

MINUTES OF THE REGULAR MEETING OF JULY 24, 2003

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

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

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

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

OLD BUSINESS

Subdivision #2001-28 – application of **ROBERT W. DURHAM** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 82.40 acres into 76 lots, located west of Road 493, 1,130.28 feet north of Road 494.

The Commission discussed this application which received preliminary approval on November 29, 2001 for 76 lots.

Mr. Lank advised the Commission that they had granted a time extension in November 2002; that the final record plan has been reduced to 75 lots; that the record plan meets the requirements of the Subdivision Code and that all agency approvals have been received; and that the record plan is suitable for final approval.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the 75-lot subdivision as a final.

Motion carried 5 – 0.

Subdivision #2002-4 – application of **COUNTRY LIFE HOMES** to consider the re-subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 6.01 acres into 12 lots, located west of Neptune II Drive, 100 feet north of Neptune III Drive within Ocean Farm Subdivision, north of Road 363, southwest of Road 361.

The Commission discussed this application which received preliminary approval on September 26, 2002 for 12 lots.

Mr. Lank advised the Commission that the final record plat contains 12 lots; that the record plan meets the requirements of the Subdivision Code and that all agency approvals have been received; and that the record plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the 12-lot subdivision as a final.

Motion carried 5 – 0.

Subdivision #2003-4 – application of **HOMESTEAD, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 122.60 acres into 81 lots, located east of Road 384, 960 feet north of Road 382.

The Commission discussed this application which has been deferred since June 26, 2003.

Mr. Lank advised the Commission that questions were raised about the proposed wastewater treatment facility proposal since the site is located in a Conservation District; that projects within Conservation Districts are required to have central wastewater treatment facilities and central water if lots of less than 1-acre are proposed; and that comments had been requested from the County Engineer to determine if the central wastewater treatment facility met the criteria of the Code.

Mr. Lank read and distributed a letter from Artesian Water Company, Inc. referencing their intent to provide domestic water and fire flow per State Fire Marshal regulations for the project.

Mr. Lank read and distributed a memorandum from Michael A. Izzo, County Engineer, in reference to his review of the central wastewater treatment proposal; that it is not feasible to connect the project to County sewer at this time; that the developer has proposed that a 5-year time limit be established for connection to the County sewer system; and that Mr. Izzo has offered some suggested conditions if the project is approved as a preliminary.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to grant preliminary approval of the 81-lot subdivision proposal with the conditions that central water be provided; that central wastewater be provided; and that final approval not be granted until the County Engineering Department has had an opportunity to: 1) Review and approve a detailed design development report for the proposed treatment and disposal system to insure that it meets the requirements of the Conservation Zone Ordinance; 2) Review and comment upon the DNREC permit conditions for said treatment and disposal permit; 3) Review and approve the collection system plan to insure that it meets the requirements of Sussex County Ordinance #38 Standards; and 4) Establish a mechanism

to insure that a connection to Sussex County sewer can be completed at the end of the 5-year period.

Motion carried 5 – 0.

C/Z #1482 – application of **DONALD DERRICKSON** 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 southeast of Road 283 (Postal Lane) and 800 feet southwest of Route One, to be located on 44.83 acres, more or less.

The Commission discussed this application which has been deferred since November 14, 2002.

Mr. Lank advised the Commission that on November 14, 2002 the Commission left the record open for 30-days after receipt of comments from DelDOT in reference to a Traffic Impact Study, and that the staff is to notify the six people who spoke in opposition upon receipt of the comments from DelDOT; that on July 10, 2003 the Commission was provided with a copy of the DelDOT comments; and that on July 11, 2003 copies of the DelDOT comments were sent to the six people who spoke in opposition.

Mr. Lank distributed copies of a memorandum from Gerritt VanBerk and Pat Torelli of the Citizens Coalition, Inc. and a letter from Michael E. Roney, President of Board of Directors of the Sandy Brae Home Owners Association, Inc. in response to the comments received from DelDOT.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1482 for Donald Derrickson based upon the information contained in the record and 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 sewer are available. In this case, the parcel is located within the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. 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 developments such as this as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.

