



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF MAY 13, 2004

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 13, 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 Revised Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of April 29, 2004 as corrected.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of May 6, 2004 as corrected.

OLD BUSINESS

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 Use 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. Johnson stated that he would move that the Commission recommend approval of C/U #1535 for The Barn Yard to add the sale of mulch, stone and related landscape goods as an amendment to C/U #1370 and C/U #1443; that he does not recommend the removal of the wetland restrictions that were contained in the prior Conditional Uses granted to the Applicant; and that his motion is based upon the record made at the public hearing and for the following reasons:

- 1) This application is for the amendment to prior Conditional Uses allowing a produce stand, corn maze and related uses.

- 2) The amendment, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 3) The Applicant has not provided any justification for lifting the current wetland restriction, and I am not convinced that there is a good reason for lifting it.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 - 1) The Applicant shall only be allowed to have 3 bins for the sale of mulch, stone and similar landscape materials as shown on his Preliminary Site Plan. Each bin shall not exceed 15 by 30 feet in size.

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- 2) Deliveries or hauling of mulch, stone or other similar landscape materials to or from the site shall only occur between the hours of 9:00am and 5:00pm Monday through Saturday.
- 3) The final site plan showing the size and location of the bins shall be subject to approval of the Planning and Zoning Commission.

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

Subdivision #2003-28 – 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.

The Commission discussed this Subdivision application which has been deferred since April 29, 2004.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2003-28 for Card, L.L.C. based upon the record made at the public hearing and asked Mr. Robertson to read his motion.

Mr. Robertson read that Mr. Johnson moves that the Commission grant preliminary approval of Subdivision #2003-28 for the following reasons:

- 1) The project is located in a Development District according to the County's 1997 Comprehensive Plan, and is located within the Environmentally Sensitive Developing Area according to the 2002 Update.
- 2) The Applicant has proposed 227 lots within the project, which is less than the allowable density for a MR subdivision on this land.
- 3) The project is consistent with neighboring and adjacent properties and will not have an adverse impact on neighboring properties or the community. In the Old Landing Road area, there are already similar projects on neighboring or adjacent parcels. These include The Villages of Old Landing, Breezewood, Cedar Valley,

- and the Warrington Family Farm. Other uses in the vicinity include Arnell Creek, The Landing, and the Old Landing Golf Course.
- 4) The project is located within the West Rehoboth Sanitary Sewer District and the Sussex County Engineering Department has stated that there is adequate capacity for the project as proposed.
 - 5) Central water will be provided to the project by Tidewater Utilities, Inc.

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- 6) The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. In addition, the site's design has a minimal impact on wetlands and no wetlands are included within the lots.
- 7) This recommendation is subject to the following conditions:
 - 1) There shall be no more than 227 lots within the Subdivision.
 - 2) 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.
 - 3) The stormwater management system shall meet or exceed the requirements of the State and County.
 - 4) All entrances shall comply with all of DelDOT's requirements.
 - 5) A system of street lighting shall be provided by the Applicant, and the location of the street lights shall be shown on the final site plan.
 - 6) Sidewalks shall be installed on both sides of all streets within the Subdivision.
 - 7) The Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - 8) No wetlands shall be included within any lot lines.
 - 9) Within one (1) year of the issuance of the first building permit, the Developer shall construct a community swimming pool and community center.
 - 10) The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of Subdivision #2003-28 for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2002-25 – application of **DALE WHEATLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex

County, by dividing 38.73 acres into 23 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Route 9. 1,170 feet west of Road 254.

Mr. Lank advised the Commission that preliminary approval of the Subdivision was granted on January 30, 2003 for 23 lots; that the Commission granted a time extension for submittal of the Final Record Plan in January 2004; that the Final Record Plan contains 22 lots, meets the requirements of the Zoning Ordinance and complies with the conditions of the preliminary approval; that all agency approvals have been received; and that the Final Record Plan is suitable for final approval.

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Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the Final Record Plan for 22 lots as a final. Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2003-41 – application of **SHELLY JONES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 14.29 acres into 3 lots, located north of Road 287, 1,060 feet west of Road 277.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of November 19, 2003 is a part of the record of this application, and that revised plots, responding to the comments of the Technical Advisory Committee were submitted on December 22, 2003.

