



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF APRIL 28, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 28, 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, and Mr. Lawrence Lank – 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 April 14, 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 #2007-36 – John H. Ferris & Others
Final – “Ferris Courtyard” Subdivision

This is the final record plan for a 7-lot standard subdivision application. The Commission granted preliminary approval for 7-lots on June 25, 2009 with 11 conditions. The site is zoned MR Medium Density Residential. The development will be served by central sewer and water. The Final Site Plan complies with the conditions of approval and all agency approvals have been received.

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

OLD BUSINESS

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.

Mr. Ross stated that he would move that the Commission recommend denial of C/U #1883 for Margaret Taylor for 6 multi-family dwellings units at this time based upon the record and for the following reasons:

- 1) While there was evidence presented that certain structures and uses predated zoning, the record is unclear as to which of the structures contained legally non-conforming dwellings that are entitled to remain without the necessity of a Conditional Use approval.
- 2) Section 115-202 of the Zoning Code states that the Board of Adjustment has the authority to resolve any uncertainty as to whether a use is legally non-conforming. So, while it appears to me that three dwelling units may have been legally non-conforming, the Applicant should get that determination first, since it affects the outcome of the pending Conditional Use application for more than one dwelling on the property.
- 3) For these reasons, I move that we recommend denial of C/U #1883 for Margaret Taylor for multi-family dwellings at this time.
- 4) I further recommend that the Applicant seek a determination from the Sussex County Board of Adjustment as to the number and location of any non-conforming dwellings on the property before seeking any more Conditional Uses for additional dwellings on the property.

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

C/U #1886 – application of **CLARENCE A. EDGENS, III** to consider the Conditional Use of land in GR General Residential District for hvac business and multi-family dwelling structures (2 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.37 acres, more or less, lying northwest of Road 305 (Hollyville Road), 3,330 feet south of Road 48 (Zoar Road).

The Commission discussed this application, which has been deferred since April 14, 2011 to allow Mr. Robertson the opportunity to review any restrictive covenants that go with the property.

Mr. Robertson advised the Commission that he has reviewed the deed restrictions; that restriction #4 references that “No commercial activity can be engaged in, except for an in home office and only then with the approval of all governmental agencies that regulate same. (Also prohibited is the storing or working on of stock or race cars)”;

that restriction #2 references that “The property shall not be subdivided”; and that the Commission should move cautiously when deed restrictions exist.

Mr. Johnson stated that he will move that the Commission recommend denial of this application based on the restrictive covenants that prohibit commercial uses on this parcel.

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 reason stated. Motion carried 5 – 0.

C/U #1888 – application of **MICHAEL HENDERSON** to consider the Conditional Use of land in AR-1 Agricultural Residential District and a GR General Residential District for a marine services and boat storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 6.81 acres, more or less, lying northwest of Road 305 (Hollyville Road) across from Road 306 (Inland Bay Road).

The Commission discussed this application, which has been deferred since April 14, 2011 to allow Mr. Robertson the opportunity to review any restrictive covenants that go with the property.

Mr. Robertson advised the Commission during the discussion on C/U #1886, that he has reviewed the deed restrictions for both C/U #1886 and this application and that restriction #4 references that “No commercial activity can be engaged in, except for an in home office and only then with the approval of all governmental agencies that regulate same. (Also prohibited is the storing or working on of stock or race cars)”; that restriction #2 references that “The property shall not be subdivided”; and that the Commission should move cautiously when deed restrictions exist.

Mr. Johnson stated that he will move that the Commission recommend denial of this application based on the restrictive covenants that prohibit commercial uses on this parcel.

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 reason 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).

The Commission discussed this application, which has been deferred since August 26, 2010, the original public hearing date, March 24, 2011, the reopening of the public hearing for the purpose of the review of the PLUS Preliminary Land Use Service comments and responses, and April 14, 2011, the latest discussion of the application.

Mr. Smith stated that he would move that the Commission rescind the vote taken on April 14, 2011 to grant preliminary approval with conditions and limitations for Subdivision #2009-10 for H.P. Layton Partnership.

In support of this motion, Mr. Smith explained that during the April 14, 2011 meeting, he voted against the motion to approve the Subdivision with limitations because he wanted more time to consider the motion and the proposed limitations on the development of certain areas of the project. That is why he immediately made a motion to defer action on the Subdivision for further consideration.

Mr. Ross seconded the motion.

Mr. Burton, Mr. Johnson, Mr. Smith, and Mr. Ross voted in favor of the motion to rescind. Mr. Wheatley voted against the motion to rescind. Motion carried 4 – 1 to rescind the vote.

