

MINUTES OF THE REGULAR MEETING OF JANUARY 8, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 8, 2015 in the County Council Chambers, Sussex 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. Rodney Smith, Mr. I.G. Burton, III and Mr. Michael Johnson, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director. It was noted that Bill Brockenbrough and Marc Cote’ of DelDOT were also present.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to revise the Agenda by reversing the order of the Public Hearings and Other Business items. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of December 11, 2014 as corrected. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of December 18, 2014 as corrected. Motion carried 4 – 0.

OTHER BUSINESS

**Americana Bayside MR/RPC
Village C Phase 1A – Route 54**

Mr. Abbott advised the Commission that this is the final record plan for Phase 1A for Village C; that this phase contains 36 single family lots; that the Commission granted preliminary approval for Phase 1 on October 10, 2013 for 135 units on 57.61 acres; that the Commission approved 5 foot front and side yard setbacks and 10 foot rear yard setbacks; that the final plan is similar to the approved preliminary plan, meets the requirements of the subdivision and zoning codes and the conditions of approval; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a final. Motion carried 4 – 0.

**Coastal Club MR/RPC
Preliminary Site Plan – Land Bay 5 – Road 285**

Mr. Abbott advised the Commission that this is the preliminary site plan for Land Bay 5 of the Coastal Club RPC for 51 single family lots; that the preliminary plan is the same as the approved Master Plan that the Commission approved on March 24, 2011; that the proposed setbacks for this Phase are 20 feet front yards, 8 feet side yards and 10 feet rear yards; that this is consistent for Phase 1 which just recently received final approval; that the area is not impacted by a flood plain and there are no wetlands being impacted; that Sussex County will provide central sewer

and Tidewater Utilities will provide central water; that sidewalks are provided on both sides of all streets; that the site plan is suitable for preliminary approval; that since the project is a part of a residential planned community, final site plan approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals; and that the Commission was previously provided a copy of the preliminary site plan.

Mr. Johnson advised the Commission that he has concerns about setbacks being revised; that the Commission spends a lot of time in reviewing applications including considerations about setbacks and amenities that are proffered by applicants only to come in later requesting changes; that he has concerns about fire safety and impervious areas; and that the full Commission should consider this request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action so that the full Commission may consider this request. Motion carried 4 – 0.

**Saddle Ridge MR/RPC
Preliminary Site Plan – Route 24**

The Commission previously received the preliminary site plan for an 81 lot residential planned community and was made aware of that this application (CZ #1742) was approved by the County Council on September 30, 2014 with 13 conditions of approval; that the conditions are noted or depicted on the site plan; that the layout/design is similar to the plan that was submitted during the public hearing process except that instead of single family detached units, the units will now be fee simple lots; that the minimum lot size is 7,500 square feet; that the proposed setbacks are 20 feet front yards, 5 feet side yards and 20 feet rear yards; that all corner lots have a 20 foot setback from both right of ways; that sidewalks are provided on both sides of all streets; that a pool, recreation facility, and 15 parking spaces are proposed; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the site is not located in a flood zone; that there are no impacts to the wetlands; that the site plan is suitable for preliminary approval; that since the project is a residential planned community, final site plan shall be subject to the review and approval of the Commission upon receipt of all agency approvals, and that the Commission was previously provided a copy of the preliminary site plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action so that the full Commission may consider this request. Motion carried 4 – 0.

**Stockley Materials, LLC
CU #1770 Amended Condition**

Mr. Abbott advised the Commission that this is a request to delete Condition #9 which states “No dredging activities shall be permitted on the site”.; that on April 16, 2009 the Commission recommended approval of this application; that the County Council approved the application with the Commission’s recommendation; that since the condition originated with the Commission, the Commission may amend/modify the conditions if it so chooses; that this item was removed from the December 11, 2014 agenda; that the Commission was previously provided a copy of a letter from the applicant’s attorney which also included copies of minutes

from the Commission and Council meeting and a copy of the approved Ordinance; and that the staff has received 20 letters in support of this request.

Mr. Johnson advised the Commission that he made the motion for this application; that at the time, he was not fully aware of dredging operations; that after visiting other borrow pits, he now understands the dredging operations; that by dredging, there will be less noise than the current operation; and that letters in support have been submitted for this request.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the request as submitted with the understanding that all other conditions of approval will remain in effect. Motion carried 4 – 0.

Ro/Ax, LLC
2 Lots & 50' Easement – U.S. Route 13

This is a request to subdivide a 1.625 acre parcel into 2 lots with access from a 50-foot easement; that Lot 1 will contain 38,115 square feet and Lot 2 will contain 32,670 square feet; that the owner is proposing to create the 50-foot easement over an existing gravel driveway; that DelDOT has issued a Letter of No Objection; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the request as submitted as a concept. Motion carried 4 – 0.

Pelican Landing
Preliminary Site Plan – Route 24

Mr. Abbott advised the Commission that this item was deferred at the December 18, 2014 meeting since there was a possible encroachment on Parcel 2; that the record of the December 18, 2014 meeting for this item will be incorporated into this item; that it has been verified that the possible encroachment on Parcel 2 is not an encroachment; and that the area in question is a grass strip between the proposed building and proposed sidewalk.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals and approval for the shared parking agreement. Motion carried 4 – 0.

PUBLIC HEARINGS

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE I, “GENERAL PROVISIONS”, AND ARTICLE XVIII “FLOOD PRONE DISTRICTS”, AND ARTICLE XXV “SUPPLEMENTARY REGULATIONS”, SECTION 115-189, “COASTAL AND FLOOD-PRONE AREA PROTECTION”.

