



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF JANUARY 26, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 26, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

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 January 12, 2006 as circulated.

### OLD BUSINESS

CU #1631 - - application of **DESIGN CONSULTANTS GROUP, L.L.C.** to consider the Conditional Use of land in a B-1 Neighborhood Business District for multi-family dwelling structures (120 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 11.86 acres, more or less, lying at the south end of a private road, 400 feet south of Route 24 and 200 feet west of Route 5 (Road 297).

The Commission discussed this application which has been deferred since December 8, 2005.

Mr. Lank reminded the Commission that the Applicants propose to develop the site with 120 condominium units; that Phase I of the project proposes 72 units served by on-site septic; that Phase II of the project proposes an additional 48 units when County sewer becomes available; that the Commission had deferred action on this application and left the record open for input from County Engineering on the number of EDUs anticipated for this site; that the site is presently a recorded undeveloped 24-lot subdivision zoned

B-1 Neighborhood Business; that County Engineering responded by Memorandum that the North Coastal Area Planning Study allocates 6.67 EDUs per acre for B-1 zoned lands, which equals 79 EDUs; and that therefore capacity will be available for 79.0 EDUs.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1631 for Design Consultants Group, LLC for multi-family dwellings in a B-1 Neighborhood Business District based upon the record made at the public hearing and for the following reasons:

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- 1) The property is in an area where other residential development has occurred, including several townhouse and single family developments. The project is consistent with those developments, and will provide a transition between the B-1 and Commercial uses along Route 24 and the adjacent Oak Meadows community.
- 2) The project will be served or benefited by amenities that are on-site. These amenities include a swimming pool, clubhouse and tot lots.
- 3) The project is in a Development District according to the Sussex County Comprehensive Plan.
- 4) With the stipulations place upon this approval, there will be no adverse impact on neighboring or adjacent properties.
- 5) This recommendation for approval is subject to the following conditions:
  1. The maximum number of residential units shall not exceed 79 units which is the correct number of EDUs allocated to the project by the County Engineering Department.
  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 initially served by a private on-site central wastewater system, until the project can be connected to a County operated sewer district. The private system shall be built to County Ordinance No. 38 Standards, and the Applicant shall work towards connection into the County Sewer District and 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 fixtures.

7. The Final Site Plan for the development shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along at least one side of all streets, and streetlights shall be installed and shown on the Final Site Plan.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.

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10. 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 am and 6:00 pm, Monday through Saturday.
11. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.
12. Addressing shall be subject to review and approval by the Sussex County Addressing Department.

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

Subdivision #2004 – 33 - - application of **CINDY L. AND HARRY L. BLADES, JR.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 5.00 acres into 3 lots, located east of Road 346, 1,050 feet north of Road 347.

Mr. Abbott advised the Commission that this application received preliminary approval for 3 lots on November 17, 2005; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the subdivision code; and that all agency approvals have been received.

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

Subdivision #2004 – 40 - - application of **SMALL WONDER, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 14.64 acres into 15 lots, located north of Road 214, approximately 1,892 feet southeast of the intersection with Road 207.

Mr. Abbott advised the Commission that this application received preliminary approval for 15 lots on August 11, 2005; that the final record plan is the same as the preliminary plan; that the record plan meets the requirements of the subdivision code; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to approve the record plan as a final. Motion carried 4 – 0. Mr. Burton did not participate.

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**Ordinance Amendment** – AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY, TO ADD A REQUIREMENT THAT ALL AR-1 CLUSTER DEVELOPMENTS BE LOCATED WITHIN A DEVELOPMENT DISTRICT AS SHOWN ON THE ADOPTED COMPREHENSIVE PLAN FOR SUSSEX COUNTY.

The Commission discussed this Ordinance Amendment which has been deferred since January 12, 2006.

Mr. Smith stated that there was excellent participation from the public on this Ordinance Amendment.

