



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE SPECIAL MEETING OF JULY 14, 2010

A special meeting of the Sussex County Planning and Zoning Commission was held Wednesday afternoon, July 14, 2010, in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 3:00 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, Mr. Michael Johnson, and Mr. Marty Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Mr. Wheatley stated that he would like to move Other Business Item #14 to the beginning of the discussion of items under Other Business.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to move Old Business Item #14 to the beginning of discussions under Other Business. Motion carried 5 – 0.

Mr. Johnson stated that he would like to move Consent Agenda Items 2a, 2b, and 2c for discussion under Other Business.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to move Consent Agenda Items 2a, 2b, and 2c for discussion under Other Business.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended. Motion carried 5 – 0.

The Revised Consent Agenda included:

Subdivision #2006-17 – Sawmill Associates, Inc.

Final – Herring Woods Village Subdivision

This is the final record plan for a 41-lot standard subdivision. The Commission granted preliminary record plan approval for 41 lots with 12 conditions on July 27, 2006 and granted one-year time extensions on July 18, 2007, August 20, 2008 and August 19, 2009. The final record plan complies with the requirements of the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2006-9 – RW Durham and Associates

This is a request for a one-year time extension. This application received preliminary approval, with conditions, on June 20, 2007. The Commission granted one-year time extensions on June 18, 2008 and August 19, 2009. This is the third request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until June 20, 2011, and that it should be stipulated that this will be the last extension granted.

Subdivision #2006-51 – Wolfe Properties, Inc.

This is a request for a one-year time extension. This application received preliminary approval, with conditions, on April 16, 2008. The Commission granted one-year time extensions on May 20, 2009 and March 17, 2010. This is the third request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until April 16, 2011, and if an extension is granted, it should be stipulated that this will be the last extension granted.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Items on the Consent Agenda that were not removed for discussion under Other Business. Motion carried 5 – 0.

OLD BUSINESS

C/U #1832 – application of **HAZZARD AUTO REPAIR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for an auto repair shop and contractors' storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.404 acres, more or less, lying north of Road 280B (Conley's Chapel Road) 100 feet east of Road 288 (Wil King Road).

Mr. Johnson and Mr. Robertson stated that they would not be participating in the discussion of this application.

The Commission discussed this application which has been deferred since June 10, 2010.

Mr. Smith stated that he would move that the Commission recommend denial of Conditional Use #1832 for Hazzard Auto Repair for the following reasons:

- 1) The Applicant has not demonstrated that there is a public need for the proposed use. There are numerous auto storage and repair businesses in more appropriate commercial zones, and the Applicant itself already operates such a facility in Lewes.
- 2) The Application is inconsistent with the character of the surrounding properties, which are by and large agricultural and residential.

- 3) The subject property is zoned AR-1 Agricultural Residential. The purpose of this District is to protect agricultural land from objectionable, hazardous and unsightly uses. The property in its current state is cluttered and in general disrepair, and there is little reason to believe that the appearance of the property will change if the Conditional Use is granted.
- 4) Approval of the Application would lead to increased activity in the immediate area, which would also be incompatible with current uses. It is also noteworthy that the State does not anticipate further infrastructure improvements in the area.
- 5) The proposed use is not of a public or semi-public character, and is not essential for the general convenience and welfare of the community.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0, with Mr. Johnson not voting since he was not in attendance during the public hearing.

C/U #1833 – application of **DAVID O. RICKARDS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an assembly plant for underwater turbines to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 15.38 acres, more or less, lying southeast of Road 367B (Rickards Road) 2,230 feet northeast of Road 370 (Daisey Road).

Mr. Johnson stated that he would not be participating in the discussion of this application.

The Commission discussed this application which has been deferred since June 10, 2010.

