

MINUTES OF THE REGULAR MEETING OF MARCH 13, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 13, 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, and Mr. Lynch with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the agenda as amended by considering the public hearing for Subdivision #2002-50 after C/U #1484 and by removing C/U #1481 from Old Business since it had been scheduled for consideration on March 20, 2003.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of February 27, 2003 as amended.

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

C/U #1483 – application of **COMCAST, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for electronic equipment storage, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 6,589 square feet, more or less, lying north of Road 480 and 200 feet east of Route 13-A.

Mr. Lank presented site plans to the Commission and advised the Commission that the site plan depicts a proposed concrete block storage building within a fence area in a wooded section of lands owned by the Mt. Zion Methodist Church and that a 10-foot driveway is proposed off of Road 480.

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

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

The Commission found that Gerald Howard was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that Comcast, Inc. is proposing to build an electronic equipment storage building with cable

equipment to improve service to the Laurel/Seaford areas; that the one story building measures 25'by25' and has an A-frame roof; that the area around the building will be fenced; that the fencing will be gated; that a security light will be placed on the front of the building; that there are no employees permanently located at the site; that approximately once per week an employee will visit the site; that there is no need for an septic or water on the site since the site is not manned; and that a State DelDOT entrance permit has been obtained.

The Commission found that Bill Dukes, a resident that lives across Road 480, questioned if the equipment would interfere with television or radio equipment.

The Commission found that Mr. Howard responded that there are no known interference problems with this type of equipment.

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

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

1. The equipment building shall not exceed the measurements of 25'by25'.
2. The equipment building shall be surrounded by chain-link type fencing with a gate.
3. The security lighting shall be directed so that it does not shine into neighboring residences or interfere with the vision of traveling motorist.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 4 – 0.

C/U #1484 – application of **GOOD EARTH MARKET, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail produce market, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.27 acres, more or less, lying south of Route 26, approximately 1,500 feet west of Route 17.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic and that the Department was reviewing a preliminary plan for the project.

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 for development; that the Fallsington soils

have severe limitations; that the applicants shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that the Fallsington soils are considered of Statewide Importance, Prime Farmland, and Hydric; that there are no storm flood hazard areas or tax ditches affected; and that it may be necessary for some on-site or off-site drainage improvements, depending on the size of the buildings.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the Conditional Use, but offered comments that the State Historic Preservation Office has noted that there is a National Register property located northwest of the site and that there may be some potential historic properties nearby; that the State Historic Preservation Office has suggested that any new buildings be designed in a way that will not visually impose on the National Register property and the other possible historic properties; that they also recommend that some landscaping be planted on the northwest corner of the parcel to act as a visual buffer to the National Register property; that the Department of Natural Resources has noted that the soils in the vicinity are mapped as moderately well-drained soil of low-lying uplands that have moderate limitations for development and some poorly-drained wetland associated (hydric) soils that have some severe limitations for development; that the applicant should be reminded that they should avoid construction/filling activities in those areas containing wetlands or wetland associated soils; that the owner should be aware that the on-site well must be classified as a miscellaneous public well; that the well is currently classified for domestic or other uses than miscellaneous public, and that an application must be submitted to the Water Supply Section of the State DNREC to request that it be reclassified; that the well must be in compliance with all current requirements, including that it be located at least 150-feet from all identifiable sources of contamination such as sewage disposal system components; that potential contaminant sources do exist in the area, and that DNREC recommends that water supply sources be tested prior to consumption; that should well pointing (dewatering) be needed during any phase of the construction, dewatering well permits must also be obtained before the points are installed; and that while DelDOT has no objections to this proposal, the applicant will be required to obtain an entrance permit from the Department.

The Commission found that David and Susan Ryan were present on behalf of their application and stated in their presentation and in response to questions raised by the Commission that they propose to create an organic farm with greenhouses, working fields for herbs, produce, and flowers, and a produce market for the sale of produce grown by them and others; that they propose to sell fruits and vegetables, organic materials and organic meats; that they may provide picnic tables near the existing pond; that the pond may be used for irrigation in the future; that they would like to have a gravel parking area to help reduce the amount of impervious surface; that they will install a paved entrance

per DelDOT specifications; that it takes 3-years to obtain an organic gardener certification; that they plan on fencing the pond; that a irrigation well will be installed; that employees will be hired to work the fields and to work in the produce market; that they do not intend to provide any delivery services; that the business will be open year round; that business hours for the produce market are planned to be from 10:00 am to 6:00 PM year round with hours of 10:00 am to 9:00 during the summer season; that they are not planning on providing any large nursery stock, mulch, or stone for landscaping; that the Dolby property to the west has a hedgerow and is partially wooded; that the Dolby's raised goats; that the Hammond property to the east is partially wooded and that the Hammonds raise sheep; that the adjoining property owner to the west and fronting on Route 26 makes pottery and they may provide a walking path to her property line so that customers may go to the pottery shop without going back out onto Route 26; that the closest organic food store is in Rehoboth Beach; and that they applied for a retail produce market since they could not be organic certified for 3-years.

The Commission found that William Payne, a resident of the Lewes area, spoke in support of the application and stated that he was excited to find that organic foods would be available.

The Commission found that there were no parties present 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.

Subdivision #2002-50 – application of **GARY HITCH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 8.86 acres into 5 lots, located north of Road 353, 500 feet west of Road 352.

Mr. Abbott advised the Commission that the comments received from the Technical Advisory Committee will be made a part of the record for this application.

The Commission found that Gary Hitch and Charles Coffman, surveyor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is surrounded by tax ditches and other residential subdivisions; that the applicant is going to keep a lot for himself and a lot for each of his two daughters and sell the remaining two lots; that individual on-site septic disposal systems have been approved for each lot by DNREC; that the project is a low density development; that the proposed deed restrictions will be recorded; that stormwater

management will be handle with a bio-retention system located on lots 1 and 5; that the runoff will seep into the ground; that the proposed entrance road crosses a tax ditch; that there is currently a culvert pipe in place at the crossing; that the site has been cleared; that the applicant will keep the 3.7 acre lot; and that they have not yet applied for an entrance permit from DelDOT.

The Commission found that no parties appeared 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 approve this application as a preliminary.

Motion carried 4 – 0.

C/Z #1493 – application of **KEITH PROPERTIES, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying on the southerly side of Route 54, 440 feet easterly of Road 58B, to be located on 1.39 acres, more or less.

C/Z #1494 – application of **KEITH PROPERTIES, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a B-1 Neighborhood Business District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 200 feet south of Route 54 and 600 feet east of Road 58B, to be located on 17,609 square feet, more or less.

