



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 24, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 24, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. Michael Johnson, 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. Johnson, and carried unanimously to approve the agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of March 10, 2011 as corrected. Motion carried 5 – 0.

CONSENT AGENDA

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

The Consent Agenda included:

Subdivision #2005-57 – Blackwater Creek, Inc.
Final – “Southview at Wild Pine Country Club” – Phase I

This is the Final Record Plan for Phase 1 of the “Southview at Wild Pine Country Club” cluster Subdivision. The Commission granted preliminary approval for 400 lots on October 26, 2006 and granted one-year time extensions on November 14, 2007, September 17, 2008, November 12, 2009, and a 6-month time extension on December 9, 2010. Phase 1 contains 54 lots. The Phase 1 Final Record Plan complies with the Subdivision and Zoning Codes and the Conditions of Approval. All necessary agency approvals have been received.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the Item on the Consent Agenda, as noted. Motion carried 5 – 0.

OLD BUSINESS

C/U #1862 – application of **NANTICOKE SHORE ASSOCIATES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to replace 260 mobile home lots with 367 seasonal rv camper sites to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, 138 acres, more or less, lying at the northeast of Long Neck Road (Route 22) 1 mile east of Pot Nets Road (Route 22C).

The Commission discussed this application, which has been deferred since February 24, 2011.

Mr. Johnson stated that he would move that the Commission recommend denial of C/U #1862 for Nanticoke Shores Associates, LLC for the following reasons:

1. The application is a request to transform 260 previously approved manufactured home lots that are in undeveloped areas of a manufactured home park into 367 seasonal RV camper sites. The areas to be used for seasonal RV sites are interspersed within the overall area of the manufactured home park and are not a completely separate section of it.
2. Seasonal RV sites are not compatible with manufactured home lots. There was testimony in the record that many of the manufactured home lots are the primary year-round residences of the park tenants. The creation of the seasonal RV camper sites would adversely affect the neighboring and surrounding manufactured home lots.
3. The creation of 367 seasonal RV camper sites is an unacceptable increase in density of 107 new lots or units in comparison with the existing 260 lots that are currently approved for the area.
4. Although DelDOT has determined that traffic will be decreased as a result of the planned development, DelDOT findings are based upon a yearly average. Instead, 367 seasonal RV camper sites will generate more traffic during the summer season when traffic congestion already exists in the Long Neck area than the approved 260 manufactured home units would.
5. No parties appeared in support of the application, and there was substantial testimony in opposition to it. Relevant testimony included: the effect on property values; increased traffic within the existing Park above and beyond what would have been generated by the 260 approved lots; concerns about security; the incompatibility of seasonal RV campers and their owners with year-round residents; the existing condition of the Park and its roads and amenities, and the worsening effect of the camp sites and their visitors on them all; and the expectation of the current homeowners and tenants that the Park would remain a manufactured home park as it is currently approved and used.
6. I am not satisfied that there is a need for additional RV camper sites in this area of Sussex County, especially if it results in a loss of manufactured housing sites.

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

C/U #1881 – application of **HAROLD R. ENNIS, JR. & DICK ENNIS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to operate businesses related to grass cutting, power washing, marine services and sales, and construction services to

be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, 1.5188 acres, more or less, lying southwest corner of Route 24 (John J. Williams Highway) and Route 277 (Angola Road).

The Commission discussed this application, which has been deferred since February 24, 2011.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1881 for Harold R. Ennis, Jr. and Dick Ennis, Inc. to operate businesses related to grass cutting, power washing, marine services and sales and construction services based upon the record made at the public hearing and for the following reasons:

- 1) The use started as a home occupation that has evolved with the success of the Applicant's businesses.
- 2) The site is appropriate for a Conditional Use, since it is at a lighted intersection of Route 24 and Angola Road.
- 3) The use is in a Developing Area according to the County's current Land Use Plan.
- 4) The proposed use, with the conditions placed upon it, will have no adverse affect on neighboring properties, traffic or the community.
- 5) This recommendation is subject to the following conditions:
 1. All parking on the site shall comply with County Parking Ordinances. The location of the parking areas and spaces shall be shown on the Final Site Plan.
 2. The Applicant shall comply with all DelDOT requirements regarding entrances.
 3. There may be one (1) lighted sign, not to exceed 32 square feet in size per side. The location of the sign shall be in accordance with County and State regulations, especially setbacks.
 4. All security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 5. There shall be no vehicle or boat parking in the setback areas fronting on Route 24 or Angola Road.
 6. There shall not be any off-season boat storage on the site other than boats for sale or boats that are being worked on by the Applicant's business.
 7. All areas for boat sales shall be designated on the Final Site Plan.
 8. No RVs or other vehicles shall be stored or sold from the site.
 9. A landscaping plan shall be included as part of the Final Site Plan.
 10. As stated by the Applicant, the hours of operation shall be from 8:00 a.m. until 5:00 p.m. Monday through Saturday, and 9:00 a.m. until 2:00 p.m. on Sundays.
 11. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 1 with Mr. Smith opposing the motion.

