

MINUTES OF THE REGULAR MEETING OF APRIL 10, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 10, 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, Mr. Abbott – Assistant Director, and Mr. Kautz, Land Use Planner.

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

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

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

PUBLIC HEARINGS

C/U #1489 – application of **REHOBOTH HOME BUILDERS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (52 units), to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 13.0 acres, more or less, lying 600 feet southwest of Route One and Route 276.

The Commission found that the applicant's had submitted prior to the meeting an exhibit booklet in reference to this application and that the booklet contains a data summary, a tax map, a DelDOT letter, a Sussex County Engineering letter, an Office of State Planning Coordination letter, a letter from Environmental Resources, Inc., a copy of a conservation easement, Planning and Zoning Minutes for Conditional Use #1434 for Grady, Inc., a copy of the Sussex County Council decision for Conditional Use #1434, and proposed conditions of approval.

The Commission found, based on comments received from DelDOT, that the Department has granted approval of the entrance plan and the connector road with Eagle Point (Conditional Use #1434) acknowledging that the Eagle Point project contained 68 units and that this project is a 52 unit expansion to the Eagle Point project.

The Commission found, based on comments received from Sussex Conservation District, that the soils on the site are Borrow, Rumford loamy sand, and Sassafras sandy loam; that the Rumford and Sassafras soils have slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Rumford soils are of Statewide

Importance; that the Sassafras soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that the State would like the County to consider the following agency comments: 1) The State Historic Preservation Office has noted that there is a medium potential for prehistoric archaeological sites within the parcel. If any archaeological sites exist there could be adverse effects. The developer should contact the Office to discuss ways to avoid any archaeological sites in the area. 2) According to the State DNREC there are five (5) inactive Leaking Underground Storage Tank sites located near the project. Should any petroleum contaminated soil be discovered during construction the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However should any unanticipated contamination be encountered and PVC pipe is being utilized it will need to be changed to ductile steel in the contaminated areas.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located within the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that wastewater capacity is available for this project; that Ordinance No. 38 construction shall be required; that the current System Connection Charge Rate is \$2,954.00 per EDU; that a connection point for future expansion was provided in the System serving the Home Depot site; that an extension of that system to serve the additional project on the parcel is required; and that conformity to the West Rehoboth Expansion Area Planning Study will be required.

The Commission found that a letter was received from Toni Odds in opposition to this project and several other projects in the area.

The Commission found that James Fuqua, Attorney, and Chuck Houser of Davis, Bowen & Friedel, Inc. were present on behalf of the applicants and stated in their presentations and in response to questions raised by the Commission that they are proposing a Conditional Use for 52 multi-family units behind the Home Depot facility; that C-1 General Commercial zoning is mapped to a point 600-feet from and parallel to Route One; that a conservation easement exists on the residual lands of the property; that the site is located within a mixed use area of commercial and residential uses; that this application is an extension to the Eagle Point project that contains 68 units; that the Eagle Point project was approved by County Council in April 2002 at approximately 4-units per acre; that the entrance to the site is from Route 276 (Shady Road) through Eagle Point; that this project will use the same restrictions as Eagle Point; that DelDOT has approved