The Commission found that Shelly Jones was present with Mark Davidson of DC Group and stated in their presentations and in response to questions raised by the Commission that 3 lots are proposed; that the largest lot contains 1.9 acres; that the smallest lot contains 1.04 acres; that the residual lands contain 9.75 acres; that the applicant will build a home on Lot #1; that Lots #2 and #3 are being reserved for children of the Applicant; that the only area suitable for septic is along the western side or rear of the lots; that individual septic evaluations have been performed and that the evaluations indicate that LPP septic systems will be required for each lot; and that the area west of the site is not farmed.

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

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

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of this Subdivision since there will be no major impact on traffic and since the project will conform to the requirements of the Subdivision Ordinance. Motion carried 5 – 0.

Subdivision #2003-42 – application of **JEFF HEFLEBOWER AND WOODY LOGAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 17.32 acres into 18 lots, located south of Road 530, 0.8 mile southwest of Road 46.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of November 19, 2003 is a part of the record of this application.

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Mr. Lank advised the Commission that the State DNREC, per letter dated December 9, 2003, has found that they believe that the project will be feasible under the current Regulations Governing the Design, Installation and Operation of on-site Wastewater Treatment and Disposal Systems dated January 4, 1985.

Mr. Lank advised the Commission that a letter was received from John Hanenfeld, a property owner living across from the site, expressing concerns about the narrowness of the entrance road, setback issues with neighboring property owners, increased traffic, traffic safety, and suggesting that the developers should install heavy plantings, decorative fencing and limited lighting to maintain the privacy and safety of the existing homeowners.

The Commission found that Jeff Heflebower and Woody Logan were present with David Rutt, Attorney, and Darin Windsor and Greg Hook of Simpler Surveying, and stated in their presentations and in response to questions raised by the Commission that the site is located in a developing area, even though it is not in a Developing District according to the Comprehensive Plan Update; that the site is surrounded by existing developments; that there are no wetlands on the site; that there are no historic features on the site; that the parcel is a pine woods; that lot clearing will be performed by individual lot owners; that all road clearing will follow State regulations; that on site septic and individual wells will be installed; that they intend to keep the lots wooded; that buffers will be provided within lots lines and the stormwater management area; that buffers of trees and planting will be maintained along neighboring residential lots and along Old Meadow Road; that there will be little to no soil removal due to the soil types; that signage will be located throughout the project to minimize traffic impacts on the subdivision; that the radius of the cul-de-sac streets will be adequate for turning of emergency vehicles; that there should be a positive impact on property values since the project is intended to be upscale with homes ranging in the \$350,000 price range with 2,000 square feet minimum for one story homes and 2,500 square feet minimum for two story homes; that there will be no impact on any farmland; that there will be no negative impact on the local School

District; that the use is compatible with the land uses in the area; that the project will conform with the Subdivision Ordinance; that deed restrictions have been reviewed and approved in form by the Assistant County Attorney; that the restrictions include that mobile or modular homes will not be permitted; that the developers will commit themselves to the preservation of as many trees as possible; and that the landscaping plan will be subject to the Department of Agriculture for recommendations on the type and height of plants or as described by the Commission.

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

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant preliminary approval of Subdivision #2003-42 based on the record, since the project is infill between existing developments, and since the project will conform to the character of the area. Motion carried 5 – 0.

C/U #1539 – application of **RUSSELL BANKS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a recycling and storage facility for recycling concrete, blacktop, and soils to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.45 acres, more or less, lying west of Route 348, 840 feet north of Route 349.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the referenced use is within the Holts Landing Planning Area and that the County Engineering Department has no schedule for providing sanitary sewer service to the site.

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 Office of State Planning Coordination, that the parcel is located within the Environmentally Sensitive Developing Area according to the State Strategies where the State will seek a balance between resource protection and sustainable growth; that the State does not feel that it is appropriate to have a concrete and blacktop recycling plant within the Environmentally Sensitive Developing Area and opposes this application; that it has been noted that the Solid and Hazardous Waste Management Branch of DNREC has been attempting to get the Applicant to remove the asphalt/concrete/soil material from the site for two years

without any success; that if the Conditional Use request is for the grinding of the existing materials on the site, the State would have no objections providing it was clear that no additional materials may be added to the site; that the Conditional Use should also have a defined end date and that the County should follow up every 6 months to ensure that this clean up is taking place on schedule; that if the Use is for the continued storage and/or recycling of material, the State would object to the use; that the site does have residential homes around it and the neighbors have voiced concerns about the use; that the storage and reuse of asphalt does require an approval from the Solid and Hazardous Waste Management Branch before this activity can be done; that the Applicant would be required to apply for approval if the Conditional Use is granted; that the Branch would be interested in knowing the sources/types of soil (clean/contaminated) that would be stored at the site; that there are air permitting requirements that must be complied with since

