

## MINUTES OF THE REGULAR MEETING OF MAY 22, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 22, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as revised to consider the Old Business items prior to the Public Hearings and to revise Rule 1 of the “Rules of Procedure of the Planning and Zoning Commission” so that Old Business is considered prior to Public Hearings.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of May 8, 2003 as amended.

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

### OLD BUSINESS

Subdivision #2002-38 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 22.02 acres into 42 lots, located south of Route 54, 450 feet southeast of Road 58B.

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

Mr. Lynch stated that he would move that the Commission recommend preliminary approval of Subdivision #2002 – 38 for Keith Properties, Inc. for only 36 lots (lots 1 through 36) based upon the record and for the following reasons and asked Mr. Robertson to read Mr. Lynch’s statement.

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

- 1) Lots 1 through 36 of the proposed subdivision generally meet the purpose of the Subdivision Ordinance in that they protect the orderly growth of the County.
- 2) The proposed subdivision is in accordance with the 1997 Sussex County Comprehensive Plan, in that it is located in a Development District. It is also in an area that is served by county sewer and central water.
- 3) Lots 1 through 36 of the proposed subdivision are integrated into the existing terrain and surrounding landscape, and preserve natural features.

- 4) Mr. Lynch suggests not approving lots 37 through 42, since they are not contiguous to the other 36 lots. They will have an adverse impact on surrounding wetlands, due to the location of the roadway and the need for it to cross 404 Wetlands for access to these lots.
- 5) Lots 37 through 42 will have an adverse impact on surrounding wetlands and natural topography, which the Subdivision Code has identified as "critical areas".
- 6) Mr. Lynch is not satisfied that lots 37 through 42 will be adequately accessible by emergency vehicles, as a result of the need to cross the 404 Wetlands by bridge or similar means.
- 7) This recommendation is subject to the following conditions:
  - Agricultural buffers shall be provided in accordance with the Subdivision Ordinance, if necessary.
  - The Applicant shall cause to be formed a homeowner's association to be responsible for the maintenance of streets, roads, any forested buffers, stormwater management facilities, and other common areas.
  - 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 final site plan.
  - No community docking or launching facilities for motorized boats or other motorized watercraft shall be permitted as part of the subdivision.
  - Except for lots 26, 27, and 28, no individual boat docks or piers shall be permitted on the lots or adjacent lands. Lots 26, 27, and 28 shall be permitted to apply for private docks or piers in accordance with applicable regulations of DNREC.
  - The common area shown on the Preliminary subdivision plat between Lots 25 and 24 shall be limited to pedestrian use only for viewing the waterways or use of non-motorized watercraft such as kayaks or canoes.
  - The subdivision shall not acquire any additional lands for development of a community marina, dock or launching area for motorized boats or other motorized watercraft including, but not limited to, "the island" located along the easterly boundary of the subdivision.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary for the reasons and with the conditions stated above.



Motion carried 5 – 0.

Subdivision #2002-7 – application of **COVINGTON CHASE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 69.72 acres into 57 lots, located at the northeast corner of the intersection of Road 264 and Delaware Route One.

Mr. Abbott advised the Commission that this application received preliminary approval on May 9, 2002; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the subdivision code; and that all agency approvals have been obtained.

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

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.

Mr. Abbott advised the Commission that a letter of septic feasibility has been received from DNREC; and that no information has been received regarding the issue of street lighting and recreation areas from a previous application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve this application as a preliminary with the following conditions:

- The new section will have street lighting and a recreation area.
- Traffic calming features will be installed in the new and old sections.

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.

The Commission discussed this application which has been deferred since May 8, 2003.

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

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 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 discussed this application which has been deferred since April 24, 2003.

Mr. Robertson advised the Commission that he had talked to Frederick H. Schranck, Esquire, of the Department of Transportation, and that Mr. Schranck verified that the State right-of-way of Road 346B does extend from Road 346 to the Indian River.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1499 (Ellis Point) for Caldera-Indian River II, LLC based upon the information contained in the record and asked Mr. Robertson to read Mr. Lynch's statement.