Mr. Lank introduced the Ordinance, and advised the Commission that no letters or emails have been received to date on this Ordinance Amendment.

Mr. Robertson gave a brief summary of the Ordinance Amendment and stated that it has taken approximately one (1) year for the staff to review and prepare the Ordinance Amendment; that FEMA and DNREC have suggested that we adopt a suggested Model Ordinance; that some of the municipalities in the County have already adopted the Model Ordinance; that some of the municipalities are considering adopting the Model Ordinance; that the Staff Committee included Vincent Robertson, Todd Lawson, Lawrence Lank, Shane Abbott, Jeff Shockley, Andy Wright, and Chris Keeler; that a DNREC consultant assisted the Staff Committee when questions arose; that the flood regulations currently run throughout the Code; that this proposed Ordinance Amendment consolidates all flood related regulations into Article XVIII of the Zoning Code; that there are not many changes in the Code, mostly formatting; that the Staff Committee reviewed freeboard; that some municipalities allow additional footage above the Base Flood Elevation, varying from none to 12 inches, 18 inches, 2 feet and 3 feet; that the Sussex County Council did not want to mandate a freeboard, but was willing to allow a maximum of 2 feet adjustment above Base Flood Elevation and then 2 feet of height adjustment; that the freeboard would be voluntary, not mandated; that raising the elevation of the construction with a freeboard allows for flexibility for the property owners and should decrease insurance rates for the individuals with a freeboard; and that the DNREC consultant suggested three (3) minor corrections (typos), and read the suggested corrections.

Mr. Wheatley stated that he was kind of leaning towards a mandatory freeboard.

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

The Commission found that three parties, not in opposition, but questioning the freeboard issue, and stating that the regulations will protect property owners.

Mr. Robertson, in response, stated that freeboard is not mandatory; that FEMA does not mandate freeboard; that there are no uniform guidelines; and that there are no penalties for not building with a freeboard.

Mr. Wheatley asked Mr. Robertson to read a suggested motion.

Mr. Robertson read that the motion should read “I move that the Commission recommend approval of the Ordinance to Amend Chapter 115 of the Code of Sussex County, Article I “General Conditions”, and Article XVIII “Flood Prone Districts” and Article XXV

“Supplementary Regulations, Section 115-189 “Coastal and Flood Prone Area Protection”, with the following minor changes as suggested by Staff:

1. Section 115-141.4D(5) should be revised to reflect in the first line “Subsection D(4) above”.
2. Section 115-141.5E(1)(b) should be underlined.
3. Section 115-141.5E(1)9b)[ii][a] should refer to Section 115-141.3D1(i)[iv]

Mr. Smith stated that he would move that the Commission recommend approval of the Ordinance Amendment with the three (3) minor changes suggested by Mr. Robertson.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the three minor changes. Motion carried 4 – 0.

Change of Zone #1759 Osprey Point D, LLC

Application of **OSPREY POINT D, LLC** to amend the Comprehensive Zoning Map of Sussex County, from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 126.8795 acres, more or less, land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach, DE) (Tax Map I.D. #3-34-18.00-83.00).

The Commission found that this application was filed on July 17, 2014 with the necessary form and survey/site plan; that the Applicants provided an Exhibit Booklet on October 13, 2014 describing the application; and that the Applicants provided two (2) Exhibit Booklets for consideration of the Traffic Operational Analysis, dated October 22, 2014. The Exhibit Booklet contains: a Presentation Guideline; a Data Sheet; Preliminary Site Plans; and Map Exhibits showing a Location Aerial Map; a FEMA FIRM Map of the area; a copy of the Future Land Use Map of the area; a copy of the State Strategies Map of the area; a Zoning Map of the Area; Sewer District Maps of the area; a copy of the Preliminary Land Use Service (PLUS) application for the property, and the Applicants responses to the PLUS comments; the Applicants responses to the Technical Advisory Committee comments; the Applicants responses to standards of Chapter 99-9C of the Subdivision Ordinance; a Willing and Able to Serve letter from Tidewater Utilities, Inc.; and an Environmental Assessment and Public Facility Evaluation Report for consideration.

The Commission found that a letter was received from DelDOT, dated October 27, 2014, referencing that DelDOT received the Traffic Operational Analysis on October 22, 2014; that the Department understands that the Consulting Engineer for Davis, Bowen & Friedel, Inc. reports that the Traffic Operational Analysis recommends that DelDOT consider the installation of a traffic signal at the intersection of Old Landing Road, Warrington Road, and Strawberry Way; extension of the left turn lane on Warrington Road at Old Landing Road; and investigating as to whether additional auxiliary lanes are necessary or feasible; and that after DelDOT reviews the Traffic Operational Analysis they will provide recommendations on the Analysis.

Mr. Lank advised the Commission that this application was originally scheduled for public hearing on October 23, 2014 before the Commission and on December 2, 2014 before the Sussex County Council, and that there were issues reported that several property owners in the area did not receive public notices; that it was determined that the application would be re-advertised; and that tonight's date was the first available for consideration of this application.

Mr. Lank advised the Commission that 634 public notices were sent out and that 20 mail returns have been received to-date.

Mr. Lank advised the Commission that, to date, one email in support has been received and 143 letter/emails were received in opposition; that there are some duplications of letters and emails since some parties sent both an email or emails and a letter. Copies of the letters and emails would be made available later, since staff had problems with the copier. Some of the letters and emails included copies of photographs of the property during rainfalls and flooding tides.