Mr. Burton stated that he would move that the Commission grant preliminary approval with conditions and limitations for Subdivision #2009 – 10 for H.P. Layton Partnership, based upon the record made at the public hearings and for the following reasons:

1. While the proposed subdivision generally meets the purposes of the Subdivision Code in that it protects the orderly growth of the County, there are limitations upon where the lots can be located within the property due to improper drainage, steep slopes, and adverse topography.
2. With the limitations and conditions, this subdivision satisfies the items set forth in Section 99-9C of the Subdivision Code.
3. The proposed subdivision density is less than the density permitted by the existing AR-1 zoning.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. The project will be served by a central wastewater system in accordance with all State and County requirements.
6. The site will be served by central water.
7. Section 99-16 of the Subdivision Code states that land which is unsuitable for development due to flooding, improper drainage, steep slopes, adverse earth formations or topography shall not be developed or subdivided unless adequate methods are formulated by the developer to solve these problems. On this site there are deep clay pits with steep slopes within several lots and Mr. Burton is not satisfied that the developer has provided adequate methods to solve these issues. During the first public hearing, the Developer's representatives stated that houses will be built upon fill or into the sides of the pits. During the second public hearing, the Developer's representatives stated that the pits would collect water which would then overflow into the storm water management system. These explanations are inconsistent and vague. Mr. Burton is also not satisfied that the developer has addressed the effects of the railroad bed, and the topography and the flow of water through this property towards the Broadkill River. For these reasons the areas where Lots 3 – 10, and Lots 28, 45 and 46 are located must not be developed.

8. A waiver from the cul-de-sac length should not be granted. Turnarounds or similar design features must be included within the subdivision to comply with the street design requirements.
9. This approval is subject to the following conditions:
 - A. There shall be no more than 37 lots within the subdivision. The clay pits and the areas where Lots 3 through 10 and Lots 28, 45 and 46 are shown must not be developed, and must remain undisturbed in their current state except for utilities and storm water management systems.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. Buffers shall be shown as required along boundaries of the entire subdivision. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lot lines. As represented by the Applicant, a minimum buffer of at least 50 feet shall be provided between lot lines and all wetland boundaries.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located on one side of all streets in the subdivision.
 - L. The subdivision shall be served by a central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department and DNREC specifications. No building permits shall be issued for homes within the development until the development is connected to an off-site sewer treatment plant.
 - M. The subdivision shall be served by a central water system operated by a public utility.
 - N. As represented by the Applicant, appropriate agencies of the State of Delaware and Sussex County shall be provided an opportunity to perform an archeological or historical survey of the Brickyard buildings and kiln ruins, subject to prior notice to the Applicant. This access shall be provided prior to the approval of the Final Site Plan for this project, and the Final Site Plan shall contain any requirements of the State Historic Preservation Office.
 - O. The tot lot shall be relocated to an area away from the brickyard ruins so that children are not tempted to play around them.

- P. As stated by the Applicant, the Brickyard and Kiln ruins shown on the Preliminary Site Plan shall be fenced off with wrought iron fencing to prevent access to them. It is further recommended that all of the ruins remain preserved, even if that requires the relocation of roadways or lots.
- Q. Because of the unusual topography of this site, the Final Site Plan shall contain a depiction of all areas where cut and fill will be required.
- R. The Final Site Plan and Deeds shall contain the Agricultural Use Protection Notice and a similar notice indicating that hunting activities occur on neighboring and adjacent properties.
- S. The Applicant has provided 50 foot wide access points for interconnectivity to adjacent properties where none are needed, while only showing a 20 foot wide access point where interconnectivity currently exists. The proposed locations of the access points shall be eliminated and the existing point of interconnectivity to the adjacent property opposite the entrance to the subdivision shall be expanded to 50 feet.
- T. The Median strip shall be removed from the entrance area to allow agricultural equipment to continue to safely access the adjacent properties.
- U. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- V. 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. Ross, and carried 4 votes to 1 to grant preliminary approval of Subdivision #2010-8 for H.P. Layton Partnership for the reasons and with the conditions stated. Motion carried 4 – 1 with Mr. Wheatley opposing the motion.

Subdivision #2010-8 – application of **VILLAGES AT HERRING CREEK DEVELOPMENT CO., LLC**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.64 acres into 22 lots, and a waiver from the forested buffer requirements, located south of Sand Bay Drive within the Villages of Herring Creek, south of Road 277.

The Commission discussed this application, which has been deferred since April 14, 2011 for further consideration.

