

MINUTES OF THE REGULAR MEETING OF FEBRUARY 27, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 27, 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. Lynch, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to revise the order of the agenda items by considering Old Business, Other Business, and then Public Hearings.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of February 13, 2003 as amended.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of February 20, 2003 as circulated.

OLD BUSINESS

SUBDIVISION #2002-32 – application of **OLD OAK PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 14.51 acres into 13 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 298 and approximately 1,080 feet southeast of Route 24.

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

Mr. Abbott advised the Commission that a septic feasibility statement had been received from the State DNREC and that the site is suitable for individual septic systems.

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

Motion carried 4 – 0.

SUBDIVISION #2002-36 – application of **OAK CREST FARMS, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 54.48 acres into 26 lots, located at the northwest corner of the intersection of Road 286 and Road 285.

The Commission reviewed this application which has been deferred since February 13, 2003.

Mr. Abbott advised the Commission that a septic feasibility statement had been received from the State DNREC and that the site is suitable for individual septic systems.

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

Motion carried 4 – 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.

Mr. Allen stated that there would be no action taken on this application due to Mr. Johnson's absence.

C/U #1478 – application of **ERIC AND LAURA JAMES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an electrical contracting business to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 3.08 acres, more or less, lying northeast of Route 48 (Zoar Road) and 3,000 feet north of Road 321.

Mr. Allen stated that there would be no action taken on this application due to Mr. Johnson's absence.

C/Z #1488 – application of **PENNY LANE DEVELOPMENT, LLC.** 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 Baltimore Hundred, Sussex County, land lying southeast of Route 84, 1,000 feet southwest of Road 349-A, to be located on 38.63 acres, more or less.

The Commission discussed this application which has been deferred since February 13, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1488 for Penny Lane Development LLC (Central Avenue LLC) based upon the information contained in the record and with reasons, and asked Mr. Robertson to read Mr. Lynch's comments for the record.

Mr. Robertson read that Mr. Lynch recommends this application for the following reasons:

1. The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Comprehensive Land Use Plan.
2. MR zoning is appropriate for the site because medium density development is appropriate in areas where central water and sewer are available. In this case, sewer service will be provided and the project is adjacent to the South Bethany Sanitary Sewer District, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities.
3. The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
4. The subject property is in an area that has developed with residential projects similar to the proposed project.
5. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 85.
 - B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. Also, the improvements along Route 84 shall be coordinated with the Villages of Bear Trap Dunes and shall be constructed as DelDOT may require under one contract.
 - C. Recreational facilities and amenities shall be constructed as the project's infrastructure is being built. These amenities shall include a clubhouse and swimming pool, sidewalks, trees between all streets and sidewalks, street lighting, landscaping and rolled curbs.
 - D. The development shall be served as part of the Sussex County South Bethany Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
 - E. The MR/RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 - G. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.

- H. The interior street design shall be in accordance with or exceed State of Delaware street design requirements and/or specifications. All internal roadways will be dedicated to DelDOT for long term maintenance.
- I. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- J. 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 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 submittal 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.
- K. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur during the hours of 7:00 am to 6:00 pm.
- L. The developer shall consult with the Sussex Conservation District and/or Tax Ditch Commissioners concerning easements, access and maintenance requirements for the tax ditch that is on the site.
- M. There shall be a 5-foot protected environmental buffer along the neighboring property line of Walter Lathbury and that maintenance of the buffer will be addressed in recorded restrictive covenants for perpetual maintenance by the Homeowners' Association.
- N. There shall be interior access to all open space so that maintenance vehicles, lawnmowers and similar equipment will not have to travel upon Route 84.
- O. State and Federal wetlands shall be maintained as non-disturbance areas, except for disturbance authorized by a valid Federal or State permit. There shall be no construction in any wetlands without valid permits.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved for the reasons and with the conditions above.

Motion carried 4 – 0.