- 4) The project is bordered on three sides by either MR or C-1 land. The adjacent or nearby developments include the MR subdivisions of Maplewood and Sandy Brae, the MR-RPC project The Plantations, and the proposed HR-RPC Woods Cove. The project is also adjacent to an area zoned C-1 that currently contains a shopping center with stores that will serve the residents of the project.
- 5) The project will be clustered at the southerly portion of the site, and will preserve the remainder of the site as a 9-hole golf course providing recreational opportunities and open space. The Applicant has agreed that the golf course area will remain as permanent open space, and that agreement is incorporated into this recommendation as a condition.
- 6) There will be on-site recreational amenities, including a pool, bathhouse, and the golf course.
- 7) DelDOT has reviewed the site plan, and has no objection to the plan, but has suggested certain items that should be incorporated into the Final Site Plan. Those items are incorporated into this recommendation.
- 8) This recommendation is subject to the following conditions:
 - 1) The maximum number of dwelling units shall not exceed 147, including the apartment that currently exists above the golf course pro shop.
 - 2) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination, including the 5-conditions stated on Page 8 of DelDOT comments dated June 13, 2003.
 - 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 and a bathhouse.
 - 4) The development shall be served by County sewer as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
 - 5) The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - 6) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices with regard to the construction and maintenance of these features.
 - 7) Site plan review 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. In addition, sidewalks shall be built along at least one side of the entrance road to the project and the streets shall be curbed and utilize a closed pipe drainage system in the multi-family areas.

- 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 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.
- 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) Sidewalks and street lighting shall be provided throughout the project.
- 13) As the Applicant has agreed, the golf course area shall remain as open space, even if it is no longer in operation.

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 for the reasons and with the conditions stated above.

Motion carried 5 – 0.

C/U #1496 – application of **JULIE SCHROECK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an antique shop/art gallery to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 39,281 square feet, more or less, lying south of Route 26, 0.6 mile east of Route 365.

The Commission discussed this application which was deferred on July 10, 2003.

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

Motion carried 5 – 0.

C/Z #1512 – application of **PERCY, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land

lying northeast of Route 382, 600 feet north of Route 17, to be located on 8.223 acres, more or less.

The Commission discussed this application which was deferred on July 10, 2003.

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

Motion carried 5 – 0.

Subdivision #2003-6 – application of **OYSTER ROCK PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 42.10 acres into 32 lots, located northwesterly of Road 264, 2,726,40 feet northeast of Route One.

The Commission discussed this application which was deferred on July 10, 2003.

Mr. Lank advised the Commission that DNREC has provided a septic feasibility statement for the project.

Mr. Wheatley stated that he would move that the Commission grant preliminary approval of Subdivision #2003-6 for Oyster Rock Properties, L.L.C. based upon the record and for the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects orderly growth of the County. It is also in an area where other residential building lots of similar size have been created.
- 2) The land is zoned AR-1 which permits low density single family residential development at a density of approximately 2-lots per acre. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) The proposed subdivision will not adversely impact schools, public buildings and community facilities.
- 5) DNREC has indicated that the site is suitable for septic and the Applicant has stated that central water will be provided by Tidewater Utilities.
- 6) This recommendation is subject to the following conditions:
 - 1) The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.

- 2) The stormwater management system shall meet or exceed the requirements of the State and County.
- 3) No wetlands shall be included within any lot lines, and no roads shall cross any wetlands.
- 4) All entrances shall comply with all of DelDOT's requirements.
- 5) A system of street lighting shall be provided by the Applicant, and the location of the street lights shall be shown on the final site plan. The street lights shall be maintained by the Applicant or a successor Homeowners' Association as part of the common elements of the subdivision.
- 6) The Restrictive Covenants shall include the Agricultural Use Protection Notice, if required.
- 7) This site has a private cemetery located upon it, which shall not be disturbed. Adequate access shall be provided, and the maintenance of the cemetery shall be addressed in the recorded Restrictive Covenants. It is suggested that the developer consult with the Delaware State Historic Preservation Office about any additional requirements concerning the cemetery prior to seeking final approval.
- 8) It is suggested that the Applicant obtain agreements from the owners of both lots adjacent to the proposed Heron Road (which are not part of this application) to relocate their entrances to Heron Road instead of County Road 264.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of this application for the reasons and with the conditions stated above.

