



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 23, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 23, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

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

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

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Minutes of June 9, 2011 as corrected. Motion carried 5 – 0.

OLD BUSINESS

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

The Commission discussed this application which has been deferred since May 26, 2011.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1897 for Russell V. Banks for a borrow pit based upon the record made at the public hearing and for the following reasons:

1. This application is for a borrow pit on 30.78 acres of land. The area covered by the borrow pit itself is only approximately 17 acres. The land is a part of several contiguous parcels totaling approximately 106 acres owned by the Applicant.
2. A need exists in the area for dirt, sand, and gravel. The material removed from this site will be used locally and throughout the County for a variety of residential and commercial uses and road construction.
3. The borrow pit operation will be limited to areas that are currently farmed and will not generate significant tree removal.

4. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
5. DelDOT has stated that entrances for the use as a borrow pit are appropriate for and from either County Road 348 or 349, but orally expressed a preference for Road 348 since that provides a more direct road to Route 26. The Applicant is proposing an entrance via Route 348. DelDOT will specify entrance and roadway improvements as part of the Final Site Plan review and approval process.
6. 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.
7. Buffers will be established along all borders.
8. The borrow pit will be isolated and integrated into the existing terrain and surrounded by the natural landscape as well as incorporating the required buffers and extensive setbacks. This will be no obvious borrow operation visible from Iron's Lane or Old Mill Road that would negatively affect the area.
9. This recommendation for approval is however subject to the following conditions and stipulations:
 1. No materials shall be brought 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. As stated by the Applicant, the entrance to the borrow pit shall be from Irons Lane. However, if dictated by DelDOT, the entrance could be from Old Mill Road, within the road frontage of the parcel that is the subject of this application.
 4. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 5. The hours of operation for the business on this site shall only occur between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
 6. No materials shall be stored on any access roads or within any buffer area.
 7. No fuel shall be stored on-site for borrow pit operations.
 8. No dredging activities shall be permitted on the site.
 9. No de-watering activities will occur on site.
 10. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 11. The borrow pit shall have benches and 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.
 12. 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. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance.
 13. The Applicant shall comply with all State and County erosion and sediment control regulations.
 14. A buffer shall be maintained along the perimeter of all boundaries of at least 50 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot

- wide vegetated buffer of native species trees. Existing natural vegetation and tree growth within the buffer areas shall remain undisturbed.
15. 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.
 16. The Applicant shall comply with all of the requirements set forth in Section 115-72B of the Sussex County Zoning Code.
 17. It is recommended that Sussex County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).
 18. The excavated area shall not exceed 17 acres, which shall be divided into 2 phases. The second phase shall not be started until the first phase is completed. The phase line shall be the hedgerow line that currently exists across the site.
 19. The borrow pit shall be no closer than 200 feet from the boundary to property of other ownership and further no structures shall be built or placed within 200 feet of the limits of excavation.
 20. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Mr. Johnson stated that he has checked the file for this Conditional Use; that he has listened to the tape of the public hearing; and that he feels that he can participate in the vote on this project.

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.

Subdivision #2011-3 – application of **KEITH PROPERTIES, INC.** to consider the subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 5.99 acres into 8 lots, (Environmentally Sensitive Developing District Overlay Zone), located southerly end of Marina Road approximately 850 feet south of Road 336.

The Commission discussed this Subdivision application which has been deferred since June 9, 2011.

Mr. Smith stated that he does not now see many issues in this application and asked for Mr. Robertson to comments.

Mr. Robertson stated that he has reviewed the Subdivision file, the exhibits provided, comments made by representatives of the Applicant and DelDOT, and records within the Office of the Recorder of Deeds; that documents have been recorded since 1975 that reference DelDOT easements acquired from residents along the access road, Marina Road; that Marina Road is maintained by the DelDOT; that everyone along Marina Road dedicated 25-feet minimum from the centerline of Marina Road; that if preliminary approval is granted the Applicant shall be required to get DelDOT's approval for access; and that it appeared that the public was concerned

about giving up additional right-of-way, which should not happen since easements have already been established.