Mr. Smith stated that he would move that the Commission recommend approval of an Ordinance to amend Chapter 115, Section 25 of the Code of Sussex County, to add a requirement that all AR-1 Cluster Developments be located within the Development District as shown on the adopted Comprehensive Plan for Sussex County, with the following additional recommendations:

- 1) Reference to the “Environmentally Sensitive Developing Area” be eliminated from Section 3 of the proposed Ordinance.
- 2) That an additional sentence be added at the end of Section 3 as follows: “Or, that the proposed cluster development lies within a low density area (1) as described within the land use element and (2) as shown on the future land use plan of the adopted Sussex County Comprehensive Plan and the total number of lots shown thereon has been determined by first reducing the gross area of the proposed development by twenty-five percent (25%)”.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved for the reasons and with the additional recommendations stated. Motion carried 5 – 0.

## PUBLIC HEARINGS

CU #1635 - - application of **THOMAS N. AND MARIAN L. ROSSI** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.89 acres, more or less, lying north of Penny Lane, a private road, 900 feet west of Wil-King Road (Road 288), and being Lot 3 within Downs Property Subdivision.

Mr. Lank provided the Commission with copies of the site plan for this application.

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The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "A" of Road 288 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington loam and Woodstown loam; that the Fallsington soils have severe limitations for development; that the Woodstown soils have slight to moderate limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Fallsington soils are considered of Statewide Importance, Prime Farmland and a Hydric soil; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that Marian Rossi was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that they have applied for the Conditional Use so that they may continue to operate their excavation, landscaping and contracting business; that they have no employees; that they have been in business for over 5 years; that their equipment includes a skid steer loader, a trailer and a truck; that they do have a small amount of ornamental stone and rock stored on the site; that the equipment and vehicles are stored to the rear of the site; that the easterly property line is improved with a stockade fence; that equipment is stored in the shed; that they proposed to build a 900 square foot garage to store the skid steer loader and personal vehicles; that no plant materials are stored on the site; that they operate during weekday hours only, not weekends; that they do not propose any signage; that the stockade fencing will be maintained; that the access road is owned by the owners of lots 2, 3 and 4; that they do not get any deliveries to the site; that there will be no outside storage, except for vehicles; and that her husband is the excavator.

The Commission found that Gerald Massuto, the owner of Lot 2, was present in opposition to this application and expressed concerns about the business hours stated by the Applicant; that he has heard or seen business activities from 6:00 am to 5:00 or 6:00 pm everyday of the week; that they have been operating illegally since they moved to the site; that the activities on the site are very noisy; that he has concerns about his grandchildren's safety due to speeding vehicles on the access road; and that this type of application is not good for the community or the area; and that the trucks utilizing the access road are tearing up the roadway.

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

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Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use #1635, the application of Thomas and Marian L. Rossi for a Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other uses in the vicinity of the property; At least one other conditional use business is located on the same private road and both businesses appear to have been in business for some time.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community. The project is located on a private road and is at least 900-feet from the nearest public road.
- 3) The operation of a landscaping business will not generate a significant increase in traffic or noise, since the majority of the work will be conducted off-site.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
  1. The current fence, located on the east side of the property, shall be maintained and will continue to serve as a buffer to the adjoining property.
  2. There will be no sign on the premises.
  3. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
  4. The hours of operation for the business on this site shall be limited to 7:00 am to 7:00 pm Monday through Saturday. There will be no Sunday hours.
  5. There will be no non-relative employees.
  6. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 3 – 2 with Mr. Gordy and Mr. Wheatley opposing the motion.

CU #1636 - - application of **SUSIE HUDSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for small business offices with warehousing to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.0 acres, more or less, lying north of Route 9 (Lewes-Georgetown Highway), 700 feet west of Road 282, and being Lots 2, 4 and 6 of Stamper Farms Subdivision.

Mr. Lank provided the Commission with copies of the site plan for this application.

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The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the Level of Service "E" of Route 9 will not change as a result of this application; that the Department of Transportation sees this Conditional Use application as encouraging more traffic in an area that the Department has identified as operating at unacceptable levels of service; and that this segment of Route 9 (from Road 261 to Route 5) operates at level of service "E" during the summer peak hour.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Rumford loamy sand and Woodstown sandy loam; that the Rumford soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Rumford soils are considered of Statewide Importance; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that Vincent Robertson, Assistant County Attorney, has reviewed the deed files for the referenced subdivision and it does not appear that Lots 2, 4 and 6 of Stamper Farms Subdivision were burdened by any recorded restrictions that would effect the referenced Conditional Use.

