



## *Planning & Zoning*

Agendas & Minutes

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

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 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. Robert Wheatley, Mr. Benjamin Gordy, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Richard Kautz – Land Use Planner.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of October 12, 2006 and the Minutes of October 18, 2006 as amended.

### OLD BUSINESS

**Subdivision #2005-49** – application of **GULFSTREAM LAND, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 47.26 acres into 90 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north and south of Road 363, 1,320 feet east of Road 84.

The Commission discussed this application which has been deferred since July 13, 2006.

Mr. Smith distributed copies of the sketch plan presented by the Applicant and asked if any of the Commission had any comments.

The Commission discussed concerns about the remote location of the amenity areas; that there is an isolation of the 13 lots on the opposite side of Double Bridges Road; that the Applicants favorably addressed Section 99.9 C of the Code; that the Applicants addressed selective clearing of trees; that there were concerns about residents of the 13 lots having to cross Double Bridges Road to get over to the amenity area; that trails could be established; and that it is not unusual to have lots across the road from a project.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

**C/Z #1595** – application of **BLACKWATER CREEK, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, land lying at the northeast corner of the intersection of Route 54 and Road 504, to be located on 3.2 acres, more or less.

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The Commission discussed this application which has been deferred since September 14, 2006.

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z 1595 for Blackwater Creek to amend the Comprehensive Zoning Map from AR-1 to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

1. This is an application to create a B-1 Neighborhood Business District on 3.2 acres, more or less, in Little Creek Hundred located on the northeast corner of the intersection of Route 54 and Road 504.
2. The subject property is located approximately 3 miles west of Delmar, and about 5 miles from the City of Salisbury, in Wicomico County, Maryland. Delmar has planned for its growth areas to expand in the direction of this project. Commercial growth has occurred along the nearby US 13 corridor in accord with Delmar's 2005 Comprehensive Plan. Wicomico County in its 1997 and 1998 comprehensive planning has proposed the "Metro Core Plan" that extends the future growth of Salisbury and Wicomico County towards Delmar and this project along US13 and to the east and west of the corridor.
3. At present, the area of the Blackwater Creek communities is an existing crossroads community that has formed from strip subdivisions at the intersection of Route 54 and Road 504. Route 54 is also a major route in Sussex County.
4. The Applicant proposes to deed restrict the subject property to grocery and convenience-type shopping without the sales of petroleum products or alcohol for off-site consumption.
5. The proposed neighborhood business project is in character with the nature of the area in that it will be a part of the larger Blackwater Creek community, create a village center, and the inclusion of neighborhood business areas will complete an integrated crossroads community by providing a master planned community.

6. B-1 Zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for retail shopping and personal service activities and that such uses should compliment surrounding neighborhoods. This proposed change in zone is consistent with the stated purpose of the B-1 Zone, and it will compliment and be integrated into the Blackwater Communities at the Route 54 intersection.

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7. The proposed neighborhood business area meets the purpose of the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of the county.
8. The proposed neighborhood project will be served with central water and wastewater treatment.
9. This project lessens congestion on roads and streets by providing for grocery and convenience shopping in the Blackwater Creek area without the necessity of traveling to the US 13 corridor through Delmar or to Salisbury.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

**C/Z #1596** – application of **BLACKWATER CREEK, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to an AR-1/RPC Agricultural Residential District – Residential Planned Community for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, land lying north of Route 54 and east of Road 504, to be located on 232.86 acres, more or less.

The Commission discussed this application which has been deferred since September 14, 2006.

Mr. Gordy asked Mr. Robertson to read the Motion prepared by Mr. Gordy.

Mr. Robertson read that Mr. Gordy would move that the Commission recommend approval of C/Z 1596 for Blackwater Creek-Northfarm, based on the record and for the following reasons:

1. The Commission is not being asked to change the basic zoning of this property. This property is currently zoned AR-1 Agricultural Residential, and the Applicant

is not seeking a change in the underlying zoning. Instead, granting the RPC, the potential uses for the property are limited, and the County can place restrictions and conditions on the use and design of the project.

2. The proposed AR-1-RPC meets the purpose of the Zoning Ordinance because it promotes the orderly growth of the County. And again, the property is currently zoned AR-1, so the Applicant is not seeking a substantial change from what is currently permitted within the current zoning.

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3. The subject property is located along State Route 54 less than 3 miles west of the Town of Delmar in an area that is within 5 miles of the City of Salisbury, in Wicomico County, Maryland. The Town of Delmar has planned for its growth areas to expand in the direction of Blackwater Creek. The Town has enjoyed significant commercial growth along the US 13 corridor in accord with its 2005 Comprehensive Plan. Wicomico County in its 1997 and 1998 comprehensive planning has proposed the "Metro Core Plan" that extends the future growth of Salisbury and Wicomico County towards Delmar along the US13 and to the east and west of the corridor.
4. The area where the project is proposed is an existing crossroads community that has formed from strip subdivisions. There are borrow pits and agricultural-type uses also existing in the project area.
5. The development has a proposed net density of 1.98 units/acre and is consistent with the uses permitted in the "low density area" of the 2002 Sussex County Land Use Plan and the purposes of the AR-1 District.
6. AR-1-RPC Zoning is appropriate for the proposed project site because the project is in the vicinity of growth areas and commercial and residential development. The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large-scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
7. The proposed project is in character with the nature of the area in that it will be a part of the larger Blackwater Creek community that provides multiple housing designs, retention of natural and open space features, outdoor recreation, preservation and continuation of agribusiness activities, the inclusion of neighborhood retail areas and completes a crossroads community by providing a master planned community. This proposed project will provide a transitional, residential community between the developing areas of Delmar, Salisbury and Wicomico County, to the south and east, and the agricultural areas to the north, by

providing open spaces, rural landscape, recreational facilities, etc. The project will comply with all agricultural use requirements required by law including buffers, setbacks, and agricultural use restrictions.

8. The developer will be responsible for the construction of all water and sewer utility facilities. Sewer facilities will be designed to comply with applicable State and County requirements.