Mr. Allen announced that the Commission would be considering C/Z #1493 and C/Z #1494 during one public hearing, rather than separate.

The Commission found that the applicant had submitted a packet of information prior to the meeting and that the packet included a tax map of the area showing the location of other B-1 Neighborhood Business Districts, a plot of the different zonings of the parcel, copies of Planning and Zoning Commission Minutes for April 19, 2001 referencing C/Z #1427 – Balsamo Norino Properties, LLC (AR-1 to MR) and C/U #1391 – Balsamo Norino Properties, LLC (Multi-family Dwelling Structures – 85 Units), a copy of Ordinance No. 1454, the County Council Findings of Fact for the approval of C/Z #1427, a copy of a DelDOT letter, dated September 27, 2002, referencing suggested deed restrictions, copies of portions of the 1997 Sussex County Comprehensive Plan and the 2002 Comprehensive Plan.

The Commission found in reference to C/Z #1493 and based on comments received from the Office of State Planning Coordination, that the State DNREC has noted that the soils in the vicinity of the proposed construction are mapped as somewhat excessively well-drained upland soils that have moderate limitations for development because of their rapid permeability, moderately well-drained soils of low-lying uplands that have moderate limitations for development, and somewhat poorly-drained transitional soils that usually contain upland and/or bottomland wetland associated (hydric) soils with limitations that range from moderate to severe that are dependent on the site-specific seasonal high water table; that the applicant should be reminded to avoid construction/filling activities in those areas containing wetlands or wetland associated soils; that DNREC noted that the information provided stated that the applicant intends to obtain public water from Tidewater Utilities and that DNREC records indicate that the site is located in the public water service area for Artesian Water Company under a Certificate of Public Convenience and Necessity; 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 the construction, dewatering well permits must be obtained before the points are installed; that potential contaminant sources may exist in the area; that the Department recommends that water supplies be tested prior to consumption; that DelDOT has advised the engineer for the project that a traffic impact study will not be required if the property owner places deed restrictions on the site, alterable only with DelDOT's concurrence, prohibiting retail bakeries, delicatessens, filling stations, fast food restaurants, and convenience stores; that because there is a potential historic property located across Route 54 from the site, any development of this site should be required to take the historic property into consideration when designing buildings and that landscaping should be provided to address any visual affects this development might have on the historic property; that the State is concerned that additional development along Route 54 is encouraging more traffic in an area that DelDOT has already identified as operating at unacceptable levels of service; that the State asks the County to consider the comments given and the cumulative impact of new development to the area; that the State asks that the County verify the deed restrictions asked for by DelDOT and if the restrictions are not in place, require the developer to work with DelDOT to determine if a traffic impact study is needed and require the applicant to address any recommendations that might come from the study.

The Commission found in reference to C/Z #1493 and C/Z #1494, and based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Pocomoke sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Pocomoke soils have severe limitations; that the Woodstown soils have slight to moderate limitations; that the developers will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that the Pocomoke

soils are considered of Statewide Importance, Prime Farmland and Hydric; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that no storm flood hazard areas or tax ditches are affected; and that it may be necessary for on-site and off-site drainage improvements because of the presence of poorly drained soils and increased storm runoff.

The Commission found that letters of opposition were received in reference to C/Z #1493, C/Z #1494, and Subdivision #2002-38 from Keen-Wik Association, Inc., Dennis and Sharon Lea Johnson, William Freeman, James and Elizabeth Burcham, Emma Phillips, Carl and Claudia Alesi, Peter and Patricia Keenan, Garth and Allyson McCabe, and an additional 41 form letters signed by residents of Keen-Wik, and a petition containing approximately 120 signatures in opposition. The Commission was provided with copies of all letters, etc. The letters are all made a part of the record.

The Commission found that Richard Keith was present with James Fuqua, Attorney, and Mark Davidson of DC Group and stated in their presentations and in response to questions raised by the Commission that they have had the opportunity to review some of the comments from the residents of the area; that reviewing the concerns of some of the residents has been a benefit to the application in that it provided the applicant the opportunity to address some of the concerns; that the property is presently zoned AR-1 Agricultural Residential, MR Medium Density Residential, and B-1 Neighborhood Business; that the applicant purchased the property in 2002; that the poultry houses on the site have been destroyed; that they are requesting that the frontage along Route 54 be zoned B-1 and that a portion of the property be changed from AR-1 and B-1 to MR so that the site to the rear can be subdivided; that the applicant owns "The Blind Factory" for window treatments; that the applicant would like to expand the uses of the site by adding a flooring store and a furnishing store; that they propose to create an entrance road that will serve the subdivision to the rear and the B-1 uses on both sides of the entrance; that access to the subdivision and the B-1 uses shall be from the proposed entrance road only, with no direct access to Route 54 except at the entrance; that the window treatment and flooring stores would be on the east side of the entrance; that the furnishing store would be on the west side of the entrance; that site plans would be subject to review and approval of the Commission; that they are willing to create private deed restrictions, based on DelDOT suggestions, that will state that the land shall not be used for retail bakery, delicatessen, filling station, fast food restaurant, convenience store or building material/lumber yard; that this restriction shall run with the land and shall be binding on the Grantee, its successors or assigns; that this restriction shall not be amended or removed without the written consent of DelDOT; that the site will be served by County sewer; that water will be provided by a public water provider; that the stormwater management will be created for the entire project and will include the two B-1 sites and the Subdivision; that the site is located within a Development District according to the 1997 Comprehensive Plan and an Environmentally Sensitive Developing Area according

to the 2002 Comprehensive Plan; that the B-1 rezoning is an extension to an existing B-1 District on the same site; that other B-1 Districts and uses exist in the area; that the County recently approved B-1 zonings for the Bunting/Gray and the Swann properties; that residential use is not appropriate at this location along Route 54; that the suggested restrictions will help control the use of the B-1 District, if approved; that the applicant intends to live within the Subdivision; that the existing B-1 area contains approximately 0.65 acre; that the proposed B-1 area will contain approximately 1.0 acre for a total of 1.65 acre exclusive of the entrance road; that they propose three separate building, one for each business; and that the applicant feels that the size of the existing building is adequate for the window treatment business, that the building for the flooring business will be a little larger due to the need for additional display space for carpet and other flooring types, and that the building for the furnishing store will be larger again due to the need for display of furniture, appliances, and accessories.

The Commission found, by a show of hands, that there were 15 parties present in opposition to this application.

