



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF MARCH 25, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 25, 2004 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00pm with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Kautz, Land Use Planner, and Ms. Mowbray – Zoning Inspector III.

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of March 4, 2004 and March 11, 2004 as amended.

OLD BUSINESS

C/U #1524 – application of **REHOBOTH BEACH ASSOCIATES, L.L.C.** 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 23.52 acres, more or less, lying northwest of Road 274 (Old Landing Road), across from Road 275A (Airport Road).

The Commission discussed this application which has been deferred since March 4, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1524 for Rehoboth Beach Associates, L.L.C., based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area.
- 2) The proposed Conditional Use is appropriate for the site because residential development of this type is appropriate in areas where central water and sewer are available. In this case, there will be central sewer provided by Sussex County and central water provided by Tidewater Utilities, Inc.

- 3) The property is in an area that has developed with a variety of uses, including commercial uses, medical facilities, mixed residential uses and a non-conforming mobile home park. This project will serve as a transition between these mixed uses and the residential uses located beyond it on Old Landing Road.
- 4) The project will be served or benefited by amenities that are on-site. These amenities include a swimming pool, community building, playground and trails.
- 5) This recommendation for approval is subject to the following conditions:
 - 1) The maximum number of residential units shall not exceed 140 condominiums within 70 duplex buildings.

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- 2) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT" requirements, as may be amended.
- 3) Recreational facilities, e.g., swimming pool, community building, trails, etc. shall be constructed and open to use simultaneously with the construction and occupancy of the residential community.
- 4) The development shall be served as part of the Sussex County West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
- 5) The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations and approvals, including DNREC, the State Fire Marshal and the Public Service Commission.
- 6) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
- 7) The interior street design shall be in accordance with or exceed Sussex County street design requirements.
- 8) There shall be sidewalks on both sides of the streets, and street lighting. These shall be shown as part of the site plan review.
- 9) The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- 10) Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.
- 11) 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.

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 based on the reasons and with the conditions stated.

Motion carried 5 – 0.

C/U #1526 – application of **ROBINO-SANIBEL VILLAGE, L.L.C.** 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 38.23 acres, more or less, lying west of Route 269A (Old Orchard Road), south of the Railroad and north of Dutch Acres Subdivision off of Route One.

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The Commission discussed this application, which has been deferred since March 4, 2004.

Mr. Wheatley stated that he would move that the Commission defer taking any action on C/U #1526 for Robino-Sanibel Village, L.L.C. for the following reasons:

- 1) The Developer has proposed to access the development, which includes 160 condominiums, via Old Orchard Road. The entrance onto Old Orchard Road would be a shared entrance with Atlantic Concrete.
- 2) Before we can act on this application, I believe that we should be provided with a final agreement between the Applicant and Atlantic Concrete for this entrance. Currently, the Applicant has only submitted a shared entrance agreement that is contingent on further approval by Atlantic Concrete.
- 3) The final agreement should establish the preliminary design of the shared entrance and the materials to be used in construction of the shared entrance. The final agreement should also clearly show who will be responsible for constructing and maintaining the shared entrance if the development is approved and built.

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

Motion carried 5 – 0.

C/U #1529 – application of **BART AND BRENDA DONAWAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for automotive repairs to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.54 acres, more or less, lying at the northeast corner of Route 24 and Route 409.

The Commission discussed this application, which has been deferred since March 11, 2004.

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

Motion carried 5 – 0.

Subdivision #2003-30 – application of **KELLER FARM, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 101.90 acres into 98 lots, located south of Route 9, across from Road 265.

The Commission reviewed this application which has been deferred since March 11, 2004.