the entrance and connector road; that the 52 units will be located within 13 buildings; that sidewalks will be provided; that adequate space exists for stormwater management; that wastewater capacity is available for the project; that Tidewater Utilities will provide water services; that no wetlands exists on the site; that the Developer will comply with all agency requirements; that the Office of State Planning Coordination has voiced no objections to the project; that the project is located within a developing area according to the 1997 Comprehensive Plan, the 2002 Comprehensive Plan Update, and the Strategies for State Policies and Spending; that the project will be an economic benefit to the County through taxation and fees; that the site is appropriate for multi-family use since multi-family and commercial uses are adjacent; that the findings of the County Council for C/U #1434 included: that the proposed development's location is appropriate for multi-family use; that the proposed development is in accordance with the 1997 Comprehensive Plan in that it is located in the designated Development District where future growth is directed under the Plan; that the site is located in an area presently served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and sufficient EDU capacity is available to serve the development; that the site is located in an area served by central water provided by Tidewater Utilities, which is a public utility regulated by the Public Service Commission, and Tidewater has verified that sufficient supply exists to serve the site without adverse impact on adjoining properties; that adjacent and nearby properties are presently developed with extensive commercial, recreational, and residential uses, including the multi-family residential developments known as Plantations East and West; that the development is consistent with the housing element and community design element of the Plan in that it will provide housing for permanent residents, second homeowners, and retirees to serve the existing and projected demand for housing in the area; that the proposed number of units are less than the number permitted by the Plan, which states that with public sewer 12 units per acre are permitted for multi-family housing; that the Plan recognizes that higher residential density is appropriate for sites located in the Development District in order to obtain the Plan's goal of preserving agricultural areas by concentrating development in the Development District where planned growth is expected to occur; that the site is in a developing area and is consistent with development patterns recognized in the Strategies for State Policies and Spending document and is located in a multi-modal investment area under DelDOT's Statewide Long-Range Transportation Plan; that the site is consistent with the Plan's future land use map' that adequate fire and police protection is available nearby; that the development is consistent with the historical trend of development in the area and with the intended plan for future development as stated in the Plan; that since adequate central water from Tidewater Utilities, Inc., and public sewer from the County are available, there will be no adverse impact on nearby properties, and the cost of extending the sewer system to the development will be paid for by the developer; that adequate utility services, schools, medical facilities, and shopping areas are available near the site; that the development will provide a substantial direct economic impact to the County in terms of jobs in the construction and real estate industries, sewer fees and

usage charges, building permit and review fees, transfer taxes, property taxes, and school taxes, and will provide a substantial secondary economic impact to area businesses through future building and grounds maintenance; and that there will be no adverse environmental impact through the discharge of stormwater off-site, in that all stormwater management will be located within the development site and will be designed in full compliance with the requirements of all State and County agencies; that a home owners association will be set up after 75% of the units have settled; that this project is an extension to Eagle Point Phase I; that sidewalks will be located on both sides of the streets; and that the borrow pit is not located on the site, but immediately adjacent to the site on the southwesterly side.

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. Gordy, and carried unanimously to defer action.

Motion carried 5 – 0.

C/U #1490 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an elevated water storage tank for a public utility, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.55 acre, more or less, lying 800 feet south of Route One (behind the site of the Home Depot).

The Commission found that the applicants provided an exhibit booklet of information in reference to this application and that the booklet included a tax map of the area, a structural stability report, vulnerability assessment report, and a height memorandum, photo illustrations of a tank on the site, a letter from the Office of State Planning Coordination, a letter from the Office of Drinking Water of Delaware Health and Social Services, a letter from the Lewes Fire Department, Inc., a fact sheet of improvements by Tidewater Utilities, Inc., a copy of the Minutes for Conditional Use #1336 for Tidewater Utilities, Inc. at a Midway site, proposed conditions of approval, and a map of locations of other water towers in the area.

The Commission found that the applicants had also provided copies of letters of support for the water utility from Lewes Fire Department, Inc., Delaware Health and Social Services, American Cedar Millwork, Colonial East, Ltd., Briarwood, Hampton Inn, R. Craig Hudson, Delaware Cedar, Savannah East, Beebe Dialysis Center, Camelot Mobile Home Park, Sleep Inn, Water Still South, The Heritage Inn and Golf Club, East Atlantic, and Maplewood Homeowners Association.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Sassafras sandy loam which has slight limitations for development; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that the State would like the County to consider the following agency comments: 1) The State Historic Preservation Office has noted that there is a medium potential for prehistoric archaeological sites within the parcel. If any archaeological sites exist there could be adverse effects. The developer should contact the Office to discuss ways to avoid any archaeological sites in the area. 2) According to the State DNREC there are five (5) inactive Leaking Underground Storage Tank sites located near the project. Should any petroleum contaminated soil be discovered during construction the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However should any unanticipated contamination be encountered and PVC pipe is being utilized it will need to be changed to ductile steel in the contaminated areas. 3) Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation. 4) If access to this property is through the proposed expansion of the Eagle Point townhouse development, a separate access permit would not be necessary; however, if direct access to Route One or another state-maintained road is contemplated, the applicant will need to contact DelDOT.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that wastewater capacity is available for up to 3 EDUs; that this should be adequate for the proposed use; that if more capacity is required, additional information should be provided and a capacity review completed before approval; that initial and on-going water testing and approval Water/Wastewater Operations is required before discharge of backwash water to the sewer system can occur; that Ordinance No. 38 construction will be required if sewer service is required; that the current System Connection Charge Rate is \$2,954.00 per EDU; that the parcel is not currently served with a sewer lateral; that if the proposed use requires a sewer connection, an extension of an existing Ordinance No. 38 sewer collection system that serves other parts of the parcel is required; and that conformity to the West Rehoboth Area Planning Study will be required.