The Commission found that Robert Marshall, the landowner, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A., Zac Crouch, Professional Engineer, and D.J. Hughes, Professional Engineer, both of Davis, Bowen & Friedel, Inc., and that they stated in their presentations and in response to questions raised by the Commission that the parcel contains approximately 126 acres of land and that they are proposing to develop the site with a 350 unit mix of single family dwellings and multi-family units; that there are no commercial uses intended; that the site has been utilized as a public golf course since the 1960s; that the site has been owned by the Marshall family for over a century; that to the south is Old Landing Subdivision; that to the north is the Woods at Old Landing; and that the east is Rehoboth Bay Manufactured Home Park and Sawgrass South Residential Planned Community; that the Sawgrass South community is developing with a mix of single family homes and multi-family units; that they are proposing to provide 50 foot wide buffers from all tidal waters and wetlands; that Federal wetland buffers are not required by Code; that the Sawgrass South project has some lots that are immediately adjacent to Federal wetlands; that the developer is voluntarily proposing 25 foot buffers from all Federal wetlands; that Tidewater Utilities will be providing central water for drinking and fire protection; that Sussex County will be providing central sewer; that sewer connection fees will exceed \$1,000,000.00; that sewer capacity is available to serve the project; that Delaware Electric Cooperative will provide electricity; that the site is in Cape Henlopen School District; that the site is located in the Rehoboth Beach Volunteer Fire Department service area; that no rare/endangered species are registered on this site; that the project meets the legal basis per the Sussex County Code and State regulations; that this application is not a popularity contest; that it is established that the County must make a land use decision based on the County laws and ordinances; that the regulations fully support this application; that the State Quality of Life Act required that the County establish a Land Use Plan; that the developer must comply with said Land Use Plan and Map; that it has been estimated that 60% to 75% of the site is in the Mixed Residential Area; that the site is located in two growth areas according to the Land Use Plan, the Environmentally Sensitive Developing Area and the Mixed Residential Area; that the Future Land Use Plan is probably the most influential part of the Comprehensive Plan; that the County's Zoning regulations are intended to carry out the Future Land Use Plan; that the Future Land Use Plan also designates which parts of the County

are to be considered growth areas; that the Land Use Plan references that permitted uses in an Environmentally Sensitive Developing Area allow for a range of housing types including single-family, townhouses, and multi-family units; that central water and sewer facilities are strongly encouraged, and that if central utilities are not possible, permitted densities should be limited to 2 units per acre; that the Land Use Plan references that permitted uses in a Mixed Residential Areas allow for a full range of housing types in these residential areas, including single-family homes, townhouses and multi-family units; that non-residential development is not encouraged; that the current densities in these areas range from a maximum of 4 homes per acre for single-family detached housing to a maximum of 12 dwelling units per acre for multi-family housing; that central water and sewer facilities are strongly encouraged in Mixed Residential Areas, and that if central utilities are not possible, densities should be limited to 2 units per acre; that the Purpose of the MR Medium Density Residential District references that the purpose of this District is to provide for medium-density residential development in areas which are or which are expected to become generally urban in character, but where sanitary sewers and public water supplies may or may not be available at the time of construction; that the area is urban in character with single-family homes, multi-family units, and townhouses; that the site is the only remaining large tract in the area; that the Purpose of the Residential Planned Community District references that in order to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Land Use Plan, the Residential Planned Community District is hereby established; that this application is consistent with the intent of the Residential Planned Community District designation; that the density of this project is 2.67 units per acre gross, which is substantially less than that suggested in the Land Use Plan; that 403 units would be permitted by the Residential Planned Community calculation; that the site is surrounded by other MR Zoning classifications, and should be considered an MR infill in an MR area; that the Sawgrass South project was established in 2003 by obtaining a rezoning from AR-1 Agricultural Residential to MR-RPC Medium Density Residential District – Residential Planned Community; that this is the same type of request, a mixed use residential community; that by comparison Sawgrass South contains 282 units, 62% being townhouses; that this proposal is similar with 350 units, 51% being townhouses; that this request has a lower percentage of townhouses and a lower density of dwelling units; that the project is proposed to contain 170 single-family dwellings and 180 townhouses; that 43% open space is being provided; that 50 foot wide buffers are proposed along all State wetlands; that 25 foot wide buffers are proposed along all Federal wetlands; that 20 foot wide buffers are proposed around the perimeter; that private streets, built to County specification, are proposed and will include sidewalks on both sides and street lighting; that two (2) access entrances are proposed along Old Landing Road; that the townhouses will be centrally located; that no single-family homes or townhouses will back up to Old Landing Road; that berms with landscaping are proposed to be installed along Old Landing Road; that a pool, clubhouse, tennis courts, game courts, and a dog park are proposed; that 24 boat slips are proposed to serve the community; that no boat launch area is proposed, only docking facilities; that they anticipate developing the project in three (3) phases, central, south, and north; that some flooding has occurred on the golf course during rains and storms; that the golf course started in the early 1960s with 9 holes, and then expanded in 1968 to 18 holes; that there is no stormwater management plan for the golf course since none was required when the golf course was built; that the developer will be required to design the project to DNREC and Sussex Conservation District requirements; that a