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Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2003-30, for Keller Farm, LLC, based upon the record of the public hearing and for the following reasons:

- 1) The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it promotes the orderly growth of the County.
- 2) The land in zoned AR-1 which permits low-density single family residential development at a density of approximately 2 lots per acre. The proposed subdivision density of 0.96 lots per acre is less than the density permitted by the existing AR-1 zoning.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) There will not be any significant impact upon traffic if the development is approved.
- 5) The development will preserve and protect a significant amount of the wooded area on the site. In addition, the site will contain substantial areas of open space.
- 6) The proposed subdivision will not adversely impact schools, public buildings and community facilities.
- 7) The subdivision will be served by an on-site central wastewater facility. This system will be constructed in accordance with the Sussex County Zoning Ordinance and will be regulated by DNREC. This system, along with the stormwater management system, will minimize groundwater recharge.
- 8) This recommendation is subject to the following conditions:
 - 1) The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.
 - 2) The Applicant shall maintain as many existing trees as possible. The undisturbed-forested areas shall be shown on the Final Site Plan.
 - 3) Central water and a central community sewer system shall be constructed as permitted by the County Zoning Ordinance and as regulated by DNREC. The sewer system shall also be constructed to the County Ordinance No. 38 standards.
 - 4) The stormwater management system shall meet or exceed the requirements of the State and County.

- 5) The use of the central community sewer system's infiltration system and stormwater management system shall maximize ground water recharge and erosion and sediment control measures and shall comply with all State and County requirements.
- 6) All entrances shall comply with all of DelDOT's standards and requirements, as may be amended.

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- 7) The Development's Restrictive Covenants and Final Site Plan shall contain the Agricultural Use Protection Notice required by the Sussex County Subdivision Ordinance. The Notice shall be modified to include reference to the existence of a dog kennel on an adjacent parcel.
- 8) There shall be sidewalks on at least one side of all streets.
- 9) A system of street lighting shall be installed by the Developer, and the location of streetlights shall be shown on the Final Site Plan.
- 10) There shall be a vegetated buffer of Leyland Cypress or similar vegetation along the perimeter of the wastewater treatment areas to screen the areas from Route 9 and all adjacent property. This shall be shown on the Final Site Plan.
- 11) All community amenities, including tennis courts, community buildings and pool shall be constructed and open to use by the residents of this development simultaneously with the construction and sale of lots or homes within the development.

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

Motion carried 5 – 0.

Subdivision #2003-35 – application of **ROUTE 30, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 30.25 acres into 28 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the southwest corner of the intersection of Routes 38 and 30.

The Commission discussed this application which has been deferred since March 4, 2004.

Mr. Wheatley stated that he would move that the Commission deny preliminary approval of Subdivision #2003-35, for Route 30, L.L.C. as presented, based upon the information contained in the record of the public hearing and for the following reasons:

- 1) Many of the lot sizes are less than $\frac{3}{4}$ acre, the required size for the AR-1 District. This is not in compliance with Section 99-19 of the Sussex County Subdivision Ordinance.
- 2) The entrance location onto Route 30 would have an adverse effect on Route 30, which has a great deal of traffic, including truck traffic on it (Section 99-9 of the Sussex County Subdivision Ordinance). The entrance should be relocated to Route 38, instead.
- 3) The design does not provide a safe vehicular and pedestrian movement within the site and adjacent ways (Section 99-9 of the Sussex County Subdivision Ordinance).

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- 4) The Applicant has attempted to circumvent the 40-foot setback requirement for lots fronting on State Route 30 by designing a minimal buffer between the right-of-way and the lot lines. The Commission does not approve of this attempt to circumvent the intent of the Subdivision Ordinance.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to deny this application as presented.

Motion carried 5 – 0.

Subdivision #2003-36 – application of **DYER MCCREA VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 66.66 acres into 66 lots, located east of Road 30, 2,255 feet south of Route 16.

The Commission reviewed this application which has been deferred since March 4, 2004.

