



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JULY 14, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 14, 2011, in the County Council Chambers, County Administrative Office Building in 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, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Michael Smith – Assistant County Attorney, Mr. Lawrence Lank – Director, and Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of June 15, 2011 as circulated. Motion carried 5- 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of June 23, 2011 as corrected. Motion carried 5- 0.

OLD BUSINESS

Subdivision #2011-3 – 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 southerly end of Marina Road approximately 850 feet south of Route 336.

The Commission discussed this application which has been deferred since June 9, 2011.

Mr. Smith referenced the comments made by Mr. Robertson, Assistant County Attorney, during the June 23, 2011 meeting which included that Mr. Robertson had reviewed the file, the exhibits provided, and the comments made by representatives of the Applicant and DelDOT, and records within the Office of the Recorder of Deeds; that documents have been recorded since 1975 that reference DelDOT easements acquired from residents along Marina Road; that Marina Road is maintained by DelDOT; that the landowners at that time dedicated 25-feet from the centerline of Marina Road; that if preliminary approval is granted the Applicant shall be required to get DelDOT's approval for access; and that it appeared that the public was concerned about giving

up additional right-of-way, which should not happen since easements have already been established.

Mr. Smith stated that he would move that the Commission grant preliminary approval of Subdivision #2011-3 for Keith Properties, based upon the record and for the following reasons:

- 1) The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
- 2) The proposed subdivision is in the Environmentally Sensitive Development District Overlay Zone. The lots are all at least 7,500 square feet in size and are within the permitted density.
- 3) The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.
- 4) The 8-lot subdivision is consistent with other developments in the area.
- 5) The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- 6) The project, as stated by the Applicant, will be served by Sussex County sewer and central water will be provided.
- 7) All entrance and road improvements will be constructed in accordance with DelDOT's requirements.
- 8) This approval is subject to the following conditions:
 1. There shall be no more than 8 lots within the subdivision.
 2. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 3. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 4. All entrances and roadway improvements shall comply with all of DelDOT's requirements.
 5. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 6. A Buffer shall be shown along the perimeter of the development as required by County Code. The Final Site Plan shall contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in those buffer areas.
 7. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 8. No wetlands shall be included within any lots.
 9. A system of street lighting shall be established.
 10. The subdivision shall be served by County sewer and central water. The sewer system shall be designed in accordance with Sussex County Engineering Department specifications.
 11. Any marina, dock or boat ramp facilities constructed at the site shall be for the use and enjoyment of the lot owners and their guests, and should not be open to the

- general public, leased or used commercially. The Developer, lot owners and Homeowners Association shall make the dock and boat ramp facilities available for emergency use or access if needed for that purpose by DNREC, fire companies or other agencies and responders, i.e. EMT and EMS.
12. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 13. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of Subdivision #2011-3 for Keith Properties for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1901 – application of **CHRISTOPHER LOPEZ** to consider the Conditional Use of land in AR-1 Agricultural Residential District for an automobile service and repair garage to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 14,613 square feet, more or less, lying northeast of U.S. Route 113, 1,420 feet south of Road 321 (Woodbranch Road).

The Commission discussed this application which has been deferred for further consideration since June 23, 2011. The record had been left open for DelDOT entrance permit information and to establish which Investment Level the site is located in.

Mr. Lank advised the Commission that DelDOT provided comments on June 29, 2011 and referenced that given the site location, DelDOT will permit a home-based business that generates a minimal amount of traffic for the site; that the Applicant's proposal of developing a home-based car repair business will generate a minimal amount of traffic according to the ITE trip generation manual; and thus, the Corridor Capacity Preservation Program has no objection to the proposal.

Mr. Lank also advised the Commission that Pennoni Associates, Inc. submitted a copy of the portion of the area around the site from the 2010 State Strategies and Investment Levels Map depicting that the site is located in Investment Levels 2 and 3, not Investment Level 4 as originally stated by DelDOT; and that the original DelDOT comments did not reflect the changes in the Strategies Map.