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crushers are proposed, if generators are used, and if a parts cleaner is proposed; that the proposed project lies with 5 miles of a known Delmarva Fox Squirrel population at the Assawoman Wildlife Area; that it appears that the site is within the Coastal Zone of Delaware and may require a Coastal Zone Act Status approval; that the soils on the site are somewhat well drained and somewhat excessively well drained; that the site is located adjacent to receiving waters of the Inland Bays designated as water having Exceptional Recreational or Ecological Significance which are recognized as special assets of the State and shall be protected and/or restored to the maximum extent practicable to their natural condition; that Best Management Practices should be utilized while working on the site; that Total Maximum Daily Loads should be addressed; that the site is proposed within the low nutrient reduction zone where a reduction of nitrogen and phosphorus should be reduced by 40%; that in order for the Applicant to comply with the Total Maximum Daily Loads mandate, a nutrient mass budget should be prepared; that should any underground storage tanks or petroleum contaminated soil be discovered on the site the Tank Management Branch must be notified as soon as possible; that there are two potential historic buildings across Irons Lane from the site and that the view of the buildings should be protected by planting of landscaping on this site; that DelDOT may require that the Applicant improve Irons Lane between Route 26 and Holts Landing Road as part of their entrance construction and that this will be determined by the number and type of trucks that would be using the facility; that an entrance permit will be required; that the State would not object to the use of the site to clean up the existing materials on the site if a condition is imposed that provides for a defined end date with the County performing at least an every 6-months inspection of progress and a condition that the use only be for the grinding and removal of the material existing on the site with no additional material being added; and that the State does not feel that this location is appropriate for a permanent concrete or blacktop recycling plant and would respectfully request that the application, if permanent, be denied.

The Commission found that the Applicant was given a Violation Notice in April 2002 for the activities being performed on the site.

Mr. Lank provided photographs of the site taken in May of 2003 and May of 2004. The photographs depict the activities taking place on the site.

The Commission found that letters in opposition to the activities have been received from the Irons Lane Communities United for Environmental Preservation, which represents an assemblage of the developments of Fairway Villas, Bay Colony, The Greens at Indian River, Gander Woods, Irons Landing, Mallard Creek, and Irons Acres.

The Commission found that several letters and petitions have been received from the Cripple Creek Golf & Country Club, Fairway Villas Property Owners' Association, Mallard Creek Homeowners Association, Irons Lane Landing Property Owners

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Association, Gander Woods Civic Association, Bay Colony, The Greens At Indian River, Fairway Villas Condominium Association, Irons Acres and individual property owners. The letters and petitions contained approximately 535 signatures in opposition to the application.

The Commission found that the concerns expressed in opposition included that the use would impact the residents wishes to preserve and maintain the tranquility, communal and rural atmosphere of the area; that the commercial operation with its noisy earth moving and processing equipment would not be conducive or in harmony with this growing suburban environment; that the State has already decreed that the area is environmentally sensitive; traffic and safety concerns with the addition of heavy trucks on the narrow roads in the area; that the proposed usage is unacceptable with existing and planned residential land use; that the residents in the area will be subjected to additional traffic, noise and safety issues; that the dust and odorous air born contaminants will negatively impact all residents; that water supply could be jeopardized by contaminants leaching into the soil; that commercial activities will negatively impact all surrounding property values; and that the use is inconsistent with the AR-1 zoning.

The Commission found that the Russell Banks was present with Allen Davis, Attorney, and stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to recycle the materials stored on the site; that the site plan is in error and will be corrected to show that the topsoil stockpile will be located to the rear of the site and that the stockpile of processed material will be located in the center of the site; that the Applicant proposes to recycle asphalt and concrete by having it crushed into more usable material for construction activities; that the materials, after recycling, will be sold and hauled off-site; that top soil and fill dirt are also stored on the site; that several years ago the contractor working on a sewer district project starting hauling materials to the site; that the Applicant admits that he was violated for the activity and immediately applied for the Traffic Summary Report and Conditional Use; that the Applicant plans on contracting with Bunting & Murray Construction Company for crushing and screening of

the materials on the site so that the materials can be recycled; that the processed materials will be stored on the site for a short term and then hauled off site; that the crushing operation will be performed as quickly as possible; that the activities will start immediately upon receipt of an approved Conditional Use and all appropriate agency approvals, or the Applicant can wait until late winter months when fewer people are in the area that may be disturbed by the activities; that it has been estimated that it may take 60 to 120 days to crush, recycle and clear the site; that the Applicant request permanent use of the site for storage of fill dirt and topsoil; that if the Applicant is granted a Conditional Use to continue the use of fill material only he will berm and landscape across the site in line with the rear of the Dorothy West property; that there will be no direct sales of materials performed on the site; that it should take less than one year, depending on the weather, to clean up the site; that once the contractor starts

