



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF NOVEMBER 16, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 16, 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. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended. Subdivision #2006-44 was withdrawn.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of October 26, 2006 as amended.

PUBLIC HEARINGS

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

C/U # 1669 – application of **DAVID A. PETERSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto restoration to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.223 acres, more or less, lying northeast of Woods Lane, a private road, 411.5 feet southeast of Route 9 and 1,600 feet southwest of Road 474 (Dukes Lumber Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service “C” of Route 9 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam and Rumford loamy sand; that the Evesboro and Rumford soils have slight limitations for

development; that the Fallsington soils have severe limitations; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that all three soil types are considered of Statewide Importance; that the Fallsington soils are also considered Prime Farmland; that there are no storm flood hazards affected; that the Dukes-Jobs Tax Ditch may be impacted; that on-site and off-site drainage improvements may be required due to the presence of soils with a seasonally high water table and/or ponding; and that there may be regulated wetlands on the site.

Minutes
November 16, 2006
Page 2

The Commission found, based on comments received from the Sussex County Engineering Department Utility Planning Division, that the site is located within the Western Sussex Planning Area #4; that conformity to the Western Sussex Planning Area Study will be required; that the Engineering Department is currently conducting a planning study to assess the future sewer needs in Western Sussex County; and that the study is scheduled to be completed by August 2007.

The Commission found that Minnie R. Culver submitted a letter in opposition and referenced that the current access road was developed by the homeowner residing on the adjoining property and is not intended to be used for business purposes and that she opposes the application because of noise and traffic that the business will produce.

The Commission found that David Peterson was present and stated in his presentation and in response to questions raised by the Commission that traffic will not change; that vehicles to be repaired are picked up by Mr. Peterson and then delivered upon completion of the work; that working from home will allow him to teach his son a trade; that no more than 3 or 4 customer vehicles will be on the site at any one time; that his has no intent to display vehicles for sale; that he is self employed and has no employees; that parts are delivered by U.P.S. or Fed-Ex; that business hours are planned to be from 8:00 a.m. to 5:00 p.m. Monday through Friday with no Saturday or Sunday business hours; that he does not do any mechanical work, only body work; that he is willing to work with his neighbors on how to operate and care for the handling of waste and solvents; that scrap metals are hauled to Seaford Salvage; that towels, rags and trash are hauled to the landfill; that he has fire extinguishers placed through out the building; that he performed sheet metal repairs, prep and priming only; that final painting is performed elsewhere; that he did maintain the private road until the property to the rear was sold; and that he was not provided with a violation notice by a Zoning Inspector.

Mr. Kautz offered that the site is located in an excellent recharge area and that the applicant should be required to control chemicals and solvents from impacting the recharge area or wetlands.

The Commission found that Scott Hevner was present in opposition, submitted a written statement and, read that he is concerned about maintenance of the private road, which he owns; that Mr. Peterson and another neighbor have signed a maintenance agreement concerning the private road; that he does not want a sign, advertising the business, erected at the intersection of the private road and Route 9; that he does not want to see vehicles for sale displayed at the intersection of the private road and Route 9; that he is concerned about traffic on the private road and that the traffic will cause the road to be maintained more often; that he is concerned about the possible impact on property values due to the number of stored vehicles on the site; and that Mr. Hevner requested that, if the project is approved, it should be restricted to include: there will not be any outside

Minutes

November 16, 2006

Page 3

storage of junked vehicles, automotive parts, equipment, tires, and other materials used to repair cars; that no vehicles for sale will be displayed on the premises; that a fence must be installed to shield the business; that any trash dumpsters be screened from neighboring properties; that he also owns the adjacent lot and is concerned about the property value being negatively impacted due to the storage and display of vehicles, potential environmental impact issues, paint fumes, and potential fire hazards.

The Commission found that Mr. Hevner submitted two photographs of the site, a copy of the aforementioned maintenance agreement, and a copy of his deed.