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

C/U #1902 – application of **DOROTHY GARVEY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an medical offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,161 square feet, more or less, lying north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road).

The Commission discussed this application which has been deferred for further consideration since June 23, 2011.

Mr. Johnson stated that the concerns expressed by the Commission during the public hearing related to the setback from Route 24 and access to Collins Avenue.

Mr. Lank advised the Commission that the setback to the dwelling is less than 40-feet since there was a taking of additional right-of-way by DelDOT for the widening of Route 24 at this location.

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

C/Z #1705 – application of **JOEL FARR** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.03 acres, more or less, lying north of Route 20 (a.k.a. Road 382) 925 feet east of Road 388 (Deer Run Road).

The Commission discussed this application which has been deferred for further consideration since June 23, 2011.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1705 for Joel Farr for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

1. The project is located within a Developing Area according to the County Comprehensive Land Use Plan.
2. The property is located in an area that is developing with a series of small commercial enterprises, and the use proposed for this site is consistent with those commercial activities. Most recently, Twin Cedars, the property directly across Route 20, was rezoned CR-1 Commercial Residential. Under the 2008 Sussex County Comprehensive Plan Update, the property is within a highway commercial area, which includes retail and service uses and is appropriate for the location of commercial uses.
3. The site is served by the Johnson Corner Sanitary Sewer District recently established by Sussex County and water will be provided by Artesian Water Company.
4. The proposed use as a mini-storage facility meets the purpose of the CR-1 zoning, (since mini-storage is not specifically permitted in a B-1 Neighborhood Business classification or as a Conditional Use in an AR-1 Agricultural Residential classification), and the rezoning is consistent with the character and trend of development in the immediate area and is consistent with the purposes of the Comprehensive Plan and the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.
5. The Applicant will meet or exceed all DelDOT requirements.
6. No parties appeared in opposition to the rezoning of this property.

7. Any proposed use will require Site Plan review and approval by the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1986 – application of **TIMOTHY S. MILLER** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a mulch storage, processing and sales and boat and RV storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.729 acres, more or less, lying east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road).

Mr. Lank advised the Commission that this public hearing is a re-hearing for a public hearing held on May 26, 2011 since it was determined that the public notice posting was placed on the wrong property. Mr. Lank added that the notice was posted at the entrance to the Applicant's home lot a few hundred feet away, and not the subject site. The public notice posting is now located at the correct location.

Mr. Lank suggested that the Commission incorporate the record of the public hearing on May 26, 2011 into the record of this public hearing since a part of the record will therefore be established and that the Applicant and interested parties can incorporate additional comments if needed.

Mr. Lank read that portion of the Minutes of the May 26, 2011 meeting relating to C/U #1986 into the record which included the following:

The Commission found that the Applicant provided a copy of a survey/site plan for the proposed mulch storage/processing/sales area, and the boat and RV storage area.

The Commission found that DelDOT provided comments on April 18, 2011 in the form of a Support Facilities Report which references that a Traffic Impact Study was not required and that the current Level of Service "A" of Peppers Corner Road will not change as a result of this application.

The Commission found that on May 23, 2011 the Sussex Conservation District provided comments in the form of a Memorandum which references that there are three soil types on this site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it is not likely that the proposed project will necessitate any off-site drainage improvements; and that it is possible that the proposed project will necessitate some on-site drainage improvements.