Mr. Ross questioned where the actual dead-end of the easement is located.

Mr. Robertson responded that the easement goes at least into the Keith Properties.

Mr. Wheatley questioned if the easement goes to the marina.

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

PUBLIC HEARINGS

C/U #1901 – application of **CHRISTOPHER LOPEZ** to consider the Conditional Use of land in AR-1 Agricultural Residential District for an automobile service and repair garage to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 14,613 square feet, more or less, lying northeast of U.S. Route 113, 1,420 feet south of Road 321 (Woodbranch Road).

The Commission found that on June 13, 2011 the Applicant provided Exhibit Booklets for the Commission's review and that the Booklets contain a description of the project team, qualifications for Pennoni Associates, Mark H. Davidson, Douglas D. Barry, and R. Stephen McCabe, a color rendering of the site plan, a copy of the Application form, a copy of the deed and a survey, a copy of the site plan, a copy of an E-mail to DelDOT, references to Developing Areas from the Sussex County Comprehensive Plan 2008 Update, copies of the Future Land Use Plan from the Update, a series of aeriels and maps, a copy of a Site Evaluation Report for a Replacement Septic, and some suggested proposed Findings of Fact and Conditions of Approval.

The Commission found that DelDOT provided comments on December 21, 2010 in letter form with attached Support Facilities Report, dated December 9, 2010, which reference that the Department does not recommend a Traffic Impact Study; that the property is located adjacent to U.S. Route 113 and is subject to the Corridor Capacity Preservation Program; that the intent of the Program is to maintain capacity of the existing highway; that the State Strategies reference that the site is located in a Level 4 Investment Area, where State policies will encourage the preservation of a rural lifestyle and discourage development; that the program states that no new or expanded direct access to U.S. Route 113 will be permitted in a Level 4 Investment Area; and that the Department will not permit an entrance for commercial use at this site.

Mr. Lank advised the Commission that the Email to DelDOT in the Exhibit Booklet references a request that DelDOT support/involvement with negotiations with the landowners of the adjacent property to the south so that the Applicant can develop his property in accordance with Code. No response has been reported.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on June 21, 2011 in the form of a memorandum which references

that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that 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 Christopher Lopez was present with Douglas Berry, Professional Engineer with Pennoni Associates, and that they stated in their presentations and in response to questions raised by the Commission that the site contains an unoccupied dwelling that they are making improvements on; that there are no wetlands on the site; that they are proposing to expand the building by adding a 1,650 square foot two-bay vehicle repair garage and a 200-square foot office space; that they may have to remove part of the existing structure to satisfy DelDOT entrance requirements; that the site is adjacent to the Georgetown Raceway on the north and an underground utility business on the south; that the site is located in a Developing Area according to the Sussex County Comprehensive Plan 2008 Update; that the site is located in Investment Level 2 and 3 according to the recently adopted State Strategies; that an on-site well and on-site septic will be utilized or upgraded; that the entrance will be built in compliance with DelDOT requirements; that they are currently working with DelDOT on the entrance improvements; that sediment and stormwater management facilities will be constructed in accordance with applicable State and County requirements; that they realize that the site plan will be subject to review and approval by the Planning and Zoning Commission; that proposed hours of operation are from 7:00 a.m. to 6:00 p.m. Monday through Friday, and 7:00 a.m. to 2:00 p.m. on Saturday; that all loading areas, storage areas, and trash container areas shall be screened with a 6-foot high privacy fence and landscaping; that they would like to erect one non-illuminated on-premise sign, not exceeding 32 square feet per side, to identify the use; that parking lot and security lighting will be provided and will have downward illumination and shields so that no illumination will encroach over any property line; that a landscaping plan will be provided; that there will be no more than five (5) cars on-site for servicing at any one time; that there shall be no permanent storing of disabled vehicles on the site; that the use shall be limited to automotive service and repair; that the Applicant is self employed and that the maximum number of future employees would be three (3); that an area for a dumpster can be created at the end of the parking area; that they are intending to apply for a waiver in the stormwater management requirements since they may be disturbing more than 5,000 square feet; and that they will not be operating a wrecker service with the business.