Mr. Smith stated that he would move that the Commission recommend denial of Conditional Use #1833 for David O. Rickards for the following reasons:

- 1) The Application is inconsistent with the character of the surrounding property, which is primarily agricultural and residential. The type of activity to be carried on at this location is more appropriate for an industrial park setting.
- 2) The operation of the business will generate truck traffic which is unsuitable for modest rural roads.
- 3) Approval of this Application would lead to increased traffic and activity in an otherwise quiet farming and residential setting.
- 4) The Applicant already operates a related business at the former Newton's facility, and there is no reason to believe that the activities contemplated by this Application could not be conducted in that same location. Rather, it appears that the proposed activity is intended to substitute for the Applicant's loss of a poultry contract, and is not one for which there is a public need at this location.
- 5) The proposed use is not of a public or semi-public character, and is not essential for the general convenience and welfare of the community.

Motion by Mr. Smith, seconded by Mr. Burton, and carried 3 votes to 1 vote to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 1 with Mr. Ross opposing the motion. Mr. Johnson did not vote since he was not in attendance during the public hearing.

C/U #1834 – application of **RICHARD F. LYNAM** to consider the Conditional Use of land in a GR General Residential District for seasonal storage of umbrella stands to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9,625 square feet, more or less, lying northwest of Hebron Road (Road 273) across from Canal Crossing Road, being the northeast portion of Lot #89 and a southwest portion of Lot #90.

Mr. Johnson stated that he would not be participating in the discussion of this application.

The Commission discussed this application which has been deferred since June 10, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1834 for Richard F. Lynam for seasonal storage of umbrella stands based upon the record made at the public hearing and for the following reasons:

- 1) The site is within the Environmentally Sensitive Developing Area according to the Sussex County Land Use Plan Update.
- 2) The Applicant has been using the West Rehoboth area and this site in particular for the purpose of storing umbrella stands and other equipment related to his beach rental business for many years.
- 3) The area where the site is located has existed with many different zoning classifications, including GR, C-1, Conditional Uses, and other pre-existing uses. The continued use of this site for seasonal storage of umbrella stands will be consistent with the existing zoning and uses throughout West Rehoboth.
- 4) Because this is a continuation of an existing use, it will not adversely affect neighboring or adjacent properties, or current traffic patterns in the area.
- 5) Petitions and letters in support of the Application have been received by the Commission containing 25 signatures of area residents. The petitions and letters state that the residents are aware of Mr. Lynam's application and ongoing use of the property for many years prior to this Application. They state that they are in favor of continuing the use of the property for storage of umbrella stands, and that the use will not substantially affect the surrounding or adjacent properties.
- 6) This recommendation is subject to the following conditions:
 1. The perimeter of the site shall be secured by an 8-foot high solid fence screening the storage area from view of neighboring properties and roadways. The fencing shall be set back from the boundaries of the property and a landscape buffer between the property boundary and the fence shall be established. A landscaping plan for the buffer area shall be included in the Final Site Plan. The fence shall be maintained in a damage free and graffiti free manner.
 2. The storage area shall be secured at all times when it is not being accessed.
 3. Only the Applicants or their employees shall have access to the fenced storage area.

4. There shall be no signage on the site, other than a small sign that may be necessary to contain contact information in case of an emergency.
5. Any security lighting provided on the site shall be screened so that it does not shine on neighboring properties or roadways.
6. The site shall be used for the Applicant's beach rental business and seasonal storage of umbrella stands only. There shall not be any storage of boats, vehicles, or other equipment not related to the Applicant's business on the site.
7. The Final Site Plan, including the landscape plans for the perimeter buffer, shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0 with Mr. Johnson not voting since he was not in attendance during the public hearing.

C/U #1837 – application of **HAROLD J. BOWDEN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for renewal and continuation of a construction storage yard to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.07 acres, more or less, lying southeast of Road 265A, 1,135 feet northeast of Route One.

Mr. Ross stated that he would not be participating in the discussion since he was not in attendance during the public hearing.