The Commission found that on May 24, 2011 the Sussex County Engineering Department – Utility Planning Division provided comments in the form of a Memorandum which references that the site is located in the Beaver Dam Planning Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the South Coastal Planning Study, 2005 Update, will be required; that the proposed project is not in an area where the County has a schedule to provide sewer at this time; that when the County provides sewer service, it will be required that the on-site septic system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that Timothy S. Miller was present and stated in his presentation and in response to questions raised by the Commission that he would like to wholesale and retail mulch; that he would also like to create a boat and RV storage area behind the existing Land Surveying office on part of the site; that he anticipates 4 or 5 employees when the project meets its maximum; that hours are proposed from 7:00 a.m. to 5:00 p.m. Monday through Friday; that directly across from the site is woodlands; that he lives on Lot #1 to the rear of the proposed boat and RV storage area; that the public notice sign was posted near the driveway to his residence and not at the intended entrance site; that he would like to sell mulch wholesale in the immediate future, and to dye and process mulch from wood chips later on in the future; that he would accept wood chips and then run them through a Rotochopper Chip Processor which converts wood chips to colored or natural landscape mulch; that there will be no boat repairs or sales performed on site; that boats will include personal watercraft; that the mulching process would require a skid loader with a front end loader and the processor; that water is available on the site in case of fire and to control dust; that he has had no contact with his neighbors; that he will have an employee to manage the storage area sometime in the future; that he will only need a sign for directional purposes; that the boat and RV storage area will be fenced and lighted in phases; that the site plan includes some notes that could be considered suggested conditions; that he anticipates that the mulch facility will be operational seven days per week and that the boat storage area will be open seasonally for seven days per week; that grinding/dying/processing of mulch will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday; that the boat and RV storage area will be open from 9:00 a.m. to 6:00 p.m. or by appointment; that the first phase of the boat and RV storage will begin in the fall will a fenced storage area; that the surface of the storage area will remain as grass; that forested buffers already exist along portions of the site; that the processor measures 35'x11'x 8' in height; that the processor performs the dying and mulching; that there is a need in the area for mulch for landscaping; that wood chips would be supplied by tree service companies; that he anticipates a maximum of 10 vehicles per day with deliveries; and that there will not be any stump grinding.

The Commission and Mr. Miller discussed the location of the "Notice" sign for this application.

Mr. Robertson stated that he would suggest a deferral due to the question about the public notice posting of the site.

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

The Commission found that Terry Sutton, an adjoining property owner, was present in opposition to this application and stated that her farm has been approved for development of an RPC Residential Planned Community (The Lakelyns); that the area contains farmland and housing; that there are eight boat/RV storage facilities in the area; that she does not feel that there is a need for more boat/RV storage; and that the creation of a mulching facility and boat/RV storage may cause a drawback to future buyers in the project on her property.

The Commission found that Jack Stanton, one of the developers of the proposed Residential Planned Community project, was present in opposition due to the 265 unit project which is proposed to have central water and sewer; that he will be building a pump station to serve the project; and that this proposal will impact the proposed Residential Planned Community.

Mr. Lank advised the Commission that the Residential Planned Community has zoning approval, but not a Final Site Plan approval.

The Commission found that Timothy S. Miller and Katie Shull were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the business is located approximately 4 miles from Route One and 3 miles from Route 26; that the area is rural in nature; that the business should be a service for area residents eliminating the need for traveling to Route 26 or other locations for mulch or boat storage; that the location should be convenient for access to the uses; that the boat and RV storage should be beneficial to area residents that live in restricted communities that do not permit parking of boats and RVs at their residences; that the location is a minimum of 300-feet from neighboring properties; that the site is surrounded by substantial woodlands; that they are proposing the storage of mulch for sales, not composting; that the mulch will be stored in small piles; that the small piles of mulch will be turned on a regular basis; that they are proposing four concrete bin areas for storage of the mulch; that the concrete walls of the bins will be six (6) feet high and will contain 33 cubic yards of mulch per bin; that the mulch stored will not exceed the height of the bins; that they have plans on meeting with the Office of the State Fire Marshal; that a small mulch grinder (single-pass) will be utilized; that they do not anticipate the original stated number of employees to reach 4 or 5; that they have not had any contact with neighbors; that the two business uses will be operated separately; that they will only be processing wood chips provided by utility companies, land clearing companies, and landscapers, and will not be processing stumps, branches, or debris; that their home is located to the rear of the storage area; that the maximum number of boats to be stored will not exceed 100 spaces; that the fencing around the storage area will be vinyl and will be erected in phases as needed; that he hopes that the storage area will be secure since it has a natural boundary of trees and the fencing; that his office and home are in close proximity; that he is not planning on a locked gate for the storage area; that he anticipates that the boat and RV storage area will be utilized seasonally; and that clients will drop off and pick up their boats by appointment only.

