

MINUTES OF THE REGULAR MEETING OF MARCH 27, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 27, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to revise the agenda in the following order: Old Business, Other Business, and Public Hearings to be heard in the following order: C/Z #1497, C/U #1488, and C/Z #1496.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of March 13, 2003 and the Minutes of March 20, 2003 as amended.

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

OLD BUSINESS

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 discussed this application which was deferred at the March 13, 2003 meeting.

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

- 1) Entrance and exit on Route 26 as required by DelDOT will be completed by the applicant.
- 2) Hours of operation for the market to be 10:00 A.M. to 6:00 P.M. year round, with hours of 10:00 A.M. to 9:00 P.M. during the summer season.
- 3) No retail sales of mulch or stone for landscaping shall be permitted.
- 4) No retail produce to be delivered from the site.
- 5) The existing pond shall be fenced with a five-foot high fence.
- 6) One unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.
- 7) The wooded buffer along the neighboring property lines will stay intact.
- 8) The parking area surface will be improved with at least gravel.

- 9) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 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.

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

Motion carried 5 – 0.

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 200 feet south of Route 54 and 600 feet east of Road 58B, to be located on 17,609 square feet, more or less.

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

Motion carried 5 – 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.

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

Motion carried 5 – 0.

Subdivision #2001 – 16 – application of **THOMAS HEAD** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 85.80 acres into 84 lots, located west of Road 264, 1,250 feet northeast of Delaware Route One.

Mr. Abbott advised the Commission that the final record plan is for 81 lots; that the preliminary approval was granted on June 28, 2001 for 84 lots; that the Commission granted a one-year time extension on May 23, 2002; that the final record plan meets the

requirements of the subdivision and zoning codes; that all agency approvals have been received; and that the final record plan is suitable for final approval.

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

Motion carried 5 – 0.

Subdivision #2002 – 13 - - application of **SMOKEY HOLLOW, LLC** to consider the Subdivision of land in a GR General Residential District in Baltimore Hundred, Sussex County, by dividing 67.24 acres into 9 lots, and a waiver from the street construction requirements, located north of Road 390, 2,132 feet northeast of Road 390A.

Mr. Abbott advised the Commission that the final record plan is for 9 lots; that the Commission granted preliminary approval on July 25, 2002 for 9 lots; that the final record plan meets the requirements of the subdivision and zoning codes; that all agency approvals have been received; and that the final record plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve this application as a final.

Motion carried 5 – 0.

Subdivision #2002 – 26 - - application of **RICHARD BASHELOR AND DANIEL V. AND BONNIE J. BASHELOR** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 25.29 acres into 2 lots, a waiver from the street design requirements, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 579, 3,475 feet southwest of Road 527.

Mr. Abbott advised the Commission that the final record plan is for 2 lots; that the Commission granted preliminary approval on November 14, 2002 for 2 lots; that the final record plan meets the requirements of the subdivision and zoning codes; that all agency approvals have been received; and that the final record plan is suitable for final approval.

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

Motion carried 5 – 0.

OTHER BUSINESS

Race Street, L.L.C.
Multi-Family Site Plan – Nassau Road

Mr. Abbott advised the Commission that this is a site plan for a 3-story, 6-unit condominium; that the parcel is zoned C-1 General Commercial and contains 24,522 square feet; that the zoning code permits 6 units; that the Board of Adjustment granted variances for the setbacks; that 18 parking spaces are required and proposed; that central sewer will be provided by Sussex County and water will be on-site; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Louis S. and Beverly Lynn O'Day
3 Lots and a 50' Right of Way – Road 206

Mr. Abbott advised the Commission that this is a concept to create 3 lots with access off of a 50-foot right of way; that the owners propose to widen an existing farm lane to a 50-foot right of way and create 3 lots; that the lots will contain 2.78 acres, 2.77 acres, and 2.32 acres; that any further subdivision of the property will require a public hearing; and that the approval should be subject to the approval of the Department of Agriculture since the site is located on an approved Agricultural Preservation District.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the 3 lots and 50-foot right of way as a concept.

Motion carried 5 – 0.

Gull Point Trust
C/U #1393 Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the application was approved by the County Council on April 24, 2001; that the Commission granted a one-year time extension on March 21, 2002; that the zoning code permits the Commission the authority to grant up to 2 one-year extensions; and that this is the last extension that the Commission may grant.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to grant a one-year time extension.

