



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 12, 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. Gordy, 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. Johnson, and carried unanimously to approve the Revised

Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of January 22, 2004 as amended.

OLD BUSINESS

C/U #1520 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for wells and a control building for a public utility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 4,676 square feet, more or less, lying northeast of Route One and being southwest of Wilson Lane within Greystone Manor Subdivision.

The Commission discussed this application which has been deferred since January 22, 2004.

Mr. Wheatley stated that he would move that the Commission recommend approval of C/U #1520 for Tidewater Utilities, Inc. for wells and a control building based upon the record made at the public hearing and for the following reasons:

1. The project is located within the Greystone Manor Subdivision. Tidewater Utilities, Inc. currently supplies central water to the Subdivision.
2. The Greystone Manor Homeowner's Association has stated that there is a need for adequate water within the Subdivision.

3. The project will meet fire protection requirements for the Subdivision.
4. This project benefits the health, safety and welfare of the residents of the area, and will not have an adverse impact on the neighboring properties and community.
5. This recommendation for approval is subject to the following conditions and stipulations:
 - 1) The driveway serving the wells and control building shall be paved.
 - 2) Landscaping shall be provided.
 - 3) There shall not be any elevated water towers constructed on the site.
 - 4) The site plan shall be subject to approval of the Planning and Zoning Commission.

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

Motion carried 5 – 0.

C/U #1521 – application of **STORAGE EQUITY PARTNERS, LP, II** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a self-storage facility to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.17 acres, more or less, lying east of Private Road (west of Crab Barn Restaurant) and 1,100 feet south of Route One.

The Commission discussed this application which has been deferred since January 22, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1521 for Storage Equity Partners, LP, II to operate a self-storage facility based upon the record made at the public hearing and for the following reasons:

1. The project is an extension of an existing self-storage facility.
2. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
3. The use as a self-storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the Route One area.
4. This recommendation for approval is subject to the following conditions and stipulations:
 - 1) There shall not be any building contractor's or subcontractor's offices or workshops within the project.
 - 2) There shall not be any storage of building materials or other construction within the project.
 - 3) Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties.
 - 4) No outside storage shall be allowed on the premises.

- 5) A landscape buffer of Leyland Cypress or similar vegetation shall be retained or installed and planted along the border of the project adjacent to any residential properties so that the storage facility is screened from view from any adjacent residential property.
- 6) The site plan shall be subject to approval of the Planning and Zoning Commission.
- 7) Access to the gates by tenants of the self-storage facility shall only be between 7:00am and 9:00pm.
- 8) The driveway and parking areas outside of the storage area shall be stoned or paved.
- 9) Stormwater management shall be maintained on site.

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

Motion carried 5 – 0.

C/Z #1547 – application of **ROBERT G. SANDO, JR.** to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, land lying northeast of Route One, 150 feet southeast of Road 234 (Deep Branch Road), to be located on 19,500 square feet, more or less.

The Commission discussed this application which has been deferred since January 22, 2004.

Mr. Wheatley stated that he would move that the Commission recommend denial of C/Z #1547 for Robert G. Sando, seeking a change of zoning from GR to AR-1 based upon the record made at the public hearing and for the following reasons:

1. I do not believe that the application is consistent with the character of the surrounding property. All of the adjacent property is zoned GR.
2. The purpose of this requested change in zone is to allow a Conditional Use to operate an on-site computer repair and sales facility within a residence. While there is some limited business or commercial zoning or uses on the opposite side of Route One, there are no similar uses on the same side of the road as this application for miles in either direction. This use would be out of character with the adjacent and surrounding properties on the same side of Route One.
3. Although the Applicant stated that the intended uses are limited and would likely be occurring while the property is also used as a residence, I believe that there are other locations that are currently zoned for business or commercial use that are available and better-suited for the intended use.
4. DelDOT has expressed concerns about the traffic generated by the intended use of the property and about access to the property from Route One.

5. The requested change of zone and accompanying Conditional Use does not promote the health, safety, convenience and general welfare of the neighborhood or community.
6. The proposed use as a computer sales and retail operation is not consistent with the purposes of the AR-1 District as set forth in the County Zoning Code.

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

Motion carried 5 – 0.

C/U #1548 – application of **ROBERT G. SANDO, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a computer repair and sales of computers and parts to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 19,500 square feet, more or less, lying northeast of Route One, 150 feet southeast of Road 234 (Deep Branch Road).

The Commission discussed this application which has been deferred since January 22, 2004.

