



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 10, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 10, 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, and Mr. Martin Ross with Mr. Richard Berl – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of May 19, 2010 as circulated. Motion carried 4 – 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of May 27, 2010 as circulated. Motion carried 4 – 0.

OLD BUSINESS

C/Z #1683 – application of **J.C. 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 discussed this application which has been deferred for further consideration since May 27, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of Change of Zone #1683 for J. G. Townsend, Jr. & Company for a change of zone from C-1, B-1 and AR-1 to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) The project is located in the Environmentally Sensitive Development District according to the Sussex County Comprehensive Land Use Plan.

- 2) The property adjoins the Rehoboth Mall to the northeast, lands of Beebe Medical Center, approved professional office space, several small commercial properties and a six unit per acre and ten unit per acre townhouse project.
- 3) The site currently has a variety of zoning classifications, including B-1, C-1 and AR-1. This rezoning will bring the property under a single zoning classification.
- 4) As part of DelDOT's ongoing plans to create a relief route from Route 24 to Airport Road, the Applicant has agreed to donate lands for the construction of the route. This right-of-way area will bisect the property and will require the demolition or removal of several buildings, further reducing the viability of the property for agricultural uses.
- 5) As a result of the surrounding uses and zoning classifications, this Change of Zone application is an infill rezoning and CR-1 is the appropriate zoning classification.
- 6) This property is served by central water and is within a Sussex County Sanitary Sewer District.
- 7) The proposed CR-1 zoning classification is consistent with the purposes of the Sussex County Zoning Ordinance and the Comprehensive Land Use Plan by promoting the orderly growth, convenience, order, prosperity and welfare of the County and it will encourage commercial activity where substantial commercial activity exists and continues to grow.
- 8) The CR-1 zoning classification is in character with the surrounding area and is consistent with the trends of development in this area of the Route One Corridor.
- 9) Any proposed use on the property will be subject to site plan review by the Sussex County Planning and Zoning Commission.

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

PUBLIC HEARINGS

C/U #1832 – application of **HAZZARD AUTO REPAIR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District for an auto repair shop and contractor's storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.404 acres, more or less, lying north of Road 280B (Conley's Chapel Road) 100 feet east of Road 288 (Wil King Road).

The Commission found that on June 1, 2010 the Applicant provided an Exhibit Booklet for consideration which contains a cover letter, the Purpose of a Conditional Use, copies of portions of the Comprehensive Plan Update referencing the Future Land Use Plan and Zoning, The Structure of the Future Land Use Plan, and Growth Areas, a copy of a portion of the Future Land Use Map depicting the area and Chart, a copy of a portion of the Tax Map of the area showing the zoning and the site, a copy of the survey of the site showing existing improvements, an aerial of the general area and site, a series of photographs, a portion of the site plan for the application, a copy of the DelDOT Support Facilities Report, and suggested Proposed Conditions.

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 recommended, and

that the current Level of Service "A" could change to a Level of Service "B" referencing existing conditions with development under existing zoning: existing peak hour traffic plus site generated traffic and projected level of service with no highway improvements during the peak hour.

The Commission found that on June 10, 2010 DelDOT submitted revised comments in the form of a Support Facilities Report, correcting the previously referenced Report, and referenced that a traffic impact study was not recommended, and that the current Level of Service "A" of Road 288 and Road 280-B could change to a Level of Service "B" referencing existing conditions with development under existing zoning: existing peak hour traffic plus site generated traffic and projected Level of Service with no highway improvements during the peak hour.

The Commission found that on June 4, 2010 the Sussex Conservation District provided comments in the form of a memorandum and referenced that there are four 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 no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be necessary; and that it may be possible that on-site drainage improvements will be necessary.

The Commission found that on June 7, 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 North Coastal Planning Area; that the Applicant intends to utilize an on-site septic system; 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 a letter from Margaret H. Smith and Eleanor L. Bennett was received June 8, 2010 in opposition to the application and stating that the application is defective and should be removed from consideration and referencing that the DelDOT report, dated October 22, 2008, references that a traffic impact study is not recommended; that the report is almost 2 years old; that the report references the wrong road; that it is a report on Road 288 (Wil King Road); and that the application is for Road 280-B (Conley's Chapel Road).