hydrologic model is proposed with interconnecting ponds and other stormwater features; that soil borings will have to be performed; that a Traffic Impact Study was not required by DeIDOT; that DeIDOT did require a Traffic Operational Analysis, which is being reviewed by DeIDOT; that the developer may contribute a fee to the area-wide study in lieu of a Traffic Impact Study; that townhouses generate less traffic than single-family homes; that the Traffic Operational Analysis included addressing eight (8) developments and a 10 year build out; that several developers are involved in establishing the necessary improvements to the intersection of Warrington Road and Old Landing Road; that a 12 hour traffic count was performed on June 20, 2014; that it has been determined that the left turn lane on Warrington Road is too short and needs to be extended; that additional turn lanes and bike lanes are needed; that local road improvements will include paved shoulders/bike lanes; and a shared use path; and that a traffic signal may be required; that in the last three (3) years there have been three (3) crashes along the site frontage, all being single vehicle crashes; that the application was rescheduled due to a mailing error; that all units will front onto an interior street; that due to setbacks, the road widths, the open space berm and landscaping the closest homes across Old Landing Road will be approximately 250 feet from another dwelling or unit; that there should not be any negative impact on the Sawgrass South project due to the similarity of the two projects; that the proposed density is basically the same as other projects in the area and complies with the Land Use Plan; that adequate sewer capacity is available for the project; that the Sawgrass South project has a greater density; that the opponents should be upfront and state that they prefer looking at and across a golf course and open space, rather than looking at a project that is similar; that there is no right of view or to impact the rights of a landowner to develop his property; that the site is located in a flood plain area, similar to the areas around it; that all developments in a flood plain have to comply with FEMA regulations that are enforced by the County; that stormwater management will be addressed and complied with; that the developers will have to pay for all infrastructure cost; that the stormwater management features will be subject to the review and approval of the Sussex Conservation District and the State DNREC; that the application complies with all statutory requirements; that the Marshall family has watched all of the projects develop along Old Landing Road; that setbacks/buffers are not required from Federal wetlands; that setbacks are subject to the discretion of the Planning and Zoning Commission; that the goal of a Residential Planned Community is to provide more open space than a standard subdivision; that there are two (2) out-parcels on the site, one is the location of the Marshall dwelling, and one is the location of the landscaping business; that the superior living environment is created by the amount of open space, additional buffers, recreational amenities, the trail along Old Landing Road, and the lack of a cookie cutter design; that the application should be considered an infill since the site is surrounded by MR Zoning, and since central sewer and water are available; that several Residential Planned Communities exists along Old Landing Road, i.e. Sawgrass South, Sawgrass at White Oak Creek; the Villages at Old Landing, and others; that Redden Ridge, a cluster subdivision, was recently approved with Bonus Density provisions; that the developers will have to comply with all stormwater management regulations for activities during and after construction, along with all Inland Bays and State DNREC regulations; that a jurisdictional determination has been approved by the Army Corps. of Engineers; that there shall be no water runoff onto neighboring properties; that the proposed project will improve drainage in the area; that runoff will be contained on-site; and that the developers will have to comply with water quality and water quantity, and the runoff will be treated prior to discharge into wetlands.

Bill Brockenbrough and Marc Cote' of DelDOT came forward to respond to questions raised and advised the Commission that DelDOT have almost completed the review of the Traffic Operational Analysis; that over the last few years, developers along Old Landing Road have agreed to pay for the cost of improvements; and that four or five signal agreements have been signed for improvements along Old Landing Road.

The Commission found that the developers representatives continued to respond to questions raised by the Commission and stated that 20 foot wide buffers are intended; that the berms along Old Landing Road will be from 3 feet to 5 feet tall with landscaping; that the proposed entrances will line-up with existing entrances with other projects; that Phase 1 of the project will be the northern entrance, the clubhouse and amenities, and some single family dwellings and townhouses; that the site is a well head protection area because of the golf course well, and will be removed as a well head protection area once central water is provided; that they are proposing 24 boat slips/docks; that the majority will be leased to residents in the community; that they have met with the Sussex Conservation District and the project will be based on their old regulations; that a Nutrient Management Plan exists for the golf course, and that those plans will be updated for this project; and that it is not economically feasible to establish a commercial component in this project due to the location.

The Commission found that Mr. Fuqua provided 10 suggested proposed Findings for consideration which included the following:

1. The proposed MR/RPC development meets the purpose of the MR and RPC Zoning Designations since it provides medium-density residential development in a developed area where County sewer and central water is available by creating a superior living environment and development design.
2. The proposed MR/RPC development is in accordance with the Sussex County Comprehensive Plan in that it is located in designated "Growth Areas" where development is directed and planned.
3. The site is located in two "Growth Areas", the Environmentally Sensitive Developing Area and the Mixed Residential Area where a full range of housing types are appropriate including single-family homes, townhouses, and multi-family units.
4. Approximately 60 to 75 percent of the site is located in a Mixed Residential Area. According to the Comprehensive Plan, current densities in the Mixed Residential Area range from a maximum of 4 homes per acre for single family housing and 12 units per acre for multi-family housing. The proposed gross density of 350 units on 126.8 acres is 2.76 units per acre, significantly less than the density deemed appropriate by the Comprehensive Plan.
5. Central sewer will be provided as part of Sussex County's West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and adequate wastewater capacity is available.
6. Central water for domestic use and fire protection will be provided by Tidewater Utility, Inc.
7. The proposed development will comply with all DelDOT requirements including entrance locations, roadway improvements and contribution toward area wide study and intersection signalization.
8. The proposed development will provide buffers from Federal and State wetlands and will comply with the Inland Bays Pollution Control Strategy.

9. The proposed development is consistent with the nature of the area, which consists of a variety of residential developments including single-family, multi-family and manufactured home developments.
10. With the conditions placed on the development, the MR/RPC designation is appropriate and in accordance with the Comprehensive Plan since it creates a large scale development with a superior living environment and the use of design ingenuity at an appropriate density.

