

MINUTES OF THE REGULAR MEETING OF JANUARY 10, 2013

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 10, 2013, 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. Michael Johnson, 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. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Agenda as amended by moving the public hearings on the Time Extension Ordinances to the end of the public hearings. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of December 6, 2012 and December 13, 2012 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1946 – application of **CLEAN DELAWARE, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of class “B” sanitary waste, non-sanitary food processing residuals and potable water iron residuals, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 259.08 acres, more or less, lying on both sides of Road 201 (McColley Road) and north of and across from Road 202 (Shockley Road) (Tax Map I.D. 3-30-3.00-7.00 and 3-30-4.00-1.00, 1.01 to 1.04, 1.08 to 1.16, 19.00 and 21.00).

Mr. Burton asked for an open discussion on this application.

Mr. Johnson stated that he was not present during the public hearing, but has had the opportunity to review the record and the file; noted that as the County grows, how do we disperse materials; that the State DNREC controls and supervises the process; and that proper safeguards and protection is a necessity of life.

Mr. Smith questioned if the site and use is appropriate at this location; acknowledged that the use may be essential; that the site location causes concerns; that he had participated in previous applications for similar use at other locations; that he is concerned about the amount of bonding necessary to protect the site and the neighboring properties; that DNREC does oversee this type of project; and expressed concerns about where the materials are being hauled from.

Mr. Ross stated that there is a need for this type of site; that the Commission has to make a decision based on land use; that the environmental issues are addressed by DNREC; that even if we approve the use, DNREC may not; that DNREC has specific criteria that the applicant must follow; and again the question relates to land use.

Mr. Burton stated that he feels that a need exists for a site that can accommodate this type of use; that Clean Delaware, LLC has a good record; that he is concerned about the site location due to the close proximity to neighbors and the Mispillion River; and that he is prepared to make a motion.

Mr. Burton stated that he would move that the Commission recommend denial of Conditional Use No. 1946 for Clean Delaware, LLC for land application of Class “B” sanitary waste, non-sanitary food processing residuals, and potable water iron residuals based upon the record made at the public hearing and for the following reasons:

- 1) It is evident from the record that the applicant chose this site because it was available, and not because it is the most suitable site for this type of operation.
- 2) There were many concerns raised during the public hearing about the impact of this proposed use on the Mispillion River, which is an important environmental and ecological resource for Kent and Sussex Counties. I am not satisfied that the applicant has adequately addressed these concerns, and there are other agricultural areas within Sussex County which do not have such environmental and ecological concerns where this type of use would be more appropriate.
- 3) I am not satisfied that the topography of this site lends itself to the application of sludge materials. As described in the Applicant’s Project Development Report, the topography of the site is moderately sloping towards the Mispillion River, and surface and groundwater drainage is generally directed toward the River. The applicant has not adequately addressed these factors that are unique to this site, especially when there are other lands in the County that do not have such limiting factors.
- 4) In addition to the topography and proximity to the River, the applicant has also stated that there are some areas of the site that are within flood zone boundaries and that areas of the site are listed as areas to avoid due to flooding or high water tables. I am not satisfied that a site with these characteristics is appropriate for the application of sludge, and there are certainly other locations where flooding, flood zones and high water tables do not exist which would be more appropriate for sludge application.
- 5) Several adjacent landowners and farmers testified in opposition to the project stating concerns about the effect of the use on crops that grow for human consumption. While crops for human consumption cannot be grown on this land while sludge operations are ongoing, I am not satisfied that the applicant has adequately addressed how to protect adjacent farmers from adverse effects of the use on their own crops.
- 6) Although DNREC regulates this site, I am not satisfied that there are adequate measures in place to protect neighboring properties or the Mispillion River. For example, the record referenced that while DNREC requires a bond as part of the Permit, it is only in

the amount of \$45,000 which is not nearly sufficient to address any environmental concerns that may develop or the loss of potable wells on adjacent properties due to the use.

- 7) In summary, while this type of use may be necessary in Sussex County, this is not the most appropriate site for it. Other more appropriate sites would include those that are flatter without drainage, flooding or runoff concerns; sites that are not adjacent to the primary environmental feature such as the Mispillion River; sites that are part of a larger tract of land under common ownership to insulate the use from properties of other ownership; sites that are not surrounded on at least one side by residential lots; or sites that do not contain other limiting factors like those that exist on this site.