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

The Commission found that Alton Stack, adjoining property owner and owner/operator of the adjoining underground utility business, was present and expressed some concerns about losing his driveway and having to relocate his driveway since a shoulder slowdown lane is going to be required to get to the Lopez site; that he will have to relocate his fence and his mailbox; that part of his fence and mailbox have been at the same location since the 1940s; that the more recent fencing was installed based on the current survey markers; that he is concerned about the location of the proposed shop area addition and the closeness to the corner of his dwelling improvements, the type of use, and traffic.

Mr. Robertson asked for a deferral to clarify the comments of the Applicant with DelDOT.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to leave the record open for DelDOT entrance permit information and to establish which Investment Level the site is located in. Motion carried 5 – 0.

C/U #1902 – application of **DOROTHY GARVEY** to consider the Conditional Use of land in AR-1Agricultural Residential District for medical offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,161 square feet, more or less, lying north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road).

The Commission found that on March 21, 2011 DelDOT submitted comments in the form of a Support Facilities Report and that the Report references that the current Level of Service “E” of John J. Williams Highway will not change as a result of this application, and that a Traffic Impact Study will not be required.

The Commission found that on June 21, 2011 the Sussex County Engineering Department Utility Planning Division submitted comments in the form of a Memorandum and that the Memorandum references that the site is located in the South Planning Area of the West Rehoboth Expansion Area; that wastewater capacity is available if the project does not exceed 2.0 EDU (office of 2,000 square feet or less); that the Planning Study assumption for the parcel is 1.0 EDU per lot; that the parcel is comprised of two lots; that Ordinance 38 construction is not required; that an on-site septic system is proposed since sewer service is not available at this time; that the parcel is not capable of being annexed into a County operated Sanitary Sewer District at this time; 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 ; that the County does not have a schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that Dorothy Garvey was present with David Wilson, Realtor, and that they stated in their presentation and in response to questions raised by the Commission that the highest and best use of this parcel is medical offices since the site is across from Beebe Medical Campus and in close proximity to other business and commercial uses; that the location is not conducive to residential use due to the expansion of Route 24; that they are proposing to enter from Route 24 and exit onto Collins Avenue; that due to the limited space between the current house and the westerly property line traffic will be in one direction; that the majority of the parking will be toward the rear of the parcel; that they have not yet discussed the site plan with DelDOT; that they have spoken to some of the neighbors and heard no objections; that Collins Avenue is privately maintained; that the front yard setback is 32.3 feet; that there are no restrictive covenants of record; and that the dwelling was built in the 1960s.

Mr. Wilson requested permission to submit an Exhibit Booklet.

Mr. Robertson reviewed the Exhibit Booklet and rejected the request since the Commission's policy is that any documents entered into the record by the Applicant shall be submitted 10 days prior to the scheduled public hearing.

The Commission found that Lawrence Kemp, M.D., was present in support of the application and stated that he is hoping to purchase the site for his medical offices; that he is currently renting at another location and has no room to increase the size of his office; that this site has a great potential for medical office use; that the layout of the house works well and is capable of being improved with handicap access; that he sees 15 to 18 patients per day; that he currently has one employee; that he plans on entering from Route 24 and exiting onto Collins Avenue; that he plans on revising the parking lot exhibited on the site plan by demolishing the garage and parking closer to the house; and that the neighbors have voiced no objections.

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

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

Some of the Commission members expressed concerns about the use of Collins Avenue and the front setback on Route 24.

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

C/Z #1705 – application of **JOEL FARR** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.03 acres, more or less, lying north of Route 20 (a.k.a. Road 382) 925 feet east of Road 388 (Deer Run Road).

