



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF AUGUST 9, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 9, 2012 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, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 18, 2012 as revised. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of July 26, 2012 as circulated. Motion carried 4 - 0.

### OLD BUSINESS

Subdivision #2005-91 – application of **HIGHLAND DEVELOPMENT CORPORATION** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 195.93 acres into 420 lots, (Environmentally Sensitive Developing District Overlay Zone), located south of Route 24, approximately 1 mile west of Road 309 (Tax Map I.D. 2-34-33.00-7.00, 7.01, & 8.00).

Mr. Abbott advised the Commission that this is a final record plan for a 391-lot cluster subdivision application to be titled “Ferry Cove”; that the Commission granted preliminary approval for 391 lots on February 20, 2007 and granted time extensions on November 14, 2007, October 16, 2008, August 18, 2009, and December 16, 2009; that the application also received a time extension until January 1, 2013 under Ordinance No. 2208 approved by the County Council on August 9, 2011; that the final record plan complies with the Subdivision and Zoning Codes and the conditions of preliminary approval; and that all agency approvals have been received.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to grant final approval of Subdivision #2005-91. Motion carried 4 – 0.

C/U #1932 – application of **Tanya A. Gibbs and Kimwuan L. Gibbs** to consider the Conditional Use of land in a GR General Residential District for an automotive sales lot to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 27,250 square feet, more or less, lying southeast of Road 285 (Beaver Dam Road), 2,500 feet south of Road 287 (Kendale Road)(Tax Map I.D. 2-34-6.00-13.00).

It is noted that this application was deferred for further consideration after the public hearing on July 12, 2012, and again under Old Business on July 26, 2012.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion. Motion carried 4 – 0.

C/U #1933 – application of **MARK A. GIBLIN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a towing service and landscaping to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.374 acres, more or less, lying southeast of Route 17 (Roxana Road), 1,185 feet northeast of Road 382 (Zion Church Road) (Tax Map I.D. 5-33-6.00-60.02).

It is noted that this application has been deferred for further consideration since July 26, 2012.

Mr. Smith asked the Commission if they had any concerns; that he would like to make a recommendation of approval, but with conditions; that he would like to limit the number of vehicles that can be impounded to 18 vehicles; and that there should not be any display or storage of vehicles between the residence and the public road.

Mr. Ross stated that there should be no vehicles sales on premises.

Mr. Smith added that the opponent referenced that people have been knocking on his door looking for the impound area; and that a sign should eliminate that problem.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1933 for Mark A. Giblin for a towing, service and landscaping business in an AR-1 Agricultural Residential District based upon the record made at the public hearing and for the following reasons:

- 1) The use has been in existence for 12 to 13 years and was recently violated for operating without an approval. This Conditional Use, with stipulations and conditions placed upon it, will regulate the use of the business and mitigate any adverse effects on the neighboring or adjacent properties.
- 2) The use is on a 3.374 acre tract where the Applicant currently resides.
- 3) Although the towing business operates from the site, the employees mostly work from their homes, since they are on call. As a result, there is not a great deal of traffic that is generated to or from the site.
- 4) The only opposition came from a next door neighbor who only opposed the impound yard use and repair/service use. This objection seemed to rise out of uncertainty from people looking for their cars about where the impound yard was located. This concern

can be alleviated with the conditions we shall place upon this recommendation. The next door neighbor did not oppose the towing service or the landscaping service.

- 5) The use is consistent with other small scale business uses in the area, including a bait and tackle shop on the adjacent property, an air conditioning service business, and other uses in close proximity to the site.
- 6) This recommendation is subject to the following conditions:
  - A. The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties.
  - B. No more than 18 vehicles shall be permitted on the property besides the Applicant's own vehicles.
  - C. No permanently disabled or abandoned vehicles shall be allowed to remain on the property.
  - D. There shall be one lighted sign which shall not exceed 32 square feet in size to identify the towing service and the impound lot. The sign shall include a phone number to call for information about vehicles impounded and for other information about the service.
  - E. No vehicles shall be displayed for sale.
  - F. All security lighting shall be downward screened so that it does not shine on neighboring or adjacent properties.
  - G. The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles, vehicles that are being serviced, and towing equipment.
  - H. The area set aside for the landscaping business, including equipment storage and any bins for materials such as topsoil, mulch, etc. shall clearly be depicted on the Final Site Plan.
  - I. The service business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturdays, with no Sunday hours.
  - J. The Final Site Plan shall include a landscaping plan for the area surrounding the impound yard screening it from neighboring or adjacent properties.
  - K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

C/U #1936 – application of **CHESTER TOWNSEND, IV** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a food vendor to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.0 acre, more or less, lying north of Route 26, 0.2 mile northeast of Road 342 (Sandy Lane Road)(Tax Map I.D. 1-34-11.00-3.00).