The Commission discussed this application which has been deferred since June 24, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1837 for Howard J. Bowden for renewal and continuation of a construction storage yard based upon the record made at the public hearing and for the following reasons:

- 1). This is a site of a Conditional Use for the same purpose that was granted by County Council in November, 1993. According to Ordinance #937, approving the Conditional Use in 1993, the use of this property was also in existence for ten (10) years prior to that time.
- 2) Because this recommendation for approval is for the use that has been in existence for more than 25 years, there will not be any change in circumstances affecting traffic and neighboring and adjacent properties.
- 3). This recommendation is subject to several conditions that are intended to clean up the current use of the property and limit any impact that the use has had on neighboring and adjacent properties throughout its existence.
- 4). This recommendation is subject to the following conditions:
 1. There shall be no more than seven vehicles or pieces of construction equipment stored on the property and all of the equipment and vehicles stored must be operational.
 2. There shall be no fuel storage on site.

3. As proposed by the Applicant, the hours of operation shall be between the hours of 8:00 a.m. and 3:00 p.m. weekdays.
4. No blacktop or asphalt products shall be stored on the property.
5. There shall not be any signage permitted on the property.
6. Any security lights shall be installed so that they are screened from shining onto neighboring properties or Old Mill Road.
7. The approval shall be limited to a period of five years from the date of adoption of an Ordinance approving the Conditional Use by County Council.
8. This Conditional Use shall expire upon the transfer or sale of the property to anyone other than the Applicant, Harold J. Bowden.
9. There shall not be any repair work performed on site.
10. The construction storage yard shall be fenced to completely screen it from view of neighboring and adjacent properties.
11. The Final Site Plan shall show the location of the fence surrounding the storage yard.
12. The Final Site Plan shall indicate all areas for vehicle equipment storage, material storage and employee parking. All of these uses shall be within the fenced area as shown on the Final Site Plan.
13. The Applicant's residence shall be separate from the fenced construction storage yard to maintain the residential appearance of the property.
14. Materials stored on-site shall be limited to stone and topsoil.
15. The site is to be used only by one contractor.
16. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Ross not participating in the vote.

C/Z #1686 – application of **WORKMAN'S STORE, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying at the northwest corner of Shortly Road (Road 431) and Hardscrabble Road (Route 20), to be located on 24,743 square feet.

Mr. Ross stated that he would not be participating in the discussion since he was not in attendance during the public hearing.

The Commission discussed this application which has been deferred since June 24, 2010.

It was noted that PLUS comments were not received within the allotted 10 days.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1686 for Workman's Store, L.L.C. based upon the record and for the following reasons:

1. This rezoning to B-1 Neighborhood Business simply brings the zoning consistent with the historical use of the property as a store since, at least, the 1950's. Other uses have included restaurants, a feed store, farm supplies and similar uses.
2. The change in zone will not adversely affect neighboring and adjacent properties, since the use will basically be the same as before and after the rezoning.
3. Neighborhood business uses are appropriate at this intersection of Hardscrabble Road and Shortly and Conaway Roads.
4. The size and configuration of the property will prohibit some of the more intensive uses allowed under B-1 zoning from occurring on the property.
5. Any proposed use of the property will require site plan review by the County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0 with Mr. Ross not participating in the vote.

Subdivision #2009-2 – application of **KEITH PROPERTIES, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 5.99 acres into 8 lots, (Environmentally Sensitive Development District Overlay Zone), located at the southerly end of Marina Road approximately 850 feet south of Route 336.

Mr. Ross stated that he would not be participating in the discussion since he was not in attendance during the public hearing.

The Commission discussed this application which has been deferred since June 24, 2010.