Motion carried 5 – 0.

Subdivision #2003-7 – application of **STOVER HOMES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 47.04 acres into 35 lots, located southwest corner of the intersection of Route One and Road 38.

The Commission discussed this application which was deferred on July 10, 2003.

Mr. Lank advised the Commission that DNREC has provided a septic feasibility statement for the project.

Mr. Wheatley stated that he would move that the Commission grant preliminary approval of Subdivision #2003-7 for Stover Homes, L.L.C. based upon the record and for the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects orderly growth of the County.
- 2) The land is zoned AR-1 which permits low density single family residential development at a density of approximately 2 lots per acre. The proposed subdivision density is less than the density permitted by the existing zoning.
- 3) The proposed subdivision will be a restricted residential development consistent with the area and will not adversely affect nearby uses or property values.
- 4) The roadways within the proposed subdivision will provide for safe vehicular and pedestrian traffic. In addition, they will be constructed to DelDOT standards and will be maintained by the State of Delaware upon their completion to the satisfaction of the State.
- 5) The proposed subdivision will not adversely impact schools, public buildings and community facilities.
- 6) This recommendation is subject to the following conditions:
 - 1) The stormwater management system shall meet or exceed the requirements of the State and the County.
 - 2) All entrances shall comply with all of DelDOT's requirements.
 - 3) A system of street lighting shall be provided by the Applicant, and the location of the street lights shall be shown on the final site plan. The street lights shall be maintained by the Applicant or a successor Homeowners' Association as part of the common elements of the subdivision.
 - 4) The Restrictive Covenants shall include the Agricultural Use Protection Notice, if required.
 - 5) The streets and roads shall be maintained by the Developer and/or Homeowner's Association until such time as the State of Delaware accepts them and begins maintaining them.
 - 6) No mobile homes or manufactured housing shall be permitted within the subdivision.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of this application for the reasons and with the conditions stated above.

Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1512 – application of **RANDALL J. PENTONEY AND DIANE M. PENTONEY** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 6,000 square feet, more or less, lying north of Admiral Road, 500 feet east of Route One and 60 feet west of Ocean Road, and being Lot 19 within Tower Shores Subdivision.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the North Bethany Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project; that there are currently 4 EDU's on this parcel and that there will be credits when the existing 4-units are disconnected; and that there is currently one six-inch lateral on Admiral Road.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are considered Coastal Beach and Dune Land which has severe limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the soils are considered Hydric; 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 that Randall J. Pentoney was present and stated in his presentation and in response to questions raised by the Commission that four (4) units exists on the site and that the existing units will be demolished; that he proposes to build a duplex on the site; that he purchased the site in 1997; that the existing units were built in the late 1960s; that the rental units are very small; that in the future he hopes to live on the site full-time; that larger units are needed to satisfy tenant needs; that he proposes to start construction in the Fall of 2003 and finish construction by Spring of 2004; that he is not aware of any objections for residents within Tower Shores; that he proposes to provide 8 parking spaces; and that the building for the two units is larger than the building for the existing four units.

Mr. Lank advised the Commission that the Applicant will be required to request a variance for the lot size from the Board of Adjustment.

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

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

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

Motion carried 5 – 0.

Subdivision #2003-9 – application of **1ST STATE DEVELOPMENT, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 31.90 acres into 30 lots, located south of Road 38, 791.51 feet east of Road 216.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on April 16, 2003 and that the Technical Advisory Committee Report is a part of the record for this application.

Mr. Lank distributed and summarized comments stated in letters received from Wallace R. and Margaret M. Sheldon, David and Alexis Brower, and Donald M. O'Bier, Jr., area residents to the application.