The Commission found that a letter was received from Jennifer Booros in opposition and expressing concerns about placement of small business uses and warehousing in a subdivision; that she lives in the same subdivision and has restrictions against business uses on lots; that business activities should not be located in residential subdivision; that they purchased their property with the understanding that other families would be living in their neighborhood; that theft activities must be considered; that there will be increased in traffic along Route 9; that pedestrian safety is an issue of concern; that there could be a

negative impact on property values; and that business and commercial uses should be located in commercial areas, not residential areas.

The Commission found that Susie Hudson, with John Murray of Kersher Engineering, were present and stated in their presentations and in response to questions raised by the Commission that she and her partners propose to develop Lots 2, 4 and 6 of Stamper Farms Subdivision as a Conditional Use for offices and warehousing for small business uses; that the three lots are adjacent to each other and the Moose Lodge facing Route 9; that she has been contacted by several business uses wanting space away from Route 1 with office space and warehousing for contractors; that the business uses will service the resort area; that the pricing will be more reasonable than parcels on Route One; that the improvements to the lots would be similar to Nassau Commons at Five Points; that there will be no outside storage; that each lot will have its own septic and well; that

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landscaping and fencing can be installed along the sides and rear of the lots to enhance the properties; that a landscape design will be established to enhance the fronts of the buildings for more curb appeal along Route 9; that stormwater facilities will be established along Route 9 on each lot; that one ground sign and one wall sign are proposed for each lot; that business hours are anticipated to be from 7:00 am to 6:00 pm six days per week with no Sunday hours; that trash containers will be hidden by fencing and landscaping; that one entrance is planned with shared access serving the three lots; that the entrance is proposed to be located across from the antique store entrance across Route 9; that Lots 2 and 6 are already improved with dwellings; that security lighting will be screened; that there are approximately 27 business uses in close proximity along Route 9; that the warehouses will be built to appear as barns; that adequate space is available for parking on each site; that they plan on renting to small businesses or contractors, modeling the improvements to Nassau Commons; that no manufacturing will be permitted on the site; that the stormwater management ponds are planned for the front for aesthetics; that detailed stormwater management plans will be submitted to the Conservation District if the Conditional Use is approved; that the District may require the stormwater management features to be relocated on each lot; and that parking for company vehicles will be restricted to indoors.

Mr. Kautz suggested to the Applicant that she review the "Better Models for Development in Delaware" documents for some ideals for the project.

The Commission found that Mary Ann Belay and John Kelly were present in opposition and expressed concerns about negative impacts on property values; that warehousing should not be permitted in a residential subdivision; that traffic will increase; that traffic accidents may increase; that the fencing company has not yet been a problem; that large warehouses are not needed and are out of character in a residential subdivision; that deed restrictions prohibit commercial uses; and that residential land owners are not being given any consideration.



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

Mr. Gordy stated that they are starting a commercial trend in a subdivision.

Mr. Wheatley stated that this seems to be a speculative application.

Mr. Johnson stated that prior applications in the area were for specific uses and that this use is more commercial, and not a typical conditional use.

Mr. Wheatley stated that the people who live in the development think the development is residential and that Conditional Uses in subdivisions have been discouraged.

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Mr. Johnson stated that the Commission, in the past, recommended denial of a similar application in the same area and that the County Council reversed the decision.

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

Subdivision #2005 – 11 - - application of **PNH HARMON, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 125.91 acres into 178 lots (Cluster Development), located south of Road 297 (Mount Joy Road), 1,680 feet east of Road 305.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 18, 2005 and that the report will be made a part of the record for this application; and that the applicants submitted an Exhibit Booklet on January 23, 2006 and that the booklet will be made a part of the record for this application.

