

MINUTES OF THE REGULAR MEETING OF MAY 8, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 8, 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. Wheatley, seconded by Mr. Gordy, and carried unanimously to approve the agenda as revised to consider the Old Business items prior to the Public Hearings.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of April 24, 2003 as circulated.

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

OLD BUSINESS

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 discussed this application which has been deferred since April 10, 2003.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1489 for Rehoboth Home Builders, Inc., based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Johnson's statement.

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

- 1) The proposed Conditional Use project meets the purpose of the zoning ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Sussex County Comprehensive Plan.
- 2) The proposed Conditional Use is appropriate for the site because residential development of this type is appropriate in areas where central water and sewer are available. In this case, there will be central sewer provided by the Sussex County West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. Central water will be provided by Tidewater Utilities.
- 3) The property is in an area that has developed with a mixture of uses including commercial and residential properties, including multi-family residential developments known as Plantations East and West.

- 4) The project is an expansion of Eagle Point (Conditional Use #1434) containing 68 units. This project contains 52 units.
- 5) This recommendation for approval is subject to the following conditions:
 - 1) The maximum number of residential units shall not exceed 52 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) The development shall be served as part of the Sussex County West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. All costs associated with the connection to or expansion of the Sewer District to serve this development shall be paid by the Applicant.
 - 4) The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations and approvals, including DNREC, the State Fire Marshal, and the Public Service Commission.
 - 5) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 - 6) The interior street design shall be in accordance with or exceed Sussex County street design requirements.
 - 7) The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, and shall provide proof that landscaping will be permanently maintained by either the Applicant or a homeowners association.
 - 8) 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.
 - 9) 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.
 - 10) Sidewalks shall be installed on both sides of all streets within the project.
 - 11) The project will utilize the same Restrictive Covenants or Restrictions as Eagle Point.

- 12) Road naming and addressing shall be submitted to the County Mapping and Addressing Division for review and approval.

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

Motion carried 5 – 0.

C/U #1491 – application of **QUAKERTOWN MEDICAL GROUP, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for medical offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.24 acres, more or less, lying on the northerly side of Route 9 (Savannah Road), 536 feet northeast of Ebenezer Branch.

The Commission discussed this application which has been deferred since April 17, 2003.

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 based upon the record made at the public hearing and with the following conditions:

- 1) Landscaping of the property shall save as many existing trees as possible.
- 2) Since the septic is proposed to be in the front portion of the property the applicants shall save as many existing trees as possible.
- 3) Parking for employees and patients shall be to the rear of the building and shall provide for future connections to adjoining properties
- 4) The building shall maintain a residential character similar to the neighborhood.
- 5) One ground sign, not exceed 32 square feet per side or facing, may be permitted.
- 6) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

C/U #1492 – application of **RT. 54 HOOK & SLICE GOLF DRIVING RANGE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for warehousing to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.13 acres, more or less, lying south of Route 54 and 2,076 feet west of Road 389.

The Commission discussed this application which has been deferred since April 17, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1492 for Rt. 54 Hook & Slice Driving Range, Inc. to operate a storage facility based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Johnson's statement.

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

- 1) The project, with the conditions and stipulations placed upon it, will not adversely impact on the neighboring properties or community.
- 2) The use as a storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
- 3) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) The project shall be used for indoor storage purposes only. There shall not be any outside storage, including boats or RVs, within the project.
 - 2) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
 - 3) A landscape buffer of Leyland Cypress or similar vegetation shall be installed and planted along the eastern border of the project starting at a point 40-feet from Route 54 and shall extend beyond the last building constructed in the project.
 - 4) There shall be no contracting work, office work or general business conducted on site, and none of the units shall be occupied as the principle place of business by tenants, or owners of the units.
 - 5) None of the units shall be used as contractors workshops.
 - 6) No more than 10 buildings shall be constructed on the site, with a total number of units not to exceed 60.
 - 7) No buildings shall be constructed on the site on the south side of the existing tax ditch that crosses the property.
 - 8) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

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

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 Road 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.