It is noted that action on this application has been deferred for further consideration since July 26, 2012.

Mr. Smith asked the Commission if they had any concerns; added that the business has been given a violation for this site and a previous site; that the Applicant filed this application to bring the business into compliance; that he is concerned about signage advertising the business in the area, with small signs along roadways and even in the marsh near Vines Creek Bridge; and that he is concerned about parking in the front yard setback.

Mr. Ross asked Mr. Smith if he needed more time to work on a motion.  
The Commission discussed signage.

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

### PUBLIC HEARINGS

C/U #1938 – application of **KAREN BARWICK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a therapist office and residence 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)(Tax Map I.D. 3-34-12.00-85.00).

The Commission found that on July 26, 2012 the Applicant provided an Exhibit Packet of information for consideration by the Commission which includes a series of Google Earth aerial photographs of the site and the area around the site; a copy of an Insert from the Tax Map depicting the Midway Acres subdivision; a copy of the survey/site plan; a copy of a May 15, 2012 letter from DelDOT; a copy of a June 2, 2012 letter from the Planning and Zoning Department in reference to a home occupation approval; and some suggested proposed Conditions of Approval for consideration.

The Commission found that on August 3, 2012 the Department received comments from the County Engineering Department Utility Planning Division which reference that the site is located in the South Planning Area of the West Rehoboth Expansion Area; that wastewater capacity is available for the project if the proposed use does not exceed 2.0 EDU (office of 2,000 square feet or less); that the planning study assumption for the parcel is 1.0 EDU; that the parcel is comprised of two lots; that Ordinance 38 construction is not required; that central sewer service is not available to the parcel at this time; that an on-site septic system is being utilized currently; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coast Planning Study will be required; that the parcel is located within a planning area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the County does not have a schedule to provide central sewer service to the parcel at this time; and that a concept plan is not required.

The Commission found that on August 6, 2012 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax

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

The Commission found that Karen Barwick was present with James Fuqua, Jr., Attorney with Fuqua, Yori and Willard, P.A., and that they stated in their presentations and in response to questions raised by the Commission that the application site is located just west of the Beebe Medical Campus; that a recent application for a doctor's office was withdrawn at this same location; that the Applicant is a Certified Licensed Therapist; that the site suits the Applicant's need providing her a residence and a location to meet her clients; that there will not be any employees; that the Applicant has purchased the property; that the Applicant anticipates seeing six to seven clients per day; that she typically sees one client at a time; that sessions typically last one hour; that a home occupation approval has been granted to the Applicant, with the understanding that she has no employees and that there will be no group activities or assembly; that part of her practice occasionally requires group sessions or workshops with clients, therefore the need for a Conditional Use consideration; that the suggested conditions of approval submitted include references to limitations for group sessions; that DelDOT will limit access to the site from the existing entrance on Route 24; that the entrance shall be for ingress traffic movements only and all egress movements shall be from the site Collins Avenue to Plantation Road; that there are no deed restrictions for street maintenance of Collins Avenue; that suggested condition of approval #4 provides that the Applicant shall share in the cost of maintenance and repair of Collins Avenue proportionately with other property owners on Collins Avenue; that the Applicant just recently replaced the septic system; that the Applicant is requesting one lighted 32 square foot sign; that this request is a reasonable extension of the home occupation by allowing for group sessions; that the application meets the necessity of the Code for Conditional Uses; that the use will be compatible for the area; that the site is in close proximity to other business uses; that the site is located in a developing area; that adequate space is available on the site for parking; that there are no deed restrictions relating to the use of the property; that the one parking space between the residence and the garage is being set aside for handicap parking; that the application includes reference to a therapist office and residence; that if the home occupation were to close the Conditional Use becomes void; and that the Applicant is planning a garden outside for meditation and quiet sessions with clients.

