tidewater Utilities, Inc.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Long Neck Sanitary Sewer District; that the current system connection charge rate for the District is \$2,101.00 per EDU; that a six inch lateral has been provided to each parcel along its parcel line on Julia's Lane; that existing uses on each parcel have connected to each lateral; and that conformity to the Long Neck Planning Study or undertaking an amendment will be required.

The Commission found that David Ritter and Tim Willard, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that the County Council approved the rezoning of the site for Full Tilt Marine, owned by Mr. Ritter; that the applicant proposes to rezone this site so that he may use the site for boat storage; that numerous business and commercial uses and zones exist in the area; that rezoning the site will conform to the surrounding area; that C-1 General Commercial zones exists on both sides of the site; that a Conditional Use for a bait and tackle shop exist on the adjoining parcel; that the applicant has agreed to deed restrict the site as referenced in DelDOT comments; that they have received numerous letters in support from neighbors and businesses in the area; that the use and zoning will be consistent with the Comprehensive Plan; that the Office of State Planning Coordination has voiced no objections; that the use will support recreational activities in the area; that the existing mobile home on one of the lots is being rented temporarily; that previous owners left several abandoned boats on the site; that trees will be removed from the site; that the applicant decided to apply for rezoning to C-1 General Commercial since C-1 General Commercial zoning surrounds the site; that the applicant feels that he can store as many as 100 boats on the site; that the storage yard will be fenced and gated; that employees will control access to the storage yard; and that the applicant presently stores boats at another location just off of Long Neck Road.

The Commission found that Rick Jones, an employee of Full Tilt Marine, spoke in support of the applicant's need for boat storage space; that the use will serve the community; that the use serves the area; and that the storage area is screened since it is located behind the adjoining business.

The Commission found that Manard Ritter, the applicant's father, spoke in support of the application since a need exists for boat storage in the area since the majority of the mobile home parks restrict parking of boats on individual lots.

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

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

Motion carried 5 – 0.

C/Z #1487 -- application of **CALDERA PROPERTIES** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the southeast intersection of Road 277 and Road 283, to be located on 138.78 acres, more or less.

The Commission found that the applicants had submitted a booklet of information into the record and that the booklet contained a memo from ECI to the Planning and Zoning Department describing the preliminary plan, letters from Tidewater Utilities, Inc. Mediacom, and Verizon offering utilities, a legal description of the site, a letter from DelDOT referencing that the Department will not require a traffic impact study, findings and conclusions from an environmental site assessment, an economic analysis, an assessment of nutrient loadings report, an endangered species and cultural resources review by Atlantic Resource Management, Inc., and a letter from the DNREC Natural Heritage Program.

The Commission found, based on comments received from the Office of State Planning Coordination, that according to the 1997 Comprehensive Plan the site is located in an Agricultural District; that according to the 1999 Strategies for State Policies and Spending the site is located in a Rural Area; that during recent update of the Comprehensive Plan, the area was located in the Environmentally Sensitive Developing Area; that it is expected that the State will update the Strategies map to reflect the County's plan when the map is updated this year; that because the State has received letters of concern from several State agencies, they respectfully request that the County require this proposal to complete a report detailing the environmental impacts of the project; that the State also request that the County require the developer to meet with State agencies to discuss the design of the project and to address the agency concerns;

that the Department of Agriculture has advised that the Agriculture Preservation Strategy map designates the site with a high to very high suitability for agricultural preservation; that there is an agricultural preservation district located adjacent to the site; that the 169-acre "Vessels Company" Agricultural Preservation District, located next to the site across Love Creek, has applied to be permanently preserved through the Agricultural Lands Preservation Foundation's agricultural easement purchase program; that due to the site's location next to an agricultural preservation district, and the presence of viable agricultural activities in the area, the Department of Agriculture is opposed to this rezoning application; that the developer will be required to adhere to State laws relating to agricultural use protections; that they acknowledge that regulations require a 50-foot setback, the Department encourages the County to develop and institute a 100-foot landscape buffer ordinance for properties that are developed next to agricultural preservation districts; that this buffer would protect both the farm owner/operators and neighboring residential landowners from conflicting land uses; that the Department of Education has advised that, if approved, the State recommends that the developer meet with and provide information to the Cape Henlopen School District in reference to the project; that the Department of Education's concerns center on school transportation of students living in the community; that the State Historic Preservation Office has advised that there is a 75% probability for prehistoric, archaeological sites and a potential historic structure located to the southwest; that the applicants should be aware of the potential archaeological sites if construction takes place and might consider some landscaping on the southwest corner to diminish any visual effects on the potential historic resource; that the soils on the site are mapped as well to somewhat well-drained upland soils having few limitations for development, moderately well-drained soils of low-lying uplands with moderate limitations for development, and poorly-drained bottomland soils indicative of wetland presence; that the sandy soils have rapid permeabilities and little or no phosphorus/nitrogen adsorption capacity, compared to finer-textured soils; that such soils are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed; that these impacts are intensified in those soils containing shallow water tables; that the applicant should be reminded that they must avoid construction/filling activities in those areas containing wetland associated hydric soils, as they are subject to Federal regulations; that tidal wetlands are subject to State regulations; that tidal waters immediately adjoin the site and are associated with riparian wetlands connected to Love Creek; that the Groundwater Discharges Management Section has met with Tidewater, Inc. and Waste Water Management Company to discuss the general concept of the wastewater system and that based on that discussion the concept appears appropriate for the project, however, the project will be reviewed through the normal permitting process; that the Section has been advised that the system will be located at least 1,000 feet from Love Creek; that pretreatment of effluent will be required due to the volume of wastewater proposed to be discharged into the system; that the adjacent waters in Love Creek and its tributaries are Seasonally Approved for the harvest of shellfish; that the DNREC looks for wastewater disposal systems on high ground, preferably below