Motion carried 5 – 0.

PUBLIC HEARINGS

C/Z #1497 - - application of **VILLAGE OF FIVE POINTS VENTURES, L.L.C.** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District-Residential Planned Community to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying 200 feet north of Route 9 (Savannah Road), and east of North Village Main and south of East First Street within the Village of Five Points, to be located on 4,410 square feet, more or less.

The Commission found that Robert Witsil, Jr., Attorney, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this rezoning is requested to make a technical correction of Ordinance No. 1377 adopted for The Village of Five Points; that DelDOT's taking of additional right-of-way along Route 9 altered the boundary of the original B-1 boundary; that his client purchased 9.0 acres to develop the shopping center and when the survey was performed it was found that the parcel contained less than 9.0 acres; that there will be no change in the density of the residential portion of the project; and that the rezoning requested includes an area measuring 14.5' by 304' containing 4,410 square feet.

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

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved based on the record and to correct the boundary.

Motion carried 5 – 0.

C/U #1488 - - application of **VAUGHN MELSON AND ALFRED MELSON** to consider the Conditional Use of Land in a MR Medium Density Residential District and a C-1 General Commercial District for multi-family dwelling structures (171 units), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 29.81 acres, more or less, lying east of Route 357 and across from Route 358.

The Commission found that the applicant had submitted an exhibit booklet prior to the meeting and that the booklet contained references to the consulting team working on the project, a data sheet on the proposed Conditional Use, a description of the location, references to water service, sanitary wastewater disposal, stormwater management, wetlands, utilities, regulatory comments from the Sussex County Engineering Department Planning and Permits Division, DelDOT, Sussex County Addressing, a Phase I Environmental Site Assessment, reference to the Cedar Neck Sanitary Sewer District, an endangered species investigation report, references to the Sussex Shores Water Company, references to an assessment of nutrient loading, references to a Federal 404 Wetlands Jurisdictional Determination, the preliminary site plan, examples of different residential building types and the community center, and a topographic survey drawing of the site.

The Commission found, based on comments received from the Office of State Planning Coordination, that some of the soils on the site are well-drained to excessively well-drained that have moderate limitations because of rapid permeability; that some of the soils are somewhat poorly-drained soils that have a watertable fluctuation range that spans the criteria for both hydric (wetland associated bottomlands) and non-hydric soils (uplands) and that development limitations are often dependent on the site-specific landscape position; that some poorly-drained wetlands associated hydric soils and some very poorly-drained wetlands associated hydric soils have severe limitations for development; that the applicant should be reminded that they should avoid construction/filling activities in those soils containing wetlands; that most of the wetlands appear to be tidal which are subject to DNREC regulations; that the area is more than 50% in the 100-year floodplain; that the State recommends that the residential areas be limited to those portions of the site which are outside of floodplains and wetlands; that construction of any wells will require well permits from the DNREC Water Supply Section; that the State Historic Preservation Office has noted that there is a National Registry listed archaeological site within the proposed project area and that there is a potential historic dwelling located south of the site; that the State asks that the County require the developer to work with the State Historic Preservation Office to determine the best way to avoid the archaeological site and provide landscape features on the south side of the project to help lessen the visual effect on the historic dwelling; that DelDOT is concerned about the ability of Cedar Neck Road to accommodate traffic generated by the project; that DelDOT is requiring other developers to improve Cedar Neck Road; that DelDOT anticipates requiring similar improvements for turning lanes and paved shoulders from this developer; that these improvements will be required along the site frontage and may be extended to provide a logical end to the improvements; that the States asks for the County's assistance in obtaining those improvements by including a requirement for those improvements in the terms of the Conditional Use approval; that DelDOT recommends that the improvements be completed prior the issuance of certificates of occupancy for any rental dwellings and before building permits for any

townhouses or condominiums; that the entrance to the site will be required to be opposite Sandy Cove Road and that an entrance permit is required; that DelDOT noted that there is a street, Territory Trail, being built within the Reservation Subdivision that will end at this project's north property line and that the County should require the developer to connect this project to Territory Trail; that the developer will be required to obtain an entrance permit from DelDOT for this connection; that the State has no objections to this development provided that the list of concerns are addressed by the developer; and that the State seeks the County's assistance in requiring the street improvements, the cooperation with the Historic Preservation Office and the interconnectivity as terms for the Conditional Use approval.