The Commission found that Tim Pianka was present in opposition and submitted and read that he is concerned about the entrance and exit off of Route 9; the maintenance of the private road; questioned the type of vehicles that would be using the private road; that questioning if the private road would have to be widened and improved and by whom; questioning the type of chemicals used, the safe handling of the chemicals, odors and any health risks; and questioning if a business can be viable when hidden away on a private road.

The Commission found that Mr. Peterson responded to questions raised by the Commission by adding that his business is to restore vehicles for customers, not to restore vehicles for sale; that he has no intent to erect a sign at the intersection of the private road and Route 9; that he has no intent to display vehicles for sale at the intersection of the private road and Route 9; that he uses OSHA containers for the storage of solvents and oils; and that "Safety Clean" will be picking up the containers.

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 5 – 0.

C/U #1711 - application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a sewer

treatment facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 13.41 acres, more or less, lying north of Route 336 (Piney Neck Road), 2,100 feet west of Route 335 (Bunting Road), and 2,200 feet east of Road 335A (Adams Road).

The Commission found that the Applicants had provided an Exhibit Booklet which included a copy of the application form, a copy of the Wastewater Services Agreement with SK Pepper Creek, LLC, a copy of the Commission Minutes for July 27, 2006 pointing out that the Commission granted final approval of the Subdivision, a copy of the Certificate of Public Convenience and Necessity to Provide Wastewater Services, a set of

Minutes

November 16, 2006

Page 4

site plans, a rendering of what the facility would look like when completed, a copy of the DNREC Authorization to Construct the Facility, a map of the area that could be served by the facility, and copies of photographs showing other facilities operated by Artesian at Stonewater Creek, the Reserves at Lewes, the Village of Herring Creek, and Beaver Creek.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division that the site is located in a proposed County operated and maintained sanitary sewer district; that the site is within the Dagsboro/Frankford Planning Area; that the project is not capable of being annexed into a sewer district at this time; that the project proposes to construct a private wastewater treatment facility; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a review and approval of the treatment and disposal system by the Engineering Department is also required and plan review fees may apply; that disposal fields should not be counted as open space; that wastewater disposal fields should be clearly identified on recorded plats; that if the County ever provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the County system at the developers and/or homeowners association expense; that the planning study is to be completed by August 2007; and that a concept plan is not required.

The Commission found, based on a memorandum from Michael A. Izzo, County Engineer, that the Engineering Department requests that this application be deferred; that the basis of this request is that Tidewater Utilities, Artesian Water Co. and the County all have treatment and disposal facilities planned for the Piney Point Peninsula; that the extra times gained by deferring this request will allow all three parties an opportunity to compile a coordinated wastewater plan for this area; and that he has discussed this request for deferral with Artesian and that they are in agreement with said deferral.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations for development; 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 no storm flood hazard areas or tax ditches are affected; and that it may be necessary for some on-site and off-site drainage improvements because of the flat topography and the possibility of wet depressions.

The Commission found that Dennis Schrader, Attorney, was present with Jack Schreppler, Scott Towler and Rodney Wyatt of Artesian Water Company, Inc. and that they stated in their presentations and in response to questions raised by the Commission that Artesian Wastewater Management, Inc., a regulated company by the Public Service