The Commission found that Michael Hazzard was present with Tim Willard, Attorney with Fuqua, Yori & Willard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that a revised letter and Support Facilities Report has been received from DelDOT which references both Road 280-B and Road 288 as referenced by Mr. Lank in summarizing the correspondence; that the Applicant proposes to develop the site with an auto repair shop and four contractor storage units; that the auto repair shop would be secondary to his auto repair shop in Lewes; that the Applicant plans on retaining his repair shop in Lewes; that the area is a mixed use and growth area according to the Comprehensive Plan Update; that the Applicant proposes to divide the poultry house into four separate contractor storage units by removing three 20-foot wide sections from the building; that the Applicant resides across the road from the site; that this application meets the standards for granting a Conditional Use; that the zoning is mixed in the area and on the site with a mix of GR General Residential and AR-1 Agricultural Residential; that an old poultry house, old garage, old dwelling, a block building, originally a welding shop and auto repair shop exists on the site; that the Applicant is proposing

to add a 55' by 60' farm style building to the existing block building for the establishment of the auto repair shop, and to remove the dwelling and other small buildings from the site; that the site will be cleaned up; that the site has historically been used for auto repair; that DelDOT did not require a traffic impact study; that the Applicant has met with some of his neighbors; that the Applicant does not have any objections to conditions being placed on this Conditional Use; that they offer the following suggested Conditions for consideration: 1) The property shall be used for an auto repair and four contractor storage units; 2) No hazardous materials shall be stored on the property; 3) No outdoor storage of any contractor materials shall be permitted, other than natural landscaping or masonry materials; 4) Hours of operation shall be limited to 7:00 a.m. until 6:00 p.m. Monday through Friday and 7:00 a.m. until 1:00 p.m. on Saturday; 5) Signage shall be limited to one roadside ground sign, not to exceed 6-square feet per side with directional lighting and one sign on the auto repair shop and each storage unit, not to exceed 4-square feet; 6) The property shall be cleaned up and kept clean; and 7) Landscaping shall be planted on residential borders; that a letter was received from Darlene Johnson requesting that a fence not be required along her property line since it would restrict access to part of her property because of the berm placed along her property line by the developers of Chapel Green Subdivision; that a letter was received from Loretta Ross voicing no objection to the application; that the Applicant is planning on landscaping along the property lines; that the property will be cleaned up for the benefit of the community and his family; that auto storage on the site will be minimal since the intended use will be auto repairs on project cars, street rods and classic cars; that the entrance onto Road 288 is shared with his brother; that the Applicant hopes to utilize the existing entrance on Road 280-B to serve the project; that no towing service is intended to be operated from the site; that no fencing is proposed since some fencing exists along the Chapel Green Subdivision which also has extensive landscaping and berms; that the contractor units will be leased; that the contractor units can have limitations on hours; that an approved mound style septic system exists on the site; that no manufacturing is to be permitted in the storage units; that mulch, sand, rock and stone may be stored outside; that the majority of deliveries will be by FedEx or UPS style trucks and some tractor trailers, and that deliveries will only be during business hours; that the first step intended is to clean up the site and begin work on the poultry house; that the Applicant has been working on the site and intends to clean up the site with or without the approval of this application; that the poultry house will be remodeled in the first phase of the project; that driveways and parking areas will be either clamshell or asphalt; that only one or two employees are anticipated for the auto repair shop; that security lights will be installed over entry doors on the buildings; that no doors or access to the units are proposed along the Chapel Green Subdivision; that there will be no pole lights; and that the block building will be improved with new windows, bricks and roofing.

The Commission found that Mary Livesey, Ann Conlon, John Novosel, Eleanor Bennett, Frances Mast, Peter Blessinger, Robert Woods were present and spoke on behalf of the 74 parties present in opposition to this application and expressed concerns about vehicles and appliances being stored on the premises; that the site is located in an Investment Level 4 area according to the State Strategies and should not be permitted to be developed since the State will not be providing any funding for infrastructure improvements; that 318 residents have signed petitions opposed to the application; that residents purchased their properties in a residential area; that the residents oppose the auto repair, towing, and storage units in the residential area; that adequate commercial space is available along Route One and near Millsboro; that the site has been an

eyesore for years; that the residential character of the area should not be impacted by a commercial use; that residents are concerned about auto body and painting, the lack of restrooms, the storage of hazardous materials, no fencing, the possibility of crime, and the amount of impervious surfaces; that water pools on the site and runs off onto neighboring lots; that the use will negatively impact property values; that no need for the use has been established and the Yellow Pages are self explanatory due to the number of auto repair shops listed in the area; that no community need or convenience has been shown; that the Applicant already has an active auto repair shop in Lewes; that in close proximity to the site are lots varying from large lots to smaller residential lots; that the Chapel Green entrance is located in close proximity to the entrance location on the site; that there are no other commercial activities in the general area; that the area has and continues to develop residentially; that project cars and street rods have loud exhaust normally and the residents object to the noise; that residents are concerned about tractor trailer traffic in a residential area; that in summary the residents are concerned about: hazardous materials being stored; the unknown users of the storage units and their uses; the number of employees to and from the site; enforcement of the suggested business hours; what is stored on the site; vandalism and theft; security lighting; the amount of impervious surfaces; and future uses and operators of the site if the site is ever sold.

