



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF FEBRUARY 22, 2007

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 22, 2007 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. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended by changing the sequence of the public hearings. Motion carried 4 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of December 21, 2006 as circulated. Motion carried 4 – 0.

### PUBLIC HEARINGS

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

**C/Z #1609** – application of **OAK CREEK, LLC** to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying east of Road 274 (Old Landing Road) and 0.7 mile south of Road 275 (Warrington Road), to be located on 115.29 acres, more or less.

Mr. Lank advised the Commission that the applicants provided revised RPC site plans, an Exhibit Booklet, a copy of the Ordinance approving Warrington Creek (C/Z #1503), a copy of the Commission Minutes approving Card, LLC (Subdivision #2003-28), a copy of the site data column for Warrington Creek indicating 15 foot front and 5 foot side yard setbacks, and a copy of a letter approving the removal of Lots 98 and 134 from the Oak Creek Subdivision. The Exhibit Booklet contained a color rendering of the proposed RPC site plan; a rendering depicting the combination of Warrington Creek RPC and Oak

Creek as one project; a drawing of a proposed 20-foot access easement and 12-foot golf cart bridge from Oak Creek to the Kings Creek Country Club; and a photograph of a typical golf cart bridge over wetlands.

The Commission found that James Fuqua, Attorney, was present with Rob Baker of Chase Communities and Gary Cuppels of ECI Corporation, and that they stated in their presentations and in response to questions raised by the Commission that the site plan for the RPC is the approved 226 lot subdivision plan for Oak Creek Subdivision; that they have proposed the RPC rezoning to allow for modifications to the setbacks; that they propose 15-foot front yard setbacks, rather than 30-foot, and 5-foot side yard setbacks,

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rather than 10-foot; that immediately adjacent to the site is Warrington Creek, a MR-RPC containing 282 dwelling units; that the Warrington Creek project was approved with 15-foot front yard setbacks and 5-foot side yard setbacks; that one year later the Oak Creek Subdivision was approved for Card, LLC and required 30-foot front yard setbacks and 10-foot side yard setbacks; that the Oak Creek and Warrington Creek projects have street interconnections; that Chase Communities purchased both projects; that the setbacks create an internal inconsistency due to the different setbacks; that they propose to create uniformity in the design and layout of the combined projects by requesting the same setbacks throughout; that the site plan has been revised by sliding 13 lots approximately 20-feet to allow for a proposed 20-foot access easement and golf cart crossing bridge to Kings Creek; that Chase Communities have had discussions with the Kings Creek Country Club for golf cart and pedestrian access only, not motor vehicles; that the golf cart bridge over wetlands shall be subject to the approval of the Kings Creek County Club and DNREC; that the County Engineering Department has voiced no objections to the application; that lot sizes will not change; that the proposed setbacks allow for larger back yards; that they will correct the setbacks on the corner lots to 15-feet; and that the three (3) homes being constructed in the Oak Creek Subdivision are owned by the applicants.

The Commission found that Mr. Fuqua submitted a copy of the reason and 10 conditions of approval for the Oak Creek Subdivision and 2 additional conditions relating to the setbacks and proposed access easement and golf cart bridge.

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. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

**Subdivision #2005-97** – application of **JAMES D. PARKER** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 4.32 acres into 3 lots, located west of Road 409, 705.22 feet south of Road 410.

Jim Parker was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that this application is for 3 lots located on Lewis Road; that the area is a nice residential area; that the site is adjacent to Parker's Point Subdivision; that he bought the land from Marshal Lewis; that 3 lots are proposed;

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that the proposed lot 16 will need a variance from the Board of Adjustment for the lot width; that the adjoining property owner is not opposed to this application; that DelDOT has granted entrance approval for a shared entrance for lots 14 and 15 and a single entrance for lot 16; that if the application is approved, custom built stick built homes will be built; that the minimum size of the dwellings will be 1,900 square feet with an attached 2-car garage; that the septic systems will be standard gravity systems; that the proposed lots are compatible to the area; that lot 16 has a reduced frontage since Mr. Lewis has accessory buildings located on the parcel that he is retaining, and that Mr. Shea's lot only has 150 feet of road frontage.

