



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF JANUARY 8, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 8, 2004 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. Lynch, Mr. Johnson, and Mr. Wheatley with Mr. Robertson, Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz – Planner.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the agenda as amended by removing Item 4 from Old Business.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of December 11, 2003 and December 18, 2003 as corrected.

OLD BUSINESS

C/Z #1526 – application of **BAY FOREST, 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 northeast of the corner of Road 347 and Road 349, to be located on 385.161 acres, more or less.

The Commission discussed this application which has been deferred since December 11, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1526 for Bay Forest, L.L.C. for the Bay Forest Club MR-RPC based upon the information contained in the record and asked Mr. Robertson to read Mr. Lynch's recommendation.

Mr. Robertson read that Mr. Lynch moves that the Commission recommend approval of C/Z #1526 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

Developing Area as established by the 2002 Sussex County Comprehensive Plan Update.

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, sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities, Inc.
3. The Developer has designed and proposes to develop a community compatible with the on-site environment that contains a diversity of housing types and good pedestrian and motor vehicle circulation. The Developer has stated the intention to preserve and enhance the environmental features of the property.
4. With the conditions place upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of a 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 project is in an area that already has similar development, and this development is consistent with other uses in the area, including Bay Colony, Seagrass RPC, Denton Woods and Denton Manor, Banks Acres and Banksville Park, Mill Run, Whites Creek Manor, West Ocean Farms, Blackwater Village and Blackwater Cove and the Jim's Hideaway Campground. There are also B-1 and C-1 properties in close proximity.
6. The project will have a net density of 2.49 units per acre and a gross density of 2.1 units per acre. This is roughly equivalent to the same basic density permitted under the current AR-1 zoning of the property.
7. The Developer intends to maintain significant amounts of existing forest in large undisturbed tracts. Also, open areas adjacent to wetlands will be re-vegetated and will have enhanced buffers consisting of tidal and non-tidal wetland creation areas. There will also be new forest zones established with trees and vegetation transplanted from elsewhere on the property.
8. The Developer has committed to funding off-site and on-site sewer extensions and upgrades that will provide potential connections for adjacent existing developments. This will contribute to improving the ground and surface water quality of the area.
9. The Developer has committed to funding traffic improvements on roadways in the area of this project that will have a positive effect on existing traffic conditions. This will benefit the existing developments and other residents of the area.
10. The proposed MR-RPC is in accordance with the Goals of the 2002 Sussex County Comprehensive Plan Update, as follows:
 - A. It represents growth directed to an area with public infrastructure and services available and is designed to protect the existing natural environment's ability to accept the development.
 - B. Through roadway and intersection improvements, alternative means of transportation and multi-modal connections, it preserves and enhances the existing transportation system and creates travel alternatives.

- C. Through its funding and installation of off-site sewer extensions, it protects critical natural environments and provides infrastructure for future growth.
- D. Through amenities, environmental areas, multi-modal pathways and by other means, it provides passive and active recreational facilities for the benefit of the residents of the development and for Sussex County's residents and visitors.
- E. With various housing types, it provides a diverse range of housing opportunities for all residents.

This recommendation is subject to the following conditions:

1. The maximum number of residential units shall not exceed 808 units as shown on the Developer's preliminary site plan, as follows:
 - 244 – 85-foot single family lots
 - 149 – 70-foot single family lots
 - 88 – 28-foot by 42-foot cottages
 - 177 – 34-foot villas
 - 68 – 30-foot villas
 - 82 – 22-foot townhouses
2. No more than 150 residential building permits shall be issued in any given calendar year.
3. Site Plan review shall be required for each phase of development.
4. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's August 5, 2003 letter, or in accordance with any further modification required by DelDOT.
5. An underground gas storage facility for service to this development shall be permitted subject to approval by the Office of the State Fire Marshal, and other agencies with jurisdiction, and subject to final site plan approval by the Commission. The facility shall be no less than 50-feet from adjacent properties.
6. A water storage tower shall be permitted subject to final site plan approval by the Commission.
7. 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 recreational facilities shall include tennis courts, swimming pool, community buildings including a meeting room with environmental and educational interpretation displays and a library, pathways and trails.
8. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
9. The MR-RPC shall be served by a public 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.