The Commission found that David Rutt, Attorney for the Harmon Family, Steve Engel and David Bates with Vista Design Group, and Jerry Esposito with Tidewater Utilities were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the Harmon Family has owned this property for over 100 years; that they will remain in the development of the property and continue to live in the area; that 178 single-family dwellings are proposed; that PCS Homes will build the dwellings; that the homes will contain 3 bedrooms with attached 2 car garages; that the proposed dwellings are in character with the area; that the price of the homes will start at \$230,000.00 and are considered affordable housing; that the dwellings will be marketed for young families and retirees; that all lots are a minimum of 8,000 square feet; that an amenities package will be included; that there will be a community center with a swimming pool, playground area and equipment, basketball courts and a sand volleyball

court; that active open space has been provided; that walking trails are proposed around the storm water management areas with an exercise area at each location; that the storm water management ponds will also be available for fishing; that the site is in a low-density Level 4 area; that low-density single family dwellings are permitted in this area; that the site is located northeast of the Town of Millsboro and that there are other single-family subdivisions in the area; that Tidewater Utilities will provide and maintain central sewer and water to the site; that Delaware Electric Cooperative, Verizon, and Medicom will provide infrastructure to the project and all have submitted letters that they are willing and able to serve the project; that traffic leaving the development will go east or west on Mount Joy Road; that fire protection will be provided by the Millsboro Fire Company and police protection is provided by the Delaware State Police; that the site is located in the Indian River School District and will not cause any negative impacts to the school district; that the site plan has been reviewed by the Office of the State Planning

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Coordination and the applicants have submitted their response as found in Tab E of the Exhibit Booklet; that there is no stripping of lots proposed; that connector roads to adjoining parcels have been provided; that the cul-de-sacs on the original plan have been deleted and a loop connector road has been added; that there will be areas left undisturbed for community open space; that the developers will maintain as many forested areas as possible; that the storm water management ponds will not be oversized; that there is active open area around the community center; that sidewalks or asphalt walking paths will be provided along the streets; that there will not be any impacts to the wetlands and no wetlands will be included on any lots; that Best Management Practices will be utilized; that there will be a 71.4% reduction of phosphorous and a 86.4% reduction of nitrogen; that Tidewater will install an 80,000 gallon elevated water storage tank that will meet the setback requirements; that the water storage tank will provide potable water and water for fire protection; that there will be a 50-foot buffer from the storm water management ponds; that additional trees will be planted along Mount Joy Road and in the interior of the site; that native vegetation will be planted around the storm water management ponds; that the applicants and engineers will comply with all agency regulations; that there is a main entrance and a secondary entrance to the east of the site proposed off of Mount Joy Road; that the required 30-foot forested agricultural buffers have been provided where necessary; that the wastewater treatment area will contain approximately 13.5-acres; that 42% of the site will remain forested; that a standard subdivision could yield 274 lots; that a cluster subdivision could yield 251 lots and that 178 lots are proposed; that the proposed density is below what is permitted; that there will be very little to no grade changes; that an environmental site assessment was conducted and there were no historical features found to exist; that open space and wetlands will be created; that no objectionable features will be permitted; that all storm water requirements will be met; that DelDOT did not require a traffic impact study to be preformed; that the development will create a positive impact to the area in that additional taxes will be collected; that restrictive covenants will be revised to add agricultural protection notices; that street lights will be provided throughout the site; that

the proposed use is the highest and best use of the property; that minimal tree removal will be conducted; that there is adequate room for a school bus stop at the entrance to the site; that a buffer will be provided along Mount Joy Road; that the community has not been designed for alleys since they would create additional impervious surfaces; and submitted a brochure of the homes that PCS build; and proposed conditions of approval.

The Commission found that no parties spoke in support of this application.

The Commission found that William Draine, William and Sharon Elzey, Jack Phillips, and Jeff Smith of Mount Air were present in opposition to this application and expressed concerns about drainage, flooding and ponding of water in the area; that the drainage

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problems need to be corrected prior to this application proceeding; that drainage in the area cannot be impeded; and that Mount Air conducts a spray irrigation application on the adjoining property.

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to defer action for further review of the information submitted. Motion carried 5 – 0.