The Commission found that DelDOT comments were received and that their comments were reflected in the Office of State Planning Coordination comments.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that the system design assumption for the District considers a mixed use commercial at 6.67 units/acre and residential at 4.0 units/acre based on the zoning; that capacity is not available for the proposed 171 units; that there is capacity for 143 units; that construction of the District is scheduled to be completed by July 2004; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$2,159.00 per EDU; that parcel 21 is served with an eight-inch stub from Pump Station 176 and an eight-inch lateral from Road 357; that parcel 21.01 is served with an eight-inch stub from Manhole 87; and that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required.

The Commission found that Natural Resources Conservation Service comments were received and that their comments were reflected in the comments from the Office of State Planning Coordination.

The Commission found that the site was reviewed by the Technical Advisory Committee on March 19, 2003 and that comments were received from Sussex County Addressing, the DNREC Division of Water Resources, DelDOT, the Delaware State Fire Marshals Office, the Assistant County Attorney, the Sussex County Engineering Department Public Works Division, and the Sussex Conservation District. The Technical Advisory Committee report for March 19, 2003 is a part of the record for these proceedings.

The Commission found that Vaughn Melson was present with James Fuqua, Attorney, Jeff Clark of Land Tech, LLC, and Mike Rieman and Greg Moore of Becker-Morgan Group and that the presenters stated in their presentations and in response to questions raised by the Commission that they are applying for a Conditional Use for 171 units on

these parcels with mixed zoning of MR Medium Density Residential and C-1 General Commercial; that they propose to develop 105 multi-family units and 66 townhouse designed units; that all of the units will be sold as condominiums; that a mixture of housing types exist in the area; that several commercial/business uses exist in the area; that historically the parcels were farmed; that Parcel A contains 21.81 acres with MR zoning; that Parcel B contains 9.63 acres with C-1 zoning; that they have calculated Parcel A with a density of 4-units per acre and Parcel B with a density of 12-units per acre based on the zoning classification; that the applicant proposes to combine the parcels and to distribute the units over the entire parcel, rather than develop the parcels individually; that the area has continued to be developed based on the zoning classifications and the Comprehensive Plans; that the site is located within a Development District according to the 1997 Comprehensive Plan where development is suggested to take place; that the site conforms to the Strategies for State Policies and Spending document which suggests that development should take place; that the Office of State Planning Coordination has voiced no objections to the project; that the applicant would have no objections to the suggestion that the project interconnect with the Reservation Subdivision, but notes that the connection to Territory Trail, a street within the Reservation Subdivision, is blocked by a proposed County pump station; that the applicants have already agreed to the easement and pump station location with the County Engineering Department; that the project will be served with central water from Sussex Shores Water Company; that the project will be served with central sewer service from the County; that Verizon will provide telephone services; that Comcast will provide television cable services; that DelDOT did not require a traffic impact study; that they are not proposing to increase density; that the applicant has no objections to the suggested improvements that will be required by DelDOT; that a Phase I Environmental Assessment was performed and that it was found that there would be no negative impacts from development of the site; that an Endangered Species Investigation was performed and it was determined that there were no rare or endangered species found on the site; that State and Federal wetlands delineations were performed; that the project has been designed so that no encroachments of wetlands will occur; that no woodlands will be removed since they are all located within wetland areas; that adequate space is available on the site for stormwater management; that a nutrient loading assessment was performed and that it was found that since central sewer, central water, and stormwater management will be provided the development will significantly reduce nutrients; that the area has sufficient commercial/business uses to support the development; that a pool, pool house, community center and mail pavilions will be provided for the residents of the development; that a public golf course is located in close proximity and will provide an additional recreational use; that a multi-family project was recently approved across Route 357 at the Bethany Tennis facility; that the 66 townhouse units with attached garages will be contained within 10 buildings; that the 105 multi-family flats will be contained within 5 buildings; that sidewalks will be provided throughout the project; that enclosures will be provided for trash containers; that the stormwater management facility

will include a bio-filter system to the west of the proposed piped bridge crossing the site and an open pond to the east of the bridge; that the townhouse buildings next to the Reservation Subdivision have been designed so that the end of the building faces the Reservation Subdivision so that the neighbors in the Reservation do not have to look at a lengthy building wall; that the multi-family buildings are staggered throughout the project; that there is no intent proposed to disturb any wetlands or woodlands on the site; that the project will be served by one entrance onto Route 357; that the project is proposed to be phased over a three year period; that the closest existing multi-family units are Cedar Shores and Salt Pond.