ground, and far-removed from the water; that public water service is currently provided to the site by Tidewater Utilities, Inc, therefore, there are no water supply issues; that the applicant should be aware that well-pointing (dewatering) may be necessary to facilitate construction on the site and that permits are needed; that the Groundwater Protection Branch reserves comment until they have had an opportunity to review and comment on the Preliminary Geologic Impact Assessment required for the system; that the project is located in an excellent recharge area; that there are no source water areas within the scope of the project; that the developer should be cognizant of potential conflicts; that the wastewater system needs to be located well up gradient of the Love Creek; that groundwater monitoring will be required; that it is not clear whether the water supply is to be from an existing public supply system and wells or if a new set of wells will be needed; if a new set of wells are needed a source water protection area will be established around the wells and need to be located away from the wastewater system; that the Inland Bays Watershed has been recognized as Waters of Exceptional Recreational or Ecological Significance (ERES Waters) that have been designated because of their ecological and recreational value to the citizens of the state and region and are therefore accorded a level of protection and monitoring in excess of that required by most other waters of the State; that the developer is encouraged and may be required to demonstrate the fate and transport of non-point source pollutants, particularly the nutrients, both pre- and post-development; that TMDLs have been established for the Rehoboth Bay and Pollution Control Strategies (PCS) will be forth coming that may create additional requirements for projects within the watershed; that the project should maintain large open, preferably forested buffers between the disturbed areas of the development and Love Creek and its tributaries; that the County should require the developer to show the State regulated wetlands on the site plans; that plans for water access should be discussed; that wetlands should be placed in a conservation easement; that the area does contain lands identified as a State Resource Area; that the majority of the forest buffer along Love Creek is part of the Inland Bays State Resource Area; that DNREC recommends that any planned development include protection of the existing riparian buffer along Love Creek; that continued loss of forest buffers along Inland Bay tributaries will only further exacerbate the water quality problems currently occurring in the Inland Bays; that portions of the site are within the regulatory floodway of Love Creek; that land disturbing activities are prohibited in the regulatory floodway unless it can be demonstrated through a hydrologic analysis that higher flood height will not result; that portions of the site are within the 100-year floodplain of Love Creek; that it is recommended that development be limited to portions of the site which are not in a floodplain; that while DelDOT is not opposed to this rezoning, certain permits will need to be obtained; that the State has listed many concerns about this project because of its location and potential environmental impacts; that the State would prefer to see this land remain undeveloped; that the State does understand that this site could be developed, under current regulations, with a larger number of units; and that if after receiving public testimony, developers presentations, and other fact finding processes, the County should approve this application, the State

request that the County require the developer to address the environmental impacts addressed in the concerns referenced.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Johnston loam or silt loam, Rumford loamy sand, Sassafras sandy loam, Woodstown sandy loam, and Woodstown loam; that the Evesboro and Woodstown soils have slight to moderate limitations; that the Johnston soils have severe limitations; that the Rumford and Sassafras soils have slight limitations; that the developers will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that the Evesboro and Rumford soils are considered of Statewide Importance; that the Johnston soils are considered Hydric; and that the Sassafras and Woodstown soils are considered Prime Farmland; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements due to some poorly drained soils on the site; and that there may be wetlands on the site.