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2010-8 for Villages of Herring Creek Development Co., LLC based upon the record and for the following reasons:

- 1) This application seeks to subdivide an area of an existing development that was set aside as part of a wastewater disposal site. Now that the development will be served by central sewer provided by Sussex County, the disposal area is no longer needed and will be reclaimed under DNREC guidelines.
- 2) The new lots will be integrated into the existing Villages of Herring Creek subdivision and homeowners association.

- 3) The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have favorably been addressed.
- 4) The proposed subdivision density is permitted by the existing AR-1 zoning.
- 5) The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
- 6) The project will be served by Sussex County sewer. The Applicants have cooperated with the Sussex County Engineering Department to remove their treatment and disposal system and connect to the County's sewer system.
- 7) The Developers have provided the necessary consents for the revision and expansion of the existing subdivision.
- 8) This approval is subject to the following conditions, in addition to those that were applicable to the original approval for this development:
 - A. There shall be no more than 22 lots within this subdivision. These lots shall be integrated into the existing Villages of Herring Creek subdivision and shall be governed by its Restrictions and Homeowner's Association.
 - B. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - C. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - D. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. A 20-foot Vegetated Buffer shall be shown along boundaries bordering on any land that is not part of the existing Villages of Herring Creek subdivision. The Final Site Plan shall also contain a landscape plan for these buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - F. This preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 - G. 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 grant preliminary approval of Subdivision #2010-8 for the Villages of Herring Creek Development Co., LLC for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

C/U #1889 – application of **ROBERT A. MARSHALL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for landscaping service business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 7.57 acres, more or less, lying west of Road 274 (Old Landing Road), 1.150 feet north of Arnell Road.

Mr. Lank advised the Commission that the Applicant provided a survey/site plan for this application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on May 17, 2010 and that the Report advises that a traffic impact study is not recommended and that the current Level of Service "C" of Old Landing Road could change to a Level of Service "D".

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of memorandums on April 25, 2011 and April 28, 2011 and that the latest memorandum advises that since the Conditional Use is for existing use conformance the County Engineering Department has no objection to the proposed Conditional Use.

The Commission found that two letters were received in support of this application from Patricia A. Dickinson, and from Richard J. Morgante and Edward F. McHale.

The Commission found that Robert A. Marshall was present with J. Scot Anderson, and Zac Crouch, Professional Engineer with Davis, Bowen and Friedel, Inc. and stated in their presentation and in response to questions raised by the Commission that they are applying for a Conditional Use to utilize 7.57 acres of the 133 acre Old Landing Golf Course property for a landscaping service business; that Mr. Marshall is the owner of the property and in partnership with Mr. Anderson in Bay Creek Landscaping; that Bay Creek Landscaping is a full service landscaping business; that they are intending to utilize the two existing maintenance and storage buildings near the entrance to the golf course to operate the landscaping business; that the older of the two buildings has been utilized for maintenance of the equipment for the golf course; that this building will continue to be used for maintenance of equipment for both the golf course and the landscaping business; that the storage building was built in 2009 and will be utilized for equipment storage; that both buildings have been connected to the County sewer system; that the landscaping business currently employs eight employees; that they cut grass, maintain properties, provide and install landscaping, and install and maintain irrigation systems; that the business assist the golf course with maintenance when needed; that DelDOT has not recommended a traffic impact study; that no additional buildings are proposed; that the County Engineering Department has voiced no objections; that all major maintenance of equipment is performed inside of the maintenance building; that a significant landscaping buffer already screens the yard from neighboring properties; that no signage is necessary; that the 7.57 acre Conditional Use area is not intended to be subdivided from the 133 golf course property; that they maintain solid waste containers for waste branches, grasses, etc; that all chemicals will be stored indoors; and that the activities on this area of the site will not appear to be any different from the normal maintenance activities that have existed for the golf course.

The Commission found that Frank Kea, a nearby resident, was present in support of the application and stated that this project will be good for the neighborhood and community.

The Commission found that David Jones, a nearby resident, was present in support of the application and stated that this area has been utilized for years for the same purpose and that he has no objection to the application.