Subdivision #2005 – 12 - - application of **LACROSSE HOMES OF DELAWARE, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 175.07 acres into 350 lots (Cluster Development), located at the northeast corner of the intersection of Road 227 and Road 229B and east of Road 229.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 18, 2005 and that the report will be made a part of the record for this application; that on January 23, 2006 the applicants submitted an Exhibit Booklet that will be made a part of the record and provided the Commission with letters in opposition to this application received from Daniel Smith and Mr. and Mrs. Malaspina that will be made a part of the record.

The Commission found that Jim Fuqua, Attorney, Zach Crouch Engineer with Davis, Bowen and Friedel, Inc., Jerry Esposito with Tidewater Utilities, Inc, Karen Barns, Kim Burke and John Dixon of Lacrosse Homes were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project has been designed to meet the purpose of the AR-1 Cluster Ordinance; that 350 single-family lots are proposed on 175 acres; that the site is west of Milton; that the site is bordered by Hummingbird Road, Carpenter Road and Smith Road; that the

remaining side is bordered by the proposed Isaac's Glen Subdivision; that the site is located in a low density area; that the proposed density is 2 lots per acre which is a permitted density in this area; that Tidewater Utilities will provide and maintain a central sewer and water system; that the wastewater system will be built to County Ordinance No. 38 standards; that Comcast, Delaware Electric Cooperative, Sharp Energy, and Verizon will provide infrastructure to the site and have submitted letters that they are able and willing to serve the project as found in Tab D of the Exhibit Booklet; that DNREC has issued a septic feasibility statement; that a Traffic Impact Study was prepared and reviewed by DelDOT as found in Tab E of the Exhibit Booklet; that the streets will be built to DelDOT standards; that there are entrances to the site off of Hummingbird Road and Smith Road; that the site is located in the Ellendale Fire Company fire protection district with the Milton Fire Department district being located in close proximity; that medical services are available in Milford to the north and Beebe Hospital to the south and

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east; that a Phase 1 and 2 Environmental Assessment has been conducted and no problems were found; that the wetlands delineation has been verified by the Army Corps of Engineers as found in Tab F of the Exhibit Booklet; that there are wetlands located in the southwestern corner of the site; that there are not any wetlands located on the individual lots and the wetlands will remain undisturbed; that one lot is setback from 68-feet from the wetlands and that all other lots are a minimum of 100-feet from the wetlands; that 70 acres or 40% of the site is open area; that the recreational amenity area will be centrally located within the project; that there is a 30-foot landscaped buffer provided around the entire perimeter of the site; that the restrictive covenants will include the agricultural use protection notice; that the developers will contribute to the Sussex County Lands Trust; that streetlights and sidewalks on both sides of all streets are proposed; that the plan has been reviewed by the Office of State Planning Coordination through the PLUS process; that there are 60 lots located in wooded areas; that the applicants will provide reforestation along Smith Road; that 6 storm water management ponds are proposed; that the developers will utilize Best Management Practices; that the proposed use is compatible with the area in that there are numerous other single-family developments in the area; that the site is accessible to Routes One and 16; that the area is growing; that the land/home packages will start at \$250,000.00 and submitted a brochure from Lacrosse Homes; that a homeowners' association will be established and professionally managed; that the design of the project has been created using the Models for Better Development guide; that this design is superior to a standard subdivision design; that the design complies with the zoning code, subdivision code, cluster ordinance, and the Land Use Plan; that the project will be built out in a 5 year period; that the applicants are requesting 100 building permits per year; that the community center will be built by the third phase; and submitted proposed conditions of approval, proposed findings of fact, and a letter addressing the items referenced in Subsection 99-9C of the Subdivision Code.

The Commission found that Glen Murphy and Valerie Jefferson were present in support of this application and advised the Commission that they are the owners of the project; that the developers are reputable builders; and that the project will be an asset to the community.

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

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

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to defer action for further review of the information that was submitted. Motion carried 5 – 0.

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Subdivision #2005 – 13 - - application of **LYNN AND KAREN MCCOLLEY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 39.60 acres into 46 lots (Cluster Development), located southwest of Road 202, 1,000 feet northwest of Road 206.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 18, 2005 and that the report will be made a part of the record for this application; provided the Commission with letters received from James and Ruth Mariani, James and Joan Bryan, James and Deborah Corrigan, and James and Nancy Bucher in opposition to this application and advised the Commission that the letters will be made a part of the record.

