



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF OCTOBER 27, 2005

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 27, 2005 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Acting Chairman Wheatley presiding. The following members of the Commission were present: Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Wheatley with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve the Minutes of October 13, 2005 as circulated.

### OLD BUSINESS

**SUBDIVISION #2002-38** – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 22.02 acres into 42 lots, located south of Route 54, 450 feet southeast of Road 58B.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to approve Phase 2 as a final.

Motion carried 4 – 0.

**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 advised the Commission that he would not be participating in this discussion since he excused himself from the public hearing on September 8, 2005.

Mr. Johnson stated that he would move that the Commission grants preliminary approval of Subdivision #2003 – 39 for Christine Reece and William Cugno based upon the record and for the following reasons:

1. The Applicants are seeking the subdivision of land in a MR Medium Density Residential District by revising an existing open space parcel into a building lot within the existing Fox Hollow Subdivision.
2. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
3. The Applicant has provided the required 51% agreement of the existing property owners within the Fox Hollow Subdivision.
4. The land is zoned MR which permits low-density single family residential development of this type.
5. The proposed subdivision is generally in character with the existing subdivision. The 1.25-acre parcel is actually larger than the other lots in the subdivision.
6. Although the parcel in question was shown on the original plan as “open space”, it does not appear that it was specifically designated for any particular purpose such as a recreation area.
7. According to the information presented, the parcel was intended to serve as something of a buffer between the residential area of Fox Hollow and the commercial area along Route 24, now known as Peddler’s Village.
8. The residents of Fox Hollow have not utilized this parcel in any manner in 35 years. Rather it has been a source of complaints and perhaps an eyesore at times due to the sporadic maintenance. While providing some spatial barrier between the residential and commercial areas, it has not had any landscaping or plantings, which would have provided at least some visual buffer.
9. The parcel was never transferred to the Fox Hollow HOA and has never been utilized by the Subdivision. Instead, ownership has been retained for approximately 35 years by the original developer of the subdivision. Property taxes have been continuously paid by this owner and the property has been periodically maintained by the same.
10. The County’s Ordinance (99 – 13) authorizes a resubdivision or an alteration to a previously recorded plot, and the requirements have been complied with in this application. The application has been exposed to a public hearing and the resubdivision or alteration has been approved by no less than 51% of the lot owners.
11. The Commission has reviewed and considered the requirements of Section 99 – 9 ©, and finds that most of those considerations would have been relevant for an initial subdivision, but have little application to a resubdivision or alteration of a recorded plot. The Commission is aware of the goal of Subsection 4 in preserving open space and scenic views, but the record was clear that there was nothing scenic about the view of this property, and preserving open space, which is an eyesore of little value. Subsection 6 addresses screening objectionable features from neighboring properties

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and roadways, and it is the Commission's view that the vacant lot has done little to satisfy that consideration for 35 years, and that a newly constructed residential dwelling would do far more to satisfy that requirement than the vacant lot. Finally, the newly constructed residential dwelling would, in the Commission's view, have a positive impact on property values compared with the eyesore which has existed, and the use of the property for a single family dwelling would be compatible to the remainder of the subdivision.

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12. The term "open space" is not defined in the subdivision ordinance. Whereas the opposing parties acknowledge this area was intended to act as a buffer between the commercial area and the residential community and has not been adequately or routinely maintained, it is the Commission's finding that the Fox Hollow residential community will be better served if the "open space" was to become a lot within the subdivision for a single family dwelling.

This recommendation is subject to the following conditions:

1. There shall be only 1 single family dwelling built on this lot.
2. A fence or screening landscape buffer of at least 6 feet in height shall be constructed or maintained between the commercial property and this parcel with the exception of an area at least 30 feet from Fairfield Road so as to not impede safe pedestrian or vehicular traffic.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 3 votes to 1 with Mr. Wheatley opposed, to approve this application for the reasons, and with the conditions stated.

Motion carried 3 – 1.

**SUBDIVISION #2003-9** – application of **1<sup>ST</sup> STATE DEVELOPMENT, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 31.90 acres into 30 lots, located south of Road 38, 791.51 feet east of Road 216.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to approve this application as a final.