Mr. Wheatley stated that he would move that the Commission grant preliminary approval of Subdivision #2003-36, for Dyer McCrea Ventures, based upon the record of the public hearings and for the following reasons:

- 1) The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it promotes the orderly growth of the County.
- 2) The land is zoned AR-1 which permits low-density single family residential development at a density of approximately 2 lots per acre. The proposed subdivision density of 0.97 lots per acre is less than the density permitted by the existing AR-1 zoning.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) There will not be any significant impact upon traffic if the development is approved.
- 5) The proposed subdivision will not adversely impact schools, public buildings and community facilities.

- 6) This recommendation is subject to the following conditions:
- 1) The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.
 - 2) The stormwater management system shall meet or exceed the requirements of the State and County.
 - 3) No wetlands shall be disturbed, and there shall be at least a 20-foot setback from all wetlands lines. In addition, a Wetlands Disclosure required by the Sussex County Subdivision Ordinance shall be included in all deeds to the lots within this project.

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- 4) All entrances shall comply with all of DelDOT's standards and requirements, as may be amended.
- 5) There shall be a 30-foot forested buffer provided along the perimeter of the development as required. On the Final Site Plan, this buffer shall extend all the way to Route 30 on the northwest side of the property.
- 6) This project shall be constructed and designed in accordance with the requirements of Sussex County. While the project may be within the future growth area for the Town of Milton, it is not adjacent to the Town's current boundaries, and the Town has no current plans to annex the property.

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

Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1545 – application of **CHRISTOPHER VALENTI** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business office, greenhouses, and material and supply storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 5.61 acres, more or less, lying southwest of Route One, 0.9 mile northwest of Route 16.

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 a aerial photograph, photographs of the property and commercial properties in the area, a tax map of the area, a site plan, copies of the Zoning Ordinance referencing permitted uses, conditional uses, and the Purpose of the AR-1 District, references to the Comprehensive Plan Update, a copy of a DelDOT letter dated September 16, 2003, photographs of the applicants present business location, a copy of an award letter to the Applicant from the Association of

Professional Landscape Designers, and a copy of the Findings of Fact from the Board of Adjustment of Sussex County referencing approval of a manufactured home for office use.

The Commission found, based on comments received from DelDOT, that the Department does not recommend that the County require a traffic impact study for this application; that the Department is concerned about the application; that the Department sees it as potentially conflicting with the goals of the Corridor Capacity Preservation Program for Route One; that it may be inconsistent with the Cabinet Committee on State Planning Issues' Strategies for State Policies and Spending; and that the Department recommends

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that the County deny the application, unless the subject property is limited to exactly what is now proposed: a landscaping and greenhouse business.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Sassafras sandy loam and Woodstown sandy loam; that the Sassafras soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that both soil types are considered Prime Farmland; that the Woodstown soils are considered Hydric in depressions; 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 a letter was received from Patricia D. Hannaway, an adjoining property owner, expressing concerns about run-off from chemicals/materials stored on the property; leaching of chemicals/materials into ground water; the amount of chemicals/materials stored on the property; rental of the dwelling; hours of operation; retail/wholesale operation of the business; and truck traffic.

The Commission found that Christopher Valenti was present with Tim Willard, Attorney, who stated in their presentations and in response to questions raised by the Commission that the Applicant currently operates his business from his residence on New Road, which is partially in the City of Lewes and the County between a church and the Lewes Ice House; that the business provides landscaping services locally and elsewhere; that the Applicant intends to use the existing dwelling for an office for 4 or 5 employees; that he employs 15 workers; that no retail sales are planned or intended; that parking has been proposed for clients doing design reviews in the office; that bins will be erected for storage of landscaping materials; that plant growth areas will be established; that greenhouses are proposed; that an area will be set aside for business vehicle parking; that they propose to plant screenings along the Hannaway property; that the greenhouses are permitted; that the 2002 Comprehensive Plan Update depicts the site in a Low Density Area; that DelDOT has voiced no objections to the landscaping and greenhouse business;

that plants will be delivered to the site and housed in greenhouses or in plant growth areas; that all deliveries will be received during business hours; that the Applicant is aware of all chemical safety and storage codes; that existing building will be used for storage; that a new four bay garage is proposed for storage of vehicles and materials; that an Arboretum is proposed along Route One to screen the site from Route One; that the Arboretum will be started immediately if approval is granted; that the use is an agricultural use under the jurisdiction of State Department of Agriculture guidelines; that the Applicant is willing to erect "No Retail Sales" signs on the site; that chemicals will be stored in a 6' by 6' building that will be heated, ventilated, and locked; that fertilizers will

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be stored in one of the storage buildings; and that all fertilizers used are in bags, not loose.