Motion by Mr. Burton, seconded by Mr. Smith, and carried 2 – 3 to deny this application for the reasons stated. Mr. Johnson, Mr. Ross, and Mr. Wheatley opposed the motion. The motion was rejected.

Vote by roll call on the motion to deny this application: Mr. Burton – yea, Mr. Johnson – nay, Mr. Smith – yea, Mr. Ross – nay, and Mr. Wheatley – nay.

Mr. Ross stated that he would move that the Commission recommend approval of Conditional Use No. 1946 for Clean Delaware, LLC for land application of Class “B” sanitary waste, non-sanitary food processing residuals, and potable water iron residuals based upon the record made at the public hearing and for the following reasons:

- 1) This is a farm that has been in agricultural production for many years, and it will continue to be in agricultural production as part of this use. The application of materials by the applicant is not unlike the application of soil additives and fertilizer materials that occur in ordinary farming operations, and it will be monitored to the same or greater extent than regular farming operations.
- 2) The proposed use is consistent with the underlying AR-1 agricultural zoning of the property, and it is essentially a fertilizer that will supplement the farmer’s own fertilizing plan,
- 3) The application is subject to the DNREC application, permitting and monitoring process under Clean Delaware, LLC’s DNREC permit “Authorization to Operate a Land Treatment System for the Agricultural Utilization of Sludge and Waste Products” (State Permit Number 1202-5-03 as amended).
- 4) The use serves a public purpose by serving many municipalities, public utilities and businesses, as confirmed by letters supporting the proposed use contained in the record.
- 5) As stated by the applicant, all of the materials are tested at the source before acceptance and delivery to the applicant for disposal on the subject property.
- 6) This site is one of several utilized by the applicant for land application of sludge materials, and this property will be part of the rotation of these properties. As stated by the applicant, there will not be regular ongoing applications of materials on this site.

Instead, the application of materials will alternate with other existing sites operated by the applicant.

- 7) While there were concerns expressed by neighbors and others about the proposed use, DNREC has the ultimate control and jurisdiction over the process and the application of the materials on the site. DNREC will also monitor ongoing operations on the site through inspections and monitoring wells. In addition, this recommendation includes several conditions to address many of the concerns raised during the public hearing.
- 8) This recommendation is subject to the following conditions:
 - A. All activity shall be as authorized by and in compliance with Clean Delaware, LLC's DNREC permit "Authorization to Operate a Land Treatment System for the Agricultural Utilization of Sludge and Waste Products" (State Permit No. AGU 1202-5-03 as amended).
 - B. This approval shall automatically terminate in the event the DNREC Permit referenced in Condition "A" expires, terminates, or is found in non-compliance.
 - C. Land Application activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday.
 - D. No Land Application materials shall be stockpiled longer than 7 days on the site.
 - E. The sources of materials shall be limited to those identified in DNREC's letter to the applicant dated January 1, 2012. Those sources shall be identified on a revised Preliminary Site Plan and the Final Site Plan for the project.
 - F. Buffer areas for surface application shall include the following as required by DNREC, and those buffer areas shall be shown on the Final Site Plan:
 - a. 200 feet from occupied off-site dwellings of which 50 feet will be vegetated.
 - b. 100 feet from occupied on-site dwellings and potable wells.
 - c. 25 feet from non-potable wells and public roads.
 - d. 50 feet from bedrock outcrops, streams, tidal waters, and other water bodies.
 - e. 25 feet from drainage ditches.
 - f. The vegetated buffer requirement referenced in "a" above are overlaid by the Sussex County Planning and Zoning Commission on the DNREC buffer requirement.
 - G. Buffer areas for subsurface injection shall include the following as required by DNREC, and those buffer areas shall be shown on the Final Site Plan:
 - a. 100 feet from occupied off-site dwellings of which 50 feet will be vegetated.
 - b. 50 feet from occupied on-site dwellings and potable wells.
 - c. 25 feet from non-potable wells.
 - d. 15 feet from public roads.
 - e. 25 feet from bedrock outcrops, streams, tidal waters, other water bodies and drainage ditches.
 - f. The vegetated buffer requirement referenced in "a" above are overlaid by the Sussex County Planning and Zoning Commission on the DNREC buffer requirement.

