



Planning & Zoning

Agendas & Minutes

MINUTES OF THE SPECIAL MEETING OF APRIL 1, 2004

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 1, 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, and Mr. Abbott – Assistant Director.

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

PUBLIC HEARINGS

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

Subdivision #2003-37 – application of **GARY WATSON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 41.86 acres into 40 lots, located north of Road 465, 2,318 feet west of Road 479.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on September 17, 2003 and that the report will be made a part of the record for this application; that on March 29, 2004 the applicant's attorney submitted an information booklet that will be a part of the record for this application; and that on March 31, 2004 the applicant's attorney submitted an Exhibit #10 into the record.

The Commission found that David Rutt; Attorney, Gary Watson; Applicant, and Don Miller; Surveyor 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 located on the north side of Road 465 east of Route 13; that Tidewater Utilities will provide central water to the site; that the site is zoned AR-1; that the site is located in a development district based on the Land Use Plan Update; that Chipman Chase subdivision is located across the street from this site; that the land to the east of the site has been subdivided; that a manufactured home park is located west of the site; that Shiloh Farms, Shiloh Woods, and Old Church Landing subdivisions are located in the

area of this site; that single family detached homes are proposed; that the gross density is less than 1 lot per acre; that the subdivision will be a restricted community; that the subdivision is a permitted use; that Mr. Robertson has reviewed the proposed deed restrictions and that the necessary revisions have been made; that manufactured homes will not be permitted; that the minimum square footage for the dwellings will be 1,800 square feet; that the site is generally flat and the contour of the land will not be changed; that the stormwater run-off will drain into an existing ditch; that 2 stormwater management ponds are proposed; that the Department of Agriculture has indicated that

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the proposed forested buffer area meets the requirements of the subdivision code; that as much forest land will be maintained as possible; that when the project is completed, there will be more vegetation than what currently exist; that a forested buffer is proposed on all 4 sides of the site; that the stormwater management areas are not located in the riparian buffer area; that the Division of Parks and Recreation has indicated that there are not any natural areas on the site; that no historical features exist on the site; that a small portion of the stormwater management pond will be located on a part of lot 12; that the dwellings will be stick built homes; that Tidewater Utilities is willing and able to serve central water and sewer to the site; that there will not be any negative impacts to the area; that the streets will be private and built to County specifications; that a 24-foot wide area will be paved with a 4-foot bicycle/pedestrian trail; that 25 mile per hour speed limit signs will be posted; that the proposed entrance has been approved by DelDOT; that DelDOT has no traffic concerns in the area; that a mailbox area and school bus shelter will be located near the entrance to the site; that a letter from Scott Reagan, Realtor, has been submitted indicating that the subdivision will not create any adverse impacts to the area; that the site is not conducive to farming; that the soils are very sandy; that a poultry operation exist to the east of the site; that lots 16 through 20 will have a minimum setback of 60-feet from the property line; that there are not any comments from the Laurel School District; that a traffic generation diagram indicates that there would be an average of 15 trips to the site per hour and that this is compatible with the area; that the applicant's construction company will build the homes; that a 3 to 4 year build out is expected; that the application meets the requirements of the subdivision code; that there is an existing hedgerow to the east of the site and that this will be cleaned up and more vegetation will be added; that a community septic system is proposed and will be operated by White Marsh Utilities; that the homeowners will pay for the maintenance of the system; that land/home packages will be offered; that there will be 2 to 3 different types of models that will be built; that architectural design and review will be required; that the price of the homes will range from \$180,000 to \$200,000; that a homeowners' association will be responsible for the maintenance of all buffers, streets, and other common areas; that the applicant has met the 17 conditions referenced in the subdivision code; that the community septic system will have to meet all of DNREC's requirements and regulations; and that a homeowners' association will take effect when 75% of the lots have been sold.

The Commission found that no parties appeared with any interest to this application.

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

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

Motion carried 5 – 0.