Motion carried 4 – 0.

**SUBDIVISION #2004-52** – application of **HOLLAND MILLS DELAWARE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 68.29 acres into 136 lots, (Cluster

Development), located south of Road 260 (Walker Road), approximately 1 mile west of Road 258 (Hudson Road).

Mr. Johnson advised the Commission that he would not participate in this discussion since he was not at the public hearing on September 22, 2005.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to defer action to allow the Commission more time to consider the information presented.

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Motion carried 3 – 0 – 1.

**SUBDIVISION #2004-53** – application of **ANTHEM DELAWARE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 75.89 acres into 151 lots, (Cluster Development), located north of Road 260 (Walker Road), approximately 1 mile west of Road 258 (Hudson Road).

Mr. Johnson advised the Commission that he would not participate in this discussion since he was not at the public hearing on September 22, 2005.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to defer action to allow the Commission more time to consider the information presented.

Motion carried 3 – 0 – 1.

**SUBDIVISION #2004-54** – application of **LBI CONSTRUCTION** to consider the Subdivision of land in an AR-1 Agricultural Residential District and GR General Residential District in Indian River Hundred, Sussex County, by dividing 67.92 acres into 115 lots, (Cluster Development), located west of Road 288 (Wil King Road), approximately 1,620 feet north of Road 280-B (Conleys Chapel Road).

Mr. Johnson stated that he would move that the Commission grants preliminary approval of Subdivision #2004 – 54 for LBI Construction “Oakwood Village” based upon the record and for the following reasons:

1. 54 acres of the site are zoned AR-1 which permits low-density single family residential development at a density of approximately 2 lots per acre. In addition, approximately 9.7 acres of the site are zoned GR which permits approximately 4 lots per acre. The proposed subdivision density of 115 lots results in a gross density of 1.8+/- lots per acre which is significantly less than the density permitted by the current zoning.
2. The Subdivision is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is innovative and superior to a standard subdivision with

multiple common areas and recreation areas on the site. Active/passive open space is proposed throughout the development. The forested open space delineated between the lots extensively proposed throughout the development is innovative in nature and provides for a superior layout of lots in the development allowing for a greater sense of privacy and aesthetic buffering. Most lots adjoin forested areas or wet ponds. Considerable efforts were made to preserve wooded areas and/or to reforest.

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3. All 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 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 no impact on wetlands, no wetlands are included within any lots, natural areas are preserved and significant buffers are provided where appropriate.
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.
6. The Subdivision will include recreational amenities for all ages such as the following: walking paths, swimming pool, club house, tennis court, basketball court, sidewalks and street lighting.
7. Central water will be provided to the project by Tidewater Utilities. Central sewer will be provided by a licensed wastewater treatment plant operator.
8. The wetland areas will remain undisturbed. The site's design has a minimal impact on wetlands and no wetlands shall be included within any lots.
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.
10. This motion for approval is subject to the following conditions:
  1. There shall be no more than 115 lots within the subdivision.
  2. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of the streets, roads, any buffers, storm water and wastewater management facilities, and other common areas.
  3. The storm water management system shall meet or exceed the requirements of the State and County.
  4. The use of a central community sewer system and storm water 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.

5. All entrances shall comply with all of DelDOT's requirements.
6. Street lighting shall be provided, and the location of the streetlights shall be shown on the final site plan.
7. Sidewalks will be provided on both sides of all streets.
8. Recreational facilities and amenities shall be constructed and open to use by the residents of the development within 2 years of the issuance of the first Certificate of

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Occupancy. These recreational facilities shall include a swimming pool, clubhouse, basketball court, and tennis court.

9. 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 a.m. and 6:00 p.m.
10. Road naming and addressing shall be subject to the approval of the Sussex County Addressing Department.
11. 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.
12. Agricultural buffers shall be provided in accordance with the Subdivision Ordinance.
13. The wastewater treatment plant will have a landscaped buffer around the perimeter.
14. In addition to the proposed stub street on Jake Circle, at least 1 stub street shall be provided from North Acorn Way to the adjacent parcels.
15. Per 115-25E(5), no lots shall have direct access to any State maintained roads, so the identified out parcel is not to be considered part of the subdivision.
16. 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 approve this application as a preliminary for the reasons, and with the conditions stated.