Mr. Lynch stated that he would move that the Commission recommend denial of C/Z #1496 for Palisades Land, LLC with reasons and asked Mr. Robertson to read Mr. Lynch's statement.

Mr. Robertson read that Mr. Lynch recommends denial for the following reasons: While the proposed project may meet a growing need for Sussex County, the orderly growth of the County requires that it be closer to municipalities and town centers. Although the proposed project is in an area identified in the 1997 Sussex County Comprehensive Plan as a Development District, the site is not appropriate for this project because:

- 1) The proposed project is out of character with the area where it is proposed to be located. The surrounding area is primarily zoned AR-1 and includes farmland, the inland bays, the adjacent Assawoman Wildlife Area and Camp Barnes (a non-profit children's camp). Multi-family development is not compatible with these other land uses.
- 2) The proposed project is not compatible with existing roadways in the area and does not promote safe vehicular, bicycle and pedestrian traffic on the adjacent roads.
- 3) I am not satisfied that the potentially substantial harmful consequences of this project on the Little Assawoman Bay, Dirickson Creek and Miller Creek are adequately addressed by the Applicant. These waterways have already been classified as "Prohibited" for shellfish harvesting by the State.
- 4) The proposed project contains lands that are part of the Inland Bays State Resource Area.
- 5) The proposed project encompasses approximately 180 acres of forest, which are mostly forested wetlands. State agencies and individuals familiar with the site report that the proposed destruction of these forested wetlands will fragment the forest, which will negatively impact plant and animal species. Also, the loss of this forested area will contribute to the ongoing degradation of the water quality of the inland bays.

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 denied for the reasons and with the conditions stated above.

Motion carried 5 – 0.

C/Z #1498 – application of **GERALD RICHARDSON** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-1 High Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Route 368, 1,154 feet east of Route 361, to be located on 0.93 acre, more or less.

The Commission discussed this application which has been deferred since April 17, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1498 for Gerald Richardson with reasons and asked Mr. Robertson to read Mr. Lynch's statement.

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

- 1) The proposed HR project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Comprehensive Land Use Plan.
- 2) The subject property is in an area that has developed with a mixture of single family and multi-family residential projects in the immediate area.
- 3) HR zoning is appropriate for the site because such development permits variety in the types of housing in areas where central water and sewer are available. In addition, the project is well located with respect to major thoroughfares and shopping areas.
- 4) The applicant has stated that he only intends to construct 4 multi-family units on the property.
- 5) The applicant has proposed to create a homeowners association to enforce deed restrictions and maintenance upon completion of the proposed project. It is suggested that these restrictions include a statement that no more than 4 multi-family units shall be constructed on the property since the applicant stated that this is the intent.

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

Motion carried 5 – 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 a 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 discussed this application which has been deferred since April 24, 2003.

Mr. Lank reminded the Commission that the record for the public hearing for this application had been left open until today for written comments from State agencies.

Mr. Lank read a letter from John A. Hughes, Secretary of the Department of Natural Resources and Environmental Control (DNREC), dated May 5, 2003 and received by fax today, that referenced a meeting of representatives of the State DNREC and the developer to discuss issues raised in the DNREC letter of April 21, 2003 and the resolutions which were posed to the mutual satisfaction of both the State of Delaware and the developer. This letter is a part of the record for this application.

Mr. Robertson advised the Commission that he had a telephone conversation with representatives of DelDOT and that he had sent a letter to DelDOT for clarification on the right-of-way of Road 346B; that his letter included copies of the Court Order for the creation of Road 346B from Road 346 to the River; that DelDOT representatives advised him that the State Inventory for Road 346B only included the existing portion of the roadway; and that he would like to get a response from DelDOT in reference to his letter.

Mr. Wheatley stated that he would like to obtain a copy of the tape recording for this application so that he can participate in the decision.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action pending a response from DelDOT.

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.

The Commission discussed this application which has been deferred since April 10, 2003.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action until the next meeting.