11. The Applicant, its successors and/or assigns, including a homeowners or condominium association that will be formed, shall operate the stormwater management facilities in a manner that is consistent with Best Management Practices (BMPs).
12. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on at least one side of the streets and street lighting. There shall not be any vehicular crossings over streams on the property.
13. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, and the proposed reforestation program.
14. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00am and 6:00pm.
15. The Applicant shall cause to be formed a homeowners or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
16. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
17. Within One (1) year of the approval of the master plan, the Applicant shall coordinate with the State, County and other local emergency planning offices in the development and implementation of emergency evacuation procedure for the project.
18. The Applicant, its successors or assigns, shall operate and maintain a community shuttle bus service connecting to bus stops operated by DART. The service and location shall be subject to review and comment by DART and DelDOT and subject to site plan review by the Commission. The service and any related improvements shall be completed within two (2) years of the issuance of the first building permit.
19. State wetlands shall not be included in any individual lots. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permit.
20. No piers, docks, boat ramps, or other water related recreational facilities shall be permitted except the existing marina with a kayak/canoe facility which shall be operated by the Developer or a homeowners or condominium association. Motorized boats shall not exceed four (4) pontoon type boats.
21. A barrier in the form of a vegetated berm shall be created along the common boundary of the development and William Derrickson to shield and separate the development from Mr. Derrickson's property.

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 based on the reasons and with the conditions stated.

Motion carried 4 – 0.

C/Z #1527 – application of **BAY FOREST, 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 north of Road 349 (Old Mill Road), approximately 1,285 feet west of Road 347, to be located on 104.32 acres, more or less.

The Commission discussed this application which has been deferred since December 11, 2003.

Mr. Lynch stated that he would move that the Commission recommend approval of C/Z #1527 for Bay Forest, L.L.C. for the Bay Forest West MR-RPC based upon the information contained in the record and asked Mr. Robertson to read Mr. Lynch's recommendation.

Mr. Robertson read that Mr. Lynch moves that the Commission recommend approval of C/Z #1527 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 Developing Area as established by the 2002 Sussex County Comprehensive Plan Update.
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, sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project. Water service will be provided by Tidewater Utilities, Inc.
3. This development will share amenities and recreational facilities with the Bay Forest Club MR-RPC (C/Z #1526), and the Developer plans to connect the two projects via a pedestrian walkway.
4. With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of a 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 project is in an area that already has similar development, and this development is consistent with other uses in the area, including Bay Colony, Seagrass RPC, Denton Woods and Denton Manor, Banks Acres and Banksville Park, Mill Run, Whites Creek Manor, West Ocean Farms, Blackwater Village and Blackwater Cove and the Jim's Hideaway Campground. There are also B-1 and C-1 properties in close proximity.

6. The project will have a net density of 2.9 units per acre and a gross density of 2.17 units per acre. This is roughly equivalent to the same basic density permitted under the current AR-1 zoning of the property.
7. The Developer has committed to funding off-site and on-site sewer extensions and upgrades that will provide potential connections for adjacent existing developments. This will contribute to improving the ground and surface water quality of the area.
8. The Developer has committed to funding traffic improvements on roadways in the area of this project that will have a positive effect on existing traffic conditions. This will benefit the existing developments and other residents of the area.
9. While there has been comment the project will disrupt the current ecological environment, the site is currently 76% cleared land and 24% wooded. The Developer intends to maintain 70% of the wooded lands, with a reforestation program.
10. The proposed MR-RPC is in accordance with the Goals of the 2002 Sussex County Comprehensive Plan Update, as follows:
 - A. It represents growth directed to an area with public infrastructure and services available and is designed to protect the existing natural environment's ability to accept the development.
 - B. Through roadway and intersection improvements, alternative means of transportation and multi-modal connections, it preserves and enhances the existing transportation system and creates travel alternatives.
 - C. Through its funding and installation of off-site sewer extensions, it protects critical natural environments and provides infrastructure for future growth.
 - D. Through amenities, environmental areas, multi-modal pathways and by other means, it provides passive and active recreational facilities for the benefit of the residents of the development and for Sussex County's residents and visitors.

