



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF AUGUST 24, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 24, 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: I. G. Burton, III, Benjamin Gordy, Michael Johnson, Rodney Smith and Robert Wheatley, with Vincent Robertson – Assistant County Attorney, Lawrence Lank – Director, and Shane 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 August 10, 2006 and August 16, 2006 as amended.

OLD BUSINESS

Subdivision #2005-48 – application of **ZOAR ESTATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 83.85 acres into 78 lots, (Cluster Development), located at the northeast corner of the intersection of Route 48 and Route 30.

Mr. Abbott advised the Commission that this is the final record plan for a 78-lot cluster subdivision application; that the Commission granted preliminary approval for 78 lots on June 22, 2006; that the final record plan meets the requirements of the subdivision and zoning codes and the conditions of approval; 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 5 – 0.

Subdivision #2005-60 – application of **MANDRIN HOMES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 27.34 acres into 56 lots, (Environmentally Sensitive Development District Overlay Zone), located west of Road 381, 3,860 feet north of Route 54, and south of Dirickson Creek.

Mr. Abbott advised the Commission that this application was deferred on August 10, 2006 for further consideration; that central sewer is proposed to be provided by Sussex County; and that at this time, central sewer is not available to the site.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action until the site is annexed into a county sewer district. Motion carried 5 – 0.

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Subdivision #2005-62 – application of **DREAM BUILDERS CONSTRUCTION, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 93.58 acres into 79 lots, located north of Route 224, 80 feet west of U.S. Route 113.

Mr. Abbott advised the Commission that this application was deferred on August 10, 2006; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on site septic systems; and that DelDOT has issued a Letter of No Objection for the entrance location.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2005 – 62 for Dream Builders Construction, Inc. based upon the record and for the following reasons:

1. The subdivision meets the purpose of the Subdivision Ordinance and protects the orderly growth of the County.
2. The land where the subdivision will be located is not considered prime farmland.
3. The Subdivision, with the conditions placed upon it, will be integrated into the existing terrain and surroundings.
4. The subdivision will be a restricted residential development. It will not adversely affect nearby uses or property values.
5. The 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 preliminary approval shall be subject to the following conditions:
 - The number of lots shall not exceed 79.
 - The Applicant shall prepare and record restrictive covenants governing the development and form a homeowners' association to be responsible for the perpetual maintenance of streets, roads, buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - The storm water management system shall meet or exceed the requirements of the State and County.

- All entrances shall comply with all of DelDOT's requirements. In addition, the entrance onto the county road shall be lighted and landscaped, with the lighting and landscaping shown on the Final Site Plan.
- The Restrictive Covenants shall include the Agricultural Use Protection Notice.
- There shall not be any wetlands within any of the lots.
- A school bus shelter with parking for at least 4 vehicles shall be included near the entrance to the project.

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- There are currently no amenities shown on the Preliminary Site Plan. While not every development needs a pool, they all need sufficient open space. In this case, the open space is primarily only the storm water pond area. On the Final Site Plan, the area around the storm water ponds currently identified as Lots 15, 16, 23, 24 and 25 shall be redesigned to dedicate more open space, even if these lots are eliminated.
- There must be a notice contained in the Restrictive Covenants stating that hunting activities occur on neighboring and adjacent properties.
- Street naming shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Gordy, and carried unanimously to approve this application as a preliminary, for the reasons and with the conditions stated. Motion carried 5 – 0.

Subdivision #2005-63 - application of **DREAM BUILDERS CONSTRUCTION, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, Sussex County, by dividing 307.71 acres into 251 lots, located south of Route 40, 580 feet west of Road 591.

Mr. Abbott advised the Commission that this application was deferred on August 10, 2006; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; and that DelDOT has sent a letter indicating that they will not issue a Letter of No Objection until the traffic impact study is completed and all required entrance/roadway improvements are finalized.

Motion by Mr. Gordy, seconded by Mr. Smith, and carried unanimously to defer action pending receipt of a Letter of No Objection from DelDOT. Motion carried 5 – 0.

C/U #1665 – application of **L.T. ASSOC., LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a professional/medical office complex to

be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 20.433 acres, more or less, lying east of Warrington Road (Road 275), 200 feet southeast of Route 24.