Mr. Smith stated that he would move that the Commission deny Subdivision #2009-2 for Keith Properties, Inc. as presented and based upon the record and for the following reasons:

- 1) I am not comfortable granting preliminary approval of this subdivision at this time, since there are too many unanswered questions that affect it.
- 2) The application is subject to the County's Amended Buffer Ordinance, but the preliminary site plan does not comply with the requirements of that Ordinance. The Applicants did not formally request a waiver of the Ordinance requirements at the time they applied for the subdivision. Also, the relief requested by the Applicant appears to be more than just a minor deviation from the buffer requirements.
- 3) There are significant questions about whether the property has the necessary means of access required by the Subdivision Code. Neighboring and adjacent property owners have appeared in opposition to the subdivision and have stated that there is not sufficient access to the subdivision. The Applicants have not been able to conclusively answer the questions regarding the required method of access, either.
- 4) The Preliminary Site Plan is based in part upon a proposed exchange of land between an adjacent property owner and the Applicant to establish access. Testimony during the public hearing revealed that such an agreement will not be forthcoming. This leaves unanswered questions as to the actual boundaries of the property which would have changed if the land swap with the neighbor had occurred.

- 5) With all of the uncertainty associated with this project, it is impossible to confirm that the project complies with the requirements of the County Subdivision and Zoning Codes.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with four votes to deny Subdivision #2009-2 as presented for the reasons stated. Motion carried 4 – 0 with Mr. Ross not participating in the vote.

Subdivision #2010-3 – application of **DIAMOND STATE COMMUNITY LAND TRUST** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 42.17 acres into 50 lots, (Cluster Development), located north of Road 72 (Wootten Road) across from Road 458 (Hudson Road) and west of Trap Pond.

Mr. Robertson stated that he would not be participating in the discussion.

Mr. Johnson stated that he would not be participating in the discussion since he was not in attendance for the public hearing.

The Commission discussed Subdivision #2010-3 which has been deferred since June 10, 2010.

Mr. Ross stated that he would move that the Commission deny Subdivision #2010-3 for Diamond State Community Land Trust based upon the record and for the following reasons:

- 1) The Applicant has offered the project as “moderately priced housing”, although not specifically within the County’s Moderately Priced Housing Ordinance. Had it been part of that Ordinance, it would most certainly have failed since the County Council’s intent was to establish such subdivisions in areas in which spending on infrastructure is likely.
- 2) The property is located in an “Investment Level 4” area, which is unlikely to benefit from future mass transit opportunities that are needed to compliment moderately priced housing, such expenditures are generally limited to Investment Level 1 and 2 areas.
- 3) The application is inconsistent with the Transportation Element of the County’s Comprehensive Development Plan.
- 4) The application was also offered as a “Cluster” development. Under Section 115-25(F)(3)(d) of the Sussex County Zoning Code, such a subdivision must lie within a Town Center, a Developing Area, or an Environmentally Sensitive Developing Area.
- 5) The cost of the project, estimated at \$10 million, also suggests that this is really not an example of moderately priced housing at all.
- 6) The landowner has previously sold larger road-front lots upon which houses in the 3,000 to 5,000 square foot range have been built. Those homes, as well as a number of others in the area, create an inconsistency which leads to a conclusion that the subdivision will have an adverse affect on property values under Section 99-9(C)(12) of the Code.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with 3 votes to 1 vote to deny Subdivision #2010-3 for the reasons stated. Motion carried 3 – 1 with Mr. Smith opposing the motion. Mr. Johnson did not participate in the discussion or vote.

OTHER BUSINESS

Subdivision #2004-55 – MJR Investors, LLC

This Subdivision was moved from the Consent Agenda for discussion purposes.

This is a request for a one-year time extension. This application received preliminary approval, with conditions, on October 18, 2006. The Commission granted one-year time extensions on November 14, 2007, August 20, 2008, and August 19, 2009. This is the fourth request for an extension. The Commission had previously received comments from the Applicant's Attorney explaining the request.

The Commission was advised that Michael Izzo, County Engineer, had also submitted a letter advising that the Applicants have been actively working with the Engineering Department, as part of their effort to expand the sewer district boundary to allow the project to connect to the Oak Orchard Sewer District; that the developer has submitted the required fees to begin the official annexation process into the sewer district; and that the Engineering Department would support the Applicant's request for an additional time extension.