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C/U #1531 – application of **DEAN W. SHERMAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit for the creation of two (2) ponds to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 78.48 acres, more or less, lying east of Route 5, ½ mile south of Road 257 and approximately 1.0 mile north of Route 9.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the parcel are mapped as Evesboro loamy sand, Kenansville loamy sand, Matawan loamy sand, Rumford loamy sand, Sassafras sandy loam, and Woodstown sandy loam; that the Evesboro, Kenansville, Rumford, and Sassafras soils have slight limitations for development; that that Matawan soils have slight to severe limitations; 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 the Evesboro and Rumford soils are considered of Statewide Importance; that the Kenansville, Matawan, Sassafras and Woodstown soils are considered Prime Farmland; that the Matawan and Woodstown soils are considered Hydric in depressions; that there are no storm flood hazard areas or tax ditches effected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found that Dean W. Sherman was present with Everett Moore, Attorney, submitted a packet of exhibits and stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to improve the site with two ponds totaling 5 acres; that to create the ponds will require removal of some of the soils from the site and therefore it becomes a borrow pit activity; that the Applicant plans to build his private residence overlooking the ponds, which will create an improvement to the property; that a private roadway will be created between the two ponds; that affidavits from 15 neighbors show support for the application; that a soil evaluation by Coastal Soil Consultants, Inc. indicates that the evaluated soils in the vicinity of the existing pond are not hydric and would not fall under the jurisdiction of the federally regulated 404 wetlands; that pictures on file with the application depict the

quality of the improvements to the farm with fencing, landscaping, stables, driveway, etc.; that there should be no significant impact on traffic; that there are no hydric soils; that the area is low density; that the application meets the requirements for a Conditional Use; that a depth of 15-feet should be adequate to maintain water levels; that the Applicant hopes to be completed with the ponds within a reasonable time; that a reasonable time would be completion by May 2006 and would include digging, shaping, reclamation and seeding; that it is not anticipated, but there could be a maximum of 100 truck loads leaving the site per day; that the large piles of top soil on the site will be

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used for dressing around the ponds and the location of the residence; that Melvin Joseph and other contractors have hauled materials from the site;

The Commission found that the packet of exhibits included an affidavit from the Applicant, since he had anticipated being in Florida, a copy of the referenced letter from Coastal Soil Consultants, Inc., affidavits from the referenced 15 neighbors, some proposed conditions, and 6 photographs.

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

The Commission found that Patsy Wells stated that she had no objections to the application but questioned who would be inspecting the site and verifying compliance with the plans if the use is approved.

Mr. Lank advised Mrs. Wells that Zoning Department staff would be inspecting the site and verifying compliance with the approved plan if the use is approved.

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.

C/Z #1534 – application of **H2E2, 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 west of Route 24, 1,800 feet south of Route 5 and Long Neck Road, to be located on 6.51 acres, more or less.

The Commission found that the Applicant had submitted an exhibit booklet prior to the meeting and that the exhibit booklet included an aerial photograph of the area, a tax map of the area, photographs of business uses in the area, a conceptual site plan, a copy of the

Office of State Planning Coordination letter, copies of DelDOT letters, reference to DelDOT Capital Improvement Project for Route 24, references to compliance with the Comprehensive Plan Update, copies of Minutes of the Planning and Zoning Commission for C/Z #1531, and a copy of a non-residential and border restrictive covenant.

The Commission found that DelDOT comments received by the Department were included in the exhibit booklet under Tab 9 and that it was not necessary to duplicate the comments.

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The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which has slight limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and Hydric in small 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, based on comments received from the Sussex County Engineering Department, that capacity is available for up to 24 EDUs; that Ordinance No. 38 construction shall 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 determined by the County Engineer; that there is no service to the parcel at this time; that the site is adjacent to the Long Neck Sanitary Sewer District; that conformity to the Long Neck Planning Study Expansion No. 1, Amendment No. 1, dated January 8, 2002, or undertaking an amendment will be required; that the site is in a sanitary sewer planning area; that service can be obtained from the sewer main to be constructed across Route 24; that the Department recommends that the Applicant be required to connect to the sewer system for this project; and that C-1 zoning will increase the number of potential EDUs.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Environmentally Sensitive Developing Area of the Comprehensive Plan Update; that since the project is in compliance with the County's certified Plan, the State does not object to the application; that the State does have significant environmental concerns that they asks that the County and the applicant consider before moving forward with the plan; that the Office agrees with DelDOT recommendations; that the State Historic Preservation Office has noted that the developers should be aware of the Delaware Unmarked Human Remains Act because there are some cemeteries near the area and in the past there were some churches in the area; that site plans and building plans need to be submitted to the State Fire Marshals Office; that septic system permits are required if the site is not served by central sewer; that the soils are well-drained to excessively well-drained and have few limitations for development; that infiltration and permeability are expected to be high and nutrient retention moderate to low; that the project is located in an area of good to excellent

recharge potential; that it is important to keep the rate of imperviousness low; that DNREC recommends that the developer consider spill prevention containment plans due to the vulnerability of contaminants pollution; that the applicant should be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland-associated hydric soils since they are subject to regulatory provisions of the Federal Clean Water Act 404 program; that it is highly recommended that the applicant maintain a 100-foot minimum buffer distance from the landward edge of adjacent wetlands areas; that with the adoption of Total Maximum Daily Loads (TMDLs) as a