OTHER BUSINESS

Kaye Construction, Inc.
C/U #1413 Site Plan – Road 531

Mr. Abbott advised the Commission that the site includes 200.50 acres of which 153.63 acres will be disturbed; that the site plan complies with the zoning code; that there were 19 conditions placed on the Conditional Use application by County Council; that the conditions should be referenced on the site plan; and that DelDOT and the Sussex Conservation District have granted their approvals.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan for Conditional Use #1413 as a final with the stipulation that the 19 conditions stipulated by the County Council be referenced on the final site plan.

Motion carried 4 – 0.

Frank Jody Brown
C/U #1475 Site Plan – Road 567

Mr. Abbott advised the Commission that this site plan is for a private cemetery; that the site plan is the same as the one submitted for the public hearings with the County Council's conditions referenced on it; and that the site plan is suitable for final approval subject to the County Attorney's approval of perpetual maintenance provisions.

Motion by Mr. Wheatley, seconded by Gordy, and carried unanimously to approve the site plan for Conditional Use #1475 as a final upon receipt of the County Attorney's approval of the perpetual maintenance provisions.

Motion carried 4 – 0.

Richard Huston
Lot on 50' Right of Way – Route 20

Mr. Abbott advised the Commission that this concept will allow creation of a 1-acre lot, improved by an existing dwelling, with access from a 50-foot wide right-of-way off of Route 20; that a roadway has always existed at this location; that the right-of-way is being revised to create a 50-foot width; and that portions of the existing roadway are being abandoned between this site and Route 80.

Motion by Mr. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the lot and right-of-way in concept. Final approval shall be subject to receipt of surveys by a licensed Delaware Land Surveyor.

Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #1481 – application of **DARRELL L. AND FELICIA A. MATTHEWS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a contractor's office and storage, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 9.202 acres, more or less, lying north of Route 9 and 474 feet east of Road 474.

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 Fallsington sandy loam, Kalmia sandy loam, and Rumford loamy sand; that the Fallsington soils have severe limitations for development; that the Kalmia and Rumford soils have slight limitations; that the applicants will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; that the Fallsington and Rumford soils are considered of Statewide Importance; that the Fallsington and Kalmia soils are considered Prime Farmland; that the Fallsington soils are also considered Hydric; 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 Darrell and Felicia Matthews were present and stated in their presentations and in response to questions raised by the Commission that they operate Matthews Masonry; that they intend to improve the property; that they propose to build a 40' by 60' building with parking behind the building; that the entrance exist off of Route 9; that they have lived on the site for 2-years; that they have 4 employees; that the business has 5 vehicles, of which two are dump-trucks, a closed trailer, a flat bed trailer, and a bobcat front-end loader; that they have an office in their home and that the building will contain a small office to get the office out of the home; that almost all of the work is received over the telephone; that the old poultry house will be used for storage of block, bricks, bags of cement, and scaffolding; that mechanical work on the vehicles is performed by a mechanic off-site; that normal business hours are from 7:00 a.m. to dark Monday through Friday and some Saturdays; that there are no Sunday hours; that they propose to create an area for storage of used and/or leftover bricks and blocks; that the

area will be fenced to screen the storage from Route 9; that they would like to place a sign on the building once constructed; that they will not be installing additional septic for the building; and that the cars on the site are personal vehicles, not for sale.

The Commission found that there were no parties present in support of or in opposition to this application.

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

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action to allow the Commission time to consider conditions and the opportunity to again review the site.

Motion carried 4 – 0.

C/U #1482 – application of **LAND DESIGN, INC.** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family residential development (20 units), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 13.187 acres, more or less, lying west of Route One and 1 mile north of Fenwick Island and south of Seatowne Development.

