



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF APRIL 29, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 29, 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 amended by acknowledgement of the withdrawal of C/Z #1536, the application of Sandy Landing, L.L.C.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of April 15, 2004 as amended.

OLD BUSINESS

Subdivision #2002-36 – application of **OAK CREST FARMS, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 54.48 acres into 26 lots, located at the northwest corner of the intersection of Road 286 and Road 285.

Mr. Abbott advised the Commission that this application received preliminary approval on February 23, 2003 for 26 lots; that the final record plan is the same as the preliminary plan and meets the requirements of the subdivision and zoning codes; that all agency approvals have been obtained; and that the record plan is suitable for final approval.

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

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

Mr. Abbott advised the Commission that the public hearing for this application was held on July 24, 2003 for 352 lots; that the Commission granted preliminary approval for 215 of the 352 lots on September 25, 2003; that the 215 lots were Phases 1 and 2; that this was the number of lots that DelDOT would grant an entrance approval for until the Traffic Impact Study was completed and reviewed by DelDOT; that the applicants have agreed to DelDOT's recommendations from the Traffic Impact Study; and that the applicants are requesting preliminary approval for the remaining 137 lots.

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Mr. Johnson stated that he would move that the Commission grant preliminary approval for the remaining 137 lots of Subdivision #2003 – 14 for H.M. PROPERTIES, ROUTE 23, L.L.C. for the reasons stated in his prior Motion to grant preliminary approval for 215 lots in this subdivision, and for the following reasons:

1. The additional 137 lots were part of an application that was considered by this Commission on July 24, 2003. As a result of that hearing, 215 of 352 lots were given preliminary approval, based on the information received from DelDOT.
2. DelDOT has since reviewed the completed Traffic Impact Study, and has issued recommendations based upon that study.
3. This approval is subject to the conditions contained in Mr. Johnson's prior Motion for preliminary approval for 215 lots in this subdivision and the additional condition that the Developer complies with all of DelDOT's recommendations concerning the property.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to grant preliminary approval for the remaining 137 lots for the reasons and with the conditions stated above. Motion carried 5 – 0.

Subdivision #2003-38 – application of **BPG PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 20.52 acres into 15 lots, located south of Road 252 (Huff Road), 1 mile east of Road 319 (Sand Hill Road).

Mr. Abbott advised the Commission that the public hearing for this application was held on April 15, 2004 and that action was deferred; that approvals have been received from DelDOT, DNREC, and Office of the State Fire Marshal; and that the plan has been submitted to the Sussex Conservation District and Sussex County Engineering Department for approvals.

Mr. Johnson stated that he would move that the Commission grant preliminary approval for this application and asked Mr. Robertson to read his motion.

Mr. Robertson read that Mr. Johnson moves that the Commission grant preliminary approval of Subdivision #2003 – 38 for BPG PROPERTIES, L.L.C., based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.

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2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning. There will only be 15 lots on the 20-acre parcel.
3. The proposed subdivision is integrated into the existing terrain and surroundings, with a conservation easement to preserve and protect the wetlands on the property.
4. The Applicant has stated the intention to maintain as many existing mature trees on the property as possible.
5. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
6. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
7. DNREC has indicated that the site is suitable for individual on-site septic systems.
8. This recommendation is subject to the following conditions:
 - The Applicant shall prepare and record Restrictive Covenants governing the development and cause to be formed a homeowners' association to be responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - 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.
 - There shall be a conservation easement prepared and recorded with regard to the wetlands that are located on Lots 5 through 11. This easement shall state that no disturbance of the wetlands is permitted. In addition, there shall be a 10-foot buffer from all wetlands.

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

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Route 269A (Old Orchard Road), south of Railroad and north of Dutch Acres
Subdivision off of Route One.

