



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JUNE 24, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 24, 2010 in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I. G. Burton, Mr. Michael Johnson, 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 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried with three votes to approve the Minutes of June 10, 2010 as amended. Motion carried 3 – 0. Mr. Johnson abstained since he was not present during the June 10, 2010 meeting.

OLD BUSINESS

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

The Commission discussed this application which has been deferred since May 27, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1668 for Twin Cedars, LLC for a change in zoning from GR General Residential and C-1 General Commercial to a GR-RPC General Residential District – Residential Planned Community based upon the record and for the following reasons:

- 1) The property is currently primarily zoned GR General Residential and partly C-1 General Commercial. Under this application, the basic GR General Residential zoning and the density permitted in that zoning will not change.

- 2) With the conditions and stipulations placed upon it, the RPC Residential Planned Community designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future land uses. It is located along Zion Church Road which is classified as a major collector road and incorporates a mixture of residential units available to a variety of income level households. It also provides an environmental benefit due to the reconfiguration of an existing tax ditch that is not functioning properly nor draining the area surrounding this site.
- 3) The project will not adversely affect the neighborhood or surrounding community. There are several existing subdivisions in the area with similar characteristics. The approval of this application also allows the redevelopment of an existing residential apartment complex into a superior designed residential community.
- 4) The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
- 5) This recommendation is subject to the following conditions:
 1. The maximum number of residential units shall not exceed 199 units.
 2. All entrances, intersections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
 3. The development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 4. The RPC Residential Planned Community shall be served by central water.
 5. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in the manner that is consistent with Best Management Practices.
 6. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 7. The Developer shall form a homeowner's association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
 8. No wetlands shall be included within any individual lots.
 9. The Final Site Plan shall contain a notice that the adjacent property is used as an RV Campground.
 10. A hunting notice similar to the Agricultural Use Protection Notice indicating that hunting activities may occur nearby and on the Lost Lands Campground, which is to the rear of the property, shall be included on the Final Site Plan and within the Restrictive Covenants.
 11. As requested during the public hearing, the Restrictive Covenants shall contain notice that a seasonal use campground exists on the adjacent property.
 12. All silt fencing shall be located on the upland side of all wetland buffers.
 13. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
 14. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.

15. The Developer shall coordinate with the Postal Service for centralized mailbox areas within the development, as the Postal Service may deem necessary.
16. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation included in the buffer areas. In addition, the landscape plan shall also show transitional or screening landscape between the commercial and residential areas of the project.
17. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

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

The Commission discussed this application which has been deferred since May 27, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1669 for Twin Cedars, LLC for a change in zoning from GR General Residential and C-1 General Commercial to CR-1 Commercial Residential based upon the record made at the public hearing and for the following reasons:

- 1) There is presently C-1 General Commercial zoning on the site of this rezoning and the surrounding RPC Residential Planned Community. This rezoning application represents a reconfiguration of the existing commercially zoned land with only a minor increase in the commercial area. By allowing this rezoning to proceed, the commercial area is integrated into the overall project.
- 2) The rezoning is consistent with the purposes of the Sussex County Zoning Code and promotes the orderly growth of the County.
- 3) The rezoning of this property will have no adverse impact on the uses and values of neighboring or adjacent properties in the area.
- 4) The rezoning of this property permits redevelopment of this property under a uniform CR-1 Commercial Residential zoning, and eliminates the possible residential density of up to 12 units per acre that would be permitted under the prior C-1 General Commercial zoning.
- 5) The property that is the subject of this application is within a Sussex County Sanitary Sewer District.
- 6) No parties appeared in opposition to the rezoning application.
- 7) Any proposed use set forth on the commercially zoned property will be subject to site plan review by the Planning and Zoning Commission.

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

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 contractors' 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 discussed this application which has been deferred since June 10, 2010. Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action since Mr. Ross was present during the public hearing; since Mr. Ross was absent this evening; and to allow Mr. Ross to participate in the discussion of this application when a decision is rendered. 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 discussed this application which has been deferred since June 10, 2010.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action since Mr. Ross was present during the public hearing; since Mr. Ross was absent this evening; and to allow Mr. Ross to participate in the discussion of this application when a decision is rendered. 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 discussed this application which has been deferred since June 10, 2010.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action since Mr. Ross was present during the public hearing; since Mr. Ross was absent this evening; and to allow Mr. Ross to participate in the discussion of this application when a decision is rendered. 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 discussed this application which has been deferred since June 10, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1859 for The Johnson Associates, LLC for a Conditional Use to confirm, clarify and expand the historical uses of the subject property, including business and professional offices, landscaping, retail and wholesale sales, indoor warehousing and storage, indoor vehicle, truck and equipment repair and indoor fabrication based upon the record made at the public hearing and for the following reasons:

