



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MAY 27, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 27, 2010 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, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of May 13, 2010 as amended. Motion carried 5 – 0.

OLD BUSINESS

C/U #1829 – application of **M.L. JOSEPH SAND & GRAVEL, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to expand excavation of borrow pit to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 40.85 acres, more or less, lying north of Road 322 (Bunting Road) approximately 2,400 feet west of Governor Stockley Road (Road 432).

The Commission discussed this application, which has been deferred since May 13, 2010.

Mr. Ross stated that he would move that the Commission recommend approval of C/U #1829 for M.L. Joseph Sand & Gravel, Inc. for the expansion of an existing borrow pit based upon the record made at the public hearing and for the following reasons:

- 1) This application is for a 40.85-acre expansion of an existing borrow pit.
- 2) A need exists in the area for dirt, sand and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
- 3) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
- 4) The use of the project is of a public or semi-public character that will provide a source of fill dirt available to the entire County. This use is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.

- 5) Vegetated buffers will be established along the boundaries of this land and lands of other ownership and Bunting Road. A majority of the boundary is surrounded by lands owned by the Applicant or its related companies.
- 6) This recommendation for approval is subject to the following conditions and stipulations:
 1. No materials shall be bought from off the site for processing, mixing or similar purposes.
 2. Water or a water truck shall be available to control dust from road traffic when conditions require.
 3. Any roadway and entrance improvements required by DeIDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 4. The hours of operation shall be as follows:
 - a. Material may be hauled off-site only between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 2:00 p.m. on Saturdays.
 - b. Continuous on-site operations of the plant dredge and pit is permitted Monday through Saturday.
 - c. There shall be no borrow pit operations after 8:00 p.m. on Saturday until 6:00 a.m. on Monday.
 5. No materials shall be stored on any access roads or within any buffer area.
 6. Fuel shall be stored on-site in confined storage tanks as required by DNREC, the Fire Marshal or any other applicable regulations.
 7. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 8. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion.
 9. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamations plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
 10. The Applicant shall comply with all State and County erosion and sediment control regulations.
 11. Markers and signs shall be placed at appropriate locations to designate pit areas.
 12. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
 13. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
 14. It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).
 15. Markers and signs shall be placed at appropriate locations to designate pit areas as required by the Mine Safety and Health Administration (MSHA).
 16. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall include a 30 foot wide vegetated buffer of native species vegetation.

17. Borrow pit operations shall be consistent with the Mine Safety and Health Administration (MSHA). MSHA Directives and Regulations supersede these plans and specifications.
18. Per MSHA requirements, the borrow pit shall be surrounded by a berm with a minimum height equal to $\frac{1}{2}$ the height of the tallest tire used in the mining operation. Current minimum height is 3 feet.
19. The Final Site Plan shall include a landscape plan for all buffer areas, the berms, and the slopes. The buffers shall include native plantings, and crops are not considered as part of the vegetative buffer. As stated by the Applicant, the buffer is designed to provide a visual, dust and other nuisance barrier.
20. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. 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 and stipulations stated. Motion carried 5 – 0.

C/U #1830 – application of **J & T PROPERTIES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an outpatient physical therapy clinic to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,553 square feet, more or less, lying north of Savannah Road (Route 9) across from Rt. 12 at Wescoats Corner.

The Commission discussed this application, which has been deferred since May 13, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1830 for J & T Properties, LLC for an outpatient physical therapy clinic based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is generally similar to other C-1 and B-1 uses in the vicinity of the property along Savannah Road, including shopping centers. There are also similar conditional uses in the immediate area for doctor's offices.
- 2) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties, community or traffic.
- 3) The project is consistent with the County's Comprehensive Development Plan and is in the Environmentally Sensitive Development District, which permits the proposed use.
- 4) The property has frontage on Savannah Road and on a proposed roadway owned by DelDOT. The entrance will be via an easement over the DelDOT land and there will be no direct access to Savannah Road.
- 5) The use benefits the health, safety and welfare of Sussex County residents, and will provide physical therapy offices in a convenient location along Savannah Road near the City of Lewes and Beebe Hospital.
- 6) The project will be served by central water, and central sewer shall be provided by Sussex County.
- 7) This recommendation for approval is subject to the following conditions and stipulations:
 1. There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side.