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

Mr. Wheatley stated that he would move that the Commission recommend denial of C/U #1526 for Robino-Sanibel Village, L.L.C. for multi-family dwellings based upon the record made at the public hearing and for the following reasons:

- 1) The Application, if approved for the proposed location, would be detrimental to the health, safety and general welfare of residents of the proposed development, neighboring property owners, and pedestrians and motorists in the area.
- 2) The Applicant has proposed a shared entrance to this 170-unit project with Atlantic Concrete. This would result in passenger vehicles sharing an entrance with larger and heavier cement mixing trucks from the concrete plant. These cement trucks come and go from the concrete plant on a regular basis, many times each day. This would be a hazard to the motorists coming and going to this property.
- 3) While the Applicant has submitted an Entrance Agreement with Atlantic Concrete, I am still not satisfied about the following issues:
 - !) The Agreement is not finalized, since Atlantic Concrete's approval of the shared entrance is still contingent on its review and approval of final plans for the proposed shared entrance.
 - 2) The Agreement does not address the party that will be responsible for maintenance of the shared entrance once the project is completely developed and Robino is no longer involved in it. And, if the homeowners are to take over responsibility, I do not believe that they should share equally in the maintenance costs, given the more intensive use and wear to the entrance area that will be caused by the Atlantic Concrete trucks loaded up with concrete.

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 #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.

The Commission discussed this application which has been deferred since April 1, 2004.

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Mr. Gordy stated that he would move that the Commission recommend denial of C/Z #1535 for Fenwick Commons, L.L.C. for a change of zone from AR-1 to MR Medium Density Residential based upon the record made at the public hearing and for the following reasons:

- 1) The property is currently zoned AR-1, and most of the area is AR-1. The proposed MR zoning is not compatible with the area of this proposed application.
- 2) There is not currently County sewer available for the property and the project is not within a County operated and maintained sanitary sewer district. Also, the Engineering Department has stated that it has no schedule to provide service to the area.
- 3) According to the Zoning Ordinance, the Purpose of the MR District is to provide for areas that are urban or are expected to become generally urban in character. In this case, I do not believe that MR zoning is appropriate since the area is not currently urban and will be developing with an urban character.
- 4) While the project is adjacent to a small property owned by Americana Bayside, the Bayside property is not part of the developed project. Also, the rest of the Americana Bayside project is not located or focused in the same area as this project.

Motion by Mr. Gordy, seconded by Mr. Wheatley, and carried with 4 votes, with Mr. Lynch not voting, to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0.

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.

Mr. Lank advised the Commission that this application was withdrawn on April 16, 2004 in compliance with the Ordinance on withdrawals prior to a Sussex County Council scheduled public hearing.

There was a consensus of the Commission that no action was necessary since the application has been withdrawn.

C/U #1532 – application of **TRIANGLE ELECTRICAL SERVICE CO.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an electrical contractors office and storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.0 acre, more or less, lying south of Route 9, 1,600 feet east of Route 319.

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The Commission discussed this application which has been deferred since April 15, 2004.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1532 for Triangle Electric to operate an electrical contracting business based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property. In addition, it is on the same property where a prior Conditional Use was approved for a craft shop.
- 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 operation of an electrical contracting business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) All trucks and trailers associated with the electrical contracting business shall only be parked in the designated parking area as shown on the site plan. There shall be no more than 2 vehicles or trailers parked in this area at any one time.
 - 2) There will only be one unlighted sign on the premises that shall not exceed 32 square feet per side or facing.
 - 3) Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or towards Route 9.
 - 4) No outside storage, except for trucks or trailers, shall be allowed on the premises.
 - 5) The hours of operation for the business on this site shall be limited to 7:30am to 6:00pm Monday through Friday and 7:30am until 12:30pm on weekends.
 - 6) The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the stipulations stated. Motion carried 5 – 0.

C/Z #1537 – application of **CHARLOTTE L. WHEATLEY** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying north of Route 26, 900 feet east of Route 349A and 180 feet west of Grant's Avenue within Murray's Haven Subdivision, to be located on 27,000 square feet, more or less.

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The Commission discussed this application which has been deferred since April 15, 2004.