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recycling they will continue daily activities until the recycling is completed so that they may relocate their equipment to another location; that the Applicant is willing to erect a solid fence across the front of the property to screen the activities; that the Applicant started hauling materials to the site approximately 4 years ago; that some of the materials were dumped on the site without his knowledge; that once the site is cleared it will probably return to farm use; that approximately 40 loads have been hauled in since April 2003; that the best public policy would be to permit the use and to allow the crushing and recycling so that the site can be cleared; and that the stockpile near Irons Lane is approximately 12 feet high.

The Commission found that Jim Wooters, Debbie Hastings, and Dorothy L. Blades West were present in support and stated that they are the most impacted by the project and that it would be a benefit to everyone if the Applicant was allowed to recycle and clear the site.

The Commission found that Dan McNaughty of Fairway Villas Property Owners Association, Ray Barbuto of the Irons Lane Communities United for Environmental Preservation, spoke in opposition to the application and requested immediate removal of the materials from the residential/agricultural area; agreed and supported the written comments expressed in the letters from the communities in the area; noted that the County has recently approved approximately 700 homesites in the area that have not yet started construction and that the projects containing those homesites will also be impacted by this application; that recycling, moving of materials on site, and hauling of materials creates more problems than just loading and hauling the materials; and requested denial of the application on behalf of the citizens living in the area.

The Commission found, by a show of hands, that there were 4 parties present in support and 75 parties present in opposition to this application.

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

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

C/U #1540 – application of **JAMES R. GIBSON** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (3 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 11,850 square feet, more or less, lying southwest of Pine Lane, 350 feet west of Lake Drive (Road 50) and north of Lake Comegy's, being Lot 3A of Silver Lake Heights.

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The Commission found that the Applicant had submitted a packet of information prior to the meeting and that the packet included a data summary, a site plan, an aerial photograph and tax map of the area; references to the Comprehensive Plan, a copy of a correspondence from the Sussex Conservation District, a copy of a letter from Atlantic Resource Management, Inc., an architectural drawing of the front of the proposed structure, and photographs of the site in April 2003 and March 2004.

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 Planning and Permits Division, that the site is located within the Dewey Beach Sanitary Sewer District and the Dewey Beach Water District; that wastewater capacity is not available for the project; that the proposed project exceeds the system design assumptions for the area; that the proposed project has a density of 11.03 units per acre; that approval of the project at an increased density in this area has the potential to cause significant capacity issues in this drainage area and limits options for other property owners; that Ordinance No. 38 construction would be required; that there is one System Connection Charge credit for the site; that the current System Connection Charge Rate is \$719.00 for water and \$2,589.00 for sewer per EDU; that rates quoted are valid for the period through June 30, 2004; that the parcel is currently served with a 6-inch sewer lateral and a 1-inch water lateral located on the parcel frontage on Pine Lane; that installation of additional laterals could be required; that three units in a multi-family dwelling structure are permitted to connect to one 6-inch sewer lateral; that individual water laterals and meter pits are required for each unit; that installation of additional 1-inch water laterals and meter pits would be at the developer's expense; that installation of a dedicated water lateral is required if fire service is required; and that installation of a fire service lateral would also be at the developer's expense.

The Commission found, based on a copy of a letter from the Sussex Conservation District, that due to the road that divides Lake Comegys and Silver Lake, the District does not consider this project to have a tidal outfall; that this site may be eligible for a quantity waiver if it can be demonstrated that the developer is not increasing the runoff from the site by more than 10% in post development.

Mr. Lank advised the Commission that the Zoning Department has received 15 letters in support of the application and that the letters are a part of the record for these proceedings.

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Mr. Lank advised the Commission that the Zoning Department has received 18 letters and petitions containing 42 signatures in opposition to this application and that the letters and petitions are a part of the record for these proceedings. The letters included letters from the Rehoboth Beach Homeowners' Association and the Rehoboth Beach Historical Society.