The Commission found that the parties in opposition presented a packet of information which included a cover letter, a copy of a letter in opposition from Margaret H. Smith and Elenor L. Bennett, a petition containing 318 signatures in opposition to this application, a copy of 19 pages of auto body and auto repair services from the Yellow Pages, a series of photographs of the area roadways, homes, a cemetery, the Applicants business in Lewes, and aerial photographs of the area from Google Maps.

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 time for Mr. Johnson to review the record and decide if he wants to participate in the decision making process. Motion carried 4 – 0.

C/U #1833 – application of **DAVID O. RICKARDS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an assembly plant for underwater turbines to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 15.38 acres, more or less, lying southeast of Road 367B (Rickards Road) 2,230 feet northeast of Road 370 (Daisey Road).

The Commission found that on November 18, 2008 DelDOT provided comments in the form of a Support Facilities Report and referenced that a traffic impact study was not recommended, and that the current Level of Service “A” of Rickards Road at this location will not change as a result of this application.

The Commission found that on June 4, 2010 the Sussex Conservation District provided comments in the form of a memorandum and referenced that there are two 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 no storm flood hazard areas are

affected; that it is not likely that off-site drainage improvements will be necessary; that it is highly likely that on-site drainage improvements will be necessary; and that a tax ditch could be affected.

The Commission found that on June 7, 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 Roxana Planning Area; that the Applicant intends to utilize an on-site septic system; 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 currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that on June 9, 2010 an E-mail was received from Raymond L. Burke voicing opposition to this application and referencing that the area is a nice quiet community of homes and that a business will not benefit the community; that the business may devalue properties; that the road cannot handle tractor trailers traffic; and that the type of business is more suited for an industrial park setting.

The Commission found that on June 10, 2010 a petition in opposition was received from FAX and referenced that this turbine facility would dramatically affect the quality of life in a negative way, including increased noise and traffic, and reduced property values; and that such a facility is out of character for the residential rural road that only leads to other rural roads at either end. The petition was signed by 7 individuals.

The Commission found that David O. Rickards was present, submitted a ten (10) year projection chart, and stated in his presentation and in response to questions raised by the Commission that the company will not be doing manufacturing of the underwater turbines, only maintenance and refurbishing; that fabrication will be performed at O.A. Newton's in Bridgeville; that tractor trailer traffic will not be as high as the poultry house operation that existed on premise; that truck traffic will only be during daytime hours; that the site is to be buffered with evergreens; that he plans on converting an existing poultry house into the refurbishing facility; that the first phase will utilize one poultry house and that he hopes that business will grow into use of the other poultry houses; that he lost his contract for the poultry houses three years ago; that this business will help pay the mortgage; that he has not talked to his neighbors; that the neighbors cannot see the buildings; that the use should not impact the adjoining neighbors or property values; that he has owned the property since the 1970s; that the maintenance of the turbines includes replacing bushings, bearings, lubrication, etc.; that turbine units will be brought in for maintenance every two years; that he will have to improve the poultry house will concrete flooring, meeting rooms, restrooms, workrooms, etc.; that the State of Delaware has approved a grant to study underwater turbines in the Indian River Inlet and near the Indian River Power Plant; that if he was still able to grow poultry he would; that the business will generate no odors or noise; that business hours will be from 8:00 a.m. to 4:00 p.m. Monday through Friday; that no signage is needed since there will be no public activities; that security lighting already exists on the poultry houses; that there will be no outside storage of materials; that units will be placed in container trailer units and hauled to and from the site; that there could possibly be 100 truck trips per year; that he anticipates that there could be at least four in-state clients; that he anticipates that he will have five employees within five years; that no hazardous waste is involved; that employees can be

easily trained; that he hopes to utilize area businesses; and that he anticipates that pay would be high-scale union type wages.

