



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 26, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 26, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, and Mr. Lawrence Lank – Director.

Motion by Mr. Burton, seconded by Mr. Ross, and carried unanimously to move C/U #1897 - Russell V. Banks to be the last of the public hearings and to approve the agenda as revised. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of May 12, 2011 as corrected. Motion carried 4 - 0.

OLD BUSINESS

C/U #1891 – application of **JUAN SANTAY AJANEL** to consider the Conditional Use of land in 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).

The Commission discussed this application which has been deferred since April 28, 2011.

Mr. Smith stated that he would move that the Commission recommend denial of C/U #1891 for Juan Santay Ajanel based upon the record made at the public hearing and for the following reasons:

1. The site of this proposed Conditional Use is surrounded by residential and agricultural properties.
2. The proposed use is for truck parking, repairs, storage of tractor trailers and operation of a truck dispatch business. This proposed use is incompatible with the neighboring and adjacent properties and the outdoor repair of large tractor trailers is inappropriate for this quiet rural location.
3. There are other more appropriate locations that are already zoned for business or commercial uses in Sussex County where this use should be relocated. There is nothing

unique or significant to this location that will benefit either the business, residents of Sussex County or some other purpose, other than the fact that it is located upon the Applicant's existing residential property.

4. Several parties appeared in opposition to the application and stated that trucks are operated and leave the premises very late at night and early in the morning which is a disturbance to the nearby homes.
5. No parties appeared in support of the application.
6. The proposed use is inconsistent with the purposes of the AR-1 Agricultural Residential District and it is not compatible with the purposes for granting a Conditional Use as set forth in the Sussex County Zoning Code.
7. The proposed Conditional Use does not promote the health, safety, welfare and general convenience of the residents of Sussex County.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with three votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 1 with Mr. Ross opposing the motion.

Subdivision #2005-54 – Baywood, LLC
Final – Duneside at Baywood – Phase 12

Mr. Lank advised the Commission that this is the final record plan for a 244 lot cluster subdivision; that the Commission granted preliminary approval for 246 lots on August 16, 2006, and granted one-year time extensions on October 17, 2007, August 20, 2008, August 19, 2009 and July 14, 2010; that the final record plan complies with the Subdivision and Zoning Codes and the conditions of preliminary approval; and all agency approvals have been received.

The Commission discussed this final record plan.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant final approval of Subdivision #2005-54. Motion carried 4 – 0.

C/Z #1704 – application of **SEASHORE HIGHWAY ASSOCIATES, LLC.**, to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District and C-1 General Commercial District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.86 acres, more or less, lying north of Route 9 (Lewes Georgetown Highway) and 1,000 feet east of Road 281 (Josephs Road).

The Commission discussed this application which has been deferred since May 12, 2011.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion and vote if he so chooses. Motion carried 4 - 0.

PUBLIC HEARINGS

C/U #1895 – application of **FREEDOM WORSHIP CENTER, INC.** to consider the Conditional Use of land in B-1 Neighborhood Business District for a private school to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.71 acres, more or less, lying southwest of Old Route 14 (Argos Corner Road) 1,000 feet northwest of Road 224 (Slaughter Beach Road) and across from Road 224A (Rutt Road).

The Commission found that on May 16, 2011 the Applicants provided an Exhibit Booklet which contains: a Table of Contents; a copy of the Conditional Use application form; copies of the site plan at different scales; a boundary survey depicting the existing improvements; a copy of the DelDOT Service Level Evaluation Request form; a copy of the DelDOT Support Facilities Report, dated March 21, 2011; a series of maps and aerials; photographs of the site and improvements on the site; a report on wastewater generation by the school; a series of additional aerials; suggested proposed Findings of Fact and suggested proposed Conditions of Approval; and a copy of a page from the Comprehensive Plan Update referencing “The need for more new schools and school expansions”.

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

The Commission found that on May 24, 2011 the Sussex County Engineering Department – Utility Planning Division provided comments in the form of a Memorandum which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the 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 Glynis Gibson, Attorney, Sue Frketic, Principal, Michael Mills, Board Member, and Ken Christenbury, Professional Engineer with Axiom Engineering, LLC, were present on behalf of the Freedom Worship Center Academy and stated in their presentations and in response to questions raised by the Commission that minimum improvements will be necessary to convert the former nursing home into a school; that a gravel parking area will be added to the existing asphalt driveway and parking area; that one building will house the pre-kindergarten through sixth grade and one building will house the middle and high school; that wastewater generated from the school will be less than the nursing home wastewater; that DelDOT did not require a Traffic Impact Study; that they estimate that 40 elementary students and 20 middle and high school students will be educated at this location; that school hours are from 8:00 a.m. through 2:30 p.m. Monday through Friday; that there will be no major sports activities at this site; that the site is being cleaned up inside and outside; that the buildings have been vacant for several years; that they have contacted several neighbors in the Argo’s Corner area and heard no objections to the school proposal; that they have received a