The Commission found that Mr. Miller submitted an Exhibit describing the service to the community, the appearance, sound, and safety, with an attached aerial that depicted the location of the mulch sales and processing area and boat and RV storage area between his office along Road 365 and his home to the rear of the site; a series of photographs of the site and neighboring properties; and an article about "Rotochopper Diesel Powered Wood Chip Processing".

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

The Commission found that Terri S. Wilkinson and Beau Croll were present in opposition, submitted a packet which includes a copy of the Tax Map of the area depicting the site and The Lakelyns site, a general information sheet on the project site, a Tax Map location map, key points of concern relating to the concerns about the mulch and the boat storage, and an article about the Inland Bays Pollution Control Strategy; and stated that there are concerns about the mulch operation due to concerns about Nitrogen, Phosphorous, Bacteria, Total Suspended Solids, and Biological Oxygen Demand; dealing with production, storage and transportation of the mulch; material runoff; impaired water quality, erosion, aquatic life, oxygen levels, and runoff levels; that there are concerns about the RV and boat storage operation due to oils, gas, and greases; hydrocarbons; transported materials; and the impact on water quality and aquatic life; that the adjacent and receiving waterways near this facility will be adversely impacted by the runoff and discharges associates with the facility, and includes short term changes in water quality during storm events, spills and leaks, and after storm events; that this can lead to spikes in nutrient levels, toxics, and bacteria levels; that long term impacts in water quality impacts caused by the cumulative effects with discharges, runoff, and spills or leaks can result in lower oxygen levels, algae blooms, decreased turbidity, loss of vegetative life, loss of fish life, and overall ecological degradation; that physical impacts to waterways include sedimentation, erosion, and changes in runoff frequency and volume; that with the production, storage, and maintenance of the mulch and boats solids, nutrients, oxygen demanding substances, bacteria, and petroleum hydrocarbons will flow into the Inland Bays Watershed, an already impaired watershed; that the National Estuary Report indicates that: 70% of streams entering the Bay are impaired, poor in regards to sediment quality index, and fair in regards to water quality index; that additional pressure will only degrade the Bay considering gasoline and oil contains hundreds of chemical compounds and mulch has numerous environmental concerns; that the project will create a negative impact on the development of the adjacent proposed Residential Planned Community; and that the site will ultimately discharge into the Little Assawoman Bay.

The Commission found that Bruce Plummer, Broker for The Lakelyns Residential Planned Community and speaking in the interest of the Buyer and the Seller of the property, stated that he believes that the proposed use will not have a positive impact on the proposed residential development of the area; that rezoning has taken place; that sewer construction plans have been reviewed; that the residential use has more value than this intended use; and that there are concerns about noise and the views that will be created by the intended use.

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

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

C/U #1903 – application of **TERRI L. MARTIN** to consider the Conditional Use of land in AR-1 Agricultural Residential District for a commercial sunroom display to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.22 acres, more or less, lying south of Route 9 (Georgetown Highway) 0.6 mile east of Route 5 at Harbeson.

The Commission found that the Applicant submitted a sketch of the proposed location for the sunroom display on the survey.

The Commission found that on April 5, 2011 DelDOT provided comments in the form of a memorandum, and that the memorandum references that a traffic impact study is not required, and that the current Level of Service “E” of Seashore Highway, Route 9, will not change as a result of this application.

The Commission found that on July 12, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum and that the memorandum references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Terri Martin was present and stated in her presentation and in response to questions raised by the Commission that she is a small farm operator and trying to make ends meet; that a friend is in the sunroom business and asked if he could display a portable sunroom display on her property and a sign; that the 12 square foot sign will be five feet from the front property line; that her intent is to lease the area around the sunroom for display purposes only; that she does not wish to subdivide the property; that the lease provides her with a small income to help with the farm; and that she would not object to a stipulation that the sign be no larger than the existing sign.