This recommendation is subject to the following conditions:

1. The maximum number of residential lots shall not exceed 227 lots as shown on the Developer's preliminary site plan.
2. No more than 75 residential building permits shall be issued in any given calendar year.
3. Site Plan review shall be required for each phase of development.
4. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's August 5, 2003 letter, or in accordance with any further modification required by DelDOT.
5. An underground gas storage facility for service to this development shall be permitted subject to approval by the Office of the State Fire Marshal, and other agencies with jurisdiction, and subject to final site plan approval by the Commission. The facility shall be no less than 50-feet from adjacent properties.
6. Recreational facilities and amenities, whether on this project or on the Bay Forest Club (C/Z #1526) site, shall be constructed and open to use by residents of the development within 2-years of the issuance of the first building permit. These recreational facilities shall include tennis courts, swimming pool, community buildings, pathways and trails.

7. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
8. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
9. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
10. The Applicant, its successors and/or assigns, including a homeowners or condominium association that will be formed, shall operate the stormwater management facilities in a manner that is consistent with Best Management Practices (BMPs).
11. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on at least one side of the streets and street lighting.
12. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, including the proposed reforestation program.
13. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00am and 6:00pm.
14. The Applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
15. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
16. Within One (1) year of the approval of the master plan, the Applicant shall coordinate with the State, County and other local emergency planning offices in the development and implementation of emergency evacuation procedure for the project.
17. The Applicant, its successors or assigns, shall operate and maintain a community shuttle bus service connecting to bus stops operated by DART. The service and location shall be subject to review and comment by DART and DelDOT and subject to site plan review by the Commission. The service and any related improvements shall be completed within two (2) years of the issuance of the first building permit.
18. State wetlands shall not be included in any individual lots. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permit.

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 based on the reasons and with the conditions stated.

Motion carried 4 – 0.

C/Z #1528 – application of **CADBURY SENIOR SERVICES, INC.** 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 northerly side of Road 267 (Gills Neck Road), ¼ mile east of Road 268 (Kings Highway), to be located on 95.2 acres, more or less.

The Commission discussed this application which has been deferred since December 18, 2003.

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

Motion carried 4 – 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.

This item was removed from the agenda on January 7, 2004.

Subdivision #2003-24 – application of **SMALL WONDER, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 32.72 acres into 34 lots, located south of Road 207, 600 feet east of Road 214.

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

Mr. Abbott advised the Commission that the plan addresses the recommendations of the Technical Advisory Committee Report of July 16, 2003; that DNREC has issued a septic feasibility report; that the site is suitable for individual on-site septic systems; and that the plans have been revised to show 33 lots.

Mr. Wheatley stated that he would move that the Commission grant preliminary approval of Subdivision 2003-24 for Small Wonder, Inc., based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single family residential development. The proposed subdivision density of 33 lots on 32.72 acres of land is significantly less than the allowed density.
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 proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The recommendation is subject to the following conditions:
 1. Only 33 single-family lots shall be permitted.
 2. Agricultural buffers shall be provided in accordance with the Subdivision Ordinance, including along the property lines adjacent to the Hall property to the East, and the Green Tree Farms property to the South.
 3. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of buffers, stormwater management facilities, and other common areas.
 4. The Developer has proposed to dedicate the streets and roads to public use, to be maintained by the State. The streets shall be constructed to State standards, and maintenance of them shall be the Developer's responsibility until they are accepted by the State.
 5. The stormwater management system shall meet or exceed the requirements of the State and County. All stormwater management and ponds shall be within the perimeter of this site.
 6. All entrances shall comply with all of DelDOTs requirements.
 7. On the final site plan, all buffers shall be indicated.
 8. Areas shall be provided for future interconnections with adjacent properties if they are developed.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve this application for 33 lots as a preliminary for the reasons and with the conditions stated.

Motion carried 4 – 0.

Subdivision #2003-25 – application of **RICH MOONBLATT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 6.16 acres into 3 lots, and a waiver from the forested buffer requirements, located west of Road 233, 2,646 feet southeast of Road 234B.