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9. The Applicant has proposed a phasing plan for the build out of the project that will integrate the project into the area without significant negative effects.
10. The project will have a Code of Regulations for the portion of the project that is condominiums and Restrictive Covenants for individual lots that provide a homeowners association for the maintenance of common areas, open areas, amenities, streets, etc.
11. Although the Office of State Planning Coordination has negatively commented upon the State Strategies Level 4 designation for this project, the project is in close proximity to the developing areas of Delmar, and to Salisbury and Wicomico County. The project also complies with the County's Land Use Plan and the relevant County ordinances. It is also situated along State Route 54, a major travel corridor in Sussex County.
12. The Applicant has favorably addressed all of the items set forth in Section 99-9C of the Subdivision Ordinance as a part of its RPC presentation.
13. The project, with the stipulations and conditions placed upon it, will not adversely affect the County, the neighborhood, or the adjacent properties.
14. This recommendation is subject to the following conditions:
  - a) The maximum number of dwelling units shall not exceed 168 multi-family units and 238 single-family lots.
  - b) The construction of the project shall be phased over a period of 10 years with no more than 50 residential building permits being issued within any given calendar year, commencing the date of final approval of this application by Sussex County Council.

- c) Site plan review is required for the master plan and each phase of the proposed development, including the location of curbs, sidewalks, and streetlights.
- d) All entrances, intersections, roadway, and multimodal improvements shall be constructed as required by DelDOT.
- e) Interior street design shall be in accordance with or exceed Sussex County street design requirements.

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- f) Recreational facilities within this project, including the golf course, swimming pool and community buildings shall be constructed and open to use by the residents within 2 years of the issuance of the first residential building permit within this project.
- g) The RPC shall be served by central wastewater treatment plant and collection system built in accordance with the requirements of DNREC and other State, County and Federal agencies.
- h) The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- i) Storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. Best Management Practices shall be used in the operation and maintenance of the systems.
- j) State and Federal wetlands shall not be included in individual lots. State and Federal wetlands shall be maintained as non-disturbance areas, except as may be authorized by a valid Federal or State permit.
- k) A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of streets, roads, buffers, storm water management facilities, recreational facilities and other common areas.
- l) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
- m) Agricultural buffers shall be provided as required by applicable State and County requirements.

- n) The Agricultural Use Notice shall be included in the Restrictive Covenants and Condominium Declaration.
- o) The Applicant shall coordinate and cooperate with the local school district's transportation manager to establish school bus stop areas. The areas of these bus stops, with the approval of the local district, shall be shown on the Master Plan.
- p) The Applicant shall cooperate and coordinate with the State and County Emergency Preparedness Office to develop and implement an emergency evacuation plan.

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Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously that this Application be forwarded to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

**C/Z #1597** – application of **BLACKWATER CREEK, INC.** to amend the Comprehensive Zoning Map from a GR General Residential District to a GR/RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, land lying west of Road 504 and south of Route 54, to be located on 273.54 acres, more or less.

The Commission discussed this application which has been deferred since September 14, 2006.

Mr. Gordy stated that he would move that the Commission recommend approval of C/Z #1597 for Blackwater Creek-Westfarm, based on the record and for the following reasons:

1. The Commission is not being asked to change the basic zoning of this property. This property is currently zoned GR General Residential, and the Applicant is not seeking a change in the underlying zoning. With this existing zoning, a density of approximately 4 lots per acre is permitted, and even mobile homes would be permitted. Instead, granting the RPC, the potential uses for the property are limited, and the County can place restrictions and conditions on the use and design of the project.
2. The proposed GR-RPC meets the purpose of the Zoning Ordinance because it promotes the orderly growth of the County. And again, the property is currently zoned GR, so the Applicant is not seeking a substantial change from what is currently permitted within the current zoning.

3. The subject property is located along State Route 54 less than 3 miles west of the Town of Delmar in an area that is within 5 miles of the City of Salisbury, in Wicomico County, Maryland. The Town of Delmar has planned for its growth areas to expand in the direction of Blackwater Creek. The Town has enjoyed significant commercial growth along the US 13 corridor in accord with its 2005 Comprehensive Plan. Wicomico County in its 1997 and 1998 comprehensive planning has proposed the "Metro Core Plan" that extends the future growth of Salisbury and Wicomico County towards Delmar along the US13 and to the east and west of the corridor.

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4. The area where the project is proposed is an existing crossroads community that has formed from strip subdivisions. There are borrow pits and agricultural-type uses also existing in the project area.
5. The development has a proposed density of 1.98 units/acre and is consistent with the uses permitted in the "low density area" of the 2002 Sussex County Land Use Plan and the purposes of the General Residential District.
6. GR-RPC Zoning is appropriate for the proposed project site because the project is in the vicinity of growth areas and commercial and residential development. The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large-scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
7. The proposed project is in character with the nature of the area in that it will be a part of the larger Blackwater Creek community that provides multiple housing designs, retention of natural and open space features, outdoor recreation, preservation and continuation of agribusiness activities, the inclusion of neighborhood retail areas and completes a crossroads community by providing a master planned community. This proposed project will provide a transitional, residential community between the developing areas of Delmar, Salisbury and Wicomico County, to the south and east, and the agricultural areas to the north, by providing open spaces, rural landscape, recreational facilities, etc. The project will comply with all agricultural use requirements required by law including buffers, setbacks, and agricultural use restrictions.
8. The developer will be responsible for the construction of all water and sewer utility facilities. Sewer facilities will be designed to comply with applicable State and County requirements.



9. The Applicant has proposed a phasing plan for the build out of the project that will integrate the project into the area without significant negative effects.
10. The project will have a Code of Regulations for the portion of the project that is condominiums and Restrictive Covenants for individual lots that provide a homeowners association for the maintenance of common areas, open areas, amenities, streets, etc.

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11. Although the Office of State Planning Coordination has negatively commented upon the State Strategies Level 4 designation for this project, the project is in close proximity to the developing areas of Delmar, and to Salisbury and Wicomico County, Maryland. The project also complies with the County's Land Use Plan and the relevant County ordinances. It is also situated along State Route 54, a major travel corridor in Sussex County.
12. The Applicant has favorably addressed all of the items set forth in Section 99-9C of the Subdivision Ordinance as a part of its RPC presentation.
13. The project, with the stipulations and conditions placed upon it, will not adversely affect the County, the neighborhood, or the adjacent properties.
14. This recommendation is subject to the following conditions:
  - a) The maximum number of dwelling units shall not exceed 403 multi-family units, consisting of 180 units in 18 unit multi-family buildings; 160 units in 8 unit multi-family buildings; and 63 townhouse units.
  - b) The construction of the project shall be phased over a period of 10 years with no more than 50 residential building permits being issued within any given calendar year, commencing the date of final approval of this application by Sussex County Council.
  - c) Site plan review is required for the master plan and each phase of the proposed development, including the location of curbs, sidewalks, and streetlights.
  - d) All entrances, intersections, roadway, and multimodal improvements shall be constructed as required by DelDOT.