Mr. Lynch stated that he would move that the Commission recommend a denial of C/Z #1537 for Charlotte L. Wheatley, seeking a Change of Zone from MR to C-1 based on 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 MR.
- 2) While there is some limited business or commercial zoning or uses in this area of Route 26, this property is directly adjacent to residential Murray's Haven lots. This change in zone would be out of character with the adjacent and surrounding properties on the same side of this portion of Route 26.
- 3) Although the Applicant's representative stated that the intended uses are limited to a publishing house in the existing structure, I believe that there are other business locations that are currently zoned for business or commercial use that are available and better suited for the intended use. In addition, if rezoned to C-1, the property could eventually be used for a variety of more intensive uses.
- 4) DelDOT has stated that it has concerns about this application because the change to C-1 potentially encourages more traffic in an area that has been identified as operating at unacceptable levels of service.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO REVISE AND REPLACE SECTION 194.1 WITH A NEW SECTION ENTITLED THE COMBINED HIGHWAY CORRIDOR OVERLAY ZONE.

The Commission discussed this Ordinance Amendment which has been deferred since February 26, 2004.

Thomas Shafer of Shafer Consulting was present and stated that the Ordinance Amendment was prepared for compliance with the 2002 Comprehensive Plan Update; that the current setback for commercial uses is 60-feet; that the Amendment will create 60-foot setbacks for new residential construction; that a 20-foot wide buffer for landscaping is proposed similar to the Highway Corridor Overlay Zone along Route One; that the proposed Highway Corridor on the East/West Routes is proposed to be 100-feet wide; that the proposed Highway Corridor on the North/South Routes is proposed to be 600-feet wide; that stormwater management facilities will not be allowed in the 20-foot wide buffer along frontages; and that he is sure that DelDOT would like more requirements, but the Department is still in support of the concept of the Ordinance.

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Motion by Mr. Lynch, seconded by Mr. Gordy, and carried with 4 votes to forward this Ordinance Amendment to the Sussex County Council with a recommendation that the Ordinance to amend Chapter 115 of the Code of Sussex County, to revise and replace Section 194.1 with a new section entitled “The Combined Highway Corridor Overlay Zone” be denied. Motion carried 4 – 0 with Mr. Johnson opposed to the motion.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV “AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS”, TO ALLOW CLUSTER DEVELOPMENT OF RESIDENTIAL STRUCTURES AND TO DEFINE CLUSTER DEVELOPMENT.

The Commission discussed this Ordinance Amendment which has been deferred since February 26, 2004.

Thomas Shafer of Shafer Consulting was present and stated that the Ordinance Amendment was prepared for compliance with the 2002 Comprehensive Plan Update; that the method of calculation of the number of units could be the same calculation method as an RPC or the calculation could be limited to two dwellings per gross acreage; that nothing in the Ordinance suggests that lots cannot be scattered throughout a parcel; that all properties are different; that if the Ordinance is recommended the motion should include that the Ordinance not become effective until the adoption of the proposed Open Space Ordinance; that the Open Space Ordinance was also recommended by the Update; that the Ordinance includes open space percentage requirements; and that the Open space Ordinance should include recreational uses, not just open space.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action on the Ordinance Amendment. Motion carried 5 – 0.

PUBLIC HEARINGS

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

C/U #1565 – application of **STATE OF DELAWARE/FACILITIES MANAGEMENT** to consider the Conditional Use of land in a C-1 General Commercial District for a helipad (helicopter landing pad) to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 5.0 acres, more or less, lying east of U.S. Route 13 and 800 feet south of the intersection with Route 404.

The Commission found that three (3) letter had been received from Landmark Engineering on behalf of the application and that the letters referenced cross-access easements; the helipad, wetlands reports, plan submittals to DNREC, the State Fire

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Marshal, Tidewater Utilities, Inc. and the Town of Bridgeville, communications with DelDOT, parking, and conversion of the existing Visitors Center.

The Commission found, based on a letter from DelDOT, that the Department is reviewing a preliminary site plan for the project.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Bridgeville Service Area according to the Western Sussex Water and Sewer Plan Area Study, and that the Applicant should contact the Town of Bridgeville concerning the availability of water and sanitary sewer service.

The Commission found, based on a letter received from the Town of Bridgeville, that the Commissioners of Bridgeville wholeheartedly support approval of the request and are pleased to see that the long time vacant building will be utilized to house Delaware State Police Troop Five.