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 Office of State Planning Coordination, that the property is zoned MR; that the State has no objections to this application; that DNREC has noted that the soils in the vicinity of proposed construction are wetlands associated (hydric) soils that have severe limitations for development; that some of the soils types are soils that have been cut, filled, or graded and generally have limitations associated with imperviousness; that the soils also contain mostly sandy surface and subsurface horizons; that sandy soils have rapid permeabilities and little or no phosphorus/nitrogen adsorption capacity, compared to finer-texture 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 most of the soils on this site have very-shallow water tables; that the parcel appears to contain over 2/3 wetlands; that wetland impacts should be avoided; that any impacts for filling of wetlands for pilings, driveways, roadways, etc. will require permits from the Corps. of Engineers and Coastal Zone Federal Consistency Certifications, in addition to State permits; that a set of Total Maximum Daily Loads (TMDL) has been established by DNREC for this area and that a Pollution Control Strategy is under development to implement the TMDL; that the applicant is strongly encouraged to contact the Division of Water Resources in reference to this strategy; that

DNREC records indicate that the project area is not within a service area of any public water utility; that the developer should consult with the water utility of his choice concerning the need for a certificate of public convenience and necessity for the utility to serve the area; that the State Historic Preservation Office has noted that there is a high probability for prehistoric archaeological sites; that there could be an adverse effect on these sites if there is destruction of any of these sites; and that the State asks that the County require the developer to meet with the State Historic Preservation Office to discuss ways to minimize any effects.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Tidal marsh, Hydric soils, which has severe limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation upon completion of construction; that storm flood hazards may be affected; that no tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements; that there may be tidal wetlands present; and that a Corps. of Engineers permit may be required.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Fenwick Island Sanitary Sewer District; that wastewater capacity exists for the project as proposed; that the current system connection charge rate is \$2,389.00 per EDU; that the location and size of laterals and connection points will be determined by the County Engineer 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 that a letter of opposition was received from Otakar and Alena Jonas expressing concerns that the project will destroy the only local wildlife sanctuary and bayshore nesting area; that the project will be in conflict with the marshland protection rules; that the project is mostly on the flood plain which has no drainage; that they do not want wall to wall housing and summer overcrowding; and that the County should consider quality of life over commercial profit.

The Commission found that Heidi Balliet, Attorney, and Tom Ford of Land Design, Inc. were present on behalf of the application and stated in their presentations and in response to questions raised by the Commission that the developer proposes to build 20 townhouse condominiums; that DelDOT, the Office of State Planning Coordination, and the County Engineering Department have voiced no objections; that Artesian Water Company, Inc. has stated that they are willing and able to provide domestic water service to the development; that the project density is 2.98 units per gross acre; that a significant amount of open space is being preserved; that the site is located within an Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan;

that they have tried to avoid any wetlands impacts; that a minimal amount of wetlands impacts are proposed for the purpose of building location and a wetlands crossing for pedestrians; that based on the development that has taken place in the area the site is appropriate for development; that there should be no impacts on property values; that the site is located between a high density residential development and a pre-existing mobile home park; that the site is a unique environmental area; that they propose to blend the project with other developments in the area; that they met representatives of the Corps. of Engineers on the site and that their delineation was approved; that a State wetlands delineation has not yet been received; that the flood zone line has been established and that they are planning on construction at the higher elevation requirement; that the County Engineering has allocated 25 units for this site for sewer; that this site is one of the last buildable sites in the area; that they propose to build 5 buildings with 4 units in each building; that they have provided 3 parking spaces for each unit; that all County setbacks and building spacings will be met; that vegetated buffers will be established; that landscaping will be provided; that approximately 0.1 acre of wetlands will be disturbed; that a bio-swale is proposed and will be subject to review and approval by the Sussex Conservation District; that they propose to create a pedestrian trail/path across the wetlands to connect the units and an observation deck/shelter/crabbing pier out near the bay; that the pathway will not be paved, only maintained; that the observation deck/shelter is approximately 700-feet from Route One; that the developer has a 20-foot wide easement across from the site on the ocean side of Route One for access to the beach; that the easement will probably be improved with a wooden walk; that the density proposal conforms to the density of other projects in the area; that each unit has at least one parking space below the unit; that some units have two spaces below; that the buildings will be elevated on pilings; that approximately 2.92 acres of uplands exists on the site; that the buildings cover approximately 0.6 acres; and that the units will measure 50' by 24' and will not exceed 42-feet in height.

