

MINUTES OF THE REGULAR MEETING OF APRIL 24, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 24, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, and Mr. Lynch, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the agenda as revised by deletion of item #2 under Old Business, C/Z #1496 for Palisades Land, LLC, since Mr. Wheatley was not present to participate in the discussion.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of April 10, 2003 as amended.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of April 17, 2003 as amended.

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

PUBLIC HEARINGS

SUBDIVISION #2002-48 – application of **VIRGINIA STAMPER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 8.12 acres into 2 lots, located south of Route 9, 900 feet west of Road 282.

Mr. Lank advised the Commission that this application was reviewed by the Technical Advisory Committee on February 19, 2003 and that the Technical Advisory Committee Report will be made a part of the record for this application.

Mr. Abbott advised the Commission that the revised restrictive covenants have been reviewed by Mr. Robertson and that he has found the revisions to be acceptable.

The Commission found that Dan McCann, surveyor, and Virginia Stamper were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the application is for one additional lot; that the existing street is private and that a maintenance agreement was recorded in 1999; that family members reside on the existing lots; that no changes are proposed to the existing street; that the existing street is gravel and stone; that they will put in crusher run stone if required to; that no street lighting is proposed; and that the existing dwelling will remain on the 5.91 acres parcel.

The Commission found that no parties were present with any interest 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 approve this application as a preliminary.

Motion carried 4 – 0.

C/U #1493 – application of **RON AND DONEITA WITKE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and warehouse for a heating and air conditioning business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 34,740 square feet, more or less, lying east of U.S. Route 113 and across from Road 323, and being Lot 14 of John Betts Subdivision.

Mr. Lank advised the Commission that this application is the same as C/U #1349 for Ron and Doneita Witke heard on August 10, 2000; that the County Council granted approval of the use on August 29, 2000 with conditions; that the applicant did not establish any improvements to the site within the allotted time; and that the application became void for lack of substantial improvement.

Mr. Lank advised the Commission that C/U #1349 was approved with conditions and that the conditions of approval included: 1) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals. 2) One unlighted sign, not exceeding 32 square feet, may be permitted. 3) Outside storage shall be within an enclosed solid fence.

The Commission found that DelDOT comments, dated March 28, 2000, were referenced for C/U #1349 and are being reconsidered for this application and advised that the Department is opposed to the application because it is inconsistent with the Department's understanding of the Comprehensive Plan and the Strategies for State Policies and Spending Map; that the application would conflict with the goals of the Department's Corridor Capacity Preservation Program; that the Department recommends that the application be denied; and that if the County finds it appropriate to approve the application, the applicant should be advised that the Department would allow access to the proposed use only from the private road opposite Road 323.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State reviewed the application in July 2000; that at that time, the Office objected to the proposal based on the fact that the site is located in a rural area of the Strategies for State Policies and Spending document as well as being in a Corridor

Capacity Preservation Program area; and that the Office asks that the County deny the application.

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

The Commission found that Ron Witke was present and stated in his presentation and in response to questions raised by the Commission that he apologizes for not completing the project in the allotted time frame; that this application is the same as the 2000 application; that he has purchased the property and is ready to start construction; that he plans on storing used materials within a solid fence enclosure; that he has a contract hauler that picks up the used materials on a regular basis; and that new materials will be stored inside the building.

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 forward this application to the Sussex County Council with the recommendation that the application be approved with the following conditions:

- 1) The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
- 2) One unlighted sign, not exceeding 32 square feet, may be permitted.
- 3) Outside storage shall be within an enclosed solid fence.

Motion carried 4 – 0.

C/Z #1499 – application of **CALDERA-INDIAN RIVER II, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1-RPC Agricultural Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the north end of Road 346B, 0.5 mile north of Road 346, to be located on 70.03 acres, more or less.