The Commission found that Dennis Johnson, William Freeman, Peter Keenan, Robert Korizek, Garth McCabe, Terry Usuki, and Jean Hunt spoke in opposition to the application and expressed concerns that it was their understanding that the application was for the window treatment store and warehousing; that they are concerned about traffic to a retail home store, the combined use intended of blinds, flooring, and furnishings; that DelDOT has expressed concerns relating to high impact uses and that the site is not appropriate; that the area is primarily residential; that the business uses would be out of character with the residential area; that the recent approval of several B-1 sites in the area, that have not yet been built, should show that there is no need for additional B-1; that traffic is a major concern for the residents; that infrastructure in the area is already over-taxed; that noise, lighting and parking lots next to residential homes is a concern; that if the B-1 zoning is approved there should be buffers and landscaping required; and that the County needs to consider the evacuation problems that additional commercial activities and development could create.

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action on C/Z #1493 and C/Z #1494.

Motion carried 4 – 0.

Subdivision #2002-38 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred,

Sussex County, by dividing 22.02 acres into 42 lots, located south of Route 54, 450 feet southeast of Road 58B.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of December 11, 2002 will be made a part of the record for this application.

The Commission found that Richard Keith, James Fuqua, Attorney, and Mark Davidson of the DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application for a 42-lot single family subdivision; that the site is surrounded by other residential developments; that the minimum lot size is 10,000 square feet and the average lot size is 11,050 square feet; that central sewer will be provided by Sussex County and Tidewater Utilities will provide central water; that there is one entrance to the site and the subdivision streets will be private and built to Sussex County requirements; that the site was rezoned to MR Medium Density Residential in 2001 by the County; that an application for 85 multi-family units was denied in 2001 and that the Commission agreed that the site was suitable for single family and not multi-family; that single family lots are an appropriate use in this area; that there is no connection proposed to the existing island to the east of the site; that no marina is proposed and submitted proposed deed restrictions referencing this; that there are no wetlands on the proposed lots; that there are three locations where the proposed streets will cross wetlands and this is permitted by the Army Corps of Engineers under a national permit; that 2,913 square feet of wetlands will be impacted by the street crossings; that there is a total of 5.8 acres of wetlands on the site; that the applicant will comply with all stormwater management requirements; that maintenance of lawns will be the responsibility of the homeowners association to utilize best management practices reducing run-off into the bays; that the site was previously farmed and this created more run-off than what the development will cause; that the wetlands will not be impacted except for the three street crossings; that there is a 50-foot buffer from the State Wetlands along lots 20 through 28; that the buffer will remain in natural vegetation and be maintained by the homeowners association; that the proposed use is consistent with the other developments in the area; that there is minimal use of the wetlands and flood plains; that there are not any historic features on the site; that there would be selective cutting of trees on site; that no objectionable features are proposed; that central water and sewer are available; that the entrance will comply with DelDOT requirements; that the site is located in a development area; that farming the site is not the best use of the property; that there would be minimal impacts to the local schools; that the site is surrounded by other developments; that the MR zoning permits 4 units per acre and the proposed density for this project is 2.8 lots per acre; that the proposed density is less than what exists in the area; that the plan complies with all environmental regulations; that boat docks are proposed for lots 26, 27, and 28; that numerous boat docks are located in the Keen Wik Subdivision; that the applicants have tried to address the concerns of the neighbors; that there would not be any adverse impacts to surrounding

property values; that the wetlands delineation has been submitted for verification and approval; that the site is located in an area where the County has determined that it is suitable for development; that there are tidal wetlands along the canal; that the natural tree line between this site and Fenwick Farms will not be cut down as it is considered wetlands; that additional landscaping could be installed if required; that the lagoons are man made lagoons; that there is a common area of 5-feet between the lots and the lagoons; that the existing island is owned by the Adkins family and not the applicant; and submitted proposed finding of facts for approval.

The Commission found that William Park, William Payne, Dennis Johnson, Bill Freeman, Pete Keenen, Robert Korizek and Emma Phillips spoke in opposition to this application and expressed concerns about the lagoons being channels dug through the wetlands; that the depth of the water will not support boat docks; that the inland bays need to be protected; that there are not any buffers proposed from the high water line; that no fire hydrants are shown on the subdivision plan; that there are extensive wetlands on the site; questions about the total amount of wetlands on the site; that buffers should not be permitted on individual lots; increased boat traffic if boat docks are permitted; that they were told that the site would never be developed; that there should be buffers from adjoining developments and that the island is a bird sanctuary.

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.

OLD BUSINESS

Subdivision #2002-39 – application of **CHRISTINE REECE AND WILLIAM GUGNO** to consider the Subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space parcel into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision.

The Commission discussed this application which was deferred at the February 20, 2003 meeting.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried three votes to none with Mr. Johnson not participating, to approve this application as a preliminary and as a final.

Motion carried 3 – 0 – 1.

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.

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1478 for Eric and Laura James to operate an electrical contracting business based upon the record made at the public hearing and with reasons, and asked Mr. Robertson to read Mr. Johnson's comments into the record.

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

1. The proposed Conditional Use is generally similar to other uses in the vicinity of the property. Also, it is in the area of Sussex Correctional Center, which is a more intensive use of neighboring property than proposed by the Applicant.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or community.
3. The operation of an electrical contracting business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.
4. This recommendation for approval is subject to the following conditions and stipulations:
 - A. All trucks associated with the electrical contracting business shall be stored inside of the building to be constructed on the site. Trailers may be stored outside but only on the designated parking area.
 - B. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
 - C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or toward Zoar Road.
 - D. No outside storage, except for trailers, shall be allowed on the premises.
 - E. The hours of operation for the business on this site shall be limited to 7:30 am to 6:00 PM Monday through Friday and 7:30 am until 12:30 PM Saturdays. There shall be no Sunday hours.
 - F. A solid vinyl clad or equivalent fence shall be installed along the northern side of the property. The fence shall not exceed 7 feet in height and shall be setback from Zoar Road 40 feet and shall extend to at least the rear of the parking area shown on the site plan

- G. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion carried 4 – 0.

C/U #1479 – application of **JEREMY AND ANASTASIA M. DAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for restoration and resale of motorcycles, and retail sales of parts, to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 1.0149 acres, more or less, of a 78.92 acre tract, lying south of Road 419 and 1,800 feet north of Road 413.

The Commission discussed this application which has been deferred since February 20, 2003.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that C/U #1479 be approved with the following stipulations:

1. The business will be open Monday through Friday 11:00 am to 7:00 PM. Saturday business hours will be 10:00 am to 1:00 PM. There shall be no business hours on Sunday.
2. There will be no outside display of motorcycles and no outside storage.
3. All repairs will be performed inside.
4. The applicant will be allowed to have a 32 square foot or smaller unlighted sign if he so desires.
5. Any outside lighting will not shine in the direction of neighbors or County Road 419.
6. There shall not be any test tracks set up on the property and no motorcycles or other motorized vehicles shall be operated or tested outside of the building shown on the site plan that is the subject of the application.
7. The applicant shall post notices on the interior and exterior of the building advising customers and the public that no motorcycles or other motorized vehicles that are not titled or registered by the Department of Motor Vehicles for on-road use in this State may leave the premises under their own power. Instead, they must be hauled or trailered from the premises.
8. The applicant will obtain all licenses and permits required by the State and the County.
9. Non-compliance with any of the above stipulations could possibly void this Conditional Use.