C/U #1873 – application of **WINE WORX, LLC** to consider the Conditional Use of land in a B-1 Neighborhood Business District for a winery/store to be located on a certain parcel of land

lying and being in Baltimore Hundred, Sussex County, containing 0.92 acres, more or less, lying southwest corner of Route 54 and Fenwick Shoals Blvd.

The Commission discussed this application, which has been deferred since March 10, 2011.

Mr. Smith stated that because this is the first application of its kind that he can recall, and because the effects of a fermenting and bottling operation should be reviewed if any change in the operation occurs, he has added a condition that any expansion shall require a public hearing.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1873 for Wine Worx, LLC for a winery based upon the record made at the public hearing and for the following reasons:

1. The use is consistent with the underlying zone, which is B-1 Neighborhood Business. It will be located within a B-1 shopping center and across the street from where the grapes are grown for the fermenting process.
2. The operation will have no affect on neighboring or adjacent properties, and will be contained entirely within the indoor premise that is the subject of this Conditional Use.
3. The use promotes agribusiness in Sussex County.
4. The use is located along Route 54, which is appropriate for B-1 uses and Conditional Uses of this type.
5. This recommendation is subject, however, to the following conditions:
 1. In conjunction with the Applicant's Farm Winery License issued by the Delaware Alcoholic Beverage Control Commission, this Conditional Use permits the fermenting, bottling and labeling of wine at the site.
 2. The Conditional Use shall be limited to the approximately 2,800 square feet shown on the site plan with shared parking of 55 spaces. Any expansion of the Conditional Use shall require the review and approval of the Sussex County Planning and Zoning Commission and the Sussex County Council through public hearings.
 3. The hours of operation shall be 10:00 a.m. to 8:00 p.m. seven (7) days per week.
 4. Signage shall be in accordance with the sign regulations that exist for the B-1 Neighborhood Business District.
 5. All Federal and State regulatory requirements shall be met.
 6. The Applicant shall comply with all requirements of the Sussex County Engineering Department regarding any discharged wastewater into the County's Sewer District.
 7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to 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 5 – 0.

C/U #1883 – application of **MARGARET TAYLOR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structures (6 units) to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County,

containing 0.989 acres, more or less, lying southeast of Bi-State Boulevard (U.S. Route 13-A) and Horsey Road (Road 460).

The Commission discussed this application, which has been deferred since March 10, 2011.

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

ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV, § 115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY.

The Commission discussed this Ordinance Amendment, which has been deferred since March 10, 2011.

Mr. Burton expressed some concern about the lack of a public hearing if a neighbor objected to a proposal.

Mr. Johnson stated that he would support this type of Ordinance.

Mr. Ross stated that he agreed and supports this type of Ordinance.

Mr. Wheatley expressed some concern about controlling repeat offenders.

Mr. Smith stated that he has some concern about the responsibility being put on the Director, rather than the Board of Adjustment.

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

PUBLIC HEARINGS

C/U #1884 – application of **MICHAEL SCHIMMEL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for landscaping business to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 6.1694 acres, more or less, lying northwest of Staytonville road (Road 224) 850 feet northeast of Union Church Road (Route 42).

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

The Commission found that on November 23, 2010 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 “A” of Staytonville Road, aka Fleatown Road, will not change as a result of this application.

The Commission found that on March 21, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex Planning Area #1; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the 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 Michael Schimmel was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he has a growing business and would like to locate it at his proposed home location; that the site is proposed to be improved by a dwelling, a pole building and area for parking vehicles and equipment; that he is not utilizing the property currently; that he has a contract to purchase the property if the zoning is approved; that he has not spoken to the area residents, except for the property owners daughter; that he has eight (8) employees; that adequate space is available on the site for parking of vehicles and equipment; that he will maintain a minimal amount of mulch for job sites; that there will be no storage of chemicals; that the tree line buffer will screen the site; that seasonal business hours will be from 7:00 a.m. to 6:00 p.m. five (5) day per week, with some Saturday hours to complete jobs delayed; that he has received a septic feasibility for septic; that his business is currently being operated from a leased shop on the site of Eastern Ornamentals near Argo's Corner; that he only needs minimal outside storage on the site for mulch, and parking of vehicles and equipment; that he can place a dumpster behind the pole building and the dumpster area can be fenced for screening; that he maintains a limited storage of pesticides for job-site use, not for sale; that he has no intent to grind mulch; and that he will be maintaining his lawn mowers and other equipment in the pole building.