The Commission discussed this subdivision application.

Mr. Robertson reminded the Commission that Section 99-33 of the Subdivision Code provides that where it can be shown that strict compliance with the requirements of the Subdivision Code would result in extraordinary hardship to the subdivider because of unusual topography or other conditions which are not self-imposed or that these conditions would result in inhibiting the achievement of the objectives of the regulations, the Commission may vary, modify or waive the requirements so that substantial justice may be done and the public interest secured.

Mr. Wheatley, Mr. Johnson, and Mr. Robertson stated that these requests would be considered on a case by case basis and would not be freely granted, and that they will not be looked favorably upon if it appears that an Applicant has not worked diligently towards Final Site Plan approval during the preceding three years.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant a fourth time extension for one-year since Mr. Johnson is satisfied that the Applicants have made efforts to achieve the necessary process; since the delays have not been self imposed by the Applicants; and since the County Engineer has agreed that a time extension is appropriate; and because the sewer annexation process takes additional time to complete. Motion carried 5 – 0.

Subdivision #2005-52 – Underhill Properties, LLC

This Subdivision was moved from the Consent Agenda for discussion purposes.

This is a request for a one-year time extension. This application received preliminary approval with conditions, on July 27, 2006. The Commission granted one-year time extensions on August 15, 2007, July 16, 2008, and July 15, 2009. This is the fourth request for an extension. On June 16, 2010 the Commission granted preliminary approval for a 13-lot expansion to this application.

The Applicant's Engineers provided a letter explaining their request and an Exhibit Booklet containing the review status of the various agencies.

The Commission discussed this Subdivision application.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to grant a fourth time extension for one-year based on the record provided; because the delays are not self imposed; and because the delays are caused in part by the projects change from on-site sewer to private off-site sewer and now County sewer service. Motion carried 5 – 0.

Subdivision #2005-54 – Baywood, LLC

This Subdivision was moved from the Consent Agenda for discussion purposes.

This is a request for a one-year time extension. This application received preliminary approval, with conditions, on August 16, 2006. The Commission granted one-year time extensions on November 17, 2007, September 17, 2008, and August 19, 2009. This is the fourth request for an extension. On August 19, 2009 it was stipulated that that extension would be the last extension granted by the Commission. The Applicant's Engineers provided letters explaining their request. It was noted that a new Engineering firm has taken over the project.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant a fourth time extension for one-year based on the record provided and due to the fact that the delay was not self-imposed. Motion carried 5 – 0.

Bay City Manufactured Home Park

Clarification – Route 22

This discussion was moved from being Item #14 of Other Business.

Mr. Abbott advised the Commission that on July 15, 2009 the Commission approved the revised survey for the Bay City Manufactured Home Park with the stipulation that "any existing structures as of the Commission's approval of the delineation shall be grandfathered, except Lots 1 through 4 in the Old Section, which shall be returned to a depth of 80-feet with monuments as previously addressed by the Commission". Mr. Richard E. Berl, Jr., Assistant County Attorney, at the Board of Adjustment's direction has written a letter requesting a clarification on the motion by the Commission on July 15, 2009 since the Board of Adjustment has pending variance applications in Bay City. It was noted that the Commission had previously received copies of Mr. Berl's letter.

The Commission discussed this request for clarification.

Mr. Robertson stated that the Commission and staff spent a lot of time and energy in processing the data on this project.

Mr. Johnson stated that he has reviewed the tapes of record, the Minutes of record, and has again visited the site.

Mr. Johnson stated that he had made a motion and established on the record his concern about the need for a wetlands delineation; that he was aware that violations were in place on some of the units on Lots 1 through 4; that some other lots may have been in violation; that he remembers that it was not his intent to grandfather the improvements on Lots 1 through 4 since some of those lots were in violation or in the process of applying through the Board of Adjustment for variances; and that he had questioned if the lot lines were appropriately mapped.