Mr. Lank submitted copies of packets in opposition from the Lake Comegys Association of Owners and Hudson, Jones, Jaywork & Fisher, P.A. The packets are considered a part of the record of these proceedings.

The Commission found that James R. Gibson and his wife were present with Steven Spence, Attorney, and Roger Gross of Merestore Consultants, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they propose to build a 3-story 3-unit condominium building on the site; that adequate space for parking is available; that access to the site is from Pine Lane; that homes on Silver Lake Drive access their garages on Pine Lane; that other Conditional Uses for multi-family use have been approved with access along Pine Lane; that in the last couple of years multi-family use has been approved on three site with access to Pine Lane; that the Lake Comegys Townhouses exists immediately adjacent to the site; that the site contains approximately 0.25 acre; that all setback requirements will be met; that the Applicant could build a single family dwelling on the premise 42-feet tall without a public hearing; that they would not have to apply for a stormwater management approval if land disturbance is less than 5,000 square feet; that the Applicant has the right to study and verify if sewer capacity is available to serve the project; that the Applicant would sit down with the Engineering Department and determine a scope of work and then study the system and area for determination of capacity; that public water is available; that the wetlands have been delineated, but not yet verified by the Corps. of Engineers; that the stormwater management system will incorporate infiltration; that minimal fill will be needed to improve the area of construction; that there will be no encroachment of the

wetlands; that the vegetation along the shoreline will remain; that the character of the area around the Lake is single family and multi-family; that Pine Lane serves as access to the site; that two dwellings and 28 townhouses provide the character of the area around the Lake; that when looking along Pine Lane you will see the rear of homes along Silver Lake Drive with garages facing Pine Lane, trash containers, sheds and townhouses; that Pine Lane serves as access to townhouses and condominiums; that the Applicant proposes an upscale condominium building with off street parking and garages; that the Applicant plans on preserving the large oak tree on the site and proposes to setback further from the shoreline of the Lake by removing 12-feet of the proposed structure on the rear; that the Applicant does not intend to impact the Lake; that there is no more of a threat on the Lake by the construction of the 3-unit building than a single family home; that the Lake is healthy with an excellent fish population; that a home was located on the site for 30-years without any impact on the Lake; that there is not a heron rookery on the

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site; that an osprey does not nest along the Lake; that the structure will be less than 42-feet in height; that 10-foot ceilings are proposed for the first floor, 9-foot ceilings for the second floor, and 8-foot ceilings for the third floor; that each unit will contain approximately 3,000 square feet; that the structure is proposed to be finished with stucco and black trim; that the Applicant has owned the site since June 1995; that the townhouses along the Lake are 2-story; that the multi-family units that backup to Pine Lane are 3-story; that no parking is permitted on the paved surface of Pine Lane; that Pine Lane has a 30-foot wide right-of-way; that the Applicant will live in one unit and sell the other two units; and that the footprint of the structure contains approximately 4,000 square feet.

The Commission found that Mr. Gibson submitted photographs of the area and the site, and a color rendering of the front elevation of the proposed structure.

The Commission found that Susan Lomas, Jeannie Lawson, and Charles Renstler spoke in support of the application and stated that the site is surrounded by townhouses and parking lots; that the Lake Comegys Townhouses were built in the 1960s or 1970s; that only 2 single family homes still remain along this side of the Lake; that the use will enhance the area; that summer parking is an issue in the Lake Comegys Townhouses because they only provided 1 parking space per unit; that they would prefer an upscale structure over the structures that exist; and that there should be no negative impact on the Lake.

The Commission found that David Weidman, Attorney, was present on behalf of his clients in opposition to this application, provided a brief in opposition, and stated that the application should not be approved because a statutorily-dedicated 50-foot public right-of-way encircles Lake Comegys and lies on top of the Applicant's parcel; that while the right-of-way was never improved, it still exists of record today, where research has revealed that the public right-of-way has never been vacated through a legal court

proceedings; that the Applicant' property is encumbered by this right-of-way; that this application could create a destructive precedent for future development around the Lake; that the use is contrary to the purpose of a conditional use because it does not provide the full protection offered to surrounding properties, is not of a public or semi-public character and is not essential and desirable for the general convenience and welfare of the community, but rather, will serve only to maximize the Applicant's personal profit; and requested that the Commission deny this application.

The Commission found that Mr. Weidman's brief contained a three page statement, a copy of a record plat of Silver Lake Shores; a copy of a deed to the property; a copy of the FEMA map of the area; and 4 copies of photographs of the site.