Motion carried 4 – 0.

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.

No action was taken on this application since it was scheduled to be considered under Old Business on March 20, 2003.

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 discussed this application which has been deferred since February 27, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1482 for Fowl's Delight based upon the record made at the public hearing and with reasons, and asked Mr. Robertson to read Mr. Lynch's comments into the record.

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

1. The proposed Conditional Use 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 Sussex County Comprehensive Plan.
2. The proposed Conditional Use is appropriate for the site because residential development of this type is appropriate in areas where central water and sewer are available. In this case, there will be central sewer provided by the Sussex County Fenwick Island Sanitary Sewer District and water provided by Artesian Water Company.
3. The property is in an area that has developed with other residential properties, including single family developments, multi-family development, and a mobile home park.
4. The project will be served by amenities that are on-site. These amenities include a pedestrian trail or path connecting the units with an observation deck. There will also be a crabbing pier, assuming appropriate permits are obtained for the pier.
5. DelDOT has advised that the project will have no significant impact on traffic.
6. This recommendation for approval is subject to the following conditions:

- a. The maximum number of residential units shall not exceed 20.
- b. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- c. Recreational facilities and amenities, including the path and observation deck, shall be constructed simultaneously with the construction of the dwelling units.
- d. The development shall be served as part of the Sussex County Fenwick Island Sanitary Sewer District.
- e. The project 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 Sussex County street design requirements.
- 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 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.
- 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 and 6:00 PM.
- l. There shall be a provision in the applicable governing documents for the project providing for the perpetual maintenance of the amenities, including the pier, if permitted, the observation area and pathways.
- m. Building D shall be reconfigured to eliminate or substantially reduce any encroachment onto Federal 404 Wetlands. There shall be no disturbance of State or Federal Wetlands at all.

- n. The developer shall take whatever steps are necessary, using best management and construction practices, to avoid erosion and deterioration of the banks of the 25-foot drainage ditch easement on the southern boundary of the site.

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.

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 reviewed this application which has been deferred since January 30, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1487 (Love Creek Chase) for Caldera Properties based upon the information contained in the record and with reasons, and asked Mr. Robertson to read Mr. Lynch's comments into 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, private central sewer service will be provided by the Developer and will be constructed in accordance with Sussex County Ordinance 38 standards so that it can be connected to a County operated Sanitary Sewer District when County sewer service becomes available to the project. Water service will be provided.
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 Applicant has shown that it may be possible to develop the property as a subdivision under the current AR-1 zoning with the same number of lots as has been proposed under the MR-RPC application. However, with the change in zone to MR-RPC, the project allows for the same number of lots with significantly more open space.
5. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 161.
 - B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, pool house, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and street lighting.
 - D. The development shall be served by a private on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with Sussex County Engineering Department Ordinance 38 specifications so that it can be connected and tied into the County Sewer System as that system expands. The private central sewer system shall also be constructed in conformity with all DNREC 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, using the best management practices with regard to the construction and maintenance of these features.
 - 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 Sussex County street design requirements and/or specifications.
 - 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 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.

- 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 and 6:00 PM.
- L. 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.

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 discussed this application which has been deferred since February 27, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1490 (Forest Landing) for Daniel McGreevy-Caldera Properties, L.P. 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 a County operated

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 project is currently zoned GR. The applicants are seeking the MR-RPC designation to eliminate the possibility of any manufactured housing within the development.
5. The subject property is in an area that has developed with residential projects similar to the proposed project.
6. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 353. This shall be comprised of 120 Townhouse units, 184 duplex units and 49 single-family lots. Each phase of development will include construction of each type of housing.
 - B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, tot lot, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and street lighting.
 - D. The development shall be served as part of the appropriate Sussex County 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 Sussex County street design requirements and/or specifications.
 - 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 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.

- 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 and 6:00 PM.
- L. 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.
- M. No more than 120 residential building permits shall be issued for the project in any single calendar year.

Motion by Mr. Lynch, seconded by Mr. Johnson, 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

Jana Hood
50 – Foot Right of Way – Road 620

Mr. Abbott advised the Commission that this is a request to create a 50 – foot right of way to serve as access for an existing 2.17 acre lot that was created in 1977; that the 2.17 acre lot should have been approved an extension to a 2.59 acre lot; that a survey was never approved by the office when the deed was recorded; that Mrs. Hood's parents will own the 2.17 acre lot and that the 50 – foot right of way will make the lot a legal lot.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the 50 – foot right of way.

Motion carried 4 – 0.

Dixie A. Gildon
Lot on existing 50-foot right of way – Willow Creek Road

Mr. Abbott advised the Commission that this is a concept to create a 50-foot easement off of Willow Creek Road to serve as access to a proposed 3.70 acre lot; that the staff has received a letter in support of this request from the Willow Creek Homeowner's Association since the Gildon's already use and pay for the maintenance of Willow Creek Road; and that any further subdivision of the property will require a public hearing.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this request.

Motion carried 4 – 0.

Subdivision #2001-24 - - Craig Hudson / Saddle Creek Subdivision
Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension in order to received final record plan approval; that the Commission granted preliminary approval on November 8, 2001 for a 73-lot subdivision application; that the letter sent to the engineering company informed them that preliminary approval is valid for a one year period; that the office received a letter on February 14, 2003 requesting an extension; that at this time all agency approvals have been received except for the Sussex Conservation District; that the final record plan has not been submitted to the office for review; and that if you are in favor of granting an extension, it should be retro-active to the original approval date and would expire on November 8, 2003.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve a one year time extension retro-active the original approval date and with the stipulation that this will be the last extension that the Commission will grant.

Motion carried 4 – 0.

Forest Reach MR/RPC
Model Homes – Road 362 and Road 368

Mr. Abbott advised the Commission that this is a request to build two model homes in the residential planned community; that the developer will not request certificates of occupancy until the record plan is recorded and bonded; that the Engineering Department has issued a letter stating that they are not opposed to the request; and that the Commission has approved this request for other projects in the area.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the request.

Motion carried 4 – 0.

Meeting adjourned at 10:40 P.M.

Meeting adjourned at 10:40 PM.