The Commission found that Edgar Polite, a nearby resident, was present in support of the application and stated that he has no objection to the application.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1889 for Robert Marshall for a landscaping service business based upon the record made at the public hearing and for the following reasons:

- 1) This use evolved from the existing maintenance and landscaping operations of the Old Landing Golf Course, and is a continuation of that use.
- 2) No new buildings or activities are proposed as part of this use.
- 3) The continued use for landscaping operations will not have an adverse effect on roadways or neighboring properties.
- 4) DelDOT and the County Engineering Department have no objections to the use.
- 5) Several neighbors appeared in favor of the application, and no parties appeared in opposition.
- 6) This recommendation is subject to the following conditions:
 - A) As stated by the Applicant, no new buildings shall be constructed.
 - B) All equipment servicing and repairs shall occur inside of the existing buildings.
 - C) Any material storage shall be stored in bins or other containers. The location of these shall be shown on the Final Site Plan.
 - D) Fertilizers and other chemicals shall be stored inside the structures or in approved outdoor tanks or containers.
 - E) The location of all parking areas shall be shown on the Final Site Plan.
 - F) The Final Site Plan shall be subject to the review of the Planning and Zoning Commission.
 - G) Per the Applicant, they will submit plans for approval from the Sussex Conservation District.

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 approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1890 – application of **CONLEY’S UNITED METHODIST CHURCH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a church operated and owned thrift shop to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.55 acres, more or less, lying southwest corner of intersection of Road 280B (Conley’s Chapel Road) and Road 277 (Robinsonville Road).

Mr. Lank advised the Commission that the Applicants provided an Explanation Letter describing the intent of the application, a copy of the deed with survey for the property, a copy of the survey of the property with a sketch of the improvements on the property, and an aerial view of the property showing the improvements already existing.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on April 25, 2011 and that the memorandum advises that the site is located in the Angola Neck Planning Area; that wastewater capacity is not available at this time; that an on-site septic system is proposed; that the site is not capable of being annexed into a County operated Sanitary Sewer District at this time; that when the County provides sewer service, a 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 Edwin B. Perry was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the Church has been on this site for 188 years; that the Fellowship Hall was built in 1973; that the Church recently built a new church just off of John J. Williams Highway, and now propose to utilize the original Fellowship Hall as a thrift shop; that Church ministries include a soup kitchen, social events, a living nativity display and activity, and a living Easter display and activity; that the area is in need of a thrift shop to serve those in need; that Mr. Perry and the Church Pastor have visited many of the area residents to advise the residents of their intent for the thrift shop; that restrooms exist in the Fellowship Hall; that existing out-buildings will be utilized for storage; that they have not yet set business hours, and anticipate a few days per week possibly from 9:00 a.m. through 2:00 p.m.; that there is adequate parking already on the site; and that they may close off the driveway when the Fellowship Hall is not in use or place signage on the site to prevent people from dropping off items when someone is not present on the site to receive items for the thrift shop.

The Commission found that Sandra Shipe, Jean Unruh, Gwen Michael, Pat Short, and John Kehrer were present in support of this application and stated that they have no objections and support the use intended; that the building needs to be used; that the use will not only benefit the community, it will also benefit the building, since a vacant building will just deteriorate; that the use creates outreach into the community; and that it appears that new people are coming to the Church that have previously attended some of the Church events, thanks to the outreach.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1890 for Conley's United Methodist Church for a church owned and operated thrift shop based upon the record made at the public hearing and for the following reasons:

- 1) This site is the site of the former Church Fellowship Hall.
- 2) The proposed use is a community outreach program of the Church and will provide a benefit to Sussex County residents by providing affordable clothing and household items.
- 3) The use will not adversely affect neighboring properties or roadways.

- 4) Several parties appeared and testified in favor of the application, and no parties appeared in opposition to it.
- 5) This recommendation is subject to the following conditions:
 - A. The use shall be limited to a thrift shop operated by the Applicant.
 - B. The Applicant shall comply with all DelDOT entrance requirements.
 - C. All parking areas and spaces shall be marked on the Final Site Plan and on the site itself.
 - D. No permanent outdoor displays of merchandise shall be permitted on the site.
 - E. 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 unanimously to forward this application to the Sussex County Council for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1891 – application of **JUAN SANTAY AJANEL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a subcontracted truck trailers & local hauling service to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.717 acres, more or less, lying north of Route 47 across from Road 296 (Lawson Road).

Mr. Lank advised the Commission that the Applicant provided a survey/site plan for the application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on September 29, 2010 and that the Report advises that a Traffic Impact Study was not recommended.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on April 25, 2011 and that the memorandum advises that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that the site is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that four letters have been received in opposition to this application from Art Sundberg, Deborah Sundberg, Ruth O’Ryan, and Dorothy and James Del Negro. Mr. Lank provided the Commission with copies of the four letters. Mr. Sundberg’s letter had photographs attached.