The Commission discussed this application, which has been deferred since August 10, 2006.

Mr. Johnson stated that he was not present during the public hearing, but he did listen to the tape recording, reviewed the file, and reviewed the site.

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Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1665, the application of L.T. Assoc., LLC for a medical office complex based upon the record made at the public hearing and for the following reasons:

- 1) This project is directly adjacent to the Beebe Medical Complex which is currently under expansion.
- 2) The close proximity to the Beebe Medical Complex will benefit the health, safety and welfare of Sussex County residents by providing accessible medical services.
- 3) The project, with the conditions and stipulations placed upon it will not have an adverse impact on the neighboring properties or community.
- 4) This recommendation for approval is subject to the following conditions and stipulations:
 1. Water shall be provided by a public central water system.
 2. The project shall be served as part of the Sussex County West Rehoboth Sewer District in accordance with Sussex County Engineering Department standards.
 3. The project is to be developed in phases. Phase I shall be limited to 81,700 square feet of office space based upon the current limited sewer capacity as outlined by the Sussex County Engineering Department. Any additional phases or expansion beyond 81,700 square feet of office space is subject to public hearings and subsequent approval of the Planning and Zoning Commission.
 4. Site Plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
 5. 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.
 6. The offices shall be limited to professional medical care or other services incidental to such a use. The offices may be used for other professional services such as law, accounting, and engineering.
 7. Parking shall be located to the rear of the buildings.
 8. A landscaped berm shall be provided along the southeasterly boundary and shall be shown on the final site plan.

9. The site plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton 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 and stipulations stated. Motion carried 5 – 0.

PUBLIC HEARINGS

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C/U #1677 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in an AR-1/RPC Agricultural Residential District-Residential Planned Community for a regional water distribution facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.18 acre, more or less, lying west of Road 346B, approximately 4,400 feet north of Route 346.

The Commission found that the Applicant had presented an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained: references to the project team, an executive summary, references to the Zoning Ordinance and Comprehensive Plan Update, a letter from the Millville Volunteer Fire Company in support of the application, a Tidewater Utilities Service Area map, an aerial photograph showing the projects proposed to be served by the facility, a copy of the site plan, a photograph of a similar tank site, suggested proposed conditions and suggested findings of fact.

The Commission found, based on comments received from DelDOT, that the Level of Service “A” of Road 346B will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the entire site of Ellis Point contains soils of Coastal beach and dune land, Evesboro loamy sand, Klej loamy sand, and Tidal marsh, salty; that the Evesboro soils have slight limitations for development; that the Klej soils have slight to moderate limitations; that the Coastal and Tidal soils have severe limitations; that the Applicants shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro and Klej soils are considered of Statewide Importance; that the Coastal and Tidal soils are considered Hydric; that there are no storm flood hazard areas or tax ditches affected; that it may not be necessary for any on-site or off-site drainage improvements; and that the Applicant should contact the Army Corps. of Engineers for any wetlands permits that may be required.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Holts Landing

Sanitary Sewer District; that it is not clear what the amount of discharge will enter the sanitary sewer; that the current System Connection Charge Rate is \$5,161.00 per EDU; that the location and size of laterals or connection points will be determined by the County Engineer during the sewer concept plan review process; that conformity to the South Coastal Area Planning Study will be required; that no discharge will be allowed to the sanitary sewer without approval of the Operations and Maintenance Department; and that a concept plan is required.

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The Commission found that the Millville Volunteer Fire Company, Inc. submitted a letter in support of the application referencing that the use will be a benefit for the Fire Company in their firefighting operations.

The Commission found that Tim Willard, Attorney, was present on behalf of this application with Bruce Patrick of Tidewater Utilities, Inc. and that they stated in their presentations and in response to questions raised by the Commission that they are proposing ground level water storage tanks for a regional water service; that the use will provide adequate pressure for fire protection; that Ellis Point was approved with a 75,000 square foot water storage facility to serve the Ellis Point project only; that this application is intended to provide water service to four (4) projects, Ellis Point, Seagrass Plantations, the Greens at Indian River and that Preserves at Irons Landing; that two (2) 30,000 gallon tanks are proposed; that the use is of a public or semi-public character and is essential and desirable for the general convenience and welfare of the residents in the area; that the use is consistent with County and State recommendations; that the use is temporary in nature since it is only planned to be utilized for 3 to 5 years; that they plan to reforest the site when the facility is removed; that the tanks will be 12-feet in height; that the Applicants are willing to fence with slats or plant Leyland Cypress for landscaping around the site to screen the site; that the booster station structure will be locked; that it is not required by State or Federal laws to fence the site; that the site is across the road from the Holts Landing State Park; that they anticipate that interconnection to create a regional system for the entire area will be completed within 3 to 5 years; and that they have no objections to a time limitation.

