



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 8, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 8, 2005 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 pm with Acting Vice-Chairman Gordy presiding. The following members of the Commission were present: Mr. Gordy, Mr. Smith, and Mr. Johnson with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, and Mr. Kautz – Land Use Planner.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of August 25, 2005 as circulated.

OLD BUSINESS

C/U #1619 – application of **HELENA R. DOVE** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (5 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19,723 square feet, more or less, lying northeast of Road 270A (Munchy Branch Road), ½ mile northeast of Route One.

Mr. Johnson stated that he will not be participating in the discussion on this application since he was not in attendance for the public hearing.

The Commission discussed this application which has been deferred since August 25, 2005.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action. Motion carried 3 – 0.

Subdivision #2004-22 – application of **TERRANCE BABBIE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 47.57 acres into 62 lots, (Cluster Development) located at the

southeast corner of the intersection of Route 38 (Jefferson Road) and Road 229 (Smith Road).

Mr. Lank advised the Commission that this application has been deferred since March 3, 2005.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action. Motion carried 3 – 0.

Subdivision #2004-39 – application of **SENECA HARBOR JOINT VENTURE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 234 acres into 400 lots, (Clustered Development), located at the northeast corner of the intersection of Road 306 and Road 305.

The Commission discussed this application which has been deferred since August 11, 2005.

Mr. Johnson stated that he would move that the Commission approve Subdivision #2004-39, the application of Seneca Harbor Joint Venture, “Avebury” based on the record and for the following reasons:

- 1) The project is located within an AR-1 Agricultural Residential District.
- 2) The Subdivision is designed in accordance with the Cluster Development Ordinance. The Cluster design is innovative and superior to a standard subdivision with approximately 130 acres (approximately 56%) of open space, providing over 98 acres of multiple common areas and recreation areas on the site. Active/passive open space is proposed throughout the development. The open space delineated between the lots is innovative in nature and provides for a superior layout of lots in the development allowing for a greater sense of openness and aesthetic buffering. Most of the lots will adjoin open space, many with direct access to active recreation.
- 3) All of the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed. Open space is being preserved throughout the development rather than being concentrated in any one area. The development is compatible with other land uses in the area and should have a positive effect on adjoining property values.
- 4) The Applicant has proposed 400 lots within this project, which is less than the allowable 516 lots density for an AR-1 subdivision on this land. This is a reduction of 22%.
- 5) The project will be a restricted residential development consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community. Other subdivisions have been approved with the Cluster Development Ordinance in the immediate vicinity.
- 6) The Subdivision will include extensive amenities for all ages such as the following: bike paths, jogging and walking paths, playgrounds, swimming pool and pool house, basketball courts, tennis courts, soccer/softball field, a network of

- 3 recreational ponds, picnic areas, and sidewalks on both sides of all streets and street lighting.
- 7) Central water and sewer will be provided to the project by Tidewater Utilities, Inc.
 - 8) The wetlands areas will remain undisturbed. The site's design has a minimal impact on wetlands and no wetlands shall be included within any lots. The stream, Polly Branch Branch, is provided an average of 600 feet of buffering.
 - 9) The proposed subdivision is designed to address the purpose and standards of Section 99-9C of the Subdivision Ordinance and the requirements of the AR Clustering Ordinance. It provides for a total environment and design, which preserves the natural environment and provides over 56% open space with significant, usable amenities for all ages and activity levels.
 - 10) This approval of the preliminary subdivision is subject to the following conditions:
 - a. There shall be no more than 400 lots within the Subdivision. Lot #1 of the concept plan shall be relocated from Edinborough Lane.
 - b. 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.
 - c. The cemetery located on the property shall be accessible, properly designated, and maintained by the Homeowners Association.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County.
 - e. The use of a central community sewer system and stormwater management system shall maximize ground water recharge and erosion and sediment control measures shall comply with all State and County requirements. The wastewater treatment system will be designed to be able to tie into a County system when one becomes available.
 - f. All entrances shall comply with all of DelDOT requirements.
 - g. Street lighting shall be provided, and the location of the streetlights shall be shown on the final site plan.
 - h. Sidewalks will be provided on both sides of all streets.
 - i. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2-years of the issuance of the first Certificate of Occupancy. These recreational facilities shall include walking and jogging paths, bike paths, picnic areas, fishing areas, swimming pool, playgrounds, basketball courts and tennis courts.
 - j. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off, or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 am and 6:00 pm.
 - k. Road naming and addressing shall be subject to the approval of the Sussex County Addressing Department.
 - l. Provisions for an area to be used as a school bus stop shelter shall be set aside near the entrance in the event such is needed for the protection and

safety of the children. The former location of Lot #1 might serve more appropriately for the shelter.