The Commission found that a letter was received from Toni Odds in opposition to this project and several other projects in the area.

The Commission found that Gerald Esposito of Tidewater Utilities, Inc. was present with James Fuqua, Attorney, and Chuck Houser of Davis, Bowen & Friedel, Inc. and that the representatives of the application stated in their presentations and in response to questions raised by the Commission that this application is adjacent to the Eagle Point II (C/U #1489) application site and Home Depot; that they would like the record of their testimony on C/U #1489 to be incorporated into the record for this public hearing; that Tidewater service area covers the area between Bay Vista to the south and Red Mill Pond to the north; that Tidewater does not have any elevated water storage tanks in the area; that a single column tower is proposed; that security lighting and FAA required lighting will be installed; that the tower will be painted a sky neutral color; that the only lettering on the tower will reference Tidewater Utilities; that the area around the base of the tower will be fenced and gated; that the tower will meet or exceed design requirements of AWWA-D100-96 industry standards of the American Waterworks; that operations will conform to the Vulnerability Assessment requirements to comply with Federal regulations; that there are no plans to install wells on the site; that once erected and operational there will be minimal traffic to the site; that State, County and local fire companies may erect communication antennas on the tower; that the tower is being designed to contain 750,000 gallons of water; that the tower will be 150-feet tall; that several water tower exists in the area and referenced Georgetown, Milton, Lewes, Rehoboth Beach, and Dewey Beach; that a previous application was rejected in the Midway area due to opposition and since the site was adjacent to residential homes; that during the public hearing process it was suggested that the site should be located in an area where development was just being started; that this site is centrally located between C-1 uses and a proposed development; that the site is located in a concentrated developing area where infrastructure is needed based on the 1997 Comprehensive Plan and the Strategies for State Policies and Spending document; that the Delaware Division of Public Health and the Lewes Fire Department support the application; that the closest well fields owned by Tidewater are located at the entrance to Rolling Meadows Subdivision to the south of the site; that Tidewater has 13 wells within the service area that are interconnected; that the tower will be approximately 100-feet from the nearest townhouse in the proposed development of Eagle Point II; that the tank will be capable of providing water for 24 hours during emergencies and have less chance of being tampered with than reservoirs; that a geo-technical report has been prepared to verify that the site can support the tower; that pilings will be embedded 50 to 80 feet below grade to provide foundation to the tower; and that the site plan references a future water treatment facility, which is a block building which has electric submersible pumps below the ground level.

The Commission found that Mr. Fuqua submitted a map showing the location of water towers in the area and a copy of the geo-technical report from John D. Hynes & Associates, Inc. for the record.

The Commission found that Mr. Fuqua referenced suggested conditions of approval that were included in the exhibit booklet and that the suggested conditions included: 1) Maximum capacity of the tower shall be 750,000 gallons. 2) Maximum height of tower shall be 150 feet. 3) Lighting at the tower shall be limited to normal security lights and safety lights required by the F.A.A. on the tower. 4) The tower shall be painted a sky neutral color and lettering shall be limited to identification of the water company "Tidewater Utilities, Inc.". 5) The tower shall be surrounded by a security fence at least six (6) feet in height. 6) Structural design of the water tower shall comply at a minimum with a WWA/standard D 100-96. 7) Applicant has offered to allow placement of antenna on the tower by the State, County, and area fire companies at no charge. 8) Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

The Commission found that Vincent Attalia of Rehoboth Beach Yacht and Country Club spoke in support of the application and questioned what the cost of the tower might be.

The Commission found that Mr. Esposito stated that the project is estimated to cost approximately \$1,000,000.00.