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.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1884 for Michael Schimmel for a landscaping business based on the record made at the public hearing and for the following reasons:

- 1) The use as a landscaping business is consistent with the underlying AR-1 Agricultural Residential zoning of the property.
- 2) The use is appropriate for a property of this size, and the Applicant's intent to reside on the property.
- 3) The use, with the conditions placed upon it will have no adverse affect on neighboring properties or traffic in the area.
- 4) No one appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
 1. The use shall be limited to the Applicant's landscaping business.
 2. A vegetated buffer shall be established as shown on the Site Plan. The vegetation shall be planted to screen the use from neighboring properties. The buffer shall be established within 90 days of the approval of the Final Site Plan for the use.

3. The hours of operation shall be from 7:00 a.m. until 6:00 p.m. Monday through Saturday.
4. All parking areas shall be shown on the Final Site Plan.
5. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
6. Any storage of stone, mulch, dirt or similar materials shall be in bins, and the location of those bins shall be shown on the Final Site Plan.
7. Any chemicals used in the business shall be stored inside of the building.
8. No retail sales shall occur from the site.
9. No mulching or stump grinding shall occur on the site.
10. The location of any dumpster shall be shown on the Final Site Plan and shall be screened from view of neighboring properties.
11. One (1) lighted sign, not exceeding 32 square feet per side, may be permitted.
12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried 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 5 – 0.

C/U #1885 – application of **JAMES MERSHON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a bait and tackle shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.352 acres, more or less, lying southeast of Roxana Road (Route 17) 990 feet northeast of Zion Church Road (Route 20).

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

The Commission found that on August 30, 2010 DelDOT provided comments in the form of a Support Facilities Report which references that a Traffic Impact Study was not recommended and that the current Level of Service “C” of Roxana Road will not change as a result of this application.

The Commission found that on March 21, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Roxana Planning Area; that the use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the South Coastal Area Planning Study 2005 Update will be required; that the proposed bait and tackle shop is not in an area where the County has a schedule to provide sewer at this time; that when the County provides sewer service, it is required that the on-site septic system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

The Commission found that James Mershon was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he purchased the property and built his residence; that he is involved in the construction industry, and wants to

start a new business; that he is proposing a bait and tackle shop; that he has experience in the tackle shop business since his father operated the same type of business in the past; that a dumpster already exists; that trees have already been planted for screening; that any trees that may die will be replaced; that the intended use is primarily seasonal, but will be operational year round; that he has no intent to offer firearms for sale; that no boat sales are intended; that a neighboring property owners operates a towing service; that the business will be open seven (7) days per week; that the seasonal hours will be from 5:00 a.m. to 8:00 p.m.; that there will not be any outside displays; that all bait will be stored indoors; that he would like to have a lighted sign; that there will be no food sales, other than vending machines; and that security lighting already exist and that the lighting is downward illuminated and screened.

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.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1885 for James Mershon for a bait and tackle shop based on the record made at the public hearing and for the following reasons:

- 1) The use will be very similar to a home occupation, and the Applicant resides on the property.
- 2) The use will not have any adverse impact on neighboring properties, the community or traffic.
- 3) The use will be limited to a building that is existing on the site.
- 4) No parties appeared in opposition to the project.
- 5) This recommendation is subject to the following conditions:
 1. The use shall be limited to the Applicant's bait and tackle shop.
 2. The existing vegetated buffer around the area of the shop shall be planted with additional plantings to fill it in and screen the shop from view of neighboring properties.
 3. The hours of operation shall be between 5:00 a.m. and 8:00 p.m., seven (7) days per week.
 4. One lighted sign, not to exceed 32 square feet per side, may be permitted.
 5. Any security lighting shall be screened so that it does shine on neighboring properties or roadways.
 6. Any dumpsters depicted on the site plan shall be screened from view of neighboring properties or roadways.
 7. No food sales, other than vending applications, shall occur on the site.
 8. No more than two (2) boats or personal watercraft shall be advertised for sale on the site at any one time.
 9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to 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 5 – 0.

C/Z #1703 – application of **TKC C, LLC** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 4.39 acres, more or less, lying west of U.S. Route 13, 413 feet north of Route 46 (Elks Club Road).