2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.
3. As proposed by the Applicant, the hours of operation shall be limited to between 7:00 a.m. and 8:00 p.m., Monday through Friday.
4. As stated by the Applicant, the building shall have a residential appearance.
5. The Applicant must comply with all DelDOT requirements concerning the entrance, easement and roadway improvements.
6. As stated by the Applicant, the use shall be a physical therapy practice.
7. The Final Site Plan shall include a landscape plan for the property.
8. The Applicant shall comply with all County Engineering Department requirements for connection of the property into the Sussex County Sewer District, including any system upgrades that are necessary to serve the property.
9. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1863 – application of **ANDREW AND CAROL WALTON** to consider the Conditional Use of land in a MR Medium Density Residential District for a marina with restaurant, retail and multi-family dwelling structures (5 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.84 acres, more or less, lying southwest of Oak Orchard Road, northeast of Pine Street and northeast of Bay Road in Oak Orchard.

The Commission discussed this application, which has been deferred since May 13, 2010.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1863 for Andrew and Carol Walton for a marina with restaurant, retail and multi-family dwelling structures (5 units) based upon the record and for the following reasons:

- 1) This is the site of a prior Conditional Use approved for a marina with boat rental, boat slip rental, bait and tackle sales, sandwich shop, crabbing pier, office and residence. This new Conditional Use is consistent with the prior approved uses for the property.
- 2) Oak Orchard residents appeared in favor of the application, stating that it will be a benefit to the area.
- 3) The use, with the stipulations and conditions placed upon it, will not have an adverse effect on neighboring properties or the neighborhood.
- 4) The proposed use will not have an adverse effect upon traffic.
- 5) The use as a marina with restaurant and retail is of a public benefit to the residents of Oak Orchard and should help revitalize small businesses within the heart of Oak Orchard.
- 6) This recommendation for approval is subject to the following conditions:
 1. This Conditional Use shall replace Conditional Use #1088 for the property.
 2. There shall be no more than 10 boat slips permitted, and all boat slips, dock, pier and marina activities shall be subject to all State and Federal requirements that may be applicable to the use.

3. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
4. No boat storage shall be permitted, except for boats belonging to the owner of the property.
5. No boat motor repair shall be permitted.
6. No fuel sales will be permitted.
7. There shall not be an arcade.
8. There shall be no more than 5 residential units on the property.
9. There shall be parking as required by the Zoning Code. The spaces shall be delineated on the site, and there shall be landscaping or a fence between the parking area and Oak Orchard Road to separate the parking area from the roadway.
10. The property shall be connected to the Oak Orchard Sanitary Sewer District and shall comply with all Sussex County Engineering Department requirements for the connection or system upgrades required to serve the property.
11. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices.
12. Security lighting shall be screened from neighboring properties and roadways.
13. All dumpsters or trash receptacles shall be screened from view.
14. 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. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2008-25 – application of **UNDERHILL PROPERTIES, LLC** to consider the subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 8.78 acres into 14 lots (Environmentally Sensitive Developing District Overlay Zone) expansion of 138 lot Environmentally Sensitive Developing District Overlay Zone (#2005-52), located 500 feet east of Road 279 and 700 feet north of Road 279A.

The Commission found that on May 14, 2010 the Applicant submitted an Exhibit Booklet for consideration which contains Projects Contacts, an Application, Subdivision #2008 – 25 Application Overview, a Development Report and Subdivision Considerations, Application Plans, Site Plan Details, Land Use Surrounding Zoning and Site Location Maps, Utility Providers and Covenants and Conditions.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 19, 2009 is a part of the record for this application.

The Commission found that Gene Bayard, Attorney, Tom Ford of Land Design Inc. and Michael Daniels of Underhill Properties, L.L.C. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this application is

for the expansion of a previously approved preliminary subdivision plan; that Subdivision #2005 – 52 received preliminary approval for 139 lots on July 27, 2006; that this application is for a 13 lot expansion; that 71 percent of the site is open space; that there are 32 acres of tidal wetlands on the site; that the applicants request that the minutes of July 27, 2006 be incorporated into the record for this application; that extensive engineering has been performed on the previous application and this application; that both preliminary plans have been submitted to the various agencies for review and approval; that this site was acquired from an adjoining parcel; that the branch splits the Guy property; that a nationwide permit would be needed to cross the branch; that 152 total lots are proposed; that a development report is found in Tab #3; that 99-9C considerations are addressed in the Exhibit Booklet; that the project is consistent with the cluster ordinance; that there is no disturbance to wetlands; that utilities are available and providers are referenced in the Exhibit Booklet; that DelDOT will grant an entrance approval; that the project meets the requirements of all ordinances; that 13 additional lots are requested; that conditions have been submitted and the applicant is requesting that the previous conditions of approval for the 139 lots be incorporated into this application; that sewer will be provided by Sussex County; and that some of the previously approved 139 lots have been relocated to allow for the design of the additional 13 lots.