The Commission found that Mark Vugrenic of 1st State Development, L.L.C. and John Barwick of Meridian Consulting Engineers, L.L.C. were present and stated in their presentations and in response to questions raised by the Commission that the Applicant was not involved with the strip lots created along Road 38 and Road 216; that the Applicant purchased the acreage to the rear of the strip lots; that the adjacent lots to the entrances to his site have a 50-foot wide access way; that he anticipates that it will take 18-months to 2-years to complete the project; that he has obtained septic feasibility for the project; that the entrances to the site were approved in 1994; that he has owned the site for approximately 6-months; that he proposes to relocate Randall Sharp's entrance at his cost to eliminate the originally intended entrance to the site from Road 38; that he proposes a minimum square footage of 1,350 square feet for a ranch style home and a minimum square footage of 1,200 square feet for a cape cod style home; and that the proposed price range for a home will range from the mid \$150,000 up.

Mr. Wheatley expressed some concerns about the loss of the entrance recorded for Road 38.

Mr. Lank advised the Commission that DelDOT comments from the April 16, 2003 Technical Advisory Committee Report reference that the Applicant shall designate the remaining parcels of 1st State Development, L.L.C. as Parcel A and Parcel B along with metes and bounds; that the approval of these two parcels can be handled through the minor subdivision process; that there will be a combined access between Parcel A and lands of Randall Sharp; that any costs associated with the construction or reconstruction

of the entrance shall be at the expense of the developer; and that Parcel B shall have a single access.

The Commission found that Randall W. Sharp, James Hammond, Wallace Sheldon, Debbie Rogers, Dan Smith, Alexis Brower, Shana Hammond, Martin Benson, James Wilson, and Phil Wemlinger, all area residents, were present in opposition to the application and expressed concerns about relocation of the entrance to Randall Sharp's lot; that the lots are smaller than the square footage of the strip lots; that the survey of the original lots depicted entrance easements on Road 38 and Road 216; that the restrictions for homes in the project should be the same as the strip lots; that property values could be negatively impacted; that the lot sizes should be the same as the existing lots; that the setbacks should be the same as the original deed restrictions which are greater than the County's minimum setback requirements; that the site is one of the highest points in the area and drains onto other properties; that the stormwater management area should be relocated into the project and not next to an adjacent property owner; that drainage should be a major concern; that some of the owners of the strip lots would not have purchased their lots if they had been aware that the site would be subdivided; and that the homes should be compatible with the homes in the area.

Mr. Robertson advised the audience that the County cannot enforce private deed restrictions, only County regulations.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action. The staff to research the deeds and plots of the existing strip lots.

Motion carried 5 – 0.

Subdivision #2003-10 – application of **WOODGATE ENTERPRISES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 50.99 acres into 30 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 280, 1,715 feet east of Road 290.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on April 16, 2003 and that the Technical Advisory Committee Report is a part of the record for this application.

Mr. Lank advised the Commission that in reference to septic use the State DNREC has reported that the proposed subdivision would be feasible under current DNREC regulations

Mr. Lank distributed and summarized a letter from Christina Schwartz expressing her opposition to this application and referencing increased traffic, loss of trees, loss of wildlife, drainage problems, electrical supply, and septic.

The Commission found that David Braun was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the stormwater management areas are proposed to the rear of the site; that they anticipate no negative impacts on woodlands or wetlands; that all lots will be wooded; that the only lot clearing will be for the area surrounding the home, septic area, and driveway; that the Applicants have not yet reached an agreement with Tidewater Utilities for service and may be limited to individual on-site wells; and that a Homeowners' Association will be created to maintain the streets, open space, stormwater management areas, and street lighting.

Mr. Robertson advised the Commission that the Applicants will be required to include agricultural protection notices in deed restrictions.

The Commission found that Henry Glowiak, Debra Doucette, and Michael Tyler were present in opposition to this application and expressed concerns that the posted sign was not originally on the correct site; that variances should not be granted for the length of a cul-de-sac; that part of the site floods; that there are drainage problems; that the lots are not compatible in size to lots in the area; that Chapel Branch is a fragile area; that heavy rains impact the Branch, area woodlands, and area wetlands; and that the Branch should not be compromised.

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.

Subdivision #2003-11 – Saw Mill Associates, Inc. (Withdrawn)

Subdivision #2003-12 – application of **LT ASSOCIATES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 163.62 acres into 162 lots, located east of Road 267, 0.9 mile east of Road 268.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on May 14, 2003 and that the Technical Advisory Committee Report is a part of the record for this application.