petition in support containing 16 signatures in support; that the goals of the Academy include: to give god the glory in all things; to provide an educational experience that is designed to point the child to God; to give the students a Christ-centered education; to support the efforts of parents as they accept and fulfill their responsibility to give their children a Christian education; to help students realize their capabilities and limitations and how to make the most of them, toward growth and service; to equip each student with the ability to communicate clearly, logically, and effectively through reading, writing, speaking, and listening; to encourage creativity and curiosity; and to teach the fundamentals of Bible, Language Arts, Mathematics, Social Studies, and Science; that the Academy use will benefit the local area and Sussex County; that the Academy has been in operation for approximately 2 years at another location; that there will be 10 teachers and one administrator on site; that there is no formal cafeteria on site; that they are not planning on having any school buses; that they do have a school van; that parents will have to bring the students to school; that there will be minimal night-time activities; that this site will be a stepping block site depending on the growth of the school population; that they anticipate 12 students during the first school year; and that they will be leasing the site, not purchasing.

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

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

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

C/U #1896 – application of **TIMOTHY S. MILLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mulch storage, processing and sales and boat and rv storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.729 acres, more or less, lying east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road).

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

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

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

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

The Commission found that Timothy S. Miller was present and stated in his presentation and in response to questions raised by the Commission that he would like to wholesale and retail mulch; that he would also like to create a boat and RV storage area behind the existing Land Surveying office on part of the site; that he anticipates 4 or 5 employees when the project meets its maximum; that hours are proposed from 7:00 a.m. to 5:00 p.m. Monday through Friday; that directly across from the site is woodlands; that he lives on Lot #1 to the rear of the proposed boat and RV storage area; that the public notice sign was posted near the driveway to his residence and not at the intended entrance site; that he would like to sell mulch wholesale in the immediate future, and to dye and process mulch from wood chips later on in the future; that he would accept wood chips and then run them through a Rotochopper Chip Processor which converts wood chips to colored or natural landscape mulch; that there will be no boat repairs or sales performed on site; that boats will include personal watercraft; that the mulching process would require a skid loader with a front end loader and the processor; that water is available on the site in case of fire and to control dust; that he has had no contact with his neighbors; that he will have an employee to manage the storage area sometime in the future; that he will only need a sign for directional purposes; that the boat and RV storage area will be fenced and lighted in phases; that the site plan includes some notes that could be considered suggested conditions; that he anticipates that the mulch facility will be operational seven days per week and that the boat storage area will be open seasonally for seven days per week; that grinding/dying/processing of mulch will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday; that the boat and RV storage area will be open from 9:00 a.m. to 6:00 p.m. or by appointment; that the first phase of the boat and RV storage will begin in the fall with a fenced storage area; that the surface of the storage area will remain as grass; that forested buffers already exist along portions of the site; that the processor measures 35' x 11' x 8' in height; that the processor performs the dying and mulching; that there is a need in the area for mulch for landscaping; that wood chips would be supplied by tree service companies; that he anticipates a maximum of 10 vehicles per day with deliveries; and that there will not be any stump grinding.

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

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

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

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

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

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

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

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration and to allow Mr. Robertson to review the public notice posting issue. Motion carried 4 – 0.

C/U #1898 – application of **BRUCE FISHER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for professional office to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 30,750 square feet, more or less, lying southeast corner of Road 532 (Camp Road) and U.S. Route 13.

The Commission found that the Applicant provided a copy of a Survey/Site Plan.

The Commission found on November 3, 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 “C” of U.S. Route 13 and the current Level of Service “A” of Camp Road will not change as a result of this application.

The Commission found that on May 23, 2011 the Sussex Conservation District provided comments in the form of a Memorandum which references that there is one (1) soil type on this site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it is not likely that the proposed project will necessitate off-site drainage improvements; and that on-site drainage improvements may be required.

The Commission found that on May 24, 2011 the Sussex County Engineering Department – Utility Planning Division provided comments in the form of a Memorandum which references that the site is located in the 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 parcel is within the Growth and Annexation Area of the Town of Bridgeville; that the proposed project is

not in an area where the County currently expects to provide sewer service; and that a concept plan is not required.

The Commission found that Bruce Fisher was present and stated in his presentation and in response to questions raised by the Commission that he is a dentist and oral surgeon and is proposing office space for his practice; that there is nothing similar in the immediate area, but that there is a proposed professional center north of the site within the Town of Bridgeville; that he would like to erect a small professional lighted sign and that the sign would not exceed 32 square feet per side; that he will have no more than 4 employees; that the offices would be open from 8:00 a.m. through 6:00 p.m. Monday through Friday and 8:00 a.m. through 1:00 p.m. Saturday; that it may be necessary that he have some emergency hours; that he will be performing some surgeries at Nanticoke Memorial Hospital and that if the Hospital does not have the necessary equipment he will be able to perform the surgeries in his office; that all narcotics will be stored in a locked safe on premise; and that the entrance to the offices will be from Camp Road, not U.S. Route 13.