The Commission found that Rose Imhof was present and expressed concerns, not in opposition to the use, but about traffic on Collins Avenue; that she stated that there are five homes along Collins Avenue; that her husband has maintained the street; and that Collins Avenue cannot support the traffic due to the narrowness of the avenue.

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

Mr. Wheatley stated that the use will create additional traffic on a private road, and that, if necessary, group sessions could be held off-site.

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

C/U #1939 – application of **JACQUELINE TYSON-HOPE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a reception use, I.E. weddings, birthdays, retirements, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 6.49 acres, more or less, lying south of Bailey's Landing Drive, 0.6 mile west of Road 487A (Beagle Club Road)(Tax Map I.D. 2-32-10.00-8.02).

The Commission found that the Applicant provided a copy of the deed to the property and a survey of the property showing the dwelling and other improvements on the property.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated May 2, 2012, which references that a traffic impact study is not recommended, and that the current Level of Service will not change as a result of this application .

The Commission found that the County Engineering Department Utility Planning Division provided comments on August 3, 2012 in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #4; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that on August 6, 2012 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains three soil types; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

Mr. Lank advised the Commission that an email had been received from Vincent and Christina Perrotta stating that they are absolutely against making any part of Bailey's Landing commercial; that they are against any rezoning/Conditional Use of the land at this time; that the four sites for homes are all next to each other on the Broad Creek; that all four homes/building sites can be seen from their property; that they are all in close proximity to each other; that the proposal would adversely affect the quality of life; that there is only one single lane dirt road coming in and out of Bailey's Landing; that the property, in front of Bailey's Landing, is owned by Jeff Hastings; that Mr. Hastings has allowed the subdivision use of the right-of-way to their properties via a single lane road; that Mr. Hastings is concerned about the heavy traffic this proposed use would bring to this quiet area of Bethel; that they are asking DelDOT to come before County Council and comment on their findings regarding the use; that they are asking that this proposal remain public record until DelDOT and all other agencies involved submit their findings to the County Council; that when they purchased this property in 1998-2000 they, along with Michael Hubbard and Frank Rodriquez signed a restrictive covenant and boundary line agreements; and that Section 13 of those restrictive covenants clearly state that "all of the land shall be used only for single family residential purposes". This email was copied to Gary and Jackie Calloway, land owners in Bailey's Landing, and the Honorable Vance Phillips, County Councilman.

Mr. Lank advised the Commission that on August 8, 2012 Lawrence B. Steele, III, Esquire, submitted a letter and attachments on behalf of Jeffrey G. Hastings, President of H & H Brand Farms, Inc. objecting to the granting of this application and expressing concerns that the Applicant's access is across said lands by a 12' wide "woods road" which is 797.77 feet long; that the attachments include a letter from Mr. Hastings, copies of the survey for "Bailey's Landing" depicting the referenced 12' road, and copies of two Court of Chancery Documents on Civil Action No. 1658 between H & H Farms, Inc. v. Theodore B. Simpler and Edward J. Kaye; that one of the documents is a Memorandum Opinion and the other is the Final Order for Injunctive Relief; that the Applicant's filing does not show this limited 12' access to her parcel; that it shows only the private interior Bailey's Landing road which adjoins her parcel; that this omission by her, which could lead the Commission to believe she has a continuous 60' entrance right-of-way to Road 487A to be, at best, disingenuous; that the location, size, and limited use of this woods road was determined by the Court of Chancery per the copies submitted; that the prior owners of the Applicant's parcel attempted to enlarge the 12' woods road to a much larger size; that the Court found that they could not and the road was Ordered returned to its original 12' width; that the Order is still in effect; that H & H Brand Farms, Inc. will not allow additional width to this 800' long woods road and will not allow the additional traffic across its land which the Applicant's requested usage contemplates; that the 12' woods road is barely functional for one vehicle's use; that two way traffic can not operate within its width; that any emergency requiring fire trucks, EMS, ambulances, or other similar first responders trying to pass each other in opposite directions will cause chaos; that to access the woods road, you must use Road 487A (Beagle Club Road) which, although paved, is a poorly maintained, unmarked, twisting country lane; that Road 487A contains many turns and curves from the north from Route 78, and narrow unmarked streets from the east from the Town of Bethel; that the streets in Bethel are clearly not designed to accommodate 50 to 100 vehicles full of party goers going to and from a reception; that Road 487A is woefully inadequate for the intended use; and requesting that the application be denied.