The Commission found that Paul Townsend, developer, was present with Robert Nash and Rob Ament of Charles D. Murphy Associates, Inc. and stated in their presentations and in response to questions raised by the Commission that the number of lots has been reduced to 161; that the southeasterly portion of the project will be a gated community; that the Bookhammer Pond area will be developed as a park area; that 19% of the site will remain in open space; that 40% of the open space will be maintained as active open space; that high quality homes are proposed; that a bike trail will be built in cooperation with the State DNREC Parks and Recreation; that the quality of runoff will improve after development from agricultural uses to residential uses; that the County will supply public sewer; that central water will be provided; that the site is located in a developing area; that there will be no impacts on wetlands; that the streets will be constructed with hot-mix and will include an additional 8-foot wide bike/pedestrian lane; that the project will have similar amenities as the Wolfe Pointe Subdivision; that the bike trail will be State maintained and will connect to a bike trail being proposed by the State DNREC; that they have created a master plan for the entire farm and that two additional future projects are proposed between this site and Kings Highway; that this project will be developed as one phase; and that if DelDOT agrees they may realign the curve along Gills Neck Road.

The Commission found that Mark Chura, Manager for the State DNREC Parks and Recreation, was present in support of the proposed bike/pedestrian corridor and stated that the State is going to build a 3.5 mile 12-foot wide stone path on parklands, and that the Applicants have designed a good design for a bike path for future interconnection between State Parks, the City of Lewes and the City of Rehoboth Beach.

The Commission found that Michael Tyler, President of the Citizens Coalition, Inc., read and submitted a statement in opposition expressing concerns since the site lies in the Environmentally Sensitive Developing Area; that the management of stormwater is critical; that one of the most insidious offenders of water resources is run off from lawn fertilizing and roadways; that Bookhammer Pond is a hidden natural body of water that needs protection as do other wetlands and tributaries surrounding this site; that TMDL's are another serious concern for development; that the additional burden on the West Rehoboth sewer system must be evaluated; that Gills Neck Road has no provisions for cyclists or pedestrians; that both sides of Gills Neck Road should have bike/pedestrian paths; that the need for additional lots in the area is questionable; that the County should consider creation of a plan that not only requires developers to phase in building unit starts but to develop a plan or a formula to stage the start of an entire development; that this method of development would allow the State and the County to plan and provide for adequate infrastructure in the form of water, sewer, roads, police and fire protection,

schools, and transportation; that a project of this size and scope should not be recommended until the ordinance on the Environmentally Sensitive Developing Area is created and adopted; that the Coalition recommends denial of this application; and added that some of the residents of the County do not know where the road numbers are, but know the road names, and that the County should include the road names when advertising sites for public hearing.

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

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

Motion carried 5 – 0.

Subdivision #2003-13 – application of **JOSEPH W. WELLS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred, Sussex County, by dividing 2.57 acres into 3 lots, located west of Road 590, 320 feet northwest of Road 583.

Mr. Lank advised the Commission that this application was not reviewed by the Technical Advisory Committee since it is a minor subdivision of three (3) lots along a public road.

The Commission found that Joseph W. Wells was present and stated in his presentation and in response to questions raised by the Commission that the site is west of the Delaware Electric Cooperative facility and southwest of Greenwood; that the property drains toward the ditches; that he has sold 13 acres to a buyer planning on a small horse farm; and that approval of the three (3) lots will complete the development of the parcel.

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. Johnson, and carried unanimously to approve the Subdivision as submitted.

Motion carried 5 – 0.

Subdivision #2003-14 – application of **H.M. PROPERTIES, ROUTE 23, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 240.81 acres into 352 lots, located at the southwesterly corner of the intersection of Road 286 and Road 285.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on May 14, 2003 and that the Technical Advisory Committee Report is a part of the record for this application.

The Commission found that the Applicants had provided an exhibit booklet prior to the meeting and that the booklet contains a letter from Tidewater Utilities, Inc., Minutes of a DelDOT scoping meeting, a DelDOT agreement, a summary on the Community Wastewater Management System prepared by WWES Associates, a statement of feasibility from DNREC, a letter from Vincent Robertson, Assistant County Attorney, in reference to deed restrictions, and proposed findings of fact.