Minutes

November 16, 2006

Page 5

Commission, proposes to amend an existing wastewater construction permit to increase the treatment capacity from 90,000 gallons per day to 300,000 gallons per day; that DNREC has issued approvals for disposal capacity to SK Pepper Creek, LLC for 90,000 gallons per day; that additional sites within the adjacent area are also being investigated for disposal; that capacity is provided for the ability to serve adjacent parcels/individuals as identified by the County and DNREC as having failed septic systems who may need to be connected to a sanitary sewer system; that the site is a portion of the Landing At Pepper Creek Subdivision, a 125 lot subdivision; that the site is located within the Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that the site is located within a Level 3 Area according to the State Strategies; that the water storage facility depicted on the sites plans is not a part of this application; that no new streets are proposed; that no wetlands have been found on the site; that they have no objections to the County Engineer's request for a deferral and hope to resolve the deferral by January 2, 2007; that the system design will be identical to the system at Stonewater Creek Subdivision on Route 5; that the wastewater will be treated to greater than drinking water standards; that they hope to serve a larger area; that the site is an excellent disposal field site and can serve from 1,000 to 1,200 EDUs; that they are regulated by both the Public Service Commission and the DNREC; that if the use is granted the size of the drainage basins could double; that the treatment facility is all enclosed; that there are little to no odors; that the drainage basins are at least 400-feet from the nearest dwelling of other ownership; that security fencing will be erected around the perimeter of the site; that the Company has been supplying drinking water for over 100-years; that their DNREC permit requires them to visit the site at least once per day; that every 32 days a contractor will come to the site and clean the digesters; that the only woodlands lost will be the areas of the basins, the buildings and any driveways; that the basins are grassy areas; that they have no objections to a stipulation that the perimeter be landscaped; that the use is of a public and/or semi-public nature; and that they feel that their application complies with the Code.

The Commission found that Brian Tingle, Paula Hocker, Merriam Brelsford, Bill and Duane Revell Kenton, Vernon and Francis Richards, and Jack Faller were present in opposition and expressed concerns that the County recently purchased another 225 acres

and that Delmarva Power owns in excess of 400 acres; that they still get some dust and coal dust from Delmarva Power; that the area presently has the best drinking water in the area with no nitrate problems; that there are only 9 local families left in the area; that the sewer plant should be located in the middle of the subdivision, not next to neighboring properties; questioning why very few neighbors received notices on the public hearing; questioning the impact on their wells; questioning the impact on property values; questioning if they will be required to connect to the system once completed; expressing concerns about odors; noting that the County should operate the treatment system; expressing concerns about wetlands and run-off; and suggesting that the facility should only serve the approved project.

Minutes
November 16, 2006
Page 6

The Commission found that Mr. Schrader, Mr. Wyatt and Mr. Schreppler responded to questions raised by the Commission that the site is already approved for a treatment plant to serve the subdivision; that they are planning to expand the facility so that they may serve other properties and projects; that all wells have been identified in the area and will not be impacted by the facility; that the basins are designed to handle more flow and that they may not need more basins; that they will only build more basins if required by DNREC; that there is no legal way for the Company to force someone to connect to the system; that they offered anyone interested the right to review their other facilities; and that they are willing to test the wells of anyone in the planned area.

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 due to the wishes of the Applicants and the request of the County Engineer. The application shall be placed on the agenda of the January 2007 Special Meeting for further consideration. Motion carried 5 – 0.

C/U #1717 - application of **STATE OF DELAWARE DIVISION OF FACILITIES MANAGEMENT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a state health care facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 701.59 acres, more or less, lying northeast of Patriots Way (Road 318), across from Avenue of Honor (Route 86).

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Johnston loam or silt loam, Kenansville loamy sand, Rumford loamy sand, Rutledge loamy sand, Swamp, and Woodstown sandy loam; that some of the Evesboro, the Kenansville, and the Rumford soils have slight limitations for development; that the Woodstown soils have slight to moderate limitations; that some of the Evesboro soils have moderate limitations; that the Johnston, Rutledge and Swamp soils have severe limitations; that the Applicant will be required to follow recommended erosion and sediment control practices during

construction and to maintain vegetation; that some of the Evesboro soils, the Rumford, and the Rutledge soils are considered of Statewide Importance; that the Kenansville and Woodstown soils are considered Prime Farmland; that the Johnston and Swamp soils are considered Hydric; that no storm flood hazard areas are affected; that a tax ditch may be affected; and that it may be necessary for some on-site and off-site drainage improvements because of the presence of soils with a seasonally high water table and flooding.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located within a proposed or

Minutes
November 16, 2006
Page 7

current County operated and maintained sanitary sewer and/or water district; that the site is located in the North Coastal Planning Area; and that the County has no comments in regards to the central on-site system that will serve a proposed expansion of the existing State Health Care Facility.