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

- 1) The proposed AR-1-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Comprehensive Land Use Plan.
- 2) In this case, sewer service will be provided and the project is adjacent to a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities.
- 3) The current zoning classification is AR-1, which will not change.
- 4) The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
- 5) The subject property is in an area that has developed with residential projects similar to the proposed project.
- 6) The project has access via County Road 346B, which DelDOT has advised the Commission is a State right-of-way that extends all the way to Indian River Bay.
- 7) This recommendation is subject to the following conditions:



1. The maximum number of dwelling units shall not exceed 56. These shall all be single family detached homes.
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 and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, sidewalks on at least one side of all streets, street lighting and landscaping.
4. The development shall be served as part of the appropriate Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
5. The RPC 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.
7. Site plan review for the development shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
9. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. 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 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.
11. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00am and 6:00pm, Monday through Saturday.
12. A fifty (50) foot buffer shall be provided from the State wetland line.

13. The applicant is encouraged to meet with the DNREC Parks Division to coordinate safeguards, such as deed restrictions or fencing, to minimize any impact on State lands.
14. No individual or community boat docks, piers, boardwalks or boat launching facilities for motorized boats shall be permitted.
15. The applicant shall comply with the conditions described in a May 5, 2003 letter from John Hughes, Secretary of DNREC, to the Sussex County 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 #1502 – application of **DOC PROPERTIES, LLC** to amend the Comprehensive Zoning Map for an AR-1 Agricultural Residential District to an AR-1/RPC Agricultural Residential District/Residential Planned Community for a certain parcel of land lying 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 discussed this application which has been deferred since May 8, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1502 for DOC Properties, LLC, based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's statement.

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

- 1) The current zoning classification is AR-1, which will not change. The prior use of the property was as a borrow pit under a Conditional Use and was primarily agricultural in nature.
- 2) The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses. In this case, the applicant has used design ingenuity by incorporating an existing borrow pit into the project as a community lake that is one of the focal points of the community.
- 3) This recommendation is subject to the following conditions:
  1. The maximum number of dwelling units shall not exceed 70. These shall all be single family detached homes.



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 by a private on-site central sewer system as defined by the Sussex County Zoning Ordinance designed in accordance with Sussex County Engineering Department specifications. The private central sewer system shall also be constructed in conformity with all DNREC regulations.
4. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
5. Site plan review for the development shall be subject to approval of the Planning and Zoning Commission.
6. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
7. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
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 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, landscape materials and fill on, off or to the property shall only occur between the hours of 7:00am and 6:00pm, Monday through Saturday.
10. The applicant shall provide access to the small cemetery that exists adjacent to the south side of the property.

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

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

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1504 Ruggiero Development Group, LLC, based upon the record made at the public hearing and with reasons and asked Mr. Robertson to read Mr. Lynch's statement.

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

- 1) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Comprehensive Land Use Plan.
- 2) MR zoning is appropriate for the site because medium density development is appropriate in areas where central water and central sewer are available. In this case, sewer service will be provided. Water service will be provided by Tidewater Utilities.
- 3) The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
- 4) The proposed RPC is in the area of several other residential projects with varying zoning classifications and densities.
- 5) This recommendation is subject to the following conditions:
  1. The maximum number of lots shall not exceed 75.
  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 and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These amenities shall include a swimming pool, tot lot, gazebo, sidewalks on at least one side of the street and street lighting.
  4. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
  5. The MR/RPC 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. If feasible, stormwater management shall be shared with Sea Grass Plantation.
7. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
9. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. 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 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.
11. Construction, site work, grading, and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur between the hours of 7:00am and 6:00pm, Monday through Saturday.
12. A 20 foot tree buffer shall be provided on the southerly and easterly boundaries of the development. A 10 foot tree buffer shall be provided along the boundary with "Sea Grass Plantation" (as shown on the preliminary site plan), and a 30 foot landscape buffer shall be provided along the boundary with Irons Lane.