- H. The Final Site Plan shall show all avoidance areas due to flooding or high water tables.
- I. In addition to the buffers required above by DNREC, there shall be a buffer of at least 100 feet between any lands where materials are applied and any adjacent lands used for agricultural production. As proposed by the applicant, this buffer area shall contain bio-swales or filter strips to prevent run-off onto adjacent crop lands. This buffer area and the bio-swales or filter strips shall be shown on the revised Preliminary Site Plan and Final Site Plan.
- J. All entrances and roadway improvements shall be constructed in accordance with DelDOT requirements.
- K. All entrances shall be improved and stabilized with pavement, crusher run or similar materials to decrease dust or other materials on county roadways.
- L. The location for the temporary stockpile of materials shall be shown on the site plan. It shall be located on the site to minimize any impacts on residences, neighboring properties, and the Mispillion River.
- M. Because the Mispillion River has an important environmental, ecological and eco-tourism role in Sussex County, there shall be a planted vegetated buffer between the area used for land application and the River to screen the use from the River. This vegetated buffer can coincide with the separation buffers required by DNREC.
- N. There shall be means and methods in place to eliminate pest and insect infestation that may result from this use.
- O. The applicant shall submit a revised Preliminary Site Plan to the Office of Planning and Zoning incorporating or listing these conditions on it.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried 3 – 2 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 3 – 2, with Mr. Burton and Mr. Smith opposing the motion.

Vote by roll call on the motion to approve the application: Mr. Burton – nay, Mr. Johnson – yea, Mr. Smith – nay, Mr. Ross – yea, and Mr. Wheatley – yea.

Subdivision #2012-4 – application of **MAIN STREET HOMES AT SUSSEX, LLC** to consider the Subdivision of land in an MR Medium Density Residential Zoning District in Lewes and Rehoboth Hundred, Sussex County, by dividing 19.71 acres into 32 lots, located at the end of Fairway Drive within Old Landing Development, approximately 1,950 feet west of Road 274 (Old Landing Road)(Tax Map I.D. 3-34-18.00-83.14).

The Chairman referred back to this application, which has been deferred since December 13, 2012.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2012 – 4 for Main Street Homes at Sussex, LLC, based upon the record made at the public hearing and for the following reasons:

1. This Project was approved by this Commission as Subdivision #2003 – 27 on April 14, 2004. It received Final Site Plan approval on May 14, 2008, but that approval lapsed when the Final Site Plan was not recorded within sixty (60) days of approval.
2. The approval of #2003 – 27 was for 35 homes and this application is for 32 homes. In addition, the site has been redesigned to address concerns from neighbors, including the location of a County pump station.
3. The Project is located within the Environmentally Sensitive Development Area according to the 2007 Land Use Plan Update.
4. The Applicant has proposed 32 lots within the Project, which is less than the allowable density for an MR Subdivision on this land.
5. The project is consistent with neighboring and adjacent properties and will not have an adverse impact on the neighboring properties or community. In the Old Landing Road area, there are already similar projects on neighboring and adjacent parcels.
6. The project is located within the West Rehoboth Sanitary Sewer District and will be served by a County operated system.
7. The proposed Subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County, and the items of Section 99-9(c) of the County Subdivision Code have been favorably addressed.
8. The Project will have access via the existing roadways known as Fairway Drive and Club House Drive. Pursuant to a recorded Easement Agreement the Developer and the new homeowners' association will share in the costs of maintaining those roadways with the existing homeowners on those roads.
9. This approval is subject to the following conditions; which include conditions that were imposed for Subdivision #2003 – 27:
 - A. There shall be no more than 32 lots within the Subdivision.
 - B. The Applicant shall form a homeowners' association to be responsible for the maintenance of streets, roads, any buffers, storm water management facilities, and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County.
 - D. All entrances shall comply with all of DelDOT's requirements.
 - E. No wetlands shall be included within any lot lines.
 - F. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
 - G. The Final Site Plan shall contain the approval of the Sussex Conservation District.

- H. Construction, site work, grading and deliveries or removal of construction materials shall only occur Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.
- I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2004-55 – application of **J. MICHAEL WARING – MJR INVESTORS, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 76.85 acres into 100 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located northwesterly side of Road 297 (Mount Joy Road), 1,350 feet southeast of Road 308 (Cordrey Road)(Tax Map I.D. 2-34-29.00-42.00).