Motion carried 4 – 0.

**SUBDIVISION #2004-55** – application of **J. MICHAEL WARING – MJR INVESTORS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 76.85 acres into 100 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located northwesterly side of Road 297 (Mount Joy Road), 1,360 feet southeast of Road 308 (Cordrey Road).

Mr. Johnson stated that he would move that the Commission deny preliminary approval of Subdivision #2004 – 55, MJR Investors, L.L.C. for “Baylis Estates” as presented, based on the record and for the following reasons:

1. The applicant did not adequately address all the sections of 99-9C and did not establish adequately that the proposed cluster development provides for a total environment and design which is superior to a standard subdivision.
2. The preliminary plan as submitted did not sufficiently address various sections of 99-9C including Preservation of natural features; preservation of open space and scenic views; and provision for safe vehicular and pedestrian movement within the site and adjacent ways.
3. Although recommended in the PLUS comments, the preliminary plan did not provide for a stub street to the east to the Coursey parcel; did not follow DNREC's

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recommendation that the plan be redesigned or reduce the sizes of the storm water management ponds, and the site is not interconnected and does not encourage walkability. The applicant has not satisfied the Commission with clear reasons for the need for such large ponds.

4. With such large ponds, the project would represent a significant change in the existing landscape on the property. As a result, the applicant has not satisfied "integrated the proposed subdivision in the existing terrain and surrounding landscape".
5. Such large, concentrated storm water management ponds will not "minimize tree, vegetation and soil removal and grade changes" as required by Section 99-9C.
6. According to the Subdivision Ordinance, land should not be subdivided if it is not suitable for subdivision or development because of flooding, poor drainage or other adverse features which are reasonably harmful to the safety, health and general welfare of the present and future inhabitants of the proposed subdivision and the neighboring property owners. The Commission was not satisfied from the preliminary site plan that was presented or the explanation given by the applicant that the current design of the proposed subdivision addresses these issues. In terms of the Clustering Ordinance, the applicant has satisfied the Commission that the current design would address these issues better than a superior design with storm water management ponds disbursed throughout the project.
7. The storm water management ponds, as proposed, are concentrated in 2 large ponds, which comprise an area equal to or greater than the combined area for the building lots (20+acres vs. 19+acres). The ponds are further concentrated in a section of the property whereby they are not readily accessible to the residents of the development and the proposed forested area further precludes the ponds from providing a ready sense of openness to the residents. Other approved cluster developments have made better use functionally and aesthetically of storm water management ponds by distributing them throughout the subdivision in smaller sizes.
8. As stated in the PLUS comments, "Community trail systems with long continuous trails, perimeter only trails, and systems with few access points, often go unused and neglected." These issues were not adequately addressed in the PLUS comments response or the preliminary site plan. The preliminary site plan appears to do just that by showing limited access to the walking paths around the large storm water management ponds.

9. The preliminary site plan with sidewalks proposed on only 1 side, coupled with the isolation of the recreation area, and without interconnection of the walking trails to the entire subdivision, does not promote safe pedestrian movement within the site.
10. One of the purposes of the Clustering Ordinance is to promote the use of design concepts that accommodate new and innovative lot configuration, and promote community interaction through a pedestrian friendly development pattern. In this case, the applicant has failed to address this purpose of the Clustering Ordinance and many of the PLUS concerns in a meaningful way, and as a result, the Commission is not satisfied that this project is superior to a standard subdivision.

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Motion by Mr. Johnson, seconded by Mr. Smith, and carried 3 votes to 1, with Mr. Wheatley opposed, to deny this application as submitted based on the reasons stated.

Motion carried 3 – 1.

**SUBDIVISION #2004-56** – application of **OCEAN ATLANTIC VIII, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown and Broadkill Hundreds, Sussex County, by dividing 53.39 acres into 42 lots, located north of Road 252 (Huff Road), 3,200 feet east of Road 319 (Sandhill Road).