The Commission found that the Applicant submitted proposed conditions.

The Commission found that Gene Wolter, the current owner, was present and stated that if he lived next door he would not object because the Applicant is very responsible, a good businessman, and a good neighbor.

The Commission found that Patty Hannaway, the adjoining property owner, stated that all of the concerns that she addressed in her letter have been addressed and that the business should be an asset to the area.

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

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

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

Motion carried 5 – 0.

C/U #1530 – application of **MOOR DISPOSAL SERVICE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a trash disposal business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.94 acres, more or less, lying south of Route 24 (John J. Williams Highway), 550 feet west of Route 309.

The Commission found, based on comments received from DelDOT, that the Department does not recommend that the County require a traffic impact study for this application, but have concerns because they see the application as contributing to traffic in an area that the Department has identified as operating at unacceptable levels of service.

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

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The Commission found that letters were received from Tony Hudson's Garage and Sentinel Self Storage, LLC in support of the application.

Mr. Wheatley stated that he will abstain from participating in this public hearing.

The Commission found that Robert Moor and Annmarie Moor were present with Heidi Balliet, Attorney, who stated in their presentations and in response to questions raised by the Commission that the Applicants plan to improve the site with a business office, garage and warehouse; that the business has twelve trucks; that the use is an appropriate non-residential use; that most of the site will be graveled; that the use is consistent with other business uses in the area; that on-site water and septic will be provided; that downward lighting will be provided; that no additional traffic will be generated by the business since the business is presently operating in the area; that the trucking business hours will be from 4:00am to 4:00pm; that office hours will be from 8:30am to 5:00pm; that they have 13 employees of which 6 are office personnel; that the use should have a positive benefit to the economy of the area and the County; that portable toilets are temporarily being stored on the site; that their trucks are travelling most of the time; that there will be no cleanup of portable toilets or dumpsters on the site; that all cleanups are performed wherever a unit is picked up; that the wastewater from the portable toilets is accepted by the City of Seaford treatment plant; that all trash loads are hauled to the State Landfill; that they would like to erect a lighted sign on the site; that the only dumpsters stored on the site will be empty; that a joint entrance will be shared with the adjacent lot; and that the dumpsters and portable toilets will be stored to the rear of the site.

The Commission found that Janice Timmons, Realtor, was present and stated that there is a need for a dumpster facility; that the business should not create any more traffic; and that the site adjoins the property of the Nature Conservancy.

The Commission found that James Harris, the owner of Lots 1 and 2, stated that he has no objections.

The Commission found that there were no parties present 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 with 4 votes to defer action.

Motion carried 4 – 0. Mr. Wheatley did not participate in the vote.

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C/Z #1533 – application of **HAILEY/RIBERA DEVELOPMENT, LLC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1/RPC Agricultural Residential District-Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northwest of Route 24, east of Love Creek, and west of Tanglewood Drive, the entrance to Briarwood Estates Subdivision, to be located on 83.74 acres, more or less.

Mr. Lank advised the Commission that this project was reviewed by the Technical Advisory Committee on March 17, 2004 and that the Technical Advisory Committee Report is a part of the record for the proceedings for this application.