Mr. Wheatley stated that he would move that the Commission recommend denial of C/U #1548 for Robert G. Sando, Jr., seeking a Conditional Use to operate a computer sales and repair facility based on the reasons in his motion with regard to the requested change of zone for the property (C/Z #1547) and the record made at the public hearing. He also stated that he had recommended denial of the change of zone from GR to AR-1, and that this type of Conditional Use is not permitted in a GR District.

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

Motion carried 5 – 0.

C/Z #1530 – application of **CLOVERLAND FARMS DAIRY, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying on the northwest corner of the intersection of Routes 24, 5, and 297, to be located on 3.66 acres, more or less.

The Commission discussed this application which has been deferred since January 22, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1530 for Cloverland Farms Dairy, Inc. to amend the Comprehensive Zoning Map from

AR-1 Agricultural Residential to C-1 General Commercial based upon the record made at the public hearing and for the following reasons:

1. The project is located within the Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update. The proposal will provide neighborhood convenience shopping, which is one of the guidelines for use in the 2002 Comprehensive Plan Update.
2. The use will not have an adverse impact on the neighboring properties or community.
3. The project is at an intersection that contains other C-1 and B-1 zoned properties. These include a shopping center with various uses including a restaurant, and warehousing. The intersection also has other community uses including a church and community center. This change of zone would make this corner of Route 24 and 5 consistent with the uses and zoning of the rest of the intersection.
4. The parcel that is the subject of this application was originally used as a service station and was later approved for use as an ice plant. The structure on the site is currently vacant and run-down. This project would revitalize the property and would improve the appearance of the intersection.
5. The applicant has stated that it will meet or exceed all DelDOT requirements.
6. C-1 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping and personal and miscellaneous service activities, and that such uses should be located along arterial roadways where a general mixture of commercial and service activity now exists. In this case, the proposed service station and convenience store along Route 24 falls within the stated purposes of the C-1 District.

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

Motion carried 5 – 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 Route 48 at the intersection of Route 30 and Route 48.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2003 – 26, for Beach Homes, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The proposed subdivision density does not exceed 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 or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for septic.
6. The proposed Restrictive Covenants address the maintenance of streets, open space, and stormwater management areas.
7. This recommendation is subject to the following conditions:
 - The number of lots shall not exceed 78, and there shall be at least one Recreational Area with a minimum area of 1.50 acres.
 - The Applicant shall prepare and record formal Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, agricultural buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - The stormwater management system shall meet or exceed the requirements of the State and County.
 - All entrances shall comply with all of DelDOT's requirements.
 - The Restrictive Covenants shall include the Agricultural Use Protection Notice.
 - There shall be streetlights and sidewalks on at least one side of all streets within the Subdivision. The location of the lights and sidewalks shall be shown on the Final Site Plan.
 - It is suggested that the Applicant follow the guidelines for lot clearing set forth in DNREC's letter to the Commission dated January 22, 2004.
 - There shall be a 30 foot landscaped buffer retained or installed along the perimeter of the subdivision as shown on the Preliminary Site Plan.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve this application as a preliminary for the reasons stated.

Motion carried 5 – 0.

Subdivision #2003-21 – application of **PAF, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 15.71 acres into 2 lots, located east of Road 484, approximately 0.7 mile north of Road 46.

Mr. Wheatley stated that he would move that the Commission grant preliminary and final approval for this application since the 2 lots now conform to the subdivision and zoning code and that a variance is not needed for the lot widths.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to grant preliminary and final approval for the reasons stated.

Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1522 – application of **SSEW, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.33 acres, more or less, lying northeast of Route 275 (Plantation Road), 700 feet southeast of Road 276 (Shady Road).