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

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

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

C/U #1831 – application of **MARK DERRICKSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a small retail gun shop to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.2 acres, more or less, lying north of Road 336 (Piney Neck Road) 0.4 mile west of Road 335A (Adams Road).

The Commission found that on May 17, 2010 the Applicant provided an Exhibit Booklet for consideration which contains a tax map with zoning designations, a series of photographs of the site and area, references to the Environmentally Sensitive Developing Areas from the Comprehensive Plan Update and a copy of the Future Land Use Map, a copy of the purpose of a Conditional Use from the Zoning Ordinance, a copy of the 2008 survey of the property, a copy of the site plan for the requested Conditional Use, a copy of the Support Facilities Report from DelDOT, dated October 22, 2008, a letter in support from an immediate neighbor to the site, a copy of the Applicant's Federal Firearms License and his State of Delaware Business License, and suggested proposed conditions of approval for consideration.

The Commission found that on October 22, 2008 DelDOT provided comments in the form of a Support Facilities Report and referenced that a traffic impact study was not required and that the current Level of Service "A" of Piney Neck Road will not change as a result of this application.

The Commission found that on May 11, 2010 the Sussex Conservation District provided comments in the form of a Memorandum and referenced that there are three soil types on this

parcel; 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 may not be necessary for any on-site or off-site drainage improvements.

The Commission found that on May 26, 2010 the County Engineering Department Utility Planning Division provided comments in the form of a Memorandum and referenced that the site is located in the Dagsboro Frankford Planning Area; that wastewater capacity is available; that Ordinance 38 construction is not required; that sewer service has not been extended to this area at this time; that the project is not capable of being annexed into a County operated sanitary sewer district at this time; that conformity to the Dagsboro/Frankford Planning Study will be required; that the parcel is in a planning area for sewer service and the area is expected to receive sewer service when developers of proposed projects located on the south side of Piney Neck Road complete construction of a pump station and extension of sewer service to the area; that when service is provided to the area, the County could consider a request for a district expansion to include the parcel; that the schedule for sewer service is unknown at this time; and that a concept plan is not required.

The Commission found that Mark Derrickson was present with Jim Fuqua, Attorney, and that it was stated that the Applicant is proposing a small retail gun shop for the sale of shotguns, rifles, handguns and accessories; that the shop is a part of a garage structure to the rear of their residence; that the room/shop exists on the premise; that they are proposing to provide three parking spaces from the existing driveway; that the shop will have one outside door and one window, and an interior access to the garage; that the doors and window will have deadbolt locks; that the window will have bars; that the Applicant will store all guns in a gun safe and all guns will be stored with trigger locks; that security lighting will be provided; that they would like to erect one ground sign, not exceeding six square feet, and one wall sign, not to exceed four square feet; that hours of operation shall be limited to 10:00 a.m. until 5:00 p.m. Monday through Friday and 10:00 a.m. until 1:00 p.m. on Saturday and Sunday; that most of the business activities will be by appointment only; that the Applicant maintains a valid Federal Firearm License, and Delaware Business and Professional Licenses; that the use is similar to a home occupation, but allows the Applicant to display the products; that revised site plans will be provided; that deliveries will be dropped off by UPS and Fed-Ex type vehicles; and that there will not be a shooting range on the site.

The Commission found that Mr. Fuqua submitted revised suggested Findings of Fact and Conditions of Approval to correct the operations hours.