The Commission found that Patrick Ryan, Architect from French & Ryan, Robert Furman and Beverly Bartlett of the Division of Facilities Management, Major Randall Hughes of the Delaware State Police, and Alvin French, Architect of French & Ryan were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they propose to renovate and expand the existing visitors center into a police barracks; that they will be building a maintenance garage for the State Police with an attached EMS facility; that the helipad will be a private facility for use for law enforcement and medical emergencies; that the helipad will not be a primary base for a helicopter; that DelDOT's Aviation Division has no objections; that they have submitted documents to the F.A.A. requesting compliance with Federal regulations; that the site is 800 feet from Route 404 and 2 miles from the existing Troop Five facility; that it is not intended that the communication facility and tower at the existing Troop Five facility be relocated to this site and that the facility will remain at its present location; that police dog kennels are located within close proximity to the helipad; and that the proposed fuel station meets the Code requirements from the helipad.

The Commission found that Susan Amato, property manager for the adjacent shopping center, questioned the impact of the flight pattern for the helicopters on some undeveloped pad site near U.S. Route 13.

The Commission found that Major Randall Hughes, Field Operations Manager for the State Police, responded that they do not intend to use the site as a primary helicopter site, only for emergency or police use; that there is sufficient area around the pad site; that the area around the pad site is substantially larger than the area around the pad site at the Nanticoke Hospital, which is close to the hospital and Middleford Road; that the

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Delaware State Police want to be good neighbors and a part of the community; and that this is a much needed service for the area.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved since the use will be a benefit to the health, safety, and welfare of the citizens of Sussex County. Motion carried 5 – 0.

C/U #1534 – application of **KEVIN A. DAVIS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto body repair shop to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 21.12 acres, more or less, lying at the northeast corner of Route 473 and Route 446.

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 County Engineering Department, that the site is located in the Blades Service Area according to the Western Sussex Water and Sewer Plan Area Study; that the Applicant should contact the Town of Blades concerning the availability of water service; and that the Engineering Department has no schedule to provide sanitary sewer service to the parcel.

The Commission found that Kevin Davis was present and stated in his presentation and in response to questions raised by the Commission that he lives on the site; that the shop has not been opened yet; that he is currently unemployed; that he proposes to utilize an existing 32' by 45' building for his body shop; that he will be self employed; that he does not plan on hiring any employees; that he will be doing auto collision and restoration work; that all work will be performed inside; that he plans on storing vehicles to be repaired in the old adjoining poultry house; that there will be no outside storage of

materials; that he would like to erect a small unlighted on premise sign; and that the entrance will be located on Route 473.

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.

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Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1534 for Kevin Davis to operate an auto body shop based on the record and for the following reasons:

- 1) The use will not have an adverse impact on neighboring and adjacent properties.
- 2) The Applicant will use existing buildings which will not change the site.
- 3) This recommendation is subject to the following conditions:
 - 1) One unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.
 - 2) All vehicles shall be parked in the parking area shown on the site plan or in buildings.
 - 3) No scrap metal or other debris shall be stored within view of County Roads.
 - 4) The final site plan shall be subject to review and approval of the Planning and Zoning Commission.
 - 5) Business hours shall be Monday through Saturday, 7:00am through 10:00pm, with no Sunday hours.

Motion by Mr. Gordy, 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 and with the conditions stated. Motion carried 5 – 0.

C/U #1535 – application of **THE BARN YARD** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an amendment to Conditional Uses No. 1370 and No. 1443 by adding the sale of mulch, stone, and related landscape goods and to remove the wetland restriction to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 39.81 acres, more or less, lying north of Route 24 and 2.320 feet southwest of Route 284.

Mr. Lank advised the Commission that there are no agency comments on this application since the intended use is an expansion of an existing Conditional Use.

Mr. Lank summarized the history of the activities on the site, which included C/U #1338, C/U #1370, C/U #1443, and Board of Adjustment Case #7801.