- e) Interior street design shall be in accordance with or exceed Sussex County street design requirements.
- f) Recreational facilities and community buildings shall be constructed and open to use by the residents within 2 years of the issuance of the first residential building permit.
- g) The RPC shall be served by central wastewater treatment plant and collection system built in accordance with the requirements of DNREC and other State, County and Federal agencies.

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- h) The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- i) Storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. Best Management Practices shall be used in the operation and maintenance of the systems.
- j) State and Federal wetlands shall not be included in individual lots. State and Federal wetlands shall be maintained as non-disturbance areas, except as may be authorized by a valid Federal or State permit.
- k) A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of streets, roads, buffers, storm water management facilities, recreational facilities and other common areas.
- l) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
- m) Agricultural buffers shall be provided as required by applicable State and County requirements.
- n) The Agricultural Use Notice shall be included in the restrictive covenants and Condominium Declaration.
- o) The Applicant shall coordinate and cooperate with the local school district's transportation manager to establish school bus stop areas. The areas of these bus stops, with the approval of the local district, shall be shown on the Master Plan.

- p) The Applicant shall cooperate and coordinate with the State and County Emergency Preparedness Office to develop and implement an emergency evacuation plan.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-57** – application of **BLACKWATER CREEK, INC.** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 200 acres into 400 lots, located south of Route 54, east of Road 504, and north of Road 512.

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The Commission discussed this application which has been deferred since September 14, 2006.

Mr. Gordy asked Mr. Robertson to read the Motion that Mr. Gordy prepared.

Mr. Robertson read that Mr. Gordy would move that the Commission grant preliminary approval of Blackwater Creek, Inc. for the Southfarm Cluster Subdivision, Subdivision #2005-57, based upon the record and for the following reasons:

1. The development is designed in accordance with both the Subdivision Ordinance and the Clustered Development Ordinances.
2. The proposed cluster design, as modified in response to PLUS comments, is superior to a standard subdivision with approximately 94 acres (47%) of the project remaining as open space which includes approximately 75 acres (37.5%) of the site used as common areas or recreational areas. Also, the clustered design allows the creation of several smaller neighborhood areas within the project separated from one another with open space, yet controlled and managed by one common homeowners association. Under the clustered design, many of the lots back up to open space instead of the back yards of other lots. And, the cluster design has allowed the developer to maintain 100% (or 6.5 acres) of the existing forested areas and creating 19.5 acres of forested conservation buffer.
3. The development will contain 400 single family detached residential lots on 200 acres of land, which is within the residential density permitted for a subdivision in the AR-1 district. It is also consistent with the uses permitted in the “low density area” of the 2002 County Comprehensive Land Use Plan.
4. The subdivision will be integrated into the overall scheme of the entire project known as Blackwater at the intersection of State Route 54 and Road 504.

5. The development is consistent with the trend of development in the area, which is an existing crossroads community that has formed from strip subdivisions. The project will also provide a transitional residential community between the developing areas of Delmar and Salisbury to the south and east and the agricultural areas to the north by providing open spaces, and a rural landscape.
6. The development will fully comply with all agricultural use requirements required by law including buffers, setbacks and agricultural use deed restriction.

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7. The development will be served by central water and sewer systems built in accordance with the requirements of DNREC and other Federal, State and County agencies.
8. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed:
  - a. The clustered subdivision is integrated into the existing terrain and landscape with the maintenance of large areas of open space, trees and buffers.
  - b. There will be minimal use or impact of wetlands, and no lots will contain any wetlands.
  - c. No significant natural or historical features are on the site. However, the limited existing natural features will be largely preserved through the use of buffers and open space.
  - d. The clustered design has allowed the preservation of a great deal of open space and will allow for scenic views within the subdivision.
  - e. The Applicant has stated that tree, vegetation and soil removal will be minimal on the project.
  - f. Objectionable features will be screened from neighboring property and roadways. Also, homes next to neighboring properties will be avoided.
  - g. The Applicant has provided for water and sewer.
  - h. Through the establishment of an extensive storm water management plan, erosion and sedimentation will be minimized on the site, including into adjacent borrow pit sites.
  - i. Subject to DelDOT's approval, the Applicant has provided for safe vehicular and pedestrian movement within the site and onto connecting roadways.
  - j. The area property values will not be decreased and should be increased by the existence of the project.

- k. The project will have a positive effect on the schools by generating economic benefits in the form of property taxes for the school district where the project is located. At the same time, the expected demographic of the purchasers within the project will not overly burden the number of pupils attending the local school district.
- l. The Applicant's traffic impact study has shown that there will not be an adverse effect on area roadways and public transportation and the upgrades to the area roadways will be at the developer's expense in accordance with DelDOT's requirements.
- m. The project will be compatible with other area land uses, including other residential developments in the general vicinity. In addition, the project has been designed to minimize any adverse impacts on properties that are directly adjacent to it.

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- n. The project will not adversely effect area waterways since the surface and stormwater management plan provides for containment and treatment on the site.
- 9. The developer has agreed to phase the build-out of the project over ten years, which will further integrate the project into the area without any significant negative affect.
  - 10. This project will have a single homeowners association managing the entire project including open areas, amenities, storm water management areas, streets, sidewalks, etc.
  - 11. While the State's comments concerning the Level 4 area designation must be considered, Mr. Gordy believes they are overcome by the representations of the Developer on the record, and by the fact that this project complies with the County Land Use Plan Update that was reviewed and approved by the State. The project is also in close proximity to the developing areas of Delmar and Salisbury and is situated along State Route 54, a major travel corridor in Sussex County.
  - 12. The project, with the stipulations and conditions placed upon it, will not adversely impact the County, the neighborhood or adjacent properties.
  - 13. This preliminary approval is subject to the following conditions:
    - a) The maximum number of single family lots shall not exceed 400.
    - b) No more than 50 residential building permits shall be issued for the project within any given calendar year.

- c) Final Site Plan review by the Planning and Zoning Commission shall be required for each phase of the development. Each Final Site Plan shall show all forested areas and shall include a landscape plan.
- d) The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting.
- e) All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT.