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 #1898 for Bruce Fisher for a professional office based upon the record made at the public hearing and for the following reasons:

1. The use as a dentist and oral surgeon's office will serve the residents of western Sussex County.
2. The Applicant has consulted with the Nanticoke Memorial Hospital about coordinating his services with the Hospital.
3. The location along U.S. Route 13, with access from Camp Road, is appropriate for the use, and it is consistent with surrounding uses.
4. The use is of a public character that will benefit the health, safety and welfare of residents of Sussex County.
5. The use will not have an adverse impact on traffic.
6. No parties appeared in opposition to the project.
7. This recommendation is subject to the following conditions:
 1. The use shall be limited to professional offices, specifically a dental, medical, oral surgery or similar type of practice.
 2. The office hours will be Monday through Friday from 8:00 a.m. until 6:00 p.m., and 8:00 a.m. to 1:00 p.m. on Saturdays. In addition, emergency hours shall be permitted as necessary.
 3. The entrance to the project shall be from Camp Road. The Applicant shall also comply with all DelDOT requirements.
 4. There may be two on-premise ground signs on the property, not to exceed 32 square foot in size. One sign shall be on Camp Road and one sign shall be on U.S. Route 13.
 5. All narcotics shall be securely stored and maintained in accordance with all Federal and State requirements.

6. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

C/U #1899 – application of **RICHARD M. INGRAM** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (16 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 4.0 acres, more or less, lying northwest of Road 291 (Martins Farm Road) 675 feet southwest of Road 262 (Fisher Road).

The Commission found that the Applicant submitted a survey/site plan showing four (4) proposed four (4) unit buildings with related parking and driveways.

The Commission found on March 3, 2011 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 Road 291 (Martin Farm Road) will not change as a result of this application.

The Commission found that on May 23, 2011 the Sussex Conservation District provided comments in the form of a Memorandum which references that there are two (2) soil types on this site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; and that it is possible that off-site drainage improvements and on-site drainage improvements will be required.

The Commission found that on May 24, 2011 the Sussex County Engineering Department – Utility Planning Division provided comments in the form of a Memorandum which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the 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 Timothy and Rebecca Myers have provided a note in opposition to this application.

The Commission found that Richard M. Ingram was present and stated in his presentation and in response to questions raised by the Commission that he has been a builder for 50 years; that he owns this site and the adjoining site where the access drive already exist; that he is proposing to build four (4) 28’ by 52’ buildings containing four (4) units each; that he hopes to attract professional, school teachers, etc., not necessarily families; that he does not anticipate any

depreciation of property values; that he has not yet met with the Sussex Conservation District for stormwater; that he has not yet met with DNREC for septic designs; that the units will be rentals, not sold; that leases will have tenant restrictions; that the units will have two bedrooms, a living/dining room combination, and a bathroom; that the buildings will be one story.

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

The Commission found that Timothy Myers, James Foresson, Calvin Butler, Estella Butler, Troy Wright, and Terry Spencer were present in opposition and stated that they were concerned about the house that was placed on the property in 1998 that is not lived in; that the lot is not mowed or maintained; that they are concerned about water and sewer; that they are concerned about the size of the units; that they are concerned about the possibility of depreciation of their property values; that they are concerned about rental of the units since the house that was placed on the property in 1998 was rented to a large family and not maintained; that they are concerned that there will be traffic at all hours of the day and night; that they are concerned that they will lose the peaceful area; that they realize that there are already some trouble areas in the Coolsprings area; and that the size of the units appear to be no larger than a motel room or efficiency unit.

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

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to allow Mr. Johnson to participate in the discussion and the decision if he so chooses. Motion carried 4 – 0.

C/U #1897 – application of **RUSSELL V. BANKS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 30.78 acres, more or less, lying east of Road 348 (Irons Lane) approximately 800 feet north of Road 349 (Old Mill Road).

The Commission found that on May 16, 2011 the Applicants provided an Exhibit Booklet which contains a listing of the project team; a Table of Contents; an Executive Summary with a project overview; references to compliance with applicable regulations, i.e. the Agricultural Residential District, Conditional Use special requirements for borrow pits, and the Environmentally Sensitive Development District Overlay Zone; a Vicinity Map; a Tax Map; a Zoning Map; a proposed layout; an email between DelDOT and Solutions IPEM; a copy of an aerial submitted to PLUS; a copy of the PLUS comments, dated January 18, 2011; a copy of the Applicants response to PLUS; a State Investment Level Map; a Developed and Protected Lands Map; a Future Land Use Map; a Boundary Survey; an Aerial Map; a Soil Survey Map; an USGS Topographic Map; a Flood Map; a Groundwater Recharge Map; and qualifications of Frank M. Kea and Jason Palkewicz of Solutions IPEM.

The Commission found that on May 23, 2011 the Sussex Conservation District provided comments in the form of a Memorandum which references that there are eleven (11) soil types on this site; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it is not likely that the proposed project will necessitate

off-site drainage improvements and on-site drainage improvements; and that there are private ditches on the property.