Motion carried 5 – 0.

PUBLIC HEARINGS

C/Z #1502 – application of **DOC PROPERTIES, 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 east of Route 387, approximately 0.3 mile north of Route 388, to be located on 72.18 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service “B” will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam, Pocomoke sandy loam, and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Fallsington and Pocomoke soils have severe limitations; that the developers will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Fallsington, 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 in small depressions, Hydric in depressions, or Hydric; that no storm flood hazard areas are affected; that a tax ditch could be 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 storm runoff.

The Commission found, based on comments received from the Office of State Planning Coordination, that this parcel is located within a “Rural” area according to the Strategies for State Policies and Spending document where State policies will encourage the preservation of a rural lifestyle and discourage new development; that the County has identified this area as a “Low Density Area” in the 2002 Comprehensive Plan Update; that the State Historic Preservation Office has found that there is a potential historic property on the site and that there are two other potential historic properties to the south of the site across Hudson Road; that the developer may want to incorporate some landscaping around the edges of the development to minimize any visual harm that the project could create on these resources; that there is a 75% probability for prehistoric archaeological sites within the area; that the project is not located in an area where public

water is available; that the Water Supply Section of DNREC will consider applications for the construction of wells providing the requirements of the Regulations Governing the Construction and Use of Wells can be met; that a well construction permit must be obtained prior to construction of any well; that the applicant should also be aware that potential contaminant sources exist in the vicinity of the site; that the Water Supply Section of DNREC recommends that potable water supplies be tested prior to consumption; that should well pointing (dewatering) be needed during any phase of the construction, well construction permits must be obtained prior to installation of the well points; that the project is proposing to use a community wastewater treatment and disposal system; that the Large System Branch of DNREC has not received any letter of intent for the project; that based on the number of proposed dwellings the projected wastewater load will require pretreatment prior to disposal; that site investigations initiated in the feasibility stage will validate the limitations and dictate the type of systems required; that the applicants should be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated soils; that the project is located adjacent to receiving waters designated as waters having Exceptional Recreational or Ecological Significance (ERES) which are recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that the ERES designation requires a level of protection and monitoring in excess of that required by most other waters of the State; that this designation strongly supports land use practices that value ecological sustainability, including land use practices that reduce nutrient loading that are consistent with reductions prescribed through the establishment of Total Maximum Daily Loads (TMDL) for the watershed; that a TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited waterbody" can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting; that attaining these use goals will be achieved via nutrient reductions referred to as "pollution control strategies"; that this parcel is located within a low nutrient reduction zone and requires a minimum 40% reduction for nitrogen and phosphorus; that impaired water quality has been recognized as a persistent problem with residential development adjacent to waterbodies; that if the project proceeds beyond the initial review stage, a full nutrient budget should be calculated to assess and/or compare current versus projected nutrient loading rates from pre and post development activities; that this nutrient budget should incorporate valid assumptions and demonstrate nutrient reductions equal or greater than the reductions prescribed under the TMDL mandate; that the Department of Agriculture has found that this property is located near Roxana and is located near an Agricultural Preservation District and is in an active and viable agriculture community; that the applicant will need to acquire an entrance permit from DelDOT; that the Department of Education has noted that this project will generate approximately 70 units and an estimated 35 additional students to the Indian River School District; that the County should require the developer to submit a package to the District for informational purposes; that the County should

require the developer to plan wide enough streets so that large school buses can access and turn around, without backing, or provide provisions for appropriate pick-up and drop-off within the development; that the State has addressed several concerns and issues that should be addressed before development is considered on this parcel; that the State's largest concern is the "Rural" area designation within the Strategies for State Policies and Spending and the "Low Density" area designation within the Comprehensive Plan Update; and that the State would prefer that development be placed in the "Community" or "Developing" areas where central wastewater is available, therefore, the State objects to this proposal and respectfully request that the County deny the application.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the project should be subject to review by the Technical Advisory Committee; that all roads should be designed, constructed and inspected in accordance with the street design requirements of the Subdivision Ordinance; and that since the proposed plans indicate a private community sewer system, which are regulated by Sussex County under Ordinance 657, the developer should contact the County Engineering Department for further information.