The Commission found that Mr. Ford provided a packet of information that included a color site plan, photographs of the site and area housing, a comparison of area projects with references to zoning and density per acre, a density study of the projects with notes, and a copy of a letter from Artesian Water Company, Inc. offering their services.

The Commission found that Ship Valliant, Realtor, was present in support of the application and stated that there is a need for this type of housing in the area; that he performed a search of the real estate multi-listing and found that only two bayfront homes were available for sale; that property values will not be negatively impacted; and that sales prices in the Water's Edge project had increased 31% prior to completion of the project.

The Commission found that Ross Cropper, a representative of Summertime Park, an adjoining mobile home park, stated that he has no objections to the project; that the project will be good for the area; that he does have some concerns over the ditch between the two projects since it has not been maintained and seems to be a mosquito haven; that the ditch was created by DelDOT for drainage when Route One was dualized; that he is concerned about erosion of the bank of the ditch on his side due to the closeness of the units within the mobile home park; and that if the observation tower is approved it should not exceed two (2) stories.

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 4 – 0.

C/Z #1490 – application of **DANIEL MCGREEVY-CALDERA PROPERTIES, L.P.** to amend the Comprehensive Zoning Map from a GR General Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 250 feet south of Road 368 and 250 feet east of Route 84, to be located on 124.80 acres, more or less.

The Commission found that the applicant had submitted a booklet of information prior to the meeting and that the booklet included a letter to the Planning and Zoning Department from EC1, letters from Tidewater Utilities, Inc. and Verizon, requests for service commitment letters to Delaware Electric Cooperative and Comcast Cablevision of Delmarva, an Executive Summary on the traffic impact study for the project, a tax map, an economic analysis, findings and conclusions from an Environmental Site Assessment, an endangered species and cultural resource review, a copy of the U.S. Army Corps. of Engineers approval, LUPA project review data, and a color preliminary site plan.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not within a County operated sanitary sewer and/or water district; that the site is adjacent to a County operated sanitary sewer district, the Miller Creek Sanitary Sewer District; that the District cannot be expanded until 50 homes have been connected; and that conformity to the Miller Creek Sanitary Sewer District Planning Study or undertaking an amendment will be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the project is located within an Environmentally Sensitive Developing Area according to the 2002 Sussex County Comprehensive Plan; that it is anticipated that the County will be enacting Ordinances that will require an applicant to provide

information and analysis addressing environmental impacts such as stormwater quality and quantity, TMDL impacts, mitigation of wetland and woodland disturbance, provisions for wastewater treatment, water systems, and other matters affecting the ecological sensitivity of the site on the Inland Bays; that the Plan also requires that prior to any preliminary plan a report detailing required public facilities and environmental impacts must be submitted and approved; that the State DNREC has noted that the soils in the vicinity of the proposed construction are very-poorly or poorly drained wetland associated (hydric) soils that have severe limitations for development, somewhat poorly drained soils that may be hydric, and moderately well-drained soils with moderate limitations for development; that approximately 90% of the soils on the site are hydric; that the soils also contain mostly sandy surface and subsurface horizons; that sandy soils have rapid permeabilities and little or no phosphorus/nitrogen capacity, compared to finer-texture 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 most of the soils on the site have very-shallow water tables; that the site contains significant acreage's of freshwater wetlands that somewhat approximates the occurrence of wetland associated hydric soils; that soils are a diagnostic indicator of wetland presence and integral to the wetland delineation process; that DNREC staff estimates that well over 50% of the site may consist of State mapped wetlands; that streams and agricultural ditches run through portions of the site; that the Corps. of Engineers has recently taken authority over work in tax ditches and would most certainly take jurisdiction over the wetland complex contained within this site; that Coastal Zone Federal Consistency Certifications from the Delaware Coastal Programs would also be required as part of the Federal permitting process, in addition to State wetlands permits; that State records indicate that approximately half of the project site is within the public water service area for the Public Water Supply Company, owned by Tidewater Utilities, Inc.; that the water utility that will be providing service will need to obtain a certificate of public convenience and necessity from the Public Service Commission; that construction of any wells will require well permits from the Water Supply Section; that if well pointing (dewatering) is needed during any phase of construction, dewatering well permits must also be obtained before the points are installed; that the area has had a set of TMDL's developed and a Pollution Control Strategy is now under development and that the developer should contact the Division of Water Resources to best understand the strong implications the strategy may have on future development; that the State Historic Preservation Office has noted that there is a 75% probability for prehistoric archaeological sites and that there are 3 structures nearby that may be potential historic resources; that the developer might integrate landscape features around the perimeter of the site to act as buffers for these resources; that DelDOT commented to the County, by letter dated September 22, 2002, on a traffic impact study that addressed both this development and other nearby lands on a project known as Fairway Village; that DelDOT asked that the County require that certain items be incorporated into the site designs and reflected on the record plans if the