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- f) The recreation areas shall be constructed and open to use by residents within two years of the issuance of the first residential building permit.
- g) The subdivision shall be served by a publicly regulated central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with the Sussex County Engineering Department specifications and in conformity with all DNREC regulations.
- h) The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection as required by applicable regulations.
- i) Storm water management and erosion and sediment control shall be constructed in accordance with applicable state and county requirements. The Applicant, its successors and assigns shall operate the storm water management facilities utilizing Best Management Practices to provide groundwater recharge.
- j) No Wetlands shall be included within any individual lots. Wetlands shall be maintained as non-disturbance areas, except where authorized by federal and state permits.
- k) The Applicant shall form a homeowners association to be responsible for the maintenance of the streets, roads, buffers, storm water management facilities, recreational areas and other common areas.
- l) Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.

- m) The Applicant will provide agricultural buffers in accordance with applicable state and county requirements.
- n) The Applicant shall include the Agricultural Use Protection Notice in the Restrictive Covenants. In addition, the covenants shall include a similar notice stating that hunting occurs on neighboring and adjacent properties.
- o) Bus stop areas shall be located as necessary throughout the project. The Developer shall coordinate and cooperate with the local school district's transportation manager to establish the school bus stop areas. The locations of these bus stops, with the approval of the local district, shall be shown on the Final Site Plan.

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- p) The Developer shall cooperate and coordinate with the State and County Emergency Preparedness Office to develop and implement an emergency evacuation plan.
- q) The existing borrow pit shall be reclaimed and the northern slopes of the borrow pit shall be reshaped, vegetated and planted.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to grant preliminary approval of Subdivision #2005-57 for the reasons and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-69** – application of **WRIGHT BROTHERS PROPERTIES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 8.97 acres into 8 lots and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Old Mill Road (Road 265A), ½ mile north of Route One.

The Commission discussed this application which has been deferred since October 12, 2006.

Mr. Burton stated that he would move that the Commission grant preliminary approval of Subdivision #2005-69 for Wright Brothers Properties based upon the record made at the public hearing and for the following reasons:

1. The proposed subdivision is in an Agricultural Residential District as established by the 2002 Sussex County Comprehensive Land Use Plan that encourages low-density single-family homes on lots greater than ¾ of an acre.
2. The subdivision is in compliance with the County Subdivision Code and promotes the orderly growth of the County.

- 3 The subject property is in an area where other residential development exists with lots of similar sizes and densities. This subdivision will be in character with the surrounding neighborhood.
4. A variance for a cul-de-sac in excess of 1,000 feet is necessary and appropriate given the configuration of the property.
5. This approval is subject to the following conditions:
  - 1) There shall be no more than 8 lots within the subdivision, including the lots where the 2 existing homes are located.

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- 2) Through restrictive covenants, the Applicants shall form a homeowner's association responsible for the maintenance of the roadway, buffers, stormwater management facilities and other common areas.
- 3) Stormwater management and erosion and sediment control shall equal or exceed all applicable State and County regulations.
- 4) A variance is granted to allow a cul-de-sac road or street that exceeds 1,000 feet in length.
- 5) The lots shall be served by individual wells and septic systems.
- 6) As stated by the Applicant, trees shall be preserved to the fullest extent possible. This shall be referenced on the Final Site Plan.
- 7) Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- 8) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Gordy and carried unanimously to grant preliminary approval of Subdivision #2005-69 for the reasons and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-71** – application of **DELAWARE LAND ASSOCIATES, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 89.12 acres into 49 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 318, 4,940 feet southwest of Road 86.

The Commission discussed this application which has been deferred since October 12, 2006.



Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action since Mr. Johnson was not available to participate. Motion carried 4 – 0.

**Subdivision #2005-73** – application of **LANDLOCK, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 132.96 acres into 213 lots, (Cluster Development), located north of Route 9, 950 feet east of Route 30.

The Commission discussed this application which has been deferred since October 12, 2006.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action since Mr. Johnson was not available to participate. Motion carried 4 – 0.

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**C/U #1667** – application of **DOUGLAS HITCHENS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automotive sales lot to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.0 acre, more or less, lying northeast of Route 18 (a.k.a. Route 404), 950 feet northwest of Road 527.

The Commission discussed this application which has been deferred since October 12, 2006.

Mr. Gordy stated that he would move that the Commission recommend denial of C/U #1667 for Douglas Hitchens to operate an automotive sales lot based on the record made at the public hearing and for the following reasons:

- 1) Mr. Gordy does not believe that the application is consistent with the character of the surrounding property.
- 2) The purpose of this application is to allow a Conditional Use to operate an automotive sales lot on an otherwise residential property, and a majority of the area is used for either agricultural or residential uses. This use would be out of character with the adjacent and surrounding properties.
- 3) Although the Applicants stated that the intended uses are limited and would occur while the adjacent property is also used as their residence, Mr. Gordy believes that there are other locations that are currently zoned for business or commercial uses that are available and better-suited for the intended use.
- 4) The application does not promote the health, safety, convenience and general welfare of the neighborhood or community.
- 5) The proposed use as an automotive sales lot is not consistent with the purposes of the AR-1 District as set forth in the County Zoning Code.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0.

## OTHER BUSINESS

Cape Henlopen School District

Determination if Conditional Use is Necessary – Road 268

Mr. Lank asked the Commission if it would be necessary for the Cape Henlopen School District to obtain a Conditional Use approval to replace the high school on the same site of the existing high school.

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Mr. Robertson stated that the site plan for the high school property has had some minor revisions over the years for expansions or improvements; that the high school building could be rebuilt if it were destroyed naturally; and that amendments to the site plan can be approved by the Commission.

Mr. Wheatley asked how the public would be served by requiring a public hearing since the use is already on the site.

Mr. Robertson stated that a site plan shall be required to be reviewed by the Commission.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously that the new high school building project be allowed to continue under the site plan review process and that a Conditional Use will not be required. Motion carried 4 – 0.

## PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be processed.

**C/U #1668** – application of **KARL M. KLINK III AND MELANIE KLINK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a country store and storage of overhead doors and parts to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 21,560 square feet, more or less, lying southwest of Route 20 (a.k.a. Road 382 and Amory Road), 150 feet northwest of Road 354.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service "D" of Route 20 at this road segment will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located within a County operated or maintained sanitary sewer and/or water district; that the site is located within the Dagsboro/Frankford Planning Area; that the Engineering Department is currently conducting a planning study to address the sewer needs in the area; that the study is scheduled to be completed by August 2007; that the Engineering Department currently has no schedule to provide service to this area; and that a concept plan is not required.