The Commission found that the Applicant had submitted site plans and an exhibit booklet prior to the meeting and that the exhibit booklet is a part of the record and a part of the proceedings for this application. The exhibit booklet contains exhibits referencing tax maps and data summary, deeds, DelDOT correspondence, a DNREC Remedial Action Plan and Restrictions, a wetlands letter, copies of Ordinances approving C/U #1489 and C/U #1434 for adjoining properties, and proposed conditions.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within the “Community” area and partially within the “Developing” area of the Strategies for State Policies and Spending document; that it is generally the State’s position to support growth in these areas, but they have serious concerns regarding the development of this site from both an environmental and a historic preservation standpoint; that it is noted that a Native American burial site has been located on the property immediately adjacent to the site; that the limits of the cemetery have not been identified, but may extend across the property line; that there is a cemetery on the church property located on Plantation Road; that this cemetery and any unmarked burials beyond the limits of the visual cemetery could be harmed with this proposed project and possible road improvements; that the Applicant needs to be aware of the Unmarked Human Remains Act (7 Del Code 54); that the Applicant should be required to contact the State Historic Preservation Office to determine the limits of the cemetery; that the State can only support a development proposal that would preserve these cemeteries and if an appropriate plan can not be developed, the State asks that the County deny the application; that a wetlands survey should be conducted to delineate the actual extent of wetlands on the site; that impacts on wetlands should be avoided; that unavoidable fills may require mitigation; that a 100+foot vegetated buffer should be employed around wetlands; that DNREC and the U.S. Army Corps. of Engineers discourage allowing lot lines to contain regulated wetlands in an effort to limit cumulative and secondary impacts to wetlands from unauthorized homeowner activities; that the developer is encouraged to maintain habitat corridors through this property by maximizing the area of forest/shrub on the southern portion of the site; that allowing significant areas of vegetation to remain and/or enhancing areas of vegetation will maintain forest connections between this parcel and adjoining parcels and will help to improve regional habitat, reduce non-point source pollution and improve air and water quality, while reducing long-term maintenance costs and providing passive recreational opportunities for residents; that it is highly recommended that a soil scientist be hired to assess the soil and hydrologic conditions of the site; that DNREC urges the developer to employ best available technologies and/or best management practices as “methodological mitigative strategies” to reduce degradative impacts associated with development; that the

State supports the comments and recommended improvements from DelDOT, but note that the design of these improvements would have to be done in a way that does not harm the existing cemeteries in the area; that site plan and building plan approvals are required from the Office of the State Fire Marshal; and that the County should require the developer to contact the State Historic Preservation Office to determine the limits of the cemeteries and whether the development or required infrastructure improvements for this development would impact these cemeteries; and that the State asks that the County consider the DNREC and DelDOT comments when reviewing this proposal for approval.

The Commission found, based on comments received from DelDOT, that a traffic impact study has been reviewed and that the traffic impact study indicates that the project would have impacts on study area intersections and traffic conditions in the area during peak hours; that should the County choose to approve the project there are certain items that should be made a part of the record plan; that the traffic impact study indicates that, with the addition of a signal, the intersection of Plantation Road and Shady Road would operate acceptably during both weekday peak hours; that at the intersections of Plantation Road with Postal Lane and Cedar Grove Road, drivers trying to enter Plantation Road from Postal Lane during the evening peak hour would experience the only weekday peak hour deficiencies; that a realignment of Postal Lane and/or Cedar Grove Road to form a single intersection, the addition of turn lanes to provide a single lane on each approach, and the installation of a signal is needed; that to accommodate summer Saturday traffic, the referenced improvements would be sufficient for the intersections of Plantation Road with Postal Lane and Cedar Grove Road, but several additional turning lanes would be needed at the intersection of Plantation Road and Shady Road; that DelDOT is pursuing the possibility of a new two-lane road west of Plantation Road; that that Road, if built, could draw traffic away from Plantation Road; that if the State does not build that new road, the State may widen Plantation Road to four lanes; that while the State may include intersection improvements in a project to widen Plantation Road, either project could significantly postpone the need for additional turning lanes at the Shady Road intersection; that while the project would significantly increase delays in some cases, in no case would it cause a level of service to change; that should the County choose to approve the project, the following should be incorporated into the site design and reflected by note or illustration on the record plan: 1) The developer should be required to enter into an agreement with DelDOT, whereby the developer would fund an equitable portion of a traffic signal at the intersection of Plantation Road and Shady Road. The cost shall include pedestrian signals and crosswalks at DelDOT's discretion and all associated costs with coordinating this signal with others along Plantation Road. 2) The developer should be required to dedicate right-of-way along the property's Plantation Road frontage to a depth of 30 feet from the road centerline and to either dedicate or reserve an additional 20 feet, for a total of 50 feet from the road centerline. 3) The site entrance should be designed in accordance with DelDOT standards. Plans for the site entrance should include separate left-turn and right-turn lanes exiting the site. Preliminarily, the southbound Plantation Road approach should include a shared left-turn and through lane and a by-pass lane. The northbound Plantation Road approach should include a right-turn deceleration lane to permit safe entry into the site entrance. 4) The developer should be required to provide bicycle lanes along the Plantation Road frontage as part of the