use is approved; that the developer should be required to enter into signal agreements with DelDOT regarding the intersections of Route 26 and Windmill Road, Route 17 and Burbage Road, Beaver Dam Road and Muddy Neck Road, and Burbage Road and Windmill Road; that the agreement would obligate the developer to fund an equitable portion of the cost of installing traffic signals at those intersections and would include pedestrian signals and crosswalks, at DelDOT discretion, and all costs associated with coordinating those signals with other existing and proposed signals; that where DelDOT determines that an intersection would be better served by a roundabout than a signal, the agreements should obligate the developer to fund an equitable portion of the cost of constructing the roundabout and should be limited to what it would have been regarding the installation of a signal; that the developer should also be required to enter into signal agreements with DelDOT regarding the intersections of Beaver Dam Road and Central Avenue, and Central Avenue and Windmill Road with the developer being obligated to fund all costs of the improvements; that prior to issuance of building permits, the developer should be required to develop plans for intersection improvements and to prepare estimates for the cost of construction for Route 26 and Windmill Road, Route 26 and Central Avenue, and Central Avenue and Windmill Road, and that the plans should be of sufficient detail for DelDOT to determine whether the improvements can be built within existing right-of-way; that where sufficient right-of-way exist to build the improvements, the developer should, at DelDOT's discretion, have the option of building them as part of the entrance construction associated with the Skiber-Chandler Property or the developer should be required to contribute the estimated costs of the improvements toward DelDOT's Route 26 and Alternate Route 26 projects; that if sufficient right-of-way does not exist and DelDOT determines that the improvements should not be done as part of its planned improvements the developer should not be obligated with regard to that particular improvement; that the developer should be required to provide sidewalks along all internal streets; that the developer should be required to provide sidewalks along Central Avenue and Beaver Dam Road, at DelDOT's discretion, for the purpose of connecting the Banks and Skiber-Chandler Properties to each other and to the Bear Trap Dunes development; that all development entrances should be designed to accommodate bicycle traffic; that the State is concerned that it seems unlikely that a 353 unit RPC could be built on this site without major resource losses; that because these parcels are within the Environmentally Sensitive Developing Area buffer zones should be established between development activities and resources, further limiting the site capacity for development; that the State would recommend that the County require the developer to address the environmental issues with a report detailing these impacts and how they will be addressed and to adhere to the DelDOT recommendations noted; and that the State asks that the County consider the environmental issues and the potential limitations for development due to these issues as the County moves forward to consider this proposal.

The Commission found that the DelDOT letter of September 25, 2002 referenced in the Office of State Planning Coordination comments were addressed and are made a part of the record for this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam, Klej loamy sand, Osier loamy sand, Pocomoke sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Fallsington, Pocomoke, and Osier soils have severe limitations; that the Klej and Woodstown soils have slight to moderate limitations; that the Evesboro, Fallsington, Klej, Osier, and Pocomoke soils are considered of Statewide Importance; that the Fallsington, Pocomoke, and Woodstown soils are considered Prime Farmland; that the Evesboro, Fallsington, Klej, Osier, Pocomoke, and Woodstown soils are considered Hydric, Hydric in depressions, or Hydric in small depressions; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements; and that since hydric soils are present there should be wetlands and that the developer should check with the Corps. of Engineers for necessary permits.