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

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

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

C/U #1904 – application of **JOSEPH MOCCI** to consider the Conditional Use of land in GR General Residential District for parking, storage and maintenance of equipment with an office to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.28 acres, more or less, lying west of Road 288 (Wil King Road) 0.3 mile north of Road 280B (Conley Chapel Road).

The Commission found that the Applicant submitted a survey of the property showing the existing improvements and driveways.

The Commission found that on May 31, 2011 DelDOT provided comments in the form of a memorandum, and that the memorandum references that a traffic impact study is not required, and that the current Level of Service "A" of Road 288 (Wil King Road) will not change as a result of this application.

The Commission found that on July 12, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum and that the memorandum references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that Joseph Mocchi was present and stated in his presentation and in response to questions raised by the Commission that he has used the property for the same use for 12 years; that he stores and maintains his excavating equipment on site; that there are no loud activities; that the site is secure; that lighting is downward illuminated; that landscaping exist on the site; that he plans on planting more Leyland Cypress in the fall and will provide additional fencing on the site side of the trees; that Leyland Cypress make great buffers; that his has already erected 6-foot high stockade fencing along Phase I of Oakwood Village; that all of the equipment on the site relates to his excavation business; that the dwelling will remain on the premise; and that he has no intent to build any additional buildings on the site.

The Commission found that Denise Thomas and Charles Seaman were present in support of the application and stated that the applicant maintains a neat site, clean buildings and equipment, and that the future residents of Phase III of Oakwood Village should not have any objections to the activities on the site.

The Commission found that Peter Blessinger, William Gillingham, Tony Celani, Gloria Leary, Ann Conlon, Victoria Gillingham, Jay Robert Woods, and Mary Celani were present in opposition to this application and expressed concerns about the use being located in a GR General Residential District and that the use is inappropriate for the area; that the site is surrounded by single family developments; that there are three entrances to the site and questioned if DelDOT authorized the entrances; questioning how one operator can operate the number of pieces of equipment and vehicles stored on the site; that the DelDOT comments reference an assumed development of 18 residential condominiums/townhouses, not an excavation company; that the Switchboard Digital Directory references that the business has existed since 1981, has business hours from 6:00 a.m. to 6:00 p.m., provides services for removals, residential services, sewer systems, utility work, demolition and removals, waterscaping, and septic systems; that the Directory also references that the Applicant has stated that they are specialists when it comes to underground utility, general construction and environmental remediation, and that their highly trained excavation experts, as well as their support staff, work hand in hand with clients; that the Superpages Telephone Directory has similar advertising; that the residents in the area are concerned about business hours; that the use has been operating illegally for at least 9 years; that the Applicant has recently been cleaning up

the site; that noise and work activities have been noticed at 4:30 to 5:00 in the a.m.; that neighbors have reported foul language and barking dogs; that the Applicant does not live on the site; that the proposed use already exceeds the requested uses that the Applicant has applied for; that the business continues to grow; that large trucks and heavy equipment are always coming to and from the site; that there have been some boats stored on the site; that Wil King Road has recently been repaved and that the trucks and heavy equipment may impact the roadway; that the Applicant should be the one responsible for maintaining any damages caused to Wil King Road by the trucks and heavy equipment; that the Comprehensive Plan frowns on commercial uses in Low Density areas; that the neighbors are concerned about the continued illegal use of the property; that the neighbors do not anticipate that the Applicant will comply with any conditions of approval that may be imposed on the Applicant if the application is approved; that it appears that the site is a gathering place for the employees to hangout; that the Applicant has a lack of regard for his neighbors; that noise is a major concern; that increased traffic is a concern; that increased trucks and heavy equipment activities is a concern; that the GR General Residential zoning should be maintained; and that the use has a negative impact on property values.