The Commission found that Mr. Fuqua provided suggested proposed Conditions of Approval for consideration which includes the following:

- A. The maximum number of dwelling units shall not exceed 350, comprising of 170 single family detached dwellings and 180 townhouse units.
- B. Site Plan review shall be required for each phase of development.
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
- D. The central recreational facilities and amenities shall be constructed and open to use by residents of the development no later than the issuance of the 100th Certificate of Occupancy. These recreational facilities shall include a clubhouse, pool, tennis and basketball courts, a tot lot and a dog park.
- E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
- F. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the Applicant, the street design shall include sidewalks on both sides of the streets and street lighting. Owners of lots fronting on Fairway Drive shall contribute to the maintenance of Fairway Drive in a manner equal to other owners of other lots fronting on Fairway Drive.
- I. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed street and shrub landscape design.
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- K. The Applicant shall cause to be formed a homeowners' or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits. The wetland areas shall be clearly marked on the site with permanent markers. A voluntary 25 foot non-disturbance buffer shall be

provided from all Federal Non-Tidal Wetlands and a 50 foot non-disturbance buffer shall be provided from all State Tidal Wetlands.

- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

The Commission found William Dunne, Esquire, was present on behalf of himself and several individuals and families in opposition to this application; stated that he owns property in the Sawgrass South community; requested that the record be kept open for more time for area residents to review the record; and stated that area residents will be negatively affected by the application; that the residents request that the application should be denied; that the Commission, at a minimum, should act to: strictly control density; preserve the character of the area; require adequate buffers; prevent flooding and adverse impacts on adjacent properties; minimize adverse environmental impacts; mitigate increased traffic and provide for community safety; that any proposed plans or construction should be subject to all requirements of Sussex County, State and Federal environmental laws, as well as all sediment and stormwater management regulations and best practices; that the Commission should require restrictive covenants and disclosures in accordance with applicable laws; that the residents are not opposed to development, if it is well planned; that the residents strongly object to this application; that they disagree with the Counsel of the Applicant that the application meets all legal requirements; that the PLUS Report notes many deficiencies and was incomplete; that the residents request that the Commission and the County Council protect this sensitive area by mandating a project designed with lower density, greater open space, appropriate stormwater management, consideration of environmental elements, and mitigation of traffic and safety concerns; that the residents have hired a geotechnical engineer to assess the stormwater management, flooding, and environmental problems with this site; that the proposed project is located in a Growth Area, the Environmentally Sensitive Developing Area and a Mixed Residential Area according to the Comprehensive Plan; that the proposed project is located in a Level 3 according to the Delaware Strategies for State Policies and Spending; that the County cannot expect the State to support development here with needed infrastructure spending in the near term; that special scrutiny should be applied to spending decisions and development proposals within these areas to assure these activities are consistent with State and local development and preservation policies; that a stormwater assessment study needs to be completed and submitted to the State DNREC; that the majority of the site is located in a flood plain; that the site is an excellent groundwater recharge area; that the project, which borders Arnell Creek, contains State and Federal wetlands; that under applicable laws, the goal is to protect critical natural resources, such as the Inland Bays, by guarding against over-development and permanently preserving selected lands; that the County should consider designating this parcel as a watershed stewardship area; that the increased density proposed has a very real potential to destroy the unique environmental value of the site; that the Applicant has yet to provide complete information and documentation pertaining to various issues concerning the flood plain, wetlands, buffer requirements, and other essential requirements: i.e. a summary of proposed deed restrictions; a buffer around the entire perimeter; stormwater and erosion and sedimentation maintenance restrictions; and wetlands disclosures; that the site plan is not in compliance since forested and/or landscape buffers are not depicted; that there is no soils report; that the soils are poorly drained; that the Applicant's response to the

PLUS comments are inadequate; that the County should not continue the process without an adequate project plan; that traffic will increase on Old Landing Road and DelDOT should require a Traffic Impact Study since the last traffic report from 2011 is inadequate and outdated; that the Commission should: 1. Prohibit commercial uses; 2. Require design that actually results in permanent preservation of a substantial percentage of the site; 3. Limit dwellings to 100 single-family homes on one-half acre lots; 4. Prohibit townhouses, or alternatively, prohibit townhouses sited near Old Landing Road, limit the total number of townhouses, prohibit stacked townhouse rows, and increase green space between sections; 5. Require a 50-foot forested buffer around the entire perimeter; 6. Prohibit any construction of any improvements in any water resource protection area and on any hydric soil; 7. Require a wetlands disclosure in deed restrictions; 8. Require a 100-foot buffer around wetlands as recommended by DNREC; 9. Require a recorded restrictive covenant to increase the amount of open space; 10. Require a limit to the number of deciduous trees that are removed; 11. Prohibit any parcels from facing Fairway Drive; 12. Realign site entrances to avoid creating dangerous intersections with Sawgrass South entrances; 13. Require the owner to assign ownership of Fairway Drive and Clubhouse Drive to existing residents; 14. Increase the buffer between Old Landing Road and site development to 50 feet; 15. Require application to FEMA requirements per FIRM effective March 16, 2015; 16. Require use of pervious surfaces for paving of all sidewalks, bike paths, driveways, nature trails, and parking areas; 17. Require walking, biking, and nature trails; 18. Require site improvements that do not increase the likelihood of stormwater breaching Old Landing Road, Arnell Road, Clubhouse Drive, or Fairway Drive; 19. Require Applicant to provide fully developed hydrologic and hydraulic engineering analyses for all phases of site improvements; and 20. Require the Applicant to provide a bond, admit liability, indemnify, and accept personal financial responsibility for any adverse impact on any adjacent property or any well in any adjacent property due to: construction activities, site improvements, including grading of lots or other areas on parcel, stormwater damage, and any alteration to a watercourse; that the residents ask that the application be reviewed on its own merits; that the County will need to weigh the need for tax revenue, the lack of available State funds for roads and other improvements, and the health and welfare of the residents; that the County should see the deficits of building 350 dwellings on an environmentally sensitive developing area; that the remedial action the residents seek recognizes the Applicant's right to develop his property, and balance that right with the rights of his neighbors to ensure that their property is not adversely impacted by uncontrolled flood waters, that the quality of their water is not affected; and that the environment they love is not despoiled and the wetlands are left undisturbed; and that the residents believe that restraining the density will put less strain on Old Landing Road and better protect the safety of the traveling public.