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 references to the consulting team, a design summary, a legal description, a location reference, references to water service, sanitary sewer disposal, stormwater management, wetlands, and utilities, copies of regulatory comments from the Sussex County Engineering Department Planning and Permits Division, DelDOT, and the Sussex County Assessment Division, a Phase I Environmental Site Assessment, an Assessment of Cultural Resource Potential, an Endangered Species Investigation with comments from the U.S. Fish and Wildlife Service and the State Natural Heritage Program, letters of intent to serve from Tidewater Utilities Water Company, Delaware Electric Cooperative, Inc., and Verizon, and a Preliminary Site Plan.

Mr. Lank advised the Commission that the site plan was reviewed by the Technical Advisory Committee on March 19, 2003 and that the Technical Advisory Committee Report for March 19, 2003 is a part of the record for this public hearing.

The Commission found, based on comments received from Vincent Robertson, Assistant County Attorney, that the increased number of proposed units is still within the permitted density as calculated by the applicant.

The Commission found, based on comments received from John A. Hughes, Secretary of the State DNREC, that the Department requests that the Commission table this project without prejudice, until the Department can meet with the developers; that the project directly borders the Holts Landing State Park; that the Parks and Recreation Division of DNREC has grave concerns about this project; that the Department would like to meet with the developers to discuss the proposed use of the existing 60-foot wide easement that will serve the site; that half of the easement is within the boundary of Holts Landing State Park; that this new road could severely affect the park, either in a positive or negative way; that this has not been considered in the plan; that potential access control from the development into the park and from the park into the development, both along the beach and other common boundary access points, has not been considered; that proposed and existing active recreational activities in the park that future neighbors must be aware of include: primitive youth camping, equestrian trails, hiking trails, the development of cottage and/or cabins, and the development of support facilities, including temporary or permanent public restrooms, and must be considered; that this proposed development could severely impair the Division's ability to provide these services; that existing resource management activities, including wildlife management hunting for deer, and invasive species control such as Phragmites spraying may be impacted; that future sewer requirements and placement of the proposed sewer line may be impacted; that other Divisions of DNREC also have concerns with this project; that the project would clearly have significant consequences to the Park; and that the site is completely within the Inland Bays State Resource Area.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Coastal beach and dune land, Evesboro loamy sand, Klej loamy sand, and Tidal marsh; that the Evesboro soils have slight limitations for development; that the Klej soils have slight to moderate limitations; that the Coastal beach and dune land and the Tidal marsh soils have severe limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Evesboro and Klej soils are considered of Statewide Importance; that the Coastal beach and dune land and Tidal marsh soils are considered Hydric soils; that some of the Evesboro soils are considered Hydric in small depressions; that the Klej soils are considered Hydric in depressions; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for some off-site drainage improvements because of the increased impervious area and proximity to tidal marsh; that it may be necessary for some on-site drainage improvements because of the increased impervious area and the proximity to tidal marsh; that even though there are sandy, well drained soils on the site, there are extensive areas of marsh and may be pockets of less well drained soils which may hold storm runoff for a period of time; and that tidal wetlands are present on the site.

The Commission found, based on comments received from the Sussex County Engineering Department Public Works Division, that the plans do not provide sufficient technical detail such as street dimensions, typical paving widths, roadway curve data, survey data, street cross section construction, cul-de-sac radius, or information such as a wetlands survey; that technical review comments cannot be made, therefore, detailed technical review from this Division will be reserved until submission of a detailed plan; and that based upon the plan submitted, the Division has no objection to the concept as shown.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State met with the developers on April 16, 2003 and at that time the DNREC expressed serious concerns regarding this development, especially with regard to Holts Landing State Park; that the site is within the Inland Bays State Resource Area and has been identified for protection by the Open Space Program; that the site is entirely within the 100-year floodplain; that the rezoning will result in a greater number of housing units being built in an area prone to severe flooding; that the site will be situated in an upland forest of approximately 22 acres adjacent to Holts Landing State Park; that forest provide important runoff buffering functions for nearby waterways; that the unique quality of the Inland Bays and the function of the forest plot in the continued health of the Bays should be considered when weighing the value of the proposal; that the ecological importance of the Inland Bays Watershed has been recognized by its designation as Water of Exceptional Recreational or Ecological Significance (ERES Waters) which are so designated because of their perceived ecological and recreational value, thus accorded a level of protection and monitoring in excess of that required by