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nutrient-runoff-mitigation strategy reduction of nitrogen and phosphorus loading will be mandatory; that this project is proposed within a low nutrient reduction zone; that in order for the applicant to verify compliance with the TMDLs mandate, a full nutrient accounting process known as nutrient mass budget should be prepared; that the project is located adjacent to receiving water of the Inland Bays designated as water having Exceptional Recreational and Ecological Significance (ERES) which are waters recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that the site is largely wooded and connects to large tracts of forest; that this forest complex provides habitat and migratory connections for the Inland Bays and Guinea Creek to expansive areas of upland forest near the site; that removal of forests has a major impact on the water quality of the watershed; that the developer is strongly encouraged to minimize the building footprint to reduce clearing of trees; that there are no Leaking Underground Storage Tanks located near the site; that should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible; and that the State asks that the County consider requiring the developers to work with the State, specifically DNREC, to address their concerns regarding development of this parcel.

The Commission found that Jesse and Juli Hall and Rush Ellis, the Applicants, were present with Tim Willard, Attorney, and Kevin Burdette of McCrone, and stated in their presentations and in response to questions raised by the Commission that professional office are proposed; that the site is surrounded by commercial uses, which include a shopping center, real estate offices, service stations, a bank, automotive sales, a carpet business, an automotive service center, apartments, retail stores, subdivisions and a mobile home park; that they propose seven (7) office buildings within the project; that the demand and nature of the area shows a need for professional offices; that the State has voiced no objections to the rezoning; that the applicants have no objections to their being required to comply with State concerns; that the Applicants will comply with all DelDOT comments; that the site is located within an Environmentally Sensitive Developing Area, a growth area, according to the Comprehensive Plan Update; that the project will compliment the Comprehensive Plan Update; that the project can be served by the Long Neck Sanitary Sewer District; that a private declaration of restrictive covenants has been recorded declaring that the property shall not be used for single or multi-family

residential units for 10 years; that DelDOT does not plan to use the site for stormwater management for Route 24, but may move some drainage into the stormwater management facility for this project if needed; that they plan on starting immediately upon receipt of all permits; that the professional office will primarily be used for medical related uses; that the units may be rented or the project may be converted into a condominium; that C-1 zoning gives them more flexibility than B-1 and that C-1 is similar to most of the zonings in the area; that units may be used for eyeglass sales or health care sales which relate to the professional offices; that central water is planned to

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be provided by Tidewater Utilities, Inc.; and that the stormwater management facilities shown on the site plan should be adequate to serve the project.

The Commission found that Kathryn Elliott and Patrick Elliott, adjoining landowners, were present in opposition and expressed concerns about traffic and traffic accidents; that the sign to Sherwood Forest North has been replaced three (3) times in the last year due to accidents; that drainage and flooding problems exist on the site and on their lot; that they are concerned about depreciation of their property values; that they are concerned about where a dumpster may be located; that the area is primarily residential between Route 24 at Long Neck Road and Road 299; that there is already too much commercial in the general area; that deliveries to the offices is a concern; that if the use is approved buffers should be provided to protect the neighbors; that most of their neighbors were not notified of the public hearing; and that they are all concerned about the other uses permitted in commercial districts.

Mr. Lank advised the Commission that 35 area property owners were sent notification of the public hearing.

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/Z #1535 – application of **FENWICK COMMONS, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying at the southwest corner of Route 54 and Route 394, and northeast of Route 394, 150 feet southeast of Route 54, to be located on 13.35 acres, more or less.

Mr. Lynch stated that he will abstain from participating in the review of this application.

The Commission found, based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is not in a County operated and maintained sanitary sewer and/or water district; that the site is within the West Fenwick Planning Area; and that the Department currently has no schedule to provide service to the area.