The Commission found that the applicants submitted a packet of information which included a color site plan and photographs of the area along Road 387, a commercial property across Road 387, and the site.

The Commission found that Don Conaway, Steve Carl, and Tom Ford of Land Design, Inc. 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 improved by a dwelling; that the poultry houses are being removed from the premises; that the proposed lake was an a Conditional Use for a borrow pit and is being reshaped with sloping banks to create the lake and areas for lots; that the gross density allowed by the Strategies for State Policies and Spending document is 1.3 units per acre; that the site plan provides for a net density of 1.1. units per acre; that the site is across from an 8 acre commercial mini-storage project; that the primary use of the site has not been agriculture, it has been borrow; that wetlands have been delineated and submitted to the Corps. of Engineers for verification; that the area is rural in nature; that there are 0.37 acres of 404 wetlands on the site; that no State wetlands exists on the site; that the site contains 50.63 acres of uplands and 21.18 acres of lake; that they propose to create 70 single family lots; that the average lot size is 20,399 square feet; that approximately half of the lots face the lake; that two areas have been set aside for the community sewer system; that Bear Hole Tax Ditch adjoins the site; that the Bear Hole Tax Ditch drains into Dirickson Creek; that they anticipate that approximately 4 acres of woodlands will be disturbed for streets and lots; that one entrance is proposed to serve the project; that the existing home will be utilized for a temporary sales office; that adjoining lands contain woodlands and farmland; that

the Community sewer system will be built subject to State and County specifications; that letters have been sent to DNREC and County Engineering; that the sewer system will be Maintained by a licensed operator for a homeowners association; that a rural theme is proposed for the project with swaled streets and no sidewalks; that the applicants have purchased the site; that a small cemetery exists on the south side of the property; and that the applicants have no problem providing access to the cemetery.

The Commission found that Clement Hudson, an adjoining property owner was present in opposition and expressed concerns about the impact on his farming operation, complaints from new lot owners, the loss of wildlife, the care for the cemetery, and the 16-foot wide maintenance easement for the tax ditch.

Mr. Robertson advised the Commission that the deed restrictions will be required to include an agricultural activity reference.

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

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

Motion carried 5 – 0.

C/Z #1504 – application of **RUGGIERO DEVELOPMENT GROUP, L.L.C.** 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 west of Route 348 (Iron's Lane) 0.8 mile north of Road 346, to be located on 22.5737 acres, more or less.

The Commission found that the applicants had submitted, prior to the meeting, an exhibit booklet in reference to this application and that the booklet contains a presentation outline, references to land use and zoning, land utilization, environmental issues, civil engineering, highway access, economic impacts, housing products, and proposed conditions.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "C" of Road 348 will not change as a result of this 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 applicants will be required to follow recommended erosion and

sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance; that there are no storm flood hazards or tax ditches 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 proposal; that the applicants will be required to obtain an entrance permit from DelDOT; that the State Historic Preservation Office has noted that there is a 50% probability for prehistoric archaeological sites within the area; that DNREC has noted that the project is located adjacent to receiving waters designated as waters having Exceptional Recreational or Ecological Significance (ERES); that ERES waters are recognized as special assets to the State and shall be protected and/or restored to the maximum extent possible to their natural condition; that with the adoption of Total Maximum Daily Loads (TMDL) nutrient-runoff-mitigation strategies reducing nutrients in the Inland Bays Watershed will be required; that the site is located within a low reduction zone which required a minimum of 40% reduction for nitrogen and phosphorus; that the Department of Education has noted that this project will generate approximately 75 units and an estimated 38 additional students to the Indian River School District; that the County should require the developer to submit a package to the District for informational purposes; and that the County should require the developer to plan wide enough streets so that large school buses can access and turn around, without backing, or provide provisions for appropriate pick-up and drop-off within the development; that the State.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the project should be subject to review by the Technical Advisory Committee; that roads should be designed, constructed, and inspected in accordance with the Subdivision Ordinance; that the streets should be curbed and utilize a closed pipe drainage system due to the proposed lot sizes; that this practice will enable the utilities to be placed within the right-of-way and not within front utility easements, maximizing the space between the street and individual lots; and that sidewalks and streetlights should be provided such that pedestrians would not be required to walk within the streets or in the dark to access community areas.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is within the Proposed Holts Landing Planning Area and that the Division requests that the applicants investigate the feasibility of connecting to the Holts Landing Sanitary Sewer District.