Bill Brockenbrough of DelDOT came forward at the request of the Commission and advised them that the 2011 Traffic Study was performed for the Hood property; that the Department did not see a need for additional studies; and that other developments have been included in the process.

The Commission found that George Barstar, Professional Engineer, was present and presented a Power Point presentation on this application by referencing the existing site; a project overview of the number of units and the open space acreage; allowable uses; allowable site development; the zoning change; environmental sensitive exclusions; wetlands; hydric soils; stormwater

management; stormwater plan approval; stormwater project application meeting; DNREC Stormwater Assessment Report; soils; runoff potential; water resource protection; discharge points; and conclusions which reference that: the site's potential for development is limited by environmental constraints; that the proposed rezoning is incompatible with the environmental constraints and should be rejected; that a significant portion of the site may be suitable for development of single family units without a zoning change with approximately 100 units compatible with local lot sizes and existing development; that recommended geotechnical investigation and soil surveys should be conducted to determine the full extent of hydric soils and infiltration in preparation of the Stormwater Assessment Study; and that prior to submission of the subdivision plan, a sediment and stormwater program project application meeting with the Sussex Conservation District is necessary; and that review of the Stormwater Assessment Report is required prior to subdivision or rezoning approval.

Mr. Crouch came forward at the request of the Commission to respond and advised the Commission that he can provide a letter from the Sussex Conservation District referencing that they will be permitted to submit the project under the old stormwater management regulations since they had already been working with the District on this project.

The Commission found that Richard Morgante, President of Old Landing Woods Owners Association, was present in opposition on behalf of the Board of Directors and stated that Old Landing Woods consist of 41 lots on two streets; that the streets surround a substantial portion of the golf course; that Old Landing Woods will be the one most directly impacted by the rezoning and development of the site; that the subdivision was established in the 1970s; that the residents request that the Commission closely examine this application; that the residents feel that the plans are seriously flawed and do not meet the Code requirements; that many of the residents reviewed the existing zoning prior to purchasing their lots; that increasing the density is contrary to the residents reasonable expectations for the development of the property, and should be rejected; that the residents urge the County to consider the character of the area; that this is not a rural, undeveloped landscape, rather it is a settled community; that it is not open farmland, it is a well-developed community surrounding a golf course; that AR-1 zoning is reasonable with respect to this land, and is in keeping with the character of the adjoining community; that the residents are concerned about environmental and flooding impacts, the density of the proposed community, the worsening of traffic congestion and safety, and the quality of life for the residents, and the surrounding community; the residents are concerned about adding 12 of the 350 homes onto Fairway Drive; that the 12 lots will be isolated from the rest of the proposed community; that there would be no buffer between these 12 lots and the existing lots along Fairway Drive; that the Code requires the inclusion of forested buffers or landscape buffers, which are not intended; that the proposal may destroy an existing forested buffer; that the lots will be out of character with the size of the lots and homes on Fairway Drive; that the Code requires proper alignment with the surrounding development; that Fairway Drive is a shared roadway with the Woods at Arnell Creek; that adding another development will impose further complications and hardship in determining control and maintenance of the narrow residential street; that they have not yet reached an agreement with the developer of the Woods at Arnell Creek; that complicating the roads management issue is the fact the Robert Marshall actually owns the roads, but does not maintain them, nor does he contribute to their upkeep; that the roads should be turned over to the Old Landing Woods Owners Association; that drainage problems

already exist throughout much of the year and would be aggravated by the additional lots along Fairway Drive; that if the project is approved, the residents request that the Commission require the developer to leave the existing forested buffer along Fairway Drive and eliminate the 12 lots and avoid future problems for those 12 future homeowners and certainly the Old Landing Woods community; that eight of the proposed lots are in an area that frequently floods; that locating homes in a flood prone area will exacerbate problems in an already poor drainage area and be contrary to the Code; that the addition of eight lots will prove problematic for not only those lots, but also the property owners that already reside there; that those lots should also be eliminated; that the residents request that this application be rejected, or at a minimum, postponed until the County is assured that the project meets Code, and that the developer should be required to provide the required investigations, studies and technical data, and makes critically needed adjustments to the plan. Mr. Morgante provided a copy of his testimony and two exhibit boards containing 28 photographs of existing conditions and flooding of the area. The photographs were reportedly taken during Hurricane Sandy and on December 9, 2014, which had a moderate rainfall.

The Commission found that Charlotte A. Reid was present in opposition and submitted and summarized comments relating to this application; that the comments include the character of the area; flood control; the Environmentally Sensitive Developing Area; special scrutiny; flood plains, wetlands, soils and the Inland Bays; new requirements concerning Flood Prone Districts; safety; that in conclusion, a decision by the Commission on this pending application and plan would be premature at this point, as there are many important open issues and unanswered questions presented by the Applicant's plan; that the Applicant's submissions fail to comply with various submission requirements under the Code; that the residents urge the Commission to strictly adhere to the PLUS review recommendations, in advance of commencing any development activity; that the Commission should delay this process long enough to extract the developer's concessions; that it is well to note that the Applicant has made no effort to discuss how to avoid inundating contiguous/nearby property with any of the neighbors whose properties would be affected by the construction of the dwellings and impervious surfaces inherent to the developer's plan; and that the Commission should require an independent geotechnical report on the effects of building on hydric soils, which do not have adequate bearing capacities to support such structures.