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

Motion carried 5 – 0.

#### PUBLIC HEARINGS

Subdivision #2003-1 – application of **DONALD COLLINS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex

County, by dividing 27.65 acres into 28 lots, located west of Road 412, 1,703 feet south of Road 433.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 19, 2003 and that the report will be made a part of the record for this application; that five letters and a petition with 20 signatures opposed to this application have been received and that they will be made a part of the record for this application.

The Commission found that Don Miller, Surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that there are 3 approved strip lots and that this application is for 25 interior lots for single family residences; that the minimum lot size is 0.75-acres; that the streets will be built to county specifications; that individual wells and septic are proposed; that there are no wetlands on the site; that there will not be any adverse impacts to traffic on the roads in the area; that the entrance location was chosen to be located between two existing homes across from Road 412 to lessen impacts from headlights; that the developers will plant Bradford pear trees along Road 412 to act as a buffer from the existing homes across from Road 412; that the rear of the dwellings will be required to have shutters on the windows; that the minimum dwelling size will be 2,100 square feet; that it will take three years to complete the subdivision; that there will not be any negative impacts to the Indian River School District; that DelDOT has not approved the entrance design yet; that the developers will review all construction plans before the homes are built; that the homes will be in the \$230,000 to \$240,000 range; that the developers will save as many trees as possible; that there is only one ingress/egress to the site; that the stormwater management pond will serve the entire subdivision; that they may lose some lots if additional stormwater management facilities are needed; that the location of the stormwater management pond is due to a positive outfall; that there are agricultural uses in the area; that the subdivision is not adjacent to any residential homes; that the dwellings in the subdivision will front on the interior streets; and submitted photographs of two other developments that the developers have built in the area.

The Commission found, by a show of hands, that two people were present in support of this application.

The Commission found that James Schreppler, Gene Mion, and Merrill Parker were present in opposition to this application and stated in their presentations that Mr. Schreppler owns a land locked parcel and he would not be opposed to the application if access were provided to his property through the subdivision; that they have concerns about the location of the stormwater management pond; that the number of lots should be reduced to 20 lots; that the minimum square footage of the homes should be 2,500 square feet to be similar to the existing homes in the area; that there should be a buffer between



the proposed lots and Road 412; that the minimum roof pitch of the proposed homes should be 7/12; that there are nine developments within a 1.5 mile radius that still have vacant lots; that the new development could cause a loss of water in the area; that the water table in the area is low; and that there will be a loss of wildlife in the area.

The Commission found, by a show of hands, that ten people were present in opposition to this application.

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

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

Motion carried 5 – 0.

Subdivision #2003-2 – application of **WOLFE PROPERTIES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 50.04 acres into 10 lots, located west of Road 453, 290 feet south of Road 454.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 19, 2003 and that the report will be made a part of the record for this application; and that the restrictive covenants have been submitted and reviewed by Mr. Robertson, and that he has found them to be satisfactory.

The Commission found that Jim Wolfe was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the proposed subdivision is for 10 lots; that there is a tax ditch that crosses lot 10; that the proposed homes will be stick built homes; that no manufactured homes will be permitted on the lots; that the larger setbacks are required since the on site septic systems will be located in the front yard; that he is trying to make estate lots; that the restrictive covenants have been submitted and approved; that he will add a clause to the restrictive covenants addressing the height of grass and weeds; and that he has talked to the Natural Resources Conservation Service about putting in culverts across the tax ditch.

The Commission found that Daniel Lecates was present in support of this application and stated in his presentation that he has reviewed the subdivision plan and found it to be very appealing; that the large estate lots are a good idea; and that the subdivision is located in an appropriate area.

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

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

Motion carried 5 – 0.