The Commission found that Ann Green was present and spoke in support of the application and stated that she is happy about the closure of the poultry business; that the Applicant should be able to do what he wants with the property; that the use will provide jobs; that the use should reduce traffic; and that there should be no hazard to the area.

The Commission found that Mark West and Mike Kwiecien were present in opposition to the application and expressed concerns about the condition of Rickards Road and other area roadways; that the area is predominantly agricultural residential; that there are approximately 30 homes along Rickards Road; that Rickards Road is traveled by school buses during the school year and that the road is not wide enough to accommodate tractor trailers and school buses; that the use should be located in an industrial park and referenced the Selbyville Industrial Park; that there is no need for the use in this area; that there is no problem with the business planned, only the location; that the use is not agricultural related; that a precedent could be set for additional similar applications in the area; that truck traffic may be less, but the employee traffic will increase; and that the property could be sold to another operator and may not be operated as presented.

The Commission found that Mr. West submitted six photographs showing the area roadways.

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. Motion carried 4 – 0.

C/U #1834 – application of **RICHARD F. LYNAM** to consider the Conditional Use of land in a GR General Residential District for seasonal storage of umbrella stands, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9,625 square feet, more or less, lying northwest of Hebron Road (Road 273) across from Canal Crossing Road, being the northeast portion of Lot #89 and a southwest portion of Lot #90.

The Commission found that on January 29, 2009 DelDOT provided comments in the form of a Support Facilities Report and referenced that a traffic impact study was not recommended, and that the current Level of Service “B” of Hebron Road will not change as a result of this application.

The Commission found that on June 4, 2010 the Sussex Conservation District provided comments in the form of a memorandum and referenced that the site contains one soil type; that the Applicant 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; and that no off-site drainage improvements or on-site drainage improvements will be necessary.

The Commission found that on June 7, 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 West Rehoboth Expansion Area; that wastewater capacity is available; that the current System Connection Charge Rate is \$4,336.00 per EDU; that the parcel has not been provided with a sanitary sewer lateral; that the property owner is responsible for the cost to install a sanitary lateral; that a lateral installation is required prior to improvements on the parcel connecting to the system; that conformity to the North Coastal Area Planning Study will be required; and that a concept plan is not required.

The Commission found that petitions and letters in support have been received containing 25 signatures of area residents. The petition references that the residents are aware of Mr. Lynam's application to use a lot on Hebron Road for the storage of umbrella stands during winter months; that Mr. Lynam has been using the West Rehoboth area as his base of operations for many years in his family owned business; that the residents are in favor of his continuing the umbrella operations and using this lot as winter storage for his umbrella stands; and that the Lynam family have been good citizens and the residents wish to help them in the continuation of their umbrella business. The letters reference that the Conditional Use will not substantially affect the surrounding and adjacent parcels, and that the residents signing the letters are in full support of the application.

Richard F. Lynam was present with Harold Dukes, Attorney with Tunnell & Raysor, P.A., and they stated in their presentation and in response to questions raised by the Commission that the Lynams have operated umbrella rentals at the local beaches for many years; that the stands are removed from the beach for the winter months and stored at various locations near Rehoboth Beach; that they are proposing to utilize this site for the purpose of storage of the umbrella stands; that no change in traffic patterns will be caused by this application; that they propose to erect an 8-foot high vinyl fence around the perimeter of the storage area; that a neighboring site used for the same purpose is closer to Hebron Road; that Dewey Beach, Henlopen Acres, and Rehoboth Beach utilize their service; that other seasonal storage areas are also utilized for life guard stands and umbrella stands; that the stands are 10-feet tall and measure 12-feet by 12-feet; that the stands are stored elevated above grade on their frames; and that the stands are designed to go down into the sand a couple of feet, therefore when removed from the sand and placed on the ground they stand up on the frames.

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

The Commission found that Ellen Bailey, Cathy Harmon, Pam Coleman, Brenda Melbourne, Richard Legatski, and Mable Granke were present in opposition to this application and expressed concerns relating to people trespassing onto this type of site and sleeping under the stands remaining; that there are several warehousing sites in the area and that the citizens of West Rehoboth are trying to clean up the area; that West Rehoboth is a residential area and should not be impacted any further with commercial uses; that the area needs homes, not warehousing; that the residents of the area do not want another site for people to hang-out; that they are concerned about prostitution and drug use and sales taking place in the area; that there are a lot of children in the area and the residents are concerned about their safety; that children are always looking for adventures and the site may be an attraction for their mischief; that elevated stands on frames

may be unsafe; that the buildings will exceed the height of the proposed fencing; that the stands should be stored on a commercial site; that the majority of the residents in the area oppose the use; that additional street lights may have to be added for security purposes; that the community is trying to revitalize, and if the area continues to be developed with commercial uses, the area will never be revitalized.