The Commission found that on May 24, 2011 the Sussex County Engineering Department – Utility Planning Division provided comments in the form of a Memorandum which references that the site is located in the North Millville Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available; that Ordinance 38 construction is not required; that System Connection Charge Rates will apply when sewer becomes available; that central sewer has not been extended to the area at this time; that conformity to the South Coastal Area Planning Study - 2005 Update will be required; that if the parcel requires sewer service in the future the owner could install infrastructure to an approved connection point; and that a concept plan is not required.

The Commission found that 40 letters, e-mails, and petition signatures have been counted as received prior to this meeting in support of this application. Some of the parties have referenced that they are not opposed to the use; that the close proximity of the site to the Applicant's dump truck operation will be beneficial to the Applicant and his customers; that the pit should not be noticeable from roadways; that dump trucks will always be using the roadways, and as long as development continues there will always be dump trucks; that a need exist for fill dirt; that the need exist locally; and that a couple of the signers of the petitions in opposition were mislead and have reconsidered the request and now support it.

The Commission found that 268 letters, e-mails, and petition signatures have been counted as received prior to this meeting in opposition to this application. Some of the parties have referenced that they are opposed to the use since it could be an unnecessary eyesore for many builders and home owners that are having difficulty selling their homes; that Irons Lane is only a 30 foot right-of-way with a minimal shoulder space; that Irons Lane is a busy road with six upscale housing developments and a popular golf course; that there are two inactive borrow pits within 0.2 mile of the site and that if there was a demand for dirt, they would have been reactivated; that both the Applicant and his father had a reputation of ignoring their properties appearance; that the County is changing; that properties are being renovated; that Delaware has a fair tax, climate and location desired by many; that a borrow pit would be out of character for this area; that this is a residential area, not an industrial area; that dump trucks and bulldozers are not needed holding up a residential egress road that is the only exit road out of the area during disaster evacuations; that when an accident, fire or hurricane occurs there are times that homeowners feel trapped for hours with no way out; that property values have already declined; that the integrity of the communities would suffer further; requesting that the County reject this application for the safety of the residents; that they did not buy into an industrial/commercial area; that a dirt borrow pit and its associated truck traffic is inconsistent with the area and raises serious safety and environmental concerns; that the local roads in the area are narrow without shoulders, bicycle lanes, or sidewalks; that traffic continues to increase due to ongoing development of new subdivisions; that dozens of new residences are currently under construction with many more planned; that pedestrians, runners, bicycle riders are already at risk on these roads; that the addition of numerous commercial dump trucks traversing these roads will make an already hazardous situation truly dangerous; that the intersections of these roads and others that provide ingress and egress to the proposed dirt borrow pit are not designed to handle a large

number of trucks; that knowingly adding a fleet of commercial trucks to the current mix of elderly drivers and beachgoers would be highly imprudent; that Holts Landing State Park is located just to the north of the proposed site and the roads that serve the Park are the same as the ones that will serve the pit; that the Park is noted for its peaceful setting, the wildlife living there, and the only crabbing pier on the Inland Bays; that a fleet of trucks is not compatible with this setting and would diminish the experience of Park visitors; that the impact of establishing a dirt borrow pit so close to the Inland Bays is unknown and should be better understood before considering this proposal; that the proposal should be denied outright; that if not denied outright, it should be deferred until a traffic study and environmental impact study are completed and the risks of a pit in the midst of a residential and agricultural area are better defined; that the pit would change the water table and increase silt levels in ditches, as well as add dust to the atmosphere.

The Commission found that Russell Banks was present with Heidi Gilmore, Attorney with Tunnell and Raysor, P.A., and Frank Kea, Land Planner, and Jason Palkewicz, Professional Engineer, with Solutions IPeM, and that they stated in their presentations and in response to questions raised by the Commission that the site is a small land area within a larger tract of land; that the pit location will be 1,720 feet from Irons Lane and 500 feet from Old Mill Road; that the pit area will contain 17 acres of a 31 acre site; that the Applicant owns other acreages that are adjacent; that the site is naturally buffered with trees for screening; that the site is a portion of a former family farm; that the pit site and area around it is currently farmed; that there will be no trees removal except with a hedgerow that crosses the middle of the tract; that the Applicant has a licensed dirt hauling business; that the use is not intended to be a sand and gravel operation, only a soil removal business; that businesses will come to the site for soil and haul the soil to other sites; that there are other borrow pits in the area; that two State pits in the area have been closed; that an old inactive borrow pit exist on adjacent property; that the site is appropriate according to the County Code; that they have submitted suggested proposed Findings of Fact and Conditions of Approval; that a Preliminary Land Use Service (PLUS) review was not required, but they went voluntarily; that the Comprehensive Plan – 2008 Update has this property identified for purposes of future land use as a Low Density Area; that the State Strategies identifies the area as an Investment Level 3; that the project will be designed in accordance with the Zoning Code; that the use is consistent with the trend of uses in the area as there have been historically other borrow pits in this area and the proposed use will be no different than the activities that have long existed in the area; that at the current time there are other borrow pits in the immediate area, yet not all are active pits; that one such inactive borrow pit is on property adjacent to this site and is also owned by the Applicant; that the Conditional Use will comply with all use regulations required by law including buffers, setbacks and use restrictions; that the use will fulfill a need to the area; that the location provides convenient and safe access to the site; that public interest in infrastructure will be avoided because the entrance is proposed to be located along that section of Irons Lane that is mostly farmland and which has the best visibility; that the developer will be responsible for the construction of a 50-foot access easement leading from the proposed entrance to the borrow pit through other lands owned by the Applicant; that subject to DelDOT's recommendation and approval, the access easement will provide for safe vehicular movement within the site and onto the connecting roadway; that no traffic impact study was required and no adverse effects on area roadways are anticipated; that the engineering calculations, based on the Applicant's current client requests, indicate that the trips per day to the