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

Mr. Wheatley stated that he would move that the Commission grant preliminary approval of Subdivision 2003-25 for Rich Moonblatt, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single family residential development. The proposed subdivision density of 3 lots on 6.16 acres of land in significantly less than the allowed density.
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 proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. The recommendation is subject to the following conditions:
 1. Agricultural buffers shall be provided, in accordance with the Subdivision Ordinance, along property lines adjacent to lands used for agricultural purposes.
 2. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 3. The stormwater management system shall meet or exceed the requirements of the State and County.
 4. All entrances shall comply with all of DelDOTs requirements.
 5. On the final site plan, all buffers shall be indicated.
 6. The location of the streetlights shall be shown on the final site plan. The streetlights shall be maintained by the Applicant or a successor Homeowners' Association as part of the common elements of the subdivision.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve this 3-lot subdivision as a preliminary for the reasons and with the conditions stated.

Motion carried 4 – 0.

PUBLIC HEARINGS

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

C/U #1518 – application of **ATLANTIC AUCTION CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for self-storage and a professional office to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.799 acres, more or less, lying at the northwest corner of Route 17 and Road 353.

The Commission found, based on comments received from DelDOT, that the Department had reviewed this site for a rezoning; that the Department feels that a Conditional Use approval, limiting the use of the property to exactly what is now proposed, is the best way for the County to address the property; that the Department would recommend that the County require the Applicant to perform a Traffic Impact Study if rezoning is applied for since the Department is concerned about the potential traffic that other, future, commercial uses that could be associated with a rezoning might generate; that traffic from the proposed use would not warrant a Traffic Impact Study; and that the Department would see no need for a Traffic Impact Study for the proposed use.

The Commission found, based on comments received from the Office of State Planning Coordination, that at the time of the DelDOT comments professional offices were not a part of the application; that such offices generate considerably more traffic per square foot; that medical-dental offices of more than 66,000 square feet would warrant a Traffic

Impact Study; that DelDOT has also commented that the Applicant should be aware of DelDOT plans to improve Burbage Road as part of the Alternate Route 26; that these improvements could require DelDOT to purchase a strip of right-of-way along the parcel's Burbage Road frontage; that any new use of the property will require the owners to obtain an entrance approval for access; that there is a potential historic property located near the site and there is a medium probability for prehistoric archaeological sites within the subject area; that the State recommends that the Applicant be required to provide landscaping on the southeast corner of the property to lessen any visual effects the new buildings might cause to the potential historic property; that DNREC has noted that information received states that there is an existing on-site well; that DNREC records indicate that the parcel is located within the public service area granted to Tidewater Utilities, Inc.; that DNREC has no objection to the continued use of the well and added that the well should be tested prior to use; and that DNREC comments described the requirements for new wells, dewatering points, and well permits.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located within or adjacent to a County maintained and operated sanitary sewer and/or water district; that this parcel is not currently in the South Coastal Planning Area; that the Department is presenting a plan to the County Council on Tuesday January 13, 2004 concerning the boundaries; and that these comments may change if the boundaries are adjusted.

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

The Commission found that Robert Kauffman of Atlantic Auction Co., Inc. was present with Mark Davidson of DC Group and that they stated in their presentations and in response to questions raised by the Commission that they propose mini-storage and a professional office; that warehousing exists south of Road 353; that warehousing exists east of Route 17; that the site is in close proximity to Route 26 commercial activities; that they propose eight (8) one-story mini-storage buildings, containing approximately 53,900 square feet, and an office building, containing approximately 2,326 square feet; that the existing 960 square foot home will be converted into the first phase of the office building; that a shed will be relocated; that a horse stall will be removed; that the existing septic system is adequate and subject to DNREC; that the office building will be utilized as a real estate office and management of the mini-storage facility; that they plan on fencing the perimeter of the mini-storage area with black-tube steel fencing; that the mini-storage area will have two gates, one that is electronically automated at the entrance and one for emergency or maintenance access; that the main gate will be accessible from 6:00am to

9:00pm; that they propose two signs on the site; that lighting will have a downward illumination so as not to impact neighboring properties; that the proposed entrance will be located directly across from the entrance to the warehousing facility across Road 353; that the entrance drive will be paved up to the gate; that the mini-storage area will be improved with crusher-run; that stormwater management will be maintained on site; that the stormwater management area has been located along Route 17 due to the existing drainage pattern of the site and will be landscaped; that there are no wetlands on the site; and that the mini-storage units will vary in size from 5-feet by 10-feet to 10-feet by 30-feet.