- m. Agricultural buffers shall be provided in accordance with the Subdivision Ordinance.
- n. The areas around the stormwater management and recreational ponds will be landscaped with native planting, including tall grasses, wildflowers, shrubs and trees along the edges and buffer areas to deter nuisance species such as Canada Geese and Mute Swan.
- o. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant preliminary approval of this application for the reasons and with the conditions stated.
Motion carried 3 – 0.

Subdivision #2004-22 – application of **FRAN GONZON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 161.91 acres into 205 lots, (Cluster Development), located south of Road 227, east of Road 226, and north of Road 231.

Mr. Johnson stated that he will not be participating in the discussion on this application since he was not in attendance for the public hearing.

Mr. Lank advised the Commission that this application has been deferred since August 25, 2005.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action.
Motion carried 3 – 0.

Subdivision #2005-19 – application of **SUSSEX COUNTY HABITAT FOR HUMANITY** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 15.12 acres into 20 lots, located north of Road 524, 125 feet northeast of Jewell Street within Lakewood Subdivision.

Mr. Lank advised the Commission that this application is for a 19-lot cluster subdivision which was deferred on June 23, 2005, and that the State DNREC has indicated that the site is suitable for individual on-site septic systems.

Mr. Johnson stated that he would move that the Commission grant approval of Subdivision #2005-19 for Habitat for Humanity based upon the record and for the following reasons:

- 1) The project is located within an AR-1 District.
- 2) The development is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is superior to a standard subdivision because the project will be occupied by individuals that qualify for a Habitat for Humanity home, and who would not likely be able to afford the upkeep for a

standard sized lot. Also, by clustering, the number of homes available for Sussex County residents through Habitat for Humanity is maximized. Also, the items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed.

- 3) The Applicant has proposed 19 lots within the project, which is less than the allowable density for an AR-1 subdivision on this land.
- 4) The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties, community or schools.
- 5) Lots will be served by individual wells and septic systems.
- 6) The proposed subdivision serves a need within Sussex County for truly affordable housing for County residents.
- 7) The proposed subdivision meets the purpose and standards of the Subdivision Ordinance.
- 8) This approval of the preliminary subdivision is subject to the following conditions:
 - a. There shall be no more than 19 lots within the Subdivision.
 - b. 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.
 - c. The stormwater management system shall meet or exceed the requirements of the State and County.
 - d. The stormwater management system shall maximize ground water recharge and erosion and sediment control measures and shall comply with all State and County requirements.
 - e. All entrances shall comply with all of DelDOTs requirements.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant preliminary approval of this application for the reasons and with the conditions stated. Motion carried 3 – 0.

PUBLIC HEARINGS

Subdivision #2002-39 – application of **CHRISTINE REECE AND WILLIAM CUGNO** to consider the Subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space parcel into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision.

Mr. Robertson excused himself from participating in this public hearing.

Mr. Lank provided the Commission with copies of the Minutes of February 20, 2003, which referenced a previous public hearing for the same parcel; a copy of the Minutes of March 13, 2003, which referenced the Commission previous decision on the same parcel; a copy of a portion of the plot of the recorded Fox Hollow Subdivision depicting the site; and a copy of a letter received from L. Vincent Ramunno, Attorney for Liborio, L.P., in

opposition to the proposed revision. Copies and originals of the referenced copies are a part of the record for this application.