most waters of the State; that the developer is aware of the established Total Maximum Daily Loads (TMDLs) for the Inland Bays Watershed; that this project is located within the portion of the watershed where the nutrient reductions of nitrogen and phosphorus are a minimum of 40 percent; that the developer is encouraged to look for opportunities to demonstrate reductions in the nutrient loadings, implement management practices and to educate potential buyers of how to properly utilize and minimize the use of fertilizers and other sources of nutrients; that the developer noted that all building lots are outside of the wetlands area; that the developer had not received confirmation of the wetlands delineation from the Corps. of Engineers; that the developer should be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated soils, as they are subject to regulatory provisions of the Federal Clean Water Act 404 program; that tidal wetlands are subject to State DNREC regulations; that the project will require a Coastal Zone Federal Consistency review from the Delaware Coastal Programs; that the developer is encouraged to attend a Wetlands and Subaqueous Lands Section Joint Permit Processing Meeting; that the developer is encouraged to place all tidal wetlands in a conservation easement to preclude future boardwalks and docks and other potential disturbances to the sensitive wetlands; that the State recommends that the developer create deed restrictions that would prevent owners from constructing any docks, piers or other structures in wetlands and subaqueous lands; that the Wetlands and Subaqueous Lands Section feels that this needs to be part of any project that is adjacent to waterbodies, especially with ERES designation; that due to the proximity of water access in the area the permitting of individual boardwalks and other structures to grant water access will be discouraged; that the State DNREC recommends that the developer articulate and implement a strategy to maximize buffer areas, particularly riparian areas adjacent to wetlands or waterbodies; that it is clear that some buffering is better than no buffering; that the on-going effort to establish TMDLs for all watersheds suggests that buffers are essential in reducing nutrients and other water quality parameters; that if dewatering points will be needed during any phase of construction a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of well points; that a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation; that a detailed sediment and stormwater permit must be approved prior to any land disturbing activities; that if a non-erosive conveyance to tidal water is to be provided for the site, a waiver of stormwater quantity management may be requested; that stormwater management must still be provided; that due to the shallow depth to the water table at the site, many of the recent "green technology" best management practices may be precluded from use; that in addition to the traditional wet pond approach to stormwater quality management, practices that minimize disturbance of existing wooded areas, maintain buffers along the tidal areas, and provide open swales rather than curb and gutter should be encouraged; that a Notice of Intent for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC along with a fee prior to plan approval; that due to the size and sensitive nature of the discharge points of this site, a Certified Construction Reviewer

may be required to make weekly on-site inspections of the site progress during construction; that the Reviewer will also be required to complete a Pond Construction Checklist for all stormwater management basins as they are being constructed; that DelDOT has noted that if the project moves forward, the developer should contact the Subdivision Manager regarding improvements to Fairway Lane; that the developer will need to improve Fairway Lane from Holt's Landing Road to the north end of the portion they need for access; that DelDOT noted that the portion of Fairway Lane where the site would have access, is unpaved and overgrown; that if the developer would like to have the Department vacate the portion north of the portion they need for access they should contact DelDOT's Real Estate Section; that the State Historic Preservation Office has noted that there is a high probability for prehistoric archaeological resources; that if any federal permits, licenses, or funds are used for the project, the federal agency must comply with Section 106 of the National Historic Preservation Act; that in conclusion, the State has met with the developer and begun discussing ways to address the issues in these comments; that the State's greatest concern is regarding the issues with being located next to Holt's Landing State Park; and that the State respectfully asks that the County table this application until the developer and the Park's Division meet regarding this project.

It was noted that comments received from the Office of State Planning Coordination included the comments received from John A. Hughes, Secretary of the State DNREC.