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.

Mr. Gordy stated that he would move that the Commission grant conceptual approval of Subdivision 2005 – 97 for James D. Parker based on the record and for the following reasons:

1. The Applicant is seeking approval of 3 new lots fronting a County Road 409.
2. The proposed lots are consistent with the other existing residential lots in Parker's Point and along Road 409.
3. The lots will be served by wells and septic systems on individual lots.
4. The lots will not adversely affect adjacent properties, roads, traffic, schools or the environment.
5. This motion is for the approval of the subdivision in concept only, since the applicant must obtain an approval from the County Board of Adjustment for the new lot identified as Lot 16.

6. This conceptual approval is subject to the following conditions:
  - A. The Applicant must obtain an approval from the Board of Adjustment for the frontage of Lot 16.
  - B. The Applicant shall comply with all of DelDOT's requirements.

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- C. If the Applicant receives approval from the Board of adjustment, this project shall be considered by the Commission at a future meeting under "Old Business" on the Agenda.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a concept only, for the reasons, and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-98** – application of **AMERISTAR HOMES** to consider the Subdivision of land in a MR Medium Density Residential District in Cedar Creek Hundred, Sussex County, by dividing 32.60 acres into 68 lots, located north of Road 619, 900 feet north of Route 36.

Mr. Lank advised the Commission that the applicant withdrew this application on February 7, 2007.

Mr. Lank advised the Commission that a letter was received on behalf of the applicants requesting that the public hearings for C/Z #1610 and Subdivision #2006-32 be consolidated into a single public hearing since the presentation would include both applications.

There was a consensus of the Commission that the two applications be consolidated into one public hearing with the understanding that each application will be acted on individually.

For the purpose of the record, Mr. Lank introduced the two (2) applications as follows:

**C/Z #1610** – application of **BURTON'S POND COMMUNITIES, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying east of

Route 24 and on both sides of Route 49 (Pinewater Road), to be located on 41.94 acres, more or less.

**Subdivision #2006-32** – application of **BURTON'S POND COMMUNITIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 158.70 acres into 265 lots, (Environmentally Sensitive Developing District Overlay Zone), located north and south of Route 48, and west of Route 24.

The Commission found that the applicants had submitted an Exhibit Book, revised site plans for both projects, a rare, threatened and endangered species habitat report prepared

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by JCM Environmental, reduced copies of the exhibit boards, an executive summary of the presentation, and an amended section of the Exhibit Book relating to erosion and sediment control and stormwater management. The Exhibit Book included a boundary survey, a tax map, an aerial map, a preliminary reconnaissance report (historic/archaeological), an amendment to the reconnaissance report, a quadrangle map, a soil survey map, a soil reconnaissance report and map for wastewater disposal, a preliminary and final wetlands investigation report, a development map, a map of the area from the Comprehensive Plan Update, a map of the area from the State Strategies, a copy of the original development plan submitted to PLUS, a copy of the PLUS letter, a copy of their PLUS response, a copy of the development layout, an additional PLUS letter, a map of the area from the FEMA maps, a map of identified historic sites, an environmental management services presentation report, a Tidewater Utilities, Inc. ability to serve letter, a Tidewater Utilities, Inc. report on water, a Tidewater Environmental Services, Inc. ability to serve letter and proposal to own and operate the sewer treatment facility, a copy of a Certificate of Public Convenience and Necessity to provide wastewater service, a copy of a portion of the PLUS report regarding TMDLs (Total Maximum Daily Loads), a groundwater recharge map, copies of conclusions from the Traffic Impact Study, an open space management plan, an economic impact study, a letter of support from the State DNREC; findings and conclusions from the Phase I Environmental Report, conclusions and recommendations of a Limited Phase II report, an environmental report, and resumes of team members. The Executive Summary includes a list of the team members, an executive summary, references to existing conditions and references to the proposed development concepts.