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 time for Mr. Johnson to review the record and decide if he wants to participate in the decision making process. Motion carried 4 – 0.

C/U #1859 – application of **THE JOHNSON ASSOCIATES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to confirm, clarify and expand the historical uses of the property, including business and professional offices; landscaping; retail and wholesale sales; indoor warehousing and storage; indoor vehicle, truck and equipment repair; indoor fabrication; and recycling operations to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 10.0238 acres, more or less, lying southeast of Route 38 (Primehook Road) 2,240 feet northeast of Route One.

The Commission found that on May 27, 2010 the Applicants provided an Exhibit Booklet which contains a site plan, a history of the Clifton Canning property, a copy of the commercial entrance permit to the site, a copy of a August 12, 2008 DelDOT Support Facilities Report, a copy of an August 5, 2008 letter from the DNREC Division of Soil and Water Conservation, a copy of an April 11, 2000 letter from the Sussex Conservation District, copies of State Fire Marshal Office permits for Buildings 100, 200, 300, 400 and 500 on the site, copies of plan review documents from Sussex County Building Code and Building Permits for Buildings 100, 200, 300, 400 and 500, copies of Electrical Inspection Reports for Buildings 100, 200, 300, 400 and 500, and copies of septic permits and well permits for the site.

The Commission found that on May 26, 2010 a letter was received from Eugene H. Bayard, Attorney with Wilson, Halbrook & Bayard, P.A., writing on behalf of the Applicants, and referencing that recycling activities be stricken from the application since the neighbors have expressed concern about possible odors, dust and truck traffic created by the recycling operation, and that the Applicant has made the decision to eliminate that part of his application, as a good neighbor.

The Commission found that on August 12, 2008 DelDOT provided comments in the form of a Support Facilities Report and referenced that a traffic impact study was not recommended, and that the current Level of Service “A” of Primehook Road will not change as a result of this application.

The Commission found that on June 4, 2010 the Sussex Conservation District provided comments in the form of a memorandum and referenced that there are two 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 no storm flood hazard areas or tax

ditches are affected; that Plum Creek does border the northeast property line; that no off-site drainage improvements will be necessary; and that it may be possible that on-site drainage improvements will be necessary since any expansion may pose a need for improvements.

The Commission found that on June 7, 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 North Coastal Planning Area; that the Applicant intends to utilize an on-site septic system; 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 a letter was received from Thomas H. Draper of Fairfield Farm to Eugene H. Bayard thanking the Applicant for eliminating the recycling operation from the application request; that the change is welcome news to the area neighbors; and that he applauds the Applicant's decision and now supports the application.

The Commission found that Matt Johnson of The Johnson Associates, L.L.C. was present with Eugene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that the proposal is to confirm the historic uses of the site so that the owners do not have to re-apply every time a tenant changes; that originally an application was filed for a change of zoning to CR-1; that the Applicant chose to withdraw that application and to re-apply for the Conditional Use; that the Applicants deal with commercial real estate by developing and maintaining projects; that Clifton Canning was built and started in late 1948 by Carlton Clifton & Sons and was known as the Clifton Canning Factory; that they processed vegetables including peas, lima beans, potatoes and sweet corn; that the number of employees varied by season but usually numbered in the 100s for the farming, trucking and processing of the vegetables; that in 1978 the buildings collapsed during a blizzard; that the Company immediately started rebuilding the present buildings and continued their processing operation; that in 1995/1996 Clifton sold to Shore Properties, who in June 1999 went before the County for Conditional Use No. 1284; that Shore Properties used the buildings for truck repair, a storage yard, a contractor facility and sales office, and a lawn care and irrigation business; that in July 2005 the Glen Brothers (Glen & Glen, LLC) purchased the property and then used the property for a construction office, a storage warehouse, truck & equipment repair and a lawn care business; that they started renovations that were never completed and eventually went bankrupt; that in December 2006, the Applicants purchased the property from the Trustee of the Bankruptcy Estate and are now the current owners; that following the purchase of the property, they have acquired all necessary approvals for buildings on site; that Building 100 is utilized by a supply company specializing in wholesale and retail sales of fire hydrants and water service and irrigation piping and accessories with some fabrication prepared on site; that Building 200 is utilized by a service company specializing in fertilizers for golf courses and developments; that Building 300 contains offices and truck maintenance facilities; that Building 400 contains offices; that the site is served by on-site septic and wells; that DelDOT has approved the entrances; that the site is secure with security lighting and security fencing; that no additional signage is necessary; that some adjoining neighbors have been contacted and that Thomas Draper, Theodore Jones and William Lankford now voice no objections to the application; that the majority of the work is performed indoors; that they have