The Commission found that Sandra Oropel was present in opposition and submitted and summarized comments relating to this application referencing traffic and safety issues that will have a grave impact on all homeowners along Old Landing Road; that DelDOT has identified Old Landing Road as facing high volumes of traffic for over a decade; that headlines in the Cape Gazette in 2004 read "Old Landing Road Traffic A Big Concern"; that DelDOT had assigned the Old Landing Road, Warrington Road, and Strawberry Way intersection a Level of Service "F", which means that the traffic demand exceeds the design of the intersection and results in an average delay of more than 50 seconds per vehicle; that nothing has been done on the plans to improve the intersection; that vehicle traffic will only increase the traffic congestion at the intersection; that DelDOT permitted the Applicant to pay for a Traffic Operational Analysis report, a less detailed study, in lieu of DelDOT performing a new more intensive Traffic Impact Study; that the last Traffic Impact Study was performed in 2011 and is insufficient because it does not take into account the development off Old Landing Road since then; that the residents

believe that the Traffic Impact Study should be mandated; that a Traffic Impact Study would have required improvement of Old Landing Road to meet State standards and would address the Traffic and Safety issues the residents will be faced with; that a review of the DelDOT Crash Analysis Report from October 2009 to October 2014 indicates that 18 accidents have occurred on Old Landing Road; that seven of those accidents occurred along a stretch of road that runs parallel to the golf course with four of them occurring in 2014; that the creation of this project will create additional traffic and related safety issues for which the State Police will be unable to deliver quality and competent law enforcement services due to their already low staffing levels and will undoubtedly jeopardize public safety; that if there is an accident at the intersection of Old Landing Road, Warrington Road, and Strawberry Way that disrupted traffic flow and then there would be another emergency anywhere south of the intersection it would be almost impossible for EMTs or Fire apparatus to get to the second emergency; and that it is a great concern that Old Landing Road is the only outlet should there be an ordered evacuation in the case of a major storm event or flooding. Ms. Oropel submitted her testimony with related excerpts from the Delaware Annual Traffic Statistical Report and related links, the Delaware Crash Analysis Reporting System, the Delaware Department of Safety and Homeland Security Division of Police Strategic Plan for 2014 through 2018, a Memorandum from Gary J. Norris, AICP, and a copy of the referenced Cape Gazette 2004 headline.

The Commission found that Donna Voigt was present in opposition and submitted and summarized her testimony by stating that the site design is not aligned with the Code; that the County has a moral obligation to current and future residents to carefully consider the opposition arguments and reject this request; that the design is clearly not aligned with the Comprehensive Plan for Future Land Use, and falls short of addressing critical questions tied to the Code and concerns of existing landowners; that the rights of those living adjacent or nearby this property are as important as the Applicant's right to develop his land; that land is an investment asset as much as any other; that each of us makes decisions regarding investments with the desire to see that investment increase in value; that sometimes taking a "wait and see" approach pays off handsomely, and sometimes not; that the Applicant chose to retain his property as a golf course instead of seeking re-zoning and building prior to the Sawgrass and other developments; that all of the developments approved and built, or are building, has created significant challenges along Old Landing Road; and that assuming that another project can be built without consideration of the current situation is foolish. Ms. Voigt submitted her testimony, which included an aerial photograph, a conceptual site plan for the project, photographs of flooding on the site, and a promotional document relating to the Sawgrass South project.

The Commission found that Jeanne Goldy-Sanitate was present in opposition and stated that she has concerns about run-off from the berms proposed along Old Landing Road causing run-off onto Old Landing Road and into Sawgrass South; that paved roads are not open space; that she is a bicyclist that rides on Old Landing Road which needs improvements for bicyclist and pedestrian safety; and that she is opposed to stacked townhouses.

The Commission found that Deborah Qualey was present in opposition and stated that she has concerns that there are no townhouses along Old Landing Road in Sawgrass South; that the developers are proposing rows of townhouses along Old Landing Road which changes the

appearance of Old Landing Road; that the project may impact the Inland Bays; and that roads and flooding are also a concern.

The Commission found that Evelyn Simmons was present in opposition and stated that she is concerned about flooding; that Mr. Marshall owns the roads and the existing marina in the Old Landing Development; that she is concerned about the boat docks; that the waters are muddy; that the existing boat ramp is also owned by Mr. Marshall; and that the Old Landing Development does not need any more traffic or parking along Arnell Road.

The Commission found that Henry Glowiak, Vice President of the Inland Bays Foundation, was present in opposition and stated that this project impacts negatively all of the past work performed by the Center for the Inland Bays, the State, and the County; that this area is one of the most stressed areas in the Inland Bays; that the quality of life in this area is deteriorating; that the Inland Bays Watershed drainage area contains approximately 300 square miles or 1/3 of the County, with approximately 80,000 residents; that impervious surfaces are a concern and are so noted in the Comprehensive Plan; that the application is not compliant with the Federal Clean Water Act; that nutrients will be going into the Inland Bays; that this property is a prime piece of property to preserve; that the State does not have the funds to purchase the property; that if the property is to be developed, it should be based on the current AR-1 zoning; and suggested that the application should be denied as submitted.