The Commission found that Karl M. Klink, III, was present and stated in his presentation and in response to questions raised by the Commission that they propose a family owned business; that the country store would be seasonally operated; that the country store would be closed during some winter months; that they propose to offer antiques, knickknacks, gifts, candles, nautical items, flags, country furniture, outdoor ornaments

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and similar items; that they propose to display some outdoor ornaments outside; that the building will include a porch for display of rockers and wicker; that the porch will have access from the interior of the building only; that they do not plan on selling produce since several produce businesses exist in close proximity; that business hours for the store are proposed to be from 9:00 a.m. to 5:00 p.m. Wednesday through Sunday, with no business hours on Monday or Tuesday; that the store would be closed from January through April; that they anticipate deliveries twice per week by step vans, not 18-wheelers; that their primary reason for applying for the Conditional Use is to build a warehouse for the storage of overhead door items; that the overhead door business requires no showroom, only storage; that there will be no manufacturing of overhead doors on site; that business hours for the overhead door business are from 7:00 a.m. to 4:00 p.m. Monday through Friday with no weekend hours; that the overhead door business has three (3) vehicles, two (2) of which will be parked over-night on the site; that overhead door products will be delivered once every two weeks; that they do not anticipate any negative impacts on the neighborhood since the site was formerly a butcher shop; that they chose this site since it is close to their residence; that the area is primarily residential and agricultural, but other businesses exists in the area; that the site fronts on a high traffic road between Dagsboro and Fenwick; that they would like to stone the parking area to get the business started and then pave later; that a ground sign would not exceed 4' by 8'; that a septic permit has been issued for the site and that they only propose to install ½ baths in the store and storage area; that a dumpster will be placed on the site for the storage of primarily cardboard; and that they have spoken to some of their neighbors and heard no objections.

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. Smith, seconded by Mr. Gordy and carried unanimously to defer action. Motion carried 4 – 0.

**C/U #1716** – application of **ANDREW LUBIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office park with medical, professional, and retail buildings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 25.3896 acres, more or less, lying southeast of Route 24, 1,300 feet southwest of Route One.

The Commission found that the Applicant had submitted a Boundary Survey, a Conditional Use Site Plan, a color rendering of the site plan; an Environmental Assessment and Public Facility Evaluation Report and Sketch Plan, and that the documents included an Executive Summary, a Site Context Maps Discussion, a Site

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Analysis Maps Discussion, An Analysis of Required Information, a listing of maps, and an Appendix.

The Commission found that a Service Level Evaluation Request was sent to DelDOT, that DelDOT responded that a Traffic Impact Study will be required, that a Traffic Study was performed; that DelDOT has found that the Traffic Impact Study conforms to DelDOT's Rules and Regulations for Subdivision Streets and other accepted practices and procedures for such studies; and that DelDOT accepts this Traffic Impact Study review and concurs with the recommendations. DelDOT's Report is a part of the record for this application.

The Commission found that a letter was received from the Beebe Medical Center in support of this application and advising that they consider the use to be compatible with the healthcare services provided at the Beebe Health Campus.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located within the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District – Southern Planning Area; that capacity is available for up to 101,560 square feet of professional/medical office area; that there is not capacity for additional office or retail space; that the developer will be required to participate in system upgrades to alleviate deficient lines in Route One before approval of more than 101,560 square feet of office space; that the North Coastal Planning Study will identify necessary upgrades; that the study is scheduled to conclude in November 2006; that Ordinance No. 38 construction will be required; that the current

System Connection Charge Rate is \$3,911 per EDU; that there is not sewer service to the parcel at this time; that the developer will be required to extend sewer service to the entrance of the project; that conformity to the West Rehoboth Expansion Area Capacity Evaluation and the North Coastal Area Planning Study will be required; that the proposed project adjoins, but is not within the West Rehoboth Expansion area; that the project is within a planning area for sewer service, and connection to the sewer system is mandatory; that the project can be annexed into the sewer district when the developer completes certain administrative procedures, construction of an extension of mainline sewers and necessary sewer upgrades; that the proposed development will require a developer installed collection system in accordance with Sussex County standard requirements and procedures; that the County Engineer must approve the connection point; that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation; and that one-time system connection charges will apply. Attached to the memorandum for the County Engineering Department was a listing of steps to be completed for extending district boundaries and a checklist for preparing concept plans.

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The Commission found that Andrew Lubin was present with Robert Hood, landowner, Robert Witsil, Attorney, and Garth Jones of Becker Morgan Group and that they stated in their presentations and in response to questions raised by the Commission that they have applied for a Conditional Use for permission to construct eight (8) professional/medical office buildings and four (4) office or retail buildings; that the site is in an established business or commercial area which includes restaurants, a lumber yard, contractor services uses, a dental clinic, an eye clinic, offices, the Beebe Health Campus and a shopping mall; that the County Council recently approved an office park for L. T. Associates on the opposite side of the Beebe Health Campus; that the site is located in the Environmentally Sensitive Developing District which references neighboring shopping and businesses to serve the rapidly expanding population; that the State Strategies refer to this area as a service area; that the four (4) proposed buildings along Route 24 are anticipated to be used for services oriented around the Health Campus, i.e. a bank, a pharmacy, physical therapy, labs, etc.; that the eight (8) proposed professional/medical office buildings will contain 10,000 to 12,000 square feet each; that they anticipate the design of the project will have a traffic calming effect with two entrances from the shared road with the Health Campus; that they are working on an agreement with Beebe Health Campus for the shared road; that the developers will comply with all DelDOT requirements; that it is anticipated that the shared road will become a State road from Route 24 to Old Landing Road; that the U.S. Fish and Wildlife Service and the State Natural Heritage and Endangered Species offices have no listed endangered species or rare plant or animals species listed in the area; that according to the Comprehensive Plan Update the site could be developed with 10 to 12 residential units per acre in the Environmentally Sensitive Developing District; that the developers realize that

restrictions can be placed on Conditional Use applications; that the Applicants originally applied for a Change of Zone for the site; that the Change of Zone application was withdrawn so that a Conditional Use could be applied for so that the County could create restrictions; that they will comply with all agency requirements; that DelDOT has approved the Traffic Impact Study for this project; that internal sidewalks and pedestrian access will be provided; that there are no wetlands on the site; that the State Economic Development Office supports the application; that the use is similar to the proposal approved for L.T. Associates; that traffic will be able to interconnect from Warrington Road, through the L.T. Associates property, through the Beebe Health Campus, to this site and beyond; that Ability to Serve letters have been received from Tidewater Utilities, Inc., Verizon, and Delmarva Power; that they will comply with the County Engineering recommendations; that the site is ideally suited for medical and professional offices, support facilities, and related businesses; that as a demographic population continues to mature and grow throughout the County, the demand for professional medical related services must grow as well; that the expansion of medical practices and practitioners has expanded exponentially; that the property, with its shared entrance from Route 24 to the Health Campus, provides a development opportunity to effectively multi-phase the use of the site; that the frontage along Route 24 is ideal for commercial businesses that support