no plans to expand; that the Applicants are a management company; that the truck traffic that has increased is from the Draper Canning Company site north of the site on Draper Road; and in summary Mr. Bayard provided the following suggested Findings of Fact: 1) This is an application to grant a Conditional Use in an AR-1 Agricultural Residential District on County Road 38 to confirm, clarify and expand the historic uses of the former Clifton Cannery property; 2) that the purpose of the Conditional Use application is to enable the Applicant to operate the property with all of its historic uses, including business and professional offices, retail and wholesale sales, industrial warehousing and storage, industrial vehicle and truck vehicle repair, indoor fabrication and a landscaping business, without the necessity of filing for successive or individual conditional use applications; 3) that the referenced uses represent the uses made of the property since the Clifton Cannery was closed a number of years ago; 4) that the property is within a low density area and an environmentally sensitive developing area; 5) that the Strategies for State Policies and Spending identifies the area as an Investment Level 3; 6) that neither DelDOT nor the Office of State Planning Coordination has any objection to the application, since the property is already fully developed; 7) and that the project is in character with the nature of the area since it has been in place for many years and will have no adverse impact on the character of the neighborhood or neighboring properties.

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

The Commission found that Allen Bennett was present, not necessarily opposed to the application, but stating that the property is very much improved and well kept; that he has not been contacted by the Applicants; and questioning what was being wholesaled and retailed; questioning the indoor storage; questioning indoor fabrication; that he is concerned about increased truck traffic; and is especially concerned about uses taking place at the Draper Canning site north of this site.

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.

Subdivision #2010-3 – application of **DIAMOND STATE COMMUNITY LAND TRUST** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Little Creek Hundred, Sussex County, by dividing 42.17 acres into 50 lots (Cluster Development), located north of road 72 (Wootten Road) across from Road 458 (Hudson Road) and west of Trap Pond.

Mr. Abbott advised the Commission that the applicants submitted an Exhibit Booklet on May 28, 2010 that is a part of the record for this application; that the Technical Advisory Committee Report of March 27, 2009 is made a part of the record; that DelDOT has issued a Letter of No Objection for the entrance location and that a letter in opposition to this application was received from Doug Sutherland.