The Commission found that Pat Torelli, Vice President of the Citizens Coalition, Inc. submitted and read comments in opposition to the application. The comments included references that the tower would have a negative impact on the natural skyline of the community; that a tower is not the only way to deliver water to the area; that ground level tanks and well pumping are other ways that water companies serve communities and are reliable and used widely; that due to the national concerns for terrorist targets and concerns for maintaining secure water sources, the wisdom of erecting a highly visible tower in these times is questionable; that if the tower is approved, they wonder how many more towers are planned by Tidewater and where are they proposed; that a comprehensive water resource plan that identifies future growth and long-range planning should be required; that the tower should be no higher than absolutely necessary; that County Engineers should review the tower as to its size and scope; that the height of the tower should not interfere with the tree line; that it is important that persons purchasing homes in the nearby communities being built should be informed of the tower; that the Home Depot tank should be removed; that the Tidewater tank should be used for fire emergency water; and that the Coalition believes that the area is being served satisfactorily by Tidewater especially in view of the fact that not one application for new development has been refused to be served by Tidewater.

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

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

- 1) The maximum capacity of the tower shall be 750,000 gallons.
- 2) The maximum height of the tower shall be 150 feet.
- 3) Lighting at the tower shall be limited to normal security lights and safety lights required by the F.A.A. on the tower.
- 4) The tower shall be painted a sky neutral color and lettering shall be limited to identification of the water company "Tidewater Utilities, Inc.".
- 5) The tower shall be surrounded by a security fence at least six (6) feet in height.
- 6) Structural design of the water tower shall comply at a minimum with a WWA/standard D 100-96.
- 7) Applicant has offered to allow placement of antenna on the tower by the State, County, and area fire companies at no charge.
- 8) Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

Motion carried 5 – 0.

SUBDIVISION #2002-42 – application of **WOLFE PROPERTIES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 59.09 acres into 54 lots, located east of Road 453, 700 feet south of Road 452.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of January 15, 2003 will be made a part of the record for this application.

The Commission found, based on comments received from the Natural Resources Conservation Service, that the soils mapped on site are Evesboro, Fallsington, Kenansville, and Woodstown soils; and that these soils have slight to severe limitations for the intended use.

Mr. Abbott advised the Commission that this application was a prior application (Subdiv. #99 – 21) and received preliminary approval on October 28, 1999; that the Commission granted one-year time extensions on November 2, 2000 and October 25, 2001; that the Commission denied a time extension on October 10, 2002; and denied a reconsideration of their decision of October 10, 2002 on November 14, 2002; and at this time, the Sussex County Engineering Department Division of Public Works still has not granted their approval.

The Commission found that Charles Adams, surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the County Engineering Department has reviewed the construction plans three times; that they have not met with the engineering department on this application; that this application is the same as the previous application; that they have to address some issues with the County Engineering Department to obtain their approval; and at this time the applicant is ready to go forward with the application.

The Commission found that no parties appeared with any interest to this application.

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

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

Motion carried 5 – 0.

SUBDIVISION #2002-43 – application of **BOCA EAST, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 258.11 acres into 180 lots, located east of Road 279, 0.9 mile southeast of Road 277.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of January 15, 2003 will be made a part of the record for this application.

The Commission found that the applicants provided an exhibit booklet of information in reference to this application and that the booklet included a project summary and subdivision application, a deed to Boca East dated February 4, 1985, an aerial photograph of the site, LUPA Agencies correspondence, Technical Advisory Committee comments, Secondary Road Comparison Study, Planning and Zoning Commission Recommendation of Denial dated June 13, 2002 (re: C/Z 1468 – Boca East Assisted Living RPC), and Planning and Zoning Commission letter of November 25, 2002 confirming preliminary approval of Middle Creek Estates, Subdivision #2002 – 24.

Mr. Abbott advised the Commission that letters of opposition have been received from The Angola Neck Natural Areas Preservation Group, Til Purnell, and Tone Odds and that the three letters will be made a part of the record for this application.

The Commission found that James Fuqua, Attorney, Jim and Jimmy Horthy, developers, Gerald Esposito of Tidewater Utilities, Preston Lee, Engineer, and David Jamison, traffic consultant 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 located on the east side of Road 279; that the Agricultural Residential District permits low density single family