The Commission found that Mr. Blessinger submitted some opposition materials, which included a listing of the materials, a copy of the site location map from the file, a 1992 aerial photograph, a copy of the survey of the property from the file, a 2007 color aerial photograph, a 2010 color aerial photograph, a copy of the DelDOT Support Facilities Report from the file; a copy of Switchboard Digital Directory referencing J. R. Mocci Co., Inc., a copy of a small ad from the Superpages Telephone Directory, a copy of a Delaware Divisions of Corporations referencing the JR Mocci Co., Inc., and a copy of the County Tax Summary for the property.

The Commission found that the Applicant responded to additional questions from the Commission by stating that his operating hours may be from 7:00 a.m. to 5:30 to 6:00 p.m.; that there are not any parties taking place at the site; that he has one employee; and that he does participate in emergency snow removal and that the operating hours would have to be flexible enough to allow him to operate the business at all hours for emergency snow removal.

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

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

C/U #1905 – application of **WEST REHOBOTH COMMUNITY LAND TRUST** to consider the Conditional Use of land in GR General Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 6,986.70 square feet, more or less, lying northeast of Dunbar Street, 100 feet northwest of Norwood Street within West Rehoboth Subdivision.

The Commission found that the Applicant submitted a survey and site plan of the proposed duplex.

The Commission found that on May 31, 2011 DelDOT provided comments in the form of a memorandum, and that the memorandum references that a traffic impact study is not required, and that the current Level of Service "B" of Road 273 (Hebron Road) will not change as a result of this application.

The Commission found that on July 12, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum and that the memorandum references that the site is located in the West Rehoboth Expansion Area; that the system design did not consider development of West Rehoboth subdivision parcels into multi-family dwellings at higher density; that the parcel is located in a residential subdivision of single family lots; that the proposed project is twice the density of system design assumptions for the area; that approval of projects that increase density in this area has the potential to cause significant capacity issues in this drainage area and limit options for other property owners; that approval of higher densities has a negative impact on overall sewer system capacity, which increases existing line deficiencies and hastens the need to perform upgrades including at the treatment plant; that further evaluation at the developer's expense is required to determine what upgrades are required to serve the proposed project; that the developer should contact the Engineering Department for additional information regarding performing the evaluation; that all upgrades would be completed by the developer and would be at the developer's expense; that some upgrades may be cost prohibitive; that the available wastewater capacity is at one (1) EDU; that Ordinance 38 construction is not required; that the parcel is already served with two 6-inch laterals along its frontage on Dunbar Street; that conformity to the North Coastal Area Planning Study will be required; that downstream sewer line and pump station deficiencies have been identified in some parts of the sewer system that serve this parcel; that others are undertaking upgrades to those parts of the system and the schedule for completion of those upgrades is not known at this time; that the County Engineering Department will not approve issuance of a building permit for the project until those and any additional upgrades have been completed; and that a concept plan is required.

Mr. Lank advised the Commission that two e-mails have been received in support of the application and 26 letters and e-mails have been received in opposition to the application prior to this meeting.

The Commission found that Richard Legatski was present on behalf of the West Rehoboth Community Land Trust and stated in his presentation and in response to questions raised by the Commission that the Trust is planning on building a duplex at 118 Dunbar Street with related parking; that multi-family use is a permitted Conditional Use application in a GR General Residential District; that they are proposing two (2) two-story units containing 1,260 square feet each with 2 to 3 bedrooms; that the units will be back to back; that the Homeowners Association will control the use; that the site is located in the Environmentally Sensitive Developing District Overlay Zone where it is most desirable for new housing; that the use provides for affordable housing; that the use is consistent with the development trend in the general area; that there should be no impact on neighboring uses or the community; that there are eight (8) properties in the West Rehoboth area that are now for sale; that the use will be consistent with other uses in the area and promotes health, safety and the welfare of the citizens in the area; that the lot is currently vacant; that the Trust will own the property and rent the units, and possibly in the

future rent to purchase the units; that the Trust had proposed a similar application on Burton Avenue for Conditional Use and that that Conditional Use expired; that several properties in West Rehoboth have more than one home located on them; that DelDOT is not opposed to this application; that there is little to no traffic on Dunbar Street; and that there are two sewer laterals provided for this parcel according to County Engineering.