The Commission found that on June 10, 2011 the Applicant provided an Exhibit Booklet for review and that the Booklet contains a copy of the application form, a site location aerial, a copy of a deed to the property, qualifications of Kenneth R. Christenbury, Professional Engineer, of Axiom Engineering, LLC, a copy of a portion of the Beers Atlas of the area, a copy of the Tax Map of the area depicting zonings and Conditional Uses in the area, a copy of the Applicant's response to PLUS; a copy of the site plan for the mini-storage project proposed, a copy of the site showing the existing conditions, a Wetlands Investigation Report prepared by ERI Environmental Resources, Inc., a soils map and related documentation, an aerial photograph of the site and surrounding area, a letter to the Applicant from County Bank referencing lending for commercial zoning and not Conditional Use, and proposed Findings of Fact.

The Commission found that on June 16, 2011 the Applicant submitted a revised proposed Findings of Fact due to an error found, and letters in support from ten (10) area residents.

The Commission found that DelDOT had provided comments on March 3, 2011, April 5, 2011 and April 6, 2011, and that in summary the Department volume warrants for requiring a Traffic Impact Study are that the proposed development would generate more than 400 trips per day or

more than 50 trips during any peak hour; that it is the Department's understanding that the Applicant is willing to place deed restrictions on the subject land such that, if it is rezoned to CR-1, then it would not be developed in such a manner as to generate more than 200 trips a day or more than 50 trips during any peak hour; and that if such deed restriction were placed on the subject land, the Department would not recommend that a Traffic Impact Study be performed for this application.

The Commission found that on June 21, 2011 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a Memorandum and that the Memorandum references that the project is capable of being annexed into the Johnsons Corner Sanitary Sewer District; that wastewater capacity is available if the EDU Assessment does not exceed 12.00 total EDU; that the current System Connection Charge Rate is \$4,861.00 per EDU; that the parcel is served with one 6-inch lateral which may not be adequate for the proposed use; that an upgrade to an 8-inch lateral may be required; that the cost of the lateral upgrade would be the developer's responsibility; that conformity to the South Coastal Area Planning Study – 2005 Update and the Preliminary Engineering Report for the Johnson's Corner Sanitary Sewer District will be required; that the parcel is within the Johnson's Corner Sanitary Sewer District and connection to the system is mandatory; that the sewer planning and design assumption for the parcel allocated 4.0 EDU per acre for residentially zoned parcels that are larger than one acre, therefore the total allocation for the parcel is 12.00 EDU; that additional information must be provided before an EDU calculation can be made; that the Department opposes rezoning because of the potential of increased wastewater flow from commercial uses; that the Sewer District is currently under construction and sewer service is expected to become available during the summer of 2011; that the Sussex County Engineer must approve the connection point; that a sewer concept plan must be reviewed and approved prior to any sewer construction; and that a concept plan is required.

The Commission found that Eugene Bayard, Attorney with Wilson, Halbrook and Bayard, P.A., was present with Ken Christenbury, Professional Engineer of Axiom Engineering, LLC, and Virgil Bullis, Realtor, and that they stated in their presentations and in response to questions raised by the Commission that the site is directly across from the recently rezoned commercial area of the Twin Cedars project; that the wetlands have been delineated; that the site is located in the Environmentally Sensitive Developing District Overlay Zone; that there are no rare or threatened species; that the timber on the site appears to have no value; that Artesian Water will provide water to the site; that the County will provide sewer service; that they anticipate that only one EDU will be necessary since they are now only proposing a mini-storage project with a small office; that the State Strategies indicate that the site is located in Investment Levels 2 and 3; that a copy of their responses to PLUS are included in the Exhibit Booklet; that they will provide the Restrictive Covenants as requested by DelDOT; that the site is in close proximity to other business and commercial uses/zonings and Conditional Uses; that the use is compatible to the area; that there should be no negative impact created by this project; that the use intended is a permitted use in the CR-1 Commercial Residential District; that the use is consistent with the Sussex County Comprehensive Plan 2008 Update; that the use is consistent with the State Strategies; that the use is consistent with the trend and character of the activities in the area; that if the use changes DelDOT will require additional review of any change; that the original proposal included a restaurant, which is not planned; that the only intent is to construction a

mini-storage facility; that the site will be secured; and that the Applicant acknowledges that the use is limited due to EDUs and DelDOT requirements.