The Commission found that the Applicants provided a survey of the property, a copy of their public hearing notice, a map of the area showing the existing zoning and an aerial photograph of the area.

The Commission found that on December 23, 2010 DelDOT provided comments in the form of a letter and a Support Facilities Report which reference that given the size of the parcel, commercial uses could be developed that generate up to 3,126 trips during a typical weekday, 121 trips during the morning peak hour and 316 trips during the evening peak hour; that based on those volumes, the development would warrant a Traffic Impact Study; that DelDOT volume warrants for such a study are 400 trips per day and 50 trips per peak hour; that DelDOT Standards and Regulations for Subdivision Streets and State Highway Access provides that if a development will generate fewer than 2,000 trips per day and fewer than 200 trips in any hour of the day, the developer may, at their discretion, pay an Area-Wide Study Fee in lieu of conducting a Traffic Impact Study; that they have received a letter from the developer indicating a willingness to pay the Area-Wide Study Fee; that if the developer can limit the development as to not generate more than 2,000 trips per day or 200 trips in an hour of the day, DelDOT would accept their payment of the fee in lieu of requiring the Traffic Impact Study; that the fee is calculated at ten dollars per daily trip, and would be paid in conjunction with the Initial Stage Fee associated with the review of their site plan; that payment of the fee would not preclude their responsibility for funding or building any needed off-site improvements identified in the plan review process; that it also does not affect our ability to require a traffic operational analysis to address concerns identified in that process; that the respective property is adjacent to U.S. Route 13, and is therefore subject to DelDOT's Corridor Capacity Preservation Program; that the main goal of that program is to maintain capacity of the existing highway; that according to the Office of State Planning Coordination's Strategies for State Policies and Spending document, the property is located within a Level 1 Investment Area; that in this area where the population is concentrated, State policies will encourage redevelopment and reinvestment; and that DelDOT will permit the property owner to develop one rights-in/rights-out entrance along U.S. Route 13. Attached to the letter is a copy of a letter from The Keith Corporation referencing the Area-Wide Study Fee and a copy of a Support Facilities Report, dated December 9, 2010.

The Commission found that on March 21, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in Western Sussex Seaford Growth Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County expects to provide sewer service; and that a concept plan is not required.

The Commission found that Beth Livingston was present on behalf of The Keith Corporation and stated in her presentation and in response to questions raised by the Commission that the rezoning requested is to allow them to sell the property for development of the site for a new business; that the parcel to the north is a Conditional Use site for Tractor Supply; that the parcel south of the site is vacant; that the Applicant's developed the Tractor Supply site; that U.S. Route 13 is a major thoroughfare; that the Applicants are aware that the site is located in a Combined Highway Corridor Overlay Zone; and that the rezoning will attract business uses to the site.

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.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1703 for TKC C, LLC for rezoning from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) The area is appropriate for commercial zoning based upon its frontage on U.S. Route 13 and its proximity to other commercially zoned properties and the City of Seaford.
- 2) The proposed zoning will not have an adverse impact on the neighboring properties or communities.
- 3) The Applicant will meet or exceed all DelDOT and Highway Corridor requirements.
- 4) CR-1 Commercial Residential zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the project along U.S. Route 13 falls within the stated purpose of the CR-1 Commercial Residential District.
- 5) No parties appeared in opposition to the application.

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 stated. Motion carried 5 – 0.

Subdivision #2010-7 – application of **A.J. BIERMAN, BIERMAN FAMILY, LLC**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 55.059 acres into 47 lots, located northwesterly side of Road 446 (Beaver Dam Branch Road) 525 feet, southwesterly of Road 447 (Johnson Road).

Mr. Lank advised the Commission that there is an error in the Hundred referenced and that it should be Broad Creek Hundred.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 21, 2011 is a part of the record for this application; that the Applicant submitted an Exhibit Booklet on March 9, 2011 that is a part of the record; that DNREC issued a septic feasibility statement on December 2, 2010 indicating that the site is suitable for individual on-site septic

systems; and that DelDOT issued a Letter of No Objection for the entrance location only on December 2, 2010.