The Commission found that Van Temple – Executive Director, James Fuqua, Attorney, Gary Cuppels, P.L.S. and Bruce Horne of ECI Corporation 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 50 single-family lots in a cluster subdivision; that the original application for this site was for a proposed GR/RPC; that the developers decided against that application and filed an application for a cluster subdivision; that no manufactured homes are proposed or permitted; that conventional housing will be built on the lots; that the site contains approximately 42 acres and is located on Wootten Road across from Hudson Road; that the site is southeast of the Town of Laurel and adjoins Trap Pond State Park; that the area is predominately single-family housing, agricultural uses and the State Park; that there are 17 single-family dwellings in the immediate area; that an archaeological study has been performed on the site and the report is found in Tab 12 of the Exhibit Booklet; that a wetlands delineation has been performed and that the Army Corps of Engineers has issued a jurisdictional determination for the wetlands; that these reports are found in Tabs 13 and 14 of the Exhibit Booklet that DNREC has issued a septic feasibility statement indicating that the site is suitable for a community on-site septic system; that this report is found in Tab 15 of the Exhibit Booklet; that the site contains wooded areas; that there are three areas of wetlands on the site; that 14.6 acres of forested land will be preserved; that there is no disturbance to the wetland areas; that there is a 50-foot buffer from the blue line stream on the eastern boundary of the site; that a 30-foot buffer is proposed around the perimeter of the site; that all of the lots will abut open space areas; that the recreational amenities include a tot lot, community center, pavilion with a BBQ area, gazebos and a tennis/basketball court; that a 1-acre community garden is proposed for the residents; that 22.17 acres of open space is proposed; that there is a small cemetery with 5 grave sites that dates back to the 1850's located on the site; that the cemetery will be fenced and access will be provided to the cemetery; that there is one entrance to the site located off Wootten Road across from Hudson Road; that the streets will be private and built to County specifications; that Tidewater Utilities will provide central sewer and water on-site; that electric will be provided by Delaware Electric Cooperative; that Verizon will provide telephone service; that the site is located within the Laurel School District and the Laurel Fire Company fire protection area; that a homeowners' association will be established and dues will be collected for the maintenance of common areas; that the minimum lot size permitted is 7,500 square feet; that the average lot size is 9,500 square feet; that the proposed density is 1.18 lots per acre; that one of the purposes of the AR-1 district is to provide for low-density single-family residential development; that the proposed density is permitted based on Section 115-20 of the Zoning Ordinance; that according to the State's Strategies Map for Spending, the site is located in a Level 4 area; that the State's Maps are for spending purposes only and not an approved plan; that according to the County's Comprehensive Land Use Plan, the site is in a low density area; that the County adopted the current Land Use Plan in 2008; that the Comprehensive Land Use Plan and Zoning Ordinance permits single-family cluster subdivisions with 30 percent open space; that no townhouses are permitted; that the smaller lots permit more open space; that the site was designed based on the soils on the site; that the initial plan was for more density; that there are no State wetlands located on the site; that 71 lots could have been permitted; that there is a 50-foot buffer from Trap Pond State Park; that DelDOT determined that the Level of Service A will remain the same and has issued a Letter of No Objection for the entrance location; that the items referenced in Section 99-9C of the Subdivision Ordinance are addressed in Tab 7 of the Exhibit Booklet; that the application was reviewed through the PLUS process and that the applicants responded to the comments and that the State responded to the applicant's comments; that both of these are in the Exhibit Booklet; that the Delaware State Housing Authority supports this application; that 2 storm water management ponds are proposed; that the streets will be 24-feet in width; that sidewalks are

proposed for both sides of all streets; that a pedestrian connection will be provided to Trap Pond State Park and that the location of the connection will be determined by the State; that the State is requesting the connection and the applicant supports the request; that central sewer will be provided on site; that if the Tidewater Regional Wastewater Treatment Facility is ever built, the project could connect to that system; that all projects are to make a profit; that the Diamond State Community Land Trust is a non-profit organization; that the Housing Element of the Comprehensive Land Use Plan addresses low to moderately priced housing; that the intent of the Land Trust is to create affordable housing in the area; that the Land Trust will retain ownership of the lots and that the owners of the dwellings will pay a \$40.00 fee for land rent per month; that the owners of the dwellings will have 99 year leases; that there are over 200 Land Trusts in the United States; that the proposed dwellings will be on-site stick built homes; that the homes may not be rented; that the price range of the homes will be from \$115,000 to \$150,000; that the homes will be quality built homes; that the Land Trust will stay involved with the project even after it is completed; that this application is not a part of the County's Moderately Priced Housing Unit program; that there will be new leases when the homes are sold; that no abandoned vehicles will be permitted on the lots; that access to the storm water management areas will be provided; that the buffer areas will be monumented; that this project is not for subsidized housing; that the lots will not be sold as fee simple; that the homes will range from 1,350 to 1,900 square feet; that 4 different models will be available; that the homes will be from 3 to 4 bedroom dwellings; that the applicant participated in DelDOT's regional traffic impact study for the area; that no further subdivision of the property is planned at this time; that in the site selection process, the applicants searched for a small neighborhood; that they considered 23 to 25 parcels; that the sales contract was agreed to in 2007 and that the owner is holding the land; and submitted proposed findings of fact, conditions of approval and a copy of the Housing Element section of the Comprehensive Land Use Plan into the record.

Amy Walls and Gina Miserendino were present in support of this application and advised the Commission that there is a need for affordable housing in Sussex County; that residents with minor incomes deserve the right to own a home; that the plan complies with the Housing Element of the Comprehensive Land Use Plan; and that the project fulfills a need for the County.