Mr. Abbott advised the Commission that this is the final record plan for a 99-lot cluster subdivision in an AR-1 district; that the Commission granted preliminary approval for 99 lots on October 16, 2006 and granted one-year time extensions on November 14, 2007, August 20, 2008, August 19, 2009 and July 14, 2010; that this application also received a time extension through Ordinance No. 2208; that the final record plan complies with the subdivision and zoning codes and the conditions of the preliminary approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve this application as a final. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1950 – application of **ERLIN I. RIVERA** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for parking commercial tractor trailers, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 9.59 acres, more or less, lying west of Road 516 (Concord Pond Road) 600 feet south of Road 525 (King Road)(Tax Map I.D. 2-31-12.00-152.00).

The Commission found that the Applicant had submitted a survey and site plan with his application; that the survey depicted an area to be set aside for a parking area; and a reduced boundary for the limits of the Conditional Use, 1.40 acres.

Mr. Lank advised the Commission that this application was received after the Applicant was given notice that the use was in violation of the Zoning Code; that a letter was sent to the

Applicant on December 14, 2011; and that notices of violation were sent on January 20, 2012 and on September 10, 2012.

The Commission found that on February 8, 2012 DelDOT provided comments that a traffic impact study was not recommended and that the current Level of Service “C” for Concord Road will not change as a result of this application. On February 16, 2012 DelDOT provided additional comments in the form of a letter which referenced that the Department has since spoken with the Applicant and were advised that the Applicant may want to have more than ten trucks per day to and from the site; that a traffic impact study would be warranted if more than 400 vehicles trips are generated per day (200 entering and 200 exiting or 50 trips per hour); that their expectation is that both the maximum number of trucks that the Applicant may want to park on the site and the maximum number of trucks that the County might find appropriate to this rural area are far lower than the DelDOT warrants; and that if the County finds that the proposed use to be otherwise acceptable, and can reach agreement with the Applicant on maximum numbers of truck trips per day and per hour that does not exceed DelDOT warrants, then the Department recommends that the County include those limits in their approval and proceed without a traffic impact study.

The Commission found that the Department had received an email voicing opposition to this application from Clementine L. Allen-Frazier voicing strong opposition to the application and referencing that this area is mainly a residential neighborhood and the noise of the tractors running all night disturbs the ability to sleep for those who reside here and need to go to work after a sleepless night; that even though the area is considered Agricultural Residential there is no disturbance during sleeping hours from the agricultural tasks; and that refrigerated trucks are loud and disturbing.

The Commission found that Erlin I. Rivera was present with Doug Williams, Surveyor with George William Stephens, Jr. and Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the site is intended for the parking and storage of trucks and trailers; that no refrigerated trailers are stored running on the site; that the applicant contracts for Allen Foods and other poultry operations; that they anticipate 10 to 12 trips per day; that the applicant currently has 6 trucks and trailers, and that the total number of trucks and trailers will not exceed 10 each; that the business operates seven (7) days per week; that no dumpster is needed on the site; that there is no need for septic or a porta-toilet; that there is no dwelling on the site; that no security is provided; that no signage is intended; that they deliver goods throughout the Mid-Atlantic region; that there will not be any scrap tires stored on the site; that they plan on keeping the site free of debris and dilapidated vehicles; that the trucks are not serviced on the site, they are currently service off-site; that the trucks are cleaned at plant sites; that the use will be limited to a 1.4 acre portion of the 9.59 acre site; that Apple Orchard Lane serves another property and this site; that the maximum number of drivers will not exceed 10 drivers; and that Mr. Williams confirmed that he is a licensed surveyor in Delaware and several other states and that he is the manager of the Georgetown office for the firm.

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

The Commission found that Edward Winder, an adjacent property owner, was present in opposition to this application and expressed concerns on behalf of his tenant that the tenant is complaining about noise, trucks running at all hours, doors slamming, music blaring, and that the tenant cannot sleep due to the noise.

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 #1953 – application of **THOMAS MILSPAW** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structure (2 Units), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.88 acres, more or less, lying west of Road 345 (West Beach Road) 0.4 mile north of Route 26 (Vines Creek Road)(Tax Map I.D. 1-34-7.00-81.04).

The Commission found that the Applicant provided a survey/site plan of the project depicting a building containing a garage with an apartment on each end.

The Commission found that on October 23, 2012 DelDOT provided comments that a traffic impact study was not recommended and that the current Level of Service “A” for West Beach Road will not change as a result of this application.