lots; that the proposed subdivision is a permitted use under Subsection 115-20 of the Code of Sussex County; that the proposed use does not require a change of zone; that the minimum lot size is 20,000 square feet; that the development has two proposed entrances; that the application is for 180 lots on 285 acres; that the net density is 1.27 lots per acre; that central water will be provided by Tidewater Utilities; that central sewer will be utilized with a spray irrigation lagoon system built to Sussex County Ordinance No. 38 requirements; that the sewer system is permitted at Subsections 99-29 and 115-25 as defined at 115-194A of the Code of Sussex County; that no drain field is proposed; that the Land Use Plan permits central sewer systems; that the sewer system will be located at the northwest corner of the property; that this area will be cleared and planted in hay; that the engineer has addressed the concerns raised in the previous rezoning application for the site; that the sewer system will be the same as the one in use at the Plantations development on Road 275 and the one used by the County at the Wolfe Neck sewer district; referenced Exhibit D and the Bagley letter in the information booklet; that the proposed sewer system is different from the one that is failing at the Woods on Herring Creek Subdivision; that the project will meet or exceed all County and State stormwater management regulations; that 9 stormwater management ponds are proposed and will utilize a bio-retention swale system; that the site contains 116 acres of wetlands and that no wetlands are located on the proposed lots; that there will be a 50 foot buffer from all State wetlands; that there may be a bridge over the wetlands to connect the two parcels with a possible walkway and that they are regulated by DNREC; that no boat launching or boat docks are proposed for the project; that the streets will be private with sidewalks and swales proposed; that street lighting is proposed; that there will be a foot path for walking throughout the development; that the subdivision will create a positive economic impact to the County; that fire protection will be provided by the substation shared by the Lewes and Rehoboth Beach Fire Departments; that the site is located in a development district based on the Land Use Plan and the State's Strategies Map; that there are recreational uses in the area such as golf courses and beaches; that the permitted density could be 2.17 lots per acre; that the previous rezoning application was for 508 assisted living units with amenities; that the last application was denied since the County thought there were too many units proposed and that it was out of character with the area; that this application is the same as what is existing in the area; that the opposition stated in the previous application that Camp Arrowhead road has emergency vehicles and construction vehicles that use this road and that there are traffic safety concerns; that DelDOT responded in a June 2002 letter that there are not any concerns with the road; that the road is not a safety hazard; that DelDOT plans to do upgrades to the area in the future; that a State employee made negative comments about the previous application which he was not authorized to make based on letters received from DNREC; that DNREC did an on site inspection of the site and did not find anything to be negative; that the spray irrigation system will meet or exceed all of DNREC's requirements; that the State could manage the wetlands through an agreement with the developer and the State; that the site is a wooded site and the developers will preserve all of the mature trees; that there will be

selective clearing of the site; that the applicants submitted a copy of the tax map of the area showing all of the single family developments in the area; that the site is east of a 120 lot single family subdivision that the Commission granted preliminary approval for in November of 2002; that the 120 lot subdivision was approved for a spray irrigation system also; that the Angola Neck Preservation Group wants the State to purchase the site; that the State has not indicated a desire to purchase the property; that the site was reviewed by the Open Space Council in December 2002 and they advised that they are not interested in purchasing the property; that the bridge that crosses the wetlands will be a wooden bridge similar to the ones in other developments; that the bridge will meet the requirements of the Army Corps of Engineers, DNREC, Fire Marshal Office and County Engineering Office; that the project will be phased and the number of units per year will be market driven; that the sewer will be pumped to a central area and that irrigation will take place in a central location; that no swimming pool is proposed; that some lots are greater than 30,000 square feet; that there will be a 50 foot wooded buffer from the lots and spray irrigation system; that there will not be any odors from the lagoons; that the lagoons are treated; that spray irrigation systems are better than drip systems; that the two entrances to the site are approximately 600 feet apart; and submitted a letter from John Hughes, Secretary of DNREC, copies of the subdivision code; a letter referencing sediment and stormwater management, and proposed findings of fact for approval for this application.

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

The Commission found, by a show of hands, that 33 people were present in opposition to this application and that Chuck Davidson, representing the Woods on Herring Creek, Charles Marsch, representing the Delaware Manufactured Home Owner's Association, Paul and Judy Mangini of Angola Neck Park, Michael Tyler and Pat Torelli representing the Citizens Coalition, Jeff Cunnyflower, William Payne, Phyllis King and Vince Caine all spoke in opposition referencing the central sewer system in the Woods on Herring Creek is a failing system and submitted pictures of the system; that the site is the last open space area in the area that could be preserved as a park for the community; that Camp Arrowhead is opposed to the application; that well water will be contaminated; that a spray irrigation sewer system will cause problems to the area; there will be more traffic accidents on Camp Arrowhead Road since there will be more cars in the area; that there will be pollution to the bay caused by fertilizer being placed on lots; that no interconnections are proposed to adjoining parcels that may be developed; that the site is located in an environmentally sensitive area that needs to be protected; that the spray irrigation field cannot be used for any recreational activities; that these systems cannot be upgraded; and that the site should remain in a natural state.