The Commission found that a letter of opposition was received from Guy Rickards, on behalf of Indian Riverview Limited Partnership, which referenced concerns about the closeness of their borrow pit to the proposed roadway; that having a road that close to an embankment and water is a huge hazard to motor vehicles using the road; that widening of the existing road will require removing some trees and a dirt bank that protects the pond and their property; that the trees and dirt bank that are there now act as a buffer to keep people and children from wondering into the pit area; that they also help to prevent the public from dumping unwanted trash in the area; that widening and paving of the road would cause an increase with the problems referenced; that as a solution to the problem, he suggests that the roadway be built off center of the right-of-way, to the west, away from the pond; that the parties responsible for the road construction should be required to build a 6-foot high security fence with wire on the top to prevent people from climbing over it; that the fence needs to be the length of the property line between the right-of-way and lands of Indian Riverview Partnership; that the road construction should not be allowed to cause any erosion or disturbance of the banks of the pond at any time; that at no time will Indian Riverview Partnership allow any drainage of water onto their property; and that if all of these requests can not be met by the developer the project should be denied.

The Commission found that Frank Key of Ellis Point, LLC, Jim Fuqua, Attorney, Jeff Clark of Land Tech, LLC, Ross Harris of Environmental Consulting International, and ED Launay of Environmental Resources, Inc. were present and stated in their presentations and in response to questions raised by the Commission that Road 346B is a State right-of-way created through a court order; that the road is paved to a point and then dirt; that the applicant will be responsible for any and all improvements to Road 346B including construction of the roadway; that they are proposing a Residential Planned Community with AR-1 densities; that central water will be provided by Tidewater Utilities, Inc.; that central public sewer will be obtained through the proposed Sussex County Holts Landing District; that utilities will also be obtained from Delaware Electric Cooperative, Verizon, and Comcast; that DelDOT did not require a traffic impact study; that a Phase I Environmental Impact Study was prepared; that an Archaeological Study was performed; that an Endangered Species review was performed; that they propose a 50-foot wide natural buffer from State wetlands; that there are no encroachments proposed into any non-tidal wetlands; that stormwater management designs will meet or exceed State and County specifications; that the site is located in an Environmentally Sensitive Developing Area according to the Comprehensive Plan Update and the Strategies for State Policies and Spending; that no community or boat launching facilities are proposed; that all of the dwellings proposed will be sold through a condominium regime; that the site will be maintained by a home owners association; that the applicants have been through a review under the guidelines of the Land Use Planning Act through the Office of State Planning Coordination; that the applicants are suppose to meet with the State DNREC Parks and Recreation Department next week; that the applicants have no objection if the Commission defers action pending receipt of written comments from the Parks and Recreation Department and requests that the record of the public hearing be left open for those written comments; that the site is adjacent to the Holts Landing State Park; that the Park includes a large recorded subdivision; that the applicants do not believe that a 56 unit development will impact the Park; that other parks have developments adjacent and/or near them; that the family of the present owners have owned the property since the 1940s; that the dwellings are proposed to be developed in clusters; that sidewalks will be provided throughout the project; that street signs and street lighting will be provided; that there are no proposed street crossings over wetlands; that a boardwalk may be built from the existing road near unit #49 to a small beach area; that no permit will be required for the boardwalk from the State or Federal government; that a court order easement exists from Route 346 to the River; that portions of the easement are now overgrown; that ponds on the site plan are proposed stormwater management areas; and that some bio-filtration is proposed to improve the Total Maximum Daily Loads for the Inland Bays.

The Commission found that Mr. Fuqua presented a tax map of the area showing the zoning classifications in the area.

The Commission found that Mr. Fuqua submitted and read some suggested/proposed conditions for approval and that the conditions included: 1) The maximum number of residential units shall not exceed 56 single family condominium units. 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 bath house shall be constructed and open to use within two (2) years of the issuance of the first building permit. 4) The development shall be served as part of a Sussex County Sanitary Sewer District. 5) The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations. 6) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. Applicant shall schedule a pre-application meeting with the Sussex Conservation District as requested by DNREC. 7) Site plan review for each phase of development shall be subject to approval by the Planning and Zoning Commission. 8) The interior street design shall be in accordance with or exceed Sussex County street design requirements. 9) A 50' buffer shall be provided from the State wetland line. 10) Applicant shall meet with DNREC Parks Division to coordinate safeguards, such as deed restrictions or fencing, to minimize any impact on the State lands. 11) No individual or community boat docks, piers, boardwalks or boat launching facilities for motorized boats shall be permitted. 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 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.