MINUTES OF THE REGULAR MEETING OF MARCH 13, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 13, 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, and Mr. Lynch with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the agenda as amended by considering the public hearing for Subdivision #2002-50 after C/U #1484 and by removing C/U #1481 from Old Business since it had been scheduled for consideration on March 20, 2003.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of February 27, 2003 as amended.

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

C/U #1483 – application of **COMCAST, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for electronic equipment storage, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 6,589 square feet, more or less, lying north of Road 480 and 200 feet east of Route 13-A.

Mr. Lank presented site plans to the Commission and advised the Commission that the site plan depicts a proposed concrete block storage building within a fence area in a wooded section of lands owned by the Mt. Zion Methodist Church and that a 10-foot driveway is proposed off of Road 480.

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

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

The Commission found that Gerald Howard was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that Comcast, Inc. is proposing to build an electronic equipment storage building with cable

equipment to improve service to the Laurel/Seaford areas; that the one story building measures 25'by25' and has an A-frame roof; that the area around the building will be fenced; that the fencing will be gated; that a security light will be placed on the front of the building; that there are no employees permanently located at the site; that approximately once per week an employee will visit the site; that there is no need for an septic or water on the site since the site is not manned; and that a State DelDOT entrance permit has been obtained.

The Commission found that Bill Dukes, a resident that lives across Road 480, questioned if the equipment would interfere with television or radio equipment.

The Commission found that Mr. Howard responded that there are no known interference problems with this type of equipment.

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

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

1. The equipment building shall not exceed the measurements of 25'by25'.
2. The equipment building shall be surrounded by chain-link type fencing with a gate.
3. The security lighting shall be directed so that it does not shine into neighboring residences or interfere with the vision of traveling motorist.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 4 – 0.

C/U #1484 – application of **GOOD EARTH MARKET, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail produce market, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.27 acres, more or less, lying south of Route 26, approximately 1,500 feet west of Route 17.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic and that the Department was reviewing a preliminary plan for the project.

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 for development; that the Fallsington soils

have severe limitations; that the applicants shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction; that the Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that the Fallsington soils are considered of Statewide Importance, Prime Farmland, and Hydric; that there are no storm flood hazard areas or tax ditches affected; and that it may be necessary for some on-site or off-site drainage improvements, depending on the size of the buildings.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the Conditional Use, but offered comments that the State Historic Preservation Office has noted that there is a National Register property located northwest of the site and that there may be some potential historic properties nearby; that the State Historic Preservation Office has suggested that any new buildings be designed in a way that will not visually impose on the National Register property and the other possible historic properties; that they also recommend that some landscaping be planted on the northwest corner of the parcel to act as a visual buffer to the National Register property; that the Department of Natural Resources has noted that the soils in the vicinity are mapped as moderately well-drained soil of low-lying uplands that have moderate limitations for development and some poorly-drained wetland associated (hydric) soils that have some severe limitations for development; that the applicant should be reminded that they should avoid construction/filling activities in those areas containing wetlands or wetland associated soils; that the owner should be aware that the on-site well must be classified as a miscellaneous public well; that the well is currently classified for domestic or other uses than miscellaneous public, and that an application must be submitted to the Water Supply Section of the State DNREC to request that it be reclassified; that the well must be in compliance with all current requirements, including that it be located at least 150-feet from all identifiable sources of contamination such as sewage disposal system components; that potential contaminant sources do exist in the area, and that DNREC recommends that water supply sources be tested prior to consumption; that should well pointing (dewatering) be needed during any phase of the construction, dewatering well permits must also be obtained before the points are installed; and that while DelDOT has no objections to this proposal, the applicant will be required to obtain an entrance permit from the Department.

The Commission found that David and Susan Ryan were present on behalf of their application and stated in their presentation and in response to questions raised by the Commission that they propose to create an organic farm with greenhouses, working fields for herbs, produce, and flowers, and a produce market for the sale of produce grown by them and others; that they propose to sell fruits and vegetables, organic materials and organic meats; that they may provide picnic tables near the existing pond; that the pond may be used for irrigation in the future; that they would like to have a gravel parking area to help reduce the amount of impervious surface; that they will install a paved entrance

per DelDOT specifications; that it takes 3-years to obtain an organic gardener certification; that they plan on fencing the pond; that a irrigation well will be installed; that employees will be hired to work the fields and to work in the produce market; that they do not intend to provide any delivery services; that the business will be open year round; that business hours for the produce market are planned to be from 10:00 am to 6:00 PM year round with hours of 10:00 am to 9:00 during the summer season; that they are not planning on providing any large nursery stock, mulch, or stone for landscaping; that the Dolby property to the west has a hedgerow and is partially wooded; that the Dolby's raised goats; that the Hammond property to the east is partially wooded and that the Hammonds raise sheep; that the adjoining property owner to the west and fronting on Route 26 makes pottery and they may provide a walking path to her property line so that customers may go to the pottery shop without going back out onto Route 26; that the closest organic food store is in Rehoboth Beach; and that they applied for a retail produce market since they could not be organic certified for 3-years.

The Commission found that William Payne, a resident of the Lewes area, spoke in support of the application and stated that he was excited to find that organic foods would be available.

The Commission found that there were no parties present 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.

Subdivision #2002-50 – application of **GARY HITCH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 8.86 acres into 5 lots, located north of Road 353, 500 feet west of Road 352.

Mr. Abbott advised the Commission that the comments received from the Technical Advisory Committee will be made a part of the record for this application.

The Commission found that Gary Hitch and Charles Coffman, surveyor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is surrounded by tax ditches and other residential subdivisions; that the applicant is going to keep a lot for himself and a lot for each of his two daughters and sell the remaining two lots; that individual on-site septic disposal systems have been approved for each lot by DNREC; that the project is a low density development; that the proposed deed restrictions will be recorded; that stormwater

management will be provided with a bio-retention system located on lots 1 and 5; that the runoff will seep into the ground; that the proposed entrance road crosses a tax ditch; that there is currently a culvert pipe in place at the crossing; that the site has been cleared; that the applicant will keep the 3.7 acre lot; and that they have not yet applied for an entrance permit from DelDOT.

The Commission found that no parties appeared 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 approve this application as a preliminary.

Motion carried 4 – 0.

C/Z #1493 – application of **KEITH PROPERTIES, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying on the southerly side of Route 54, 440 feet easterly of Road 58B, to be located on 1.39 acres, more or less.

C/Z #1494 – application of **KEITH PROPERTIES, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District and a B-1 Neighborhood Business District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 200 feet south of Route 54 and 600 feet east of Road 58B, to be located on 17,609 square feet, more or less.