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 #1831 for Mark Derrickson for a small retail gun shop based upon the record and for the following reasons:

- 1) The project is in a developing area according to the County Comprehensive Land Use Plan.
- 2) This limited use, with the conditions and stipulations placed upon it, will not adversely impact neighboring properties or traffic in the area.
- 3) The use, as a small retail gun shop, will be a benefit to outdoorsmen and residents of this area of Sussex County.
- 4) This recommendation is subject to the following conditions:
 1. There shall be no more than one unlighted sign on the premises, not to exceed six (6) square feet in size per side, and one sign on the building, not to exceed four (4) square feet in size.
 2. The 11.5 feet by 15 feet gun shop shall be limited to retail sales of guns, knives, ammunition and related accessories.
 3. The Final Site Plan shall contain a delineated parking plan and the site itself shall have all parking spaces clearly marked.
 4. Any and all dumpsters shall be screened from view of neighboring properties.
 5. No firearms shall be discharged on the site.
 6. The Applicant shall comply with all DelDOT requirements regarding entrance and roadway improvements associated with the project.
 7. The shop shall contain one outside door for customers and a window, both with deadbolt locks, bars and alarms. The solid interior door shall also have a deadbolt lock with alarm. The shop shall house a gun safe for storage.
 8. Security lights shall be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
 9. Hours of operation shall be limited to 10:00 a.m. until 5:00 p.m. Monday through Friday and 10:00 a.m. until 1:00 p.m. on Saturday and Sunday.
 10. The owner and operator shall have all necessary Federal and State licensing and permitting required for retail sales of firearms and shall be the only employee.
 11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1683 – application of **J. G. TOWNSEND, JR. & CO.** to amend the Comprehensive Zoning Map from a C-1 General Commercial District, a B-1 Neighborhood Business District and an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying north of Road 274 (Old Landing Road) and across from Road 275A (Airport Road), to be located on 10.28 acres, more or less.

The Commission found that on May 13, 2010 the Applicants provided an Exhibit Booklet which contains a site survey of the property, a copy of Ordinance No. 428 for the rezoning of a portion of the property to B-1 Neighborhood Business, a copy of letters from Wilson, Halbrook & Bayard, P.A. to the Office of State Planning Coordination, dated February 3, 2010 and May 7, 2010, in reference to the application, a copy of a portion of Beers Atlas depicting the site, a copy of a portion of the Tax Map of the area showing zoning of the area, a detail map showing a

portion of the site and the proposed DelDOT realignment connector to Airport Road, and suggested proposed Findings of Facts.

The Commission found, based on a November 19, 2008 letter from DelDOT that the site is in the area identified as Activity Center A-2 in the SR-1 Land Use and Transportation Plan; that DelDOT has been working with the developers of Sterling Crossing and the owners of the Hood and J.G. Townsend properties on improving the local road network; that one of the main objectives is to improve connectivity, specifically through the extension of Airport Road from Old Landing Road to Route 24; that the developers of Sterling Crossing have made provisions for the road by dedicating right-of-way along the project perimeter; that the other owners have expressed a willingness to cooperate in the planning of their developments to also accommodate the roadway; that this represents a potential opportunity to achieve land use and transportation objectives desired by the State and County; that if the developers are amenable to creating site plans that provide for good bus access and related facilities, pedestrian friendly connections and bicycle provisions as part of a planned activity center, the State will consider spending their time and resources to make this a reality; that since they have studied this area extensively it is possible that a Traffic Impact Study would not be required depending upon the size, intensity, and type of use that is ultimately proposed and whether previous studies can be simply updated to provide the information needed in regard to the DelDOT mission.

The Commission found that on May 11, 2010 the Sussex Conservation District provided comments in the form of a memorandum and advised that the site contains two soil types; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that off-site drainage improvements will be required; and that it is possible that on-site drainage improvements will be required.

The Commission found that on May 26, 2010 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum and advised that the site is located in the South Planning Area of the West Rehoboth Expansion Area; that the planning study assumption for the parcel is 4.0 EDU per acre for AR-1 zoned land and 6.67 EDU per acre for B-1 and C-1 zoned land, or 43.26 total EDU; that Ordinance 38 construction is required; that the current System Connection Charge Rate is \$4,336.00 per EDU; that the parcel was served with a 6-inch lateral during original sewer district construction; that a 6-inch lateral is not adequate for most potential uses of the parcel; that the project is capable of being annexed into the West Rehoboth Expansion Area; that conformity to the North Coastal Area Planning Study will be required; that the parcel is located within a planning area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and adjoins the existing sewer district boundary; that the parcel could be annexed into the sewer district following completion of certain administrative procedures; that connection to the sewer system is mandatory; that sewer capacity downstream of potential connection points is limited and the developer maybe required to undertake or participate in upgrades at their expense; that any proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that it will be the developer's responsibility to install infrastructure from an approved connection point approved by the County Engineer; that a Sewer Concept Plan is required to be submitted for review and approval prior to requesting annexation; that all cost

associated with extending sewer service will be the sole responsibility of the developer; and that one-time system connection charges will apply.