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2004 – 56, for Ocean Atlantic VIII, L.L.C. “Reddenwood Phase II” based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County. This is Phase II of an existing subdivision with similar characteristics.
2. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision is integrated into the existing terrain and surroundings.
4. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
6. DNREC has indicated that the site is suitable for individual on-site septic systems.
7. This recommendation is subject to the following conditions:
  1. The Phase II shall become part of the homeowners’ association formed by Phase I to be responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
  2. The storm water management system shall meet or exceed the requirements of the State and County.



3. Multi-modal paved paths separated by grass areas shall be provided on at least 1 side of the streets throughout Phase II to facilitate safe, convenient off-road access for pedestrian travel.

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

Motion carried 4 – 0.

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**SUBDIVISION #2005-6** – application of **S. K. PEPPER CREEK, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 65.39 acres into 125 lots, (Environmentally Sensitive Developing District Overlay Zone), located south of Road 336 (Piney Neck Road), 1,170 feet east of Road 335A and north of Pepper Creek.

Mr. Smith stated that he would move that the Commission grants preliminary approval of Subdivision #2005 – 5 for S.K. Pepper Creek, L.L.C. based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The Sussex County Comprehensive Plan designates the area as being within the Environmentally Sensitive Developing Area. The land is zoned AR-1 with a permitted density of 138 single-family residences. The applicant has a 3.2-acre out parcel, which could reduce the permitted AR-1 density to 31 single-family residences. The applicant is asking for approval on a plan that shows 125 single family residences which is less than the density allowed in the underlying AR-1 zone.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings or community facilities.
5. The proposed subdivision will include a variety of recreational and open space features, which support the provisions, and/or intent of the Environmentally Sensitive Developing District Overlay Zone Ordinance.
6. This recommendation is subject to the following conditions:
  1. This approval is for the preliminary site plan of the residential subdivision and the 3.2-acre out parcel as an unimproved out parcel. No consideration is given to any future improvement to the out parcel as a marina, etc.
  2. The 11.92 acres of open space shall be contained within the residential subdivision and not included in the 3.2 acres of the marina out parcel.
  3. No wetlands shall be located on any of the lots.

4. The 2 storm water management ponds in the vicinity of County Road 336 entrance are to be relocated to the interior of the subdivision or landscaped and shielded from view on Road 336 by a berm.
5. The applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of streets, storm water management facilities, any buffers and other common areas.
6. All entrances shall comply with all of DelDOT's requirements.
7. The storm water management system shall meet or exceed State and County requirements.

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8. The final site plan shall be subject to approval by the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary for the reasons, and with the conditions stated.

Motion carried 4 – 0.

#### PUBLIC HEARINGS

**SUBDIVISION #2004-59** – application of **DONALD K. MILLER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 2.15 acres into 2 lots, located south of Road 494, 1,350 feet east of Road 498.

The Commission found that no one appeared on behalf of the application.

There was a consensus of the Commission to refer this application to the end of the public hearings in case the Applicant was running a little late.

At the conclusion of the public hearings the Chairman again referred to this application.

The Commission found that no one appeared on behalf of the application.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to deny this application since no one appeared and therefore there was no record in support of the application.

Motion carried 4 – 0.

**SUBDIVISION #2004-60** – application of **PHILLIPS BRANCH ASSOCIATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 47.63 acres into 95 lots, (Cluster

Development), located at the southwest corner of the intersection of Road 48 (Hollymount Road) and Road 302 (Phillips Branch Road).

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 16, 2005 and that the report will be made a part of the record for this application; that the applicants submitted an Exhibit Booklet, revised plans based on the recommendations of the Technical Advisory Committee, and proposed deed restrictions which will all be made a part of the record.