The Commission found that Mr. Fuqua submitted a copy of the decision for Conditional Use #1360 for Raymond Michitti for multi-family use at the Bethany Tennis facility, a copy of the tax maps of the area depicting the zoning in the area, and some suggested conditions of approval.

The Commission found that the suggested conditions of approval included:

- a. The maximum number of residential units shall not exceed 171.
- 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, e.g. swimming pool & bath house, shall be constructed and open to use by residents within two (2) years of issuance of the first building permit.
- d. The development shall be served as part of the Sussex County Cedar Neck Sewer District.
- e. The Conditional Use 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. A 50' wide buffer shall be provided from State wetland line.
- 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 such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to

125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

- 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 a.m. to 7:00 p.m.
- l. Street names and addressing shall be approved by the Sussex County Addressing Department.

The Commission found that Jean Coggins and Bill Johnston spoke in opposition to the application and expressed concerns that notice of the public hearings was not received, traffic, the impact on the sewer system, traffic congestion, the number of units per building, the number of projects being built in the area, that the density should be reduced, the impact on wetlands, and construction activities.

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

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

Motion carried 5 – 0.

C/Z #1496 - - application of **PALISADES LAND, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying on both sides of Route 364, ½ mile southeast of Route 363 and on both sides of Route 364A, 2,000 feet south of Route 364, to be located on 354.17 acres, more or less.

The Commission found that the applicant had provided an exhibit book prior to the meeting and that the book contained location maps, development plans, a community summary, a planner's project description, a letter from the Office of State Planning Coordination, density calculations, community comparisons, a traffic impact statement summary, DelDOT's traffic impact study review letter, an intersection location map, a DNREC letter of feasibility, a system description, wastewater facility owner/operator information, an Applied Water Management brochure, a letter from Tidewater Utilities, an assessment of nutrient loadings, and a response to DNREC comments by Atlantic Resource Management, Inc.

The Commission found, based on comments received from the Office of State Planning Coordination dated March 24, 2003 and March 26, 2003, that the State first reviewed this project on December 18, 2002 and responded with a letter dated January 8, 2003 that

listed State agency concerns; that the Groundwater Discharges Section of DNREC has issued a favorable "Non-binding Statement of Feasibility" to the developer; that pretreatment of effluent will be required due to the volume of wastewater proposed to be discharged into the system; that projected flows for a development of this size is between 225,000 and 270,000 gallons per day; that the developers have indicated their intent to construct a wastewater treatment plant utilizing a Xeron membrane bio-reactor in order to provide a "high quality" effluent that meets or exceeds drinking water standards for all wastewater parameters including nitrogen; that areas have been identified as being provisionally suitable for the initial areas for the injection of this effluent through the use of a community drip irrigation system; that the site is being monitored for the duration and height of groundwater levels to address hydraulic mounding concerns for the groundwater under long-term wastewater application; that depending upon a clarification of the definition for a "central sewer system" in the County Code (Section 115-194) the requirements for the Conservation Zone may be imposed; that the permitting of system design and subsequent installation and operation shall be required to meet DNREC regulations; that the soil types vary and include somewhat well drained soils, moderately well drained soils, somewhat poorly drained soils, poorly drained soils, and very poorly drained soils; that the site includes wetlands associated hydric soils; that construction/filling activities in such areas are subject to Federal regulations; that tidal wetlands are subject to State regulations; that a Subaqueous Land Permit will be required for any activities in the tidal waterways that exist; that destruction and impacts on wetlands will make it harder for the State to maintain its current wetlands acreage and ecological balance; that strategies to replace destroyed wetlands with created wetlands may not adequately replace the nutrient uptake or retention, sediment retention, nutrient cycling, erosion/flood control, and wildlife/fish habitat to the same degree inherent in the natural wetland; that the cumulative effect of the project on wetland communities is of great concern; that the area is more than 50% in the 100-year floodplain; that much of the floodplain areas are also indicated as wetlands; that DNREC staff recommend that residential areas be limited to those portions of the site which are outside of floodplains and wetlands; that DNREC staff recommends that the developer attend a Joint Processing Meeting and that plans shall show the State regulated wetlands and Federal wetlands; that buffers should include contiguous areas around either the tidal or freshwater wetlands; that the developer needs to articulate and implement a strategy to maximize buffer areas, particularly areas adjacent to wetlands and waterbodies; that the on-going effort to establish Total Maximum Daily Loads for all watersheds suggests that buffers are essential in reducing nitrogen and phosphorus and other water quality parameters; that by minimizing the potential impact to the forested buffer along perennial streams and ditches a major pollution reduction strategy for the development could be achieved; that DNREC staff suggests that impacts including selective clearing of vegetation be avoided or minimized; that wetlands provide habitat and water quality benefits; that cutting of wetland vegetation will compromise the ecological health and integrity of the wetlands; that access for bikes and walkways through either scrub-shrub or forested wetlands will