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

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loam and Woodstown sandy loam; that the Evesboro soils have slight limitations for development; that the Fallsington soils have severe limitations; 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 the Evesboro and Fallsington soils are considered of Statewide Importance; that the Fallsington and Woodstown soils are considered Prime Farmland; that all of the soil types have some Hydric conditions; that no storm flood hazard areas or tax ditches are affected; that it may be necessary for some on-site and off-site drainage improvements because of the increased impervious areas; and that there may be regulated wetlands on the site.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the project should be reviewed by the Technical Advisory Committee; that roads shall be constructed and inspected in accordance with street design requirements of Chapter 99; that since the plan depicts a cemetery on site, the applicant should provide adequate access to and from the cemetery for prospective next of kin and demonstrate that the cemetery has been delineated to the satisfaction of the State Historic Preservation Office.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Environmentally Sensitive Developing Area of the Comprehensive Plan Update; that since the project is in compliance with the County's certified Plan, the State does not object to the application; that the State has noted that the area is still predominantly agriculture and the agricultural economy of the area is viable and active; that the Department of Agriculture has voiced objection to this rezoning and to higher densities in this area; that the Office agrees with DelDOT recommendations; that the State Historic Preservation Office has noted that there is a potential historic building and a graveyard on the site; that the developers should contact the State Historic Preservation Office before any site work begins to determine the limits of the graveyard and should be aware of the Delaware Unmarked Human Remains Act; that site plans and building plans need to be submitted to the State Fire Marshals Office; that the soils were described and are soils which are conducive to nutrient leaching via groundwater or surface runoff into receiving tributaries of the watershed; that it is highly recommended that the applicant maintain a 100-foot minimum buffer distance from the

landward edge of adjacent wetlands areas; that it should be recognized that most waters of the Little Assawoman Bay watershed suffer from severe water quality impairments due to persistent runoff from agricultural operations, and unrelenting residential/commercial development pressures; that it is incumbent upon the developer to employ best available technologies and/or best management practices as methodological mitigative strategies to reduce the degradative impacts associated with development and related activities; that the project is located adjacent to receiving water of the Inland Bays designated as water having Exceptional Recreational and Ecological Significance (ERES)

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which are waters recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that if dewatering wells are needed during the construction phases permits are required; that saltwater intrusion is a potential threat to the aquifer and caution should be exercised during construction phases; that there are no Leaking Underground Storage Tanks located near the site; that should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible; and that the State does have some environmental concerns regarding this development; and that the State asks that the County consider the State agency comments regarding this application as the County moves forward with the review process.

The Commission found that a letter was received from Laf P. Erickson of Atlantic Resource Management, Inc. in response to the comments from DNREC and that the developers will do everything that is possible to minimize inputs of nutrients, minimizing concerns associated with nutrient leaching with respect to soil characteristics; that based on detailed site investigations, there are no non-tidal, forested, State tidal, nor farmed wetlands present within the project boundaries; that the developers will follow DNREC recommendations if dewatering wells are necessary; that all wastewater is planned to be treated off-site by the County operated South Coastal Wastewater Treatment Facility; that the use of central sewer eliminates nutrient loading and groundwater contamination concerns associated with wastewater disposal on site; that stormwater will be managed in such a way so as to provide renovation that meets State and/or County requirements; that initial plans include use of a wet retention pond; and that the project is viable and does meet regulations in effect at this time.

The Commission found that Joel Farr was present on behalf of Fenwick Commons, LLC with David Weidman, Attorney, and Ken Christenbury of River Basin Engineering and stated in their presentations and in response to questions raised by the Commission that that propose to develop 30 single family lots on approximately 13 acres; that the area is largely MR-RPC with several commercial uses in the area; that another MR application is pending on a parcel across Road 394; that the State voices no objections to the rezoning since the use is in compliance with the Comprehensive Plan Update; that a small cemetery exists in the middle of the project and that a 10-foot wide access easement is proposed; that no wetlands exists on the site; that DelDOT did not require a traffic impact

study; that the site is located in the Environmentally Sensitive Developing Area; that the Applicant shall restrict the use to 2.25 units per acre as a maximum; that the Applicant hopes to be able to connect to the Bayville Sanitary Sewer District; that central water will be supplied by Artesian Water; that the proposed use is consistent with the Comprehensive Plan Update, the State comments, and the area; that a homeowners association will be created to maintain buffers, streets, the easement to the cemetery, and stormwater management facilities; that the cemetery will be left undisturbed; and that

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they realize that if the zoning is approved, it will be necessary that they apply to subdivide the site.