The Commission found that Christine Reece and William Cugno were present with Jackson Dunlap, Jr., Attorney, and stated in their presentations and in response to questions raised by the Commission that the applicants propose to develop the original open space lot into a residential lot; that the original owner intended to use the lot for his own use; that the property is still owned by the developer of Fox Hollow; that at no time has this lot ever been transferred to the home owners in Fox Hollow; that they take the position that the restrictive covenants are silent as they relate to this property; that the lot has never been used for recreational purposes; that the restrictive covenants have no reference to this parcel; that they applied to the Commission approximately two (2) years ago for this same revision; that the Commission approved the change in use of the parcel; and that they have received additional signatures of the home owners in the Fox Hollow Subdivision voicing no objection to the request totaling approximately 60% of the home owners.

The Commission found that Thaddeus Nowakowski, the original developer of the Fox Hollow Subdivision, was present and stated that he has been paying taxes on the parcel for 35 years; that he has maintained the parcel; that nothing in the deed restrictions reference this parcel; that he stored top soil and equipment on the site for approximately 10 years; and that his sons have gardened on the parcel.

The Commission found that Gail N. Singer submitted a copy of the latest Sussex County Tax Bill for the record.

The Commission found that Mr. Dunlap added that the restrictive covenants are already recorded.

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

The Commission found that John Gorecki, a home owner in Fox Hollow Subdivision, was present in opposition and stated that he was representing the people in the Subdivision who want a playground in the subdivision and that the lot has not been maintained properly.

The Commission found that L. Vincent Ramunno, Attorney, was present in opposition and stated that open space is open space; that 83 buyers bought lots in Fox Hollow Subdivision with the understanding that the development plan showed an open space; questioned how a developer can now sell the open space for a residential lot; that deeds reference the open space; that the fact that the developer kept the lot in his name does not eliminate the reference to open space; that the lot has not been maintained; that this proposal should be considered a resubdivision; that this parcel is the only open space in the subdivision; that Chapter 99 references the need for open space; that the developer should deed the parcel to the Homeowners Association who can then assess the lot

owners for maintenance; that it appears that the lot was intended to buffer the subdivision from the Peddlers Village Shopping Center; that the original signatures on the petition in support includes some tenants; that the computer printout that he provided with his letters should be compared to the lists of signatures provided to eliminate any tenants and to verify that they have obtained at least 51% of the home owners; that he would be willing to maintain the lot; that all of the owners of lots within Fox Hollow have vested interest in use of the open space; that a Homeowners Association does exists, but is not active since they have nothing to maintain; that the developer is paying taxes and holding the land rather than conveying the parcel to the Homeowners Association; and that the parcel could serve as a buffer between the subdivision lots and the rear of the shopping center. The Commission found that Frank and Lois Manzel, lot owners in the subdivision, were present in opposition and stated that they purchased their lot with the understanding that the adjacent parcel was open space; that he liked the idea that he would have a buffer adjacent to his lot; that revising the lot affects his lot; that the lot funnels water runoff from Pickwicke Lane; that Mr. Gorecki does represent the Homeowners Association and speaks on their behalf; that revising the parcel will change the development; that she did not originally object to a house being built on the lot until she realized that the lot was a designated open space; that she does not recall the original application; and that she has a fear that the lot could be sold and become a parking lot.

By a show of hands the Commission found that there were 6 parties present in support and 4 parties present in opposition.

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

Mr. Robertson did not participate in the discussion.

Mr. Johnson stated that there are a lot of issues and that the Commission may need to get a legal opinion from another County Attorney.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action so that matters can be taken under advisement. Motion carried 3 – 0.

Subdivision #2004-47 – application of **ANTHONY V. BRIGHT** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 0.86 acres into 2 lots, located at the northwest corner of Red Mill Drive and Road 265, being Lot 7, Block C within Mill Pond Acres Subdivision.

The Commission found that Anthony V. Bright was present and stated in his presentation and in response to questions raised by the Commission that the lot has 333 feet across the rear; that central sewer is available; that he has obtained letters of no objections from over 51% of the land owners in the Mill Pond Acres Subdivision; that he proposes to divide the lot into 2 lots; that the average lot in the development is 100-feet by 125-feet; that the smaller lot that he proposes is 115-feet by 125-feet; that an extra lateral already

exists for both lots for water and sewer connection; that the County will provide sewer service; and that Tidewater Utilities, Inc. will provide water service.