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

C/Z #1706 – application of **JOSEPH BALSAMO** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.01 acres, more or less, lying west of U.S. Route 13 Southbound) 400 feet north of Route 18 (Cannon Road).

The Commission found that on June 13, 2011 the Applicant provided an Exhibit Booklet for review and that the Booklet contains a listing of the project team, the qualifications of Pennoni Associates, Inc., the qualifications of Mark Davidson, Douglas Barry, Professional Engineer, and R. Stephen McCabe, Professional Engineer, of Pennoni Associates, Inc., a color rendering of the site plan including this site and the adjacent site already zoned B-1 Neighborhood Business, a copy of the application form, a copy of the deed and survey of the property, a site plan, excerpts from the Sussex County Comprehensive Plan 2008 Update, relating to Town Centers, a copy of the Future Land Use Map from the Update, copies of DelDOT correspondence, dated December 21, 2010 and May 25, 2011, a series of maps and aerial photographs, and proposed Findings of Fact for consideration.

The Commission found that on June 21, 2011 the Sussex County Engineering Department Utility Planning Division submitted a Memorandum and that the Memorandum references that the site is located in the Western Sussex Planning Area #1; that an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the parcel is within the Growth and Annexation Area of the Town of Bridgeville; that the site is not in an area where the County expects to provide sewer service; and that a concept plan is not required.

The Commission found that DelDOT provided additional comments, dated June 6, 2011, relating to this site and the Minutes of a Traffic Impact Study Scoping Meeting of April 11, 2011. Mr. Lank summarized the additional comments.

The Commission found that Doug Barry of Pennoni Associates, Inc. was present on behalf of the Applicant and stated in his presentation and in response to questions raised by the Commission that the adjacent property is zoned B-1 Neighborhood Business and that the Applicant wants to develop both the adjacent property and this property; that this site contains approximately one acre and is located just north of the northwest corner of U.S. Route 13 and Route 18; that there are no wetlands on this site; that the site is not located within the 100-year Flood Plain; that the Exhibit Booklet contains suggested Findings of Fact; that there are many commercial and

business uses in close proximity, and submitted an aerial photograph depicting those commercial and business uses; that Accent Environmental, LLC performed a soil site evaluation on the site and that the site will support a sand mound disposal system; that the use will be consistent with the surrounding area; that they do not anticipate any negative impact by the development of this parcel; and that the area to the west of the site is located within the Incorporated Limits of the Town of Bridgeville.

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

The Commission found that Beverly Williams, an adjacent landowner, was present in opposition to this application and expressed concerns about the additional traffic, and having commercial uses on both sides of her residential property.

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

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1706 for Joseph Balsamo for a change of zone from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record and for the following reasons:

- 1) The site is appropriate for a change of zone to B-1 Neighborhood Business. It is located on the west side of U.S. Route 13 near the intersection of Cannon Road.
- 2) The B-1 Neighborhood Business rezoning is consistent with the orderly growth of the County. There are a number of business and commercial uses located in the immediate vicinity on U.S. Route 13 and several properties are zoned C-1 General Commercial at the same intersection. The property is also adjacent to the Town of Bridgeville and is in a Town Center area according to the County's Comprehensive Land Use Plan. The site is also adjacent to other land owned by the Applicant that is zoned B-1 Neighborhood Business.
- 3) B-1 zoning has more limited uses than CR-1 zoning, which will limit the intensity of any development on the property.
- 4) The change in zone will not adversely affect neighboring or adjacent properties or nearby communities.
- 5) This rezoning will bring the Applicant's entire property under B-1 Neighborhood Business zoning.
- 6) Site plan approval for any use of the property will 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 stated. Motion carried 5 – 0.