entrance construction. 5) As part of the design and construction of subdivision streets, the developer should be required to provide sidewalks on both sides of all interior streets and on both sides of the entrance driveway leading to the development. 6) As part of the design and construction of the entrance, the developer should be required to provide sidewalks along the development frontage on Plantation Road to accommodate pedestrians and shoulders along that frontage to accommodate bicyclists. 7) The developer should be required to provide bus stop facilities acceptable to the Delaware Transit Corporation, including a bus pad and shelter on Plantation Road. These facilities should be shown on the record plan as future construction. They should then be supplied by the Delaware Transit Corporation when or if bus service is extended to Plantation Road.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the West Rehoboth Expansion Area; that the project exceeds the West Rehoboth Expansion Planning Study assumption of 4.0 EDUs per acre, however, the proposed project will not cause additional collection lines to become deficient; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$3,369.00 per EDU; that an 8-inch gravity main is installed within an easement in parcel 504.7; that the pipeline is along the southern property line of the western portion of the parcel; that an 8-inch stub is available at the eastern end of the 8-inch line at manhole 606B; that the County Engineer must approve the connection point; and that conformity to the West Rehoboth Area Planning Study will be required.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the proposed project should be reviewed by the Technical Advisory Committee; that the roads should be constructed and inspected in accordance with the street design requirements of Sussex County; that the streets should be curbed and utilize a closed pipe drainage system for the multi-family areas as construction of high-density dwellings destroys earthwork and finished grades of drainage swales can not be maintained throughout construction; that the plan depicts a community pool; that sidewalks and streetlights should be provided to all multi-family buildings; that adequate safety features should be provided that would not require pedestrians to walk within streets or in the dark to access their units and community areas; that a minimum of 40 feet turning radius for all turns, intersections should be provided; and that dimensions for the adequate review of the divided lane and island widths should be provided.

The Commission found that a copy of a letter from DNREC to Mark Slaughter, one of the developers, advised that the submitted development plans for townhouses to be built on the site are consistent with the Final Plan of Remedial Action approved by DNREC for the Jackson Pit site.

The Commission found that the Applicant provided a copy of willing and able letter to serve water to the site from Tidewater Utilities, Inc.

The Commission found that the Applicant provided a copy of an exhibit booklet titled “Federal 404 Wetland Jurisdictional Determination” prepared by Coastal & Estuarine Research, Inc. for the site.

The Commission found that developers Mark Slaughter, Ken Simpler, Butch Emmert, and Don Wakefield were present with James Fuqua, Attorney, Jessica Nichols and Darin Lockwood of Meridan, and Dawn Riggi of Davis, Bowen & Friedel, Inc., were present on behalf of the application.

The Commission found that Lindsey Hall and Alex Ritzberg of DNREC were also present in case there were any questions raised about testing of the borrow pit or the remedial action plan.

The Commission found that Mr. Slaughter and Mr. Fuqua spoke on behalf of the application and referenced that they propose to develop 80 townhouses on the site; that access is off of Plantation Road; that Rolling Meadows Subdivision adjoins the site to the south; that an open field adjoins the site to the west; that Eagle Point I and II adjoin the site on the north and east; that according to the 2002 Comprehensive Plan Update the site is located in an Environmentally Sensitive Developing Area, a growth area; that according to the State Strategies the site is located within a “Community” area and partially within a “Developing” area, growth areas; that central water will be provided by Tidewater Utilities, Inc.; that public sewer is available from the County; that the in principle the developers have no objections to compliance with DelDOT comments; that the site is surrounded by an areas being developed; that the intended use is consistent with the development trends of the area; that the developers have received approval of a Remedial Action Plan for cleaning up the borrow pit and dump site on the site; that the developers have recorded a Declaration of Restrictions for remedial action approved by DNREC; that cleanup cost for the site may exceed \$100,000.00; that there are no wetlands on the site; that no disturbance of any cemeteries is intended; that fire protection is available from Lewes and Rehoboth; that State Police provide police protection; that the site is in close proximity to shopping areas and medical facilities; that amenities include a pool, pool house, playground, trails, and a picnic area; that a landscape plan will be provided; that the gross density equals 4.36 units per acre; that there should be no adverse impact on neighboring projects; that sidewalks will be provided from Plantation Road to the picnic area; that no interconnections to Eagle Point are proposed; that street lighting will be provided; and that there will be no construction activities on Sundays.

The Commission found that Alex Ritzberg of DNREC, in response to questions raised by the Commission, stated that they tested the pit as a means of soil testing; that they did not find the garbage claimed to be buried on the site; that they did find bricks, concrete, and construction materials; that 18 test pits were dug; that the pits were six foot square with depths of 4 to 10 feet; that the pits were spaced approximately 20 feet apart; that the testing indicated that native materials were found at the surface and at 4 to 10 feet below grade.