The Commission found that John Griffith, an adjacent property owner; was present, not necessarily in opposition, but concerned about the location and screening, and requested that the Applicants leave as much vegetation as possible and that the site be reforested when the facility is removed. Mr. Griffith added that he would not object if Leyland Cypress were used for screening.

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

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

C/U #1694 – application of **TIDEWATER UTILITIES, INC.** to consider the Conditional Use of land in a GR/RPC General Residential District-Residential Planned Community for an elevated water storage tank/public utility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 18,234 square feet, more or less, lying south of Angola Road (Road 277), approximately 710 feet west of Angola Beach Road (Road 278).

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The Commission found that the Applicant had presented an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained an introduction summary, a Tidewater Utilities Service Area map, references to the Zoning Ordinance and Comprehensive Plan Update, a copy of the site plan, a photograph of a similar water tower, a structural stability report, a letter of support from the State Division of Public Health, suggested proposed conditions and suggested findings of fact.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Angola Neck Planning Area and that the Department has no objection to the proposed elevated water tank.

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

The Commission found that a letter was received from John Townsley, a Board member for the Bay Ridge Woods Homeowners Association, expressing concerns relating to entrance to the tower site from Angola Road in the immediate vicinity of Bay Ridge Lane in Bay Ridge Woods Community and two lots along Angola Road; that the entrance will disrupt traffic flow in and out of Bay Ridge Woods and will be detrimental to traffic safety; that traffic patterns will be interrupted with vehicles entering and exiting the access road on a sporadic basis from Angola Road, where traffic flows at a high rate of speed; that school buses pick up and drop off children from Bay Ridge Woods; that children are exposed to significantly higher risk by virtue of the fact that they congregate

on the curbside of Angola Road for school bus service; that in the interest of public safety, Bay Ridge Woods request that more detailed information and dimensional plots be submitted that specifically identify the actual location of the access road in relation to Bay Ridge Woods, that the proposed location of the water retention basin and the water tower be repositioned to place the tower in the westernmost location, which would permit the access road for the water tower to be built across from the access road to the power substation; that the water tower be erected not less than 200 feet off of Angola Road to preserve the ambiance and visual appearance of existing communities; that the tower enclosure be properly landscaped with trees and vegetation to enhance the appearance of

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the road frontage; and that all residents within 200 feet of the final proposed location be notified in accordance with County procedures.

The Commission found that Tim Willard, Attorney, was present on behalf of this application with Bruce Patrick of Tidewater Utilities, Inc. and Chuck Hauser of Davis, Bowen & Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the letter from Bay Ridge Woods seems to relate primarily to traffic; that traffic concerns should be minimal since visitation to the site, once construction is completed, will be no more than once per day or once per two days; that the site is within an open space area within the Angola Estates RPC; that the site is centrally located in a wooded area close to Angola Road to preserve trees; that the site is adjacent to a stormwater management facility; that the site is located within the Angola District and is intended to serve Angola By The Bay, Angola Estates, Bay Ridge Woods, Chapel Green, Lochwood, Village of Herring Creek, Bay Front, Cove on Herring Creek, West Bay Park, Woods on Herring Creek, and other proposed developments; that the use is of a public or semi-public character and is essential and desirable for the general convenience and welfare of the residents in the area; that the use is consistent with County and State recommendations; that the State Division of Public Health supports elevated storage tanks for large communities because of the added public health protection they offer and since they maintain adequate water pressure and a reserve of water during power outages thereby minimizing the potential for back-siphonages during those periods and provide fire flow protection; that the proposed tower is designed to contain 400,000 gallons of water; that the tower is proposed to be painted a sky-blue and is proposed to have a Tidewater Utilities, Inc. logo and Angola Estates logo; that the shape of the tower is similar, but 100,000 gallons smaller than the tower in Rehoboth Beach; that the Exhibit Booklet includes a Structural Stability report in Tab 6; that the tower in Rehoboth Beach is similar in height or higher; that tanks are designed based PSI service pressure; that the 160-foot height proposed will accommodate adequate pressure; that the communication antennas on top of the tower are no higher than the tower; that 50% of the antenna leases will be governmental; that once construction starts it will take approximately 6 months to complete the tower; that the construction entrance on