The Commission found that on January 4, 2013 the Department received comments from the County Engineering Department Utility Planning Division referencing that the site is located in the Vines Creek Planning Area; that wastewater capacity is not available at this time; that the proposed use will use an on-site septic system; that the project is not capable of being annexed into a County operated and maintained Sanitary Sewer District at this time; that when the County does provide sewer service, connection to the system is mandatory; that the County does not have a firm schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that a letter of support was received on December 13, 2012 from Parsons Brothers 2, LLC, adjacent land owners, voicing no objection to the application for multi-family use.

The Commission found that Thomas Milspaw was present and stated in his presentation and in response to questions raised by the Commission that he intended to build a pole building type structure with an apartment on each end; that he was advised by the County that multi-family use

was not a permitted use; that his brother-in-law is handicapped and has sold his dwelling on a neighboring property and is in need of a residence; that they are now proposing the two apartment type units; that the units are not intended to be rentals, but for family use; that he received a violation notice for not having a permit for a deck; that no more than two units are proposed; that the structure is 10 years old; that the structure was designed with two units in concept and approved by DNREC with one septic system and two drain fields; that the building is served by one electric meter; that no rent will be collected from family members; that family members will assist in the electric bill; and that the property will transfer in the future to family members.

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

C/U #1954 – application of **ROBERT A. HERMANSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for commercial/retail shop (handcrafted furniture/gifts and antiques), to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.306 acres, more or less, lying northwest of Route 48 (Zoar Road) 150 feet west of Road 315 (Deep Branch Road)(Tax Map I.D. 2-34-14.00-20.03 and 20.04).

The Commission found that the Applicant has provided a survey/site plan with his application.

The Commission found that on August 24, 2012 DelDOT had provided comments that the Department has no contention with the Applicant using an existing entrance from Route 48 for a 240 square foot workshop and antique store, with the understanding that the site shall have access from the existing entrance; that the site is to operate on Fridays and Saturdays from 10:00 a.m. to 6:00 p.m.; that the entrance shall require a 36” by 36” stop sign per DelDOT stop sign detail concerning the placement for commercial entrances; that if in the future the site proposes to change zoning, use, ownership, existing use or adds a new use that increases the existing site annual daily traffic, the property owner shall submit information to DelDOT and the entrance be re-evaluated by the Department to determine if any improvements are warranted based on the proposed site and usage changes.

The Commission found that on January 4, 2013 the Department received comments from the County Engineering Department Utility Planning Division referencing that the site is located in the North Coastal Planning Area; that the project is not capable of being annexed into a County operated and maintained Sanitary Sewer District at this time; that conformity to the North

Coastal 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 Robert Hermanson and Linda Hermanson were present and stated in their presentation that they built a shop to sell things that he makes and antiques that he refinishes; that he does not propose to have any employees; that he works part-time and hopes to sell some of the items; that the shop building only contains 240 square feet and only has electric service; that he and his wife live on the property; that he realizes that he could obtain a home occupation to sell items that he makes, but he wants to also sell items made by others; that business hours will not exceed Monday through Friday from 10:00 a.m. to 6:00 p.m. with no Sunday hours; that signage will not exceed 32 square feet per side; that he may install solar lighting on the sign; that Route 48 is not an emergency evacuation route; that all sales will be from the 240 square foot shop; that he will be preparing the items in his workshop to sell in the shop; and that the application includes both parcels that they own and allows the parking to be on both parcels.

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/Z #1724 – application of **CENTRAL STORAGE @ HARBESON, LLC** to amend the 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 Broadkill Hundred, Sussex County, containing 8.05 acres, more or less, lying north of Route 9 (Lewes Georgetown Highway) 500 feet west of Route 5 (Harbeson Road) and 700 feet east of Road 254 (Prettyman Road)(Tax Map I.D. 2-35-30.00-8.02).

The Commission found that on December 27, 2012 the Applicants provided an Exhibit Booklet which included a copy of the application form; a copy of the Deed to the property; a copy of the Beers Atlas map of Broadkiln Hundred; a copy of a page from the Zoning Ordinance referencing permitted uses in the CR-1 Commercial Residential District; a map of the Harbeson area depicting zoning classifications; a copy of the PLUS comments and responses; a reference to the Principals of Central Storage @ Harbeson, LLC; a site plan; support letters from Compass Point Associates and Community Bank; and proposed suggested Findings of Fact for this application.