The Commission found that Lee Dogoloff was present and submitted and read a letter from the Board of Trustees of The Greens at Indian River Homeowners Association expressing concerns about lack of individual notices being sent to the residents of their development, the lack of any detail in reference to sanitary sewer service, improvements to Route 346B for access to the proposed project, construction and potential storm runoff from the improvements, that swales should be included with the improvements to assist in controlling rain water flooding, and that any infrastructure improvements required to serve the project should be completed without having a detrimental impact on The Greens at Indian River.

The Commission found that Ron Couch, Guy Rickards, and Ruth Rickards expressed concerns about the dimension between the existing borrow pit and the property line with The Greens at Indian River, traffic, noise and dust during construction activities, the need for plantings between Route 346B and The Greens at Indian River, the minimal distance between the roadway and the borrow pit, the need for fencing between the roadway and the borrow pit, the location of the roadway improvements within the right-of-way, and questioning the validity of the court order creating the right-of-way.

The Commission found that Richard West, a grandson of the original owner of the property at the time of the court order, stated that the land was donated to the State by the landowners in the area to provide access to the River; that the State owns a 60-foot wide right-of-way; and that the borrow pit encroaches onto the right-of-way.

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action with the understanding that the record remain open until May 8, 2003 for written comments from State agencies.

Motion carried 4 – 0.

C/Z #1500 – application of **HERBERT SCHAEFER** 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 southwest of Road 382 (a.k.a. State Route 20 and Zion Church Road), 1,057 feet west of Road 382A, to be located on 5.5544 acres, more or less.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located in a “Rural” area of the Strategies for State Policies and Spending document; that the State would prefer to see retail businesses located within the “Community” or “Developing” areas; that the State objects to this rezoning and request that the County deny this application; that according to the State Historic Preservation Office the house on the site may be eligible as a historic resource; that if the change of use requires any change to the house or its outbuildings, the State Historic Preservation Office would be happy to meet with the owners to suggest ways to design any alterations in a manner that is least harmful to the significance of the potential historic resource; that there is a high probability for prehistoric archaeological sites on the property; and that if any construction is involved in this project that causes ground disturbance, the owner should contact the Historic Preservation Office about any potential archaeological sites.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service of Route 382, a.k.a. Route 20, may change from level of service "C" to level of service "D".

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington sandy loam, Klej loamy sand, Pocomoke sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Klej and Woodstown soils have slight to moderate limitations; that the Fallsington and Pocomoke soils have severe limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that the Evesboro, Fallsington, Klej, and Pocomoke soils are considered of Statewide Importance; that the Fallsington, Pocomoke and Woodstown soils are considered Prime Farmland; that all of the soil types are considered Hydric, Hydric in depressions, or Hydric in small depressions; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements since there should be no increase in impervious areas.

The Commission found that Herbert Schaefer was present and stated in his presentation and in response to questions raised by the Commission that he and his wife have owned a portion of the site for approximately 25 years; that his daughter proposes to operate a retail clothing and accessories business in the barn; that there would be a limited number of customers; that the majority of the business would be done via mail order and on the internet; that the barn building was built in the 19th century; that the carriage building has been converted into a dwelling; that the business will operate year round during daytime hours; that a garden center exists across Route 20; that he originally had a 1.01 acre parcel containing the improvements; and that he added approximately 4.54 acres to the parcel to protect the property from adjoining parcels.

The Commission found that Lynn Hickman, Realtor, stated that the 5.5544 acre parcel runs back from Route 20 to the existing tree line.

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

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that B-1 Neighborhood Business be approved for the original 1.01 acre parcel, which measures approximately 150-feet by 300-feet, and that the remaining 4.54 acres be denied.

Motion carried 4 – 0.