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.

SUBDIVISION #2002-44 – application of **JUNIOR ARMIGER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 47.93 acres into 41 lots, located at the south end of Armiger Drive, 380 feet southeast of Grace Circle within Hill N Dale Subdivision on the east side of Road 490.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of January 15, 2003 will be made a part of the record for this application.

The Commission found, based on comments received from the Natural Resources Conservation Service that the soils mapped on site are Evesboro and that these soils have slight limitations for the intended use.

The Commission found that Don Miller, surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the site is located southwest of Seaford; that the existing subdivision has 75 lots; that this application is for 41 additional lots; that all of the lots are 0.75 acres or greater; that a homeowner's association will be established to maintain the streets, stormwater management areas, and forested buffer areas; that there are not any wetlands on the site; that only stick built on site homes will be permitted; that traffic will not be a concern; that a bypass lane may be required by DelDOT at the entrance to the existing subdivision; that the streets will be private and built to county specifications; that on site wells and septic are proposed; that the owner has contracted for trapping any possible Delmarva Fox Squirrels that may be on the site; that street lighting may be permitted and that there will be recreation areas.

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

The Commission found that Gary Burns, Mariann Powell and Melissa Rumph all of Hill 'N' Dale subdivision were present in opposition to this application and stated that there is only one entrance into the subdivision; that there are young children in the development and more traffic will cause safety concerns; that the existing streets are not wide enough; that a similar application was denied 13 years ago; that there are sink holes in the development; that there would be a loss of wildlife habitat in the area; that there should be one homeowner's association and not 2 separate ones; that the site plan does not provide for any recreational areas; why don't they access the site from the other side; that there are numerous traffic accidents on River Road; and that there are not any sidewalks or streetlighting in the area.

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

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

Motion carried 5 – 0.

OLD BUSINESS

C/U #1485 – application of **JAY R, DONOVAN**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District to sell antiques, produce, glassware, flowers, used tools, and farm supplies, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.0 acre, more or less, lying north of Route 36 and 340 feet west of Road 626.

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

Mr. Wheatley stated that he is concerned with this application since it is no different than the previous application for the same site and that he would move that the application be denied since this is a Conditional Use application in an AR-1 zone to sell antiques, produce, glassware, flowers, used tools and farm supplies located in a low density residential and farm area; that there are no Conditional Uses or commercial uses in or near this location; that the purpose of a Conditional Use is generally a use essential and desirable for the general convenience of neighboring properties; that at the Conditional Use meeting there was one adjoining property owner present in support, but with several stipulations to be met by the applicant, one letter of support by a rear property owner of open farm land and three friends of the applicant who do not live anywhere near this application; that basically a similar application by the same applicant was denied both by this Commission and the County Council approximately one year ago with several reasons stated as follows: being a dangerous location along Route 36, increased traffic, not sufficient off-road parking and an undesirable use in a total farm and residential area; that one adjoining property owner was present in opposition and stated that he opposed this Conditional Use because of parked cars blocking his driveway, could not see to enter Route 36 because of parked cars, and lowering his property value because of the unsightly display of products to be sold.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be denied for the reasons stated above.

Motion carried 5 – 0.

C/U #1486 – application of **ALTON D. WHITE**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for light fabrication of parts and frames for race cars, to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 5.06 acres, more or less, lying northwest of Route 497 and 250 feet north of Route 24.

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

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

Motion carried 5 – 0.

C/U #1487 – application of **RONALD E. GRAY**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mini-storage facility with space for boat and RV storage, workshops, and an office, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.55 acres, more or less, lying 696 feet north of Route 54, 0.7 mile west of Route 58B and 0.7 mile east of Route 381.