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

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

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

Motion carried 4 – 0.

C/U #1519 – application of **INLAND BAYS, L.L.C.** to consider the Conditional Use of land in an MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less, lying north of Route 360 (Fred Hudson Road), 1,360 feet east of Road 357 (Cedar Neck Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service “E” of Route 360 will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Cedar Neck Expansion Area of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$3,066.00 per EDU; that the parcel is served with an 8-inch line through the Bethany Lakes Subdivision; that the connection point is on the north property line; and that conformity to the South Coastal Area Planning Study Amendment #2 will be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Environmentally Sensitive Developing Area of the Strategies for State Policies and Spending document; that State policy has been to seek a balance between resource protection and sustainable growth; that the State recognizes that the parcel is surrounded on three sides by residential development and that it is also adjacent to the Delaware Seashore State Park; that the State has serious

environmental concerns with the development of this property; that DNREC has noted that more than ½ of this parcel is forested and that a large majority of this forest is palustrine forested wetlands; that the segment of forested wetlands and the uplands are part of a larger forest block primarily owned by the Division of Parks and Recreation as part of the Delaware Seashore State Park; that large forest blocks such as this provide important habitat and corridors for migratory birds and resident wildlife as well as providing water and air quality benefits; that the developer is encouraged to minimize the loss to forest resources; that the Division of Parks and Recreation has stated that they would be interested in discussing the possibility of purchasing the forested wetlands on this site for inclusion into the Delaware Seashore State Park; that development potential is extremely limited due to the extensive area of wetlands present on the site and a townhouse neighborhood consisting of 48 units will likely require impacts to regulated wetlands beyond what could be permitted; that wetlands should be delineated and a jurisdictional determination completed by the U.S. Army Corps. of Engineers; that the site layout should avoid impacts to all wetlands and allow for 100-foot buffers from watercourses and wetlands; that tidal wetlands and subaqueous land impacts are regulated by the DNREC; that individual permits and certain Nationwide permits from the Corps. also require 401 Water Quality Certification from the Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the Division of Soil and Water Conservation, Delaware Coastal Programs Section; that the Applicant is encouraged to attend a Joint Permit Processing Meeting to discuss the project; that the project is located within the public water service area granted to Sussex Shores Water Company; that the Applicant should discuss his options with the Public Service Commission; that DNREC also provided comments relating to dewatering and well permitting; that in conclusion, the State has serious concerns regarding the development of this site because of its proximity to the Delaware Seashore State Park and the potential impacts on wetlands and forest lands; that the State encourages the developer to contact the Division of Parks and Recreation to discuss the possible purchase of the forested wetlands on the site for inclusion into the Delaware Seashore State Park; that the State request that the County require the developer to have a wetlands delineation completed by a certified professional and a jurisdictional determination completed by the U.S. Army Corps. of Engineers before any site plan is approved; and that the site plan should avoid impacts to all wetlands and allow for 100-foot buffers from watercourses and wetlands.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Pocomoke sandy loam 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 Pocomoke soils are considered of Statewide Importance, Prime Farmland, and Hydric; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for both on-site and off-site drainage improvements because of the presence of very poorly drained soils and the increased impervious area causing increases in storm runoff.

The Commission found that the Applicant had submitted an Exhibit Booklet prior to the meeting and that the Exhibit Booklet is a part of the record for these proceedings.