The Commission found that Bob Nash, Surveyor with Charles Murphy Associates, Eric Howard, Attorney, and Lynn and Karen McColley were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the proposed density is 0.86 lots per acre; that 9.9 acres of the site is open space; that the site is currently cleared land; that there will not be any tree removal; that the lots have been clustered into ½ acre lots as are the other lots in the area; that the minimum square footage for one story dwelling will be 1,800 square feet excluding attached garages; that the dwellings will be similar to other ones in the area; that there will not be any substandard housing; that the homes will be stick built; that the streets will be private and built to County specifications; that a 30-foot agricultural buffer has been provided where necessary; that the area is located in a rural setting; that the project will be an asset to the area in that property values will increase; that the storm water management ponds will help the drainage in the area; that the site is surrounded by ½ acre lots; that DNREC has issued a septic feasibility statement; and that the project will not cause any negative impacts to the area.

The Commission found that no parties spoke in support of this application.

The Commission found that William Mills, Peter Fazekas, Richard Kelly, Emil Raffio, Jim Doughton, John Thornley, and Greg Harding were present in opposition to this application and advised the Commission that there are water, flooding and drainage problems in the area; that the road swales cannot handle any more water since the pipes are clogged up; that the area is too low for development; questioned who will maintain the storm water management areas and streets; questioned the types of streets proposed; that too many homes are proposed; that the project is not a cluster design; questioned if any recreational areas will be provided; that traffic will be a problem in the area; that the roads cannot handle the existing traffic; and questioned who agreed to the subdivision plan.

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Mr. McColley advised the Commission that once he obtained the required 51% agreement of the property owners, he did not seek any more approvals.

The Commission found, by a show of hands, that 5 people were present in support of this application and 16 people were present in opposition to this application.

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

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Ordinance Amendment - - AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY.

Mr. Lank introduced the Ordinance Amendment and added that the amendment allows an increase in density within planned Growth Areas and provides for specific circumstances, fees and/or conditions for obtaining such increase in density; and that the amendment also encourages the preservation of open space and/or active and passive recreation areas by trading additional residential density for the proffering of funds for the acquisition of open space to the Sussex County Land Trust; and that the amendment establishes a fee schedule.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Office, on behalf of the State agencies, would like to express support for the concept and some additional points to consider as the ordinance move forward; that the ordinance would function similarly to a transfer of development rights (TDR) program in that in exchange for additional density in a growth area, a developer would pay to preserve land outside of the growth area; that the State is very supportive of the concept and would like to get TDR programs implemented statewide; that enabling legislation is currently being drafted to provide incentives to local governments and developers to participate in such initiatives; that because the ordinance, as proposed, would increase allowed density in Town Centers and Development Districts, often areas that are adjacent to municipalities and within annexation areas, the Office believes that the County should work closely with the towns so that development occurs in a way that is in keeping with the character of the town; that for land that is contiguous to municipal boundaries and within an annexation area is a certified comprehensive plan, the Office hopes that the County would encourage annexation into the municipality; that the

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Department of Agriculture believes the payment amounts proposed per unit are low; that their conversations with the development community leads them to believe that \$20,000 per unit is a legitimate starting point for unit payment; that studies used by the Department demonstrate that developers need about a 35% margin to participate in programs like one proposed; that using current land values in Sussex County, the minimum amount would be set in the \$20,000 range; that perhaps comparable sales data should be used to set the values and then adjusted on a bi-annual basis; that the Department suggests that a requirement be included in the proposed ordinance that a percentage of the funds raised be used to match the State's farm preservation program; and that as specified in the ordinance, this money would be channeled through the Sussex County Land Trust.

Mr. Lank provided the Commission with copies of four (4) letters in reference to the Ordinance Amendment. The Sussex County Farm Bureau letter was favorable to the Amendment. The letters from Harry Haon, Michael Tyler, President of the Citizens Coalition, Inc., and Richard Anthony, Conservation Chairman of the Delaware Chapter of the Sierra Club expressed negative concerns about the Amendment. The letters are a part of the record for this Ordinance Amendment.