The Commission found that Sally B. Cartright was present on behalf of the Division of Facilities Management and stated in her presentation and in response to questions raised by the Commission that she responded to the PLUS review by commenting on comments from DelDOT, DNREC, the State Fire Marshal's Office, and the County; that they will comply with all agency requirements; that there will be no increase in traffic; that they plan on demolishing the existing medical center, administrative offices, kitchen and laundry, and to replace them with a new facility; that the facility will include residential space for 54 existing residents with special needs, replacement space for the administrative offices, medical facilities, kitchen and laundry; and provide for occupational and physical therapy; that originally the facility served 400 residents; that they propose to serve any of the residents with housing needs for their lifetime; and that some of the other structures are leased to other agencies, i.e. a day care facility.

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

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

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to forward C/U #1717 for the State of Delaware Division of Facilities Management to the Sussex County Council with the recommendation that the application be approved based on the record and since this action will have a positive impact on the current residents of the Stockley Medical Center, and will continue to serve those individuals who are being serviced in the community and will be replacing their aging physical facility. Motion carried 5 – 0.

C/U #1718 – application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional sewer

treatment facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.91 acres, more or less, lying southeast of West Barrier Reef Boulevard, 600 feet northeast of Crocodile Cove within Heron Bay Subdivision, which is southwest of Hopkins Road (Road 286).

The Commission found that the Applicants had provided an Exhibit Booklet which included a copy of the application form, a copy of the Wastewater Services Agreement with Heron Bay Associates, LLC, a copy of the Commission Minutes pointing out that the Commission granted final approval of the Subdivision, a copy of the Certificate of Public Convenience and Necessity to Provide Wastewater Services to serve Heron Bay,

Minutes

November 16, 2006

Page 8

the Wilkinson property, Beaver Dam Properties, Harbeson Farms Properties, the Otto property, J. G. Townsend Properties, Oakwood Village, Springcap II and Wilkinson Holdings Properties, Carriage Greens, and Spring Breeze, a set of site plans, a rendering of what the facility would look like when completed, a copy of the DNREC Authorization to Construct the Facility, a map of the area that could be served by the facility, a listing of developments that could be served by this regional system, and copies of photographs showing other facilities operated by Artesian at Stonewater Creek, the Reserves at Lewes, the Village of Herring Creek, and Beaver Creek.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located within a proposed or current County operated and maintained sanitary sewer and/or water district; that the site is located within the North Coastal Planning Area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that the project proposes to use the wastewater treatment facility within the Heron Bay Subdivision on a regional basis to serve additional off site communities; that the Department recommends that the facility be operated to meet the TMDL limits for Delaware's Inland Bays; that the proposed project is located outside of the Inland Bays Planning Area where the County expects to provide sewer service; that a review and approval of the treatment and disposal system by the Department is required and plan review fees may apply; that disposal fields should not be counted as open space; that wastewater disposal fields should be clearly identified on recorded plots; that if the County ever provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the County system at the developers and/or homeowners association expense; and that a concept plan is required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand and Sassafras sandy loam which have slight 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 Sassafras soils are considered Prime Farmland; that no storm flood hazard areas or tax

ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Dennis Schrader, Attorney, was present with Jack Schreppler, Scott Towler and Rodney Wyatt of Artesian Water Company, Inc. and that they stated in their presentations and in response to questions raised by the Commission that Artesian Wastewater Management, Inc., a regulated company by the Public Service Commission, proposes to amend an existing wastewater construction permit to increase the treatment capacity from 97,600 gallons per day to 400,000 gallons per day; that DNREC has issued approvals for disposal capacity at Heron Bay for 97,600 gallons per