The Commission found that Lauren Alberti was present on behalf of Inland Bays, LLC, with James Fuqua, Attorney, and Gerald Freidel of Davis, Bowen & Friedel, Inc., Consulting Engineers, and that they stated in their presentations and in response to questions raised by the Commission that the site is adjacent to Bethany Lakes Subdivision, across from the Salt Pond Residential Planned Community, close to Lynn Lee Village Mobile Home Community, and the Courts and Lakes at Old Mill, recently approved multi-family projects, and adjacent to the State lands; that zoning in the area is predominantly MR and GR residential with some Conditional Uses for multi-family; that MR zoning permits approximately 4 units per acre; that the proposed project proposes 48 units on 12 acres which equals 4 units per acre; that the site contains 11.96 acres which includes 2.23 acres of Federal wetlands; that the wetlands have been delineated; that there are no State wetlands on the site; that the site is located in the Environmentally Sensitive Developing Area according to the State Strategies and the 2002 Sussex County Comprehensive Plan Update; that multi-family uses exists in the area with similar densities and referenced five sections of the Salt Pond Residential Planned Community, the proposed Courts and Lakes at Old Mill, and a C-1 General Commercial parcel north of Bethany Lakes; that they studied this site as a in-fill site because all developable areas have been approved around the site; that the land to the east will not be developed since it is owned by the Nature Conservancy and the State; that there is a fractional need for a wetland permit since they will be requesting to mitigate four small areas totaling 0.10 of an acre to allow for good circulation of traffic; that roads will be constructed to exceed County standards with rolled curbing; that sidewalks will be provided; that recreational amenities will include a swimming pool, community building, and a tennis court; that buildings will contain from 4 to 8 units each; that sewer capacity is available from the County; that water will be obtained from Sussex Shores Water Company; that fire protection will be provided by Millville Volunteer Fire Company; that the existing Popular trees along the westerly property line will be retained as part of a buffer from Bethany Lakes; that DelDOT did not require a traffic impact study since rezoning was not proposed and since the density is not being increased; that a Nutrient Impact Assessment was performed and it was found that the propose development will reduce the impact by nutrients; that the project will be an economic benefit to the County and the area; that the site layout can be adjusted to provide interconnection of the cul-de-sac and the recreational area; that drainage will be accommodated through grass swales and a wet pond; and that the site is consistent with the development that is taking place in the area.

The Commission found that Mr. Fuqua submitted some suggested conditions.

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. Wheatley, and carried unanimously to defer action.

Motion carried 4 – 0.

C/Z #1529 – application of **DOUGLAS W. BROCKWAY** to amend the Comprehensive Zoning Map from a GR General Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying west of Road 288 (Wil-King Road), 4,100 feet north of Route 280-B, to be located on 1.67 acres, more or less.

The Commission found, based on comments received from DelDOT, that regardless of whether the application is a rezoning or a Conditional Use, the Department is concerned about this application; that the proposed use would be inconsistent with the Strategies for State Policies and Spending; that the Department would normally recommend that the County deny the application; and that because there is an existing business on the site the Department would not oppose a Conditional Use, limiting the site to exactly what is now proposed.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam 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 Fallsington soils are considered of Statewide Importance, Prime Farmland, and Hydric; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within a “Rural” area according to the Strategies for State Policies and Spending document; that in these areas the State policy is to encourage the preservation of a rural lifestyle and discourage new development; that because rezoning this parcel to commercial will allow a range of future commercial uses in a rural area if the boat repair shop closes, the State objects to this proposal; that if, after testimony by the applicant and others, the County is inclined to approve this application, the State would advise that if a new well is needed, a permit must be obtained prior to construction of the well; that the Delaware Clean Marina Guidebook, published in June 2003, has guidelines for boat maintenance facilities including best management practices for pollution control, stormwater management facilities and waste containment and disposal that may be applicable to this project; that any change in use will require the owner of the property to obtain an entrance approval for access to the business; and that, in conclusion, the State objects to the rezoning of this parcel because it is in a rural area.