site are estimated at 15 to 18 trips; that the borrow pit will be isolated and integrated into the existing terrain and surrounded by the natural landscape as well as incorporating the required buffers and extensive setbacks; that there will be no obvious borrow operations visible from area roadways that would negatively affect the area; that wetlands located on the site will not be affected by the use; that no significant historical or natural features are on the site; that the PLUS comments indicate that there are no gravesites on this site; that the borrow pit site will be limited to the proposed isolated portion area; that the borrow pit operation is to occur in the area used currently as farmland, therefore the Applicant can preserve trees on the site and block visibility to operations; that objectionable features will be screened through the use of existing natural landscape, trees, and a buffer maintained by the Applicant; that studies have been performed on the site and it was determined that the soils are excellent for the intended use; that through the establishment of approved stormwater management plans and sediment and erosion control plans, erosion and sedimentation will be highly controlled on site and the potential for pollution of surface and groundwater will be avoided and virtually eliminated; that the use will not adversely affect area waterways; that area property values will not be decreased by the use because of the scale of the land area of the total site versus the limited portion of land dedicated to the use; that the use will not have a negative effect on the area; that the Applicant has documented economic benefits will be generated by the use based on increased values of services to area businesses by not having to travel to available borrow pits in Georgetown and Selbyville for soil materials; that the use is compatible with other area land uses, including agricultural and business uses in the vicinity; that in addition, the project has been designed to minimize any adverse impacts on adjacent properties and to provide protection to the nearby residential uses; that the property is situated in an Investment Level 3 and the site plan is in compliance with the County Comprehensive Plan, which was reviewed and approved by the State, as well as with all County Ordinances; that the use in an AR-1 Agricultural Residential District requires County approval for which the County may place conditions; that although the site is in an Investment Level 3 area where the State does not intend to spend funds for infrastructure or other public services, State policy should not be used as a basis for denial if the project otherwise complies with County Ordinances; that they offer the following suggested Conditions of Approval for consideration: 1) Final site plan review by Planning and Zoning shall be required for each phase of the project. 2) Hours of Operation: Monday through Friday, 7:00 a.m. to 7:00 p.m., Saturday, 7:00 a.m. to 7:00 p.m., No Sunday hours. 3) Security – Because of the location of the proposed site isolated by a natural barrier within the interior of property approximately 1,700 feet from Irons Lane and 450 feet from Old Mill Road, there is no issue with security to the site operation for which the public need heightened protection. The Applicant plans to install a gate at the entrance of the site which shall be secured when the operation is closed. 4) There is no need for lighting of the site. 5) One sign is requested at the entrance to the site for directional purposes. 6) Traffic flow: An entrance and a fifty (50) foot access easement shall be installed on the Irons Lane side of Applicant's land and run across the land of the Applicant to the proposed site. 7) The entrance required by DeIDOT shall be completed by the Applicant and within the time periods required by DeIDOT. 8) Storm water management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated utilizing Best Management Practices. 9) Buffers shall be provided as required by applicable State and County requirements and as noted on the proposed site plan. 10) No site preparation, site disturbance, excavation, or other construction shall be commenced until all permits required by other laws, ordinances, rules