The Commission found that Joseph Hope was present on behalf of this application for a reception use, and stated that the intent is to have wedding receptions, birthday parties, banquets and gatherings at their home; that he anticipates 30 to 35 guests per activity; that no alcoholic beverages are intended to be served or allowed; that typically the activities would be scheduled between 4:00 p.m. and 11:00 p.m.; that music entertainment, if any, would be provided through record players, or similar electronic equipment, not bands; that the home contains approximately 8,000 square feet; that receptions would be held downstairs; that catering would be provided by the party giver; that there are adequate restrooms on the premises; and that the parcel contains approximately six acres of land, with adequate space for parking.

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

The Commission found that Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A., was present in opposition to this application on behalf of Wright Properties, an adjacent landowner, and stated that he is in agreement with the opposition comments summarized by Mr. Lank; that the site is adjacent to the Broad Creek; that the site is zoned AR-1 and in close proximity to the Town of Bethel; that the use is a form of spot zoning since there are no commercial activities in the area; that the home was intended to be a residence, not a banquet

hall; that a preliminary site plan has not been submitted, only a survey showing the existing improvements on the property; that the survey does not include a plan showing the intended parking or activity areas; that catering requires refrigeration and cooking facilities; that some caterers offer alcoholic beverages; that he questions if the septic system is designed for such an activity; that he questions if the Office of the State Fire Marshal has reviewed the facility; that he questions if there is adequate water capacity for fire protection; that he questions if the State Health Department has reviewed the necessary kitchen facilities; that he questions if the Sussex Conservation District has considered the impacts on stormwater and erosion and sediment control; that DelDOT comments only relate to the entrance on Beagle Club Road, not the impact on the 12-foot lane; that one of the accesses to the site is from Vines Street within the Town of Bethel; that traffic should be a concern due to the limitations of a 12-foot wide single-lane road; that the site is a significant distance from Beagle Club Road; that there is no record of any restrictive covenants on maintenance of Bailey's Landing Drive; that the Sussex County Comprehensive Land Use Plan references that this site is located in a Low Density area, where agricultural and single family residential uses are permitted; that the State Strategies Map depicts this site in a Level 4 area where this type of use is not typically encouraged; that there is no record of support for the application or information that there is adequate water, sewer, or transportation infrastructure to support the use; that he questions if there may be any overnight guests; that he acknowledges that agency comments are very limited; and that his client requests that the application be denied.

Mr. Schrader submitted a copy of a portion of the survey to the Bailey's Landing subdivision showing the location of the 12-foot wide lane, and a copy of a Google aerial showing the location of the site and the area.

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

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied due to the lack of adequate record to support the application. Motion carried 4 – 0.

C/U #1940 – application of **PHIL DePENNA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a physical training studio and gym, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 33,418.9 square feet, more or less, lying east of Route 13A (Seaford Road) 1,000 feet north of Road 480 (Mount Zion Road)(Tax Map I.D. 1-32-12.00-20.00).

The Commission found that the Applicant submitted copies of a survey/site plan for his application.

The Commission found that on June 1, 2012 DelDOT provided comments in the form of a Support Facilities Report, which references that a traffic impact study is not recommended; and that the current Level of Service "C" of Route 13A (Seaford Road) will not change as a result of this application.



The Commission found that the County Engineering Department Utility Planning Division provided comments on August 3, 2012 in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #4; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that on August 6, 2012 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains one soil type; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Phil DePenna was present and stated in his presentation and in response to questions raised by the Commission that he is proposing a training studio which will be operated by he and his son; that they will live upstairs above the facility; that they will be providing exercise classes and one-on-one training sessions; that the use should benefit the area residents and students; that access to the facility will be provided to membership with access by way of a keycard; that a maximum of 50 members is anticipated; that he or his son will be available at all times; that they would like to erect an on-premise ground sign to advertise the location; that he anticipates that there would be 5 or 6 clients present at any one time; that the building was formerly used as a church; that the building contains 1,225 square feet on the first floor and includes a restroom; that there is a two bedroom apartment on the second floor; that there may be some activities held outside when weather permits; that the closest fire station is in the Town of Blades; and that the closest medical facility is the Nanticoke Hospital.