C/Z #1501 – application of **BETHANY BEACH DEVELOPMENT, L.L.C.** 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 southwest of Route 631 (Muddy Neck Road) and 150 feet south of Route 368, to be located on 0.70 acre, more or less.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam and Pocomoke sandy loam which have severe limitations for development; that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that both soil types are considered of Statewide Importance, Prime Farmland, and Hydric; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained and very poorly drained soils and the increase in impervious area; and that there may be jurisdictional wetlands present.

The Commission found that Glenn Prettyman and Heidi Balliet, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that a professional office is proposed to be built on the site; that the site is being temporarily used for a mobile sales office based on an approval by the Board of Adjustment; that B-1 Neighborhood Business is being applied for since B-1 Neighborhood Business exists on an adjoining parcel; that they have heard of no objections from any agencies; that the use and zoning is appropriate based on the Comprehensive Plan which depicts the site in a Developing Area; that the site is surrounded by B-1 Neighborhood Business, MR Medium Density Residential, and HR High Density Residential zoning classifications; that public water and public sewer is available to the site; that the location will serve the area; that a cross access easement crosses the site for access to the Bethany Breeze development being developed by the applicants; and that the developers will comply with all agency requirements.

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

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

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application

be approved since the site adjoins B-1 Neighborhood Business zoning, since there will be no adverse change in the character of the area, since there should be no significant impact on traffic, and since no new entrance is proposed.

Motion carried 4 – 0.

OLD BUSINESS

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.

Mr. Gordy stated that he would move that C/U #1486 for Alton D. White be approved to operate a shop for light fabrication of parts and frames for race cars based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use will have no significant impact upon traffic.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. This recommendation for approval is subject to the following conditions and stipulations:
 1. There will not be any outside storage of any type, including but not limited to, racecars, equipment, tires, or other materials used in the fabrication of racecars. The applicant shall be allowed to store his personal hauler on the site.
 2. No vehicles for sale will be displayed outside on the premises.
 3. No repair work will be performed outside.
 4. No racecars shall be operated outside.
 5. The only fabrication allowed in the shop will be for dwarf race cars or cars of similar characteristics. No other fabrication of any kind will be permitted without modification of the Conditional Use.
 6. The shop will only be operated between the hours of 9:00 am until 8:00 pm Monday through Saturday.
 7. There will be no more than two employees in addition to the Applicant working on the premises at any one time.
 8. There will not be any signs on the property advertising the business except for the markings currently on the outside of the Applicant's personal hauler that may be parked on the site.

9. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
10. There will be a buffer from any historic buildings, as requested by the State Historic Preservation Office.
11. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Gordy and seconded by Mr. Johnson to forward this application to the Sussex County Council with the recommendation that it be approved based on the reasons and conditions referenced above.

Motion carried 2 – 1, with Mr. Allen opposed to the motion.

Motion was defeated since there were not three (3) affirmative votes based on the Rules of Procedure of the Commission.

Mr. Lynch and Mr. Wheatley were absent.

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.

No action was taken on this application since it was announced at the adoption of the agenda that the application was being deleted from the agenda since Mr. Wheatley was not present to participate in the discussion.

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.

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

Motion carried 4 – 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.

The Chairman referred back to this application which was deferred April 10, 2003.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary since the proposed 54-lot subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County and the proposed subdivision is the same as the one approved as a preliminary for Subdivision #99-21, and that that preliminary approval had expired after several extensions were granted to the applicant.

Motion carried 4 – 0.

SUBDIVISION #2002-18 – application of **MICHAEL W. SHORT, SR.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 45.12 acres into 39 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 493, 3,038.67 feet south of Road 494.

Mr. Abbott advised the Commission that this application received preliminary approval on September 26, 2002 for 39 lots; that the final record plan has been reduced to 38 lots; that the record plan complies with the requirements of the subdivision code; that all agency approvals have been received; and that the revised deed restrictions have been submitted.

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

Motion carried 4 – 0.