The Commission found that Juan Santay Ajanel was present with Joanne Ortiz, and Charles Adams, Professional Land Surveyor of Adams-Kemp Associates, Inc., and that they stated in their presentation and in response to questions raised by the Commission that they are proposing a subcontracted truck trailers and local hauling service from their 1.717 acre site; that the Applicant contracts work with Perdue, Mountaire, and other companies for hauling poultry to

poultry plants and elsewhere; that the business maintains eight trucks in its fleet; that currently there are six employees/drivers; that they do perform oil changes, tire changes, and normal maintenance on site as needed; that recycled oils and fluids are picked up and hauled away by licensed waste handlers; that the Applicant resides on the premise; that hours vary because of the night work for hauling poultry from farm to poultry plants; that the Applicant has been in business for approximately 2 years at this location; that maintenance and service on the trucks is only performed on company equipment; that typically there are only a few trailers parked on the site; that they may also haul junk cars and scrap metals; that vehicles are serviced outside; that there are no set hours; that security lighting already exist; that a hedgerow exist along the easterly borderline and a woods and some fencing already exist on the westerly borderline; and that they are planning to remove all parts and outside storage presently stored to the rear of the dwelling.

The Commission found that there were no parties present in support of this application other than the Applicant and his representatives.

The Commission found that Kurt Krause, Tracy Sargent, Connie Hearn, and Granville R. Johnson were present in opposition to this application and expressed concerns that the area is predominantly agricultural and residential, not agricultural and commercial; that many tractors and trailers travel this roadway, mostly from this site; that they are concerned about the environmental impact of oils and fluids getting into the groundwater and contamination of their well water; that truck tractors require maintenance every 7,000 to 15,000 miles; that the use has already impacted lot sales in the area due to the trucking business activities; that most of the trucks are in and out of the site at night; that they are concerned about the depreciation of property values; that the pictures submitted depict the concerns and problems; that tractors/trailers are normally parked on the site and are considered an eyesore in a residential area; and that Mr. Johnson went through the Conditional Use process in the early 1970s and the neighbors in the area were concerned about outside storage even then.

The Commission found that Mr. Sargent submitted additional photographs.

In response to questions, Ms. Ortiz stated that the business started approximately eight years ago after the Applicant acquired his trucking license; and that this application may only be a temporary use since the business has grown over the last two years.

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.

Subdivision #2011-2 – application of **SHORE PROPERTY MAINTENANCE, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 62.25 acres into 2 lots, and with a waiver from the street design specifications and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located south of Road 47, approximately 2,200 feet west of Road 290.

Mr. Lank advised the Commission that the Applicant provided a survey of the property and provided the Commission with copies. Mr. Lank added that the property was originally approved as an extension to other acreage owned by the Applicant and that the Applicant desires to divide the 5.724 acres as a separate parcel with access to a private road to Route 47. A copy of the preliminary plan was previously submitted to the Commission.

Mr. Lank advised the Commission that the site was not required to be reviewed by the Technical Advisory Committee.

The Commission found that Ted Nowakowski was present with Eric Howard, Attorney with Wilson, Halbrook and Bayard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that the 5.724 acre parcel was divided from the William Hurdle property several years ago as an extension to other lands owned by Mr. Nowakowski to the south of the site; that the site is served by an existing 50-foot wide private right-of-way; that the Applicant is requesting that the 5.724 acre parcel be considered a separate parcel with access from the 50-foot wide private right-of-way; that Mr. Hurdle granted use of the right-of-way to Mr. Nowakowski when he conveyed the 5.724 acres; that the right-of-way is already in excess of 1,000 feet long; that Mr. Nowakowski owns and operates a landscaping business on the adjacent parcel with his family; that the site is currently vacant with a pond and is used for hunting purposes; that Mr. Nowakowski has agreed to assist in the maintenance of the road; that the road is improved with gravel; that the deeds to the other lands on the right-of-way only reference that the properties are adjacent to an existing road; and that the Applicant does not object to a restriction requiring perpetual maintenance.

The Commission found that Denise Bradford was present, not in objection, but with a question about the location of the referenced 62.25 acres.

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to grant approval to separate the 5.724 acres parcel with access from the existing 50-foot wide private right-of-way with a waiver from the street design specifications, and a variance from the maximum allowed cul-de-sac length of 1,000 feet. Motion carried 5 – 0.

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

Mr. Lank introduced the Ordinance relating to temporary extensions of time for applications for Subdivisions, Conditional Uses, and Residential Planned Community projects.

Mr. Lank added that the Commission previously received a copy of the Ordinance Amendment for review.