- 1) This Conditional Use is simply a confirmation and clarification of prior uses that have existed on the property. It began as a cannery in 1948 and existed and expanded under that use until 1995 or 1996. There have been a series of Conditional Uses affecting the property, including one in 1999 for truck repairs, storage yard, contract facilities and sales offices and a lawn care business. It was later used for construction offices, storage warehouses, truck and equipment repair and other uses.
- 2) A new Conditional Use is appropriate, since it limits the uses to what has historically existed or uses very similar to what has previously occurred and consolidates them all into one Ordinance. In this case, given the location of the property and the uses on neighboring and adjacent properties, a Conditional Use is more appropriate than a Change in Zone to B-1 or CR-1.
- 3) Since the property is already fully developed, the Conditional Use will have no effect on neighboring and adjacent properties or traffic. Likewise, neither DelDOT nor the Office of State Planning Coordination has an objection to the application, since the property is already fully developed.
- 4) This recommendation for approval is subject to the following conditions:
 1. The uses shall be limited to business and professional offices, landscaping, retail and wholesale sales, indoor warehousing and storage, indoor vehicle, truck and equipment repair and indoor fabrication. As stated by the Applicant, there shall be no recycling operation permitted on the property.
 2. Retail uses shall be limited to those sales directly related to the other uses permitted by this approval. Large scale commercial or retail uses shall not be permitted on the site.
 3. There shall be no fuel storage on the site.
 4. There shall be no Sunday hours, except in the event of an emergency.
 5. Any waste oil generated by the vehicular repair facility shall be stored and disposed of as DNREC regulations require, using a licensed Waste Oil Hauler.
 6. The Applicant shall maintain, repair the place as necessary, including parking areas, buffer areas, stormwater management facilities, interior drives and other common areas.
 7. The project shall comply with all agency requirements, including, but not limited to Sussex Conservation District, DNREC, Sussex County Engineering Department, etc.
 8. Because the site is already fully developed with lighting, signage, security fencing and a motor operated gate, these shall be deemed approved as they currently exist.

- The Applicant shall file with the Commission an as-built site plan of the property, depicting the location and nature of all of the elements of the property, and designate the parking area and interior drives on it.
9. The Final Site Plan, containing all of the information referenced above, shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Burton, seconded by Mr. Smith, and carried with 3 votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 3 – 0. Mr. Ross was absent. Mr. Johnson not voting since he was not present during the public hearing.

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.

The Commission discussed this application which has been deferred since June 10, 2010.

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

PUBLIC HEARINGS

Subdivision #2009-2 – 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 Development District Overlay Zone), located at the southerly end of Marina Road approximately 850 feet south of Route 336.

Mr. Lank advised the Commission that this application was filed on March 4, 2009; that the Technical Advisory Committee review comments were received by June 5, 2009; that the Technical Advisory Committee comments were forwarded to the Commission and are a part of the record for this application; that revised plans were submitted on June 16, 2010 responding to the Technical Advisory Committee comments.

The Commission found that the Applicants provided an Exhibit Booklet on June 14, 2010 and that the Exhibit Booklet contains a color rendering of the subdivision, an aerial photograph of the site and area, qualifications of Mark H. Davidson, a description of Design Consultants Group, L.L.C. and DCG Environmental Services, Inc., a copy of the application form, a reduced copy of the preliminary plan, copies of deeds with related plots, responses to Section 99-9C of the Subdivision Ordinance, a Wetlands Delineation Report prepared by Enviotech Environmental Consulting, Inc., a series of maps and aerials, an Environmental Assessment Report, proposed covenants and restrictions, a series of maps and correspondence on wastewater, a Willing and Able to Serve letter from Tidewater Utilities, Inc., suggested Conditions of Approval for consideration, and suggested Findings of Fact for consideration. The Exhibit Booklet has been a part of the record since June 14, 2010.

The Commission found that letters in opposition have been received from Edward and Helene McAvoy, Frank and Josephine Vara, Thomas and Patricia Frey, Patricia Weekley, and Natasha and George Merrick, residents living along Marina Road. The letters express concerns relating to the condition and maintenance of Marina Road, traffic, the affect on their quiet style of living, system connection charges, overbuilding in an environmentally sensitive area, density, questioning why the application is in process when the Applicant has not acquired or contracted the necessary access to the property, the negative impact on the quality of life of the residents in the area, concerns about updating the marina and dredging, the environmental impact of redevelopment of the marina, that the Applicant has been advised that the proposed land swap which would enable the completion of the access right-of-way will not be agreed upon, the possible negative impact on property values, and requesting that the application be denied.