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The Commission found that Gene Bayard; Attorney, Mark Handler, Randy Mitchell and Jennifer Finch of Phillips Branch Associates, L.L.C. and Jason Palkewicz and Rebecca Michaels with McCrone, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicants have met with the Office of State Planning Coordination through the PLUS process; that the preliminary plan has been reduced to 85 lots by incorporating the comments made by the PLUS process; that an additional application for a conditional use for a wastewater treatment plant was filed with this application and that hearing is scheduled for December 8, 2005; that if approved, that application would handle the wastewater treatment created by this application; that a decision on this application needs to be deferred until that application is heard and a decision is rendered; that there are other single family developments in the area that are under construction; that Artesian will provide central sewer and water to the site; that the Office of State Planning Coordination has endorsed this application; that all of the items referenced in Subsection 99-9C have been addressed in the Exhibit Booklet; that the design of this project complies with the subdivision and zoning codes; that a standard subdivision could have 64, 20,000 square foot lots and presented an example design; that interconnections are provided to the west and south sites; that the storm water management ponds have been relocated from the original design; that multi-modal paths and additional right of way dedication have been provided; that 85% of the forest is being retained; that walking trails are provided throughout the project; that a multi-purpose athletic field, sidewalks, a playground, and passive recreation areas are proposed; that 44.7% of the site is open space; that streetlights will be provided; that DelDOT did not require a traffic impact study; that all of the lots adjoin open space to the rear of each lot; that buffers will be provided; that the restrictive covenants have been submitted; and that if the conditional use for the wastewater treatment plant is not approved, this application will have to have an on-site sewer system.

The Commission found that no parties appeared in support of or in opposition to this application.

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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action pending the outcome of Conditional Use #1629 for a wastewater treatment plant.

Motion carried 4 – 0.

**C/U #1624** – application of **DESIGN CONSULTANTS GROUP, L.L.C.** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures (64 units) to be located on a certain parcel of land lying and being in

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Baltimore Hundred, Sussex County, containing 16.01 acres, more or less, lying north of Road 358 (Sandy Cove Road), 1,200 feet northwest of Road 357 (Cedar Neck Road).

The Commission found that the Applicants had submitted a Revised Site Plan and an Exhibit Booklet that contains an aerial photograph overlaid with the project layout, an aerial photograph of the area, a color rendering of the site plan, a copy of the application form, copies of surveys of the property, copies of deeds to the property and a legal description of the property, a copy of the PLUS (Preliminary Land Use Service) application form, a copy of letters from the Office of State Planning Coordination for July 15, 2004 and March 11, 2005, a copy of a letter of response to the Office of State Planning Coordination for December 23, 2004, a copy of the DelDOT Support Facilities Report for June 2, 2004, an Environmental Assessment Report, a reduced copy of the site plan, a series of maps and aerials, 13 photographs, a Nutrient Loading Assessment Report, and a Soils Investigation Report.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division that the System Design Assumption for this site in the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District is 4.0 EDUs; that wastewater capacity is available for the project; that Ordinance No. 38 construction will be required; that the current System Connection Charge Rate is \$3,382.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer during the sewer concept plan process; that conformity to the South Coastal Area Planning Study or undertaking an amendment will be required; and that a concept plan will be required.

The Commission found that a letter was received from the Sussex Shores Water Company stating that the Company is willing and able to provide water service providing the developers execute a water service agreement with the Company.

The Commission found that Joe Goldstein, Applicant, was present with Eugene Bayard, Attorney, Robert Kauffman, Realtor, Mark Davidson of DC Group and Paul Westal of Fulmer and that they stated in their presentations and in response to questions raised by the Commission that the site is zoned GR General Residential; that sewer capacity is

available from the County; that the Conditional Use proposed something different in the GR District; that 64 units are proposed; that the site is in an area of mixed uses, including manufactured home communities and subdivisions, a mobile home park and campground, a tennis complex with proposed multi-family units, commercial/business, and some existing multi-family; that they propose to build a multi-family project with condominium sales; that a previous campground to the west is now doing site work for a multi-family project for Ryan Homes; that the project should have a positive impact on the area; that there is a demand in the area for this type of housing; that they propose to create a focal point around the pond in the layout of the project; that pedestrian walkways

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and sidewalks are proposed; that a pool, tennis court, and shuffleboard courts are proposed; that they plan on installing fountains in the pond; that all garages face into the interior of the project; that streetlighting is proposed with downward illumination; that a landscaping plan will be provided; that they have spoken with the Indian River School District and the State Police and heard no objections; that there should be minimal tree disturbance; that street trees will be added; that the townhouse units will contain approximately 2,000 square feet per unit; and that 2 parking spaces plus 1 garage space will be provided for each unit.