The Commission found that Wendy Baker, President and CEO of the Sussex County Land Trust (Trust), was present on behalf of the Board of Trustees to inform the Commission of the Trust and their work to date and to let the Commission know that a motion at their December 16, 2005 Board meeting was approved, with Councilman Phillips and Councilman Dukes abstaining, to support the Ordinance Amendment and to accept the responsibility to be the recipient of the funds; that giving back to the community was foremost in the minds of several Sussex Countians who decided to form this non-profit in December 2001; that with the help of a group of dynamic people with similar goals, the Board of Trustees was formed and a mission statement adopted. Sussex

County Land Trust is a non-profit conservation organization, dedicated to protecting natural, cultural, agricultural and recreational resources through land preservation, stewardship and education for today and tomorrow; that with a significant, annual monetary commitment and two seats on the Board, a unique public – private partnership between the County Council and the Trust evolved; that when approached and challenged by the State Department of Agriculture in December 2002 to participate in a matching fund program, the Trust stepped up to meet this opportunity to leverage money by launching a fundraising campaign; that thanks to local businesses and individuals who responded, the Trust was able to raise \$300,000 in private donations matched by the County Council; that the \$600,000 was then matched by the State Department of Agriculture to total \$1.8 Million or 933 acres of farmland preservation in Sussex County; that as part of a large scale effort to preserve 600 acres of vital habitat in the 17,000 acre Great Marsh, near the mouth of the Delaware Bay, the Trust, County Council and The Nature Conservancy joined forces to purchase for \$600,000 one of the tracts in the project, a 43 acre parcel on Oyster Rock Road; that The Nature Conservancy will hold

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the conservation easement, with the Trust holding fee simple title to the property; that the Trust will provide a stewardship role to monitor 287 acres of forested uplands, wetlands and tidal wetlands at Bayside for their compliance with conservation easement provisions; that to assist this stewardship, Carl M. Freeman Communities will place \$5,000 in an endowment fund each year with Delaware Community Foundation, for the next ten (10) years; that the Company will also be responsible for all costs incurred by the Trust associated with the administration, monitoring and maintenance responsibilities of managing the 40 individual parcels of Bayside property placed in the conservation easement; that we have the opportunity to significantly advance conservation of Delaware's dwindling forestland; that Glatfelter Pulp Wood Company, Delaware's largest private landowner, is divesting as much as 2,800 acres in Delaware through a series of sealed bid sales; that much of this acreage falls within one of the largest forested areas remaining on the Delmarva Peninsula today – the Redden/Ellendale Forest, located within the Chesapeake-Delaware Bay Conservation Corridor in the heart of Sussex County; that The Nature Conservancy purchased the Ponders tract – 908 acres adjacent to their Pemberton Branch preserve and a critical piece of the Redden/Ellendale Forest, one of the four most densely forested areas in the State; that they approached the Trust to partner with them on this important conservation property; that the Trust pledged \$1 Million to be paid over a four (4) year period, and when asked by The Nature Conservancy, stepped up to the plate and made the contribution in two (2) years, helping them to reduce the interest carry on the property; that the Peninsula on Indian River Bay is habitat to a wide variety of native marine life, birds, animals, plants, and trees; that they look at this as an opportunity to develop this natural sanctuary, tempered with an obligation to protect and nourish its natural ecology; that they have made conservation a priority by placing 240 acres along the Indian River Bay into a conservation easement held by the Trust, along with a \$50,000 endowment; that in addition to this commitment they have pledged, and are already honoring that pledge by donating \$1000 per lot, for