The Commission found that the Applicant had submitted site plans and an exhibit booklet prior to the meeting and that the exhibit booklet is part of the record and a part of the proceedings for this application. The exhibit booklet contains an Environmentally Sensitive Development statement and overview; exhibits depicting the Future Land Use Map from the Comprehensive Plan Update and the Strategies for State Policies and Spending Map; a map of land use in the area; an aerial photograph of the area; photographs of the site; a copy of a DelDOT letter dated February 28, 2003; wetlands mapping; maps, photographs and a feasibility statement on wastewater; statements from Atlantic Resource Management, Inc. and the DNREC Natural Heritage & Endangered Species Office on natural heritage issues; a copy of the site plan; a copy of the proposed entrance configuration; a chart on preliminary nutrient assessment; a riparian buffer chart; an example on lot clearing and site development; a site data sheet; a preliminary pedestrian circulation plan; cross sections of the proposed streets; typical streetscape plans; a letter from Cape Henlopen School District; a conceptual storm water management plan; utility company letters from Tidewater Utilities, Inc., Delaware Electric Cooperative, Inc., Verizon, Sharp Energy, Mediacom, Artesian Wastewater Management, Inc. and Applied Water Management, Inc.; and suggested proposed conditions.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has reviewed the proposed rezoning; that the site is located within a "Rural" area according to the Strategies for State Policies and Spending document; that the site is located within the Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that since the project is in compliance with the County's certified comprehensive plan, the State does not entirely object to the rezoning; that the State does have significant environmental concerns and asks that the County should consider prior to acting on this application; that DelDOT comments are a part of the Technical Advisory Committee Report; that DelDOT and the Applicant are still discussing possible changes on access issues; that according to the State Historic Preservation Office there is a high probability for prehistoric sites on the site; that there is a known historic archaeological site on the site; that it is recommended that the Applicant

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retain the wooded areas, especially near the Creek, to provide a buffer to help preserve any archaeological sites; that a buffer should be provided on the south edge of the project to help lessen any effects the project may have on the older houses along Route 24; that the Applicant should be made aware of the Delaware Unmarked Human Remains Act; that the DNREC provided comments on the soils on the site; that wetlands do exist on the site; that the Applicant is encouraged to avoid impacts on wetlands, including fills for roadways and stormwater management facilities; that unavoidable fills may require mitigation; that a 100-foot vegetated buffer should be employed around all wetlands; that DNREC and the Army Corps. of Engineers discourage allowing lot lines to contain wetlands; that the project is located along receiving waters of the Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES); that ERES water 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 provisions of the Delaware Surface Water Quality Standards specify that all ERES waters and receiving tributaries develop a pollution control strategy to reduce non-point sources of nutrient runoff through implementation of Best Management Practices; that reduction of nitrogen and phosphorus loading will be mandatory; that the project is proposed within the low nutrient reduction zone; that in order for the Applicant to verify compliance with the Total Maximum Daily Loads mandate, a full nutrient accounting process known as nutrient mass budget should be prepared; that a small portion of the site is located with a flood plain and the developer should avoid construction activities in these areas; that the project contains land currently identified as part of the Inland Bays State Resource Area; that the Applicant is strongly encouraged to avoid clearing of trees and impacts to wetlands; that allowing significant areas of vegetation to remain and/or enhancing areas of vegetation will maintain forest connections 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 the Delaware Natural Heritage and Endangered Species program should be contacted to survey the site for rare plant and animal species; that the Love Creek corridor provides foraging habitat for the pair of Bald Eagles that nest just upstream; that there is one

inactive leaking underground storage tank site near the site; and that the State asks that the County consider requiring the developers to work with the State, especially DNREC, to address their concerns regarding development of this site.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand, Fallsington sandy loam, Sassafras sandy loam, Tidal Marsh, and Woodstown sandy loam; that two of the Evesboro soil types and the Sassafras soils have slight limitations for development; that the other Evesboro soils have moderate limitations; that the Woodstown soils have slight to moderate limitations; that the Fallsington and Tidal Marsh soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the

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Evesboro and Fallsington soils are of Statewide Importance; that the Fallsington, Sassafras and Woodstown soils are considered Prime Farmland; that some of the Evesboro, Fallsington and Woodstown soils are considered Hydric; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained soils and the increase in impervious area.