and regulations have been issued and the approved final site plan is recorded. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning. 11) No materials may be brought from off the site for processing, mixing or similar purposes. 12) No materials will be stored on any access road or within any buffer areas. 13) No stumps, branches, debris or similar items will be buried on the site. 14) The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties, as follows: A. A buffer of 50 feet shall be maintained around that portion of the site from which the borrow pit is proposed to be operated. Existing vegetation within the buffer area shall remain undisturbed. B. A water truck will be available to control dust from interior trucking traffic when conditions require.; 15) The 30.78 acre parcel shall be divided into two (2) phases of approximately 16 acres each. Phase Two will not be started until Phase One is completed. Note: There is a natural hedgerow that will buffer the Phase One operations on the south side. 16) Applicant may operate the borrow pit using mechanical means. 17) Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control (DNREC), or any successor thereto. Upon certification by the DNREC of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment. 18) We believe that the granting of the Conditional Use is in accordance with the 2007 Sussex County Comprehensive Plan, promotes health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and the adoption of the Conditional Use ordinance is for the general convenience and welfare of the inhabitants of Sussex County.; that the site is tucked back within trees and hedgerows; that they have incorporated small cross-sections on the site plan to show how the buffers would be bermed, shaped and landscaped; that the entire site contains 104 acres; that there are no wetlands within the 30 acres portion of the site; that all surface water will remain on site; that the site will be self contained; that the pit, future pond, will contain safety benches; that they anticipate an average of 15 to 18 trips per day; that DelDOT did not require by-pass lanes; that DelDOT will require that the entrance on Iron's Lane be constructed to State specification; that the site plan and operation of the project will comply with items (1) through (6) of the Zoning Code Chapter 115 Article XXIV Section 115-172 B in that (1) The proposed borrow pit will not transport material from off the site for processing, mixing or similar purposes. (2) A 50' landscaped buffer is provided around the pit. The borrow area is more than 650' from the nearest on-site home, over 750' from the nearest off-site home and over 450' from the nearest public road. Stormwater within the site will be directed into the excavation. The site is near an existing high point which will allow off-site stormwater drainage to be directed around the site. The existing ditch on the southern edge of the Conditional Use limits will have a 50' landscaped buffer. Access to the site will be from Irons Lane and be coordinated and designed per DelDOT standards. (3) The excavation will be a minimum of 50' from the outbound property line. Based on USGS maps the depth to water table is between 2' and 4'. The site slope above the water table will be 3:1 and be vegetatively stabilized once excavation in that area has been completed. (4) A minimum 50' buffer to the

property lines has been provided around the excavation and work area. The closest road to the excavation/work site is Old Mill Road and it is over 450' from the proposed excavation. (5) The nearest off-property dwelling is over 750' from the proposed excavation. (6) Should the County see fit to grant this Conditional Use, a site plan will be prepared and submitted in compliance with this section.; that the access easement is a part of the legal description of the Conditional Use; that the PLUS comments included, but were no limited to: that no cemeteries exist on the site; that minimal entrance improvements will be required; and that there was minimal negativity from State agencies; that they have not performed a Phase I Environmental Assessment since the project is on a family owned farm and since the family knows the site; that the Quillen Pit, which is in close proximity to this site, is inactive; that the State pits, referenced in the opposition comments, are near Ellis Point; that the excavation will be performed by the Applicant, his employees, or sub-contractors of the Applicant; that the life of the pit will not exceed 40 years; that the depth of the pit will be no more than 25 feet since they will be excavating with mechanical equipment, not dredging; that the surface area of the pond will not exceed 17 acres; that neighbors closest to the entrance are in support of the application; that the materials have been tested and are suitable for borrow; that the Applicant owns the majority of the acreage around the site; that excavation shall be no less than 100' from neighboring property lines; that no materials will be dredged; that the first phase of the operation will be to the rear (north portion); and that the berms will be landscaped.

Mr. Robertson stated that recent applications for borrow pits have been approved with some conditions of approval that reference that markers and signs shall be placed at appropriate locations to designate pit areas as required by the Mine Safety and Health Administration (MSHA); that borrow pit operations shall be consistent with the MSHA; that MSHA Directives and Regulations supersede these plans and specifications; and that per MSHA requirements, the borrow pit shall be surrounded by a berm with a minimum height equal to ½ the height of the tallest tire used in the mining operation; and that the current minimum height is 3 feet.

Mrs. Gilmore stated that the Applicant has no objections to those additional conditions.

The Commission found that Robert Thornton, a local builder/developer, was present in support of the application and stated that the Sussex County economy needs fill material for development of projects; that the location of the site, being in close proximity to several current and future developments, will benefit those projects by providing materials; and that if done in an environmentally sound process the project will be a major benefit.

The Commission found that Ted Stevens, a local builder, was present in support of the application and stated that, in the past, he has fought borrow pit applications that started development without the appropriate approvals; and that traffic should not change in the area since the Applicant and other contractors are already hauling materials from other pits in the area.

The Commission found that Susan Timmons, Ruth Vella, Richard Hudson, Ray Morgan, Joan Kusak, Raymond Banks, George Merrylow, and Elaine MacKinnon, of the 18 parties present in opposition, spoke in opposition and stated that the petitions and letters submitted in opposition have been signed by more than 260 people expressing their concerns about this application and