Mr. Wheatley stated his agreement with Mr. Johnson's recollection and intent.

Mr. Robertson stated that Condition #4 of the original approval should be clarified to reference whether it was Mr. Johnson's intent that the existing improvements on Lots 1 through 4 were not to be grandfathered and that the lots be returned to a depth of 80-feet, or whether it was his intent to grandfather all of the structures in Bay City and only require lots 1 through 4 to be returned to 80-feet on the plot.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously that Condition #4 be interpreted in accordance with his intent that "Any existing structures as of the Commission's approval of the delineation shall be grandfathered, with the exception of the improvements on Lots 1 through 4, and that Lots 1 through 4 be returned to a depth of 80-feet". Motion carried 5 – 0. Mr. Johnson asked Mr. Robertson to respond to Mr. Berl's request on behalf of the Commission.

Americana Bayside MR-RPC

Parcel H – Preliminary Site Plan – Route 54

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 4,500 square foot fast food restaurant on one parcel and a 13,500 square foot pharmacy/retail operation on another parcel. Ingress/egress to the two parcels is from a right-in/right-out off of Route 54 approved by DelDOT and from Americana Parkway. The proposed fast food restaurant is located on a 1.70 acre parcel. The setbacks meet the requirements of the Zoning Code. 1,750 square feet is dedicated to patron area. 40 parking spaces are required and 58 parking spaces are proposed. Half of 14 parking spaces are located within the 60-foot front yard setback and are subject to site plan review. The existing parking for the sales trailers is within the front yard setback. A 30-foot conservation easement is proposed along the boundary of this site with lands owned by Sound Methodist Episcopal Church. A pedestrian connection is provided from this site to Founders Avenue. The parcel for the pharmacy/retail sales contains 1.56 acres. The setbacks meet the requirements of the Zoning Code. 10,300 square feet is dedicated for sales/display areas. 57 parking spaces are required and 71 parking spaces are proposed. Half of 17 spaces are within the front yard setback and are subject to site plan review. This parcel has a vehicular connection to Americana Parkway. Both parcels will be served by central sewer and water. If preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals. It was noted that the Commission had previously received a copy of the site plan.

The Commission discussed the site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of this site plan and that final approval may be granted by the staff upon receipt of all agency approvals. Motion carried 5 – 0.

Wayne Drywall

C/U #1804 Site Plan – Route 20 and Route 17

Mr. Abbott advised the Commission that this is a preliminary site plan for an office and warehousing located on 0.53 acres. This Conditional Use was approved by the Sussex County Council on January 5, 2010 with eight conditions. The eight conditions are listed on the site plan. The existing dwelling will be utilized as the office. Three 1,120 square foot warehouse buildings are proposed. The setbacks meet the requirements of the Zoning Code. Seven parking spaces are proposed. The existing on-site septic and well will be utilized. 13 additional landscaping trees are proposed along the rear of the site. The Final Site Plan needs to show the location of the centralized dumpster. If preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals and the site plan showing the location of the required centralized dumpster. It was noted that the Commission had previously received a copy of the site plan.

The Commission discussed the site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of this site plan and that final approval may be granted by the staff upon receipt of all agency approvals and the site plan showing the location of the required centralized dumpster. Motion carried 5 – 0.

KGH Property Development, LLC

Eight (8) lots – Road 257

Mr. Abbott advised the Commission that this is a request to replace a preliminarily approved 47-lot major subdivision with an 8-lot strip lot subdivision. The major subdivision (Subdivision #2003-50) received preliminary approval on April 19, 2007 and the Commission granted one-year time extensions on June 18, 2008 and September 16, 2009. Lot A will contain 5.0 acres, Lot B will contain 5.0 acres, Lot C will contain 4.93 acres, Lot D will contain 4.92 acres, Lot E will contain 5.0 acres, Lot F will contain 5.0 acres, Lot G will contain 5.53 acres and the residual lands will contain 1.0 acre. DelDOT has issued a Letter of No Objection for the entrance locations. The Applicants are requesting that this subdivision be approved and that it would take the place of the major subdivision. It was noted that the Commission had previously received a copy of the proposed subdivision and a letter from the Applicant's Engineering Firm.