The Commission found that letters voicing opposition were received from Frank Bracale and Mrs. Lillian L. Greener expressing concerns about traffic, the size of the development, the lack of traffic signals, and traffic accidents.

The Commission found that Jeb Bittner was present on behalf of the application with James Fuqua, Attorney, and Tom Ford of Land Design, Inc. who stated in their presentations and in response to questions raised by the Commission that they propose to develop 144 single family lots on the site; that there are no wetlands on the site; that there are 3.44 acres of Federal 404 wetlands on the site; that the gross density is 1.7 units per acre; that the site is located within an Environmentally Sensitive Developing Area, a growth area, according to the 2002 Comprehensive Plan Update and a Rural area according to the State Strategies for Policies and Spending; that Tidewater Utilities, Inc. will provide central water for the project; that they have received a Non-binding Statement of Feasibility for central wastewater on the site; that DelDOT did not require a traffic impact study; that the entrance will be subject to DelDOT; that there should be no negative impact on the Cape Henlopen School District; that medical facilities and shopping areas are available in the area; that a fire station is in close proximity; that the area is predominantly residential with some scattered commercial; that the site is between homes along and across Route 24 and homes to the rear; that the developer of the subdivision across Route 24 has voiced that he has no objections to the project; that a large mobile home park exists southwest of the site across Route 24; that the site was zoned MR for years until the present owner downzoned the parcel in 1997; that the present owner now wishes to see the parcel developed; that DelDOT recommended that

the project be limited to the number of dwellings that could be built under existing zoning; that the signalization of the entrance to the Cape Henlopen school east of this site will help control traffic at the entrance to this project; that the wetlands were mapped by Coastal & Estuarine Research, Inc.; that the soils were studied by Atlantic Resource Management, Inc. for consideration of the central wastewater system; that the central wastewater system is proposed to be setback 1,000 feet from State wetlands; that a Natural Heritage Review was conducted by Atlantic Resource Management, Inc.; that the DNREC Natural Heritage Program group inspected the site; that the site contains 84 acres of which 18% are wooded and 82% are tillable lands; that the average lot size is 14,260 square feet; that there will be 25 acres of open space; that the net density is 1.99 units per acre; that they intend to preserve 63% of the wood lands; that all building setbacks will equal or exceed the County requirements; that a pool, bathhouse, sidewalks,

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a bus station, trails, a crabbing pier, and a gazebo will be provided; that a 15-foot wide dedication of right-of-way has been requested by DelDOT; that development of the project will greatly reduce the nutrients over maintaining the site in agriculture and will meet the Total Maximum Daily Loads requirements for Love Creek; that the rear lot line will be at the Federal 404 line; that there is an average of 212-feet from wetlands to buildable areas; that scattered street lighting will be provided; that they have no intent to permit the use of golf carts within the community; that some of the drainage areas will be bio-retention areas where shallow swales are improved with a special mix of soils and then grasses and shrubs are planted; that the lot sizes could have been reduced to 7,500 square feet since the site is located within an Environmentally Sensitive Developing Area, but they propose to maintain the lot sizes presented; that the lots will be sold with completed home packages; that a propane facility proposed to serve the project will be built to the rear of the site and will be screened from the Briarwood Estates Subdivision by heavy woods; that the propane facility will be partially buried and screened with plantings; that it has been determined that it may be 10-years before the County will be serving the area with public wastewater treatment facilities; that the wastewater facility will be operated by a licensed operator approved by DNREC; and that they have proposed conditions.

The Commission found that Mr. Fuqua submitted a FAX copy of a letter from Gene Bookhammer, developer of a subdivision across Route 24, voicing no objections; copies of the history of the deeds to the property showing transfers between members of the Hart family since purchased in 1901 to present; a copy of the Minutes of the Planning and Zoning Commission for November 20, 1997 showing that H. Spencer Hart and Joyce W. Hart did downzone the property from MR to AR-1; and a copy of the proposed conditions.