The Commission found that letters were received from Jim Henry, Virginia Walls Lewis, Mr. and Mrs. Anthony Cambria, Victoria J. Cambria, Theresa Verano, Kathy A. Verano, and Bridget D. Bauer and Linda L. Bova in opposition to the application and expressing concerns about the lack of infrastructure for the area, stormwater run-off, septic and well concerns, that narrowness of the roads in the area, increased traffic, police protection, fire and ambulance time, impacts on schools and hospitals, the impacts on the agricultural community, and possible impacts on Love Creek.

The Commission found that James Fuqua, Attorney, Dan McGreevy, one of the developers, and Ross Harris of E.C.I. were present and stated in their presentations and in response to questions raised by the Commission that the gross AR-1 Agricultural Residential density of this site could reach 276 lots; that they prepared a subdivision layout of 0.5 acre lots on this parcel and established that the site could be developed with central sewer with 161 lots; that they then prepared a residential planned community with the same number of lots and felt that this clustered design was more appropriate, created more open space, more amenity areas, and no wetlands encroachments; that the site plan creates 161 lots with lots sizes ranging from 10,000 square feet to 18,000 square feet; that they realize that the County can stipulate that the number of lots not exceed 161; that they plan on providing tennis courts and a swimming pool for the community; that the project will be surrounded by open space; that central sewer and central water will be provided; that they have received ability to serve letters from water, electric, cable, and telephone providers; that the State DNREC has issued a preliminary statement of feasibility for the central sewer system; that 50-foot wide buffers are proposed along State wetlands line; that no federal wetlands exists within any lot lines; that DelDOT did not require a traffic impact study; that access to the site is available from several directions; that the site has

good access to regional shopping areas; that they anticipate no negative environmental impacts; that the U.S. Fish and Wildlife Service has stated that there are no endangered species; that they had a TMDL analysis performed which found that development of the site, as proposed, would cause a 28% reduction in nitrogen and an 88% reduction in phosphorous; that the applicant has already addressed the concerns stated in the letter from the Office of State Planning Coordination; that a meeting has been tentatively scheduled to meet jointly with State agencies; that both the State and the County recognize that the area around the Inland Bays is desirable for appropriate development; that when a central wastewater system is provided, residential density would be permitted up to the maximum allowable density of the underlying zoning district; that clustering of lots in any zoning district to a minimum lot size of 7,500 square feet should be permitted, but should not increase the density permitted in that zoning district; that the central wastewater system is not a community septic system; that the central wastewater system will be designed and built to Ordinance No. 38 standards as required by the County Engineering Department; that no lots front on waters along Love Creek; that the ponds along the entrance are for visual features; that materials will be moved in and around the site to improve landscaping plans; and that they are maintaining the AR-1 density by not exceeding 2 units per acre since they have central wastewater.

The Commission found that Mr. Fuqua submitted proposed conditions for consideration:

- 1) The maximum number of residential lots shall not exceed 161.
- 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 pool house shall be constructed and open to use within two (2) years of the issuance of the first building permit.
- 4) The development shall be served by a central sewer system as defined by the Sussex County Zoning Ordinance in conformity with all DNREC regulations.
- 5) The development shall be served by a public central water system providing adequate drinking 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 plan.
- 9) A 50-foot buffer shall be provided from the State wetlands line.
- 10) No individual boat docks or boat launching facilities for motorized boats shall be permitted.

- 11) 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.
- 12) Sidewalks shall be provided on one side of all streets within the development.
- 13) Street lighting shall be provided.

The Commission found that Jim Henry, William Payne, Maurice Gladden, Alden Hopkins, and Henry Glowiak were present in opposition and expressed concerns relating to traffic impacts since all roads in the area lead to Route One; that greater buffers are needed to protect Love Creek and existing developments; questioning DelDOT comments that there would be no traffic impact; TMDL reductions; the impacts of development on the Inland Bays and Love Creek; that the plans show lots encroaching into environmentally sensitive existing tree buffers; spot zoning; that the use will adversely affect water quality or adversely impact the tidal water bodies; loss of habitat for wildlife; impacts on riparian forests; that the County should adopt an overlay zone for the environmentally sensitive developing areas and should evaluate the riparian buffer along the waters and perennial non-tidal rivers and non-tidal streams; that the plans do not show mean high water line of tidal water; that the plans do not show the conservation zone properly; that the required 50-foot buffer is not shown; that lots fronting along wetlands are not the required 150-foot width; that the plans only show a 25-foot buffer, not the required 30-foot; that the sewer pump station and treatment plant should have an uninterrupted power supply to prevent overflow during a power outage; that a planted buffer zone should be provided to shield the pump station and treatment plant from housing and neighboring communities; that development should be adjacent to existing municipalities and rural communities that can support central water with fire plugs, police and fire protection, roads, sidewalks, and municipal sewers capable of removing 100% of the nutrients; that neighboring property owners are concerned about the amount of impervious surfaces causing runoff into Love Creek; that eastern Sussex County is being systematically destroyed by development; that the 1997 Comprehensive Plan locates this project in an Agricultural District; that the Strategies for State Policies and Spending map locates this project in a Rural Area; that the 2002 Comprehensive Plan locates this project in an Environmentally Sensitive Developing Area; that Department of Agriculture comments should be considered since the site is highly to very highly