Robert Witsil, Attorney and Tim Filasky, P.E. with Karins and Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this site was previously the subject of Subdivision #2005 – 21 for 41 lots; that that application received preliminary approval but was subsequently withdrawn by the applicant since there were storm water management concerns; that the storm water management concerns have been addressed and that there is an outfall for this project; that this project is awaiting acceptance into the L and W Tax Ditch District; that 47 single-family lots are proposed on 55.0-acres; that all lots exceed three-quarters of an acre in size; that the lot sizes comply with the AR-1 zoning district; that the site does not contain any wetlands and is not located in a flood plain; that the applicant will comply with all recommendations made by the Technical Advisory Committee; that Tab #1 of the Exhibit Booklet depicts an aerial photograph of the site and surrounding area; that the site is located in a rural area; that it is anticipated that the homes will be in the upper \$200,000 to \$300,000 price range; that the proposed dwellings will be stick built or modular homes; that manufactured homes will not be permitted; that the project will be similar to Shiloh Farms; that the site is located in a Level 4 investment area; that DelDOT has determined that no major road improvements will be required; that the applicant will be required to install a 2-inch overlay on Johnson Road; that on-site septic and wells are proposed; that the site contains 10.8-acres of open space; that the site is located within the Laurel School District; that fire protection is provided by the Laurel Fire Department and police protection is provided by the Delaware State Police; that the proposed subdivision will not have a negative impact on surrounding property values; that at this time, sidewalks are not proposed but if they are required, the applicant is requesting that they only be required on one side of the streets; that there is one entrance to the project; that a proposed entrance off of Beaver Dam Branch Road was eliminated by DelDOT; that the amenities will include a playground, picnic tables and a bar-b-que area; that Del DOT issued a Letter of No Objection for the proposed entrance off of Johnson Road; that storm water management ponds will be wet ponds since an infiltration system will not work; that the engineers have been working with the Sussex Conservation District on the storm water management design; that the subdivision is a standard subdivision; that the project is compatible to the area; that the project will be restricted and utilizes good land use planning; that the L and W Tax Ditch is across Shiloh Church Road; that there is a small depression located on Lot 41 and this will require judgment in locating and designing the septic system; that the playground could be relocated to a more centralized location; that a bus shelter will be located near Lot 47; that the wet ponds are designed larger than needed to hold water; that the previously approved plan was for 41 lots which were larger than what is proposed; that the applicant has petitioned the court for inclusion into the L and W Tax Ditch District; summarized the items referenced in Section 99-9C that were explained in the Exhibit Booklet; and submitted proposed findings of fact and conditions of approval into the record.

No parties appeared in support of this application.

Robert Ward, Alan Whaley, Mary Beth Burke, Vince Bonowicz, Jerry Hickman, Mike Ellingsworth, Helen Cook, Todd Mitchell, John Theofiles, Beverly Gray, Donald Steen, Michael Tyler, Sharon Ward, Michelle Harrington and Ron Burke were present in opposition to this

application and advised the Commission that the project will increase traffic in the area; that the existing conditions of the roads in the area are damaged due to frost, rain and ice; that the project only has one entrance; that there are drainage problems in the area; the types of homes that are proposed could be less than what is already in the area; concerns about septic designs; that a tax ditch tax will be required; that the improvements required for Johnson Road could lead to a taking of property; that there will be run-off onto neighboring properties; safety concerns for children in the area; that changes in the grade will lead to run-off and more flooding in the area; that the soils in the area contain clay; that this is the third time that a project has been designed for this site; that there are available lots in the area already; that all of the lots in the area are greater than 1 acre; that the water table in the area is high; that they have concerns about the location of the proposed playground; that motorist speed on the roads in the area; that the roads are unmarked and have no shoulders; that the wooded areas have been cut and are causing drainage problems; that the project will cause more littering in the area, trespassing; that sidewalks should be required; that the Commission needs to consider the cumulative impact on the area; questioned the size of homes proposed; and submitted photographs of the area.

The Commission found by a show of hands that no one appeared in support of the application and that 22 people were present in opposition.

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

Mr. Ross stated that he would move that the Commission defer taking action on Subdivision #2010 – 7 for A.J. Bierman and Bierman Family, LLC and that the Commission leave the record open for receipt of the following information:

1. Written confirmation that all approvals have been received for acceptance of the property into the L and W Tax Ditch District.
2. Written confirmation of whether DelDOT has required the access to adjoining Lots 16 and 17 must be by shared access on the applicant's property and not directly onto Beaver Dam Branch Road.
3. Written confirmation of whether an easement exists, or will be established, for the shared access entrance of Lots 16 and 17 across the applicant's property.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to defer action and to leave the record open for the reasons stated. Motion carried 5 – 0.

Subdivision #2009-10 – application of **H. P. LAYTON PARTNERSHIP** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 52.97 acres into 49 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located west of Round Pole Bridge Road (Road 257), 1.050 feet north of Cave Neck Road (Road 88).