Mr. Lank advised the Commission that three letters in support of this Ordinance Amendment have been received from Frank M. Kea of Solutions Integrated Planning Engineering and

Management, LLC, Gerald L. Esposito of Tidewater Environmental Services, Inc., and James. A. Fuqua, Jr., Esquire, of Fuqua, Yori and Willard, P.A. Mr. Lank provided the Commission with copies of the letters.

Mr. Robertson added that this Ordinance Amendment has been discussed by both the Commission and the County Council for the purpose of creating some uniformity in the way that time extensions are addressed, instead of the case-by-case review that currently happens; and because the Commission and Council have stated that some relief should be given due to the economy; and that the intent was to grant an additional two years to either a preliminary approval or a final approval.

Mr. Lank advised the Commission that the letter from James A. Fuqua, Jr. includes copies of some information from the internet about the Pennsylvania "Permit Extension Act", the New Jersey "Permit Extension Act", the North Carolina "Permit Extension Act", the Massachusetts "Permit Extension Act", and the Rhode Island "Tolling Statute", which provided for time extensions for projects which have received approvals within a certain time frame.

Mr. Lank advised the Commission that, if his counts are correct, there have been 86 RPC Residential Planned Community District established; that 21 of those Districts are not considered to be substantially underway; that two of those Districts have been annexed into incorporated Towns; that four of those Districts have just recently received Master Plan approval and may proceed with submittals of plans; that two other District files need to be obtained from the Record Management Facility for review; that the Staff must confirm and verify some of the dates relating to the time line for those Districts; that there have been 1900 Conditional Use applications file since 1971 and that the Staff is still counting to determine the number of projects that could be sunset for lack of development; and that the Staff has not yet completed the count on the number of Subdivision applications that could be sunset, either with their preliminary status, or with their final recordation status and the five year sunset provision if a subdivision is not substantially underway.

The Commission found that Joseph Conaway of Conaway Associates, Land Use Consultant, was present and stated that he is a member of the Delawareans For Environmental and Economic Development (DEED) and that DEED has asked that he invite the Commission members to attend a Governmental Affairs Seminar on "Infrastructure and the Importance of Investing in Delaware's Future" on May 13, 2011; that the Honorable Edward G. Rendell, former Governor of the Commonwealth of Pennsylvania, will be the feature speaker; that DEED is in support of extensions; that the Sussex County Economic Development Action Committee (SEDAC) is in support of extensions; that a lot of economic benefit has been lost due to this economy; that businesses have closed and jobs have been lost; that it seems wrong to make an Applicant go back and start over after all of the expenses that they have already incurred; that the question is what is the correct extension; that SEDAC believes that extensions are warranted and will save a lot of jobs; that banks are not lending money at this time; that the economy has impacted surveyors, engineers, laborers, contractors, everyone; that equity is lost if projects are voided; that many farmers have not closed on sales of their lands for projects proposed for development due to the economy; that extensions should be based on consistency; that some of the RPC Residential Planned Communities, if eliminated, will revert back to the underlying zoning, which

may even give them a greater density; that based on this proposed Amendment everything prior to January 1, 2009 will be void, unless substantially underway; that he would like to suggest that the County consider that the Amendment refer to January 1, 2009 as the retroactive start date and that the extension is not to exceed January 1, 2014 for every application; that this would be simpler and easier for staff; that the extension would provide a great economy tool and will help put people back to work; and that the purpose was to give two additional years.

The Commission found that Frank Kea of Solutions Integrated Planning Engineering & Management, LLC was present and stated that his company has many clients that have invested large sums of money, time and effort on projects both prior to and in the face of the on-going recession; that despite those efforts, the market and related banking issues have prevented a timely start to those projects in relation to approval expiration; that a two year extension would serve to prevent harm not just on developers, but to their associated banks by preserving property value, consultants who depend on continuation and rejuvenation of projects for survival, as well as other related industries such as accountants, lawyers, appraisers, marketing firms, realtors, property managers, sign makers, landscape contractors, and many others who provide services; that developers are not always doing nothing; that some of the agencies are not releasing permits causing impacts on projects; that he supports extensions; that the market is changing; that some projects need to be amended to support the market; and that he supports Mr. Conaway's extension suggestions.

The Commission found that Robert Ruggio, Vice President of the Delaware Economic Development Council and a member of the SEDAC Board, was present and stated that banking in Delaware is almost non-existent at this time; that an Ordinance providing for time extensions is needed in Sussex County; that the economy does not seem to be improving; that the Ordinance will be good for economic development; and that he also supports Mr. Conaway's extension suggestions.