The Commission found that Joe Ruggiero was present with Jim Fuqua, Attorney, and Jerry Friedel and Mike Wigley of Davis, Bowen & Friedel, Inc. and stated in their presentations and in response to questions raised by the Commission that the developer proposes to sell house/lot packages with a "low-country" theme; that the site is 1.6 miles from Route 26; that the site is located within a "Development District" according to the 1997 Comprehensive Plan and an "Environmentally Sensitive Developing Area" according to the 2002 Comprehensive Plan Update and the Strategies for State Policies and Spending document; that the proposed density is approximately 3.3 units per acre; that no State or Federal Wetlands exists on the site; that the applicants will connect to the Holts Landing Sanitary Sewer District when available; that the site is adjacent to the proposed Seagrass project, across from The Greens at Indian River and Cripple Creek Golf and Country Club, and in close proximity to Mallard Creek, Bay Colony, and Fairway Villas projects; that the area has a mixture of zoning classifications including AR-1, AR-2, MR, and HR-2 and a mixture of development densities; that the proposed minimum lot size is 7,500 square feet; that buffers are proposed along the perimeter of the project; that they propose to share stormwater management with the Seagrass project on the Seagrass site; that the natural stormwater flow goes toward the old borrow pits on the Seagrass site; that the applicant and the developers of Seagrass have agreed to negotiate a shared stormwater management facility; that street widths are proposed to be 28-feet from back of curb to back of curb; that changing the site from agriculture to development with stormwater management will reduce nutrients; that letters showing the ability to serve the project have been received from County Engineering for sewer, Tidewater Utilities for water, Millville Volunteer Fire Company for fire protection, Delaware Electric Cooperative for electrical service, and Verizon for telephone service have been received; that sidewalks will be provided on one side of the streets; that street lighting will be provided throughout the project; that no negative comments were received from DelDOT; that the project will have a positive benefit to the County, the Indian River School District, and the Fire Company; that the project is designed with a loop street system and short cul-de-sacs with a central recreational area; that the recreation area will contain a pool, tot-lot, and gazebo; that there will be selective clearing of the wooded areas of the site to preserve as many trees as possible; that traditional dwellings are proposed creating a community where people can walk and communicate with each other; that the dwellings will have covered porches on the fronts and some sides; that all garages will be located to the rear of the dwellings; that they propose minimum setbacks of 10-feet front, 5-feet side, and 5-feet rear with a minimum spacing between improvements of 20-feet; that the front of the lots will have picket fencing; and that a connector road has been provided to the adjoining lands to the south.

The Commission found that Mr. Fuqua read the suggested proposed conditions of approval offered by the applicant referenced under Tab I of the booklet.

The Commission found that Sandra deChurch, President of the Board of Directors for The Greens at Indian River Homeowners Association, was present and submitted and read of letter in opposition to the application expressing concerns of the Board of Directors in reference to the location of the entrance, the condition of Road 348, the number of projects being created along Road 348, the abuse of the 40 MPH speed limit, concerns for walkers, bikers, and joggers using Road 348, children and school buses in the area, the lack of paved shoulders along Road 348, the need for a four-way stop sign at the intersection of Road 348 and Road 346, the need for improvements to the intersection of Route 26 and Road 348, and the construction of another 70 homes that will only exacerbate the problems on Road 348.