The Commission found that Gene Bayard, Attorney and a Stockholder of J.G. Townsend, Jr. and Co. was present on behalf of the Applicants and stated in his presentation and in response to questions raised by the Commission that the company has operated from the Race Street site in the Town of Georgetown for 99 years due to access to the railroad lines; that the company has been involved in timber harvesting, timber products, farm produce sales and deliveries, home construction, and vegetable and fruit sales and deliveries; that the company employees 30 full-time and 30 part-time employees; that the company cultivates 3,200 acres, 2,600 acres in vegetable crops and 600 acres in small grains; that crops need rotation; that DelDOT wants a Route 24/Airport Road connector; that the connector will bisect this property; that the site contains mixed zoning with AR-1, B-1 and C-1 zoning; that the site is adjacent and in close proximity to several commercial and business uses and zonings, i.e. Rehoboth Mall, Wal-Mart, Atlantic Liquors, fast-food restaurants, landscaping business, etc.; that the site is adjacent to Sterling Crossing, a multi-family project with a density of 6.0 dwellings per acre and in close proximity to Sea Chase, a multi-family project with a density of 10.0 dwellings per acre; that DelDOT is requesting that the Applicants donate 0.95 acres for the connector road; that the site is not appropriate for farming activities due to the location and access problems for farming equipment; that the home and buildings on the site will be removed or demolished; that the appropriate zoning of the property should be commercial; that the company has no intention of developing the site, but wants to sell the site to allow them to purchase additional farm lands suitable for them to continue farming in close proximity to other farmland in their ownership; that the desire of the company is to be able to own and maintain 3,000 acres of usable farmland; that rezoning of this site should be considered in-fill; that the immediate area is predominantly in commercial use; that DelDOT approached them; and that they did not approach DelDOT.

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

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

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

In reference to **C/Z #1668** and **C/Z #1669**, Stephanie Hansen, Attorney, came forward and requested that the public hearings be combined for purpose of presentation, and acknowledged that she understands that the decisions will be rendered separately.

C/Z #1668 – application of **CB TWIN CEDARS, LLC** to amend the Comprehensive Zoning Map from a GR General Residential District and a C-1 General Commercial District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Road 382 (Route 20 and Zion Church Road) 1,000 feet east of Road 388 (Bixler Road), to be located on 58.55 acres, more or less.

C/Z #1669 – application of **CB TWIN CEDARS, LLC** to amend the Comprehensive Zoning Map from a GR General Residential District and a C-1 General Commercial District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying south of Road 382 (Route 20 and Zion Church Road) ¼ mile east of Road 388 (Bixler Road), to be located on 5.79 acres, more or less.

The Commission found that on May 17, 2010 the Applicants provided Exhibit Booklets which include an executive summary, a project overview, references to the PLUS (Preliminary Land Use Service), references to compliance with zoning regulations as it relates to GR, RPC, and CR-1 zoning classifications and the Environmentally Sensitive Developing District Overlay Zone, 41 figures, charts and maps, and 4 exhibit boards.

The Commission found that on May 21, 2008 DelDOT provided comments that referenced that the developers are proposing to develop the site with 224 mixed dwelling units and approximately 38,000 square foot of commercial space; that a traffic impact study has been prepared; that the study was being reviewed and that the Department has no objection to the application being processed.

The Commission found that on May 26, 2010 the County Engineering Department Utility Planning Division provided comments on C/Z #1668 that reference that 224 mixed units are proposed to be developed; that the site is located in the Johnsons Corner Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$3,512.00 per EDU; that sewer service is not available at this time; that conformity to the South Coastal Area Planning Study – 2005 Update and the Preliminary Engineering Report for the Johnsons Corner Sanitary Sewer District will be required; that connection to the system is mandatory; that the proposed project is within planning study and system design assumptions for sewer service; that sewer capacity can be assumed for a project that does not exceed 224 residential units; that the County construction schedule indicates that sewer service could become available to the parcel as early as this summer or early fall of 2010; that the County requires design and construction of the collection and transmission system to meet County Engineering sewer standards and specifications; that the County Engineer must approve the connection point; and that a sewer concept plan must be reviewed and approved prior to any sewer connection.