The Commission found that Mr. Fuqua and Mr. Slaughter continued by advising that they propose to remove all debris on the site; that it was reported that there were two 25' by 100' municipal garbage pits in the southeast corner years ago; that tree stumps, debris, etc. will be removed from the site; that the 1997 testing found some contaminants; that recent testing exhibited little to no contaminants; that stormwater management ponds will be wet ponds; that each unit will have a garage and three parking spaces; that when the streets are built driveways will be provided to all adjoining parcels along the entrance road; and that traffic calming methods will be provided along the entrance road due to the length of the road.

The Commission found that Dawn Riggi, in response to questions raised by the Commission, stated that the weekday morning peak hour varies from 7:00am to 9:00am; that the weekday afternoon peak hour varies from 4:00pm to 6:00pm; and that the Saturday peak hours are between 9:00am to 5:00pm.

The Commission found that Mr. Fuqua submitted photographs of the site.

The Commission found that a letter in opposition was received from the Citizens Coalition, Inc. referencing concerns about traffic safety; the number of units; that the traffic impact study did not reference the Five Points intersection; that additional traffic at the intersection of Shady Road and the entrance to Henlopen Landing onto Plantation Road will become highly dangerous without traffic signals; that the single access driveways onto Plantation Road would mean traffic wanting to make a left turn south would have to cross over traffic on Plantation Road without a signal; that the need is questionable due to the number of developments in the area; questioning if there is sufficient infrastructure in place to handle more housing; that DelDOT numbers are low and should not be accepted as moderately reasonable; that they have heard that traffic signals are proposed, but when will they occur; that the developers should work with DelDOT and be responsible for the additional infrastructure needed for development; questioning if there will be any open space remaining along Plantation Road; questioning if there will be any farmland along Plantation Road; questioning if there will be any natural habitat for birds and wildlife along Plantation Road; and requesting denial of the application as proposed.

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.

Motion carried 5 – 0.

C/U #1523 – application of **RABB-FORD** to consider the Conditional Use of land in a 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 2.48 acres, more or less, lying south of Route 54, 500 feet west of Lincoln Drive, a

private road within Cape Windsor Subdivision, and 0.5 mile west of The Ditch at Fenwick Island.

The Commission found, based on comments received from the Office of State Planning Coordination, that DelDOT had noted that they had reviewed a similar application in 1996; that DelDOT had recommended denial of that application since they had planned to acquire the property as a wetlands mitigation site relating to improvements on Route 54 and that they had opposed the application because it would increase the intensity of development along Route 54; that DelDOT has completed the improvements along Route 54 without the use of the site; that this portion of Route 54 is extremely congested during the summer season and that DelDOT still objects to the application; that DNREC has advised that State wetlands maps show significant areas of Estuarine Emergent Tidal Wetlands on and surrounding the site; that a detailed wetlands delineation should be conducted; that the developer is encouraged to employ a 100+ foot vegetated buffer around the wetlands and either deed restrict or place the wetlands into a permanent conservation easement; that DNREC discourages allowing lot lines to contain regulated wetlands in an effort to limit cumulative and secondary impacts to wetlands from unauthorized homeowner activities; that the site is within a flood hazard area; that it is recommended that hydraulic conductivity tests be conducted by a licensed soil scientist to assess the actual extent of soil compaction; that because of the highly variable and somewhat unpredictable soil water table fluctuations, a soil scientist should evaluate the suitability of the parcel for development; that some of the soils have rapid permeabilities and little or no phosphorus/nitrogen absorption capacity and that such soils are conducive to nutrient leaching via groundwater or surface runoff; that these impacts are intensified in soils containing shallow water tables; that it should be noted that most waters of the watershed suffer from severe water quality impairments due to persistent runoff from agricultural operations and unrelenting residential/commercial development pressures; that best available technologies and/or best management practices as “methodological mitigative strategies should be employed to reduce the degradative impacts associated with development and related activities; that the State Historic Preservation Office has noted that there is a high probability for prehistoric archaeological sites within and around the area; that preserving the wetland and wooded areas, keeping any development away from them, as those are the areas where the probability for prehistoric archaeological sites is the highest; that there is also a high probability for historic archaeological sites; that the State has concerns regarding development on this property because of the increase in traffic to an already congested area; and that they have also noted environmental concerns that they feel should be considered when the County reviews this project.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the project should be reviewed by the Technical Advisory Committee; that the roads should be constructed and inspected in accordance with street design standards of the Subdivision Ordinance; that the streets should be curbed and utilize a closed pipe drainage system for the multi-family areas as construction of high-density dwellings destroys earthwork and finished grades of drainage swales can not be maintained throughout construction; and that the developer

should provide a minimum of 40-foot turning radius for all turns, intersections and provide dimensions for the adequate review of the divided lane and island widths.