Mr. Lank provided the Commission with copies of 18 letters expressing concerns and opposition to C/Z #1610 from Richard and Susan Barry, Herbert C. Miller, Jr., Russell C. and Mary Ann Scott, David and Myra Rankin, Robert and Sherilyn McLaughlin, Helen M. Abrams, Jessie F. and David L. Achey, Jr., Mark S. Ayers and Sharon Sampson, Randy C. Curry, Linda J. and Samuel M. Sloan, Jr., Carol A. Wells, Joe J. and Elizabeth P. Boettger, Joseph and Patricia Quill, Louise Baylis, Mark and Joanne Woodruff, Robin May, the Reverend James D. VonDreele, and Kenneth Sale.

The Commission found that James A. Fuqua, Attorney, was present on behalf of the applicants with Michael Lynn, President of RDM, Inc. and a partner in the projects, Scott Aja and Brent Jett of McCrone, Inc., Derrick Kennedy of Orth-Rodgers Associates, Inc., Gerald Esposito of Tidewater Utilities, Inc. and Tidewater Environmental Services, Inc., Todd Fritchman of Envirotech Environmental Consulting, Inc., and Mark Chura of Ocean Atlantic and that they stated in their presentations that the project includes two sections, a rezoning from AR-1 to MR-RPC on the east side of Route 24 and south of Sloan Road and a Cluster Subdivision west of Route 24 and on both sides of Route 48 (Hollymount Road); that the Residential Planned Community site is located in the Environmentally Sensitive Developing District Overlay Zone, a growth area; that they are proposing 102

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multi-family units in 15 buildings on approximately 42 acres; that the buildings are similar to the "Big Houses" in the Paynther's Mill project near Red Mill Pond; that the maximum number of units could be 174, but the applicants only propose 102 units; that 75% of this site is open space; that the Cluster Subdivision site is located in the Low Density Area and the Environmentally Sensitive Developing District Overlay Zone; that they propose to develop 265 single family detached dwelling lots with a density of 1.67 lots per acre; that 51% of this site is open space; that recreational facilities are proposed in both projects; that the opposition letters have been reviewed and that they would like to respond that the Environmentally Sensitive Developing District is an area defined as a developing area with special environmental design and protection requirements; that housing types approved in the Environmentally Sensitive Developing District include single family detached homes, townhouses, apartments, condominiums and manufactured housing where permitted; that residential planned communities and village style development should be encouraged to provide open space and protect habitat; that the County requires that the applicant provide information and analysis addressing the developments environmental impact, including the treatment of stormwater quality and quantity, TMDL impacts, mitigation of wetlands and woodland disturbance, provision of wastewater treatment and water systems, and other matters affecting the ecological sensitivity of the site; that any increase in density should only be permitted with proper environmental guidelines; that central water and sewer are proposed; that retail and service businesses are in close proximity to the site; that a homeowners association will be created; that they have met with the PLUS agencies; that the site plans were altered and revised to respond to the PLUS recommendations; that in the final PLUS comments the State noted that the developers efforts to address DNREC comments regarding the forest removal by reducing the impact to forested areas from 3.3 acres to 0.46 acres; that the State also addressed their major concern of the location of the project within the transition zone between Level 3 and Level 4 in the first PLUS comment letter, and was responded to by the developer that the development is an infill development with existing or approved development almost completely surrounding it and that the State responded to this by saying that the State does not oppose this proposal; that the Division of Historic and Cultural Affairs commended the developer for avoiding and protecting possible

archaeological sites; that the State Department of Agriculture thanking McCrone, Inc. for their good faith effort to address the Department's and other State agency concerns, and noted that the Department has no objection to the project as currently proposed; that several subdivisions and a 1,000 unit campground are immediately adjacent to the projects; that an October 23, 2006 letter from the State Division of Parks and Recreation references that the forested/riparian lands located on the southern portion of the site is considered to be within a State designated Natural Area as well as a State Resource Area and that the State appreciates the applicant's efforts to remain out of these environmentally important area; that both the RPC and the Cluster subdivision encourage design ingenuity; that historic features of the site will be protected; that the projects have passive and active amenities; that the developers are also purchasing Burton's Pond; that