have an adverse effect on the wetlands system; that walkways through wetlands should be avoided; that before the Corps. of Engineers can issue a Federal permit for any activity in wetlands, the developer must obtain a Water Quality Certificate from DNREC; that the developer will have to address the State's Surface Water Quality Standards since the site is adjacent to ERES Waters; that all tributaries of the Little Assawoman Bay, which includes Williams Creek, are classified as "Prohibited" for shellfish harvesting; that it is recommended that stormwater not be allowed to be discharged into any of the excavated ponds without consultation and approval from State agencies, including the Department of Agriculture and the State Nutrient Management Commission; that subsequent discharge from these ponds to waters of the State must meet water quality parameters for ERES Waters; that the developer should be cognizant of potential conflicts with any water wells (e.g. public or domestic) or surface water bodies; that ground-water monitoring will most likely be required for any large wastewater systems for this project; that specific requirements such as number of monitoring wells, frequency of monitoring, and analytic schedule will be determined by DNREC; that by increasing the amount of impervious surface the amount of recharge to the ground-water system decreases; that by decreasing the freshwater recharge to the area, existing ground-water heads will lower with time and will therefore increase the potential for saltwater contamination to the aquifers; that guidelines used elsewhere in Delaware limit impervious cover to 20% with 10% preferred; that DNREC records indicate that the project area is not located within a public water service area; that all public use water wells within a housing development, subdivision, or strip development recorded on or after April 6, 1997 shall be located at least one hundred fifty feet within the projects outermost property lines; that should well pointing (dewatering) be needed during any phase of the construction, dewatering permits must be obtained before the points are installed; that this project contains lands identified as part of the Inland Bays State Resource Area; that the Resource Area is relatively small and located along the northern boundary of the parcel and would not normally be of great concern, however, the project is adjacent to the Assawoman Pond Natural Area which contains several State rare plants and the only known population of Hirst's Panic Grass, a globally rare grass species that is known from only a few other sites in the United States; that this development has the potential to alter the hydrology of the area and negatively impact these species; that the site also encompasses approximately 180 acres of forest, the vast majority of which is forested wetland; that destruction of 100 acres of these forest will severely fragment the forest, greatly diminishing its value to the host of forest dwelling plant and animal species; that loss of this forest, even without factoring in the increased impacts from the 750 homes, will also contribute to the continued degradation of water quality of the Inland Bays; that there are no known historic resources within the boundaries of the project; that there is a 75% probability for prehistoric resources; that the State would like to emphasize the importance of unmarked human burials and make the developers aware of the Delaware "Unmarked Human Remains Act"; that there are several marked cemeteries around the perimeter of the site, creating a high probability of other, possibly unknown, cemeteries or burials within the

project area; that there are some possible historic structures around the boundaries of the proposed development, with the closest two being just east and west of the project on Camp Barnes Road; that landscaping on these edges of the project will help buffer these potential historic properties from any harmful visual effects; that the State asks that the County require the developer to address DelDOT's issues regarding this project; that the State does have concerns regarding this project; that the State has been working with the developers to address these issues; that there are still pending issues; and that the State looks forward to the developers continued cooperation to address these issues; that the March 26, 2003 comments included that hydric soils, vegetation and hydrology are characteristics that indicate the presence of wetlands; that the March 24, 2003 letter had an error in reference to 50% of the site being in a floodplain; that approximately 20 or 30 percent of the site is within a floodplain; and that the State still recommends that residential structures be limited to areas outside of the floodplain.