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

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

Mr. Gordy stated that the proposed use is not out of character with the area.

Mr. Johnson stated that the trend in the area is development of dwellings and townhouses, rather than manufactured homes, and that the proposed use is in accordance with the development in the area.

Mr. Smith stated that the project appears to be saving the trees on the site and that it will be an improvement to a site, which has been vacant for several years.

Mr. Smith stated that he would move that the Commission recommends approval of C/U #1624 for Design Group Consultants, L.L.C. based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is appropriate because such residential development is appropriate in areas where central water and sewer are available. The County Engineering Department states that there is sewer capacity for the project.
- 2) The property is in an area where other residential development has occurred, including Bethany Marina and Cedar Shores projects.
- 3) Existing trees will remain undisturbed.

- 4) The Applicant is seeking townhomes at a density acceptable to the County Engineering Department.
- 5) With the conditions and stipulations placed upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 6) This recommendation for approval is subject to the following conditions:
  1. The maximum number of residential units shall not exceed 64 townhouse condominium units.

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2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
3. The swimming pool shall be constructed and open to use by residents within 2 years of issuance of the first building permit for the project.
4. The development shall be served as part of a Sussex County Sewer District and the developer shall install all sewer infrastructure at its own expense to connect to the existing sewer according to all Engineering Department standards.
5. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these features.
7. The stormwater management pond on the southeast corner of the project shall be shielded from the view of Route 358 by landscaping and a berm.
8. Site plan review of each phase of development shall be subject to the approval of the Planning and Zoning Commission.
9. The interior street design shall be in accordance with or exceed Sussex County street design requirements.
10. Sidewalks shall be installed along at least one side of all streets.
11. Streetlights shall be installed and shown on the final site plan.
12. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
13. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impacts.
14. Signage shall be limited to one ground sign, not exceeding 32 square feet per side or facing.

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

Motion carried 4 – 0.

**C/U #1625** – application of **SAMUEL S. CONNORS** to consider the Conditional Use of land in a GR General Residential District and an AR-1 Agricultural Residential District for the storage of powerwashing equipment, landscaping supplies, and land clearing

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equipment to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.162 acres, more or less, lying southwest of Road 285A (Jimtown Road), 0.4 mile southeast of Road 285 (Beaver Dam Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing Level of Service “A” of Road 285A will not change as a result of this application.

The Commission found that Samuel Connors and Larry Fifer, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that the Applicant proposes to build a home on the site and a pole building to house equipment for his powerwashing and land clearing business; that he is presently improving the site by cleaning up the site; that he has hauled in excess of 100 loads of debris from the site; that he is presently leasing a site in Nassau; that he proposes to store all of his equipment inside the pole building; that there will be no outside storage on the site; that the proposed building measures 30’ by 80’; that he has no intent to store plant material on the site; that if a sign is erected it will not be lighted; that the pole building will have garage doors; that he has no objections to fencing or screening the side property line is required; that the pole building will be at least 20’ from the site property line and 200’ from the road frontage; that business hours will not exceed the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday; that there will be no Sunday hours; and that the color of the pole building will blend in with the woods surrounding the site.

The Commission found that John Connors, the Applicant’s father, was present and stated that they had met with a lot of the residents in the area; that his son does not want to disrupt the area; that his son wants to live on the site and work from the site; and that all of his son’s work is on job sites that are off-site.

The Commission found that Arnia Kemp and Rosalyn J. Allen Echols were present in opposition to this application and expressed concerns about the loss of the residential character of the area; that the use is out of character with the residential character of the area; that children and older residents live in the area; that older residents need rest; that

they are concerns about noise, heavy equipment, traffic, and business hours; and that they have no objections to farming activities in the area.

Ms. Echols also expressed some concerns about another gentleman in the area that parks dumptrucks and commercial lawnmowers on properties belonging to others, and that this activity has been on going for several years.

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

There was a consensus of the Commission that they would like to review the site again.

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Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action for further consideration.

Motion carried 4 – 0.