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

The Commission found that Ellen Magee, a landowner living across Route 54 from the site, was present in opposition and stated that her site is agricultural; that the applicant should be required to have central sewer and water before developing; that the County Engineering Department advised her that it may be 10-years prior to sewer availability; that if the site is rezoned it would be the only MR zoning on Route 54 in the Williamsville area and would be spot zoning; that her family owns land adjacent and across from the site; that the area is still predominantly rural; that the current zoning should be maintained; that the site is within a tax ditch district; and that no commercial properties are adjacent to the site.

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

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried with four votes to defer action.

Motion carried 4 – 0 with Mr. Lynch abstaining from voting.

C/Z #1536 – application of **SANDY LANDING, L.L.C.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying west of Route 341, across from Route 342, to be located on 27.21 acres, more or less.

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 copies of tax maps showing the area and the site, the Bluffs Subdivision, the Seawinds Subdivision, and Dogwood Acres Subdivision, a copy of the DelDOT Support Facility Report, a copy of the letter

from the Office of State Planning Coordination, a copy of the Environmentally Sensitive Developing Area Ordinance, proposed conditions, and a reduced copy of the site plan.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro sand, Evesboro loamy sand, and Tidal marsh, salty; that the Evesboro soils have slight limitations for development; that the

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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 Evesboro loamy sand is considered of Statewide Importance; that all of the soil types have Hydric conditions; that there are no storm flood hazard areas or tax ditches affected; that it will be necessary for on-site and off-site drainage improvements because of the increased impervious area; and that there are regulated wetlands on the site.

The Commission found that a copy of a letter from Tidewater Utilities, Inc. to Engineering Consulting, Inc. was received stating the Tidewater Utilities, Inc. was willing and able to provide water service to the project.

The Commission found, based on comments received from the Office of State Planning Coordination, that the project is located within the Environmentally Sensitive Developing Area of the Comprehensive Plan Update; that since the project is in compliance with the County's certified Plan, the State does not object to the application; that the State has some environmental concerns regarding this proposal; that DelDOT understood that the Applicant was rezoning 27.21 acres of a 40.38 acre parcel to create 73 lots and the remaining 13.17 acres would be developed with 4 lots; that DelDOT would now recommend that the County require the Developer to commit to not dividing the 13.17 acres into more than 4 lots by permanent deed restriction; that the State Historic Preservation Office has advised that there is a very high probability for prehistoric archeological sites with the project area; that there are some potential historic properties adjacent to the subject parcels and that the proposed project should provide buffers around the edges to lessen the visual effects to these potential historic properties and buffers should be provided along the waters edge to minimize any harm to archaeological sites; that site plans shall be required to be reviewed by the Office of the State Fire Marshal; that the soils on the site vary from excessively well drained to very poorly drained; that the project is located within an area of excellent recharge potential; that the developer is encouraged to look for ways to keep the percentage of impervious areas low an to minimize the potential for pollutants from reaching ground and surface waters; that that it is the developers responsibility to ensure that a wetland survey is conducted and verified to delineate the actual extent of wetlands on the site; that impacts to wetlands,

including fills for attendant structures such as roadways and stormwater management facilities, should be avoided; that unavoidable fills may require mitigation; that DNREC and the U.S. Army Corps. of Engineers discourage allowing lot lines to contain wetlands in an effort to limit cumulative and secondary impacts to wetlands from unauthorized homeowner activities; that this site currently provides a forested buffer of between 50 – 150 feet between the small tidal creek and its associated wetlands to the agricultural field; that the forested buffer along Indian River is approximately 300 feet; that the developer should strive to preserve and improve this forest resource because it is within an area mapped as “Rural” by the State Strategies; that a 100-foot or larger vegetated buffer

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should be employed from wetlands; that it is recommended that the existing upland forest be retained and enhanced to provide a buffer; that those portions of the site within the flood hazard area should be revegetated to provide additional flooding and water quality benefits; that reduction of nitrogen and phosphorus loading will be mandatory; that this 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 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 it is highly recommended that the developer employ best available technologies and/or best management practices as methodological mitigative strategies to reduce the degradative impacts associated with development and related activities; that the project is located adjacent to receiving water of the Inland Bays designated as water having Exceptional Recreational and Ecological Significance (ERES) which are waters recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition; that there are no Leaking Underground Storage Tanks located near the site; that should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible; and that the State asks that the County consider their concerns as they move forward with the review process.

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 road shall be constructed and inspected in accordance with street design requirements of Chapter 99; that the private community sewer system shall be designed and constructed in accordance with Ordinance No. 657; and that the Applicant should demonstrate that the capacity of the system will service the number of proposed units prior to final approval by the Commission.