Minutes

November 16, 2006

Page 9

day and Wilkinson (Cool Spring) for 61,200 gallons per day; that the Spring Breeze site is anticipated to received approval for a minimum of 135,000 gallons per day; that additional sites within the adjacent area are also being investigated for disposal; that capacity is provided for the ability to serve adjacent parcels/individuals as identified by the County and DNREC as having failed septic systems who may need to be connected to a sanitary sewer system; that the treatment facility will be similar to the facility at Stonewater Creek and Beaver Creek; that they have received inquiries from several projects and properties for inclusion into the system; that they do not anticipate any increases in the number of basins for this project; that they may pipe treated water to areas on the other sites being served; that the treatment facility is at least 300-feet from any dwelling of other ownership; that the project will be regulated by the Public Service Commission and DNREC; that it makes more sense to operate one regional facility than several smaller systems; that there is a map in the Booklet showing anticipated pipelines and pump stations; that some of the projects listed for service have final approval, preliminary approval or are pending; that the Facility is now under construction to serve Heron Bay; that total expansion of the project may take 25 years; that the expansion will be phased; that they will comply with all DNREC requirements; that they are willing to fence and landscape the facility; and that the only effluent piped to other areas will be treated water.

The Commission found that Paul Jones, a Professional Engineer present representing Oakwood Village, spoke in support of the application by stating that it would be better served with a regional treatment facility than several small facilities, and that it would be a economic benefit to the users overall.

The Commission found that Gary Cuppels, President of ECI, was present in support and stated that the Carriage Greens project was deferred pending the outcome of this public hearing, and that this facility can serve the Carriage Greens project and the Oakwood Village project once approved.

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.

Minutes
November 16, 2006
Page 10

Subdivision #2006-33 – application of **BETHANY SHORT PROPERTIES, LLC** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 20.08 acres into 49 lots, (Environmentally Sensitive Developing District Overlay Zone), located west of Route One, 3,500 feet north of Fred Hudson Road (Road 360).

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of October 25, 2006 will be made a part of the record for this application; that on November 13, 2006 the applicants submitted an Exhibit Booklet and a revised plan and that they will be made a part of the record; and that a letter from The Sanctuary Homeowners' Association has been received and that it will be made a part of the record.

The Commission found that James Fuqua; Attorney, Frank Conolly; a representative of the applicant, and Scott Aja and Jason Palkewicz; Engineers with McCrone, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the qualifications of Mr. Aja and Mr. Palkewicz are referenced in the Exhibit Booklet; that the project is for 49 single family lots that will be known as Bluewater; that the site contains 20 acres and is bordered by Route One on the east, lands owned by the State of Delaware to the north and west, and The Sanctuary, a single family residential subdivision to the south; that the site is also adjacent to Sussex Shores Water Company; that the site is zoned Medium Density Residential; that the site is located in a developing area; that the maximum density permitted is 4.3 lots per acre or 86 lots; that the proposed density is 2.4 lots per acre; that the site is located in a growth area known as the Environmentally Sensitive Developing Area per the Comprehensive Land Use Plan; that the proposed number of lots is 56% of the number of lots that are permitted; that the project has been designed using the cluster ordinance; that central water and sewer are proposed; that 30% of the site will remain as open space; that the minimum lot size is 7,500 square feet and the average lot size is 9,054 square feet; that there are 0.19 acres of tidal wetlands on the site; that the Army Corps of Engineers has issued a jurisdictional determination and that the report is in the Exhibit Booklet; that utilities will be provided by Delmarva Power and Light, Verizon, and Mediacom; that the site is located in the Indian River School District and will not negatively impact the

school district; that fire protection is provided by Bethany Beach Fire Company; that DelDOT did not require a traffic impact study for this project; that the entrance has been relocated at DelDOT's request; that the entrance will be a right in right out only; that the applicants originally applied for a conditional use for 93 single family detached condos for this site but withdrew that application; that the applicants went through the PLUS process and the comments and their response are referenced in the Exhibit Booklet; that the project has been reduced from 93 units to 49 lots; that the proposed use is compatible to the area; that Figure 5 of the Exhibit Booklet shows an aerial photograph of the area; that there are other single family subdivisions in the area with similar densities; that this project is an in-fill project; that the community will be gated; that the streets will be