Mr. Lank advised the Commission that a FAX had been received from the Delaware Electric Cooperative, Inc. which advised that adequate facilities and capacity to supply this development is available.

Mr. Lank advised the Commission that a FAX had been received from the Cape Henlopen School District which advised that the District cannot endorse this particular development, and that with the construction of two new buildings in the District, they expect to be able to serve the additional students that this development will generate.

The Commission found that Mark Handler and Randy Mitchell, developers, were present with James Fuqua, Attorney, Ramesh C. Batta of Ramesh C. Batta Associates, P.A., and Brian Carbaugh of WWES Associates and stated in their presentations and in response to questions raised by the Commission that the number of lots has been reduced to 349; that they propose to develop amenities that will include a pool, a bathhouse, tennis courts, and a playground; that the gross density will be 1.45 units per acre; that DelDOT has stated that they can approve up to 215 lots and that any further development of the site will require completion of a traffic impact study; that the traffic counts have been completed and that the traffic impact study is subject to DelDOT's review and approval; that Artesian Water Company, Inc. is willing to supply central water for domestic use and fire protection; that fifteen (15) lots have been set aside for a central wastewater treatment facility; that portions of the site will not be developed until County sewer is available to the project; that the State DNREC has stated that the proposed large on-site wastewater treatment and disposal system is feasible under current regulations; that Best Management Practices will be performed; that no wetlands are proposed within lot lines; that no entrances are proposed from Beaver Dam Road (Route 23); that the recreational area is proposed at the end of the entrance road; that the three lots eliminated have been

added to the recreational area; that buffers have been provided where required; that a bus stop will be provided at the entrance when needed; that a homeowners association will be established to enforce restrictive covenants; that they propose to develop no more than 100 lots per year; that the homes will be priced in the \$200,000 range; that street lighting will be provided, if required; that they do not propose sidewalks, but will be providing a multi-modal paved path throughout the project; that the multi-modal path will be 5-feet wide and separated from the streets by a 3-foot wide grass area; that the project complies with the Code; that the site is adjacent to the Reserves at Fortune Field, an AR-1 Subdivision, and across from Oak Crest Farms, a MR Subdivision; that the application is consistent with the development taking place in the area; that Walls Branch is primarily a dry branch; that the project will be developed in four phases; that an escrow account will be created for maintenance of the wastewater treatment facility; and that the escrow account is controlled by stipulations imposed on the facility by the State DNREC Division of Water Resources.

The Commission found that Mr. Fuqua submitted, for the record, copies of a letter from Artesian Water Company, Inc., some photographs of debris on the site, a site investigation report from Atlantic Resources Management, Inc., a copy of the Minutes of the Commission, dated March 23, 2000 and April 27, 2000, referencing the application of Oak Crest Farms, Inc., and a copy of the record plat for Oak Crest Farms, approved for recordation on February 22, 2002.

The Commission found that Allen Paul, a neighbor, Pat Torelli, Vice President of the Citizens Coalition, Marie Sadowskis, a resident of The Reserve at Fortune Field, Ralph Holston, a neighbor, Henry Glowiak, Mable Granke, and Michael Tyler, President of the Citizens Coalition, were present in opposition to this application and expressed concerns relating to the loss of wildlife in the area by increased developments; that the neighbors do not want to look at the backs of houses; that the project creates a small city in a rural area due to the number of lots and the number of vehicle trips that will be generated; that buffers should be created along all neighboring properties, whether they are in active agriculture or not; that Road 286 will not be able to handle the damage from traffic; that street lighting adds to the loss of a rural character; that the development is not within a development zone; that the proposal is out of character with the surrounding community of single family homes on larger lots and the agricultural uses of the surrounding lands; that intense development along Beaver Dam Road, a slated alternative route for Route 24 traffic, is in direct conflict with the concept of an alternative route; that private on-site wastewater facilities should not be approved; that no need has been shown for a development of this size in a rural area; that the County should consider creation of a plan that not only requires developers to phase in building unit starts but to develop a plan or a formula to stage the start of an entire development; that this method of development would allow the State and the County to plan and provide for adequate infrastructure in the form of water, sewer, roads, police and fire protection, schools and transportation;