suitable for agricultural preservation; that the Department of Agriculture opposes this application due to the site's location next to an agricultural preservation district and the presence of viable agricultural activities in the area; that the project is located in an excellent recharge area; that pollution control strategies are forth coming that may create additional requirements for projects within the watershed; that the site is within a State Resource Area; that the majority of the forest buffer along Love Creek on the southwest side of the site is part of the Inland Bays State Resource Area; that DNREC recommends that any planned development include protection of the existing riparian buffer along Love Creek; that portions of the site are located within the 100-year floodplain of Love Creek; and that the increased density of the proposed development has the potential to result in increased development within the 10-year floodplain.

The Commission found that Mr. Payne provided five photographs, two wetlands maps, a listing of NOAA tidal datums, and an official national tidal datum epoch.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action.

Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2002 – 25 - - application of **DALE WHEATLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 38.73 acres into 23 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Route 9, 1,170 feet west of Road 254.

The Chairman referred back to this application that has been deferred since the November 14, 2002 meeting.

Mr. Johnson stated that he would move to approve this application as a preliminary and asked that Mr. Robertson read his motion with reasons and conditions for approval.

Mr. Robertson read “ Mr. Chairman, I move that we grant preliminary subdivision approval to Subdivision 2002-25 for Dale Wheatley based upon the record made at the public hearing and for the following reasons:

1. The proposed subdivision is in an agricultural residential district as established by the 1997 Sussex County Comprehensive Land Use Plan that encourages low-density single family homes on lots greater than $\frac{3}{4}$ of an acre.

2. The subject property is in the area of Deerwood and other residential development and subdivisions of similar sizes and densities.
3. This recommendation is subject to the following conditions:
 - The restrictive covenants to the subdivision shall include a notice to all property owners as follows:

This property is located adjacent to a live poultry-processing plant operating 24 hours a day on land zoned for Heavy Industry. Such industrial use and activity involves noise, dust, offensive odors, glare, and other annoyances associated with 24 hour live poultry operations. The use and enjoyment of the property is expressly conditioned on acceptance of any annoyance or inconvenience, which may result from such normal heavy industrial uses and activities.

- There shall be a forested buffer strip along the outer perimeter of any portion of the subdivision that is adjacent to property of Allen Family Foods.
- The entire area of the 30-foot easement across the land of this subdivision shall be paved, and the paving of the subdivision road and easement will intersect each other with curved pavement rather than right angles or cornered pavement.
- The applicant shall form a homeowner's association responsible for the maintenance of the roadways, buffers, stormwater management facilities and other common areas.
- Stormwater management and erosion and sediment control shall equal or exceed all applicable State and County regulations.
- A variance is granted to allow a cul-de-sac road or street that exceeds 1,000 feet in length.
- A turnaround shall be installed in the roadway leading to the cul-de-sac turnaround 800 feet from the point where the subdivision roadway and 30 foot easement intersect at the entrance to the subdivision.
- There shall be street lighting installed along the subdivision road.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the application as a preliminary based on the reasons and conditions stated.

Motion carried 5 to 0.

Subdivision #2002 – 33 - - application of **LINDA L. AND EARL H. BAKER, JR.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 8.01 acres into 3 lots, located south of Road 322, 0.45 mile west of Road 321.

The Chairman referred back to this application which has been deferred since the meeting of January 16, 2003.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the application as a preliminary.

Motion carried 5 to 0.

Subdivision #2002 – 31 - - application of **SUSSEX VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 76.44 acres into 64 lots, located south of Road 297, 2,930 feet west of Route 30.

The Chairman referred back to this application which has been deferred since the meeting of December 19, 2002.

Mr. Johnson stated that he would make a motion to deny this application for the following reasons and asked that Mr. Robertson read Mr. Johnson's statement.