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the majority of the projects are located in existing fields and pasture lands; that they field investigated the sites and cumulatively studied the property; that they identified features and site assets; that they established the boundaries of the site and then overlaid wetlands, upland woodlines, historic interest, and the Phase I study area, road changes, and possible rapid infiltration sites prior to starting a design; that it was noted that the Greenbank Estates Subdivision to the west placed their stormwater management pond in a wooded area adjacent to the Cluster Subdivision site; that they planned the projects as if they were one community; that almost all of the lots within the Cluster Subdivision back up to open space corridors; that there is a 200-foot average setback between wetlands and lot lines; that the cluster lots average 9,500 square feet; that the Cluster Subdivision includes 3 parks/playgrounds, a swimming pool, clubhouse, and tennis; that they want to permit the recreation area along Burton's Pond to be used by others; that the Pond is a part of the proposed purchase, but was not calculated into the project; that they propose a 2-acre park and parking lots near the Pond; that the Residential Planned Community design provides an alternative housing type; that they would like to offer 20 of the 102 housing units to be contributed to the MPHU provisions; that the design/layout of the Residential Planned Community provides protection of woodlands; that landscaping buffers will be provided; that an 18<sup>th</sup> century cemetery was located on the site and will be protected; that a 17 acre prehistoric woods with dump sites was found on the northerly portion of the site and will be left undisturbed; that the wetlands were delineated by James McCulley of Environmental Consultants, Inc.; that no underground storage tanks were found on any of the site; that the Cluster Subdivision lots will contain a minimum of 100-foot depth and a minimum width of 75-feet; that 25-foot front yard, 10-foot side yard, 10-foot rear yard and 15-foot corner setbacks are proposed; that a 42-foot height limitation is proposed; that streets will have 50-foot wide rights-of-way with two 12-foot lanes; that no driveways will adjoin the internal collector road; that the streets will have curb and gutter, sidewalks on both sides of the street, and street lighting; that no lots abut wetlands; that they will establish a 30-foot wide landscape buffer along Hollymount Road on both sides, a 40-foot wide buffer around the rapid infiltration areas, and a 30-foot wide buffer along the westerly property line; that the buffers will be bermed and landscaped with native species; that the greenway corridors contain approximately 30 acres; that

pedestrian and bike paths will be created; that multi-modal paths will also be created; that the park along Burton's Pond will provide for access to the Pond for fishing and boating by kayak, canoes, and electric motorized watercraft; that the park will include a swimming pool, tennis, clubhouse, and bus stop; that best management practices will be utilized to meet the State TMDL regulations; that stormwater management facilities will include structural and non-structural features with piping, ponds, and grass swales; that they will meet or exceed the required 40% nitrogen and phosphorus reduction; that the current design appears to provide a 48% reduction; that they propose to develop an open space management plan; that the site will be protected during construction by both silt fencing and super silt fencing; that a Certified Construction Reviewer will oversee the project; that the Residential Planned Community will be developed with the same