The Commission found that on July 23, 2012 DeIDOT provided comments referencing that the Department had originally recommended that a traffic impact study be performed; that the basis for that requirement was due to the potential increase in trip generation as a result of rezoning the

8.05 acre parcel to Commercial Residential; that the Department has had further discussions with the Applicant and has learned that the Applicant wishes to only develop a portion of the site for 60,000 square feet of mini-storage space, which would generate 142 vehicle trips per day and 15 vehicle trips during the p.m. peak hour; that the Department would not require a traffic impact study be performed if the applicant is willing to place a deed restriction on the property, such that a traffic impact study would be required if the proposed development would cause the property's total trip generation to exceed 400 vehicle trips per day and/or 50 trips during any hour of the day; that an amendment or removal of the deed restriction would have to require DelDOT's concurrence; and that absent these conditions, DelDOT would recommend that the County require a traffic impact study to be performed for this application.

The Commission found that on January 4, 2013 the County Engineering Department Utility Planning Division provided comments referencing that the site is located in the North Coastal Planning Area; that wastewater capacity is not available; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal 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 the Department received three letters in opposition to this application. The letters, from Alva and Jeanette Wagner, John and Carol Kane, and Jacqueline Conklin, expressed concerns about the zoning changing; that they realize that once rezoned anything permitted in the commercial zoning would be permitted on this site; that they are concerned about the depreciation of property values; that the number of units have increased over the previous Conditional Use site plan; that one of the road locations should be moved from the perimeter to the interior between buildings; that lighting should be installed between units making lighting less offensive to neighbors; that the original Conditional Use did not permit outside storage of boats and RVs; that storage of boats and RVs is still a concern; that they would like to request that a landscaping plan be required, including tall fencing, to screen the adjacent residential property from the view of the mini-storage facility, which would be a safety feature benefitted by the owners and the neighbors; that the natural habitat area is beautiful and that they hope it can be preserved; that they hate to see trees removed; that the site is in an area with major traffic issues and it is anticipated that there will be more traffic issues; that DelDOT needs to do a major traffic study at this location before any action is taken on this application; and that landscape buffering should be included on the final site plan.

The Commission found that Mark Schaeffer of Central Storage @ Harbeson, LLC, and as a Licensed Real Estate Broker, was present with Eugene Bayard, Attorney of Morris, James, Wilson, Halbrook and Bayard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that Mr. Schaeffer has been involved with three (3) other storage projects, one in Dover, one in Long Neck, and one in Milford; that the site will be improved by removal of some dilapidated old buildings; that no wetlands will be disturbed; that they anticipate 15 vehicle trips per day, considered to be a good day in storage facilities for

vehicle trips; that three (3) homes exist across Beaverdam Branch; that the Sussex County Comprehensive Plan supports the rezoning; that the rezoning will enhance property values; that there are no stormwater issues; that a need exist for more storage units; that they are proposing to build approximately 60,000 square feet of storage space; that the number of vehicle trips anticipated will not negatively impact traffic; that DelDOT will require deletion of one of the existing entrances; that they are in agreement with DelDOT for a restrictive covenant limiting trips per day; that the project will be served with private well and septic; that eight (8) foot tall fencing will be provided and will include security gates and security cameras; that landscaping will be provided; that the project will require minimal lighting; that there will not be any pole lighting; that they are planning on having a resident manager on the site; that they had previously planted magnolia trees along the westerly boundaries; that the majority of the existing trees will be left undisturbed; that the original Conditional Use project was not developed due to the economic crash; that they cannot obtain funding for a Conditional Use project; that funds can be obtained for a commercially zoned property; that the zoning requested is the appropriate zoning for the use, and the trend of development taking place in the area; that the project will be built in phases, as needed; that approximately one-half of the project will be climate controlled; that according to the State Strategies the site is located in a Level 1 and Level 2 area; and that DelDOT creates warrants of control on uses and any change of use will require further review by DelDOT.

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.

In reference to the **TIME EXTENSION ORDINANCES:**

Mr. Robertson suggested that due to the similarity of the Ordinances scheduled for public hearings that the Commission holds one public hearing to discuss the Ordinances and then act on the Ordinances individually.

There was a consensus of the Commission to hold one public hearing and then to act on each Ordinance individually.

Mr. Wheatley introduced the titles of the following Ordinances:

AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS.

AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS, WITH A PROVISION FOR FURTHER EXTENSION UPON WRITTEN REQUEST.