Mr. Lank advised the Commission that action was tabled on August 26, 2010 so that the applicant could go to PLUS with the Office of State Planning Coordination for comments which would require the applicant to respond to the PLUS comments and for the Office of State

Planning Coordination to give a final response and once the information was received, the public hearing would be reopened for the purpose of reviewing the PLUS comments.

Mr. Robertson advised the Commission that if it so chooses, there would have to be a motion to move this matter from the table and to continue with the public hearing; and assuming that happens, he wants to remind everyone that the continuance is limited to the PLUS comments and the issues raised by the PLUS comments for everyone involved.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to lift the application from the tabled status and to continue the hearing. Motion carried 5 – 0.

Mr. Robertson advised the Commission that Mr. Abbott sent a packet containing a copy of the minutes of August 26, 2010, Environmental Resources, Inc. response to the PLUS comments dated December 1, 2010, Engineering Consultants International, LLC response to the PLUS comments dated December 30, 2010, and a copy of the Office of State Planning Coordination 's final response to the applicants response to the PLUS comments dated February 10, 2011 and that these would be a part of the record for this application.

Mr. Abbott read a letter received from the Nature Conservancy in reference to the PLUS comments regarding buffers.

Jim Fuqua, Attorney, Sam Burke and Lawrence Burke, Applicants, Ken Kullman, project manager, and Ed Launay of Environmental Resources, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is for 49 single-family lots located on 59 acres; that the site is located on the west side of Round Pole Bridge Road east of Milton and is zoned AR-1 Agricultural Residential; that the purpose of this continuance is for the purpose of addressing the PLUS comments; that the site is located in Investment Level 2, 3 and 4 according to the State's Strategies for Spending; that the Level 4 area of the site contains wetlands that will be preserved with a 50-foot buffer; that the remainder of the site is in Levels 2 and 3; that the Level 2 area is a growth area in both the county and state plans; that the Level 3 area is where growth is encouraged for the future; that the 2008 Comprehensive Land Use Plan references the site being in the Milton Town Center district which is designated as a growth area; that the comprehensive plan permits significant growth to be clustered around municipalities in the Town Center districts in unincorporated area beyond municipality boundaries; that a wide range of housing types are permitted in the Town Center District; that the proposed density is less than the allowable density permitted; that 49 lots will not cause a significant impact to traffic in accordance with DelDOT policy; that the applicants have contributed to a required fee to the DelDOT area wide study program; that the applicant has complied with all of DelDOT's requirements; that a wetland delineation was performed by Environmental Resources, Inc. using the three parameter approach required by the United States Army Corps of Engineers; that a study of soils, vegetation and hydrology of the site was performed; that a survey of the wetland delineation report was prepared and submitted to the Philadelphia Army Corps of Engineers District Office; that there are 8.43 acres of federally regulated wetlands on the site which are located along the Broadkill River and two streams that drain from the east; that no wetlands are located within any lot lines; that a 50-foot buffer is proposed from all wetlands; that the buffer has been expanded