Mr. Allen announced that the Commission would be considering C/Z #1493 and C/Z #1494 during one public hearing, rather than separate.

The Commission found that the applicant had submitted a packet of information prior to the meeting and that the packet included a tax map of the area showing the location of other B-1 Neighborhood Business Districts, a plot of the different zonings of the parcel, copies of Planning and Zoning Commission Minutes for April 19, 2001 referencing C/Z #1427 – Balsamo Norino Properties, LLC (AR-1 to MR) and C/U #1391 – Balsamo Norino Properties, LLC (Multi-family Dwelling Structures – 85 Units), a copy of Ordinance No. 1454, the County Council Findings of Fact for the approval of C/Z #1427, a copy of a DelDOT letter, dated September 27, 2002, referencing suggested deed restrictions, copies of portions of the 1997 Sussex County Comprehensive Plan and the 2002 Comprehensive Plan.

The Commission found in reference to C/Z #1493 and based on comments received from the Office of State Planning Coordination, that the State DNREC has noted that the soils in the vicinity of the proposed construction are mapped as somewhat excessively well-drained upland soils that have moderate limitations for development because of their rapid permeability, moderately well-drained soils of low-lying uplands that have moderate limitations for development, and somewhat poorly-drained transitional soils that usually contain upland and/or bottomland wetland associated (hydric) soils with limitations that range from moderate to severe that are dependent on the site-specific seasonal high water table; that the applicant should be reminded to avoid construction/filling activities in those areas containing wetlands or wetland associated soils; that DNREC noted that the information provided stated that the applicant intends to obtain public water from Tidewater Utilities and that DNREC records indicate that the site is located in the public water service area for Artesian Water Company under a Certificate of Public Convenience and Necessity; 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 the construction, dewatering well permits must be obtained before the points are installed; that potential contaminant sources may exist in the area; that the Department recommends that water supplies be tested prior to consumption; that DelDOT has advised the engineer for the project that a traffic impact study will not be required if the property owner places deed restrictions on the site, alterable only with DelDOT's concurrence, prohibiting retail bakeries, delicatessens, filling stations, fast food restaurants, and convenience stores; that because there is a potential historic property located across Route 54 from the site, any development of this site should be required to take the historic property into consideration when designing buildings and that landscaping should be provided to address any visual affects this development might have on the historic property; that the State is concerned that additional development along Route 54 is encouraging more traffic in an area that DelDOT has already identified as operating at unacceptable levels of service; that the State asks the County to consider the comments given and the cumulative impact of new development to the area; that the State asks that the County verify the deed restrictions asked for by DelDOT and if the restrictions are not in place, require the developer to work with DelDOT to determine if a traffic impact study is needed and require the applicant to address any recommendations that might come from the study.

The Commission found in reference to C/Z #1493 and C/Z #1494, and based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Pocomoke sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Pocomoke soils have severe limitations; that the Woodstown soils have slight to moderate limitations; that the developers will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that the Pocomoke

soils are considered of Statewide Importance, Prime Farmland and Hydric; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that no storm flood hazard areas or tax ditches are affected; and that it may be necessary for on-site and off-site drainage improvements because of the presence of poorly drained soils and increased storm runoff.

The Commission found that letters of opposition were received in reference to C/Z #1493, C/Z #1494, and Subdivision #2002-38 from Keen-Wik Association, Inc., Dennis and Sharon Lea Johnson, William Freeman, James and Elizabeth Burcham, Emma Phillips, Carl and Claudia Alesi, Peter and Patricia Keenan, Garth and Allyson McCabe, and an additional 41 form letters signed by residents of Keen-Wik, and a petition containing approximately 120 signatures in opposition. The Commission was provided with copies of all letters, etc. The letters are all made a part of the record.

The Commission found that Richard Keith was present with James Fuqua, Attorney, and Mark Davidson of DC Group and stated in their presentations and in response to questions raised by the Commission that they have had the opportunity to review some of the comments from the residents of the area; that reviewing the concerns of some of the residents has been a benefit to the application in that it provided the applicant the opportunity to address some of the concerns; that the property is presently zoned AR-1 Agricultural Residential, MR Medium Density Residential, and B-1 Neighborhood Business; that the applicant purchased the property in 2002; that the poultry houses on the site have been destroyed; that they are requesting that the frontage along Route 54 be zoned B-1 and that a portion of the property be changed from AR-1 and B-1 to MR so that the site to the rear can be subdivided; that the applicant owns "The Blind Factory" for window treatments; that the applicant would like to expand the uses of the site by adding a flooring store and a furnishing store; that they propose to create an entrance road that will serve the subdivision to the rear and the B-1 uses on both sides of the entrance; that access to the subdivision and the B-1 uses shall be from the proposed entrance road only, with no direct access to Route 54 except at the entrance; that the window treatment and flooring stores would be on the east side of the entrance; that the furnishing store would be on the west side of the entrance; that site plans would be subject to review and approval of the Commission; that they are willing to create private deed restrictions, based on DelDOT suggestions, that will state that the land shall not be used for retail bakery, delicatessen, filling station, fast food restaurant, convenience store or building material/lumber yard; that this restriction shall run with the land and shall be binding on the Grantee, its successors or assigns; that this restriction shall not be amended or removed without the written consent of DelDOT; that the site will be served by County sewer; that water will be provided by a public water provider; that the stormwater management will be created for the entire project and will include the two B-1 sites and the Subdivision; that the site is located within a Development District according to the 1997 Comprehensive Plan and an Environmentally Sensitive Developing Area according

to the 2002 Comprehensive Plan; that the B-1 rezoning is an extension to an existing B-1 District on the same site; that other B-1 Districts and uses exist in the area; that the County recently approved B-1 zonings for the Bunting/Gray and the Swann properties; that residential use is not appropriate at this location along Route 54; that the suggested restrictions will help control the use of the B-1 District, if approved; that the applicant intends to live within the Subdivision; that the existing B-1 area contains approximately 0.65 acre; that the proposed B-1 area will contain approximately 1.0 acre for a total of 1.65 acre exclusive of the entrance road; that they propose three separate building, one for each business; and that the applicant feels that the size of the existing building is adequate for the window treatment business, that the building for the flooring business will be a little larger due to the need for additional display space for carpet and other flooring types, and that the building for the furnishing store will be larger again due to the need for display of furniture, appliances, and accessories.

The Commission found, by a show of hands, that there were 15 parties present in opposition to this application.