The Commission found that Douglas Brockway was present and stated in his presentation and in response to questions raised by the Commission that he started the business approximately 10- years ago on Savannah Road in a commercial area; that he purchased this site in 1998, built his home, and reopened the business; that he installs t-tops on boats for Allen Lucas Marine, Inc.; that he installs t-tops on small boats up to 22-feet long at his shop; that he installs t-tops on larger boats at marina sites and other sites off-site; that there is no annoying noise from the shop; that he works on approximately two boats per week; that his typical business hours are from 8:00am to 5:00pm Monday through

Saturday, with no Sunday hours; that he would have one employee there when help was needed; that he will not install any signage on the site; that all material storage will be indoors; that he improved the street where he accesses his shop with a base, crusher-run, and stone; that since he moved to the site, he received violations for not obtaining a building permit, which was an error, occupying a camper, and using the building for a business; that t-tops are stainless steel units and consoles that are bolted to a boat; that he also installs fishing rod holders; that the only outside storage will be for boats to and from the shop; and that the tools used in the shop include a tube bender, a chop-saw, and a small welder.

The Commission found that Mr. Brockway submitted eight (8) pictures of boats with and without installed t-tops, t-tops and tubing, and a letter from Allen Lucas Marine, Inc.

The Commission found that Marian Rossi, a resident living on the access road (Penny Lane) was present in opposition to the use of the access road, not the rezoning or the business, and added that the road is not owned by Mr. Brockway and that Mr. Brockway does not have any authorization to use the access road to serve his property; and that the owners on the road are concerned about any liability that may impact them.

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 4 – 0.

Subdivision #2003-26 – application of **BEACH HOMES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 103.73 acres into 96 lots, located on both sides of Route 30 and both sides of Road 48 at the intersection of Routes 30 and Road 48.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 20, 2003 and that the report will be made a part of the record for this application; that letters were received from Gerald A. Pusey and Robert A. Raley expressing concerns about this application; and that a revised plan was submitted by the applicant that reduces the number of lots proposed to 80 and complies with the recommendations of the Technical Advisory Committee.

The Commission found that Heidi Balliet, Attorney, Bill McMahon, Jr., and Jessica Nichols with Meridian Consulting Engineers were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the number of lots has been reduced from 96 to 80; that no agencies have objected to the application; that the development is a low density development; that $\frac{3}{4}$ -acre lots are proposed and permitted; that the minimum square footage for the dwellings will be 1,350 square feet; that the dwellings will be stick built homes; that manufactured housing will not be permitted; that there is a need in the community for affordable housing; that one

entrance is proposed off of Route 48; that on-site septic and wells are proposed; that the soils work has been submitted to DNREC for approval; that the streets will be private and built to County specifications; that there are no wetlands or flood plains on the site; that there are no plans for sidewalks or streetlights at this time; that no recreation is proposed; that the only open space on the site is where the stormwater management ponds will be located; that the stormwater management ponds could be relocated; that the stormwater management ponds will probably be wet ponds since there is no positive outfall; that the average price range will be \$150,000 to \$190,000 price range; that a turn key package development is proposed; that there will be a homeowners' association with an architectural review committee; that the homeowners' association will be responsible for the maintenance of the streets, common areas, and buffer areas; and submitted photographs of dwellings from other developments that the applicants have constructed.

The Commission found that no one was present in support of this application.

The Commission found that John Hall, Lisa Workman, Dave Magee, and Wayne Carmean were present in opposition to this application and advised the Commission that there are problems with the type of signs that the County uses in posting notices; that people in the area are not aware of what is happening since the signs are usually destroyed; that the intersection of Route 30 and 48 is one of the deadliest intersections in the State; that Route 30 is a possible evacuation route; that the State is looking at areas for north and south bypasses and that this area is being studied; that no recreation area is proposed; that the development could have a negative impact on traffic and the school district; that other homes in the area have had septic problems; that the stormwater management ponds are located in a bad area; that the site is a low lying area; that growth is not needed in the area; that traffic is increasing in the area; that the drainage ditches are not working properly in this area; that modular homes are not stick built homes; and that there are trespassing problems since there is not any recreational area.

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

Motion carried 4 – 0.

Subdivision #2003-27 – application of **MAIN STREET HOMES, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 24.40 acres into 35 lots, located at the end of Fairway Drive within Old Landing Development, approximately 1,950 feet west of Road 274 (Old Landing Road).

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on August 20, 2003 and that the report will be made a part of the record for this application; and that the applicants have submitted a revised plan that complies with the recommendations of the Technical Advisory Committee.