The Commission found that Pat Wilson, the owner of the property, was present in support of the application.

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

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

Motion carried 5 – 0.

Subdivision #2002-49 – application of **HM PROPERTIES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 222.20 acres into 301 lots, located east and west of Route 5, 1,180 feet southeast of Road 307.

Mr. Abbott advised the Commission that this application 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 application; that the applicant's attorney submitted a booklet that includes Subdivision Application, Site Data and Tax Map, DelDOT review of the traffic impact study and TAC comments, DNREC Division of Water Resources letter addressing Central Wastewater System, Community Waste Water Management System Information, Ability to serve letters: Delaware Electric Cooperative, Inc, Long Neck Water Co., and Indian River Volunteer Fire Co., TMDL Analysis, and Subdivision and Recreation Area Plans; and that a revised cover sheet has been submitted.

The Commission found that Jim Fuqua; Attorney, Mark Handler and Randy Mitchell; developers, Jason Palkewicz; Professional Engineer with McCrone, Inc., Brian Carbaugh of WWES, and Dawn Riggi of Davis, Bowen and Friedel 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 for a low density agricultural residential single family subdivision; that the developers have a contract to purchase the site; that 20,000 square

foot lots with central sewer are proposed; that the site is on both sides of Route 5, 3,000 feet north of Route 24; that the site contains 222 acres; that there are 4.5 acres of wetlands on the site; that the wetlands are along Phillips Branch; that 301 single family lots and recreation area proposed; that the lots contain the minimum lot width and depth of 100 feet; that the setbacks will be the standard setbacks in the AR-1 zoning district; that the proposed density is 1.35 lots per acre; that there are four phases proposed and that there are two more additional phases that will be another application in the future; that the two additional phases were not applied for at this time since the applicants did not have a contract on the land; that a traffic impact study was conducted and reviewed by DelDOT; that DelDOT reviewed by traffic impact study based on 500 lots and that there are six areas of concerns; that the developers will comply with the recommendations of DelDOT; that the large portion of the subdivision is on the east side of Route 5 and the small portion on the west side; that there are proposed interconnection streets on the east side of Route 5 to adjoining parcels; that a community wastewater system will be used; that there will be a bus stop along Route 5; that a 30-foot forested buffer is on the west side of the site as required; that the recreational areas will have tennis courts and tot lots; that the project will be marketed as affordable housing; that the price range will begin at \$200,000.00; that the phasing plan will be about 125 homes per year; that central water will be provided by Long Neck Water Company; that electric will be supplied by Delaware Electric Cooperative; that the site is located in the service area of the Indian River Volunteer Fire Company; that the developers will donate \$100.00 for each initial sold lot to the Indian River Fire Company; that the community wastewater system will be built as per Ordinance No. 38 requirements; that the stormwater management areas will meet or exceed Sussex Conservation District and DNREC requirements; that no wetlands will be disturbed; that the streets will be private and built to County specifications; that there will be a five-foot paved path for walking, bike riding and skating through out the subdivision; that no street lights are proposed but each lot will be required to have an outside lamp post in their yard; that the project will have a positive economic impact to the County; that there are mixed housing types in the Long Neck area; that there are shopping and recreational opportunities in the area; that a change of zone is not required or requested for this project; that the project is a permitted use based on the zoning code and Land Use Plan; that the zoning code permits development outside of the development area; that the site is mostly cleared land that has been farmed in the past; that there are about 6 acres of woodlands; that there is not a tax ditch on the site; and submitted proposed findings of fact that include:

A. The subdivision's location is appropriate for the proposed development:

1. The land is zoned AR-1 which permits low-density single family residential development at a density of appropriately two (2) lots per acre. Stonewater Creek's density of 301 lots on 222 acres of land is a gross density of 1.36 lots per acre.

2. The subdivision is in character with other residential developments in the area including an expansion of the Baywoods Development located on both the north and south sides of Route 24.
3. The site is located in close proximity to Long Neck Road which contains a concentration of business and services for the Long Neck Area.
4. The subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
5. The subdivision is consistent with the historical trend of residential development in the area.