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During part of Mr. Weidman's statements he exhibited a short videotape of the site. A cassette of the tape is a part of the record for these proceedings.

Mr. Robertson and Mr. Weidman discussed the court proceeding in general.

The Commission found that Deborah Burris, Howard Burris, Ernest Sando, Christina Fleps, Tony Burns, President of the Lake Comegys Homeowners Association, and Sally Forman, President of Save Our Lakes Alliance, spoke in opposition to the application and expressed concerns about setbacks from the Lake; run-off; lighting; that the use alters and changes the character of the area; that setbacks should be increased from the Lake; that the Lake Comegys Townhouses are separated by 3-acres of land from the Lake; that a view will be lost from the adjacent units; that the size of the building will impact light to the adjacent units; noise; traffic; impacts on property values; and environmental concerns about the need to protect the freshwater lakes in the area.

The Commission found that written comments and packets were received from Mr. Burns, Mr. Sando, Ms. Fleps, and Ms. Forman, and that the packets included newspaper articles and letters from the previous owners of the site.

At the conclusion of the public hearing, Mr. Burns submitted a letter for the record from Mable Granke voicing opposition from the Citizens Coalition, Inc.

The Commission found, by a show of hands, that there were 5 parties present in support and that there were 38 parties present in opposition.

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 to consider the evidence submitted during the public hearing. Motion carried 5 – 0.

C/U #1571 – application of **MID-ATLANTIC PROPERTY VENTURES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a family practice medical office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.162 acres, more or less, lying southeast of Route 24, 0.43 mile northeast of Love Creek.

The Commission found that the Applicants had submitted a packet of information prior to the meeting and that the packet included a site plan, a aerial photograph showing the tax parcels in the area, a portion of the tax map of the area, a landscape plan, and a copy of the survey of the lot showing a perpetual combined access easement.

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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 does not support additional development at this location, where it would encourage more traffic in an area that the Department has identified as operating at unacceptable levels of service and that has been designated as Environmentally Sensitive.

The Commission found that 124 form letters, 15 individual letters, a letter from R. Donald Little, President of the Bookhammer Estates Subdivision, and a petition with 38 signatures have been received in support of this application.

The Commission found that Jeff Heckert, M.D., Craig Bahtiarian, M.D., and Mark Sorti, M.D. were present with Jim Yori, Attorney, and stated in their presentations and in response to questions raised by the Commission that they are planning a family practice medical office; that the area has a mixture of uses, including residential subdivisions, a produce stand, an art studio, a new school, a medical center, and many small business; that the site is between the art studio and the entrance to a residential subdivision; that the homeowners of the residential subdivision support the application; that in 2002 an application was filed for a Conditional Use for the same site and included more and larger buildings, a larger parking lot, more doctors, a pad for an MRI mobile unit, and received a lot of opposition; that this application proposes a smaller building, 3 to 5 doctors, no MRI mobile unit, and no on-site microscopic lab work; that the developer and homeowners of Bookhammer Estates support the application; that an earthen berm with landscaping will be placed around the parking lot; that the owner of the art studio supports the application; that the site is located within the Environmentally Sensitive Developing Area according to the 2002 Comprehensive Plan Update; that a letter has not been received from the Office of State Planning Coordination on this application, but there is a letter on the previous 2002 application and that the State asked that the County consider the cumulative effects of the development in this area and that if the application is approved the County require the developer to work with the State Historic Preservation

Office to minimize the impact on the historic resources in the area; that the facility will be primarily a daytime office, with some early evening hours; that there will be no noise, water, or odor pollution; that the site is in the center of their patient area; that DelDOT considers the site in a Management Investment Area and is concerned about additional development in the area; that the Applicants propose to reserve 65-feet along their frontage in the case of a need for future road widening; that they are limited to access from the referenced perpetual access easement; that on-site water and septic are proposed; that stormwater management will be maintained on site; that a 5-foot wide earthen berm is proposed along the rear of the site to buffer the subdivision; that 58 parking spaces are proposed; that a two story building is proposed with a beach type design; that the first floor will contain a maximum of six doctors office and patient rooms; that the second floor is planned for storage and a break-room; that they have 12 employees; that they would like to erect a 2-sided 32-square foot sign; that the maximum

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office hours would be from 8:00am to 8:00pm Weekdays and 9:00am to 11:00am on Saturdays; that there will be no Sunday hours; that security lighting will have downward illumination; that the Office of the State Fire Marshal is reviewing their plans and that the building may not have to be sprinkled; that medical waste is handled by a licensed waste handler and is picked up every three weeks; that all of the doctors are residents of Sussex County; that some of the letters in support are from patients in that area that see the proposed location of the site as a benefit to them so that they do not have to travel on Route One; that they presently lease a site and share it with another medical group; that their lease is valid through November; and that they ask that the Commission consider the need for the proposed service to the citizens of the County when making a decision on this application.