The Commission found that Chester Porches, the land owner, was present and stated that the site has previously been used for recap tire sales and service, a sandwich shop, and a church; and that other business type uses in the area include a bait and tackle shop, an auto service garage, car sales, and a skating rink.

The Commission found that there were no parties present in opposition to the application.

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

Mr. Wheatley stated that there should be minimal impact on the area.

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

C/U #1941 – application of **DELAWARE ELECTRIC COOPERATIVE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a solar electric generation facility, to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 40 acres, more or less, lying southeast of Trap Pond Road

(Route 62) approximately 840 feet northeast of Road 518 (Substation Road)(Tax Map I.D. 1-35-22.00-23.00 (Part of).

The Commission found that the Applicants submitted surveys/site plans of the property and project along with an Exhibit Booklet with their application, and that the Exhibit Booklet contains a summary of proposed construction, references to existing site conditions, references to a wetlands and water of the United States investigation, agency review coordination, an aerial map of existing conditions, a photo location map, photos of the site, a minor subdivision plan, a preliminary site plan depicting proposed construction, solar panel information sheets, photos of similar solar electric sites, a letter from DNREC Division of Soil and Water Conservation, a letter from DNREC Division of Water, a letter from the U.S. Army Corps. of Engineers, an aerial map of the Water of the United States, and suggested proposed Findings of Fact and Conditions of Approval.

Mr. Lank advised the Commission that an email was received from the Applicant's Attorney, Terry Jaywork, advising that there is an error on Page 35 of the Exhibit Booklet in reference to the number of homes that could be served by the project, and that Phase I of the project could serve the referenced 500 homes, and that a total of 870 homes could be served by Phase I and Phase II of the project; that the Cooperative held an open house on July 30, 2012 to provide information to the residents of the area; that invitations were sent to approximately 37 property owners, and that only 4 property owners attended; and that no one expressed any opposition.

The Commission found that the County Engineering Department Utility Planning Division provided comments on August 3, 2012 in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #4; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that on August 6, 2012 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains six soil types; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that off-site drainage improvements will not be necessary; that it is very likely that on-site drainage improvements will be required; and that tax ditches are evident, and that the scope of the project will determine the affect on the tax ditches.

The Commission found that Terry Jaywork, Attorney for the Delaware Electric Cooperative, Inc., Mark Neilson, Vice President of Delaware Electric Cooperative, Inc., and Walt Hoey, Professional Engineer with Century Engineering, were present on behalf of this application and stated in their presentations and in response to questions from the Commission that the site is surrounded by farm land and a small tract of woodland; that the renewable energy statute mandates that the Cooperative meet 25% of their overall demand with green infrastructure; that the project should provide for good environmental use of the site and should be good for the economy; that the solar panels are proposed to be manufactured in Newark and should create a minimum of 40 jobs; that the solar farm will be less impacting on the area residents than

agricultural uses; that the solar farm will not require any chemical uses, and should not create any dust, odors or noises once completed; that the Cooperative held a public meeting at the Cheer center on July 30, 2012 to get comments from area residents; and that they had sent out notices to approximately 37 landowners, but only four area residents attended.

Mr. Jaywork presented the Commission with a map of the area depicting parcels in colors for properties owned by area residents that were invited and attended the workshop; property owners that were invited to the workshop; property owners that were within 200 feet of the solar farm site that were invited and attended or did not attend; a copy of the list of 37 property owners that were invited; a draft copy of the letter sent to the 37 property owners notifying them of the workshop; and a copy of the sign-in sheet for attendance at the workshop.

Mr. Jaywork asked that their Exhibit Booklet, surveys/site plans, and the information and map relating to the workshop be made a part of the record for this public hearing.

The Commission found that Mr. Jaywork, Mr. Hoyer, and Mr. Neilson continued with the presentations and stated that the Cooperative is only purchasing 40 acres of the larger acreage tract; that the site is approximately 0.5 mile from a Cooperative substation; that the use will create minimal impact on the area; that the project will be developed in two phases; that the first phase will include 16,000 solar panels on approximately 20 acres with access roads throughout; that the second phase will include 12,000 solar panels on 20 acres with additional access roads; that the phases will be fenced with chain-link fencing with barbwire on the top; that low growing plants will be planted for ground cover to eliminate weeds and help control grasses; that a similar solar farm exists in Kent County; that once completed, there should only be one maintenance vehicle checking the site per week; that there will be some small transformers on the site which may create a humming noise that should not be heard outside of the boundaries of the site; that two finger ditches on the site will be filled; that 6 ditches exist and are not jurisdictional; that there is a tax ditch on the farm, but it is outside of the construction area; that the first phase should require approximately 3 to 4 months of construction activities; that they hope to have the first phase completed by early 2013; that the second phase should be started within five years; that grasses and weeds will be maintained in the area of the solar panels and along fencing; and that the fence will be gated for access.