Mr. Lank advised the Commission that a variance is needed since one of the lots is less than 20,000 square feet.

Mr. Lank advised the Commission that if they are supportive of this subdivision it should be in concept only and subject to review and approval by the Board of Adjustment for a variance in the lot size.

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. Smith and carried unanimously to grant approval of the subdivision in concept subject to the granting of a variance for the lot size by the Board of Adjustment, since existing laterals are in place to serve the two lots, since the lots are similar in size to lots in the subdivision, and since the proposal should not have an adverse impact on the community or schools. Motion carried 3 – 0.

Subdivision #2004-48 – application of **CHARLES GUY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 57.81 acres into 38 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 534, 625 feet northwest of Road 546 and railroad.

Mr. Lank advised the Commission that this subdivision was reviewed by the Technical Advisory Committee on January 19, 2005 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

The Commission found that Charles Guy was present with Dean Campbell, Attorney, Steve Engel of Vista Design, and David Green and that they stated in their presentations and in response to questions raised by the Commission that they propose to develop 38 lots just outside of Seaford; that the lots vary in size from $\frac{3}{4}$ acre to 3 acres; that they will comply with all agency requirements; that they anticipate minimal impacts on wetlands and woodlands; that the project will conform to all Technical Advisory Committee requirements; that restrictive covenants have been submitted for review; that they have proposed that some of the wetlands are included in some lot areas and that restrictive covenants have been proposed that there shall be no disturbance of the wetlands; that the original site plan included a waiver from the 1,000 foot cul-de-sac length; that the revised site plan creates bubbles in the streets for turning around so that it eliminates the need for a waiver; that 30% of the project is open space and stormwater management areas; that

the plan complies with 99-9c of the Subdivision Ordinance; that buffers are planned to separate the project from the railroad; that the site is currently farmed and wooded; that residential lots exist along Road 534; that the entrance area will be improved with landscaping and fencing; that individual wells and septic systems are proposed; that there should be no impact on schools; that the site is located in a Low Density Area according to the Comprehensive Plan; that they purchased the site as two (2) parcels; that they have reconfigured the lot with the existing dwelling; that they are willing to revise the wording on the referenced "Outlots" to change them to open space; that they developed and chose to place restrictions on the lots for the buffers, rather than place the buffers under control of a Homeowners Association since there are only 38 lots proposed; that if they are required to separate the lots and buffers the lots will have to be reconfigured; that it has been the developer's experience in smaller subdivisions to allow individual lot owners to maintain and control the use of the buffers and wetlands since restrictive covenants are proposed; that septic feasibility has been granted by the State DNREC; that they anticipate the values of the proposed homes to be in the range of \$250,000 to \$275,000 similar to Saddlebrook Subdivision, another project that they are involved in; that the proposed restrictions are more restrictive than the Saddlebrook Subdivision; that no street lights or sidewalks are proposed; and that the berm along the railroad will be landscaped.

The Commission found that Bessie Hill was present and questioned the location of the entrance and then voiced no opposition to the application.

The Commission found that Richard Miller was present in opposition and expressed concerns about existing and future drainage problems; that a large tile exists under Road 534 that sometimes causes water around and under some of the homes along Road 534; that he has no objections to the location of the entrance; that Road 534 is heavily traveled since the construction of the Wal-Mart on Route 13; and that he is concerned about additional and increased traffic.

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

Mr. Smith stated that he would move that the Commission grant preliminary approval of the 38 lot subdivision with the stipulation that the lot lines be moved so that they do not include any buffer areas.

Motion died for the lack of a second.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action to clarify issues that were addressed in the public hearing. Motion carried 3 – 0.

Subdivision #2004-49 – 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 51.42 acres into 21 lots and a variance from the maximum

allowed cul-de-sac length of 1,000 feet, located north of Road 306, 1,425 feet west of Road 303.

Mr. Lank advised the Commission that this subdivision was reviewed by the Technical Advisory Committee on January 19, 2005 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

Mr. Lank advised the Commission that the State DNREC has provided a Feasibility Statement for the preliminary site plan and recommends that all individual site evaluations be completed and approved by their Department prior to allowing recordation of the subdivision to ensure that all proposed lots are viable.