Mr. Robertson stated that the current time extension Ordinance No. 2208 granted time extensions to January 1, 2013; that the County Council had three basis options: (1) do nothing and let them all lapse; (2) grant an additional uniform time extension of a certain length (for example, one or two years) to every application within this group; or (3) come up with a process to only allow an extension of a certain length (for example, one or two years) to viable applications, whereby the applicant must report back to the County seeking an extension; of the options referenced, (1) and (2) are self-explanatory; that if the Commission chooses to adopt another extension, the extension should be retroactive back to January 1, 2013; that option (3) gives everyone a blanket extension (for example, six months) to give everyone an opportunity to request, in writing, an additional longer extension; if a developer wants the additional extension, they would have to request it in writing to Planning and Zoning and include certain information detailing the status of the development and grounds for the request; the Commission would determine the level of information a developer should be required to provide with their request; that we took on the task of reviewing some other jurisdictions and that each municipality does it differently; and that it seems that there are projects that will go forward and some projects that will never develop.

The Commission discussed the ordinances; referenced proposed time frames of 1, 2, or 3 year extensions; that there may need to be administrative changes; and that there may need to be other ordinance changes.

Mr. Lank advised the Commission that since August of 2012 the Department has received 14 time extension requests for subdivisions, three (3) time extension requests for Conditional Uses, and one (1) time extension request for a residential planned community; that none of the requests could be granted since they fell under the conditions of Ordinance No. 2208, the time extension ordinance, which dead-ended on January 1, 2013; that the first five (5) of those requests were responded to and advised that neither the staff or the Commission had the authority to grant a time extension since Ordinance No. 2208 was in effect; that subdivision applications reviewed prior to the adoption of Ordinance No. 2208 included all major subdivisions applied for from January 1, 2001 through December 2011, a total of 478 projects; that approximately 100 of those applications could be affected without an additional time extension; that conditional use applications reviewed prior to the adoption of Ordinance No. 2208 included approximately 190 applications for many types of uses; that 49 conditional use applications may have terminated on January 1, 2013 without an additional time extension; that residential planned community applications were reviewed back to the 1970s; that there have been approximately 140 residential planned community applications, of which 16 applications may have terminated on January 1, 2013 without an additional time extension; that in all cases, if an application had preliminary

approval and the term of the preliminary approval terminated on January 1, 2013 the applications could be considered void; that if the applications had received final approval the project would have to be substantially underway on or before January 1, 2013, unless the project had a later termination date, since final approvals of subdivisions and residential planned communities have five (5) years to be substantially underway; conditional use have three (3) years to be substantially underway; that several projects have been purchased by adjoining property owners; one or two project have reverted back to farmland and have been approved for agricultural preservation through the Delaware Agricultural Lands Preservation Foundation; and other projects are intended to be farmed, not developed.

The Commission found that Joseph Conaway, present on behalf of SEDAC, the Sussex County Development Action Committee, and Rodney Wyatt, Director of Operations for Artesian Resources, were present in support of the adoption of a time extension ordinance that will provide additional time extension for developers, small business operators, utility companies, and others to get their projects substantially underway, and referenced that thousands of lots could be lost; that the economy is not back, but it is improving; that the demand is growing; that permits have increased; that a time extension ordinance will save a lot of projects and the cost to reapply; that other agencies impact projects by the cost and time it takes to get through the other agency processes; that the economy has impacted developers, buyers, the service industries, and retailers; that prior to introduction of these time extension ordinance proposals, SEDAC asked the County Council to consider a time extension of at least two (2) years; that some commercial projects have disappeared; that some farmers have purchased projects that have not developed; that sunseting of projects was originally supported and is not impacting projects that can't get started due to the cost and the economy; that SEDAC urges the Commission to support one of these two ordinances; that an ordinance, if adopted, should be retroactive back to January 1, 2013; that a time extension will allow utility companies to continue projects to serve the public with water, sewer, gas, electric and other infrastructure; that utilities have to plan ahead prior to developments taking place so that services can be provided; that it may take three years to plan ahead for infrastructure services; and that the utility companies support the need for more time.

Mr. Robertson also added that if the Commission is concerned about having to make decisions on whether a developer has done enough according to their written request, there could be a recommendation to modify the proposed ordinance. For example, an applicant would still be required to submit a written request with the information outlined in Section 4 A, B, C, and D, but there would not be any evaluation of that information. To accomplish this, the final paragraph of Section 4 would be modified to state "The Planning and Zoning Commission shall approve any written request submitted pursuant to this Ordinance at any regular meeting." The sentence that follows would be deleted. In other words, if an applicant submits a request in writing it would be granted, and all of the projects that are dead and no requests are made would come off of the County's books.