The Commission found that Carol Hart Stone and Janice Hart Burris, family members, spoke on behalf of the family describing the history of the property and stated that their

parents wanted to sell the property, that their father passed away on Saturday March 20, 2004 and that the family honors the wishes of their parents.

The Commission found that Jim Gaskill, Robert Waizenegger, Patricia Warden, and Leatrice Trazilio, property owners in Brairwood Estates spoke in opposition to the application and expressed concerns about the stormwater management system, wastewater treatment concerns, the propane facility, traffic and increased traffic congestion, access onto Route 24, wetlands disturbance; the presence of standing water, increased habitat for mosquitoes, the lack of landscape screening along parts of Briarwood Estates, and the possible use of generators for the treatment facilities.

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

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

Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO ALLOW RESIDENTIAL, BUSINESS, COMMERCIAL OR INDUSTRIAL USES AS CONDITIONAL USES IN THE AGRICULTURAL RESIDENTIAL AND GENERAL RESIDENTIAL ZONING DISTRICTS.

Mr. Lank summarized the Ordinance Amendment.

The Commission found that James Fuqua, Attorney, stated that no one seemed to know that this section of the Ordinance was being amended.

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be adopted as circulated.

Motion carried 4 – 0.

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO ALLOW FOR A TECHNICAL ADVISORY COMMITTEE REVIEW OF RPC DEVELOPMENTS, TO DEFINE A TECHNICAL ADVISORY COMMITTEE

AND TO ALLOW FOR A SCHEDULE OF CONSTRUCTION FOR RPC DEVELOPMENTS.

Mr. Lank summarized the Ordinance Amendment.

Mr. Kautz stated that the Ordinance Amendment complies with the 2002 Comprehensive Plan Update Executive Summary.

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be adopted as circulated.

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Motion carried 4 – 0.

OTHER BUSINESS

Paynter's Mill MR/RPC

a. Paynther's Manor – Final Site Plan

Jeff Clark of Land Tech, LLC was present on behalf of this application (a, b and c).

The Commission reviewed a final site plan for the amenities/recreational area. The uses proposed are a community center, swimming pool, kiddy pool, playground equipment, volleyball court, and a game court.

Mr. Lank advised the Commission that final approval could be granted and should be subject to receipt of an approval from the Office of the State Fire Marshal.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a final subject to receipt of all appropriate agency approvals. Motion carried 5 – 0.

b. Paynther's Meadow – Final Site Plan

The Commission reviewed a final site plan for horseshoe pits and two (2) tennis courts.

Mr. Lank advised the Commission that final approval could be granted since no agency approvals are required.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

c. Governor's Green – Final Site Plan

The Commission reviewed a final site plan for walking/jogging trails.

Mr. Lank advised the Commission that final approval could be granted since no agency approvals are required.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

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Mike's Clearance Center
Preliminary Site Plan – U.S. Route 13

The Commission reviewed a preliminary site plan for a 9,632 square foot retail furniture store with an attached 3,864 square foot warehouse.

Mr. Lank advised the Commission that the site is zoned LI-2 Light Industrial and that the use is permitted; that the setbacks meet the requirements of the zoning code; that 25 parking spaces are required and 26 spaces are proposed; that one loading space is required and provided; that on-site septic and water are proposed; that no wetlands are being disturbed and that the site is not in a flood zone; that the site plan is suitable for preliminary approval and final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all appropriate agency approvals. Motion carried 5 – 0.

Americana Bayside MR/RPC
Arrington Woods – Preliminary Site Plan

The Commission reviewed a preliminary site plan for 60 multi-family units.

Mr. Lank advised the Commission that there are 30 duplex buildings proposed; that each building is 2-stories; that 180 parking spaces are required and provided and consists of 60 garage spaces, 60 driveway spaces and 60 spaces on the site; that there is a mix of 20 and 40 foot separations between buildings; that since this is a RPC, the Commission can

modify the setbacks; that a recreational area is also proposed consisting of a swimming pool and clubhouse; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approval.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all appropriate agency approvals. Motion carried 5 – 0.