The Commission found that William Schab, Attorney, and Roger Gross of Merestone Consultants, Inc. were present and stated in their presentations and in response to questions raised by the Commission that 21 lots are proposed; that the site is almost entirely wooded; that plans were drawn with an average lot size of 2 acres with minimal open space and restrictions; that 30-foot buffers are provided; that they anticipate a mound septic system on one lot and LPP or gravity septic systems on the other lots; that a small area of wetlands has been found at the proposed location of the cul-de-sac and may be developed under a Nationwide Permit; that they have not yet received verification from the Army Corps. of Engineers; that individual wells are proposed; that they propose to place the stormwater management facility at the entrance due to the location of an existing drainage system across Road 306; that the existing drainage system provides a positive outfall; that DelDOT has voiced no objections to the entrance design; that there should be no impact on the School District; that residential lots exists to the east; that approximately 10 acres of the woodlands will be disturbed for the streets, stormwater, and approximately ¼ acre for clearing the buildable area for each lot; that the majority of the lots will remain wooded; that they are in the process of developing individual septic evaluations for each lot; and that they have not yet moved the cul-de-sac away from the wetlands since the wetlands area only contains 0.10 acre and that the Army Corps. of Engineers may authorize filling the area.

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.

Mr. Johnson stated that he was concerned about the stormwater management facility being located along Road 306.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action for further advisement. Motion carried 3 – 0.

Subdivision #2004-50 – application of **PGS PROPERTIES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 67.39 acres into 74 lots (Cluster Development), located south of Road 433, 0.5 mile east of Road 412.

Mr. Lank advised the Commission that this subdivision was reviewed by the Technical Advisory Committee on January 19, 2005 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

The Commission found that the Applicants had submitted an exhibit booklet and that the exhibit booklet is a part of the record for this application. The exhibit booklet includes a color site plan, a boundary survey, a copy of the deed to the property, a legal description, a copy of the application form, a preliminary site plan, a map showing FEMA floodplains, a copy of a 1974 aerial map, a map showing the layout of the subdivision over an aerial, a map showing the Comprehensive Plan of the area, a site analysis map, a copy of proposed deed covenants and restrictions, a copy of portions of the Technical Advisory Committee Minutes for January 19, 2005 relating to the application, a copy of the PLUS application for this project, a copy of a letter from the Office of State Planning Coordination, dated December 17, 2004, a copy of a letter to the Office of State Planning Coordination in response to their letter from DC Group, a soil evaluation report prepared by Environmental Resources, Inc., a copy of a letter from DelDOT, dated November 3, 2004 in reference to this application, a copy of a letter from the Army Corps. of Engineers relating to wetlands, a letter from the State DNREC Division of Water Resources relating to septic feasibility with an attached Environmental Resources, Inc. report, a nutrient budget report, and a wetlands delineation map.

Mr. Lank advised the Commission that the street names have been approved for the project by Sussex County Addressing.

The Commission found that Preston Dyer of PGS Properties, L.L.C. and Mark Davidson of DC Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are proposing to develop this site with 20,000 square foot lots with a cluster design; that individual septs and wells are proposed; that the lots will meet the minimum of 20,000 square feet, 100-foot depth, and 100-foot width; that the soils are suitable for septic according to the feasibility statement received from the State DNREC; that forested buffers are proposed along all property lines; that they propose a 6-foot high fence along Smith, McCabe and Reynolds property lines; that all access to the lots shall be from the subdivision streets with no direct access from lots to Road 433; that the site is not located in a flood plain; that the site is located in a Low Density Area according to the Comprehensive Plan; that the site contains a mature stand of trees; that originally they proposed 74 lots; that they have reduced the number of lots to 72; that the two ponds on the site are the subject of a Conditional Use application for temporary borrow pits; that the site contains 1.72 acres of wetlands; that they are proposing to establish a 100-foot wide buffer from wetlands; that 28% of the site will be in open space; that 2-story homes are planned to contain 2,200 square feet of living space, exclusive of decks, porches, and garages; that 1-story homes