The Commission found that Richard Keith was present with Mark Davidson of Design Consultants Group, L.L.C. and that Mr. Davidson stated in his presentation that they are proposing eight lots in the Environmentally Sensitive Developing District Overlay Zone; that they would like to also request a waiver from the landscaped buffer requirement to allow them to place the required landscaping on the interior side of some of the lots; that the site is located in an Investment Level 3 according to the State Strategies; that a wetlands delineation has been performed; that aerial photography exhibits that the site was previously improved with a marina and docks; that an Environmental Assessment Report has been provided in the Exhibit Booklet; that the dwelling on the property has been abandoned; that some of the remnants of the old marina and docks still exists in the form of pilings; that the fueling station has been removed; that a 20-foot wide access is being provided to two existing parcels on the adjoining property; that Green Technologies for Best Management Practices will be utilized in the development and maintenance of the project; that Tidewater Utilities, Inc. has advised that they are willing and able to serve the project; that public sewer will be available in the future from the County; that they will be required to apply for annexation into the sewer district; that the project adjoins "The Landings at Pepper Creek"; that access to the parcel will be an extension to Marina Road (Road 336B); that DelDOT has voiced no objection to the extension; that County Addressing indicates that the street shall not be named Marina Road Extended since addressing has already been established as Marina Road; that two lots are primarily wooded and the remaining six are in open areas; that no on-site septic systems are proposed; that 48% of the site is open space and that the majority of the open space is wetlands; that no lots will contain any wetlands; that Envirotech is working on a marina reapplication to DNREC; that the marina use will be limited to the residents of this subdivision; that they have responded to Section 99-9C of the Subdivision Code in the Exhibit Booklet; that none of the lots are located in a Flood Zone; that they will follow all State and Sussex Conservation District regulations for stormwater management; that they anticipate no negative impact on property values; that they are willing to provide a bus shelter if required; that they are requesting a waiver from the buffer requirement to allow the street to be off-set from the Creek; that they have been attempting to get closure on an agreement for a land swap with the Merrick property; that as an additional consideration for the land swap they are offering Mr. Merrick the right to use two boat slips in the proposed community dock facility to be constructed, when and if constructed, and all of Keith's right, title, equity and interest in Ocean Farmers of America, Inc., including without limitation all corporate assets; that that portion of Marina Road that is dedicated to State Maintenance has a 50-foot right-of-way; that they are requesting that the subdivision be approved as a preliminary with the condition that prior to

obtaining final subdivision approval, Marina Cove Estates will need to successfully obtain a variance from the County Board of Adjustment for a 2.06-foot variance reduction from the required 50-foot wide right-of-way requirement in Section 99-17B. of the Subdivision Code; that they acknowledge that they have not received a signed land swap agreement; that there are no other amenities, other than the open space and private marina, if permitted by DNREC; that the marina is intended for the private use of the owners within Marina Cove Estates; that the marina is primarily a boat ramp, docks for fishing and crabbing, and 10 or less boat slips; that the street will meet or exceed Sussex County street design standards or State maintenance; and that no contaminants have been found on the site.

The Commission found that Mr. Davidson submitted a revised color rendering of the subdivision that matches the revised Preliminary Subdivision Plan submitted on June 14, 2010 and a Landscape Plan.

Mr. Lank advised the Commission that the Applicants should have included his request for waivers in the application so that staff could have advertised the inclusion of the waivers with the subdivision application.

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

The Commission found that E.J. Steen, George Merrick, and Pat Frey were present and spoke in opposition to this application and expressed concerns that Marina Road came into existence after the property owners on both sides of the then dirt road dedicated a total of 50-foot right-of-way to public use so that the road could be State maintained; that at low tide a boat will not float at the marina location; that boat traffic from Gull's Way Campground across the Creek is out of control; that Mr. Merrick has not agreed to and does not intend to agree to the land-swap agreement; that Mr. Merrick turned the agreement down two years ago; that the fuel service facility at the marina was performed by employees or members of Keith Properties; that the dog kennel can be relocated; that the Steen family gave up 25-feet on the easterly side of Marina Road; that the residents on the westerly side of Marina Road gave up 25-feet; and that the road dedication goes approximately halfway along the frontage of the Merrick property.