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techniques of stormwater management facilities and buffers; that driveways will be 24-feet wide; that the entrance will be divided; that they have established substantial setbacks from the woodlands and road frontages along Sloan Road and Route 24; that parking will meet or exceed the Code; that the buildings will probably be 90-feet in length with 40-foot separation between buildings; that the historic cemetery site will be preserved and protected; that multi-modal paths, natural paths and sidewalks will be provided; that the site will include a tot-lot, tennis courts, swimming pool with bathhouse, and a bus stop; that a 6-foot fence is proposed along the Brandywood Subdivision; that 30-foot wide buffers and landscaping will be provided along Sloan Road and Route 24; that both projects comply with all of the references in 99-9C of the Subdivision Code, the Cluster regulations, and the Environmentally Sensitive Developing District Overlay Zone regulations; that the Traffic Impact Study was completed in December 2005 and the final conclusions were completed in 2006; that 6 intersections were studied; that Hollymount Road will be improved to State Collector Road Standards; that Sloan Road will be improved to State Local Road Standards; that the developers will comply with all of DelDOT recommendations and determinations; that the off-site cost of road improvements are estimated to be \$1,800,000.00; that central water will be piped in from off-site; that Tidewater Utilities, Inc. has a watermain within 3,000 feet of the sites; that capacity is available; that they are not planning any water hook-ups off site; that DNREC has approved feasibility for the wastewater treatment facility and rapid infiltration basins; that the wastewater treatment facility is designed to serve these projects only; that the system will be designed to Ordinance NO. 38 standards; that sludge will be managed in the treatment plant building, not outside; that fencing and screening will be provided; that there will be zero impact on the groundwater by the treated water; that the treatment plant will measure approximately 60-feet by 100-feet; that Envirotech did an Environmental Assessment and established a Environmental Management Service project to improve non-point source pollution, water quality, wildlife habitat, invasive species, and aesthetics in and around the watershed; that all services were conducted in association with McCrone, Inc. and DNREC; that all products (i.e. herbicides and algacides) are EPA registered and will be used under manufacturer's specifications; that only degreed and licensed applied scientists will conduct the services; that the services will be provided in



3 stages: immediate stage: during contract stewardship of the property; intermediate stage: during development and construction phase; and long term stage: continued services for the projects; that water quality monitoring will be conducted; that generalized rapid-bio-assessment techniques will be used at each test site to determine the quantity and quality of benthic macro-invertebrates; that they will design and implement aquatic and terrestrial integrated vegetation management programs for the control/eradication of invasive species; that the aquatic and wetland ownership includes 43 acres of fresh water impoundment, associated wetlands and riparian buffers; and that the impoundment waters are supported by a dyke and spillway system owned by DeIDOT.

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The Commission found that Mr. Fuqua submitted copies of proposed conditions and findings of facts for C/Z #1610 and referenced specifically that the conditions include that “the developer will design and install a landscape buffer of berms and plantings running South to North along the entire property boundary with Route 24”; that “the developer will design and install a landscape buffer of berms and plantings running East to West along the entire property boundary with the relocated Sloan Road”; and that “the developer will install a six (6) foot beige vinyl fence along the East to West boundary where the proposed building area is closest to the Brandywood Community”.

The Commission found that Mr. Fuqua submitted copies of proposed conditions and findings of facts for Subdivision #2006-32 and referenced specifically that the conditions include that “the Applicant shall establish an Environmental Management Plan for Burton’s Pond including designing and implementing, monitoring and managing strategies for the pond and its watershed. This responsibility shall be transferred to the Home Owners Association and as adequate budget shall be established to accomplish the intent of the Plan”; that “the developer will design and install a landscape buffer of berms and plantings running South to North along the entire property boundary with Route 24; and “as represented by the Applicant the use of Burton’s Pond will be subject to the following conditions: a) watercraft shall be limited to fishing boats with electric motors and non-motorized watercraft; b) fishing shall be limited to catch and release, except for State designated citation fish; c) watercraft use of Burton’s Pond by community residents shall be limited to a maximum of 30 watercraft at any one time. The Homeowners Association will establish a system of ownership or registration to implement this policy; d) hunting will not be permitted on Burton’s Pond. Signs will be posted.

The Commission found that Mr. Fuqua added that the design of the projects create a superior residential community; that the plans exceed the requirements of all State and County ordinances; that they propose an Environmental Management Plan; that the developer will be funding all of the roadway improvements; that the project provides residential housing alternatives; that woodlands are being protected; and that the State agencies have complimented the project.