The Commission found, based on comments received from the DNREC Division of Water Resources, that the Division has worked with the applicants and are impressed with their approach and commitment to providing a superior wastewater treatment and disposal system that would not just meet minimum standards but to exceed the standards and become a model for wastewater reuse and recycling in Delaware; that the amount of soils, hydro-geological, and engineering work that has occurred on this project has satisfied the Division to the point that the Division issued a non-binding statement of feasibility on November 22, 2002; that this statement is issued when it has been demonstrated that there is sufficient area for wastewater disposal; that the project will likely get a permit which will be based on certain site characteristics and technical limits which is part of the next phase in the permitting process; that the project will use advanced treatment technology at a level higher than is the minimum required by DNREC regulations; that after treatment, it will dispose of the highly treated effluent in the initial phases of the development in approved wastewater management zones utilizing micro (drip) irrigation; that depending on the additional modeling and groundwater studies, the final build-out of the development may elect to use the effluent as a resource to irrigate all the common areas and some residential lands in the development; that the developer also proposes to provide a secondary wastewater zone; that the Division finds this technical approach to be innovative and very much consistent with the Division's mission of reusing and conserving out valuable water resources; that the Division expects this project to be successful and if so, encourage the developers to allow the Division to showcase the project to other prospective wastewater project applicants as a type of system that we would encourage in Delaware as part of our statewide effort to address elevated nutrient levels in our surface and ground waters; that DNREC is also encouraged to see the assembly of a strong wastewater management team that proposes a design/build/ownership utility formation; that wastewater regulations require the creation of a "trust indenture" as a way to provide a higher degree of financial surety to a private utility; that the proposed parties in this trust indenture are enterprises that have

established track records and the apparent financial wherewithal to successfully address operational and management problems for the proposed wastewater treatment facility; and that concerns about failure of other projects appears to have been alleviated by the management team assembled for this project.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed project has complex streets, bridges, drainage, stormwater management and sanitary sewer systems and should be reviewed by the Technical Advisory Committee; that all streets and roads should be subject to plan review and inspection by the County; that paving sections should be increased to provide curbing, two paving courses and utilize a closed pipe drainage system as the intensity of multi-family building construction often damages the initial course of paving and finished grades of earthwork and drainage swales; that all bridges must be designed and constructed to meet American Association of State Highway & Transportation Officials HS-20 Loading; that a Geotechnical Report, certified by a licensed Delaware Professional Engineer, must accompany the construction plans; that sidewalks and streetlights should be required to provide lighted pedestrian access to amenity and community areas; that the minimum single lane pavement width adjacent to any building unit should be limited to 15 feet to provide adequate street width for the operation of volunteer fire department vehicles; that the project is located in a poorly drained area; that the plan should adequately address any tax ditch and wetlands concerning adjacent construction and/or filling of the ditches and should be required to not adversely impact the drainage of adjacent properties; that stormwater management areas should not be located upon private property/lots; that all stormwater management ponds and other areas designed for community drainage features should be located on community property; that the developer should address wetlands permitting, flood plain locations, and other issues concerning the proximity to creeks and waterways; that a comprehensive topographic map should be required showing existing site features; that the collection and transmission lines for the wastewater treatment facility should be designed and constructed to Ordinance #38 standards and specifications; and that there should be a condition attached that when Sussex County sewer becomes available, the treatment plant should be abandoned and the system connected to the County sewer at the operator/owners expense.

The Commission found, based on comments received from the Sussex Conservation District, that there appear to be eleven (11) soil types on the site; that the suitability of the soil types for development vary from slight limitations to severe limitations; that the developers will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of construction; that seven (7) of the soil types are considered of Statewide Importance; that four (4) of the soil types are considered Prime Farmland; that nine (9) of the soil types are

considered Hydric in small depressions, Hydric in depressions, or Hydric; that no storm flood hazard areas are affected; that there are tax ditches throughout the site; and that off-site and on-site drainage improvements will be necessary due to the poorly drained to very poorly drained soils on the site and the increased storm runoff.

The Commission found that the applicant had provided a corrected page for "Project Comparisons" for their review.