are planned to contain 1,800 square feet of living space; that an open space management plan is proposed to be incorporated into the deed restrictions; that a gazebo, walking paths, and a pedestrian/bike path are proposed; that the walking paths measures approximately 0.92 mile; that the pedestrian/bike path measures approximately 1.12 mile; that no lot lines are within the 100-foot wetland buffer; that there shall be no disturbance of wetlands; that Best Management Practices will be utilized; that the ponds meet the criteria for State stormwater management facilities; that the soils are sandy; that the stormwater management facilities will meet or exceed State and County requirements; that the site is approved for individual septic systems; that individual wells are proposed; that a standard subdivision of $\frac{3}{4}$ acre lots would generate 70 lots with no open space; that the cluster option improves the layout of the subdivision; that the most impressive improvement is open space; that this cluster design is superior in design to a standard subdivision; that the application meets the criteria of the Cluster Ordinance; that the subdivision meets the criteria of 99-9c of the Subdivision Ordinance; that the creation of borrow pits will reduce the impact on grade changes; that they have attempted to comply with all State Agency comments; that the open space calculation includes the ponds; that if the Conditional Use for the borrow pits is denied more trees will be required to be removed since stockpiling areas will be needed; that the nutrient budget provides for additional reduction of Nitrogen and Phosphorus; that walking paths are proposed along one side of all streets; that street lighting will be installed; and that the percentage of tree removal is minimal.

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. Smith and carried unanimously to defer action pending a decision of the County Council on the Conditional Use application for the borrow pits. Motion carried 3 – 0.

Subdivision #2004-51 – application of **W. JAMES AND ROBERT A. BOSCH** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 16.68 acres into 14 lots, located south of Road 252, $\frac{3}{4}$ mile west of Route 30.

Mr. Lank advised the Commission that this subdivision was reviewed by the Technical Advisory Committee on January 19, 2005 and that the Technical Advisory Committee Report for that meeting is a part of the record for this application.

Mr. Lank advised the Commission that the State DNREC has issued a statement of feasibility for septic and added that the comments in their letter are technical, and are not intended to suggest that DNREC supports this development proposal; that the letter does not in any way suggest or imply that the Applicant may receive or may be entitled to

permits or other approvals necessary to construct the development the Applicant indicates or any subdivision of these lands.

The Commission found that W. James and Roberta Bosch were present with William Schab, Attorney, and John Murray of Kercher Engineering, Inc. and stated in their presentations and in response to questions raised by the Commission that deed restrictions have not yet been submitted and that tree removal limitations will be referenced in the restrictions; that the open space calculation includes stormwater management areas and wetlands; that buffers are not required along the adjacent lands since the adjacent lands are a part of a proposed subdivision and pending subdivision; that the Huff family owned the site originally and required a restriction that a minimum of 20-foot of natural woodlands be retained and that a fence be erected; that no wetlands are proposed on any lots; that tree removal will be limited to areas for homes, septic, driveways and streets; that they received no objections from DelDOT; that there should be no impacts on the School District; that an environmental study was preformed and the stormwater management plan will be designed so as not to impact the “Swamp Pink” species on a portion of the site; that the Conservation District and DNREC will review the plans prior to a request for final approval; that all lots will access the subdivision streets, not Road 252; that wetlands areas are established based on soils and vegetation even though the site is presently dry; that lots lines will not encroach into wetlands; that 1-story homes will be required to maintain a minimum of 1,600 square feet of living space; that 2-story homes will be required to maintain a minimum of 2,000 square feet of living space; and that no mobile homes will be permitted.

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. Smith and carried unanimously to grant preliminary approval of this subdivision based on the record, since the site is located in an Agricultural Residential District, since the use is consistent with the area, since there should be no adverse impact on the neighborhood, and with the following conditions:

- 1) The Applicant shall cause to be formed a homeowners association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.
- 2) The entrance shall comply with all of DelDOT’s requirements.
- 3) Restrictive covenants shall be prepared in compliance with County requirements and shall include references to tree removal.
- 4) The stormwater management facilities shall be landscaped with native plantings, including tall grasses, wildflowers, shrubs and trees along the edges and within the buffer area around the stormwater management pond to deter nuisance species, such as Canada Geese and Mute Swans.