B. The Subdivision is in compliance with the Sussex County Subdivision Ordinance:

1. The site design integrates the development's location on the site so as to have a minimal impact on wetlands. No wetlands are included within any lot lines.
2. Due to the existing nature of the site, no significant grade changes are anticipated and the developer intends to protect any mature trees outside of the roadway and house site areas.
3. Central water and a central community sewer system will be constructed as permitted by the County Zoning Ordinance and as regulated by DNREC.
4. The stormwater management system will meet or exceed the requirements of the State and County.
5. The use of a central community sewer system and stormwater management system will maximize ground water recharge and erosion and sediment control measures will comply with State and County requirements.
6. Entrances will comply with the requirements of DelDOT.
7. The subdivision will contribute significant revenue to the local School District through school taxes.
8. The development does not affect area water ways or other natural features.
9. The development will not adversely affect the environment in that the central community sewer system will be constructed and operated in accordance with DNREC regulations and central water will be provided by a public water company.

The Commission found that Robert Raley was present and spoke in support of this application and stated in his presentation that he owns a campground in the area; that the people who use the campground may purchase lots in the development; that the subdivision will create affordable housing in the area; and that Holly Lake Road will not be negatively impacted.

The Commission found that Henry Glowiak and Pat Torelli of the Citizens Coalition were present and spoke in opposition to this application and stated in their presentations that the application should be denied since it is not in compliance with the Liveable

Delaware goals; that it goes against the Sussex County Comprehensive Land Use Plan; that a letter from DelDOT clearly indicates the negation of current improvements to the Route 5 and 24 intersection; that the site borders Phillips Branch which is a tributary to the Rehoboth Bay; that the project intrudes into the riparian forest; that there are problems with the proposed community sewer system; that these type of sewer systems have failures and are not feasible; that traffic is a problem in the area; and that the project will cause a loss of farmland in the area; and submitted a letter into the record.

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

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

Motion carried 5 – 0.

OTHER BUSINESS

Courts at Old Mill
C/U #1472 Site Plan – Road 357

Mr. Abbott advised the Commission that this is a preliminary multi-family site plan for 48 units on 12.58 acres; that there are 12 buildings with 4 units each; that each unit has an attached 2 car garage; that 144 parking spaces are required and provided; that the final site plan needs to reference the 40-foot separation between buildings and include the dimensions of the buildings; that central sewer will be provided by Sussex County and central water will be provided by Sussex Shores Water Company; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Lakes at Old Mill
C/U #1473 Site Plan – Road 357

Mr. Abbott advised the Commission that this is a preliminary multi-family site plan for 160 units on 40.74 acres; that there are 6 buildings with 15 units; 1 building with 11 units; 1 building with 8 units; 1 building with 5 units; 10 buildings with 4 units; and 2 buildings with 3 units; that 480 parking spaces are required and provided; that the final

site plan needs to reference the 40-foot separation between units and include the dimensions of the buildings; that a clubhouse, swimming pool, tennis courts and tot lot is provided; that central sewer will be provided by Sussex County and central water will be provided by Sussex Shores Water Company; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Forest Landing MR/RPC
C/Z #1490 Preliminary Site Plan – Roads 84 and 368

Mr. Abbott advised the Commission that this is a preliminary site plan for 352 units on 124.80 acres; that the project includes 120 townhouse units; 184 duplex units and 48 single family lots; that the approved ordinance permits 353 units; that 1,008 parking spaces are required and 968 spaces are referenced on the site plan; that the final site plan will need to be revised to provide the correct parking; the final plan needs to reference the 40-foot separation between buildings and include the dimensions of the buildings; that the recreation area includes a swimming pool, tot lot, and tennis courts; that street lighting and sidewalks are required; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the site plan is suitable for preliminary approval with the required revisions; and that final approval is subject to the review and approval by the Commission upon receipt of all agency approvals.