The Commission found that on May 26, 2010 the County Engineering Department Utility Planning Division provided similar comments on C/Z #1669 which added, in addition to the above referenced comments, that sewer capacity can be assumed for a project of approximately 35,000 square feet of commercial space.

The Commission found that on May 11, 2010 the Sussex Conservation District provided comments on C/Z #1668 referencing that the site contains three soil types; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that private ditches may be affected; that it is not likely that off-site drainage improvements will be necessary; and that it is possible that on-site drainage improvements will be required.

The Commission found that on May 11, 2010 the Sussex Conservation District provided similar comments on C/Z #1669 which added, in reference to the above referenced comments, that it is possible that off-site drainage improvements will be required depending on the scope of the project.

Mr. Lank advised the Commission that they had previously received comments from the Technical Advisory Committee from their February 2009 review.

The Commission found that the files for C/Z #1668 and C/Z #1669 contain copies of correspondence relating to the PLUS process from the Office of State Planning Coordination, Landmark Engineering/JCM Environmental, and McCrone, Inc.

The Commission found that Wm. David and Karen Simpson, owners of Lost Lands RV Park, submitted a letter of no objection to the projects, but asking that the developer make known to their customers and tenants that the Lost Lands RV Park exists at the project's rear border, and that they are requesting that the developer give careful consideration to the drainage on the project; that they hope that the drainage will not adversely affect the RV sites; and that the customers and tenants should be advised that hunting activities exists on the RV Park acreage and surrounding lands.

The Commission found that Roger Black and Jim Gordon of CB Twin Cedars, LLC were present with Stephanie Hansen, Attorney with Young, Conaway Stargatt & Taylor, Scott Aja, Professional Engineer with McCrone, Inc., Keith Rudy, Professional Engineer with Landmark Engineering/JCM Environmental, and Amy Nazdrowicz, Environmental Scientist with Landmark Engineering/JCM Environmental and that they stated in their presentations and in response to questions raised by the Commission that the Applicants have had a lot of contact with area residents to explain their applications; that the site is currently improved by three apartment buildings containing 50 rental units; that the units are now vacant, except for one unit occupied by a caretaker; that their applications include conversion of a portion of the existing C-1 District and a portion of the existing GR District, totaling 58.55 acres, and rezoning to GR-PRC for development of a mixed residential project, and conversion of a portion of the existing C-1 District and a portion of the existing GR District, totaling 5.79 acres, and rezoning to CR-1 for development of approximately 38,000 square feet of commercial space; that the existing C-1 District contains 2.5 acres and has a rectangular shape; that the proposed CR-1 District contains 5.79 acres and is more of a square shape; that there are several RPC communities in the area; that there are several commercial zonings in the area; that the Future Land Use Map in the Comprehensive Plan Update depicts the site in a mixed residential area and within the Environmentally Sensitive Developing Area; that the site is located in the Johnsons Corner Sanitary Sewer District and sewer service will be available soon; that public central water is available by Artesian Water Company; that Zion Church Road is a Major Collector road according to DelDOT; that according to the State Strategies for Policies and Spending the site is located in an Investment Level 4; that they question why the site is located in a Level 4 since development has been taking place and continues to take place in the area, since Zion Church Road is a Major Collector road, since public sewer service will soon be available, and since central water is available; that they have revised the development plans for the project several