**C/U #1626** – application of **JULIE BERNICK AND DEBORAH SAFEE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for dog grooming to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8,276 square feet, more or less, lying at the northwest corner of Route 30 and Horseshoe Drive, and north of Route 24.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service “C” of Road 24.

The Commission found that a letter was received from Jeni Coffelt voicing no objections to this application.

The Commission found that Julie Bernick was present and stated in her presentation and in response to questions raised by the Commission that they had recently purchased the property from Dr. Butterworth; that the site was formerly used by Dr. Butterworth as a dental office; that they propose to operate a dog grooming business on the site; that the business will include hair and fur cuts, washing and nail clipping; that they use all organic products that are bio-degradable; that the business should have less traffic than the previous use; that parking already exists on the site due to the previous use; that they have a small area fenced in to allow for a dog run; that dog waste is picked up and placed in a poop can; that business hours are proposed to not exceed 8:00 a.m. to 6:00 p.m. Thursday through Monday, since they are closed on Tuesday and Wednesday; that the only sign will be a wall sign on the building; and that any sign that replaced the existing sign will not be any larger than the existing sign.

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



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

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 based on the record made at the public hearing, since the site was previously used as a dental office, since the use will not create additional traffic, since there should be no adverse impact on the neighborhood or community, and with the following conditions:

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- 1) Business hours shall not exceed 8:00 a.m. to 6:00 p.m. Thursday through Monday.
- 2) There shall not be any kenneling overnight.
- 3) The existing sign may be permitted. Any revised signage shall not exceed the size of the existing sign.
- 4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 4 – 0.

**C/Z #1581** – application of **GEORGE C. COVERDALE** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of Route One, 700 feet northerly of Road 265A (Old Mill Road), to be located on 40,000 square feet, more or less.

The Commission found that the Applicant had submitted a Site Plan and an Information Packet that Tax Map marked to show zoning and business/commercial uses in the area, eleven (11) photographs of the area and site, Guidelines for Non-residential Uses from the Comprehensive Plan Update, a copy of a letter from the Office of State Planning Coordination, a copy of the DelDOT Support Facilities Report for December 12, 2004, a copy of a Building Permit for a storage building and a copy of a Certificate of Compliance and/or Occupancy, a copy of the site plan/survey, and a copy of a letter from Axiom Engineering L.L.C. addressed to the Sussex Conservation District.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “D” of Route One at this location will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State and Planning and Zoning Office had mutually agreed that the

project does not impose a significant impact on State interest or resources and decided to waive the PLUS process on this application.

The Commission found, based on a letter from the Sussex Conservation District, that the Applicant had been notified that he was in violation of Delaware's Sediment and Stormwater Regulations since he had begun construction without an approved plan.

The Commission found that a letter in opposition had been received from Thomas E. Lewis of T.C. Lewis, LLC expressing concerns about the Applicant's blatant attempt to usurp the building codes, zoning codes, the Conservation District, and DelDOT; that the Applicant is in the process of constructing a large building under a residential storage

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shed permit; that it is very clear to anyone that sees the building that it was purpose-built to be a commercial warehouse spaces; that a stormwater management problem has been created; that a runoff problem already exists; and that the Applicant should be required to satisfy all relevant State and County agencies or remove the building. Attached to the letter were seven (7) photographs of the site and property lines.

The Commission found that George Coverdale was present with Tim Willard, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that in October 2004 the Applicant went to Mr. Willard for assistance in applying for rezoning; that they filed for a traffic summary report to DelDOT; that they filed an application for PLUS review; that they then filed for rezoning in February of 2005; that the proposed 30' by 160' building is permitted; that it has been built for storage only; that the Applicant knows that he cannot use the building for anything other than private storage unless he received the rezoning approval; that the home on the site is a rental; that several business and commercial uses exists in the immediate area; that the neighboring property is improved by a proposed barbecue restaurant and a boat facility; that the Applicant placed silt fencing around the area when he was violated; that if the building was not already up it probably would not have received any opposition; that, if approved, the building could be used for small contractors use for storage of materials and equipment; that no additional building are proposed; and that the building is designed to contain four (4) separate garages.