Minutes

November 16, 2006

Page 11

private and built to County specifications; that there is a 20-foot forested buffer to the south, a 30-foot forested buffer to the north and a 40-foot forested buffer to the east; that the buffer on the west side varies from 205-feet to a 40-feet at Lot 15; that there is a 50-foot buffer from the tidal wetlands; that none of the lots contains any wetlands; that approximately 0.34 acres of wetlands will be disturbed and mitigated at a ration of 2 to 1; that the applicants are preserving the wooded areas along the perimeter of the site; that additional plantings will be installed; that the recreational facilities will include a spa and gazebo and pocket park benches; that the homes will probably be second homes; that the storm water management design will utilize bio-swales; that the existing dwelling and septic system on the site will be removed; that there is a parking area provided near the recreation area; that sidewalks will be provided on at least one side of all streets; that the Exhibit Booklet addresses the items listed in Subsection 99-9C of the Subdivision Code and an Environmentally Sensitive Developing District Report is also addressed in the Exhibit Booklet; that it would be hard to enforce The Sanctuary's request since the County does not have an ordinance enforcing working hours; that the project will be similar to the other developments in the area; that the project will be a high quality development that fits in with the area and has an environmentally sensitive design; that the recreation area has been relocated and downsized; that they aware that the Fresh Pond is a wilderness area; that lot 49 provides a scenic view of the area; that the applicants will comply with all regulations; that there are no known endangered or threatened species on the site; that the site is currently wooded at this time; that the applicants will cooperate with the State of Delaware; that the pond on site is existing and will be utilized as a part of the storm water management design; that the sidewalks can be connected to one another; that fill dirt will be brought to the site; that lot 49 will contain special notes on the record plan and in the deed; and submitted proposed conditions of approval and findings of fact into the record.

The Commission found that Debra Hartney; a member of The Sanctuary Homeowners' Association was present and stated that she supports the community; that they previously had concerns about lot 49; that they would like for the Commission to honor their request limiting construction from Memorial Day to Labor Day; and stated that homeowners could lose rental income if construction is permitted all during the summer.

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

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action and to leave the record open for the applicants to submit a rare and endangered impact study. Motion carried 5 – 0.

Minutes
November 16, 2006
Page 12

Subdivision #2006-44 – application of **DAVID TRAVIS** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 28.00 acres into 12 lots, located at the east end of a 50' private road and east of Road 298A.

This application was withdrawn on November 16, 2006.

ADDITIONAL BUSINESS

Subdivision #2005-72 – application of **BAYWOOD, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 311.93 acres into 679 lots,) Environmentally Sensitive Developing District Overlay Zone), located northeast of Road 298, 3,950 feet southeast of Route 24.

Mr. Lank provided the Commission with a copy of the Traffic Impact Study information received from DelDOT on October 31, 2006.

Mr. Lank reminded the Commission that the Commission had deferred action on October 12, 2006 and left the record open for 15 days after receipt of the DelDOT comments on the Traffic Impact Study.

Mr. Lank noted that there was no way to announce to all of the residents that spoke in opposition that the information had been received and to allow them to respond in writing, and recommended that the 15 day review period be effective from this evening, and that the record should remain open until the close of business on December 1, 2006.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously that the 15 day review period shall begin this evening and written comments may be received until the close of business on December 1, 2006.

2007 Meeting Schedule

Mr. Lank asked the Commission if they had any objections to the Tentative 2007 Meeting Schedule that was mailed to the Commission earlier this week.

No objections were noted.

There was a consensus of the Commission that the staff may schedule public hearings on the reported dates for 2007.

Minutes
November 16, 2006
Page 13

Next Meeting

Mr. Lank reminded the Commission that a Special Meeting of the Commission was scheduled for November 20, 2006 at 3:00 p.m. in County Council Chambers to consider an Agenda of Old Business and Other Business.

Meeting adjourned at 9:30 p.m.