Suburban Boulevard within Angola Estates will be utilized during construction of the tower; and the proposed driveway will be completed when the construction is completed.

The Commission found that John Townsley, John Kitchenman, and Jean Unruh were present with questions and expressed concerns about traffic safety; suggested that the construction entrance be a permanent entrance; questioned the setbacks proposed; supported the sky-blue color; questioned the need for the logos; and questioned the need for 160-foot of height.

The Commission found that Mr. Willard, Mr. Hauser and Mr. Patrick responded that the design calculations for the tower and pressure indicates that 160-foot of height is

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necessary; that the easement area does not include a permanent connection to the construction entrance; that no more than one vehicle per day or one vehicle per two days will be visiting the site; and that no portion of the tower will encroach into any setbacks.

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

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

C/U #1696 – application of **TIDEWATER UTILITIES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional wastewater treatment facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.11 acres, more or less, lying northeast of Camp Arrowhead Road (Road 279) within the Bay Front Subdivision, and being southeast of Marsh Island Avenue, 525 feet west of Rachel Avenue.

The Commission found that the Applicant had presented an Exhibit Booklet prior to the meeting and that the Exhibit Booklet contained a project overview which included copies of the Application form, a letter to the Applicant in reference to attendance at meetings, and copies of advertisements; a chronology referencing the wastewater treatment facility; a colored site plan; a color map of parcels in the area showing the area to be served in green; photographs of the entrance sign to Bay Front and the wastewater treatment facility at Bay Front; photographs of the interior of the wastewater treatment facility at Bay Front; photographs of the rapid infiltration basin at Bay Front; a listing of treatment standards; copies of excerpts from the Commission Minutes on BOCA EAST, LLC (Subdivision #2002-43); copies of the BOCA EAST, LLC DNREC permit #204435 and attachments; a copy of a letter from the DNREC Division of Water Resources; a copy of a Certification of Public Convenience and Necessity to provide Wastewater Services for Herring Point as approved by the State Public Service Commission; a copy of the application filed with the State Public Service Commission by Tidewater Utilities, Inc.

for the facility and area with attached maps; Expansion Information relating to the Conditional Use application for this project; and a large aerial map of the area.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Inland Bays Regional Planning Area, Angola Neck Area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Area Planning Study will be required; that the Engineering Department has no objection to the operation of the existing wastewater treatment plant continuing its service to the Bay Front Development; that it is proposed to use the wastewater treatment facility as a regional facility to serve other communities within the proposed Angola Sanitary Sewer District, i.e. Sussex County central sewer service; that the County has

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received requests from property owners in Angola By The Bay, The Woods on Herring Creek and Bay Ridge Woods to provide central sewer service; that based upon those requests, petitions are being prepared in consideration of a District referendum being held in early 2007; that the Department strongly objects to the concept of Tidewater's own efforts to provide affordable and planned sewer service to the existing residents of the Angola Peninsula; and that the Department is on a fast track to provide sewer service to the Woods on Herring Creek development, which has a failing on-site system.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the entire site of the Bay Front project are mapped as Evesboro loamy sand, Swamp and Tidal marsh, salty; that the Evesboro soils have slight limitations for development; that the Swamp and Tidal soils have severe limitations; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance; that the Swamp and Tidal soils are considered Hydric; that there are no storm flood hazard areas or tax ditches affected; and that it may be necessary for some on-site and off-site drainage improvements.

The Commission found that prior to the meeting the Applicants provided some suggested proposed findings of fact and suggested conditions of approval for the Commission's consideration.