The Commission found that the representatives of the projects, in response to questions raised by the Commission, stated that the Applicants are purchasing the Pond; that the public will have access to use the Pond; that it may cost as much as \$65,000 to \$70,000 to improve the Pond and \$12,000 to \$15,000 to maintain the Pond annually; that a marked pedestrian crossing is proposed crossing Hollymount Road; that parks are placed throughout the project; that they have not submitted a MPHU plan to the County, but voluntarily propose to include at least 20 units for inclusion into the MPHU program; that the RPC portion of the project was chosen to serve as an alternative lifestyle, preserves all of the woodlands on that portion of the site, has greater setbacks, and is located in the Environmentally Sensitive Developing District, which references the density and housing

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types proposed; that the multi-family housing at this site is in close proximity to the multi-housing in the Baywood RPC to the south; that the 1,000 unit campground to the south of the proposed Cluster Subdivision is higher in density; that one lot next to the Pond is less than 50-feet from the Pond; that a 50-foot separation can be created; that any use of the sewer treatment system by others shall be subject to the approval of an expansion of the franchise boundary by the Public Service Commission; and that the proposed boat storage area can be screened from view.

The Commission found that Kaye Allison was present in support of the application and stated that she found the developers to be very professional; that most developers maximize the impact; that these developers plan on improving the environmental features of the project; that adjacent landowners, in the past, have tried to improve the Pond with no success and with little to no cooperation from the owners; that the developers' intents are welcome to those who live on the Pond; and that the proposal will have a positive impact to the site and the area.

The Commission found that Bob Maegerle of Pinewater Farms Subdivision was present in opposition to the application and stated that the Commission recently wrote to the developer of Spring Breeze that "a cluster development was not appropriate for this area"; that the County Council overruled the Commission's decision and approved the Spring Breeze project; that last year the Commission worked with the developer of Pinewater Woods Subdivision to revise a proposed 23 lot cluster subdivision to a 14 lot standard subdivision with 0.75 acre lots; that standard 0.75 acre lots are the norm in this area and that MR zoning is out of place; that the residents of the area only have zoning regulations to assure them that adjacent developments will be similar to their lots and homes; that the request to create a MR-RPC zone in the middle of an AR-1 residential area is an injustice to the Pinewater Woods Subdivision and strips the zoning protection from the residents of Pinewater Farm, Brandywood and Herring Creek Estates; that the date on the notice was questionable since some of the residents received their notice 4 days in advance of the date; that the correct naming of Route 49 is Sloan Road, not Pinewater Road; that the notice did not include a reference that the project is in an

Environmentally Sensitive Developing District Overlay Zone; that the Comprehensive Plan Update references that “The Purpose of designating the Environmentally Sensitive Developing Area is to recognize that the Inland Bays of Sussex County are a major resource of the County and must be protected from intensive development on the surrounding area.”; that the Plan also references that “The intent of the Plan is to encourage higher residential densities in the Town Centers, with densities reducing as development moves further away from the Town Centers.”; that the Plan also references that “While improvement of existing housing is the preferred alternative, it will be necessary to plan for areas of multi-family dwelling units to accommodate the housing needs of low-income and elderly residents, These developments will be located where public infrastructure and services are available.”; that it is estimated that if a standard

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development of homes on 0.75 acre lots, similar to all the existing and new developments in this area, were built on the 42 acre farm, 34 homes could be accommodated and that if a cluster development was to be built on this property 80 homes could be accommodated; that the calculations of the developer call for a maximum of 183 units to be allowed with MR-RPC zoning; that this is not decreased density, this is not a Town Center, and public infrastructure and services are minimal; that the residents of the area have high hopes that the proposed 2007 Comprehensive Plan will prohibit on-site septic and waste treatment systems, and require County sewer to be installed before developments are approved in the Environmentally Sensitive Developing District Overlay Zone; that water quality of the Inland Bays and water wells must be protected from human waste; that on-site treatment facilities, from higher density developments, perpetuate this pollution and discourage the approval of new sewer systems; that affordable housing for moderate income families is a fine idea, but should be located near urban areas where the proper infrastructure and services exist; that trying to create an urban zone in the middle of an AR-1 District, with high property values will be a dis-service to the moderate income families; and that cost associated with the maintenance of private roads, waste treatment facilities, recreational facilities, Burton’s Pond and payment of dues will overwhelm those moderate income families and create a situation like Pot Nets where retired families have had their savings depleted to pay escalating land rent.