The Commission found that Dennis Johnson, William Freeman, Peter Keenan, Robert Korizek, Garth McCabe, Terry Usuki, and Jean Hunt spoke in opposition to the application and expressed concerns that it was their understanding that the application was for the window treatment store and warehousing; that they are concerned about traffic to a retail home store, the combined use intended of blinds, flooring, and furnishings; that DelDOT has expressed concerns relating to high impact uses and that the site is not appropriate; that the area is primarily residential; that the business uses would be out of character with the residential area; that the recent approval of several B-1 sites in the area, that have not yet been built, should show that there is no need for additional B-1; that traffic is a major concern for the residents; that infrastructure in the area is already over-taxed; that noise, lighting and parking lots next to residential homes is a concern; that if the B-1 zoning is approved there should be buffers and landscaping required; and that the County needs to consider the evacuation problems that additional commercial activities and development could create.

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action on C/Z #1493 and C/Z #1494.

Motion carried 4 – 0.

Subdivision #2002-38 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred,

Sussex County, by dividing 22.02 acres into 42 lots, located south of Route 54, 450 feet southeast of Road 58B.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of December 11, 2002 will be made a part of the record for this application.

The Commission found that Richard Keith, James Fuqua, Attorney, and Mark Davidson of the DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is an application for a 42-lot single family subdivision; that the site is surrounded by other residential developments; that the minimum lot size is 10,000 square feet and the average lot size is 11,050 square feet; that central sewer will be provided by Sussex County and Tidewater Utilities will provide central water; that there is one entrance to the site and the subdivision streets will be private and built to Sussex County requirements; that the site was rezoned to MR Medium Density Residential in 2001 by the County; that an application for 85 multi-family units was denied in 2001 and that the Commission agreed that the site was suitable for single family and not multi-family; that single family lots are an appropriate use in this area; that there is no connection proposed to the existing island to the east of the site; that no marina is proposed and submitted proposed deed restrictions referencing this; that there are no wetlands on the proposed lots; that there are three locations where the proposed streets will cross wetlands and this is permitted by the Army Corps of Engineers under a national permit; that 2,913 square feet of wetlands will be impacted by the street crossings; that there is a total of 5.8 acres of wetlands on the site; that the applicant will comply with all stormwater management requirements; that maintenance of lawns will be the responsibility of the homeowners association to utilize best management practices reducing run-off into the bays; that the site was previously farmed and this created more run-off than what the development will cause; that the wetlands will not be impacted except for the three street crossings; that there is a 50-foot buffer from the State Wetlands along lots 20 through 28; that the buffer will remain in natural vegetation and be maintained by the homeowners association; that the proposed use is consistent with the other developments in the area; that there is minimal use of the wetlands and flood plains; that there are not any historic features on the site; that there would be selective cutting of trees on site; that no objectionable features are proposed; that central water and sewer are available; that the entrance will comply with DelDOT requirements; that the site is located in a development area; that farming the site is not the best use of the property; that there would be minimal impacts to the local schools; that the site is surrounded by other developments; that the MR zoning permits 4 units per acre and the proposed density for this project is 2.8 lots per acre; that the proposed density is less than what exists in the area; that the plan complies with all environmental regulations; that boat docks are proposed for lots 26, 27, and 28; that numerous boat docks are located in the Keen Wik Subdivision; that the applicants have tried to address the concerns of the neighbors; that there would not be any adverse impacts to surrounding

property values; that the wetlands delineation has been submitted for verification and approval; that the site is located in an area where the County has determined that it is suitable for development; that there are tidal wetlands along the canal; that the natural tree line between this site and Fenwick Farms will not be cut down as it is considered wetlands; that additional landscaping could be installed if required; that the lagoons are man made lagoons; that there is a common area of 5-feet between the lots and the lagoons; that the existing island is owned by the Adkins family and not the applicant; and submitted proposed finding of facts for approval.

The Commission found that William Park, William Payne, Dennis Johnson, Bill Freeman, Pete Keenen, Robert Korizek and Emma Phillips spoke in opposition to this application and expressed concerns about the lagoons being channels dug through the wetlands; that the depth of the water will not support boat docks; that the inland bays need to be protected; that there are not any buffers proposed from the high water line; that no fire hydrants are shown on the subdivision plan; that there are extensive wetlands on the site; questions about the total amount of wetlands on the site; that buffers should not be permitted on individual lots; increased boat traffic if boat docks are permitted; that they were told that the site would never be developed; that there should be buffers from adjoining developments and that the island is a bird sanctuary.

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.

OLD BUSINESS

Subdivision #2002-39 – application of **CHRISTINE REECE AND WILLIAM CUGNO** to consider the Subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space parcel into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision.

The Commission discussed this application which was deferred at the February 20, 2003 meeting.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried three votes to none with Mr. Johnson not participating, to approve this application as a preliminary and as a final.

Motion carried 3 – 0 – 1.

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.

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1478 for Eric and Laura James to operate an electrical contracting business based upon the record made at the public hearing and with reasons, and asked Mr. Robertson to read Mr. Johnson's comments into the record.

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

1. The proposed Conditional Use is generally similar to other uses in the vicinity of the property. Also, it is in the area of Sussex Correctional Center, which is a more intensive use of neighboring property than proposed by the Applicant.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or community.
3. The operation of an electrical contracting business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.
4. This recommendation for approval is subject to the following conditions and stipulations:
 - A. All trucks associated with the electrical contracting business shall be stored inside of the building to be constructed on the site. Trailers may be stored outside but only on the designated parking area.
 - B. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
 - C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or toward Zoar Road.
 - D. No outside storage, except for trailers, shall be allowed on the premises.
 - E. The hours of operation for the business on this site shall be limited to 7:30 am to 6:00 PM Monday through Friday and 7:30 am until 12:30 PM Saturdays. There shall be no Sunday hours.
 - F. A solid vinyl clad or equivalent fence shall be installed along the northern side of the property. The fence shall not exceed 7 feet in height and shall be setback from Zoar Road 40 feet and shall extend to at least the rear of the parking area shown on the site plan

- G. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion carried 4 – 0.

C/U #1479 – application of **JEREMY AND ANASTASIA M. DAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for restoration and resale of motorcycles, and retail sales of parts, to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 1.0149 acres, more or less, of a 78.92 acre tract, lying south of Road 419 and 1,800 feet north of Road 413.

The Commission discussed this application which has been deferred since February 20, 2003.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that C/U #1479 be approved with the following stipulations:

1. The business will be open Monday through Friday 11:00 am to 7:00 PM. Saturday business hours will be 10:00 am to 1:00 PM. There shall be no business hours on Sunday.
2. There will be no outside display of motorcycles and no outside storage.
3. All repairs will be performed inside.
4. The applicant will be allowed to have a 32 square foot or smaller unlighted sign if he so desires.
5. Any outside lighting will not shine in the direction of neighbors or County Road 419.
6. There shall not be any test tracks set up on the property and no motorcycles or other motorized vehicles shall be operated or tested outside of the building shown on the site plan that is the subject of the application.
7. The applicant shall post notices on the interior and exterior of the building advising customers and the public that no motorcycles or other motorized vehicles that are not titled or registered by the Department of Motor Vehicles for on-road use in this State may leave the premises under their own power. Instead, they must be hauled or trailered from the premises.
8. The applicant will obtain all licenses and permits required by the State and the County.
9. Non-compliance with any of the above stipulations could possibly void this Conditional Use.