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the clientele at the Health Campus; that medical practices and specialists such as oncology, ophthalmology, orthopedics, and internists prefer to be close to the Health Campus and to other providers; Plastic surgery and reconstructive surgery along with rehabilitation and physical therapy will advantage themselves of the outpatient surgical services provided at the Health Campus; that women's health issues along with dental health services will also be a significant area of expansion; that the doctors and their practices prefer ownership; that the concept of the Hood family retaining fee ownership of the land and selling the improvements either on a condominium basis, or build-to-suit provides a variety of ownership opportunities, and preserves the integrity, quality and conformity of the real estate; that the committed plans of DelDOT to connect the access road from Route 24 to Old Landing Road using the approved segment will allow for more orderly traffic movements away from Route One; that DelDOT participated in the design of the roadway; that the buildings will be similar in design to the Health Campus; that the 739 parking spaces proposed exceeds the required number of spaces; that the storm water design will help recharge the area better than the present agricultural practices on the site; that the storm water design will meet or exceed the requirements of the Conservation District; that the soils on the site are very sandy with good infiltration; that Best Management Practices will be utilized; that the site has been designed as if it were commercial zoned with greater setbacks; that the Hood family has owned the property for over 250 years; that the advertisement sign on the site was not erected by the owners or the applicants; that they have not limited the offices to medical uses; that they do not plan on permitting a fast-food chain restaurant and do not object to a restriction; that truck traffic should be limited to light-duty vehicles, not 18-wheelers; and that the open space area is actually under contract for lease with the Rehoboth Mall for possible

future use as a parking lot expansion and was created due to the big-box regulations (Wal-Mart).

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. Gordy, seconded by Mr. Smith and carried unanimously to defer action so that Mr. Johnson can review the record. Motion carried 4 – 0.

**Subdivision #2005-68** – application of **SANDY LANDING, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex County, by dividing 40.38 acres into 77 lots, (Environmentally Sensitive Developing District Overlay Zone), located west of Road 341, across from Road 342.

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Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed this application on March 15, 2006 and that the Technical Advisory Committee Report is a part of the record for this application; that revised plans were received on October 12, 2006; that Exhibit Booklets were received on October 20, 2006; that PLUS and TAC responses were received from the Application on October 12, 2006; that a letter addressing Section 99-9 C items was received on October 20, 2006; that a letter was received from the Office of State Planning Coordination in reference to responses received; and that an Environmental Assessment and Public Facilities Evaluation Report was received on October 20, 2006.

The Commission found that Jim Fuqua, Attorney, was present with Lauren Alberti, Zac Crouch of Davis, Bowen & Friedel, Steve Smailor of Duffield Associates, and Gerald Esposito of Tidewater Utilities and that they stated in their presentations and in response to questions raised by the Commission that 77 residential lots are proposed; that 3 residential lots and 2 utility lots are across Road 341; that the 4.5 acre parcel with access easement is not proposed to be developed and will remain undisturbed; that the 4.5 acre parcel will be dedicated to the Homeowners Association for maintenance; that the site is located within the Environmentally Sensitive Developing District, not a Low Density Area, and is an area where growth is anticipated and planned; that the design complies with the Environmentally Sensitive Development District Overlay Zone regulations where clustering is permitted and proposed; that the site contains 40.38 acres and that 42% of the site will be preserved as open space; that the open space will contain 29% of the site if the on-site community system, well site, and pump station site are excluded; that a previous application for the same site was a rezoning application for MR-RPC

Medium Density Residential – Residential Planned Community; that the MR-RPC application was withdrawn since the County regulations were revised to allow clustering and since considerable concerns and opposition were expressed, i.e. zoning being out of character, clustering, wastewater facility, environmental impacts, and the size of the lots originally proposed; that ability to serve letters were received from Tidewater Environmental Services, Tidewater Utilities, Inc., Verizon, Delaware Electric Cooperative, Inc., Mediacom and Sharp Energy; that the central community sewer system will comply with all State and County regulations; that according to the State DNREC the soils are suitable for the community system; that the project will be built to comply with all DelDOT requirements; that a wetlands delineation has been approved by the U.S. Army Corps. of Engineers; that a Homeowners Association will be established; that the project is compatible to the development that has taken place in the area, i.e. Seawinds Subdivision, the Bluffs at Sanding Landing, and Dogwood Acres; that the projects in the area have been developed with several sizes of lots; that a minimum 30-foot wide buffer will be created along agricultural lands; that the Declaration of Restrictions will include references to agricultural uses and the mandated Agricultural Protection Notice; that they have forwarded a response to the PLUS comments; that the streets will be private and built to County specifications; that sidewalks will be provided on both sides of the streets;

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that bio-swales will be utilized for drainage, rather than ponds; that the two proposed ponds are planned to be for aesthetics; that street lighting will be provided; that 50-foot wide buffers will be established along State wetlands; that an average of 44-foot buffers from non-tidal wetlands will be provided; that no wetlands will be included within any lots; that 41% of the existing woodlands will be preserved with selective clearing; that the entrance will be required to connect to the existing entrance at Otonka Trail per DelDOT; that Total Maximum Daily loads are being addressed and that according to the State DNREC the project should not significantly add to the nutrient load of the Inland Bays due to the incorporation of best management practices; that amenities and recreation features are located for convenient access and the promotion of a sense of neighborhood with central amenity areas isolated from adjacent developments, and include walking and biking trails, a tot lot, a gazebo, benches and a connected open space; that a school bus shelter location can be provided and the location should be subject to the approval of the Indian River School District; that no individual boat docks or launching facilities are proposed; that the developer may apply to the State DNREC for a community facility; that it is planned that trees within setbacks be preserved; that a buffer is proposed along Road 341 to screen the rear of the homes since no individual entrances will be permitted by DelDOT; that the community treatment system will be housed in a house type structure and the system will use small pumps, which creates minimal to no noise; that all chemicals associated with the sewer and water systems will be stored indoors based on agency regulations; that the water system will be capable of providing drinking water and fire protection; that the water system will be housed in a building; and that the 3 lots across Road 341 can be location adjusted to allow for wellhead protection.