The Commission found that Mr. Maegerle submitted his comments in writing and a petition, containing 127 signatures, which states that the residents of Pinewater Farm object to the rezoning of property east of Route 24 on both sides of Sloan Road; that this property is in the Environmentally Sensitive Developing District Overlay Zone, which is an area to be protected from intensive development; and that since this proposal is out of context with the 2003 Comprehensive Plan Update the residents request that this application be rejected or at least tabled until the 2007 Plan is issued to further define residential use in the Environmentally Sensitive Developing District Overlay Zone.

The Commission found that Michael Tyler was present and expressed concerns that the project looks like a cookie-cutter layout; that amenities should be centralized, not across

Route 48; that traffic calming methods are needed and referenced lesser road widths; that houses should not back up to public roads; that this land is designated as good recharge and questioned if this project will recharge or impact local water wells; that the MPHU units should be mixed in with single family lots, not in multi-family areas; that the traffic impact study references traffic numbers that are higher than presented; that the Tunnell Company projects must not have been calculated into the traffic impact study; that buffers should be scientifically established, not dimensionally established; that he questioned the bio-retention system, piping and swales; that ponds are attractive nuisances; and suggested that the ponds should be eliminated due to maintenance concerns for the future home owners.

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The Commission found that representatives of the project, in response to questions raised by the Commission, stated that there will be no drawing of water from the sites, since water will be piped in to the sites, treated and then discharged on the site for recharge; that they have not experienced any water supply problems in the County; that Civil Environmental Engineers are qualified to review and establish adequate buffers; that a 50-foot wide buffer have been determined to be a safe dimension; that the proposed management plans will provide a benefit to the sites; that rear yards will capture runoff; and that wet ponds provide more detention time which breakdown particles easier, and are a benefit to residents who like to fish the ponds.

The Commission found that George Boettger, John Holcome, Wynn Stewart, John Davidson, Karen Smutts, Mary Ann Scott, Wayne Erickson, Mary Tomlin, Emily Sloan and David Ackey were present and spoke in opposition to the application and expressed concerns that single family homes should be placed next to other single family homes, not multi-family; that the use will impact property values; that the need for another development was questioned due to the number of lots available in Baywood projects, Hart's Landing, Greenback Estates, Pinewater Woods, Pinewater Farm and other projects; that a 50-foot wide right-of-way exists along Brandywood and has not been mentioned; that large electric power poles have just been erected at the intersection Route 48 and Route 24 and appear to be in the sewer disposal area; that there are not any other multi-family projects in the immediate area of this project; that the area is rural; that the intended use is not compatible; that a precedent will be set for further projects in the area; that for safety reasons the realignment of the intersections of Route 24, Route 48 and Route 49 should be completed prior to any construction within the project; that street-lighting causes light pollution and impact the neighboring projects; that the location of street lighting should be given consideration so as not to impact others; that the projects create loss of farmland in the area; that farmland needs to be preserved; that all of the proposed impervious surfaces will not restore ground water; that archaeological sites in the area will be impacted; that silt problems already exists from water runoff from adjacent properties into the Pond and Hopkins Prong; that the cost of infrastructure will impact future residents; questioning what happens if the homeowners association

becomes extinct and the possible lack of maintenance of all of the amenities and infrastructure; that Holly Lake Campground is only seasonal, not permanent; and questioning who maintains the dam at Route 24.

The Commission found that representatives of the project, in response to questions raised by the Commission, stated that the electrical power poles are not located in the area of the sewer disposal area; that the poles will remain where they are presently located; that the only way it will work for this project to be developed is to make the intersection improvements in the first phase; and that the State DeIDOT maintains the dam at Route 24.

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The Commission found, by a show of hands, that one (1) person was present in support and that 28 parties were present in opposition to the applications.

At the conclusion of the public hearings, the Commission discussed the applications.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action on C/Z #1610 for further consideration. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Gordy and carried unanimously to defer action on Subdivision #2006-32 for further consideration. Motion carried 4 – 0.

Meeting adjourned at 10:18 p.m.