The Commission found that Lauren Alberti was present on behalf of Sandy Cove, L.L.C. with James Fuqua, Attorney, Gezja Csoltkus of Consulting Engineering, Inc. and Steve Smailer of Duffield Associates and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop 73 lots in the

proposed MR district and 4 lots in the AR-1 district; that 5-acres are reserved for the community wastewater facility; that 4.5 acres are reserved for open space and are subject to a conservation easement; that the irregular shape of the project is due to past out conveyances; that the area is predominantly residential and agricultural; that the project is in close proximity to Bogart's Cove Subdivision, The Bluffs Subdivision, Seawinds Subdivision, and Dogwood Acres Subdivision; that no increase in density is being sought; that the density is the same as if the project were to be developed with AR-1 lot sizes; that gross density could provide for 89 lots; that if the 4.5 acres were to be deducted from the calculation for the RPC 77 lots could still be maintained; that the site

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is located within the Environmentally Sensitive Developing Area; that the Environmentally Sensitive Overlay Zone Ordinance adopted after this application was applied for provides that clustering with 7,500 square foot lots can be permitted when central water and central sewer are utilized; that 1.86 lots per acre are proposed; that central water and central sewer are proposed; that a 2-acre area is needed for the community system with a 2-acre area for backup area leaving 1-acre of buffers; that the collection system for the sewer system will be designed to County specifications; that if the County takes over the system in the future the area set aside for the system will become open space and will not be developed; that according to DelDOT there will be no significant impact on traffic; that the main entrance will be from Road 341; that they propose buffers from the high water line; that stormwater management ponds will be centered in the project; that sidewalks, curbed and guttered streets, and street lighting are proposed; that a swimming pool and clubhouse are proposed within the active open space area; that the project will comply with the Conservation District requirements of the Zoning Ordinance; that a homeowners association will be established to maintain the private restrictions, roads, common areas, etc., that the site is located where growth is anticipated according to the Comprehensive Plan; that the State has no objections to the rezoning; that the entire project will be built as one phase; that no piers or docks or boat launching facilities are proposed; that they propose to submit plans for a treatment plant and disposal fields for reduction of nutrients meeting the TMDL requirements; that the ponds shown on the site plan are only for stormwater management; and that the exhibit booklet includes suggested conditions if the project is approved.

The Commission found that Chester Vernon Townsend, III, the present owner, was present in support of the application and stated that the property has been in his family for years; that he is a realtor; that it is time to sell the property; that he understands the NIMBY (not in my backyard) theory of area residents; that he has never opposed neighboring subdivisions and has even granted easements for some.

The Commission found that Robert Witsil, Attorney, present on behalf of some of the landowners in the area, David Carroll, Gerald Smith, Thomas Baylor and Jennifer Vortech of the 35 parties present in opposition to the application expressed concerns about the reduction of the lots size for residential lots; that the lots in the area average one

acre or larger; that the rezoning is not necessary or appropriate; that inclusion of the 4.5 acre in the calculation of density is not appropriate since the site is not contiguous; that if the developer could place 89 – 20,000 square foot lots on the parcel the neighbors would support the application, but it is impossible to design the number of lots due to the shape of the parcel; that the site plan does not meet the requirements of the preliminary site plan requirements of the zoning code; that portions of the site are not contiguous and do not meet the code definition of a subdivision; that the neighbors have not been privileged with enough information on the type of sewer treatment; that the proposed 7,500 square foot lots do not conform to the lot sizes in the area; that the application creates a village

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center or town center in the middle of a rural area; that water quality issues have not been addressed; that nutrient reduction is necessary to protect the Indian River and the Inland Bays; that this type of application impacts agriculture and the rural character of the area; that 77 lots could produce 17,000 gallons of wastewater per day and could impact the wells of the residents in the area; that increased traffic is a concern for local roads and Route 26; that a lot of the County roads do not meet State specification and will not withstand truck traffic; that buffers are needed to protect the 3 poultry farms in the immediate area around the project; that runoff is a concern since some of the poultry farms runoff crosses the project site; that the poultry farm owners are concerned about complaints from future home owners due to their tunnel fans on the poultry houses; that increased density will eliminate the rural character of the area; that schools, fire, police and other services will be impacted; and that wetlands will be impacted by development of the project.

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

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

Motion carried 5 – 0.

Meeting adjourned at 11:05pm.