Motion carried 4 – 0.

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.

No action was taken on this application since it was scheduled to be considered under Old Business on March 20, 2003.

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 discussed this application which has been deferred since February 27, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1482 for Fowl's Delight based upon the record made at the public hearing and with reasons, and asked Mr. Robertson to read Mr. Lynch's comments into the record.

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

1. The proposed Conditional Use 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 Sussex County Comprehensive Plan.
2. The proposed Conditional Use is appropriate for the site because residential development of this type is appropriate in areas where central water and sewer are available. In this case, there will be central sewer provided by the Sussex County Fenwick Island Sanitary Sewer District and water provided by Artesian Water Company.
3. The property is in an area that has developed with other residential properties, including single family developments, multi-family development, and a mobile home park.
4. The project will be served by amenities that are on-site. These amenities include a pedestrian trail or path connecting the units with an observation deck. There will also be a crabbing pier, assuming appropriate permits are obtained for the pier.
5. DelDOT has advised that the project will have no significant impact on traffic.
6. This recommendation for approval is subject to the following conditions:

- a. The maximum number of residential units shall not exceed 20.
- b. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- c. Recreational facilities and amenities, including the path and observation deck, shall be constructed simultaneously with the construction of the dwelling units.
- d. The development shall be served as part of the Sussex County Fenwick Island Sanitary Sewer District.
- e. The project 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 Sussex County street design requirements.
- 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 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.
- 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 and 6:00 PM.
- l. There shall be a provision in the applicable governing documents for the project providing for the perpetual maintenance of the amenities, including the pier, if permitted, the observation area and pathways.
- m. Building D shall be reconfigured to eliminate or substantially reduce any encroachment onto Federal 404 Wetlands. There shall be no disturbance of State or Federal Wetlands at all.

- n. The developer shall take whatever steps are necessary, using best management and construction practices, to avoid erosion and deterioration of the banks of the 25-foot drainage ditch easement on the southern boundary of the site.

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.

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 reviewed this application which has been deferred since January 30, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1487 (Love Creek Chase) for Caldera Properties based upon the information contained in the record and with reasons, and asked Mr. Robertson to read Mr. Lynch's comments into 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, private central sewer service will be provided by the Developer and will be constructed in accordance with Sussex County Ordinance 38 standards so that it can be connected to a County operated Sanitary Sewer District when County sewer service becomes available to the project. Water service will be provided.
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 Applicant has shown that it may be possible to develop the property as a subdivision under the current AR-1 zoning with the same number of lots as has been proposed under the MR-RPC application. However, with the change in zone to MR-RPC, the project allows for the same number of lots with significantly more open space.
5. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 161.
 - B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, pool house, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and street lighting.
 - D. The development shall be served by a private on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with Sussex County Engineering Department Ordinance 38 specifications so that it can be connected and tied into the County Sewer System as that system expands. The private central sewer system shall also be constructed in conformity with all DNREC 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, using the best management practices with regard to the construction and maintenance of these features.
 - 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 Sussex County street design requirements and/or specifications.
 - 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 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.

- 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 and 6:00 PM.
- L. 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.

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 discussed this application which has been deferred since February 27, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1490 (Forest Landing) for Daniel McGreevy-Caldera Properties, L.P. 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 a County operated

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 project is currently zoned GR. The applicants are seeking the MR-RPC designation to eliminate the possibility of any manufactured housing within the development.
5. The subject property is in an area that has developed with residential projects similar to the proposed project.
6. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 353. This shall be comprised of 120 Townhouse units, 184 duplex units and 49 single-family lots. Each phase of development will include construction of each type of housing.
 - B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, tot lot, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and street lighting.
 - D. The development shall be served as part of the appropriate Sussex County 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 Sussex County street design requirements and/or specifications.
 - 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 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.

- 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 and 6:00 PM.
- L. 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.
- M. No more than 120 residential building permits shall be issued for the project in any single calendar year.

Motion by Mr. Lynch, seconded by Mr. Johnson, 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

Jana Hood
50 – Foot Right of Way – Road 620

Mr. Abbott advised the Commission that this is a request to create a 50 – foot right of way to serve as access for an existing 2.17 acre lot that was created in 1977; that the 2.17 acre lot should have been approved an extension to a 2.59 acre lot; that a survey was never approved by the office when the deed was recorded; that Mrs. Hood's parents will own the 2.17 acre lot and that the 50 – foot right of way will make the lot a legal lot.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the 50 – foot right of way.

Motion carried 4 – 0.

Dixie A. Gildon
Lot on existing 50-foot right of way – Willow Creek Road

Mr. Abbott advised the Commission that this is a concept to create a 50-foot easement off of Willow Creek Road to serve as access to a proposed 3.70 acre lot; that the staff has received a letter in support of this request from the Willow Creek Homeowner's Association since the Gildon's already use and pay for the maintenance of Willow Creek Road; and that any further subdivision of the property will require a public hearing.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this request.

Motion carried 4 – 0.

Subdivision #2001-24 - - Craig Hudson / Saddle Creek Subdivision
Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension in order to received final record plan approval; that the Commission granted preliminary approval on November 8, 2001 for a 73-lot subdivision application; that the letter sent to the engineering company informed them that preliminary approval is valid for a one year period; that the office received a letter on February 14, 2003 requesting an extension; that at this time all agency approvals have been received except for the Sussex Conservation District; that the final record plan has not been submitted to the office for review; and that if you are in favor of granting an extension, it should be retro-active to the original approval date and would expire on November 8, 2003.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve a one year time extension retro-active the original approval date and with the stipulation that this will be the last extension that the Commission will grant.

Motion carried 4 – 0.

Forest Reach MR/RPC
Model Homes – Road 362 and Road 368

Mr. Abbott advised the Commission that this is a request to build two model homes in the residential planned community; that the developer will not request certificates of occupancy until the record plan is recorded and bonded; that the Engineering Department has issued a letter stating that they are not opposed to the request; and that the Commission has approved this request for other projects in the area.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the request.

Motion carried 4 – 0.

Meeting adjourned at 10:40 P.M.

Meeting adjourned at 10:40 PM.