C/Z #1503 – application of **RDM, INC. (WARRINGTON PROPERTIES, 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 Lewes and Rehoboth Hundred, Sussex County, land lying east of Road 274 (Old Landing Road) 1.4 miles south of Road 275 (Warrington Road), to be located on 139.32 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 an executive summary, a background summary, references to water service, sanitary sewer service, stormwater management and best management practices, stormwater control during construction, environmental considerations, utilities, roads and transportation, fire access and safety provisions, deed restrictions, an economic impact study, and preliminary assessments of historic resources.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed project should be subject to review by the Technical Advisory Committee; that the roads should be designed, constructed and inspected in accordance with the street design requirements of Chapter 99; that the streets should be curbed and utilize a closed pipe drainage system for the multi-family areas as construction of high-density dwellings destroys earthwork and finished grades of drainage swales; that sidewalks and streetlights should be provided for all multi-family areas; and that adequate safety features should be provided that would not require pedestrians to walk within the streets or in the dark to access their units and community areas.

The Commission found that DelDOT letters, dated December 20, 2003, April 10, 2003, and May 15, 2003 have been received and are summarized in comments from the Office of State Planning Coordination.

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, Rumford loamy sand, Sassafras sandy loam; Sassafras loam, Tidal marsh, and Woodstown loam; that the Evesboro, Rumford, and Sassafras soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Fallsington, Pocomoke, and Tidal marsh soils have severe limitations; that the applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Fallsington, Pocomoke, and Rumford soils are considered of Statewide Importance; that the Fallsington, Pocomoke, Rumford, Sassafras, and Woodstown soils



are considered Prime Farmland; that the Fallsington and Pocomoke soils are considered Hydric; that the Woodstown soils are considered Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; that regulated wetlands may be present; and that it may be necessary for some on-site and off-site drainage improvements because of the increase in impervious areas and the presence of poorly drained soils.

The Commission found, based on comments received from the Office of State Planning Coordination, that the applicant has met with the State through the Request for Review process; that the State agencies commended the developer on working with the agencies to address their concerns; that DNREC has noted that the applicant has addressed most of the salient regulatory issues; that DNREC has requested that the developer prepare a nutrient budget showing how this development will reduce nutrient loading to levels equal to or exceeding established TMDL criteria; that TMDL reduction criteria for this area specified a reduction of 40% for both nitrogen and phosphorus; that the developer is to be commended for adopting "Green Technology" Best Management Practices on this project; that these practices have been identified by the Department as the preferred method for compliance with the State's Sediment & Stormwater Regulations; that the Sediment & Stormwater Program staff is available for any technical assistance in the planning and design of these BMP's; that DelDOT comments included: 1) A phasing plan acceptable to DelDOT should be developed such that DelDOT has sufficient opportunity to identify and purchase any rights-of-way from the north end of the property that might be needed for the development of a planned limited access road through the area. DelDOT anticipates identifying that right-of-way by the fall of 2005. 2) The developer should be required to enter into an agreement with DelDOT, whereby the developer would fund an equitable portion of a traffic signal at the intersection of Old Landing Road, Warrington Road and Strawberry Way. The costs shall include pedestrian signals and crosswalks at DelDOT's discretion and all associated costs with coordinating this signal with others along Old Landing Road. 3) The developer should be required to enter into an agreement with DelDOT, whereby the developer would fund an equitable portion of a traffic signal at the intersection of Old Landing Road and Airport Road. The costs shall include pedestrian signals and crosswalks at DelDOT's discretion and all associated costs with coordinating this signal with others along Old Landing Road. 4) Prior to the issuance of building permits, the developer should be required to develop plans for the improvement of the intersection of Old Landing Road, Warrington Road and Strawberry Way in a manner acceptable to DelDOT. Eastbound Old Landing Road left-turn lane, westbound Old Landing Road right-turn lane, and restriping the southbound Warrington Road approach to include a right-turn lane were included. 5) Sidewalks, crosswalks and roadway shoulder improvements should be included in the site plan. These improvements should be incorporated into the design of the internal street network, the roadway frontage along Old Landing Road and development entrance. The developer should be required to build any improvements in the Old Landing Road right-of-way in conjunction with the site entrance construction. That DelDOT anticipates working with