Mr. Robertson noted that, in summary, projects depend on the utility companies and the utility companies depend on the projects; that utilities plan on building in reasonable phases to serve the growing needs in areas developing; that the utilities look at regional areas with 10 years to 20 years growth projections; and that if projects sunset it impacts the utilities.

Mr. Conaway agreed and added that too many “paper” lots and the continued existence of lots on the County’s records that will never really get built (for example where the land has returned to agricultural production) has not been an issue to the members of his group in Sussex County.

Mr. Wyatt agreed and noted that on some of their project they have put in the required improvements for DelDOT, but is still dealing with DNREC trying to obtain approvals.

The Commission discussed the proposed Ordinances and there was a consensus of the Commission to support a blanket ordinance.

In reference to AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS:

Mr. Johnson stated that he would move that the Commission recommend a revision to the drafted ordinance with an additional time extension to January 1, 2016 and that the ordinance be retroactive back to January 1, 2013.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with a recommendation that the Ordinance Amendment be approved with a revision that an additional time extension go to January 1, 2016 and be retroactive back to January 1, 2013. Motion carried 5 – 0.

In reference to AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS WITH A PROVISION FOR FURTHER EXTENSION UPON WRITTEN REQUEST.

Mr. Smith stated that he would move that the Commission recommend denial of this drafted ordinance due to the administrative burden on the staff and the Commission.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with a recommendation that the Ordinance Amendment be denied for the reasons stated. Motion carried 5 – 0.

OTHER BUSINESS

The End Result Gym
CU #1940 Site Plan – U.S. Route 13-A

Mr. Abbott advised the Commission that this is a site plan for a fitness studio/gym located on 33,392 square feet; that this Conditional Use was approved on September 11, 2012 with 5 conditions; that no new improvements are proposed; that 7 parking spaces are proposed and a portion of the spaces are located within the front yard setback and are subject to site plan review; that the site plan complies with the conditions of approval; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

Cheer Center
CU #1947 Site Plan – Route 16

Mr. Abbott advised the Commission that this is a site plan for a one-story, 6,000 square foot Cheer Center; that this Conditional Use was approved on November 27, 2012 with 8 conditions; that the conditions of approval are noted on the site plan; that 120 parking spaces are required and 195 spaces are proposed; that 21 spaces are partially within the front yard setback and are subject to site plan review; that the building setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Burton seconded by Mr. Johnson and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

MDC Global, LLC
Preliminary Site Plan – U.S. Route 113

Mr. Abbott advised the Commission that this is a preliminary site plan for a 7,960 square foot medical office located on 2.76 acres; that the site is zoned C-1; that the setbacks meet the requirements of the zoning code; that 30 parking spaces are required and that 42 spaces are proposed; that the project will be served by on-site septic and well; that there are no wetlands on the site and the site is not located in a flood plain; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Schultze Property
CU #1930 Site Plan – Bennett Road

Mr. Abbott advised the Commission that this is a site plan for a multi-family dwelling structure (2 units) located on 8,030 square feet; that the site is zoned B-1; that this Conditional Use was approved on June 24, 2012 with 9 conditions; that the 9 conditions are noted on the site plan; that the Board of adjustment granted a variance for the front, side and rear yard setbacks on December 17, 2012; that 11 parking spaces are proposed; that 4 spaces are stacked spaces; that the parking spaces along Bennett Road back out into the street as do the spaces along Pennsylvania Avenue; that Ingress/egress to unit 1 is off of Bennett Road and ingress/egress to unit 2 is off of Pennsylvania Avenue; that DelDOT has issued a Letter of No Objection; that central sewer will be provided by Sussex County; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan along with a copy of the landscape plan.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

Fishkillers Food Vendor
CU #1936 Site Plan – Route 26

Mr. Abbott advised the Commission that this is a site plan for a food take out business located on 1.0 acre; that the site is zoned AR-1; that this Conditional Use was approved on September 11, 2012 with 7 conditions; that the 7 conditions are noted on the site plan; that the Board of Adjustment granted a special use exception on December 17, 2012 for the use of the trailer-type structure and granted a variance for the setback for the shed; that the setbacks meet the requirements of the zoning code; that 4 parking spaces are proposed; that DelDOT has issued a Letter of No Contention for the existing entrance to be utilized; that if preliminary site plan approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Meeting adjourned at 9:13 p.m.