The Commission found that a letter had been received from David Kramer expressing his concerns about the amount of land being rezoned and stating that the Commission should forestall or negate the application in order that this large area remain as presently zoned, and that if the rezoning is approved he request that the road improvements be made, at the cost of the developer, to Camp Barnes Road and Miller Neck Road to be able to handle traffic from the project; that at least 60% of all housing units be single family detached units with the remaining housing units being a mix of attached town homes and duplex homes; that the proposed subdivision should hook up to the County sewer treatment system and that no gray water should be allowed to further pollute the Dirickson Creek Watershed; that we need to keep a watchful eye on the use and protection of our open and forested lands; that wildlife homes and ranges must be protected; and that open and forested lands should not be subjected to unparalleled growth.

The Commission found that Robert Harris, developer, Mark Dunkle, Attorney, Bill Chamberlain and Steve Engel of Vista Design Group, Lisa Wood of Atlantic Resources, Inc., Mark Strauss of Applied Water Management, and Gerald Esposito of Tidewater Utilities, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the application meets the goals of the Environmentally Sensitive Developing Area of the 2002 Comprehensive Plan Update; that the project has positive environmental impacts; that the project is located in a Development District according to the 1997 Comprehensive Plan and an Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update; that the project offers 186.35 acres of open space containing recreational centers, ponds, wetlands, parks and greenways; that the units and lots occupy approximately 132 acres of area; that they propose 1.2 acres of commercial for a destination restaurant; that they only propose to clear 17% of the wooded areas; that they propose 233 single family lots, 202 duplex units, 251 townhouses, and 64 condominium units; that a walkable/liveable community is proposed; that they have no plans on disturbing any wetlands; that approximately 2 miles of hiking/biking trails are proposed; that high density areas are proposed to be located in existing open areas to reduce the amount of woodland disturbance; that the site will be improved with stormwater management ponds; that the primary access points are from the proposed roundabout; that indoor and

outdoor pools, tennis courts, and playgrounds are proposed; that the wastewater facility is proposed to be located on the most suitable soils for treatment; that the density suggested by the 1997 Comprehensive Plan would permit in excess of 1,000 units; that the 2002 Comprehensive Plan Update would permit in excess of 710 units; that they have met with the Tax Ditch Authority and that they will not be disturbing any tax ditches; that they propose subsurface drip irrigation of the treated effluent which will be reused and recycled; that they anticipate a 5% reduction in nitrogen and an 85% reduction in phosphorous; that TMDLs have not been established for this watershed; that Best Management Practices will be incorporated into the maintenance of the site; that only 15 acres of wetlands exist on the site and that the wetlands will be preserved; that no endangered species have been identified on the site; that the site is adjacent to the Assawoman Wildlife Area and that there should be no negative impact on the Wildlife Area; that Delmarva Fox Squirrels have been released in the area and that no such squirrels have been found on the site; that approximately 175 test borings and test pits have been completed on the site; that the drip irrigation is similar to lawn sprinklers; that the irrigation will be installed by the developer; that deed restrictions will be created to control lawn fertilizer management controls; that a management/operation company will manage the project as a utility; that grasses will be harvested from the irrigation sites; that the wastewater management facility must be designed to meet DNREC requirements; that the project will be required to have bonds and escrow accounts per DNREC requirements; that annual budgets and reports will be required; that escrow monies will be utilized for maintenance and repair only if authorized by DNREC; that Tidewater Utilities, Inc. will be the full service water provider and contract operator of the wastewater treatment system; that the net density has been calculated to be 2.6 units per acre; that a traffic impact study was performed and that no major improvements have been required by DelDOT; that a roundabout is proposed for traffic calming on Camp Barnes Road; that there should be no negative impact on Millers Neck Road; that the developers will make all improvements required by DelDOT; that only six (6) homes are proposed within the AE Floodplain and that the homes will be located to conform to all buffer requirements; that they propose to create a match of the fee collected by the County on building permits to the local fire companies; that they propose a community shuttle bus for access to the beach and shopping areas; that homeowners association fees will pay for future maintenance of streets, lighting, etc.; that security will be provided for the project; that Indian River School District representatives have advised them that there are no anticipated impacts on the District; that the State Police have advised them that there is adequate police protection for the area; that County sewer is not yet available for the area; that the Miller Creek proposed sanitary sewer district is within 0.5 mile of the site; that they will build the sewer infrastructure to County Ordinance #38 standards; that inspection fees will be paid; that they will connect to the County sewer when it becomes available; that the prices of the proposed homes will range from \$100,000 to \$500,000; that it is anticipated that most of the buyers will be from the second home market; that they anticipate development of the project over a 4 to 5 year period; that the project will

be an economic benefit to the County based on transfer taxes, fees, inspection fees, and collection charges; and that the project meets the intent of a RPC.