the developer to incorporate the following suggestions into the site plan: 1) DelDOT will require a right-of-way dedication along the parcels' frontage of 30 feet from the centerline of the road. 2) DelDOT's policy with regard to number and spacing of access points is to permit no more than two per road. Preliminarily, the north and south entrances are acceptable, but the middle one may not be. DelDOT understands that the middle entrance is an important element of the proposed site layout and they may permit additional access where there is more than 1,000 feet of frontage. 3) DelDOT commended the developer on the proposed multi-modal path along Old Landing Road. 4) DelDOT noted that the south entrance would be located well north of the golf course entrance on the west side of Old Landing Road and that an internal cul-de-sac would be more or less opposite the golf course entrance. Consideration should be given to extending a pedestrian path and crosswalk, possibly wide enough for golf carts, from the end of the cul-de-sac to the golf course property. 5) DelDOT noted that the applicant has provided the opportunity for an interconnection to the property immediately to the north, which is also proposed for residential development. Preliminarily, the opportunity provided is acceptable, but it will require further review. The State commends the developer on working with State agencies to identify and address issues regarding development of this property. The State has no objections to this proposal.

The Commission found that Michael Lynn, developer, was present with James Fuqua, Attorney, Scott Aja of McCrone, and Robert Rodgers of Orth-Rodgers Associates, Inc. and stated in their presentations and in response to questions raised by the Commission that they propose to develop the 139 acre tract with 282 residential units; that no commercial uses are proposed; that the gross density has been calculated at 1.97 units per acre; that the net density has been calculated at 2.81 units per acre; that central water will be provided by Tidewater Utilities; that public sewer is available from Sussex County; that electrical service will be provided by Delaware Electric Cooperative; that Verizon will provide telephone service; that Comcast will provide cable service; that the Rehoboth Beach Volunteer Fire Company will provide fire protection; that a phasing plan has been proposed to the satisfaction of DelDOT; that the project will be an economic benefit to the County and to the area; that the site is located in a Development District according to the 1997 Comprehensive Plan, an Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update and the Strategies for State Policies and Spending document; that the developer has met agencies through a Pre-LUPA meeting, a LUPA meeting, a joint processing meeting with DNREC and the Army Corps. of Engineers, and meetings with DelDOT, the Sussex Conservation District, and County Engineering; that the site adjoins Rehoboth Bay Mobile Home Community, is across from Old Landing Golf Course, and is adjacent to, directly across from, or in closed proximity to several residential developments in the area, including single family subdivisions, residential planned communities, mobile home parks, or multi-family uses; that they have proposed lesser setbacks between streets and homes so that residents may walk or bike to open spaces within the project; that the project has been designed to



include connectivity with single family lots along or near Old Landing Road and multi-family units in pockets throughout the interior of the site; that a multi-modal path is proposed along Old Landing Road; that buffers are proposed between lots and upland wetlands and woodlands; that State wetlands buffers have been increased to an average of 80 feet; that 88 acres of the 149 acre tract will remain open and undeveloped; that interconnection to the undeveloped lands to the north of the project is proposed; that a DART bus turnaround is proposed; that they are proposing to phase the project over three (3) years; that they propose to start development of the project in 2004; that the developer has contacted the Cape Henlopen School District and noted that the project will be an economic benefit to the District and should not be a burden to the District; that a homeowners association will be created to enforce the deed restrictions; that there will not be any water oriented activities along White Oak Creek; that bio-filtration, dry swales, and ponding will be provided to aid in Best Management Practices; that preliminary design of the project indicates a 72.7% reduction of Nitrogen and a 40.7% reduction in Phosphorus through Structural Best Management Practices; that woodlands will separate lots and wetlands; that they will be creating non-tidal forested wetlands; that they propose to create interconnecting greenway corridors at four locations where a canopy of trees over roadways can be established; that the County Engineering Department and local Fire Chief has voiced no objection to the concept; that the greenway corridors will also be a benefit to wildlife habitat; that the maximum wetlands disturbance will be 0.114 acre (0.057 acre for road crossing and 0.057 acre for outfalls); that a study was performed to evaluate traffic impacts per the guidelines required by DelDOT; that they will comply with all DelDOT requirements; that the site is in a Development District and in an area that is developing with residential uses; that the proposed density is appropriate for the area; that the project has been designed to minimize impacts on the environment; that the only tidal wetlands are along White Oak Creek; that no bridging of wetlands is proposed; and that the Office of State Planning Coordination, speaking no behalf of the State, has voiced no objection.