The Commission found that Kevin DiSabatino was present and stated that family companies have Conditional Uses that could expire, Residential Planned Communities that could expire, and Subdivision that could expire; that they do not want to lose the approvals that they have received; that they would support time extensions with an end date, and referenced a start date of January 1, 2009 through January 1, 2014 or 2013.

The Commission found that Sue Bramhall, Realtor, was present in support of an Ordinance with dates that can be referenced; and that the extensions would be a benefit to all parties, including the real estate community, the buyers and the sellers.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Mr. Ross stated that he would move that the Commission recommend approval of the Ordinance Amendment with revised language in Sections 1, 2, and 3 by deletion of the wording at the end of each Section that reference ["and outstanding as of January 1, 2010, shall remain valid for two (2) additional years"] and inserting in lieu thereof the wording "with a date of approval of January 1, 2009 or later shall be valid until January 1, 2013 or the expiration of the current approval, whichever is later".

For clarification of each Section the following wording is proposed since the Sections are worded somewhat differently.

Section 1. Notwithstanding the time limits for validity set out in Chapter 99 of the Sussex County Code, any preliminary subdivision plat under §§99-9B, and any recorded subdivision plat valid under §§99-11 and 99-40, with a date of approval of January 1, 2009 or later shall be valid until January 1, 2013 or the expiration of the current approval, whichever is later.

Section 2. Notwithstanding any other provisions of Chapter 115 of the Sussex County Code for any Residential Planned Community valid under §§Article XVI and outstanding as of January 1, 2009 or later shall be valid until January 1, 2013 or the expiration of the current approval, whichever is later.

Section 3. Notwithstanding any other provisions of Chapter 115 of the Sussex County Code for any Conditional Use action approved pursuant to the provisions of §§Article XVI, Article XXIV, and Article XXVIII of Chapter 115 of the Sussex County Code valid and outstanding as of January 1, 2009 or later, and relating to new residential, commercial, or industrial developments, shall be valid until January 1, 2013 or the expiration of the current approval, whichever is later.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the revised language stated. Motion carried 5 – 0.

OTHER BUSINESS

McCabe's Farm, LLC
C/U #1870 Site Plan – Route 404

Mr. Wheatley advised the Commission that he would not be participating in the review of this Site Plan and turned the meeting over to Vice-Chairman Smith.

Mr. Lank advised the Commission that this is a site plan for a metal fabrication, welding and related activities business located on 6.45 acres; that the site is zoned AR-1 Agricultural Residential; that the Conditional Use was approved by the County Council on November 30, 2010 with eight Conditions of Approval; that the eight Conditions of Approval are noted on the site plan; that the existing dwelling on the site will be used for an office; that an 80-foot by 120-foot one-story workshop and a 60-foot by 80-foot one-story storage building are proposed; that the setbacks exceed the minimum requirements of the Zoning Code; that the proposed dumpster area is located to the rear of the storage building and is enclosed with a 6-foot high fence; that there are 26 total parking spaces provided; that an on-site septic system and well are proposed; that the site plan complies with the Conditions of Approval; that all agency approvals have been received; that Final Site Plan approval can be granted; and that the Commission was previously provided with copies of the site plan.

Motion by Mr. Ross, seconded by Mr. Burton, and carried with 4 votes to grant final approval of this Site Plan. Motion carried 4 – 0. Mr. Wheatley was not present during the discussion.

Gary Chorman
C/U #1815 Site Plan – Road 258 (Hudson Road)

Mr. Lank advised the Commission that this is a site plan for a storage building for appliances located on 3.3795 acres; that the site is zoned AR-1 Agricultural Residential; that the Conditional Use was approved by the County Council on February 2, 2010 with ten (10) Conditions of Approval; that the ten Conditions of Approval are noted on the staff's copy of the site plan; that a 60-foot by 120-foot storage building is proposed and permitted; that the setbacks exceed the minimum requirements of the Zoning Code; that DelDOT has issued a Letter of No Objection for the entrance and the Office of the State Fire Marshal has approved the site plan; that Final Site Plan approval can be granted; and that the Commission was previously provided with copies of the site plan.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to grant final approval of this Site Plan. Motion carried 5 – 0.

Good Earth Market, LLC
C/U #1715 Site Plan – Route 26

Mr. Lank advised the Commission that this is a site plan for professional office space, a café restaurant, and meeting space on the south side of Route 26 near Clarksville; that County Council granted approval of the Conditional Use expansion on April 1, 2008; that the Commission granted time extensions on August 19, 2009 and April 14, 2010; that the Final Site Plan and all agency approvals, except for the Sussex Conservation District, were submitted on March 25, 2011; that the County Council granted a one year time extension on April 19, 2011; and that the Landscape Plan was received on April 20, 2011.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary. Final approval of the site plan shall be subject to the staff receiving a copy of the Sussex Conservation District approval of the site plan. Motion carried 5 – 0.