The Commission found that a letter was received from the Cape Windsor Community Association, Inc. advising that the developer has agreed to extend the privacy fence eastward to the maximum allowed by the 40-foot setback, and that the Board of Directors of the Cape Windsor Community Association has no objections to the proposed development.

The Commission found that the applicant submitted an exhibit booklet, which contained photographs of Route 54, the entrance to the site; elevation drawings of a building; a colored site plan; and a site plan of a courtyard.

The Commission found that Tom Ford, Sally Ford and George Rabb were present and stated in their presentations and in response to questions raised by the Commission that the site was rezoned to MR in the 1990s; that in 1996 they received approval for 13 multi-family units; that they did not build that project; that they are now applying for 12 detached dwelling to be built in clusters; that the Route 54 viaduct has been completed; that central water will be provided by Artesian Water; that the fire plugs are in place and water meters have been installed; that the site will be served by County sewer; that the entrance construction has been completed; that a 50-foot wetland buffer will be provided; that the proposed density is less than the surrounding development; that fire protection will be provided by the Roxana Fire Company; that a DelDOT entrance permit was issued and the entrance was built and inspected by DelDOT for the original 13 multi-family units; that a traffic signal is being installed at the entrance onto the viaduct off of old Route 54; that best management practices will be provided through stormwater management; that the project will be developed as a condominium; that the units will contain approximately 2,400 square feet each; that each unit will include a two car garage; that the maximum height of the units will not exceed 42 feet; that at least 36 parking spaces will be provided; that wetlands have been delineated; that they have owned the site since 1993; that the site has remained above the flood water during storm events; that the site is adjacent to the Cape Windsor recreational area and some lots; that Cape Windsor has been experiencing changes from mobile homes to dwellings in recent years; that they propose to fence and landscape with native species along the rear property line; that they propose 25-foot wide drives with mountable curbs and accent paved driveways; that the units will have 28'x70' and 30'x60' footprints; that a courtyard will be established on the site for passive recreation; that they would like to request a 30-foot setback from old Route 54 for the units east of the entrance and a 20-foot setback from old Route 54 for the units west of the entrance since Route 54 has been altered; that they would like to request that the existing billboard on the site be permitted to be used for a sales promotion sign during construction; that the billboard will be removed upon completion of sales of the units; that they propose to create a bio-swale to retain water and that the design of the bio-swale should remove 80 to 90 percent of sediments; and that the individual units will be 9-feet to 12-feet apart within clusters; and that clusters of units are 40-feet apart.

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.

C/Z #1531 – application of **LAKE PLACID PROPERTIES, LLC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying east of Route 24, 1,000 feet south of Route 5 and Route 22 (Long Neck Road), to be located on 14.23 acres, more or less.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project; that the Department does not support 12 units per acre because of the detriment to the treatment plant; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$2,411.00 per EDU; that the location and size of laterals or connection points shall be subject to the approval of the County Engineer; that there is no service to this parcel at this time; that facilities are not being constructed by the County; and that conformity to the Long Neck Planning Study Expansion Area No. 1, Amendment No. 1, dated January 8, 2000 shall be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to the rezoning, but would like to note that there is a medium probability for prehistoric sites within the area; that there are known cemeteries nearby; that the Applicant should be made aware of the Delaware Unmarked Human Remains Act and should contact the State Historic Preservation Office if any unmarked human remains are discovered; that wetlands should be delineated; that DNREC recommends a 100+foot vegetated buffer around all wetlands and that buffers and wetlands should be placed in deed restrictions and or placed into a conservation easement; that the site is extensively forested; that the developer should minimize the clearing of trees and maintain habitat connections; that the soils on the site are well drained or somewhat excessively well drained; that the project is located adjacent to receiving waters of the Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES); that ERES waters are recognized as special assets to the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that reduction of nitrogen and phosphorus loading will be obligatory; that this site is proposed within the low nutrient reduction zone; that DNREC recommends that the Applicant conduct a nutrient budget analysis; that the budget will assess and compare contemporary nutrient loading rates from current land uses with those projected for the change in land use; that all lands bounded by the watershed must demonstrate nutrient reductions that meet or exceed the percentage reduction level or

levels prescribed for that reduction zone; that the State supports DelDOT comments in their letter of August 18, 2003 and asks that the County require the recommendations be incorporated into the site design and reflected on the record plan; that any development of the property will require entrance approval from DelDOT; that site plans shall be subject to review and approval from the Office of the State Fire Marshal; and that the State asks that the County consider the State agency comments as they continue to review this application.