The Commission found that Jay Beach was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he proposes to add the sale of mulch, stone, and other landscaping materials to his list of items for sale at his produce stand; that some of his customers have requested the items; that the wetlands on the site have been cleaned up in compliance with all agency regulations; that he proposed three (3) material storage bins now and that he shall not exceed twelve (12) bins; and that his corn maze concept has not worked out and is not

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worth the effort; that the neighbors seem to keep an eye on what is going on; that he has been selling mulch for approximately nine (9) months; and that he keeps applying for expansions to help pay the mortgage on the farm.

The Commission found that Jim Gaskill, J.J. Catts, and Bill Zack were present in opposition and expressed concerns that the wetlands area is a natural buffer between the site and the entrance road to Briarwood; that the area should remain in its natural state; that concerns were expressed about large trucks hauling mulch and stone to the site; that traffic and traffic congestion is a problem on this stretch of Route 24; expressing concerns about the impact on the watershed; questioning what the mulch is treated with; and stating that there is no known support for the expansion from the residents of Briarwood.

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

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

C/U #1536 – application of **MR. NATURAL BOTTLED WATER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office and warehousing for a bottled water company to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.0 acres, more or less, lying northwest of Route 17, 3,000 feet south of Route 353.

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

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located within a County operated and maintained water and/or sewer district; that the site is within the Beaver Dam Planning Area; and that County Engineering currently has no schedule for providing sanitary sewer service to this parcel.

The Commission found that Rodney Short was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that they propose to move their bottled water business from it's current location to this site; that they propose to build an 864 square foot office building and a 5,000 square foot warehouse on the site; that a 150' by 200' parking area exists on the site; that some of the existing buildings will be removed from the site; that the existing facility near the Assawoman Canal will be closed; that all water is now trucked in from Pennsylvania by tractor trailer; that all water is distributed by commercial beverage bay trucks; that warehouse hours are from 7:00am to 5:00pm weekdays, except during summer months

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when hours extend to 7:00pm; that there are no weekend business hours except for emergencies; that they would like to erect a lighted two side sign not exceed 4' by 8'; that they have eight (8) beverage bay trucks which have from 4 to 12 bays; that they do some retail sales of water; and that there is adequate space on site for additional parking if necessary.

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.

Mr. Lynch stated that he would move that the Commission recommend approval of C/U #1536 for Mr. Natural Bottled Water since there will be no adverse impact on the surrounding area; since the site was previously approved for a Conditional Use; and since there will be no significant impact on traffic, according to DelDOT; and with the following conditions:

- 1) One lighted sign, not exceeding 32 square feet per side or facing, may be permitted.
- 2) Business hours may be from 7:00am to 7:00pm Monday through Friday. Weekend hours shall be for emergencies only.
- 3) The site plan shall be subject to review and approval of the Planning and Zoning Commission.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that C/U #1536 be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2004-28 – application of **CARD, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 115.29 acres into 234 lots, located east of Road 274 (Old Landing Road) approximately 3,750 feet south of Road 275.

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 revised restrictive covenants have been submitted and reviewed and approved by Mr. Robertson.

The Commission found that Jeff Clark of Land Tech, Ross Harris of ECI, Tony DiGedio, developer and David Rutt, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site was rezoned to MR on March 9, 2004; that the total site is 115.30 acres; that the site is made up of three large acreage tracts; that there are two wetland areas that have been