The Commission found that Kevin McKinney, Karen Hugues, Cathy McAllister, Abby Ploaway, Brenda Milburn, Mable Granke, and Beth Doty were present in support and stated that the Glade Trail bike trail is on the opposition side of West Rehoboth; that the people of West Rehoboth deserve decent housing; that a duplex will be much more cost efficient; that the application would be a benefit to those living in the community and around the surrounding communities; that the use will help improve the quality of life for the residents in West Rehoboth; that there is a need for affordable housing in the area; that people are living in the area with no services; that West Rehoboth needs a change to the better; that improvements in the area will make the residents proud and will provide for additional opportunities for additional improvements; that there is a need for future improvements in the area; that absentee owners need to clean up their properties; that the community needs revitalization; that West Rehoboth is one of the last places in the Rehoboth area where affordable housing can be supported; that the Trust is trying to provide affordable homes for minimum wage residents of the area; that dual sewer laterals were placed in front of most of the lots in West Rehoboth; that Mr. McKinney surveyed the community and found that of the 125 lots in the area there are 54 home-sites and 71 vacant lots; that they received 20 letters in support and are aware of 6 residents in opposition to the application; that the intent is to serve residents already in the community; that the Delaware Housing Authority supports the use intended; that the community recently received grants to install cameras in the community to monitor activities; that there are children programs; and that the County has helped fund some of the improvements on some of the homes in the community.

The Commission found that Mr. Legatski submitted the 20 letters in support of this application.

The Commission found that Norman Steward, Jason Balla, Robert Paul, Ed Krum, Frederick Maymir, JoAnn Supple, Rea Contellini, Stephanie Shelton, Chuck Seaman, and Helen Earp were present in opposition to this application and expressed concerns that the use is in conflict with the development trends of the West Rehoboth area which is predominantly single family homes; that the use doubles the intended density of the lot; that the use concentrates low income families in an area already riddled with crime; that the use continues to segregate the poor and low income families, forcing them to live in an area that is under served and under protected; that there has been a great increase in theft and violent crime in and around the community, with beatings and home invasions; that there are reported rival gangs between Burton's Village and West Rehoboth; that there are numerous calls to emergency groups relating to late night fires and loud music; questioning if the Trust is acting in the best interest of a family in need of a home by locating them in West Rehoboth; questioning who is benefiting from the rents collected from these units; questioning if criminal background checks are being performed prior to renting a unit; questioning the number of tenants per unit; questioning maintenance of the units; expressing a fear of a precedent being established by approval of this application causing additional applications in West Rehoboth for similar applications; depreciation of property values; that the subdivision should be limited to single family homes as originally intended; that

the Commission should recommend to the Sussex County Council to potentially look into desegregating affordable housing areas by making developers make them available in all communities; that de-concentrating poverty will serve the community better; that the DelDOT traffic study does not reference vehicles backing out into Dunbar Street; that Dunbar Street is narrow and not improved; that the Homeowners Association cannot handle the trash issues in West Rehoboth; that the residents have more to lose than gain if this application is approved; that the proposed use causes overcrowding on a small lot; that more units bring more traffic; that the Trust will get more support from the community if a single family unit is constructed; that there is a need for more local, State and Federal support in the area; that they oppose higher density; that lots have to be continually cleaned of trash; that the Trust is proposing to change the community from single family to higher density; that rental properties decrease land values; that the Trust has already applied for a variance in the square footage to allow for two units; that the community should be developed as it was originally intended, single family lots; that the area needs adequate infrastructure, including sewer, water, fire hydrants, sidewalks, open space for the children, not density, overcrowding, and poor street conditions; and that the safety of the children in the area is a major concern since they will play in the streets.

The Commission found that Mr. Steward submitted written comments for the record.