The Commission found that John Sergovic, Attorney with Sergovic, Carmean & Weidman, P.A. was present in support on behalf of his client, Heritage Lands, LLC, and stated that the contract allows the seller to possibly develop the residual lands for residential uses; that this facility should enhance the development of the residual lands due to the green infrastructure proposed.

The Commission found that Sondra Ware, Real Estate Broker, was present in support and stated that the use supports good stewardship of the land; that other project types could be detrimental to the area; that the green effect of solar panels creates an economic benefit for the area; and that there will be minimal run-off from the project.

The Commission found that Paul Reed, Donna Atkinson, and Carol Reed were present in opposition to this application and expressed concerns that they did not get notice of this public hearing; that they live within 200 feet of the property; that the use will destroy their property values; that they will lose the value on their homes; that they do support green energy; that the

use will create a fenced-in eyesore; that there are other areas more suitable for this type of use, i.e. an industrial park; questioning the size of the transfer boxes referenced on the site plan; expressing concerns about lead leaching into the groundwater; questioning if a substation will be located on the site; questioning what happens if the project is abandoned; expressing concerns about the possible impact on health issues since there are records that indicate that electrical facilities cause cancers; and questioning what the four red poles are along Substation Road.

The Commission found that Mr. Neilson responded that the transformers on site measure approximately 4' by 4' and are 3' or 4' tall and will be set on concrete slabs; that the transformers are all located to the interior of the site; that there are four proposed transformers in the first Phase and three in the second Phase; that the red poles are location markers for future poles, or guide wires, that will support larger conductors; that solar panels create direct current and do not pose any hazards to area residents; that the height of the solar panels proposed are 5 feet 10 inches from grade to the top of the panel; and that they reviewed a number of sites for the solar farm, and that this site was chosen because it is within close proximity to a Cooperative substation.

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

Mr. Lank advised the Commission that the Applicants provided the list of property owners within 200' of the specific application site, not the entire property, which meets the requirement of the application process.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1941 for the Delaware Electric Cooperative, Inc. for a solar electric generating facility in an AR-1 District based upon the record made at the public hearing and for the following reasons:

- 1) The proposed facility is a public utility use under the Sussex County Zoning Code and it meets the purposes of a Conditional Use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
- 2) The proposed use will not have any adverse impact on the neighboring or adjacent properties. It is bordered on the East by a collector ditch and an unoccupied wooded area, on the South by a tax ditch and a large tract of tilled agricultural land, on the West by East Trap Pond Road and another large tract of tilled agricultural land, and on the North by yet another large tract of tilled agricultural land. The nearest residence to the proposed use, which appears to be unoccupied and abandoned, is approximately 0.1 mile from the proposed use. The nearest occupied residence is approximately 0.2 mile from the site.
- 3) The proposed solar electric generation facility will be constructed in two phases. The first phase will generate four megawatts of solar electric power and a second phase will add an additional three megawatts of solar electric power. The combined total of these two phases will provide sufficient renewable green energy for approximately 870 homes.
- 4) The proposed solar generation facility will not result in a noticeable increase in traffic on adjacent and neighboring roadways. It is expected that only one vehicle trip per week on average is anticipated for inspections, maintenance and repair of the solar panels.
- 5) The Delaware Department of Transportation has reviewed the proposed plan and has issued a "letter of no objection" with regard to the plan.