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delineated and that they are 11.3 acres and 9.30 acres for a total of 20.60 acres of wetlands; that the wetlands drain into the Rehoboth Bay; that the wetland delineation has been verified by the U.S. Army Corps of Engineers; that the 100-year flood plain has been shown on the preliminary plan; that there are not any rare or endangered species or plants located on the site; that a Traffic Impact Study was performed by the applicants and that DelDOT has reviewed the study and will require improvements to certain intersections; that the site is located in the Environmentally Sensitive Developing Area at the 2002 Land Use Plan Update; that the site is located in a central sewer district operated by Sussex County and sewer capacity is available for 4 units per acre; that the site has 378 EDU's available; that the site is located in a central water service area operated by Tidewater Utilities and that Tidewater has issued a letter that they are able and willing to provide central water to the site; that there are other developments in the area such as Kings Creek Country Club, The Villages of Old Landing I and II, Arnell Creek and The Landing; that there are 3 golf courses in the immediate area; that 227 lots are proposed; that the lot sizes will range from 8,200 to 15,000 square feet in size; that the streets will be private and built to County specifications; that DelDOT will permit one entrance to the site; that there are 2 emergency access points provided; that the developer has provided an interconnection to the Warrington Creek residential planned community near lots 160 and 161 and also near lots 65 and 66; that sidewalks on both sides of the streets are proposed and that they will be at grade; that there are 5 stormwater management ponds proposed; that no lots encroach into the wetland areas; that a community swimming pool and center are proposed; that the developer will retain as many mature trees as possible; that the proposed density is 2 units per acre; that the design of the project protects the environment; that streetlights are referenced on the preliminary plan and that the actual location of the streetlights is determined by the appropriate power company; that the project has been designed under the Environmentally Sensitive Ordinance; that the stormwater design will meet the requirements of the Sussex Conservation District; and that the developer has recorded deed restrictions limiting the density to 2 lots per acre.

There were no parties present in support of this application.

The Commission found that Harold Maxwell, Dennis Finnerty, Ellis Undercuffer, Louise Latrell, and Elva Windeger, all area residents, were present in opposition to this application and expressed concerns about the existing woods not being shown on the preliminary plan; that the stormwater management ponds do not depict whether the ponds will be wet or dry; that the stormwater management ponds become mosquito breeding areas; that there are too many developments located along Old Landing Road; that the proposed development will increase traffic in the area which is already a problem; that there needs to be another way to access Old Landing Road instead of just from Route One; that there should be a wooded buffer between this development and Old Landing Village II; that White Oak Creek needs to be protected; that they were told that the site would remain a wooded site; that emergency vehicles have a hard time responding to the

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area due to traffic problems; and that the proposed interconnections to adjoining developments will cause more traffic in the existing developments.

The Commission found, by a show of hands, that 7 people were 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. Wheatley, and carried unanimously to defer action. Motion carried 5 – 0.

OTHER BUSINESS

Summerfield MR/RPC

Master Record Plan – Road 275 (Plantation Road)

Mr. Abbott advised the Commission that this is the master record plan for a 101 lot single family residential planned community with recreational amenities; that the plan is the revised plan that was submitted at the County Council's public hearing; that 101 lots are the maximum lots permitted by the approved ordinance; that the recreational amenities include a clubhouse, swimming pool and tennis court; that the site plan meets the requirements of the subdivision and zoning codes; that the developer is requesting the regular MR district setbacks; that the site plan is suitable for master plan approval; that final approval shall be subject to the review and approval by the Commission upon receipt of all agency approvals; and that the name of the development needs to be changed since there is already a development named Summerfield.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the master plan. Motion carried 5 – 0.

Subdivision #2002 – 47 - - James C. Wells, Jr.

Time Extension

Mr. Abbott advised the Commission that the staff has received a request for an extension so that the applicant can obtain all agency approvals; that the Commission granted preliminary approval for this 16-lot application on April 17, 2003; that this is the first request for an extension; and that approvals have been received from DelDOT and DNREC.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve a one-year time extension. Motion carried 5 – 0.

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C/U #1487 - - Ronald E. Gray Time Extension

Mr. Abbott advised the Commission that the staff has received a request for an extension so that the applicant can obtain all agency approvals; that the County Council approved this application on May 6, 2003; and that this is the first request for an extension.

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

Francis H. Prettyman Lot on an existing 50' right of way – Road 254

Mr. Abbott advised the Commission that this is a request to create a lot with access from an existing 50' right of way; that this would be the second lot with access from the right of way; and that the Commission approved the first lot and right of way on September 25, 2003.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the lot as submitted. Motion carried 5 – 0.

Holly Lake Campground Revised Units – Route 24

Mr. Abbott advised the Commission that this is a request to add 15 cabins to the Holly Lake Campground; that 5 of the cabins are 12' by 20' and the other 10 are 13' by 24'; and that this could be approved as submitted or require an amended conditional use application.

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

Meeting adjourned at 10:15 PM.