The Commission found that Dan McGreevy was present with James Fuqua, Attorney, and Gary Couples of ECI, on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is presently zoned GR General Residential; that they could have proposed an RPC in the GR District, but chose to apply for MR-RPC since they were not proposing to permit any manufactured housing; that they propose to develop the site with 120 townhomes, 184 duplex units, and 49 single family lots for a total of 353 units; that the gross density equals 2.8 units per acre; that the site could permit approximately 400 units based on the calculation method for a RPC; that no commercial activities are proposed; that the proposed recreational activities include tennis, swimming pool, and tot lot; that the site is across from the town limits of Ocean View; that central water for consumption and fire protection will be provided by Tidewater Utilities, Inc.; that sanitary sewer service will be connected to either the Miller Creek Sanitary Sewer District or the South Bethany Sanitary Sewer District; that wetlands have been delineated and that they are waiting for approval of the delineation from the Corps. of Engineers; that they are proposing to impact approximately 0.25 acre of wetlands for road crossings; that it is anticipated that the project will reduce Nitrogen by 48% and Phosphorus by 91%; that the applicant is agreeable to all DelDOT requirements; that they propose to develop each phase with all types of units; that they propose to develop 120 units per year; that a homeowners association will be established; that there will be an economic benefit to the County; that the site is located in the area where Bethany Beach and Ocean View are expanding; that the site is adjacent or in close proximity to Silverwoods, Plantation Park, Ocean Air, Shady Dell Park, The Reserves, Providence, Forest Reach, Bear Trap Dunes, and Wedgefield developments; that some of the developments have recently been annexed into Ocean View; that the site is located

within a Development District according to the 1997 Comprehensive Plan; that the site is located where the governments are directly development to take place; that the project conforms to the State Strategies since it is located in a growth area; that the project conforms to the Ocean View Plan annexation map; that the project conforms to the Comprehensive Plan since it is in a growth area and adjacent to Ocean View; that two entrances are proposed; that greenways are proposed; that sidewalks will be provided on at least one side of all of the streets; that street trees and street lighting will be provided; that the project will consist of three neighborhoods; that no endangered species or eagle nest have been found on the site; that the site is within close proximity to areas where Delmarva Fox Squirrels have been sighted; that the site contains tilled lands and woodlands; that all of the wetlands areas are wooded; that approximately 75% of the site is upland; that a minimal disturbance of woodlands is proposed; that 60% of the site will remain as open space; that they are not opposed to interconnection with adjoining properties for future developments; that no State wetlands exists on the site; that central sewer will eliminate most of the anticipated environmental concerns; and that Best Management Practices will be utilized in the development of the project.

The Commission found that Mr. Fuqua submitted some suggested conditions for consideration, which included:

1. The maximum number of residential units shall not exceed 353 comprised of 120 townhouse units, 184 duplex units and 49 single-family lots.
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 for use by the residents within two (2) years of the issuance of the first building permit.
4. The development shall be served as part of a Sussex County Sewer District.
5. The development shall be served by a public 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 & 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. Residential building permits shall not exceed 120 units per year commencing with the date of final approval of this application by the Sussex County Council.

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 or regulations shall have been issued and the approved final site plan is recorded, except such site 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 applications for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning & 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 Mr. Fuqua also submitted for the record copies of an Assessment for Nutrient Loading prepared by Atlantic Resource Management, Inc., copies of portions of the Strategies for State Policies and Spending, copies of portions of the Comprehensive Plan for Ocean View, copies of portions of the 2002 Sussex County Comprehensive Plan, copies of the County Council decisions for C/Z #1421 for Abraham P. Korotki, C/Z #1403 for Providence Land, LTD., C/Z #1456 for Forest Reach, LLC, C/Z #1409 for Wedgefield Land, LTD., copies of the tax map of the area showing the Silverwoods, a.k.a. Starlights Woods, and copies of a letter from Environmental Resources, Inc. referencing wetlands delineation and permitting.

The Commission found that there were no parties present in support of or in opposition to this application.

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 4 – 0.

Meeting adjourned at 9:30 p.m.