The Commission found that Mr. Fuqua submitted and read some proposed conditions of approval and that the conditions included: 1) The maximum number of units shall not exceed 282 units comprised of 106 single family lots and 176 single family attached townhouses. 2) Residential building permits shall not exceed 100 per year cumulatively. 3) Site plan review shall be required for each phase of development. 4) The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting. The RPC design recognizes the importance of the environmental aspects of the development, including the storm water management design, utilization of best management practices and connectivity of existing site features proposed for the development, therefore the County shall allow variance from the standard subdivision street requirements at the four (4) designated "green way corridors". Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design for the project. 5)



All entrance, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT in its letter of April 10, 2003, or in accordance with any further modification required by DelDOT. 6) A bus stop shall be provided on site for future use by DART. 7) Recreational facilities, e.g. tennis courts, swimming pool and bath house shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit. 8) The RPC shall be served as part of the Sussex County sanitary sewer system. 9) The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations. 10) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated Federal or State wetlands or open space areas. 11) State wetlands shall not be included in individual lots. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. 12) No piers, docks, boat ramps, or other water related recreational facilities shall be permitted adjacent to White Oak Creek. 13) The applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of the streets, roads, buffers, stormwater management facilities, and other common areas. 14) The applicant, its successors, and assigns shall operate the stormwater management facilities in a manner consistent with the Best Management Practices (BMPs) set forth in the applicant's exhibits submitted as part of the record. 15) (A) 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. (B) Any site work performed, including clearing, grubbing and excavation, within the boundaries of any proposed street right-of-way shall be inspected by a qualified geo-technical engineer who shall certify in writing to the Sussex County Engineering Department, prior to issuance of construction permits, that (a) all right-of-way areas have been cleared flush with the ground of all trees, brush, shrubs, down timber, rotten wood, rubbish, and other debris, vegetation or obstructions; (b) all fill material utilized was suitable; and (c) all fill material utilized was adequately compacted as a road base. 16) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.



The Commission found that Mark and Jean Winstead, residents of Old Landing Subdivision, and David Lurdy, a resident of Rehoboth Shores Estates, were present and expressed concerns that the applicant had not contacted anyone within Old Landing Subdivision about the application, increase traffic through their development, additional traffic on Old Landing Road, concerns for pedestrians and bikers along Old Landing Road, the need for more traffic lanes, poor sight distance view at Airport Road and Miller Road, and questioning the maps presented by the traffic engineer since the Sea Chase project was not shown.

The Commission found that Michael Tyler, President of the Citizens Coalition, Inc., was present and submitted and read a statement in opposition expressing concerns that transportation infrastructure continues to lag behind development; that if this project is approved it should be done contingent upon the installation of appropriate traffic signals at Warrington Road and Old Landing Road; that the application is being requested without any commensurate housing demand or economic need; that our quality of life is being exploited; that our gateway communities must be protected and preserved; that the Coalition questions the continued ability of our water and wastewater systems to handle a steadily rising use and a steadily declining sewer capacity; that it is time the pace of development be slowed to allow for future expansion to handle future anticipated use; that developers should be providing employee housing and supporting the infrastructure; that the County should consider creating an Employee Housing District that would allow for employees to live where they work; that the cumulative impact of traffic, with or without traffic control continues to erode our safety and quality of life; and that he hopes that the County will consider all the concerns being made regarding this and other areas facing the pressure of development that have a negative impact on Coastal Sussex and its gateway communities and recommend denial of this application at this time.