Subdivision #2011-5 – application of **CEDAR CREEK PROPERTIES, LLC**, to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 88.44 acres into 192 lots, and (Environmentally Sensitive Developing District Overlay Zone), located south of Route 9, north and south of Road 285 (Beaver Dam Road), 0.4 miles southwest of Route One.

Mr. Lank advised the Commission that the Technical Advisory Committee Report of May 27, 2011 is a part of the record for this application; that the Applicant submitted a revised plan and Exhibit Booklet on June 13, 2011; that the Commission previously received both the plan and Booklet; that the site was previously reviewed by the Commission on June 25, 2009; that the site was approved by the Commission for a 185-lot Environmentally Sensitive Development District Overlay Zone subdivision on June 15, 2009 with 15 Conditions of Approval; and that the preliminary approval for the 185-lot subdivision is valid until July 15, 2012.

The Commission found that Heidi Gilmore, Attorney with Tunnell and Raysor, P.A., Paul Carey, a representative of the Applicant, and Mark Davidson of Pennoni Associates, Inc. were present on behalf of the Applicant and stated in their presentations and in response to questions raised by the Commission that the original application requested 192 lots; that DelDOT had requested a taking of the area for seven of the lots for roadway realignments; that the DelDOT roadway realignment is no longer planned; that they are proposing to incorporate the seven lots back into the subdivision; that the overall density will be 2.17 units per acre; that all of the DelDOT data references 192 lots; that they recently appeared before the Sussex County Board of Adjustment for the construction of two ornamental silos and received approval; that some of the lots have been revised by widening from 60-feet of width to 75-feet and 80-feet of width to allow for larger homes; that the stormwater management and street designs have been completed for the entire project; that they are hoping to submit their Final Site Plan application by the end of this year, 2011; that they are planning on landscaping the entire perimeter of the project; that all review requirements of 99-9C of the Subdivision Code and the ESDDOZ Environmentally Sensitive Developing District Overlay Zone have been addressed; and that all amenities are intended to be built in Phase One of the project.

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

Mr. Johnson stated that he would move that the Commission grant preliminary approval of Subdivision #2011-5 for Cedar Creek Properties, LLC based upon the record and for the following reasons:

- 1) This application is for seven lots that were originally a part of the application for Subdivision #2007-37, but the seven lots were deleted for DelDOT. Since the area where these lots were located is no longer required by DelDOT, this application simply returns those seven lots to the project.
- 2) No parties appeared in opposition.
- 3) The Findings contained in the Preliminary Approval granted for Subdivision #2007-37 for this Applicant.
- 4) This Preliminary Approval is subject to the Conditions of Approval imposed on Subdivision #2007-37, and those are incorporated by reference into this approval.
- 5) For clarification, the time clock starts for the entire project with this preliminary approval.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to grant preliminary approval of Subdivision #2011-5 for Cedar Creek Properties, LLC for the reasons stated and the conditions referenced. Motion carried 5 – 0.

OTHER BUSINESS

Baywood Duneside GR/RPC Final Site Plan – Phase II – Route 24

Mr. Lank advised the Commission that this is the Final Site Plan for Phase II of the Baywood Duneside GR/RPC; that the Commission granted preliminary approval on August 20, 2008; that this Phase contains 43 single family lots; that the lots comply with the minimum requirements of the Subdivision Code and Zoning Code; that the minimum lot size is 7,500 square feet; that the proposed setbacks are 10-feet from all lot lines; that this is the same as presented with the preliminary plan; that central water is being provided by the Long Neck Water Company; that central sewer is being provided by the Inland Bays Preservation Company; that the lots are not located in a Flood Zone and that there are no wetlands on any lots; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Final Site Plan for Phase II of Baywood Duneside as a final. Motion carried 5 – 0.