The Commission found that Bruce Patrick of Tidewater Utilities, Inc. was present with Dennis Schrader, Attorney, and that they stated in their presentations and in response to questions raised by the Commission that the site is within the Bay Front Subdivision; that the site is currently being utilized for a wastewater treatment facility to serve the Bay Front Subdivision and includes a rapid infiltration basin; that the facility is designed currently to handle up to 250,000 gallons per day; that they have excess capacity and plan to serve the Herring Point Subdivision; that they received a DNREC permit in October 2004; that the Bay Front Subdivision was approved in November 2004; that the permit to

construct the facility was approved in June 2005; that five (5) rapid infiltration basins are proposed; that the site has good permeability rates for the area of the basins; that the collections system will be a gravity collection system delivered to the treatment facility by force mains; that the treatment facility is 200 feet from any property line; that adequate space is available for expansion of the facility; that rather than building a treatment facility for both projects it appears to be economically more feasible to create one system and serve both projects; that their intent is to expand the existing facility to serve the Herring Creek Subdivision; that they propose to provide additional capacity to serve 180 additional units; that the area is not currently served by a public or private sewer service; that the findings of fact that they submitted suggest that the uses is appropriate for the area; that typically facilities are designed at a capacity of 300 gallons per day; that the system is designed for in excess of 250,000 gallons; that if approved the

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State Public Service Commission will have to approve a revised Certificate of Convenience and Necessity, the State DNREC will have to grant approval of the use, and the site plan will have to be approved; and that if and when County sewer service becomes available the County may have to compensate Tidewater Utilities, Inc. for the facilities.

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. Burton and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Subdivision #2005-64 – application of **PALISADES LAND, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 737.00 acres into 1,052 lots, (Environmentally Sensitive Development District Overlay Zone), located south of Road 363, both sides of Road 364, both sides of Road 364A, east of Road 381, and north of Dirickson Creek.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on February 15, 2006; that the Applicant's have submitted an Exhibit Booklet, a response to PLUS comments, a revised preliminary plan, wetlands evaluation reports, a forest environmental survey report, a Phase 1 environmental site assessment, a site evaluation and ground water impact assessment, a traffic impact analysis, a Phase 1 archaeological report, a ground water monitoring progress report, an environmental assessment and public facility evaluation report, copies of previous Planning and Zoning and County Council minutes and that all of these items will be made a part of the record.

Mr. Abbott advised the Commission that 30 letters and a petition with 251 signatures in opposition to this application has been received and that they will be made a part of the record.

The Commission found that James Fuqua, Attorney, Jack Hayes, Bill Stephens of Stephens Environmental Services, Mark Wendland of EDSA, and Carl Wilson of the Traffic Group were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this project complies with land use laws; that the opposition has legitimate concerns; that the developers have the same concerns as the opposition; that the project has been designed to have minimal and positive impacts on the environment; that the Commission's decision has to be based on

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the existing laws; that the opposition to this application is based on inaccurate information published in the local newspapers; that a commercial shopping center is not a part of this application since it is not permitted; that the mention of the shopping center came up in a PLUS meeting; that the County Council denied a request for a residential planned community on this site three years ago; that the Planning and Zoning Commission approved a subdivision for this site in 2004; that the editorial in the newspaper does not support land use laws; that the Comprehensive Land Use Plan and Ordinances are the law; that this project is a single family residential subdivision known as The Estuary; that the site is made up of seven tracts and contains 742 acres; that the site is located south of the Town of Ocean View; that there are several residential developments in the area such as Plantation Park, Starlight Woods and Bear Trap Dunes; that the site is west of the Assawoman Wildlife Refuge; that the project is north of Route 54 and there are several single family developments such as Magnolia Shores, The Refuge and Swann Cove; that the site is zoned agricultural residential and does not require a change of zoning; that the agricultural residential district permits a density of 2.18 lots per acre; that single family dwellings are a permitted use; that the site is located in an environmentally sensitive developing area based on the Comprehensive Land Use Plan and is a growth area; that there are two elements to the environmentally sensitive developing area – the environment and growth areas; that there is an increased demand for housing in this area; that the expansion of waste water treatment plants will protect the Inland Bays; that the site is desirable for appropriate development; that 1,617 lots are permitted by the approved ordinances; that by clustering the lots to a minimum square footage of 7,500 square feet promotes quality development and creates more open space; that the land use plan and ordinances are legal documents; that the Environmentally Sensitive Developing District Overlay Zone ordinance was adopted in 2003; that this ordinance permits 7,500 square foot lots with central sewer and water; that the revised plan that was submitted was for 1,060 lots; that the advertisement was for 1,052 lots; that the site is not located in a low density area but has been designed as a low density development; that the proposed density is 1.43 lots per acre; that the development will be phased in over a five year period; that approximately 220 dwellings will be built per year;