times to accommodate PLUS comments; that two buildings are planned, containing a total of 38,000 square feet of commercial area with appropriate parking and loading; that the RPC portion of the project is proposed to be developed with six apartment/condominium style buildings containing 120 units, 45 townhouse units, and 34 duplex units for a total of 199 dwelling units; that the zoning would allow for up to 228 dwelling units; that the gross density equals 3.4 units per acre; that the net density equals 3.79 units per acre; that 50-foot buffers are proposed along the northerly property line and the southerly property line along the CR-1 portion of the site with an 80-foot buffer along the southerly property line along the RPC portion of the site; that a Forest Conservation Area is proposed to the rear of the site and contains approximately 16 acres; that an existing Tax Ditch exists within 200-feet of Zion Church Road and is proposed to be relocated to a more central portion of the site and will be subject to the approval of the State and the Sussex Conservation District; that amenities include a clubhouse, pool, multi-purpose courts, tot-lots, and open fields for recreation; that sidewalks are proposed along all streets and will interconnect with the CR-1 portion of the project; that the site contains approximately 58.7% (approximately 37 acres) of open space; that the site is located in the Roxana Volunteer Fire Company service area and the Indian River School District; that four phases are proposed: 1) the CR-1 portion, 2) the condominium portion, 3) the townhouse portion, and 4) the duplexes; that the existing Tax Ditch is being converted from a 250-foot easement to an 80-foot easement; that the revised drainage plan will revise and improve the drainage of the site and the general area; that the site is adjacent to the Hampden Park subdivision on the north and in close proximity to a proposed medical facility to the south; that in addition to the relocation of the Tax Ditch they are proposing at least two additional stormwater management features (ponds); that the relocated Tax Ditch will be vegetated for wildlife habitat; that the project will comply with TMDL regulations; that the project has been condensed and consolidated to reduce impacts on the site and the area; that DelDOT requirements will be met; that streets will be private and built to County specifications; that street names have already been approved by the County; that two bus stops are proposed; that the site is not located in a Source Water Protection Area; that an Environmental Assessment and Public Facility Evaluation Report has been prepared and is a part of the Exhibit Booklet in Tab 38; that no Federal threatened species or their habitat exists on the site; that the area being set aside for forest conservation is best suited for habitat for wildlife; that a Wetlands Mitigation Plan has been prepared and is a part of the Exhibit Booklet in Tab 37; that the relocated Tax Ditch will be designed to meander across the property, rather than a straight channel; that the realignment will assist some of the landowners in the Hampden Park subdivision with drainage and will remove ditches that cross some of the lots; that property owners along the Tax Ditch have signed a petition in support of the project to relocate the Tax Ditch; that the Co-Managers of the Tax Ditch also signed a resolution in support of the project to relocate the Tax Ditch; that deed restrictions will include references to protection of the Forest Conservation Area; that the application meets the purpose of an RPC District; that the final PLUS response has not yet been received; that the site is within ½ mile from the Roxana Volunteer Fire Company facility; that the existing apartments will be demolished as soon as permitted, if the use is approved; that they have no objection to deed restrictions referencing the RV Park, hunting activities, and agricultural activities; that reshaping and expanding the commercial area will enhance the use of the site; that the Tax Ditch slopes are planned to be gradually sloped between 10% and 15% and should improve safety and increase habitat values; that they will be contacting the Postal Service for recommendations on cluster mail boxes or stations; that four lots in Hampden Park may be impacted by the relocation of the

Tax Ditch; that the stub street provides access to a proposed parking area; that landscaping will be provided along the entrance roads and along the Tax Ditch right-of-way; that the commercial parking areas will be screened; that commercial areas will be screened and buffered; and that street lighting will be provided.

The Commission found that Ms. Hansen provided copies of a petition of five landowners in the area voicing support for the projects.

The Commission found that Ms. Hansen provided copies of a statement from the Habitat Conservation Division of the United States Department of Commerce referencing the Endangered Species Act, the Fish and Wildlife Coordination Act, and the Magnuson-Stevens Fishery Conservation and Management Act which reported that no threatened or endangered species are known to occur within the project area; that no National Oceanic and Atmospheric Administration resources of concern occur in the project area; and that no Essential Fish Habitat has been designated in the project area.

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.

In reference to C/Z #1668:

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action on C/Z #1668 for further consideration and to leave the record open for 10 days for receipt of PLUS comments from the Office of State Planning Coordination, and for an additional 10 days for a response to the PLUS response by the Applicants. Motion carried 5 – 0.

In reference to C/Z #1669:

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action on C/Z #1669 for further consideration and to leave the record open for 10 days for receipt of PLUS comments from the Office of State Planning Coordination, and for an additional 10 days for a response to the PLUS response by the Applicants. Motion carried 5 – 0.

Meeting adjourned at 8:35 p.m.