The Commission found that Thomas E. Lewis was present in opposition and stated that his letter of opposition is a part of the record and added that his main concerns are drainage problems and developing the site prior to approval; that the Applicant should be required to go through all of the steps that he went through in getting permits from agencies; and that he objects to rezoning if billboards are permitted.

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

Mr. Wheatley stated that under these circumstances a Conditional Use might be more appropriate since the building has already been constructed.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration.

Motion carried 4 – 0.

**C/Z #1582** – application of **MARDELVA, LLC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Northwest Fork Hundred, Sussex

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County, land lying east of U.S. Route 13, 0.55 miles south of Route 40, to be located on 2.70 acres, more or less, of a 5.08 acre tract.

The Commission found that the Applicants had submitted a Revised Site Plan and an Exhibit Booklet that a color rendering of the site plan, DelDOT correspondence, a copy of the application form, a copy of the deed to the property, a copy of a letter from the Office of State Planning Coordination granting a waiver from the PLUS process, a copy of the DelDOT Support Facilities Report for December 16, 2004, and letters from DelDOT in reference to the entrance, copies of approvals from DelDOT and the State Fire Marshal's Office, a series of maps of the site and area, and a Site Evaluation Report prepared by Atlantic Resource Management, Inc.

The Commission found, based on a letter from the Town of Bridgeville, that the Town would like to go on record to reflect that the Town has no objection to this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Bridgeville Service Area according to the Western Sussex Water and Sewer Plan; that the Applicant should contact the Town of Bridgeville concerning the availability of water and sanitary sewer service; and that the proposed change of zone is within the Town of Bridgeville's Growth and Annexation Area.

The Commission found that John Congedo of MARDELVA, LLC was present with Mark Davidson of DC Group and stated in their presentations and in response to questions raised by the Commission that they are requesting rezoning of the rear portion of the site; that the front of the property is zoned C-1 General Commercial; that the rear of the property is zoned AR-1 Agricultural Residential; that Building No. 1 on the site plan is located in the C-1 District; that the adjacent parcel is zoned C-1 to the rear property line; that they propose to build two similar buildings on the rear portion of the site; that they propose to provide other contractors in the area with a facility for offices and

manufacturing; that the anticipate contractors interested in cabinet making, outdoor lighting and irrigation or similar uses; that the site is centrally located in the Bridgeville area; that the business does not generate a lot of traffic; that a traffic impact study was not required; that the entrance will be shared with the neighbor to the south; that approval has been received from the Fire Marshal; that the stormwater management facilities is anticipated to include 2 small ponds and some infiltration; that plans have been submitted to DelDOT and the Sussex Conservation District; that they have received an on-site wastewater system approval from DNREC; that no wetlands exists on the site; and that the site is not located in a Flood Plain.

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 application.

Mr. Wheatley stated that he always thought that the C-1 General Commercial area along U.S. Route 13 should have been greater to appropriately use the parcels and that access to the site also serves the neighbor to the south.

Mr. Johnson stated that he agreed and added that the joint access makes better use of both facilities.

Mr. Wheatley added that the use promotes an economic benefit to the County with no expense to the County.

Mr. Gordy stated that he would move that the Commission recommends approval of C/Z #1582 for MARDELVA, LLC for a change of zone from AR-1 to C-1 based upon the record made at the public hearing and for the following reasons:

- 1) The property that is the subject of this application is part of a larger tract of land. The rest of this land is already zoned C-1 and this is simply an expansion of that zoning.
- 2) This application will not have any effect on traffic since it only expands the location of existing C-1 District lines, and it will not create any new entrances onto Route 13.
- 3) The neighboring and other adjacent and surrounding properties will not be adversely affected given the relatively small size of the property that is the subject of this application.
- 4) The expansion of the C-1 area is next to a neighboring property that is already zoned C-1 to the same depth of this property.

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

Motion carried 4 - 0

#### Additional Business

Staff advised the Commission that there are several proposed ordinances that will be coming up for consideration, and specifically referenced an amendment to the Cluster Development Ordinance.

There was a consensus of the Commission that Old Business items may be considered at the November 9, 2005 meeting and that the meeting will be held in the County Council Chambers at 3:00 p.m.

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Meeting Adjourned at 9:37 p.m.