The Commission found that Mr. Fuqua submitted suggested proposed findings and suggested conditions.

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

The Commission found that David Carroll, Thomas Bailor, Ed Bender, Dick Jensen, Greg White, Jennifer Vortech, and Larry McKitchen were present in opposition to the application and expressed concerns about the impact on their way of life, the environment, water quality, and traffic; that they had hoped for an improved plan over the plan submitted with the original MR-RPC; that they agree with the developers that the entrance location chosen by DelDOT is not an appropriate location and should be located on Road 341; that the adjacent area is primarily agricultural residential oriented with 1-acre lots or larger; that the lots within the Seawinds project are from ½ acre to 2 acres in size; that lots sizes should be consistent with the lots within the area; that the PLUS comments have not been adequately addressed; that they are concerned about the impact on the waterways; that they are concerned about the possible impacts on their water wells; questioning if central water systems are bonded; that some of the lots back up to poultry houses; that woodlands will be lost; that property values may be negatively

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impacted; that they would like to see a relocated entrance, larger lots, 1-acre lots along the water, and no more than 32 lots; questioning the size of the proposed homes and the height of the homes; that the site is located in a State Resource Area and should be preserved; questioning the limited active open space uses and noting that the open space calculation includes sewer and water utility areas; noting that all landowners in Seawinds subdivision own to the project side of Stump Creek; expressing concerns that the ponds will not hold water due to the soil types, salt water intrusion, and runoff; expressing concerns about the impact on the habitat for wildlife; questioning why the developer has proposed to rename Otonka Trail, and expressing concerns about the lack of adequate width of Road 341 and the impact on the road surface during construction of the project.

The Commission found that Mr. Bailor submitted and summarized a letter from the State DNREC in reference to the State Resource Areas.

The Commission found that the representatives of the developer, in response to questions raised by the Commission, added that State law mandates that if a water supply dewateres an existing private well the utility is required to replace the well; that County Ordinances state that the maximum height of homes could be 42-feet; that the project is proposed to be an upscale development; that according to County Code the open space area includes areas that are not roads or lots; that the developer is willing to go back to DelDOT for reconsideration of the entrance location; and that the ponds will be lined and vegetated.

The Commission found by a show of hands that 1 person was present in support of the application and that 27 people were present in opposition.

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.  
Motion carried 4 – 0.

**Subdivision #2005-74** - application of **DELMARVA WOODLANDS ALLIANCE 4, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Indian River Hundred, Sussex County, by dividing 172.12 acres into 296 lots, (Cluster Development), located south of Route 48, east and west of Road 305, and south of Road 302.

Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed this application on April 19, 2006 and that the Technical Advisory Committee Report is a part of the record for this application; that Exhibit Booklets were received on October 12, 2006; that Restrictions and easement documents were received on October 12, 2006; and that on October 23, 2006 the Applicants provided a listing of area developments, a Phase I Environmental Audit, a wetlands delineation, an economic

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impact study, a school district and fire district map, and a letter in reference to compliance with Section 99-9 C.

The Commission found that Jim Fuqua, Attorney, was present with Preston Schell and Mark Chura of Ocean Atlantic, Matthew Peterson of Element Design, Steve Smailer of Duffield Associates and that they stated in their presentations and in response to questions raised by the Commission that the site is adjacent to the Pumpkin-Chunkin site; that a portion of the site is zoned GR General Residential and a portion of the site is zoned AR-1 Agricultural Residential; that the combined acres of GR and AR-1 lands has a development potential of up to 540 lots; that they are proposing a maximum of 296 lots with an density of 1.7 units per acre; that the GR lands could be developed with 4 units per acre; that they are proposing 131 lots in the AR-1 portion of the site and 165 lots within the GR portion; that all lots will contain a minimum of at least 10,000 square feet; that Orth-Rodgers performed a Traffic Impact Study and that the developer will comply with all of DelDOT requirements; that Artesian Water Company, Inc. will supply central drinking water with fire protection capabilities; that Tidewater Environmental Services will provide sanitary sewer services; that a homeowners association will be established for maintenance of all streets and common areas; that the site is located within the Millsboro Fire Company service area; that the site is located in both Indian River School District and Cape Henlopen School District; that the area is mapped as Low Density in the Comprehensive Plan; that the project is consistent with other developments in the area and referenced Indigo Run, Double Eagle Farms, Wetherby, Avebury, and Stonewater Creek; that four entrances are proposed to serve the site; that no lots back up to another lot; that trails are being provided; that roads curve; that a 100-foot wide buffer

is proposed around the wastewater treatment area; that 50-foot wide buffers are proposed along all wetlands; that an integrated trail system is proposed for walking with tot-lots; that a bus shelter location will be worked out with the school districts; that no manufactured homes are proposed; that the area set aside for the wastewater treatment will require minimal tree removal; that multi-sports courts are proposed; that the developer will comply with all DeIDOT requirements for improvements to the intersection of Route 48 and Roads 305 and 302; that a crossing trail will be located near the intersecting entrances to the project; and that they propose affordable housing and that modular homes may be an option, but not single-wide or double-wide manufactured homes.

The Commission found that Mr. Fuqua submitted suggested proposed findings and suggested conditions.

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

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The Commission found that Ken Murphy and Clarence Edgins were present in opposition and expressed concerns about the impact on private wells, the type of wastewater treatment system, odors for the treatment system; and bonding; that the Traffic Impact Study was performed prior to the opening of the Transfer Station Facility on Route 5 and the change of Route 48 references to Alternate Route 24; and questioning where the bike paths are proposed and where they already exist.

The Commission found that the representatives of the developer, in response to questions raised by the Commission, added that a well site is not proposed for this project since the site will be served by a regional water system; that the treatment plant system will be housed in a building and will provide high-end treatment per the Total Maximum Daily load requirements; that a membrane bio-reactor will probably be utilized; that requirements are extensive to guarantee no off-site impacts and better than water quality standards; and that the mounds will be approximately 1 or 2 feet above grade and will not be located near the perimeter of the project.

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

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action so that Mr. Johnson can review the record. Motion carried 4 – 0.