that a project of this size and scope should not be recommended until the ordinance on the Environmentally Sensitive Developing Area is created and adopted; that the Coalition recommends denial of this application; that drainage ponds in an adjacent project do not drain properly; that Walls Branch is not properly mapped and runs almost up to the Reserves at Fortune Field; that the entire area of Walls Branch is wet and not dry as stated by a representative of the Applicant; that the developers have not even started another project that they are developing, and referenced Stonewater Creek; that there are Agriculture Preservation Districts in close proximity; that timbered land is sometimes considered an agricultural use and that buffers should be provided; that the Oak Crest Farms project should have been considered spot zoning in 1977 when it was created; that the Commission should not consider this application until DelDOT has completed it's review of the traffic impact study; that a secondary wastewater treatment site should be established on the site in case the proposed system fails; and that the cumulative impact on the area needs to be addressed.

The Commission asked Brian Carbaugh of WWES Associates to respond to the question about a secondary wastewater treatment site being established.

Mr. Carbaugh responded that the site for the wastewater treatment facility is twice as large as required by DNREC.

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

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

Motion carried 5 – 0.

OTHER BUSINESS

- 1) The Peninsula MR/RPC
C/Z #1475 Master Plan – Road 299

The Commission reviewed the Master Plan for the 1,404 unit Residential Planned Community.

Mr. Lank advised the Commission that the 21 conditions of approval stipulated by County Council are referenced on the Master Plan; that the Master Plan shows how the project will be developed; and that each phase of the project shall be subject to the review and approval of the Commission.

The Commission found that James Fuqua, Jr., Attorney, and Scott Aja of McCrone, were present on behalf of the developer. Mr. Fuqua asked if construction of the golf course, a permitted use, could begin upon approval of the Sussex Conservation District permit.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the Master Plan as submitted.

Motion carried 5 – 0.

- 2) R.D.C., L.L.C.
Multi-Family Site Plan – Road 276

The Commission reviewed a preliminary site plan for 9-units on 0.75 acre.

Mr. Lank advised the Commission that the site is zoned C-1 General Commercial and that 9-units are permitted by the Code; that 27 parking spaces are provided including an attached garage for each unit; that 2 parking spaces are located within the front yard setback and need a waiver from the Commission; that one building has five units and the other building has 4 units; that the setbacks and building separations meet the requirements of the Code; that central sewer will be provided by the County; that central water will be provided by Tidewater Utilities; that the site is not located in a flood zone; that there are no wetlands on the site; that the 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 grant the requested waiver for the 2 parking spaces within the front yard setback and to grant preliminary approval of the site plan. Final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 – 0.

- 3) Subdivision #2001-25 – S & M Ventures
Time Extension

Mr. Lank advised the Commission that preliminary approval was granted on October 11, 2001 for 60 lots; that a time extension was not requested prior to October 11, 2002; that a letter was received from James Fuqua, Attorney, requesting a time extension with several reasons, especially approvals delayed from the Town of Georgetown and the Army Corps. of Engineers; that all appropriate agency approvals have been received; that the record plan meets the requirements of the Code and that the plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to grant a one-year time extension retroactive to October 11, 2002 since all appropriate agency approvals have been received.

Motion carried 5 – 0.

4) Subdivision #2002-14 – J & Y Parker Family, L.P.

Mr. Lank advised the Commission that preliminary approval was granted on July 25, 2002 for 6 lots; that when the agenda was posted the Office of the State Fire Marshal approval had not been received; that all appropriate agency approvals have since been received; that the record plan meets the requirements of the Code; and that the plan is suitable for final approval.

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

Motion carried 5 – 0.

5) Ocean Ridge West
Lot extensions – East Bank Road off of Route One

Mr. Lank advised the Commission that lot extensions are proposed for Lots 15, 17, 18, 19, 20 and 21; that each of the lots has an existing boat dock on lands of the Homeowner's Association; that the Association has voted to convey portions of their lands to each of the lot owners with boat docks; and that the portions of land being conveyed are wetlands and will not be built upon.

Mr. Robertson stated that he couldn't see any legal reasons to not approve the request.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the requested lot extensions.

Motion carried 5 – 0.

Meeting adjourned at 10:40pm.