The Commission found that Jessica Nichols of Meridian Consulting Engineers and David Dombert of Main Street Homes, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that access to this project is through the existing Old Landing Woods Subdivision; that there is a positive outfall on this site; that the name of the subdivision will be Old Landing Estates; that a majority of the proposed streets were rough cut years ago; that wetland mitigation will occur on the site; that the existing Old Landing Woods subdivision has streetlights but no sidewalks; that a homeowners' association is proposed; that no areas on the site are set aside for recreation; that the open space is usable area; and that the existing fence and gate will be removed.

The Commission found that no one was present in support of this application.

The Commission found that Lorraine Edgins, Patrice Riggin, and Don Hawkins, all residents of Old Landing Woods were present and expressed concerns about traffic being a problem in the area already; raised questions about existing wells becoming contaminated; who will be responsible for the maintenance of the streets and if the applicants will help with the maintenance of Fairway Drive; will existing roads need to be widened; that the ownership of Fairway Drive needs to be established; and that Robert Marshall, the original developer, still owns Fairway Drive.

The Commission found that Darin Lockwood of Meridian Consulting Engineers was present and submitted a letter from Harry M. Fisher, III, Esquire, to Eugene H. Bayard, Esquire, indicating that Robert Marshall agrees to provide access to the site via Fairway Drive; that this will be done by an easement within the deed or a separate agreement that will be executed at settlement; and submitted a letter from Tidewater Utilities that they are able and willing to provide central water to the site.

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to leave the record open for 45 days for this application so that Mr. Robertson can review the deed restrictions for Old Landing Woods subdivision.

Motion carried 4 – 0.

OTHER BUSINESS

The Retreat MR/RPC
Revised Record Plan – Road 283

Mr. Abbott advised the Commission that this is a revised plan to relocate the proposed wastewater management building to a location along Road 283; that the previous approved plan had the building located on what is now lot 1; that the Sussex County Engineering Department is requesting the relocation since it will be more feasible to hook

up when central sewer becomes available to the area; and that there are still 161 lots proposed.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised plan as submitted.

Motion carried 4 – 0.

Subdivision #2001 – 3 - - C. Larry McKinley
Time Extension – Road 504

Mr. Abbott advised the Commission that this application received preliminary approval for 42 lots on January 24, 2002; that the Commission granted a one-year time extension on April 10, 2003 retroactive to the original approval date; that the surveyor is requesting another extension and indicated that they are actively pursuing the location of the cemetery on site.

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

Motion carried 4 – 0.

Indigo Run
Exception to Plan Scale Requirements

Mr. Abbott advised the Commission that Chapter 99, Article IV, Subsection 99-22, Item A requires plans to be submitted at a minimum scale of one (1) inch equals one hundred (100) feet; and that Land Design Inc. is requesting permission to be able to submit an overall plan of one (1) inch equals four hundred (400) feet with 2 enlargement sheets at one (1) inch equals two hundred (200) feet for a residential planned community.

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

Motion carried 4 – 0.

Robert Reed
Lot on Existing Private Road – Road 88

Mr. Abbott advised the Commission that this is a request to subdivide a 1.88-acre parcel into 2 lots with access from a 50-foot private road; that currently the 1.88-acre parcel has access from an existing 25-foot private road; that the owner will have to dedicate an additional 25-feet to make the road a 50-foot road; and that the 2 lots will be the only ones with access from the road.

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

Motion carried 4 – 0.

Janet Rigan and Ashley Linton
2 Parcels and 50' Right of Way – Road 288

Mr. Abbott advised the Commission that this is a request to subdivide an 11.55-acre parcel into 2 parcels with access from a 50-foot right of way; that Parcel A will be 3.76-acres; that Parcel B will be 6.58-acres; and that the owners propose to widen an existing driveway to 50-feet to serve as access to the parcels.

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

Motion carried 4 – 0.

Herman Ockels
Parcel and 50' Right of Way – Road 483

Mr. Abbott advised the Commission that this is a request to create a 7.21-acre parcel with access from a 50-foot right of way off of Road 483; that the right of way exist; and that the 7.21-acre parcel would be the second parcel with access from the right of way.

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

Motion carried 4 – 0.

Meeting adjourned at 10:20pm.