from the federally regulated wetlands; that in referenced to Total Maximum Daily Loads, the project has been designed and will be constructed utilizing Best Management Practices; that no on-site wastewater disposal systems are proposed; that Tidewater Environmental Services owns and operates a wastewater treatment facility in the Town of Milton; that Tidewater is willing and able to provide sewer to this development from that facility; that central sewer reduces the total maximum daily load impacts; that a public water service area has been granted to Tidewater through a CPCN; that the comments from the Office of the State Fire Marshal are standard comments and the applicants will comply with all water requirements and access requirements; that the agricultural use protection deed restriction and agricultural setbacks will be met to comply with Department of Agriculture comments and comply with State and County laws; that all items addressed to this point are requirements by State regulatory agencies; that the additional comments made by PLUS are under a heading of Recommendations/Additional Information; that this section includes a list of site specific suggestions that are intended to enhance the project; that these suggestions have been generated by the State Agencies based on their expertise and subject area knowledge; that these suggestions do not represent State code requirements; that they are offered here in order to provide proactive ideas to help the applicant enhance the site design; that it is hoped but not required, that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project; that the Comprehensive Land Use Plan is law; that the State has indicated that portions of the site are the site of a brick-making operation that opened between 1887 and 1929; that on a 1937 aerial photograph, the main brick-making facility once occupied approximately two acres located along the Round Pole Branch Road and the Queen Anne Railroad right of way; that the current owners are appreciative of the fact that the brick-making operation that once occurred on the site may have relevance to the social and economic history of the area, the owners are willing to allow qualified archaeologists to access the remains of the brick-making operation for study; that they have reviewed the 1937 aerial photograph along with a 1906 U.S. Geological Survey map, that there is no evidence to a landing site on the subject property; that it appears that there was a landing in the area approximately 0.5 mile to the west of the subject site; that tidally-flowed forest wetlands occur between the edge of the Broadkill River at this location; that no potential historic landing site onto the Broadkill River physically exists; that the aerial photograph did not reveal the presence of a sailor's path either; that the remains of the brick-making operation are now more than 80 years old and overgrown with vines and trees; that the existing structures are unstable and falling down; that in order to promote and enhance local history, the applicants will assist or facilitate placement of an official historical marker recognizing the past brick-making operation at the site; that the locations of State regulated wetlands have been placed on the plans in accordance with Delaware Tidal Wetlands Map #DNR-134; that no lot lines are within the wetlands; that there will be one wetland crossing that will probably use a culvert casting with a pipe; that no lot lines are within any subaqueous lands; that a 30-foot forested agricultural buffer is proposed around the perimeter of the property; that a total of 22.5 acres of the site are dedicated to open space which will remain forested; that roads and storm water management areas involve approximately 7 acres; that there is no need for clearing for individual wastewater disposal systems; that there are Atlantic White Cedars, Scrub Shrub Forest on the site; that these will not be impacted; that the uplands are well drained soils; that run-off will be diverted to the natural tributaries on the site; submitted proposed findings of fact and conditions of approval into the record; that the applicant has addressed concerns raised in the PLUS comments; that the design has incorporated suggestions made by the PLUS agencies; that the area is designated by the State and County as a

growth area; that the proposed density is less than the density permitted; that the project will be served by central sewer and central water; that the use is a permitted use in the AR-1 zoning district; that the applicant's family has owned the property since 1932; that it has been in the family for 79 years; that the application exceeds all ordinance requirements and is entitled to approval; that the bridge near lots 45 and 46 will have a box culvert; that the culvert will not retain water; that the site has natural drainage; that storm water management will handle drainage; that the clay pits currently have water in them; that run-off will fill and then overflow the pits and that the run-off will be treated for quality before flowing to the natural tributaries.

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

John P. Reed was present in opposition to this application and advised the Commission that he disagrees with the applicants about the landing and sailor's path; that he can show where these are located on the site; that there are drainage problems in the area; that water comes from Cave Neck Road, Diamond Horse Road and from Sussex Electric; that more pavement and buildings will cause more run off problems in the area; that the branch has expanded over the years; that the developers will clear cut the site causing more run off; that the clay pits on the site have been used for dumping purposes; that all of the homes will sit on top of the pits; and that a pipe on Road 88 has already been replaced.

Michael Tyler, President of the Citizens Coalition read and submitted written comments.

Johnny Hopkins advised the Commission that there are drainage problems in the area; that the proposed 50-foot buffer is not sufficient; that the Broadkill River will significantly widen due to run off; that water already backs up in the area; and that the project needs to be downsized.

Linda Rogers advised the Commission that the site is not located in the Milton Town Center District according to the Town of Milton's Comprehensive Land Use Plan; that they operate an equestrian facility on an adjoining parcel; that the proposed entrance location will cut off access to their property; that there are drainage problems in the area; and that as proposed, this is over development of the site.

Kevin Burdette advised the Commission that the plans that were submitted to PLUS are not the same plans that the Commission reviewed in August 2010; that the previous plan called for on-site septic systems and now central sewer is proposed; that there are inconsistencies with DelDOT's Letter of No Objection and the fees that the applicants paid; that there are not 50-foot buffers from all wetlands as stated; and that the site does not show a pump station for the proposed central sewer.

Mary Jane Simpler questioned why her notices of the hearing were mail returned.

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

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

OTHER BUSINESS

Coastal Club

Revised Master Plan – Road 285 (Beaver Dam Road)

Mr. Abbott advised the Commission that this is a revised master plan for the Coastal Club residential planned community; that the original master plan was approved by the Commission on November 30, 2005; that Phase 1 received final site plan approval on January 19, 2007; that this revision is for the single-family lots being modified to avoid lots directly backing up to one another; that drainage swales and drainage structures will be located between the lots in the open space areas at the request of the Sussex Conservation District; that the revised plan also eliminates the on-site waste water disposal and treatment plant that was proposed on-site; that Tidewater Environmental Services will still provide central waste water for the site but it will be from the Wandendale Wastewater Treatment Plant; that the parking configuration for the community center has been revised; that the last revision deletes 4 townhouse units and replaces those units with 4 single-family lots; that 630 total units are still proposed and permitted; that there are now 416 single-family lots and 214 townhouse units proposed; that the setbacks for the single-family lots are 20 feet front yard and ten feet side and rear yard; that the maximum building length, setbacks, building separations and aggregate yards for the townhouses meet the requirements of the zoning ordinance; and that the Commission was previously provided a copy of the revised master plan and a letter explaining the request.