The Commission found that Mr. Yori submitted some suggested conditions of approval if the use is approved.

The Commission found that Diana Riley, an administrator for the doctors, Kauz Wothey, a patient, and Allen Riley spoke in support of the application and referenced a need for the service, a need for space to care for patients, that these doctors are dedicated to serve their patients; and that the use would be a benefit to the area.

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

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

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 since the use will serve the community; since the use should relieve some traffic on Route One; since the shared access is already in place; since the concerns in

reference to the prior application for this site have been addressed; and with the following conditions:

- 1) The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals.
- 2) A raised dirt berm (5-feet high) with shrubbery/bushes will be planted/constructed along the three sides that border residential property.
- 3) Lighting for the parking lot and the property in general will be “down” lights mounted on poles or lighting pointing away from adjacent properties so that the lighting will not affect (or will have a minimum affect) on adjacent properties.
- 4) The physicians office hours will be from 8:00am until 8:00pm Monday through Friday. Saturday office hours will be from 9:00am until 11:00am. The office will be closed on Sundays. There may be emergency office hours anytime.
- 5) Required parking will be provided and handicapped parking will be marked.

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- 6) The building, stormwater management, parking, well and septic shall all be located in such a way that, in the event that Route 24 is widened, the impact on the subject property will be minimal.
- 7) A sixty-five foot (65') wide strip of land along the front of the property running parallel with Route 24 will be kept available in the event the State of Delaware (DelDOT) elects to widen Route 24.
- 8) There shall be one sign on the property no larger than 4-feet high and 8-feet long designating the doctor's office.

Motion carried 5 – 0.

OTHER BUSINESS

SSEW Townhomes
C/U #1522 Site Plan – Road 275

Mr. Lank advised the Commission that this site plan is for an 80-unit multi-family project on 18.33 acres; that the Conditional Use was approved by the County Council on March 30, 2004; that ten (10) 2-story building with 8-units each are proposed; that setbacks, building lengths and building separations meet the requirements of the Zoning Ordinance; that 240 parking spaces are required; that 245 parking spaces are proposed; that there are also 80 detached garages proposed; that the proposed playground and picnic area has been relocated to the center of the community as required by the conditions of approval; that a swimming pool is also proposed; that required sidewalks, street lighting and a landscape plan are depicted, as required, on the site plan; that Sussex County will provide central sewer and Tidewater Utilities, Inc. will provide central water to the project; that the property is not located in a Flood Plain; that no wetlands exists on the

site; that the site is suitable for preliminary approval; and that final approval could be subject to receipt of all appropriate agency approvals and/or permits by the staff.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the site plan for 80 multi-family units. Final approval shall be subject to receipt of all appropriate agency approvals and/or permits by the staff. Motion carried 5 – 0.

Dagsboro-Willey Mini Storage
Preliminary Commercial Site Plan – Route 26

Mr. Wheatley stated that he abstains from participating in the review of this site plan.

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Mr. Lank advised the Commission that this site plan is for a 37,225 square foot storage facility on 4.08 acres; that the site is zoned C-1 General Commercial; that the developers proposed to develop three buildings containing 5,400 square feet, three buildings containing 5,100 square feet, one building containing 2,250 square feet, one building containing 1,650 square feet, one building containing 1,200 square feet, one building containing 375 square feet, and one building containing 250 square feet; that the setbacks conform to the requirements of the Zoning Ordinance; that three parking spaces are proposed for the office building; that the proposed travel lanes throughout the project will be gravel; that all buildings will be of metal construction; that the site is not located within a Flood Plain; that there are no wetlands on the site; that the site plan is suitable for preliminary approval; and that final approval could be subject to receipt of all appropriate agency approvals and/or permits by the staff.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried with 4 votes to grant preliminary approval of this commercial site plan. Final approval shall be subject to receipt of all appropriate agency approvals and/or permits by the staff. Motion carried 4 – 0 with Mr. Wheatley not voting.