Motion carried 3 – 0.

Americana Bayside MR/RPC
Phase 11 Site Plan – Route 54

Mr. Lank advised the Commission that this is a preliminary site plan for 27 units in this phase; that the site plan is the same as the approved master plan; that the 27 units consist of 2 patio homes, 12 village homes, 12 estate homes, and 1 grand estate home; that this phase contains 13.23 acres; and that the site plan is suitable for preliminary approval.

Motion by Mr. Smith, seconded by Mr. Johnson and carried 3 – 0 to grant preliminary approval of Phase 11 for 27 units. Motion carried 3 – 0.

The Peninsula at Long Neck MR/RPC
Marina Bay Amended Site Plan – Road 299

Mr. Lank advised the Commission that this is a revised site plan for 458 units; that the approved master plan has 3 interior cul-de-sacs in this area; that the revised plan deletes the cul-de-sacs on the interior and provides a connector road; that the revised plan creates more open space; that there are 134 single family detached units, 126 townhouse units and 198 multi-family units proposed; that the revised site plan is suitable for preliminary approval; that the areas impacted are the interior of the Marina Bay Circle and the townhouse/multi-family portions adjacent to Golf Holes 17 and 18; that the total lengths of streets and drives have decreased by 1,900 linear feet; that the stormwater management ponds have been increased in size in the interior of Areas 1 and 3 and two new ponds are proposed in Area 2; that these ponds are all oversized and will enhance water quality; that open space areas behind the units have been increased in size; that the overall number of housing units in the project will remain as originally approved, 1404 units; and that the revised site plan is suitable for preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant preliminary approval of the Marina Bay Amended Site Plan. Final approval of the site plan shall be subject to review and approval by the Commission. Motion carried 3 – 0.

Ocean Sands, L.L.C.
Commercial Site Plan – Route One

Mr. Lank advised the Commission that this is a preliminary site plan for 19,605 square feet of retail and office space located on 1.02 acres; that the site is zoned C-1; that ingress/egress is off of Route One; that DeIDOT has issued a letter of no objection for the entrance location; that the setbacks meet the requirements of the Zoning Code; that 67 parking spaces are required and 85 spaces are provided; that 30 spaces are located within the front yard setback of 60-feet and need a waiver from the Commission; that Tidewater Utilities, Inc. will provide central water and the County will provide central sewer; that there are not any wetlands located on the site; that the site plan is suitable for preliminary approval and final approval could be subject to the staff receiving all agency approvals;

and that automotive sales facilities exists on both sides of the site with parking adjacent to the right-of-way of Route One.

The Commission found that Mark Davidson of DC Group was present on behalf of the Applicants and stated that 4 entrances are being replaced with 1 entrance/exit; that DelDOT has requested a 30-foot wide cross access easement, but normally accepts a 25-foot wide easement; and that the proposed building square footage is similar to the existing square footage of the existing buildings on the site.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant preliminary approval of the site plan and the requested waiver since the adjacent sites have parking in the front yard setback. Final approval shall be subject to the staff upon receiving all appropriate agency approvals. Motion carried 3 – 0.

Anchorage Motel Revised Site Plan – Route One

Mr. Lank advised the Commission that this is a revised site plan for a 4,240 square foot addition for a 12-room addition to the motel on the site; that the site is zoned C-1; that DelDOT has issued a letter of no objection for the entrance and will require improvements; that the setbacks meet the requirements of the Zoning Code; that 69 parking spaces are required and provided; that Tidewater Utilities, Inc. will provide central water; that the County will provide central sewer; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant preliminary approval of the site plan. Final approval shall be subject to the staff upon receiving all appropriate agency approvals. Motion carried 3 – 0.