The Commission found that Steve Britz, a member of the Board for Webbs Landing and Vice Chair of the Citizens Advisory Committee for the Center for the Inland Bays; presented a Power Point presentation and testimony referencing the size of the project; that there is insufficient justification to change the zoning; that the project is out of character with the surrounding communities; that Old Landing Road is at a choke point for ingress/egress; that the land does not support high density development; expressed soils and stormwater concerns; expressed concerns about the cost of construction and insurance in a flood plain; that the soils are very limited for homes with basements; that the ground may be water saturated, has a high seasonal groundwater, is prone to ponding, is unstable for foundations, that impervious surfaces are exacerbated, that the soils are low-lying and difficult to remediate, and that there is a need to increase the buffers; that the Subdivision Ordinance references that lands compromised by improper drainage or flooding may pose significant threats to the safety and general welfare of residents and should not be developed; that the DNREC Watershed Assessment Section believes that permitting development on such soils would be inconsistent with the County Code; that the run-off generated by the project may cause run-off onto the Sawgrass South project; that the County should require the developer to contact a Certified and Licensed Soil Scientist to conduct a more thorough site-specific field delineation of the hydric soils on the site; and suggested that the County should deny this request pending a more environmentally responsible plan.

The Commission found that Ed Ryner was present in opposition and stated that he is concerned about traffic, that the roads in the area are inadequate for the possible traffic volume; and that the residents in the area are losing a public golf course.

The Commission found that Linda Frese was present in opposition and stated that the application is not a popularity contest as stated by the developers Attorney; that the residents in attendance

are concerned citizens; that the residents live in the area; that the residents know the flooding issues; that the residents know traffic; that the residents are concerned about the environment and the area; that some of the residents are doctors and lawyers and are expressing concerns; that the residents are in attendance hoping for a better way of life for the area; that the residents are concerns about safety; that the residents are hoping for a future for their children in the area; and that the residents are only trying to express how they feel.

The Commission found that George Love, a resident of the Rehoboth Bay Manufactured Home Community, was present in opposition, submitted comments and expressed concerns that the developers have not responded to recommendations from science-based agencies, i.e. the recommended 100-foot buffering from wetlands; that the developers have stated that they will meet or exceed the recommendations of the Pollution Control Strategies; that the developers have not specifically referenced the treatment method, the plan for on-going maintenance, and/or the source of funding for the maintenance; that the plan should be incorporated into the covenants and/or permit conditions; that surface water runoff is affected by construction and re-contouring of land surfaces, and can adversely affect adjacent/downstream properties through flooding and erosion; that the natural soils are going to be impacted by the expansive impervious surfaces; that the facilities for runoff collection and treatment should be isolated from the shallow ground water table; that a schedule to routinely monitor the quality of the water impounded in the runoff retention ponds will demonstrate that no long-term chemical loading will impact groundwater, and that the water quality does not violate discharge quality conditions that may be imposed on any point discharge from the project into the tidal waters and/or Arnell Creek; that a study should be required to determine what, if any, impact the disturbance of the soils by re-grading and re-shaping will have on surrounding water wells; and that the study should include an inventory of all wells, both private and public, within a reasonable distance from all areas where the infiltration rate for groundwater discharge are modified. Mr. Love's comments included his text, and maps from the Delaware Geologic Information Resource referencing subsurface aquifer and water depth points results; an area map indicating wellhead protection areas, digital and aerial maps, a map of groundwater recharge potential areas, and an unconfined aquifer transmissivity map.

The Commission found that Josephine Hamilton was present in opposition, submitted comments and expressed concerns that there is a known archeological site on this parcel; that the Division of Historical & Cultural Affairs recommends that the developers have a qualified archaeological consultant investigate the project area to see if there is any unmarked cemetery, graves, or burial sites; that the Division also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development; that the developer responded that the State Historical Preservation Office provided the developer with some information regarding a known archaeological site, and that Terrance Burns of the Bureau of Archaeology and Historic Preservation provided information determining that the sites are not located within the Osprey Point property.

The Commission found that a petition was submitted in opposition to this application containing signatures of approximately 140 residents of the area. The petition included a summary and background for the opposition, a copy of the PLUS application, a copy of the Conceptual Site

Plan for Osprey Point, and color maps of the area indicating the boundaries of the State Strategies for Policies and Spending, and the land uses in the area.

The Commission found that Mr. Fuqua and Mr. Crouch responded to questions raised by the Commission by stating that the owners contribute to maintenance of Fairway Drive by deed restrictions; that the owners along the road contribute funding for maintenance; that there is no buffering proposed along Fairway Drive since Mr. Marshall owns the roadway.

The Commission found that Mr. Morgante stated that Mr. Marshall does not contribute to the maintenance of Fairway Drive or maintain Fairway Drive; and that the residents along Fairway Drive have not yet reached an agreement with the developer of the Woods of Arnell Creek for participation in the maintenance of Fairway Drive.

Prior to closing the public hearing, the Chairman asked for a show of hands and found that there were still 24 residents in opposition to the application present of the approximately 110 parties that were present at the start of the public hearing.

The Commission discussed the application.

Mr. Robertson stated that the record should be left open for at least the Sussex Conservation District comments about the appropriate regulations to apply to this application (i.e. whether it is grandfathered under the old regulations), and DelDOT comments relating to the Traffic Operational Analysis.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to leave the record open for the Sussex Conservation District reference to grandfathering of the project, and for DelDOT comments on the Traffic Operational Analysis, the applicants response to the DelDOT comments, and that public written comments relating to those comments will be accepted for 20 days after the announcement of receipt of those comments by the Planning and Zoning Commission. Motion carried 4 – 0.

Meeting adjourned at 11:12 p.m.