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

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1487 for Ronald E. Gray to operate a mini-storage facility based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's recommendations. Mr. Robertson read the following reasons offered by Mr. Lynch:

- 1) The project is located in a Development District according to the County's 1997 Land Use Plan, and is located within the Environmentally Sensitive Developing Area according to the 2002 Update.
- 2) The project, with the conditions and stipulations place upon it, will not have an adverse impact on the neighboring properties or community.
- 3) The project is located within the Fenwick Island Sanitary Sewer District and the Sussex County Engineering Department states that there is adequate capacity for the project as proposed.
- 4) The use as a mini-storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties. The storage facility is proposed to serve residents of the mobile home parks and multi-family projects in the area due to the limited storage space available on mobile home park lots and within multi-family units.
- 5) This recommendation for approval is subject to the following conditions and stipulations:

- 1) There shall not be any building contractors or subcontractors offices or workshops within the project.
- 2) There shall not be any storage of building materials or other construction materials within the project.
- 3) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring residential properties.
- 4) No outside storage, except boats or RVs, shall be allowed on the premises.
- 5) A landscape buffer of Leyland Cypress or similar vegetation shall be installed and planted along the border of the project adjacent to any residential properties so that the mini-storage facility is screened from view from any adjacent residential property.
- 6) The site plan shall be subject to approval of the Planning and Zoning Commission.

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

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 257 and across from Route 358.

The Commission discussed this application which has been deferred since March 27, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1488 for Vaughn Melson and Alfred Melson based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's recommendation. Mr. Robertson read the following reasons offered by Mr. Lynch:

- 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 central sewer are available. In this case, there will be central sewer provided by the Sussex County Cedar Neck Sewer District.

- 3) The property is in an area that has developed with residential properties similar to the proposed project.
- 4) The project will be served or benefited by amenities that are on-site. These amenities include a swimming pool and a community center.
- 5) This recommendation for approval is subject to the following conditions:
 - 1) The maximum number of residential units shall not exceed 143 units, based upon the County Engineering Department's determination of the available wastewater capacity for this parcel.
 - 2) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - 3) Recreational facilities, e.g., swimming pool and bathhouse, community center, etc., shall be constructed and open to use by residents within 2-years of issuance of the first building permit for the project.
 - 4) Trees shall be planted as shown on the Preliminary Site Plan. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
 - 5) All roadways within the development shall be paved in a manner that maximizes their aesthetic appearance and safety, as shown on the Preliminary Site Plan.
 - 6) The development shall be served as part of the Sussex County Cedar Neck Sewer District.
 - 7) The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - 8) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 - 9) Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
 - 10) The interior street design shall be in accordance with or exceed Sussex County street design requirements.
 - 11) A 50-foot wide buffer shall be provided from the State wetland line.
 - 12) 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.

- 13) 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, Monday through Saturday.
- 14) Street naming and addressing shall be approved by the Sussex County Addressing Department.

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

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.

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

Mr. Lynch stated that he would move that the Commission recommend denial of C/Z #1493 seeking a Change of Zone from AR-1 to B-1 based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's recommendation. Mr. Robertson read the following reasons offered by Mr. Lynch:

- 1) While there may be a need for the materials and services provided by the applicant, the orderly growth of the County does not justify creating the requested additional B-1 zoned property and the permitted uses available under the zoning classification, especially given the location of the property along this particular area of Route 54.
- 2) The property that is the subject of this application is located in an area that is residential in character. I do not believe that the application is consistent with the character of the surrounding property.
- 3) Approval of this application could lead to increased traffic and trucking activity on the property. This will lead to increased noise to neighboring property owners and residents.
- 4) The applicant has not demonstrated a need for this type of additional B-1 zoning in the area.

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

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 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.

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

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1494 seeking a Change of Zone from AR-1 and B-1 to MR as shown on the preliminary plot submitted with the application based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's recommendation. Mr. Robertson read the following reasons offered by Mr. Lynch:

- 1) The property that is the subject of this application is part of a larger tract of land that is the subject of a pending subdivision application (Subdivision #2002-38).
- 2) According to the site plan submitted with this application and for Subdivision #2002-38, the basis for this change of zone is to reduce a portion of the existing B-1 district where the applicant currently operates a business so that the district is consistent with the proposed boundaries of the residential subdivision.
- 3) This application will also relocated the current common boundary between the AR-1 and MR districts on the applicant's property so that the MR district boundary is consistent with the proposed boundary of the residential subdivision (Subdivision #2002-38).
- 4) This application will not have any effect on traffic since it only re-designates the location of existing B-1 district lines.
- 5) The neighborhood and other adjacent and surrounding properties will not be adversely affected, given the relatively small size of the property that is the subject of this application, its current use, and its location in relation to other properties.