The Commission found that Mr. Dunkle submitted some suggested conditions and that the conditions include the following:

- 1) The maximum number of residential units shall not exceed 750 comprised as follows:
 - A) No fewer than 233 single family lots.
 - B) No more than 202 duplex lots.
 - C) No more than 251 townhouses.
 - D) No more than 64 multi-family condominiums or apartments.
- 2) Commercial use shall not exceed 4,000 square feet of dining area and 2,000 square feet of storage, food preparation, and office.
- 3) Residential Certificates of Occupancy shall not exceed 200 per year cumulatively commencing with Council approval.
- 4) All entrance and off-site improvements recommended by DelDOT shall be completed in accordance with DelDOT's letter dated January 29, 2003.
- 5) The development will operate a community shuttle service to shopping areas and beaches and shall be operational within 2 years of the first certificate of occupancy.
- 6) Within one (1) year of approval of the master plan, the applicant shall coordinate with the State, County, and other local emergency planning offices in the development and implementation of an emergency evacuation procedure for the project.
- 7) The community shall be served by a central wastewater plant approved by DNREC and located in the area of the site as shown on the development plan. The sewer collection system will be installed and inspected in accordance with Sussex County Ordinance 38.
- 8) The community will be served by a central water system providing adequate drinking water and fire protection service as required by the State Health Department and the State Fire Marshal. The plant and storage, if required, will be located in the vicinity of the community wastewater plant.
- 9) Site plan approval for each phase will be subject to approval by the Planning and Zoning Commission.
- 10) The interior street design shall be in accordance with or exceed Sussex County street design standards.
- 11) State and Federal wetlands shall not be included within the boundaries of any lot.
- 12) The amenities, including pools, community center, and one tennis court shall be completed within 18 months of the issuance of the first certificate of occupancy. Any other amenities will be completed within 36 months of the first certificate of occupancy. Play areas will be constructed along with the phase that contains them.

- 13) No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.
- 14) The applicant will subsidize the Millville Volunteer Fire Department and the Roxana Volunteer Fire Department in the amount of \$300 per home at the time of settlement of a lot or residence to a final user.
- 15) Road naming shall be subject to review and approval by the Sussex County Addressing Department.

The Commission found that Paul Weber, Richard Groble, Mark Jansen, Kevin Lynch, Richard D'onfrio, Christine Griswell, Bill Zinzer, Janice Riley, Sandy Poole, and Rob Gonell of the 21 people present in opposition to the application expressed concerns about the sewer facility, the clay subsurfaces of the area, the closeness of the irrigation to homes, the poor drainage of the area, the lack of quality roads to serve the area, stormwater management, the impact on water quality and quantity, the shallowness of existing ground water, connection to a County sewer district, loss of critical habitat, the impact on the inland bays, the over development of the area, the loss of forest lands, traffic, the size of the treatment buildings, concerns for walkers and cyclist that travel the roads in the area, the impact on farming operations in the area, the impact on private wells, the lack of public services in the area, that multi-family uses are not compatible with the development trend in the area, traffic accidents and hazards, that the project will change the character of the area, and that a greenway is not a greenway with houses laid out on it.

The Commission found that representatives of the project responded that all ponds will be completed per Sussex Conservation District standards; that the wastewater treatment facility is designed to be operational year round; that the water table varies from 12" to 72" below grade on the site; that the single story wastewater treatment building will have an agricultural design and measure approximately 100' by 120' and will be located approximately 800 feet from a roadway; that this type of wastewater treatment facility has not been done in Delaware but has been done in other states; that the Miller Creek Sanitary Sewer District is not anticipated to be built until the year 2008; and that the

developers have offered to build this project to County specifications so that it can be connected to a County sewer system when available.

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

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

Motion carried 5 – 0.

Meeting adjourned at 11:10 pm.