The Commission found, based on comments received from DelDOT, that the State was considering purchasing the site for stormwater management; that the State is no longer considering the site for that purpose; that the project would have traffic impacts on several intersections; and that the County should require the developer to make certain improvements as part of the plan approval process as outlined in the DelDOT letter of August 18, 2003.

The Commission found that Preston Dyer and Steve Parsons were present on behalf of this application and that Mr. Dyer stated in his presentation and in response to questions raised by the Commission that they are requesting commercial zoning to allow them to build a commercial retail center and pad sites; that sewer capacity is available; that central water will be provided by Tidewater Utilities, Inc.; that the site adjoins Bay Shore Plaza I, a commercial project; that vehicular interconnection will be created to Bay Shore Plaza I from this site; that connection will be provided through Bay Shore townhouses to Long Neck Road; that a traffic impact study was performed for DelDOT; that the site is no longer targeted for stormwater management by DelDOT; that stormwater management will be provided on the site for the project; that post-development run-off will not exceed pre-development run-off; that there are no wetlands on the site; that the site is not located in a flood plain; that the site is in a developing area; that several C-1 rezonings have occurred in the area adjacent to the site and across Route 24 from the site; that Route 24 is a major east/west corridor; that development of the site commercially will provide a service to the communities being built in the area; that they will be creating a voluntary deed restriction to provide a 7-foot high solid fencing along Bay Shore Subdivision and Sherwood Forest; that landscaping will also be provided; that the increase in residential growth in the area will support the project; that all parking islands will be landscaped; that all lighting will illuminate downward; that they will be developing the site along with Bay Shore Plaza I; and that no written objections have been received from any adjoining projects.

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

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

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

Motion carried 5 – 0.

Subdivision #2003-32 – application of **HM PROPERTIES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 136.20 acres into 201 lots, located south of Route 301, 1,820 feet east of Road 302.

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 a letter has been received from the Indian River Volunteer Fire Company advising that they are capable and willing to provide fire protection to this subdivision.

The Commission found that the applicants submitted an Exhibit Book on February 9, 2004 that contained a site data and vicinity map, Planning and Zoning Minutes for Stonewater Creek Phases 1 through 4, and proposed findings of fact.

The Commission found that James Fuqua, Attorney, Mark Handler and Randy Mitchell, applicants, Kevin Burdette and Jason Palkewicz of McCrone, and Brian Carbaugh of WWES Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is zoned AR-1; that a low density, single family development is proposed; that central sewer permits 20,000 square foot lots; that 201 lots are proposed on 123.63 acres; that the proposed density is 1.62 lots per acre; that Phases 1 through 4 have been granted final record plan approval for 301 lots; that this site adjoins the Baywoods development; that access to this site will be from the internal streets that are located within Phases 1 through 4; that the developers have acquired additional land since the first application was submitted; that the total number of lots for Phases 1 through 6 will be 502 lots; that Phases 5 and 6 will have the same restrictive covenants as Phases 1 through 4; that the site plan complies with all codes and regulations; that the recreational areas will be the same as Phases 1 through 4; that this Phase will utilize the same sewer and water system as the other phases; that the developers have acquired additional lands and have submitted an application for Phases 7 through 9 which is in the process for approval; that the sewer location will probably be relocated; that underground propane will serve the project; that the streets will be private and will have streetlights as in Phases 1 through 4; that a 5 foot multi-modal paved area is also proposed in this phase; that the north end of Long Neck Road is developing; that there are two interconnections to this site from Phases 1 through 4; that there is no access to Holly Lake Road from this site; and that the submitted conditions of approval are the same as those for Phases 1 through 4.

The Commission found that there were no parties present with interest to this application.

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

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

Motion carried 5 – 0.

Subdivision #2003-33 – application of **JOHN A. MAST** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 30.65 acres into 13 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Route 78, 375 feet northwest of Road 80.

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 staff received a letters in opposition to this application from Kenneth and Hazel Wilson and Rush Yelverton, Jr. and a petition with 84 signatures opposed and that they will be made a part of the record for this application.