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

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

Motion carried 5 – 0.

C/Z #1505 – application of **NANTICOKE TRIBE #21/IMPROVED ORDER OF REDMEN** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, land lying southwest of U.S. Route 113, 0.3 mile northwest of Road 431, to be located on 1.407 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 site plan, a portion of the tax map showing the zoning in the area, photographs of the site and some



commercial uses in the area, a copy of the 2002 Comprehensive Plan Update Future Land Use map, and a copy of the "Guidelines for Non-Residential Uses" in Developing Areas from the Update.

The Commission found, based on comments received from DelDOT, that the subject application is for an existing automotive glass installation shop and an existing fraternal organization meeting hall; that because these uses are existing uses, the Department will allow the applicant to continue using the existing horseshoe driveway; that if the subject land uses change, the Department would not issue a commercial entrance permit to the property if the proposed uses exceed 200 average daily trips; that if the land uses change the existing horseshoe driveway would be eliminated and replaced with one combined rights-in/rights-out entrance; and that since the application is for existing uses, which are not intense uses, a traffic impact study is not necessary.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is within a Developing Area according to the Strategies for State Policies and Spending document; that the State has no objections to this application; that the State acknowledges DelDOT comments; that building plans for all commercial structures shall be submitted for review and approval to the Office of the State Fire Marshal; that the State DNREC commented on wells, isolation distances, dewatering, and well permitting; that there are two active and three inactive Leaking Underground Storage Tank sites near the site; that no environmental impact is expected from the sites; and that the State Historic Preservation Office has noted that there is a 75% probability for prehistoric sites in the area.

The Commission found that Ronald Moore, Fred Rust, and Art Mears, members of the Order, were present with Tim Willard, Attorney, and stated in their presentations and in response to questions raised by the Commission that the Order is a patriotic and charitable organization; that the Order has owned the site since 1959; that a portion of the building has been utilized by a automotive glass replacement business for approximately 15 years; that the remainder of the building provides space for meetings of the Order; that



the use is non-conforming and was established prior to zoning jurisdiction; that the rezoning is appropriate since the site is in close proximity to other commercial, business, and industrial sites; that the site is in close proximity to 1<sup>st</sup> State Chevrolet, Arrow Safety, Townsends Administrative Office Building, a Day Reporting Center for State Department of Corrections, State Offices for Health and Social Services, a church, and the SPCA; that the site has on-site water and septic; that no changes are proposed to the use; that DelDOT requirements will be complied with if any change of land use is created; that the site is close to Georgetown; that the site is located within a Developing Area according to the 2002 Comprehensive Plan Update; and that the use is consistent with the "Guidelines for Non-Residential Uses" of the Update.

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

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved based on the record of the public hearing, since the use has existed on the site since 1959, and since the use is consistent with the area.

Motion carried 5 – 0.

C/Z #1506 – application of **DELAWARE PULPWOOD CO.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying at the northeast corner of U.S. Route 113 and Road 207 (Johnson Road), to be located on 1.4 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 site plan, a portion of the tax map showing the zoning in the area, photographs of the site and some commercial uses in the area, a copy of the 2002 Comprehensive Plan Update Future Land Use map, and a copy of the "Guidelines for Non-Residential Uses" in Developing Areas from the Update.

The Commission found, based on comments received from DelDOT, that the subject application is for an existing office and used car sales lot; that the Department will not permit new commercial entrances that would exceed 200 average daily trips along this portion of U. S. Route 113; that the site has alternative access that they are currently using along Johnson Road (Road 207); that all access will be required to continue along

Johnson Road; and that since the application is for existing uses, which are not intense uses, a traffic impact study is not necessary.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is within a Secondary Developing Area according to the Strategies for State Policies and Spending document; that the State has no objections to this application; that the State acknowledges DelDOT comments; that the State DNREC commented on wells, isolation distances, dewatering, and well permitting; and that the State Historic Preservation Office has noted that there is a potential historic property immediately east of the site and well as one across Johnson Road; that the Office suggests that the County require some landscape buffering on the east side and southeast corner of the property to minimize the adverse visual effects that could be caused to the neighboring historic resources; and that there is a 75% probability for prehistoric sites in the area.