1404 lots, which equals \$1,404,000; that traveling down Piney Neck Road one sees glimpses of all facets of life in Sussex County, farm houses, new developments, corn fields, and one of the wonderful wide creeks, Peppers Creek; that the Cannon Tract, totaling 187 acres was purchased by Sussex County for spray irrigation; that a separate parcel of 37 acres currently being farmed, with upland forest and wetlands along Pepper Creek was approved for purchase by the Trust for \$1.3 Million; that when Delaware Wildlands asked, we listened; that Senator Venables carried to the General Assembly the Trust's commitment to help preserve the Angola Neck properties; that with the Trust's commitment, he was able to help secure State funding to make up the difference and preserve this valuable land; that our next project that we are working on with the State is the Tunnel Tract, approximately 755 acres of prime forestland west of Milton for \$12 Million; that as we have demonstrated in the past, and will continue, our next steps are concentrated in measured growth at a continue slow pace; that recognizing that new land trusts often make mistakes by jumping too quickly into land deals, which affect them into perpetuity, the Trust has made a cognizant effort to try to avoid this pitfall; that several

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main objectives we are focusing upon include identifying the highest priority natural, cultural, agricultural and recreational lands for protection in the County and developing a stewardship endowment for lands and easements to be held by the Trust; that we have forms in place which outline the steps we take; that a Landowner Contact Sheet is completed; that the Conservation Programs Committee, chaired by our Board Secretary, Dennis Forney, meets to discuss the potential project and a site visit is scheduled; that when a potential property is visited by the Committee, a Criteria for Conservation Project form is completed by every member at the site visit; that it is used to rank 17 areas of public benefit and 10 areas establishing feasibility criteria; that a total score is calculated by each member, with an overall property score assigned; that the Criteria guides the actions of the Trust; that the criteria were developed to ensure that the Board of Trustees acts in a manner consistent with its vision, land conservation goals, and the Internal Revenue Service's regulations governing tax deductibility; that the Board retains discretion over acquisition or disposition of projects and will evaluate each project proposal on its own merit after investigating the property, its resources and its public benefits; that at the committee level the potential project is discussed and a consensus is reached as to whether to proceed to the next step, recommendation to the full Board of Trustees; that the committee chairman presents the project to the Board and a motion is made and voted upon based on the lengthy discussion that takes place; that if the decision is to proceed, then Ms. Baker is asked to go to a public meeting of the County Council to present the potential project, answer questions and request to have the County expend the funds to proceed with the project; that this is no easy task when you consider it requires a super majority vote – 4 out of the 3 Councilmen must agree; that the good news is if we act now we protect and sustain our community's landscapes for ourselves and future generations; that we asks the Commission to give careful consideration to the potential benefits this Ordinance could have on preserving open space; that if this Ordinance is

approved you will be further augmenting the County's ongoing efforts to provide adequate open space that ensures quality of life for our citizens today and in the future.

The Commission found that Ms. Baker submitted her comments for the record along with copies of the Sussex County Land Trust Selection Process for Conservation Projects, a Land Preservation Project Information Sheet, Criteria for Conservation Projects, Criteria Score Sheets, and two pamphlets on "Conservation Options for Private Landowners" and "Protecting Your Land with a Conservation Easement".

The Commission found that Ms. Baker exhibited a copy of a map of Protected Lands in Sussex County.

The Commission found that Dennis Forney was present and endorsed Ms. Baker's statement and added that good economy allows benefit to improve the quality of life; that he is not necessarily interested in increasing density, but the Ordinance does provide for that benefit; that it is possible that a wildlife corridor or greenway can be established

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across Sussex County; that there can be a balance between developable lands and undevelopable lands; that we need to help preserve a sense of place with treelines, waterways, etc.; that it eliminates free up-zoning; that it can be used to leverage open space; it provides for a greater opportunity to partner with the Delaware Agricultural Lands Preservation Foundation; that further accountability should require County Council hearings if increasing density; and that it provides an tremendous opportunity for the County.

Ms. Baker added that the County Council has adopted and pledged 10% of the Budget Surplus to the Trust.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Ms. Trifillis suggested that the Commission should defer action to allow legal counsel to review the comments received.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to defer action for further consideration; that the record be left open for written comments until February 24, 2006; and asked Mr. Kautz to provide revenue estimates and information on similar programs in other jurisdictions; and that a legal opinion should be provided by Mr. Robertson addressing any legal issues. Motion carried 5 – 0.

Meeting adjourned at 10:42 p.m.