Mr. Johnson questioned if the therapeutic horseback-riding academy is still proposed and what is in the middle of the project.

Rich Polk, P.E. with Vista Design Inc. was present and advised the Commission that the horseback riding academy is still proposed; that the applicant's of the riding academy are aware that the conditional use approval has expired and will be refilling the application at a future date; and that the large open area in the middle of the project is the buffer area for the former bald eagle nesting site; that the eagle is no longer on the site, but the buffer will remain as submitted.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to approve the revised master plan as submitted. Motion carried 5 – 0.

Twin Cedar GR/RPC and CR-1

Master Record Plan – Route 20 (Zion Church Road)

Mr. Abbott advised the Commission that this is the master plan for a 199-unit residential planned community located on 58.55-acres; that this rezoning was approved on July 20, 2010 with 17 conditions; that the conditions of approval are referenced on the master plan; that the residential community will contain 120 apartment/condo units, 45 townhouse units and 34 duplex units; that the commercial site contains 38,175 square feet of retail located on 5.79-acres; that the required parking has been met; that the project will be developed in 4 phases; that phase 1 is for the commercial area, phase 2 for the 120 apartment/condo units, phase 3 for the 45 townhouse units and phase 4 for the 34 duplex units; that the intent of the master plan is to depict how the project

will be developed; that each phase will be subject to the review and approval of the Commission; and that the Commission was previously provided a copy of the master plan.

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

Roxana Athletic Club
CU #1750 Site Plan – Route 20 (Pyle Center Road)

Mr. Abbott advised the Commission that this is a site plan for an athletic complex located on 8.22-acres; that the conditional use was approved on October 28, 2008 with 7 conditions; that the Commission granted one-year time extensions on November 12, 2009 and November 10, 2010; that the approved use needs to be substantially underway by October 28, 2011 or the application will be voided; that the site addresses the 7 conditions of approval; that the site plan includes an indoor recreation/office building, a swimming pool, a fitness station, 2 tennis courts, a soccer/lacrosse field, bleachers and a walking trail; that the setbacks meet the requirements of the zoning code; that on-site septic and well are proposed; that 58 crusher run parking spaces and 23 grass overflow parking spaces are proposed; that the developer is requesting a waiver from the requirement of the parking area being paved; that all agency approvals have been received; and that the Commission was previously provided a copy of the site plan and a letter requesting a waiver from the parking requirements.

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

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to grant a waiver for the parking requirements and to allow the parking area to be crusher run and grass for the overflow parking. Motion carried 5 – 0.

Susan Pressley
2 Lots on 50' Easement – Road 498

Mr. Abbott advised the Commission that this is a request to subdivide a 7.92-acre parcel into 2 parcels with access from an existing 50-foot easement; that the 50-foot easement was approved by the Commission in 1999 to serve as access to another lot owned by the applicant; that one lot will contain 0.75-acre and it has an existing dwelling located on it; that the residual lands will contain 7.17-acres; that if the request is approved, this would make three lots having access from the 50-foot easement; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision; and that the Commission was previously provided a sketch drawing of the request.

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

Heirs of Frances E. Rogers

5 Lots and 50' Easement – Route 24 and Walt Carmean Way

Mr. Abbott advised the Commission that this is a request to create a 4.92-acre parcel with access from a 50-foot easement off of Walt Carmean Lane, which is a privately maintained but dedicated to the public use easement; that there will be 5 parcels that will be conveyed as extensions to five existing parcels; that 4, 0.75-acre parcels are also proposed along Walt Carmean Lane; that the intent of the subdivision is to settle an estate; and that the Commission was previously provided a sketch drawing of the request.

Mr. Johnson advised the Commission that he visited the site; that the existing easement is a mix of stone, asphalt, and gravel; that he has concerns about the type of improvements the easements are required to meet; that he has concerns about the maintenance of these easements; and that the request should be subject to a public hearing.

Motion by Mr. Johnson, seconded by Mr. Smith and carried unanimously to deny the request as submitted and require the request to go through the major subdivision process. Motion carried 5 – 0.

Meeting adjourned at 10:15 p.m.