Mr. Robertson read " Mr. Chairman, I move that we deny Subdivision 2002-31 for Sussex Ventures for the following reasons:

1. The proposed 64-lot subdivision does not meet the purpose of the Subdivision Ordinance in that it does not protect the orderly growth of the County because the proposed site is not in a Development District as established by the 1997 Land Use Plan.
2. The proposed 64-lot subdivision does not meet the purpose of the Subdivision Ordinance in that it does not encourage the preservation and conservation of Farmland, which is identified in the Sussex County Code as one of the county's most valuable natural resources. The land use in this vicinity is primarily agricultural, the application would remove 76.44 acres, more or less, from tillage, and there is no similar residential real estate development in this area along County Road 297.
3. The proposed 64-lot subdivision does not provide for safe vehicular and pedestrian traffic within the site because of the extreme length of the cul-de-sac interior street, with access from only one roadway, causing accessibility concerns for emergency vehicles.

4. According to the Subdivision Ordinance, land should not be subdivided if it is unsuitable for subdivision or development because of flooding, poor drainage or other adverse features which are reasonably harmful to the safety, health and general welfare of the present or future inhabitants of the proposed subdivision. I believe that flooding, poor drainage, erosion and sedimentation, increased rates of runoff and the potential for pollution of surface water and groundwater will likely occur if the subdivision is approved. I am not satisfied that these areas of concern have been satisfactorily addressed by the applicant such that future inhabitants of the proposed subdivision would be protected from the effects of erosion, increased runoff, poor drainage and the flooding that occurs on the property.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to deny this application for the reasons stated.

Motion carried 5 to 0.

C/Z #1483 -- application of **APPLE ELECTRIC, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northwest of Route 24 and 150 feet southwest of Bryan Drive, and also being 1,500 feet southwest of Route One, to be located on 20,250 square feet.

The Commission discussed this application which has been deferred since January 16, 2003.

Mr. Wheatley advised the Commission that he will abstain from participating in the discussion of this application.

Mr. Johnson stated that everything surrounding the site is primarily commercial uses and zones.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that it be approved.

Motion carried 4 – 0. Mr. Wheatley did not vote.

C/Z #1484 -- application of **JACQUELINE M. HICKMAN & OTHERS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying 450 feet east of Road 213, 0.8 mile south of State Street in Ellendale, to be located on 7.53 acres, more or less.

The Commission discussed this application which has been deferred since December 19, 2002.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning will place the entire existing subdivision boundary within the same zoning classification GR General Residential.

Motion carried 5 – 0.

OTHER BUSINESS

Canal Landing Revised Site Plan – Route One A

Mr. Abbott advised the Commission that this is a request to delete the sidewalks in a multi-family project; that the stormwater management pond slopes have been reduced to 4:1 slopes from the originally planned 3:1 slopes; that the new requirements enlarged the surface area of the pond; that the developer made the footprints of the buildings larger than the original concept due to the real estate market; that enlarging the buildings made the rear of the buildings closer to the ponds; that the developer considers the sidewalks to be undesirable because of the close proximity of the buildings to the proposed sidewalks which will create privacy problems; that deleting the sidewalks would allow more room for grading around the pond to reduce the slopes to minimize potential erosion problems and address concerns raised by the Sussex Conservation District; and that the Conservation District supports the request.

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

Motion carried 5 to 0.

Car Wash Townhomes Multi-Family Site Plan – Road 273D

Mr. Abbott advised the Commission that this is a preliminary site plan for 15 multi-family units on 1.25 acres; that the property is zoned C-1 General Commercial and that 15 units are permitted by the Zoning Code; that two three story buildings are proposed with one building having 8 units and the other having 7 units; that 45 parking spaces are required and proposed which includes an attached one car garage for each unit; that the lengths of the buildings are under the 165 foot maximum allowed length; that there is a 43 foot separation between the 2 buildings; that the setbacks meet the requirements of the

zoning code; that central sewer will be provided by Sussex County and central water will be provided by the City of Rehoboth Beach; that access to the site is off of Hebron Road; that there are not any wetlands on the site and the site is not located within a flood zone; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all required agency approvals.

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

Motion carried 5 to 0.

PF Meyers
Commercial Site Plan – Nassau Commons – Route 9

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 2-story 11,804 square foot office building; that the site is zoned C-1 General Commercial; that the proposed building will be sprinklered since it is greater than 10,000 square feet; that the Board of Adjustment granted variances for zero side yard setbacks for all of the lots within Nassau Commons; that the parking for each business is shared across all of the lots and is referenced in the restrictive covenants; that individual on site water will be provided and that there is a water storage tank located to the rear of the building; that central sewer will be provided by Sussex County; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all required agency approvals.

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

Motion carried 5 to 0.

Meeting adjourned at 11:35 P.M.