Rehoboth Beach Associates, LLC
Preliminary Multi-Family Site Plan – Route One

The Commission reviewed a preliminary site plan for 147 units on 12.30 acres.

Mr. Lank advised the Commission that the site is zoned C-1 General Commercial; that the density equals 12 units per acre; that 18 – 8 unit buildings and 1 – 3 unit building is

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proposed; that the 8 unit buildings are 40-feet by 160-feet; that the 3 unit building is 40-feet by 60-feet; that each unit measures 20-feet by 40-feet; that the buildings have the minimum 40-foot separation between them; that a 30-foot by 90-foot swimming pool is proposed; that 441 parking spaces are required and proposed; that each unit has an attached garage and a driveway parking space; that there are 147 off-street parking spaces; that the City of Rehoboth Beach will provide central water; that central sewer will be provided by Sussex County; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

The Commission discussed the parking layout and was concerned about the location of some of the parking as it relates to units.

The Commission also expressed some concerns about the lack of stormwater management being depicted on the site plan.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to defer action. Motion carried 5 – 0.

Richard E. Tucker
C/U #1492 – Site Plan – Route 54

The Commission reviewed a site plan for 10 – 50-foot by 120-foot warehouses.

Mr. Lank advised the Commission that Conditional Use #1492 was approved by the County Council on January 6, 2004; that there is an 85-foot separation distance between the proposed warehouses; that the setbacks meet the requirements of the zoning code; that each warehouse has a 20-foot by 75-foot loading area; that the 8 conditions of

approval are referenced on the site plan and that the plan complies with the conditions; that the site plan is suitable for preliminary approval and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all appropriate agency approvals. Motion carried 5 – 0.

Edwin Tilghman
Multi-Family Site Plan – Route 26 and Road 413

The Commission reviewed a conceptual site plan for 2 units near Gumboro.

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Mr. Lank advised the Commission that the site is zoned C-1 General Commercial; that the 2 units are actually a 14-foot by 70-foot Delaware Home and a 28-foot by 24-foot apartment; that there is also a 24-foot by 24-foot garage on the site; that the setbacks meet the requirements of the zoning code; that if the Commission is favorable, only conceptual approval should be considered; and that a formal site plan showing parking needs to be submitted to the staff.

Mr. Lank advised the Commission that Delaware Homes were built at the old fish factory near Lewes in the 1970s and that they were considered modular homes since they had house type windows, doors and accessories, and A-frame roofing.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to grant conceptual approval. Motion carried 5 – 0.

Brea Millman
Lot and 50' Easement – Road 277

The Commission reviewed a request to create a lot that is 150-feet by 275-feet (41,250 square feet) and leaving 50-feet to serve as access to a 10.0-acre parcel.

Mr. Lank advised the Commission that the 50-foot easement would be located where the existing driveway is located; that the driveway serves as access to the applicant's fathers home; that the Commission could approve the lot and easement as submitted or require a public hearing for a major subdivision; that the applicant has a disabled son and needs to be near her parents to help with her son; that the applicant sold her home in another State to move to Sussex County; and that her finances need to be reinvested by March 31, 2004 or her son will lose his disability benefits.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant conceptual approval. Motion carried 5 – 0.

Subdivision #2002-41 – Commercial Corner Joint Venture.
Time Extension – Road 382

The Commission discussed a request for a time extension for this subdivision.

Mr. Lank advised the Commission that the time extension is requested to allow the Applicant time to obtain all agency approvals for final approval; that the Commission granted preliminary approval for this application on March 20, 2003 for 37 lots; that the request for a time extension was received on March 5, 2004; and that this is the first request for a time extension for this subdivision.

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Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to grant a one-year time extension. Motion carried 5 – 0.

Meeting adjourned at 10:58pm.