The Commission found that John Mast and Don Miller, Surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this is the same site as a previous application that was withdrawn last year; that the original application was for 22 lots and that this application has been reduced to 13 lots; that most of the lots are 2.0 acres or greater; that a 30-foot landscaped buffer is proposed along the perimeter of the subdivision; that due to the layout of the parcel, the proposed cul-de-sac is longer than 1,000 feet; that the cul-de-sac length is approximately 2,500 feet; that the owner is not opposed to putting in traffic calming devices if required to do so; that the calming devices are usually circles that are about 1,000 feet apart; that the proposed dwellings will be on site stick built homes; that manufactured housing will not be permitted; that the dwellings will be a minimum of 2,400 square feet; that there is a small area of wetlands on the site near the rear of the property; that the wetlands are not located in the stormwater management area; that the site is suitable for engineered septic systems on the 2.0 acre lots; that the smaller lots contain better soils and will be able to have standard septic systems; that a community septic system would permit more than 22 lots; that the applicant purchased the property 3 years ago and it was used as a golf driving range; that the proposed use is better than a driving range; that there is a need for these type of lots in the area; that there are existing lots in the immediate area that are smaller than what is being proposed; that the subdivision will be an improvement to the area; that there would not be any negative impacts to traffic in the area; that the original parcel was subdivided into 2 parcels; that the adjacent parcels will probably not be developed since they are being farmed; that Mr. Robertson has reviewed the proposed deed restrictions and found them to be acceptable; and that the subdivision plan meets the requirements of the subdivision ordinance.

The Commission found that no parties appeared in support of this application.

The Commission found that Rush Yelverton was present in opposition to this application and read his letter that was submitted to the Commission and stated that the site borders properties that are active agricultural farms; that he purchased his property in 2001; that

children are in the area and expressed safety concerns; that there is a dangerous intersection in close proximity to the site; raised concerns about accessibility for emergency vehicles; and that the proposed forested buffer will not protect the farmers in the community.

The Commission found that Donald Allen was present in opposition to this application and advised the Commission that the smaller lots in the area were created for property owner's children at different times; that the subject site was tilled as recently as 3 years ago; and that there is not any need for additional lots in the area.

The Commission found that Julie Kennedy, a real estate agent, was present in opposition to this application and advised the Commission that most of the property in the area is large acreage tracts and owned by families; that the area is rural and the proposed subdivision would be out of character with the area since the area is predominately agriculture farms and horse farms.

The Commission found that Carlton Jones was present in opposition to this application and advised the Commission that he tills the adjoining parcel; that future homeowners will complain about farming operations; and that a 38 lot subdivision is currently being built and that there are lots still available in that subdivision.

The Commission found that Roy Collins was present in opposition to this application and advised the Commission that he agrees with the previous people who have spoken.

The Commission found, by a show of hands, that there were 38 people present in opposition to this application.

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

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

Motion carried 5 – 0.

OTHER BUSINESS

Oak Grove Subdivision

2 lots – Sunrise and Moonlight Drives – Road 345

Mr. Abbott advised the Commission that this is a request to create 2 parcels within the existing Oak Grove Subdivision; that the 2 proposed lots are located in an area that was reserved for future development on the original record plan; that lot 1 would be 3.037 acres; that lot 2 would be 13.362 acres; that the remaining land is wetlands and would be 6.92 acres; that the staff has received a letter in support of the request from the President of the Oak Grove Homeowners' Association; and questioned if the Commission will

approve the request as submitted or require a public hearing for an amended subdivision application.

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

Motion carried 5 – 0.

Mike Magaha

Lot on 50' Right of Way – Route 20

Mr. Abbott advised the Commission that this is a request to create a 0.75 acre lot with access off of an existing 50-foot right of way; that the Commission approved a parcel and 50-foot right of way on June 12, 2003; and that if approved, this would be the second lot with access from the right of way.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve up to 2 more lots with access from the right of way and that any further subdivision will require a public hearing for a major subdivision.

Motion carried 5 – 0.

Tracy Faulkner

2 Lots and 50' Right of Way – Road 501

Mr. Abbott advised the Commission that this is a request to create a 50-foot right of way to serve as access for 2 lots; that the 2 lots were created in 1981 and were to be conveyed as extensions to an existing lot located on Road 501; and that the owner would like to separate the 2 lots for her children.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the 50-foot right of way.

Motion carried 5 – 0.

Mary Wilgus

Parcel and 50' Right of Way – Road 381A

Mr. Abbott advised the Commission that this is a request to create a 1.0-acre lot with access from an existing 50-foot right of way; and that this would be the second lot with access from the right of way.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the lot as submitted.

Motion carried 5 – 0.

Scott and Billie Jo Layfield
Parcel and 50' Right of Way – Road 471

Mr. Abbott advised the Commission that this is a request to create a 2.0-acre lot with access from an existing 50-foot right of way; and that the proposed lot would be the second lot with access from the right of way.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the lot as submitted.

Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank discussed possible dates for having a special meeting for public hearings only in March and April.

It was the consensus of the Commission to have a special meeting on March 4, 2004 and April 1, 2004. The regularly scheduled meetings for March are still the 11th and 25th and for April the 15th and 29th.

Meeting adjourned at 11:10 P.M.