The Commission discussed the subdivision request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the requested subdivision with the condition that there be no further subdivision of the lots. Motion carried 5 – 0.

Richard M. Davis, Jr.

Lot and 50' Easement – Road 205

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from a 50-foot easement. The owner is proposing to create the 50-foot easement over an existing 10-foot wide driveway. The site is in an AR-1 Agricultural Residential District and an approval would be required from the Delaware Agricultural Lands Preservation Foundation. The request can be approved as submitted, as a concept, or an application for a major subdivision can be required. If approved as a concept, final approval by staff would be subject to the Delaware Agricultural Lands Preservation Foundation approving the request. It was noted that the Commission had previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the requested subdivision as a concept subject to the receipt of approval from the Delaware Agricultural Lands Preservation Foundation. Motion carried 5 – 0.

Mark J. Wells

3 Lots and 50' Right-of-Way – Road 38

Mr. Abbott advised the Commission that this is a request to subdivide a 4.66 acre parcel into 3 lots with access from a 50-foot right-of-way. The owner is proposing to widen an existing old County Road (Radcliffe Lane) to a 50-foot right-of-way. Radcliffe Lane is currently an existing 15-foot right-of-way. Lot 1 will contain 1.54 acres and Lots 2 and 3 will contain 1.56 acres. The request can be approved as submitted or an application for a major subdivision can be required. If the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision. It was noted that the Commission had previously received a sketch drawing of the request.

Mr. Abbott advised the Commission that the Department has received two letters in opposition to this request and referenced that the Applicant intends to use their 15-foot right-of-way without contacting them for permission. The letters were from Vera Clifton Reed and James V. Reed, III.

The Commission discussed this subdivision request.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to deny this subdivision request as submitted. Motion carried 5 – 0.

Steve Millman

2 Lots and 50' Easement – Route One

Mr. Abbott advised the Commission that this is a request to subdivide a 7.07 acre parcel into 3 lots with access from a 50-foot easement. Lot 1 will contain 16,581 square feet. Lot 2 will contain 19,899 square feet and Lot 3 will contain 6.24 acres. The owner is proposing to create the easement over an existing driveway. The minimum lot size is required to be 32,670 square feet (0.75 acre) since central sewer is not available. If the Commission were favorable to the request, variances would be needed from the Board of Adjustment for the minimum lot size. The request can be approved as submitted or an application for a major subdivision can be required. If the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision. It was noted that the Commission had previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to deny this subdivision request as submitted. Motion carried 5 – 0.

Henry James Johnson

3 Lots and 50' Right-of-Way – Route 30

Mr. Abbott advised the Commission that this request was discussed at the June 16, 2010 Special Meeting and that action was deferred so that the staff could verify whether the dirt road exists. This is a request to create 3 lots with access from a proposed 50-foot right-of-way. The proposed lots will contain 2.06 acres, 2.23 acres, and 2.35 acres. The owner proposes to create the right-of-way over an existing dirt road. An on-site inspection of the site on June 28, 2010 confirmed that the dirt road exists. The request could be approved as submitted or an application for a major subdivision can be required. If the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision. It was noted that the Commission had previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this subdivision request with the stipulation that any further subdivision of the property shall require an application for a major subdivision. Motion carried 5 – 0.