Mariner Center Commercial Site Plan – U.S. Route 113

Mr. Lank advised the Commission that this is a commercial site plan for a warehouse and office complex located on 3.41 acres; that the site is zoned C-1; that DelDOT has issued a letter of no objection for the entrance location; that there are three (3) 49.5' by 100' (4,950 square feet) and one (1) 50' by 50' (2,500 square feet) buildings proposed; that the setbacks meet the requirements of the Zoning Code; that 28 parking spaces are provided; that on-site sewer and water are proposed; that the site plan is suitable for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to grant preliminary approval of the site plan. Final approval shall be subject to the staff upon receiving all appropriate agency approvals. Motion carried 3 – 0.

The Arbors of Cottagedale
C/U #1522 – Revised Site Plan – Road 275

Mr. Lank advised the Commission that the site plan for twenty (20) 4-unit buildings was approved by the Commission on May 14, 2004 and by the staff on July 14, 2005; that due to extreme site conditions, the developers are requesting to revise the site plan as one loop road through the access road, to remove the second loop road and buildings, to replace that area as open space and recreation area, to convert the proposed two story buildings with three story buildings on the same footprints for a total of 11 buildings containing 6-units each for a total of 66 units with associates parking and garages; that the clubhouse and pool are proposed to be relocated to the south side of the loop road; that the number of units is proposed to be reduced by 14 units; and that the Commission may either approve the revised site plan as a preliminary or require an amended Conditional Use application.

The Commission found that Paul Robino was present and stated that the site conditions warrant the corrections; that less impervious surfaces will be created; that 2 monitoring wells exists on the site which are monitored by DNREC; that the north half of the site is more suitable for development; that the south half of the site would require major mining of the site; that the proposed three story buildings will create more open space; that the site has been cleaned up and that a majority of the fill cover has been placed; that DNREC continues to monitor the improvements on the site; and that they realize that all agency approvals will be required.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant conceptual approval of the revisions of the project since the revisions reduce the number of units. Preliminary approval shall be subject to review and approval by the Commission. Motion carried 3 – 0.

Madeline L. and Floyd J. Toomey
Lot and a 50-foot Right-of-Way – Road 523

Mr. Lank advised the Commission that this is a request to create a 2.0 acre lot with access from a 50-foot right-of-way off of Road 523; that there is an existing driveway that the owner proposes to make into a right-of-way; and that the right-of-way will serve as access to the 2.0 acre lot and the residual 5.31 acre parcel.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to grant conceptual approval of the lot and access with the stipulation that any further subdivision of the residual lands will require a major subdivision application and improvements to the road. Motion carried 3 – 0.

Oscar E. Harmon, Jr.

Lot and a 50-foot Right-of-Way – Route 5

Mr. Lank advised the Commission that this is a request to create a 0.75 acre lot and a 50-foot right-of-way off of Route 5; that there is an existing driveway that the owner proposes to make into a right-of-way; and that the right-of-way will serve as access to the proposed lot and the residual 1.1 acre lot.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant conceptual approval of the lot and access with the stipulation that access to both lots shall be from the right-of-way. Motion carried 3 – 0.

Danny Moore

Lot and a 50-foot Right-of-Way – Road 231

Mr. Lank advised the Commission that this is a request to create a 4.01 acre parcel with access from a 50-foot right-of-way off of Road 231; that the proposed easement will cross a 0.97 acre lot and serve as access to the 4.01 acre parcel to the rear.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant conceptual approval of the lot and access with the stipulation that both lots will have access from the proposed right-of-way and that any further subdivision of the 4.01 acre parcel shall require a major subdivision application and improvements to the road. Motion carried 3 – 0.

Short's Marine

C/U #1551 – Time Extension – Road 306A

Mr. Lank advised the Commission that this is a request for a time extension; that this application for boat storage was approved on September 21, 2004; and that this is the first request for a time extension.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to grant a one-year time extension since this is the first request. Motion carried 3 – 0.

ADDITIONAL BUSINESS

Future Meetings

The Commission discussed the scheduling for October 2005.

Mr. Lank advised the Commission that seven (7) hearings have been scheduled for October 13, 2005 with a starting time of 7:00 pm and that this agenda will not include any other business.

There was a consensus of the Commission that a special meeting will be held on October 20, 2005 at 6:00 pm for the purpose of reviewing site plan and other business only.

Meeting adjourned at 11:22 p.m.