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

Motion carried 5 – 0.

C/Z #1495 – application of **RONALD E. GRAY** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying north of Route 54, 0.7 mile west of Route 58B and 0.7 mile east of Route 381, to be located on 4.77 acres, more or less.

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

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1495 for Ronald E. Gray to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential to C-1 General Commercial based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's recommendation. Mr. Robertson read the following reasons offered by Mr. Lynch:

- 1) The project is located in a Development District according to the County's 1997 Land Use Plan, and is located within the Environmentally Sensitive Developing Area according to the 2002 Update. The proposal is a neighborhood shopping center or village scale shopping center, which is a preferred design under the 2002 Update.
- 2) The project will not have an adverse impact on the neighboring properties or community. The change in zone will benefit residential developments, including Shady Park and Swann Keys.
- 3) The project is located within the Fenwick Island Sanitary Sewer District and the Sussex County Engineering Department states that there is adequate capacity for the project as proposed.
- 4) The location of a neighboring shopping center on this parcel should have the effect of limiting trips on Route 54 by residents in this area who would otherwise have to travel farther on Route 54 for their shopping needs.

Motion carried 5 – 0.

C/Z #1496 – application of **PALISADES LAND, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying 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 discussed this application which has been deferred since March 27, 2003.

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

Motion carried 5 – 0.

SUBDIVISION #2002-22 – application of **LESLIE AND BRENDA JOHNSON** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred, by dividing 55.70 acres into 38 lots, located west of Road 541, 1,230 feet south of Road 20.

Mr. Abbott advised the Commission that the final record plan meets the requirements of the subdivision code and that all agency approvals have been received.

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

Motion carried 5 – 0.

SUBDIVISION #2002-23 – application of **JAMES D. PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 20.52 acres into 18 lots, located east of Parker Drive and south of Kinsley's Lane within Parker's Point Subdivision, southeast of Road 410 and northeast of Road 412.

Mr. Abbott advised the Commission that the final record plan meets the requirements if the subdivision code and that all agency approvals have been received.

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

Motion carried 5 – 0.

OTHER BUSINESS

The Villages of Five Points MR/RPC

- a. West Village Phase II – Record Plan
- b. West Village Phase III – Record Plan
- c. West Village Phase IV – Record Plan
- d. Town Center East Parcels I, II, and III – Record Plan
- e. Town Center and Town Center East – Multi-Family Site Plan

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

record plans and multi-family site plans as a final based on the written information that Mr. Abbott sent to the Commission.

Motion carried 5 – 0.

Epworth Christian School
C/U #1464 Revised Site Plan – Road 476

Mr. Abbott advised the Commission that the revised site plan is for a 2 story 25,576 square foot building for an elementary, middle and junior high school; that the parcel is presently zoned for a church and school; that the temporary modular classrooms will be replaced with the new building; that the church requires 60 parking spaces and the school requires 149 parking spaces; that there are 150 parking spaces proposed and that the church and school are not in use at the same time; that the setbacks meet the requirements of the zoning code; that the use will remain the same as the existing conditional use; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Lynch, 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.

Wilson and Alberta Cullum
C/U #1464 Site Plan – Route 9

The Commission reviewed a site plan for a used car sales facility and repair shop.

Mr. Abbott advised the Commission that the 18 cars for display are not located on the paved area; and that a letter from the applicant's attorney advises that the area will be paved in the future.

Mr. Johnson stated that when he recommended approval of this application, it was his intention of having the cars on display located in front of the existing building and not located closer to the adjacent dwelling.

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

Motion carried 5 – 0.

Short's Marine
C/U #1305 Revised Stipulation – Road 299

The Commission reviewed a request to suspend a stipulation that the applicant be permitted to use Road 298 and Road 299 until the construction to the intersection is completed at Route 22 and Route 24.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the request.

Motion carried 5 – 0.

Subdivision #2001 – 3 - - C. Larry McKinley
Time Extension

The Commission reviewed a request for a one-year time extension to obtain final approval.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried unanimously to approve a one-year extension.

Motion carried 5 – 0.

Alfred Mitchell
2 Lots and 50' Easement – Route 5

The Commission reviewed a request to create 2 lots with access from a 50-foot easement.

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

Motion carried 5 – 0.

Meeting adjourned at 11:50 PM