that a shopping center is not proposed nor permitted; that 380 single family lots have already been approved by a previous subdivision application; that the 380 lots are the center of this project; that the developers have purchased additional acreage for this application; that there will be ten different neighborhoods in this project; that amenities and open space will be provided; that the 380-lot Williams Creek Subdivision was approved for 20,000 square foot lots without much open space; that by utilizing a cluster design, more open space is created; that this site contains 416 acres or 56% open space; that the CCMP for the Inland Bays was considered; that the CCMP is not aimed at stopping development; that the project is for single family detached dwellings and that townhouses or condominiums are not proposed nor permitted; that the Sussex County Engineering Department does not want private waste water treatment plants; that the site is located in the Bayard Expansion area; that the applicant will fund the study area and

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request to be annexed into the district; that the developer will be responsible for transmission lines; that central water will be provided along with fire hydrants; that utilities will be provided by Tidewater Utilities, Delaware Electric Cooperative, Verizon, Comcast and Sharp Energy; that the site is located in the Indian River School District, that the site is located in the jurisdiction of the Delaware State Police; that it is in the fire protection districts of the Millville Fire Company and Roxana Fire Company, with Bethany Beach Fire Company being in close proximity; that a homeowners' association will be established; that an emergency evacuation plan will be created; that traffic is a major concern; that the Traffic Group prepared a traffic impact study that has been submitted to DelDOT; that 24 intersections were studied and road improvements will be required and completed by the developers; that all lot owners will be required to be members of the homeowners' association; that the project will be professionally managed; that the restrictive covenants have been submitted; that the covenants provide for the maintenance of all streets, common areas, buffers and storm water management facilities; that recreational facilities will be provided; that these amenities will include a boat house facility, indoor/outdoor swimming pools, spas, a lazy river water feature, tennis and basketball courts, lawn fields and a multi use building; that there will be an area for storage of boats, canoes and kayaks; that no motorized boat launching facilities will be permitted; that there will be a snack bar with a grill; that walking and biking trails will be provided; that numerous studies of the site of been conducted; that Stephens Engineering prepared the plan; that Tidewater Utilities will provide central sewer and water to the site; that there will be adequate pressure and capacity; that an area has been set aside for a water storage tower if one is needed; that Tidewater will be required to comply with all of DNREC and Public Service Commission regulations; that there are 2 pump stations proposed for the site; that annexation into the County sewer district has begun; that the waste water treatment design will be built to Ordinance No. 38 standards; that the storm water management design will provide for water quantity and quality; that the site extends across three watersheds and drains to the Assawoman Bay; that the developers are ready to submit to the Sussex Conservation District; that the groundwater has been monitored for over one year; that they have data for over 4 years; that the storm

water management design will utilize best management practices; that there will not be any disturbances or impacts to the wetlands; that there will be a minor disturbance to the flood plains; that all non delineated flood plains will be determined and all improvements will be at or above these requirements; that the wetlands have been delineated and submitted to the Corps of Engineers; that there are 156 acres of 404 wetlands and 44 acres of tidal wetlands; that there will be 2 acres of constructed wetlands; that there will be a 30-foot buffer from non-tidal wetlands; that an average buffer of 70 feet is provided; that no wetlands will be included on any of the lots; that the developer will acquire all necessary approvals; that the developer has met with the Center for the Inland Bays and the Department of Agriculture; that the developers will replace 30 acres of forested areas; that the wildlife corridors will be maintained; that an endangered species study has been