The Peninsula MR/RPC Marina Bay – Phase 5B – Areas 3 and 4 and Phase 6B – Area 5 Revised Site Plan – Road 299

Mr. Lank advised the Commission that this is a revised site plan for 18 single family detached condominiums; that the approved Master Plan showed 20 single family detached condominiums; that there are three (3) groups of four (4) units proposed; that five (5) groups of buildings are enclosed within 165-foot by 165-foot building envelopes; that there is a 40-foot building separation between all building envelopes; that the proposed setbacks are 20-feet front yard, 10-foot side and rear yard, and 15-feet on corner lots; that central sewer is being provided by Sussex County; that central water is being provided by Tidewater Utilities; and that all agency approvals have been received.

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

George Herker C/U #1858 Site Plan – Route 54

Mr. Lank advised the Commission that this is a site plan for a helicopter landing pad; that the Conditional Use was approved on September 28, 2010 with six conditions; that the six conditions are noted on the site plan; that as required by the approved Ordinance for this application, the Applicant's attorney has advised the Department that the helicopter in use is an Enstrom 280FX, Tail Number 50AZ; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to grant preliminary approval of the site plan. Final approval shall be subject to the staff upon receipt of all appropriate agency approvals. Motion carried 5 – 0.

Sussex Shores Water Company
C/U #45 – Revised Site Plan – Route One

Mr. Lank advised the Commission that this is a request to erect a 6,250 gallon above ground storage tank within the Sussex Shores Water Company site near Bethany; that the tank will be used to store bleach for Sussex Shores Water Company; that the tank will be built and operated by Colony Pool Service, Inc.; that Colony Pool Service, Inc. will provide Sussex Shores Water Company with all the necessary bleach required for all of its water production facilities; that Colony Pool Service, Inc. will also provide bleach to their other customers in Sussex County and Ocean City; that this request was deferred on May 12, 2011 for further information from Colony Pool Service, Inc.; that Colony Pool Service, Inc. forwarded a letter on May 26, 2011 describing what has been stated; that the tank has been registered with and approved by DNREC; and that the staff is questioning whether an amended Conditional Use application should be required.

Mr. Smith stated that he is hesitant about approving the use since the area has expanded residentially since the original Conditional Use for the water company was approved; that without requiring an amended Conditional Use the residents in the immediate area would have no method of speaking out in reference to the application; and that the residents may have some concerns about the storage of bleach and the proposed service intended for other areas of Sussex County and Ocean City.

There was a consensus of the Commission that an Amended Conditional Use application would be appropriate.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to deny the request as submitted and that an Amended Conditional Use application will be necessary and shall have to go through the public hearing process. Motion carried 5 – 0.

Donnette C. English
3 Lots and 50' Right-of-Way – Route 30

Mr. Lank advised the Commission that this is a request to create three (3) lots with access from a 50-foot Right-of-Way; that the owner is proposing to create the Right-of-Way over an existing driveway and entrance to the site; that the proposed lots contain 3.18 acres, 3.18 acres, and 3.25 acres; that the owner is also proposing to retain residual lands for a graveyard and that it is noted that the residual lands is not a buildable parcel; that the request can be approved as submitted, or an application for a major subdivision can be required; and that if the request is approved as submitted, it should be stipulated that any further subdivision of the site will require an application for a major subdivision and that the residual lands are non-buildable.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to grant approval of the three (3) lot subdivision as submitted with the stipulation that any further subdivision of the

parcel shall require an application for a major subdivision and that the residual lands be noted as non-buildable. Motion carried 5 – 0.

Subdivision #2006-70 – PAF, LLC
Time Extension

Mr. Lank advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval on July 16, 2008 and granted one-year time extensions on June 17, 2009 and June 26, 2010; that this is the third request for a time extension; and that if the time extension is granted, preliminary approval will be valid until June 16, 2012.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the requested time extension with the condition that this is the last time extension to be granted by the Commission. Motion carried 5 – 0.

Meeting adjourned at 9:00 p.m.