The Commission found that Mr. Legatski responded to questions from the Commission that he is not aware of any restrictive covenants in West Rehoboth, and that the project was originally started in the 1950s or earlier, prior to zoning jurisdiction by the County.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to leave the record open for clarification from County Engineering on the issue of sewer laterals and EDUs. Motion carried 5 – 0.

OTHER BUSINESS

Conley's United Methodist Church
C/U #1890 Site Plan – Road 277

Mr. Abbott advised the Commission this is a site plan for a community thrift shop owned and operated by the Church; that this Conditional Use was approved on May 17, 2011 with five (5) conditions; that the conditions of approval are noted on the site plan; that 17 parking spaces are required and 53 provided; that the thrift shop is 60.4 feet by 48.4 feet; that four (4) storage sheds are proposed; that the setbacks meet the requirements of the Zoning Code; that an existing on-site septic system and well are proposed to be utilized; and that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant preliminary approval of this site plan. Final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

McKinley Evans
Lot on 50' Easement – Road 213

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from a 50-foot easement; that the owner proposes to extend an existing 50-foot easement to serve as access to the lot; that this lot would be the third lot having access from the easement; that the request can be approved as submitted or an application can be required for a major subdivision; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will required an application for a major subdivision.

Motion by Mr. Burton, seconded Mr. Smith, and carried unanimously to approve the request in concept with the stipulation that any further subdivision of the parcel will require a major subdivision application. Motion carried 5 – 0.

Edwin Montero
2 Parcels & 58' Right-of-Way – Road 454

Mr. Abbott advised the Commission that this is a request to subdivide an 11.09 acre parcel into two (2) lots with access from a 50-foot right-of-way; that Lot 1 will contain 1.47 acres and has an existing dwelling located on it; that Lot 2 will contain 9.62 acres and has an existing poultry house located on it; 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; and that the request can be approved as submitted or an application for a major subdivision can be required.

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

Bruce Wardwell
2 Lots & 50' Easement – Road 589

Mr. Abbott advised the Commission that this is a request to create two (2) 1.0 acre lots with access from a 50-foot easement; that the owner proposes to create the easement over an existing driveway; that the residual lands will contain 6.87 acres; that the request can be approved as submitted or an application for a major subdivision can be required; that 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.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the requested subdivision with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

REORGANIZATION

Mr. Wheatley appointed Mr. Lank as Acting Chairman for the purpose of holding an Election of Officers.

Mr. Lank opened nominations for Chairman.

Motion by Mr. Johnson and seconded by Mr. Burton to nominate Mr. Wheatley as Chairman.

Motion by Mr. Smith and seconded by Mr. Ross that the nominations for Chairman be closed.

Motion was adopted to nominate Mr. Wheatley as Chairman with 5 Yea.

Vote for Mr. Wheatley, as Chairman, by roll call:

Mr. Burton – Yea
Mr. Johnson – Yea
Mr. Ross – Yea
Mr. Smith – Yea
Mr. Wheatley – Yea

Mr. Lank opened nominations for Vice-Chairman.

Motion by Mr. Smith and seconded by Mr. Burton to nominate Mr. Johnson as Vice-Chairman.

Motion by Mr. Ross and seconded by Mr. Smith that the nominations for Vice-Chairman be closed.

Motion was adopted to nominate Mr. Johnson as Vice-Chairman with 4Yea and 1 Abstaining (Mr. Johnson).

Vote for Mr. Johnson, as Vice-Chairman, by roll call:

Mr. Burton – Yea
Mr. Ross – Yea
Mr. Smith – Yea
Mr. Wheatley – Yea
Mr. Johnson – Yea

The meeting was turned over to Mr. Wheatley, the re-elected Chairman.

Mr., Wheatley appointed Mr. Lank as Secretary for the Commission, and authorized Mr. Lank – Director, and Mr. Abbott – Assistant Director to sign record plots for recordation on behalf of the Commission.

Meeting adjourned at 9:28 p.m.