Mike Smith, area resident and attorney, was present in opposition to this application and presented a power point presentation and advised the Commission that the site is 6.28 miles from Laurel, 10.24 miles from Delmar, 13.59 miles from Seaford, 13.61 miles from Millsboro, 16.39 miles from Salisbury and 19.15 miles from Georgetown; that the applicant's website indicates that the applicants help families live closer to jobs thereby reducing commuting times, saving fuel and money and increasing quality of life; that the site is 7.38 miles from the Laurel Fire Department; that the site is in the jurisdiction of the Delaware State Police and questioned response times; that the site outside a designated growth area and located in a Level 4 area based on the State's Spending Maps; that the site is adjacent to Trap Pond State Park an area where hunting occurs; that the project will have a negative impact on existing vegetation; that it will cause a deforestation of a pristine area; that there will be negative impacts on wildlife; that the project will cause an overburden on adjoining agricultural and preserved lands; that the site contains non-tidal wetlands; that there is a blue line stream located on the site; that the site is listed as a State Resource Area; that Trap Pond State Park serves as a tourist attraction and revenue generator for a rural area; that the State Park's bike path and walking trails come close

to the project; that the site contains 38.3 acres of forest lands and that the project will cause 23.6 acres to be removed; that lower income residents will have problems paying for sewer service repairs; that no supporting statements were submitted with the application; that there are already high water tables in the area; that surface discharge will affect waterways that are far reaching; that there will be a negative affect on area property values; that many of the homes in the area range between 3,000 and 5,000 square feet; that the marketability of existing homes depends upon the presence of similar homes; that there will be no incentive for someone purchasing a home in the development to improve the appearance of the home; that this will result in a lighted community with suffering neighbors bearing the negative effects; that farmland should be preserved and protected; that the project should be located only in high growth areas and town centers, not rural areas; that the project will likely bring in 122 new residents; that 550 additional vehicle trips per average peak season will occur; that the project is incompatible with the surrounding rural setting and surrounding homes; that the project will effect the ecosystem surrounding Trap Pond; that the project contradicts the purpose of the Subdivision Ordinance; that development is not directed to areas within or near community services; that it does not conserve the County's agricultural economy and the value of its farmland; that it does not protect critical natural resources; that it does not encourage tourism and other responsible job providers; that property owners would have no incentive to improve the property since the lots would be leased; that there would be effects on financial stability of a homeowners' association; and that Sussex County is listed as a funding partner on the applicant's website and submitted a booklet of the power point presentation.

CarolSue Crimmins, area resident and realtor, was present in opposition to this application and voiced concerns about the size of the proposed lots; that most lots in the area are a minimum of $\frac{3}{4}$ of an acre; that there are large homes in the area; and submitted a packet containing Items of Concern, Surrounding Area Housing Characteristics, Similar Housing Concept, Homes at Wootten and Hudson Roads Crossroads, Alternative Locations and Supporting Documentation into the record.

Bill Whaley advised the Commission that the project is out of character with the area; and that the project contradicts the 8 directives of the Comprehensive Land Use Plan.

Monet Whaley Smith was present in opposition to this application and submitted written comments, copies of DNREC maps and Income documents into the record.

Lee Collins, area resident, farmer and bus contractor advised the Commission that he is a farmer in the area; that new residents complain about noise and odors associated with farming practices; that farmers are protected by State law; and that the area is predominately agricultural not residential.

Dianne Callaway, area resident, advised the Commission that her home is currently under construction; that her loan is for \$250,000; that Trap Pond is the terminus of the Western Sussex Byway; discussed the history of the area dating back to 1937 to current; that the Office of State Planning Coordination had negative comments about the application and does not support it; discussed crime in other locations that are similar to this project; and submitted copies of her presentation and letters from Brian Calloway, Larry and Shirley Bell, Marian Van Den

Meydenberg, Olive and Buzz Lowrey, Glenn and Rosemary Spaeth, and Elke Dolder in opposition to this application.

Tom Elliott, Monty Whaley, Charity Spears, Mitch Lagowski, Scott Whaley, Woodrow Whaley, Karen Joseph, Michelle Hurley, Joe Van Den Meydenberg, David Moore and Buddy Joseph, area residents, were present in opposition and advised the Commission that emergency responders response time is not good in this area; that the area is remote; that the federal government is looking for land for a national park in the State and that the land could be used for that; that there have been crime incidents in the area; that the new homes will create additional traffic and safety will become a problem; that the proposed homes are not compatible to the existing homes in the area; that there will be safety issues for farmers in the area; that the project will have a negative impact on property values in the area; that the water table is high and that there is standing water on the site during rain periods; that there will be a negative impact on wildlife in the area; that Wootten and Hudson Roads do not have shoulders and are not wide enough; that they are proud of the homes in the area; that if the developers filed for bankruptcy, there would be problems for homeowners of the project; questioned the type of homes proposed and questioned who will build the homes and expressed trespassing concerns.

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

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

Meeting adjourned at 11:50 p.m.