that some of the reasons include: traffic safety since Irons Lane pavement is only 20 feet in width with no shoulders; that several school bus routes and a Dart bus route use Irons Lane; that school bus, passenger, and auto safety is a concern since the intersection with Route 26 and with Holts Landing Road have been the location of many accidents; that unacceptable road damage and safety impacts could occur since the weight and width of dump trucks is unsuitable for such a narrow road; that traffic safety is a concern since the entrance and exit of the pit will be on Irons Lane; that noise levels will be offensive to neighbors; that contamination of ground water is a major concern; that conditions for an existing grandfathered 30+ years old borrow pit nearby cannot be the same as for a new pit; that Holts Landing Road is already used as a bypass for Route 26 by locals and vacationers; that the widening of Route 26 will affect Irons Lane; that wildlife and the nearby Holts Landing State Park will be negatively affected; that the original entrance to the pit was denied by DelDOT; that an additional borrow pit is not compatible with a built up residential area; that bicyclists, walkers and joggers are already at risk on these roads; that the addition of numerous commercial dump trucks traversing these roads will make an already hazardous situation truly dangerous; that the intersection of Route 26 and Irons Lane is always busy and has been the location of several accidents; that the entrance and exit of the ACTS Thrift Shop are on either side of the intersection; that there are a minimum of 5 school bus routes on Irons Lane in the AM and PM each school day, as well as a kindergarten route at the noon hour; that children wait on the sides of Irons Lane for these buses; that some of the children have to walk a distance to their homes; that additional trucks would put those children in harm's way; that there is at least one daycare provider located on Irons Lane; that the intersection of Holts Landing Road and Irons Lane has had 8 accidents in recent years and has necessitated the State to put up 4 way stop signs; that these intersections are not designed to handle a large number of commercial dump trucks; that the very nature of dump trucks with their bulk, width, and weight pose a real danger to automobiles on the road; that an accident involving a car and a dump truck would be highly more likely with the increased traffic; that during spring and fall, Irons Lane is traversed by many tractors and farm equipment which take up more than the 20 foot wide pavement; that many cars have to pull over to let the farm equipment by, and suggest that the Commission imagine farm equipment and dump trucks meeting each other; that Irons Lane is almost exclusively residential and that the addition of a dirt borrow pit would be detrimental to property interest and values; that traffic on these roads continues to increase due to ongoing development of new subdivisions, dozens of new homes currently under construction, and many more planned; that Irons Lane is in poor shape; that a culvert under the road must be broken because the dirt keeps eroding under the road; that part of the pavement is broken; that there are very deep ditches along some sections of the road; that there is an existing operational pit within 0.4 miles of the site that was brought into service over 30 years ago, before the area was built-up with new developments, homes, a golf course/country club, all of which empty out onto Irons Lane; that the road network has remained unchanged with the same widths and no shoulders; that circumstances of the area in question have drastically changed the need and validity for an additional borrow pit; that the Applicant originally requested access from the pit to be on Old Mill Road; that DelDOT denied that request; that the Applicant was told that he would have to pay to have Old Mill Road from the access to the intersection of Irons Lane; that this sounds like the Applicant is trying to put his profits on the back of the County and State tax payers to avoid his personal cost and his willingness to put the impact on Irons Lane; that Irons Lane is far more dangerous for such an access and much more heavily traveled; that the roads that serve the Holts Landing State Park are the same roads that will serve the pit; that Holts

Landing State Park is noted for its peaceful setting, the wildlife living there, and the crabbing pier; that a fleet of dump trucks is not compatible with this setting and would diminish the experience for park visitors; that water pollution impacts on the Indian River Bay is unknown and should be better understood before considering this proposal; that the ditches that border the property empty into the Blackwater Creek which is classified as navigable waters; that the silt and runoff from the pit could be a hazard to the wildlife and vegetation in and around the Creek; that the Creek runs directly into the Indian River; questioning the effects on ground water; questioning where fuels will be stored to fuel all of the equipment; questioning what precautions will be taken for possible spills and leaks; that dust can be a health hazard; that noise is a concern due to buckets banging, bulldozers working, engines running, and beeper horns; that the sign location is questionable since it was located on Old Mill Road, and not on Irons Lane; questioning if a traffic study has been done to see if the roads involved can withstand the weight and constant traffic of loaded dump trucks; questioning the equivalent of a loaded dump truck to a car on road damage; questioning if a study has been done to evaluate the traffic and load impacts on the roads; questioning if anyone has done a study to find out the environmental impact on a borrow pit in a residential area and the Inland Bays; questioning if an research has been done to determine the effects of digging such a deep hole and its affect on ground water; questioning if any of the Commission have heard the noise level created by an active borrow pit and if they would like a pit next to their home; questioning how the safety concerns of vehicles, pedestrians, and children will be addressed; questioning if the road is structurally sound to handle the volume and weight of the increased dump truck traffic; questioning what the designated truck travel route would be; questioning what the normal hours of operation of the pit would be; questioning the types of equipment that would be used and their impacts; that Bay Colony was required to have a 60' right-of-way for entrance to their development and that Cripple Creek roads had to have 30' paved roads; questioning how DelDOT can allow Irons Lane to have a 20' pavement; expressing concerns about the proposed construction on Route 26 and some temporary closure of local roads during that construction; questioning if the Applicant has abided by his previous issues with the Planning and Zoning Department; questioning if he cleaned up the areas that he was told to clean up or did he clean them up and then start dumping again; questioning if the Applicant is now using his residential property for commercial use; questioning if the Applicant will follow all the rules and regulations; that the Applicant has not contacted the neighbors prior to making application to see if the neighbors had any concerns; that during winter months the pit will be visible from roadways since the foliage will be gone; and stating that public notices should be placed perpendicular to roads, not parallel.