The Commission found that Robert Fitzgerald, owner, Joe Webb, tenant, and Tim Willard, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that the site has been utilized as a pulpwood and firewood distribution site; that the use is non-conforming and was established prior to zoning jurisdiction; that the rezoning is appropriate since the site is in close proximity to other commercial, business, and industrial sites; that the site is in close proximity to Weller's Tire Service and Fitzgerald Auto Salvage; that the immediate area has a mixed zoning of B-1 Neighborhood Business, C-1 General Commercial, and HI-1 Heavy Industrial; that a rezoning has been requested so that a used car sales facility can be permitted on the site; that the site has on-site water and septic; that they have no intent to change the entrances on the site; that DelDOT has granted a temporary entrance permit for the used car sales lot; that a mobile home type structure exists on the site and is used for an office; that the proposed use is less impacting than the previous pulpwood/firewood business since there will be no truck traffic, scales, or storage of wood products; that the site is located within a Developing Area according to the 2002 Comprehensive Plan Update; and that the use is consistent with the "Guidelines for Non-Residential Uses" of the Update.



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

Motion carried 5 – 0.

#### OTHER BUSINESS

Swann Cove/Fenwick Plaza MR/RPC  
Site Plan – Route 54

Mr. Abbott advised the Commission that this item was removed from the agenda on May 21, 2003 at the request of the applicant's engineer.

Route 24 Professional Center  
Commercial Site Plan – Route 24

Mr. Abbott advised the Commission that this is a site plan for a 2,912 square foot doctor's office; that the site is zoned B-1 Neighborhood Business; that the setbacks meet the requirements of the zoning code; that 12 parking spaces are required and 25 spaces are proposed; that there are 8 spaces located within the front yard setback and need a waiver from the Commission; that individual on-site septic and water are proposed; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all required agency approvals.

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

Motion carried 5 – 0.

Eric James  
C/U #1478 Site Plan – Road 48

Mr. Abbott advised the Commission that this is a site plan for a 40' by 78' electrical contractor's office and warehouse; that the setbacks meet the requirements of the zoning code; that there were 6 conditions of approval and they are referenced on the site plan; that individual on-site well and septic are proposed; that the site plan meets the

requirements for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. 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.

Creekwood Parcel C  
Commercial Site Plan – Route One

Mr. Abbott advised the Commission that this is a site plan for a 8,600 square foot office building and a 3-story 24 unit condominium building on 2.12 acres; that the site is zoned C-1 General Commercial; that the staff has received a letter of no objection from DelDOT in reference to the entrance location; that the setbacks meet the requirements of the zoning code; that 115 parking spaces are required and 116 spaces are proposed; that 38 spaces are located within the front yard setback and need a waiver from the Commission; that central water will be provided by Tidewater Utilities and central sewer will be provided by Sussex County; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. 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.

Word of Hope Church  
Site Plan – Route 9

Mr. Abbott advised the Commission that this is a site plan to convert an existing dwelling into a church; that the site is zoned AR-1 Agricultural Residential; that 127 parking spaces are proposed; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

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

Motion carried 5 – 0.



Bill and Anita West – Werner  
Lot and 50' right of way – Route 54

Mr. Abbott advised the Commission that this is a concept to create a 2.00-acre lot with access from a 50' right of way; that the owner proposes to widen an existing farm lane to 50-feet wide and create a parcel for his daughter and son-in-law.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the lot and 50' right of way as a concept.

Motion carried 5 – 0.

Meeting adjourned at 11:10 P.M.