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conducted; that the fox squirrel trappings have not been very successful on the site; that there is no evidence of expansion of the fox squirrel population; that the Wildlife Refuge is the home of a rare grass that the developers would like to get seedlings from try to harvest this plant on their site; that an extensive trail system will be provided; that fill dirt will be utilized from this site; that a Phase 2 archaeological study has begun and there is a small cemetery on the site; that the site is over 700 feet from the Wildlife Refuge; that there will be a 40% reduction of nitrogen and phosphorous; that the project has been designed utilizing the models for better development guidelines; that the developers have met with various groups and State agencies; that large block of woodlands will be maintained; that the developers have responded to the PLUS and TAC comments; that the cluster design will create less impervious areas; that the neighborhoods will be joined by a boulevard; that sidewalks will be provided; that none of the proposed lots are located off of the boulevard; that the boulevard avoids crossing any wetlands; that 3 major roundabouts are proposed; that access to the lots will be from internal streets and cul-de-sacs; that the streets will be built to county specifications; that the proposed density is 2/3 of the permitted density; that the proposed lot widths of 60, 65, 75, 85 and 100 feet will provide for different housing types; that none of the lots have direct access to public roads; that a Discovery Visitors center is proposed; that a water front park and green space parks are proposed; that 97 miles of trails and sidewalks are proposed; that there will be a tree save on the individual lots; that this project will be a model example for cluster developments; that the developers will comply with all recommendations and regulations; that wetlands and woodlands will be preserved; that the project complies with the TMDL requirements of DNREC; that the TMDL report is referenced in the Exhibit Booklet; that the site is not in a remote area; that the site is located in a growth area; that the items referenced in Subsection 99-9C have been addressed in the Exhibit Booklet; that the project is a low density single family development; that this project is far superior to other standard subdivisions in the area; that the design complies with all ordinances and the comprehensive plan; that based on land use laws, this project should received preliminary approval; that a well and pump house location has been provided within 300 feet of the boundary of the subdivision; that there is adequate buffering from

an adjacent poultry operation; that the amenity areas will have adequate parking provided; that the existing dock on the site may be replaced by a floating dock; that the proposed roundabout on Camp Barnes Road will be able to handle large truck traffic; that DelDOT will require off site improvements such as turn lanes and signals when warranted at the expense of the developer; that shopping is available in the Millville and Americana Bayside areas along Routes 26 and 54; that bus shelters can be placed at the recommendations of the Indian River School District; that Road 364A will be realigned per DelDOT's requirements; and submitted proposed conditions of approval and finding of facts.

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

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The Commission found that Linda Tekloa, Marvin Long, Herbert Barnes, Jr., Christine Griswell, Brian Hudson, Chris Bason, Rich D'Onofrio, Richard Ryan, Vince D'Onofrio, Johnny Rogers, Nancy Spiatto, Ann Hobbs, Josh Johnson, Kirt Shively and Cindy Adolpos were present in opposition to this application and stated that they are opposed to the proposed density; that traffic in the area will only increase and become worse; that there will be negative impacts to the local schools; that most homes in the southeastern part of the county are second homes; that the site is located in close proximity to the Wildlife Refuge; that Dirickson Creek is a small body of water that is home to a family of eagles; that the project will cause negative impacts to the wildlife in the area; that the snack bar will turn into a restaurant; that the area cannot support 1,000 homes; that Camp Barnes is located in the immediate area and there will be safety concerns for the people who utilize the camp; that the Camp experiences security problems during the winter months; that there will be a negative affect on hunters in the area; that there are already empty homes for sale in the area; that the homes are not needed; that central sewer should be in place first; whether any of the homes will be for affordable housing; requested that access be left open to existing properties; that the quality of life will be ruined in the area; that the wetlands will be impacted; that sea level is rising and wetlands are being lost; that the Little Assawoman Bay is the dirtiest of the Inland Bays; that the area is an environmentally sensitive area; raised concerns about the location of the proposed boat storage facility; that there is a poultry operation in the area; that fertilizers will negatively impact the Inland Bays; that there are numerous traffic accidents in the vicinity; that the project will impact everyone in the area; that the local roads in the area are narrow; that the project is out of character with the area; that Delmarva Fox Squirrels exist in the area; and that there are flooding concerns for the area.

The Commission found, by a show of hands, that 2 people were present in support of this application.

The Commission found, by a show of hands, that 33 people were present in opposition to this application.

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

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

Meeting adjourned at 11:05 p.m.