Stonewater Creek Subdivision
Relocated Wastewater Treatment Facility – Route 5

Mr. Lank advised the Commission that this site plan relocates the wastewater treatment facility to the east side of Route 5 near the Delaware Electric Cooperative substation; that Phases 1 through 4 of the Subdivision have received final approval; that Phases 5 and 6 have received preliminary approval; that the application for Phases 7 through 9 has not yet been scheduled; that the proposed site plan includes an office, treatment tanks,

underground propane storage tanks and small sheds; that the entire perimeter of the site will be landscaped; and that the relocation of the facility should benefit the entire project.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the site plan. Final approval shall be subject to receipt of all appropriate agency approvals and/or permits by the staff. Motion carried 5 – 0.

Wilgus Associates, Inc.

C/U #1480 Amended Conditions – Savannah Road (Route 9)

Mr. Lank advised the Commission that the Applicants are requesting to amend Condition No. 8, which stated that “the use shall be limited to a single tenant real estate and insurance office”; that the Commission approved the site plan on August 14, 2003; that all agency approval were received; that a building permit was issued in December 2003; that the one-story building contains 4,102 square foot; that the building is under construction and that the Applicants have realized that they will not need the entire

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building and would like to be able to rent a portion of the building for a similar use; that the rented portion of the building would contain 1,550 square feet and would not be used for retail or commercial uses; that no additional parking would be required since the parking calculations were done for the entire building; that the Commission may amend the conditions of approval since the conditions originated at the Commission level; and that there was no opposition to the application at the public hearing.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the amendment to Condition No. 8 to allow for rental of a portion of the building for a similar use, but not retail or commercial uses. Motion carried 5 – 0.

Peter Economos

C/U #1249 Revised Site Plan – Route 9

Mr. Lank advised the Commission that this Conditional Use was approved by the County Council on June 30, 1998; that the Commission granted final approval of the site plan on July 23, 1998; that Condition No. 8 stated that “this approval is for the sale of automobiles and pickups only”; that this condition originated from the Commission; that the owner would like to erect an 18’ by 21’ carport as a demo model to sell carports; that the carport would be located to the east of the existing structure on the site; that the Commission may amend the conditions of approval since the conditions originated at the Commission level; and that there was no opposition to the application at the public hearing.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the amendment to Condition No. 8 to allow for the display of one (1) carport model. Motion carried 5 – 0.

Irene Gray

Two (2) lots and a 50-foot Right-of-way – Road 432

Mr. Lank advised the Commission that Ms. Gray has submitted a concept to create 2 lots with access from a proposed 50-foot wide right-of-way; that the Board of Adjustment granted a variance for the lot width requirement for 2 lots to be 100-feet in width; that Ms. Gray proposes to create a 50-foot wide right-of-way and create 2 lots off of the right-of-way; that this would be a total of 4 lots with access from the right-of-way; and that this concept should be required to go through the major subdivision process.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to deny the requested concept. The staff may advise Ms. Gray that she shall be required to apply for a major subdivision. Motion carried 5 – 0.

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Subdivision #2003-35 – Route 30, L.L.C.

Request for reconsideration

Mr. Lank advised the Commission that the Applicants are requesting that the Commission reconsider their decision to deny this application; that the entrance has been removed from Route 30 and relocated to Route 38; that all of the lots are now a minimum of 32,670 square feet (0.75 acre); that a 20-foot landscape buffer is proposed along Route 30 and with the rear yard setback of 20-feet improvements would be setback 40-feet from the right-of-way of Route 30; that the Applicant feels that these revisions have addressed the concerns that the Commission had in denying this application; and that if the Commission is acceptable to this plan, it should be subject to a public hearing since there was opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to grant the request for reconsideration with the understanding that a public hearing will be required; that the fee for the public hearing may be waived; that the public hearing may be scheduled for the earliest available hearing date of the Commission; and that the street entrance should be relocated to adjoin the westerly property line along Route 38. Motion carried 5 – 0.

Holly Lake Campground

Revised Units – Route 24

Mr. Lank advised the Commission that this is a request to add 15 cabins for camping purposes in Holly Lake Campground; that 5 cabins measure 12' by 20'; that 10 cabins measure 13' by 24'; that the cabins will take the place of existing campsites; and that the cabins have already been placed on the sites.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the cabins for seasonal use with the understanding that the cabins shall not have any kitchens or bathrooms. Motion carried 5 – 0.

Meeting adjourned at 12:12am.