Old Landing Properties, LLC
C/U #521 Revised Site Plan – Road 274 (Old Landing Road)

Mr. Lank advised the Commission that this is a revised site plan for a rental storage business; that the Conditional Use was approved by County Council on April 18, 1979; that the owner is proposing to delete two 13-foot by 40-foot storage trailers and a 58-foot by 54-foot storage building (totaling 4,172 square feet) and to replace those with a 64-foot by 67-foot building (4,288 square feet) which includes a 546 square foot office; that the setbacks for the proposed building exceeds the minimum setback requirements of the Zoning Code; that the replacement building is almost in the same footprint as the existing storage building; that the staff is questioning if a new public hearing process is required; and that the Commission was previously provided with a copy of the revised site plan.

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

Corrado Route One Commercial Center
Preliminary Site Plan – Route One and Road 271 (Holland Glade Road)

Mr. Lank advised the Commission that this is a preliminary site plan for a 74,882 square foot shopping center located on 10.49 acres; that the site is zoned C-1 General Commercial and CR-1 Commercial Residential; that four buildings are proposed, which include a 55,882 square foot retail building, two 7,500 square foot restaurants and a 4,000 square foot bank; that the building setbacks exceed the minimum requirements in the Zoning Code; that 450 parking spaces are required and 492 parking spaces are proposed; that central sewer will be provided by Sussex County; that central water will be provided by the Town of Rehoboth Beach; that there are no wetlands on the site; that the site is not located in a flood zone area; that stormwater management is proposed to be an underground infiltration system; that the site is located in the Combined Highway Corridor Overlay Zone; that the Final Site Plan will need to include a landscaping plan for the required 20-foot buffer along Route One; that preliminary approval can be granted; that final approval could be subject to the staff receiving all agency approvals and the Final Site Plan showing the required 20-foot buffer and the landscape plan; and that the Commission was previously provided with 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. Final approval of the site plan shall be subject to the staff receiving all agency approvals, the Final Site Plan showing the required 20-foot buffer, and the Landscaping Plan. Motion carried 5 – 0.

Wilde Woods GR/RPC
C/Z #1688 Preliminary Site Plan – Road 297 (Mount Joy Road)

Mr. Lank advised the Commission that this is a preliminary site plan for a 37-lot GR/RPC General Residential District – Residential Planned Community; that the rezoning was approved by the County Council on December 14, 2010 with 15 Conditions of Approval; that the Conditions of Approval are noted on the site plan; that the minimum lot size is 7,500 square feet; that the project will be served by central sewer and central water; that DelDOT has sent an e-mail indicating that they will not require any improvements to Oak Street and Mount Joy Road; that final approval for each phase or the entire project is subject to the review and approval of the Commission upon receipt of all agency approvals; and that the Commission was previously provided with a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary. Final approval of each phase or the entire project shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 5 – 0.

Sam Hayes

4 Lots and a 50' Easement – Road 298A
Revised to only include 3 Lots

Mr. Lank advised the Commission that this is a request to subdivide a 6.44 acre parcel into 3 parcels with access from a 50-foot easement; that the owner proposes to create the 50-foot easement over an existing roadway; that Lot 1 and Lot 2 will contain 1.0 acre each; that the residual lands will contain 4.27 acres (Lot 3 and the original residual lands were combined); that if the Commission is favorable towards the request, the Commission could approve a maximum of three lots with access from the easement; and that the Commission was previously provided with a sketch drawing of the original 4 Lot request.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this conceptual site plan with the stipulation that final approval shall be subject to the staff and that any further subdivision of the parcel shall require a major subdivision application. Motion carried 5 – 0.

Edward J. Troise, Sr., Trustee
2 Lots & 50' Easement – Road 266 (New Road)

Mr. Lank advised the Commission that this is a request to subdivision a 1.874 acre parcel into 2 parcels with access from a 50-foot easement; that the owner proposes to create the easement over an existing entrance and roadway; that both of the parcels will contain 0.937 acre; that the request can be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided with a sketch drawing of the request.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to grant conceptual approval of this 2 lot subdivision. Final approval shall be subject to receipt of an entrance approval from DelDOT. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that a Special Meeting of the Commission was scheduled for May 11, 2011 at 3:00 p.m. in the County Council Chambers to discuss Ordinances, Policies, and Procedures.

Meeting adjourned at 9:40 p.m.