- 6) The facility will be “eco-friendly”. In its first year of operation, it will decrease approximately 12, 641 pounds of carbon-based generated electricity. This is the equivalent of taking 1, 239 automobiles off the road.
- 7) This recommendation is subject to the following conditions:
  - A. No storage facilities shall be constructed on the site.
  - B. Lighting on the facility will consist only of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
  - D. The site shall be secured by fencing. A locked 38 foot wide gate will permit access to the site from East Trap Pond Road, with a “Knox Box” to accommodate emergency access by the local fire company.
  - E. If the solar electric generation facility is non-operational for a period of 12 months, the Delaware Electric Cooperative, Inc. or assigns must return the site to its original state within a 12 month period.
  - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

#### OTHER BUSINESS

##### Americana Bayside MR/RPC

##### Final Site Plan – Parcel 16 – Route 54

Mr. Abbott advised the Commission that this is a final record plan for a 4,500 square foot fast food restaurant and a 13,500 square foot pharmacy/retail building on 3.26 acres; that the Commission granted preliminary approval on July 14, 2010; that the setbacks meet the requirements of the Zoning Code; that 97 parking spaces are required and 115 are proposed; that the project will be served by central sewer and water; that the final site plan is the same as the preliminary plan and all agency approvals have been received; and that he had previously provided the Commission with copies of the site plan.

The Commission discussed this site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant final approval of Parcel 16 of Americana Bayside MR/RPC. Motion carried 4 – 0.

##### C/U #1716 – Andrew Lubin

##### Determination of Substantially Underway – Route 24

Mr. Abbott advised the Commission that this Conditional Use for an office park with medical, professional and retail buildings was approved on January 16, 2007; that the Commission granted previous time extensions; that a commercial site plan for Artisans’ Bank was approved

by the Commission on April 22, 2009 and received final approval by staff on April 8, 2010; that approval of the Conditional Use is valid until January 1, 2013 by Ordinance No. 2208 adopted by County Council on August 9, 2011; that the developers are requesting that the Commission determines that the approved use is substantially underway even though construction and permitting have not taken place based on the work that they have done to date; and that he had previously provided the Commission with copy of a letter from the owner explaining what has been done to date.

The Commission discussed this request.

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

Everett C. Toomey, Jr. and Tamara M. Toomey  
3 Lots on 50' Right-of-Way – Route 20 (Betts Pond Road)

Mr. Abbott advised the Commission that this is a request to subdivide a 2.50 acre parcel into 3 lots with access from a 50-foot wide right-of-way; that Lot 1 is an existing parcel and will be increased to 0.764 acre, Lot 2 will contain 0.80 acre; that there is an existing swimming pool and pool house located on Lot 2, which will need Board of Adjustment approval to remain on the site if a new dwelling is not commenced within six months of recordation; that Lot 3 will contain 0.940 acre and there is an existing dwelling located on it; that the request may 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 would require an application for a major subdivision; and that he has provided a sketch drawing of the request.

The Commission discussed this request to subdivide.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant conceptual approval of the subdivision subject to the following conditions:

- 1) If a new dwelling is not commenced within six (6) months of the date of recordation on the lot containing 0.800 acres, a special use exception will be required from the Sussex County Board of Adjustment for an accessory use on less than 1.0 acre of land to retain the swimming pool and pool house.
- 2) A Letter of No Objection is required from DelDOT.
- 3) Any further subdivision of the land will require an application for a major subdivision.

C/U #1897 – Russell V. Banks  
Easement Location Discussion – Road 348 (Irons Lane)

Mr. Abbott advised the Commission that this Conditional Use for a borrow pit was approved on June 12, 2012; that when the application was applied for, there was an easement to the site that was described in the approved ordinance; that the easement area contains 2.04 acres; that the proposed easement has been relocated based on the relocated DelDOT entrance and field verification of the existing farm road; that the proposed easement area is 2.15 acres; that staff is questioning if an amended application is required since the original easement was described in

the approved ordinance; and that he had previously provided a copy of the revised easement location.

The Commission discussed the intended relocation of the access easement.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration by the Commission and to allow Mr. Robertson time to review and research the file for this application. Motion carried 4 – 0.

Americana Bayside MR/RPC  
Phase 6 Final Record Plan – Route 54

Mr. Abbott advised the Commission that this is the final site plan for 44 units; that there are 32 patio homes and 12 duplex units proposed; that the Commission granted preliminary site plan approval on March 22, 2012; that the final site plan is the same as the preliminary; and that all agency approvals have been received.

The Commission discussed the site plan for Phase 6 of Americana Bayside.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant final approval of the site plan for Phase 6 of Americana Bayside MR/RPC. Motion carried 4 – 0.

Meeting adjourned at 8:55 p.m.