The Commission found that Mrs. Timmons submitted her comments on behalf of the 259 signers of petitions in opposition; that Mrs. Vella submitted comments on behalf of 21 residents in White's Neck Village and West Ocean Farms Subdivisions in opposition; that Mr. Hudson submitted a letter from himself and his wife in opposition; and that Elaine MacKinnon submitted a letter in opposition.

The Commission found, by a show of hands, that there were six (6) parties present in support of this application and 18 parties present in opposition.

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

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

OTHER BUSINESS

Tidewater Environmental Services, Inc.
C/U #1792 – Wandendale Final Site Plan – Route 24

Mr. Lank advised the Commission that this is the final site plan for a regional wastewater treatment and disposal plant; that the Commission granted preliminary site plan approval and a final time extension on October 28, 2010; that the approved use needs to be underway by December 9, 2011; that the final site plan notes the 14 conditions of approval and the buffers that are to be planted have been revised from Leyland Cypress to Red Cedar trees; that this revision was requested by the Commission and approved by the Department of Agriculture; that all agency approvals have been received; and that the Commission was previously provided with a copy of the site plan.

The Commission discussed this site plan.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to grant final approval of the submitted site plan. Motion carried 4 – 0.

Ellendale Volunteer Fire Department, Inc.
C/U #1880 – Site Plan – Road 213

Mr. Lank advised the Commission that this is a site plan for an 8,151 square foot fire department substation located on 16.62 acres; that the site is zoned AR-1; that the Conditional Use was approved on January 4, 2011 with two (2) conditions; that the conditions of approval are noted on the site plan; that the setbacks meet the minimum requirements of the Zoning Code; that on-site septic and well are proposed; that the site is not located in a flood zone; that there are no wetlands on the site; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided with a copy of the site plan.

The Commission discussed this site plan.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to grant preliminary approval of the submitted site plan. Final approval of the site plan shall be subject to the staff receiving all appropriate agency approvals. Motion carried 4 – 0.

Sposato Landscaping
C/U #1446 – Revised Site Plan – Road 367B

Mr. Lank advised the Commission that this is a revised site plan for a 15' by 48' (720 square foot) lean-to addition to a 38' by 51' (1,938 square foot) pole barn to an existing 1,917 square

foot shed; that this Conditional Use for a landscaping business was approved on April 9, 2002 with five (5) conditions; that the conditions of approval did not limit any additional buildings; that staff is questioning if an amended application is required; that at the public hearing on March 14, 2002 there were no parties present in support of or in opposition to the application; and that that the Commission was previously provided with a copy of the site plan.

The Commission discussed this site plan revision.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant approval of the submitted site plan. Any further expansion to the buildings for the business shall require an application for Conditional Use and public hearings. Motion carried 4 – 0.

William W. Stevenson, Jr.
3 Parcels and 50' Right-of-Way – Route 26

Mr. Lank advised the Commission that this is a request to subdivide a 39.11 acre parcel into three (3) parcels with access from a 50' Right-of-Way; that Lot 1 will contain 1.66 acres; that Lot 2 will contain 1.35 acres; and that the residual lands will contain 36.10 acres; that the owner is proposing to create the 50' Right-of-Way over an existing driveway; that DelDOT has issued a Letter of No Objection; that this request may be approved as submitted or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision; and that the Commission was previously provided with a copy of a sketch drawing of the request.

The Commission discussed this requested subdivision.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the requested minor subdivision with the condition that any further subdivision of the site will require an application for a major subdivision. Motion carried 4 – 0.

Subdivision #2005-52 – Underhill Properties
Time Extension – Marsh Island

Mr. Lank advised the Commission that this is a request for a time extension or a determination that this subdivision has been superseded by the approval of Subdivision #2008-25; that Subdivision #2005-52 received preliminary approval on July 27, 2006; that the Commission granted one-year time extensions on August 15, 2007, July 16, 2008, July 15, 2009 and July 14, 2010; that Subdivision #2008-25 was for an extension of Subdivision #2005-52; that Subdivision #2008-25 received preliminary approval on June 16, 2010; that one of the conditions of approval was that the conditions of approval on Subdivision #2005-52 shall be incorporated into this application; that since this is the case, staff is questioning if both applications are now valid until June 16, 2013; and that the Commission was previously provided with a copy of a letter from the Applicant's engineer advising the Department about the work that has been completed to date.

The Commission discussed this subdivision request.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously that Subdivision #2005-52 be considered a part of Subdivision #2008-25 with the same time line of June 16, 2013.
Motion carried 4 – 0.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that their packet includes some follow-up information from Robert Witsil, Jr., Esquire, in reference to the Bierman Family Trust Subdivision relating to the L & W Tax Ditch for future discussion.

Meeting adjourned at 9:33 p.m.