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

Motion carried 5 – 0.

Tidewater Utilities, Inc.
C/U #1477 Site Plan – Route 54

Mr. Abbott advised the Commission that this is a site plan for a 150-foot tall 300,000 gallon elevated water storage tank; that a 24-foot by 24-foot water treatment building is also proposed; that the area is enclosed with a chain link fence; that the setbacks meet the requirements of the zoning code; and that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Delaware Electric Cooperative
C/U #1463 Site Plan – Road 353

Mr. Abbott advised the Commission that this is a site plan for a 62,500 square foot area for an electrical substation; that the area is fenced in; that the applicants are requesting to buffer the entire frontage of Road 353 instead of the fenced in area as this will create a more effective buffer; that the setbacks meet the requirements of the zoning code; that the site plan meets the conditions of approval; and that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary and to allow for the landscaping along the entire frontage of Road 353 with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 – 0.

Miranda/Hardt Office Building
Commercial Site Plan – Route 26

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story 5,535 square foot office building; that the first floor contains 4,575 square feet and the second floor contains 960 square feet; that 28 parking spaces are required and that 30 spaces are provided; that there are 16 spaces located within the 60-foot front yard setback and that they will need a waiver from the Commission; that the proposed building meets the setback requirements of the zoning code; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

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

Tokyo Steakhouse
Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for a 9,600 square foot restaurant; that the staff has received a letter of no objection from DelDOT in reference to the entrance location; that the entrance will be from the existing entrance to the Home Depot site with a cross access easement; that 125 parking spaces are required and 126 spaces are provided; that 24 spaces are located within the 60-foot front yard setback and that they need a waiver from the Commission; that the setbacks meet the requirements of the zoning code; that central sewer will be provided by Sussex County and that central water will be provided by Tidewater Utilities; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.

Vines Creek Marina, L.P.
2 lots North Dogwood Drive – Dogwood Acres

Mr. Abbott advised the Commission that this is a concept to create 2 lots with access from North Dogwood Drive within the Dogwood Acres Subdivision; that the parcel to be subdivided is not a part of the Dogwood Acres Subdivision but it does have access from the existing streets which are dedicated to public use; and that both of the lots meet the requirements of the subdivision and zoning codes.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the two lots as a concept.

Motion carried 5 – 0.

Gary Chorman
Lot on an existing 50' right of way – Road 264

Mr. Abbott advised the Commission that this is a concept to create a 2.44 acre lot with access off of an existing 50-foot right of way; 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 an application for a major subdivision.

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

Motion carried 5 – 0.

David Collins
Lot on 50' right of way – Road 367B

Mr. Abbott advised the Commission that this is a concept to create a 3.07 acre lot out of a 5.29 acre parcel; that the proposed 3.07 acre lot will have access from a 50-foot right of way; and that there is an existing entrance where the proposed right of way will be located.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the lot and right of way as a concept.

Motion carried 5 – 0.

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

Mr. Abbott advised the Commission that this is a site plan for an used car sales facility and repair shop; that the maximum number of vehicles to be displayed at any time is 18; that they are required to be displayed on the paved area; that the applicant's attorney has written a letter requesting that the cars be displayed on the grass area to the east of the site; that they cannot display the vehicles on the paved area since it will block the gate to the storage area and that the gate cannot be relocated due to a concrete post being at the other end of the fence; and that the letter indicates that the grass area will be paved in the future.

Mr. Johnson advised the Commission that it was his intention to have the display area located on the existing paved area and he still wants the cars to be displayed on the existing pavement now and in the future.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously that the cars will be displayed on the existing paved area in front of the building.

Motion carried 5 – 0.

Pep – Up, Inc.
Commercial Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story 4,400 square foot office building; that 22 parking spaces are required and proposed; that 6 spaces are located within the 60-foot front yard setback and need a waiver from the Commission; that the setbacks meet the requirements of the zoning code; that individual on-site sewer and water are proposed; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, 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.

Meeting adjourned at 10:45 P.M.