\_\_\_\_\_The Commission recessed for 10 minutes.\_\_\_\_\_

**Subdivision #2005-75** – application of **TOP DRAWER, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 108.63 acres into 72 lots, located south of Road 78, across from Road 487.

Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed this application on May 24, 2006 and that the Technical Advisory Committee Report is a part of the record for this application; that Exhibit Booklets were received on October 12, 2006; and that Restrictions and easement documents were received on October 12, 2006.

The Commission found that Preston Schell and Mark Chura of Ocean Atlantic were present with Matthew Peterson and Doug Warner of Element Design and stated in their presentations and in response to questions raised by the Commission that they have changed plans for this site several times; that  $\frac{3}{4}$  acre lots are now proposed; that no lots back up to another lot; that the site is close to Bethel; that the project is consistent with the Company concept to create a larger lot community in the State Strategies Level 4 area; that bike paths and a tot lot will be provided; that the density equals 0.8 units per acre; that 40% of the site is considered as open space; that there are 16 acres of

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woodlands on the site; that there are no wetlands on the site; that the site is not located within a flood zone; that they have provided curving roads, large buffers around the perimeter, and a mulched trail system; that the lots will be served by individual wells and septic systems; that the State DNREC has issued a statement of septic feasibility for the site; that private streets are proposed to be built to County specifications; that the size of the project should eliminate the need for deceleration and acceleration lanes; that wet ponds are probable for the storm water management of the site; that a response has been sent to the Office of State Planning Coordination in reference to the PLUS comments; that a homeowners association will be established to maintain all streets and common areas; that tree clearing will be restricted; that the existing house on the site will be retained by the property owner; that there will be no dead-ends to the trail system; that they may build the project and sell lots for builders; that they will probably not offer lot/home packages; that the homes will contain a minimum of 1,750 square feet of living space; that adequate space exists for a bus shelter if deemed necessary by the School District.

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. Gordy, seconded by Mr. Smith and carried unanimously to defer action and to leave the record open for 7 days so that the Applicant can provide a copy of their response to the PLUS comments. Motion carried 4 – 0.

**Subdivision #2005-76** – application of **JAMES H. AND DOROTHY M. BAILEY** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 8.16 acres into 8 lots, located north of Road 54, 0.2 mile west of Route 26.

Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed this application on May 24, 2006 and that the Technical Advisory Committee Report is a part of the record for this application, and that the State DNREC has advised that the site is suitable for individual septic systems.

The Commission found that Dorothy M. Bailey was present with Don McCoy of Davis, Bowen & Friedel and that they stated in their presentations and in response to questions raised by the Commission that all lots contain a minimum of  $\frac{3}{4}$  acre; that homes will not exceed 42-feet in height; that individual septic systems and wells are proposed; that homes will contain a minimum of 1,400 square feet of living space and have 2-car garages; that no manufactured homes are proposed; that the use fits in with the surrounding community; that the site is adjacent to Edgewood Manor and across from

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Hidden Acres subdivisions; that they are proposing an infiltration trench for storm water management; that a homeowners association will be established for maintenance of streets and common areas; that a 30-foot wide wooded buffer will be retained along the agricultural lands to the west; that the private street will be built to County specifications; and that swales will be created to carry the run-off to the infiltration trench.

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

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

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2005-76 based on the record made at the public hearing and for the following reasons:

1. The proposed subdivision is in a MR Medium Density Residential District in the Environmentally Sensitive Developing Area as established by the 2002 Comprehensive Plan Update, which encourages single-family development.
15. The subdivision is in compliance with the Subdivision Ordinance and promotes the orderly growth of the County.

3. The subject property is in an area where other residential development exists with lots of similar sizes and densities. This subdivision will be in character with the surrounding neighborhood.
4. This approval is subject to the following conditions:
  - a. There shall be no more than 8 lots within the subdivision, excluding the two lots along Omar Road.
  - b. Through restrictive covenants, the Applicants shall form a homeowner's association responsible for the maintenance of the roadway, buffers, stormwater management facilities and other common areas.
  - c. Stormwater management and erosion and sediment control shall equal or exceed all applicable State and County regulations.
  - d. The lots shall be served by individual wells and septic systems.
  - e. Trees shall be preserved to the fullest extent possible. This shall be referenced on the Final Site Plan.

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- f. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to grant preliminary approval of Subdivision #2005-76 for the reasons and with the conditions stated. Motion carried 4 – 0.

**Subdivision #2005-77** – application of **CHESAPEAKE CONSTRUCTION** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 13.01 acres into 13 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Road 535 and as an extension to Foxtail Drive in Clearbrooke Acres.

Mr. Lank advised the Commission that the Technical Advisory Committee (TAC) reviewed this application on May 24, 2006 and that the Technical Advisory Committee Report is a part of the record for this application; that Restrictive Covenants were received on October 4, 2006; that revised plans were received on October 18, 2006 containing 14 lots, which were rejected since they exceed the number of lots advertised;

and that the Commission shall review the original plan submitted and advertised for 13 lots.

The Commission found that John Murray and Pat Mitchell of Kercher Engineering, Inc. were present with Steve Marvel of Chesapeake Construction and stated in their presentations and in response to questions raised by the Commission that the site is adjacent to Indian Village and Clearbrooke Acres; that a variance from the length of the cul-de-sac is not necessary since the cul-de-sac is only 982 feet in length; that all lots contain a minimum of  $\frac{3}{4}$  acre; that the adjacent lots contain  $\frac{1}{2}$  acre; that the streets will be private and built to County specifications; that individual septic and wells are proposed; that the State DNREC has granted septic feasibility; that a 16,000 square foot area is being set aside for storm water management; that an adjacent site is a proposed subdivision; that restrictions will be similar to Clearbrooke Acres; that all lots will be improved with site constructed homes; that 40-foot setbacks are proposed along the front of the lots; that a homeowners association will be established to maintain the streets and common areas; that there is an old drainage ditch adjacent to Indian Village; that infiltration should handle the run-off; and that an emergency spillway will be established for overflow to the drainage ditch.

The Commission found that Mr. Murray submitted a copy of the State DNREC septic feasibility letter.

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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. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

#### Additional Business

Mr. Lank asked the Commission to determine when the Special Meeting in November would be held so that he could reserve the Council Chambers.

There was a consensus of the Commission that they meet on November 21, 2006 at 3:00 p.m.

Meeting adjourned at 11:35 p.m.