Michael J. Dickerson

Lot and 50' Right-of-Way – Road 497

Mr. Abbott advised the Commission that this is a request to create a 2.11 acre lot with access from a 50-foot right-of-way. The owner proposes to create the right-of-way over an existing dirt drive. The residual lands contain 10.51 acres with 385 feet of road frontage. The request can be approved as submitted or an application for a major subdivision can be required. If approved as submitted, final approval shall be subject to the Board of Adjustment granting a Special Use Exception to retain a manufactured home on less than 5-acres or the manufactured home is removed. Also prior to the survey being approved, a well permit will be required since the site is

located in a Ground Water Management Zone and is near the old Laurel landfill. It was noted that the Commission had previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve this subdivision request in concept with the stipulation that prior to approval of the subdivision it shall be necessary that the Applicant apply to the Board of Adjustment and obtain approval to retain the manufactured home on less than 5 acres, and that the Applicant provide proof of a well permit since the site is located in a Ground Water Management Zone. Motion carried 5 – 0.

Timothy Chambers

Lot and 50' Right-of-Way – Road 62

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from an existing 50-foot right-of-way known as Buck Run. The request can be approved as submitted or an application for a major subdivision can be required. If approved as submitted, approval will be required from the Delaware Agricultural Lands Preservation Foundation since the site is located in an Agricultural Preservation District. It was noted that the Commission had previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the requested subdivision as a concept subject to the receipt of approval from the Delaware Agricultural Lands Preservation Foundation and DelDOT. Motion carried 5 – 0.

Eastburn Estates

2 Lots and 50' Easement – McCoy's Way – Road 357

Mr. Abbott advised the Commission that this is a request to subdivide a 3.65 acre parcel into 2 lots from a 50-foot easement. Lot 1 will contain 1.74 acres and Lot 2 will contain 1.90 acres. The parcel currently has access from a 15-foot easement. The owner is proposing to widen the easement to 50-feet. The request can be approved as submitted or an application for a major subdivision can be required. It was noted that the Commission previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Mr. Smith stated that this application should go through the public hearing process since Bethany Woods, the adjoining subdivision, went through the process.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to deny this subdivision request as submitted and referencing that a major subdivision application be required. Motion carried 5 – 0.

Connie Copper

Lot and 50' Easement – Road 395

Mr. Abbott advised the Commission that this is a request to create a 0.75 acre lot with access from a 50-foot easement. The owner is proposing to create the 50-foot easement over an existing driveway. The residual lands will contain 38,159 square feet and has a dwelling located on it. There is an existing shed that is being removed. DelDOT has issued a Letter of No Objection. The request can be approved as submitted or an application for a major subdivision can be required. It was noted that the Commission has previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve this subdivision request as submitted, noting that the existing shed is to be removed or relocated. Motion carried 5 – 0.

Caleb F. Sierra

Lot and 50' Easement – Road 547

Mr. Abbott advised the Commission that this is a request to subdivide a 4.30 acre parcel into 2 lots with access from a 50-foot easement. The owner is proposing to create the 50-foot easement over an existing driveway. One lot will contain 1.17 acres and the residual lands will contain 3.13 acres. The request can be approved as submitted or an application for a major subdivision can be required. It was noted that the Commission has previously received a sketch drawing of the request.

The Commission discussed this subdivision request.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the subdivision request as submitted. Motion carried 5 – 0.

Delaware Department of Transportation

Parcel and 50' Right-of-Way – Route 404 By-Pass

Mr. Abbott advised the Commission that this is a request to create a 30.0 acre parcel with access from a 50-foot right-of-way. There will also be a 4.0 acre parcel between the right-of-way and the railroad right-of-way. The proposed 30.0 acre parcel will be the subject site for a Conditional Use for a DelDOT maintenance yard. DelDOT will build the right-of-way. The request can be approved as submitted or an application for a major subdivision can be required. It was noted that the Commission had previously received a sketch drawing of the subdivision request.

The Commission discussed this subdivision request.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the subdivision request as submitted. Motion carried 5 – 0.

Meeting adjourned at 4:50 p.m.