OTHER BUSINESS

Vineyards at Nassau Valley
Multi – Family and Commercial Site Plan – Route 9

Mr. Abbott advised the Commission that this site plan was reviewed by the Commission on December 19, 2002 and action was deferred pending review by the Technical Advisory Committee; that the site plan was reviewed by the Technical Advisory Committee on February 19, 2003 and that the report will be made a part of the record for this project; that the site plan is for 984 multi-family units on 82.23 acres; that the site is zoned C-1 General Commercial; that 6,000 square feet of commercial space is proposed; that the commercial uses will be those that are permitted in the Neighborhood Business District in the zoning code; that swimming pools and bath houses are proposed; that the

setback along Route 9 needs to be revised from 55-feet to 60-feet; that the buildings have the minimum 40-foot separation between them; that there are no wetlands on the site; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the letters received from the Citizens Coalition and Sierra Club are still a part of the record; and summarized letters received from DelDOT and R.A. Raley.

Jim Fuqua, Attorney, was present and advised the Commission that the State has not yet determined where the proposed road will be located; that phases 6, 7, and 8 will not be developed until the proposed road location is finalized; and that a traffic impact study has been completed even though it was not required.

Bobbi Geyer of DelDOT was present and advised the Commission that DelDOT and the developer have agreed on the conceptual plan for the proposed road that will be located near phases 6, 7, and 8; that it is their understanding that these phases will be developed at a later time; and that the Department has no objection to the Commission granting preliminary approval for the entire project.

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

Motion carried 4 – 0.

Midway Water Park
C/U #1319 Revised Site Plan – Route One

Mr. Abbott advised the Commission that the revised site plan is for a pool and pump house; that the proposed use is the same as what exists now; and that the Commission may approve the revised site plan without requiring an amended conditional use application.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the revised site plan as a preliminary with final approval subject to the staff receiving all agency approvals.

Motion carried 4 – 0.

Joe Pleasanton
C/U #1471 Site Plan – Road 463

Mr. Abbott advised the Commission that the site plan is for a counter top manufacturing business; that the site plan is the same as what was submitted for the public hearing; that the site plan complies with the conditions of approval except that the dumpster needs to

be screened from Road 463; and that final approval could be subject to the staff receiving 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 the dumpster be screened by a fence and that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 4 – 0.

Jessie, Jr. and Margaret Armwood
Revised Lots – Ivory Drive and Anderson Pine Drive

The Commission reviewed a request to revise 7 lots into 2 parcels within Fisher Mill Park.

Mr. Abbott advised the Commission that the lots meet the requirements of the subdivision and zoning codes.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the revised lots.

Motion carried 4 – 0.

Ashley Dukes
Lot on 50' right of way – Road 370

The Commission reviewed a request to create a 1.00-acre lot with access from an existing 50-foot right of way.

Mr. Abbott advised the Commission that under the old policy, this would be the third lot with access off of the right-of-way and that any further subdivision will require a public hearing for a major subdivision application.

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

Motion carried 4 – 0.

Subdivision #2001 - 12 - - Dr. James Beebe
Time Extension

Mr. Abbott advised the Commission that this is a request for a time extension to obtain final approval; that the Commission granted preliminary approval on May 24, 2001; that the Commission granted a time extension on May 9, 2002; that this is the second request for an extension; that approvals have been received from DelDOT and DNREC; and that the request is necessary due to a new engineer taking over the project.

Roger Gross of Merestone Consulting advised the Commission that he is in the process of trying to obtain the information from the previous engineering firm and that is the reason that an extension is needed.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve an one-year time extension with the stipulation that this will be the last extension granted.

Motion carried 4 - 0.

The Refuge at Dirickson Creek
Final Site Plan - Route 54

Mr. Abbott advised the Commission that the final record plan is for 343 units in a residential planned community; that there are 287 single family lots and 56 multi-family units; that the record plan is the same as the approved master plan that the Commission approved on July 11, 2002; that the record plan complies with the subdivision and zoning codes and the stipulations of approval; that all agency approvals have been received; and that the site plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a final.

Motion carried 4 - 0.

Meeting adjourned at 10:15 P.M.