The Commission found that Mr. Davidson responded that plots of record and easements indicate that a 50-foot right-of-way exists.

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

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

Subdivision #2009-3 – application of **WOODLAND FERRY ESTATES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 30.65 acres into 22 lots, located northeast of Road 78, 425 feet northwest of Road 80.

Mr. Lank advised the Commission that this application was filed on March 6, 2009; that the Technical Advisory Committee review comments were received by June 5, 2009; that the

Technical Advisory Committee comments were forwarded to the Commission and are a part of the record for this application; that this site received preliminary approval for 13 lots in 2006 (Subdivision #2003-33) with conditions/stipulations; that a time extension was granted in 2007; that final approval was granted in December 2007; that the purpose of this application is to revise the layout of the project and to add 5 additional lots for a total of 18 lots; and that no additional comments have been received from any agency or individual.

The Commission found that John Hanenfeld of Woodland Ferry Estates, LLC was present with Bob Sigler of Miller-Lewis, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the entrance improvements have been constructed, that the stormwater management facilities have been constructed; and that some of the landscaping has been completed; that the street layout is exactly the same as the original subdivision street previously; that the lots along the poultry farm are remaining as previously drawn; that the lots on the opposite side of the street are being revised to allow more marketable lots because there is no interest in 2.0 acre lots; that buffer areas have been established; that Delaware Electric Co-operative is going to erect coach lights for street lights; and that all lots meet Site Evaluation standards.

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

The Commission found that Ray Tull, Donald Allen, Linda Allen, Arthur Walsh, and Carlton Jones, area residents, were present and spoke in opposition to this application and expressed concerns relating to the increase in the number of lots; that the trees in the planted buffer have died; that there is not a planted buffer next to the Orr property; that the stormwater management area overflow backs up; that the adjoining farm owners have a fear of complaints from future buyers against odors, noise and other farming activities; that the lesser the number of homes next to a poultry farm the better; that future buyers will not be properly informed about the poultry farm and other farming practices; that they were advised by the Planning and Zoning Department that the original 13 lot subdivision is void; that the site is surrounded by agricultural business activities, i.e. farming, poultry, cattle, etc.; that an Agricultural District, not an Agricultural Residential District, is needed; that people from other areas do not understand agricultural areas; that they have a fear of a precedent being established causing applications for more subdivisions in the area; that the project could impact the environment and wildlife; that that Turtle Branch and Turtle Creek will be impacted; that there has been no need shown for more lots; that advertisements have shown that they may not be developing the lots with on-site construction, but with manufactured homes; that the type of septic systems is a concern; that ditching and drainage is a concern; that the safety of the children is a concern; that flooding could be a major issue; and that all run-off from the area goes to the Nanticoke River.

The Commission discussed the status of the 13 lot subdivision of record v. this proposed 18 lot subdivision.

It was determined that the 13 lot subdivision is still valid and will remain valid until a revised subdivision is approved and recorded, and that the 18 lot subdivision, if approved, will have to comply with all current regulations, i.e. buffers, amenities, etc.

The Commission found that Mr. Hanenfeld stated that no lots have been sold in the project; that he purchased the project after the 13 lot preliminary plan was approved; that the road is stabilized; and that the stormwater management area is in place.

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

Mr. Smith stated that he would move that the Commission deny subdivision #2009-3 for Woodland Ferry Estates, LLC, based upon the lack of a record made during the public hearing and for the following reasons:

- 1) The Applicants have failed to show that this subdivision application, which is a new subdivision application, is in compliance with the County Subdivision Ordinance.
- 2) The Applicants have failed to show that the subdivision is in compliance with the Sussex County Land Use Plan.
- 3) The Applicants have failed to adequately address the 17 items of consideration in Section 99-9C of the Subdivision Code.
- 4) There was substantial opposition to the project, based upon concerns about the effects on neighboring and adjacent properties and property values, preservation and conservation of farmland; the effect on area waterways and the environment; the effect of nearby poultry operations on the project; and concerns about adequate sewer disposal.
- 5) Generally, the Applicants have failed to make a record that can support an approval of this subdivision.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to deny this application for the reasons stated. Motion carried 4 – 0.

C/U #1837 – application of **HAROLD J. BOWDEN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for renewal and continuation of a construction storage yard to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.07 acres, more or less, lying southeast of Road 265A, 1,135 feet northeast of Route One.

Mr. Lank advised the Commission that DelDOT comments were not requested since the use was originally approved as a Conditional Use on November 23, 1993 and that no changes are proposed.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on June 15, 2010 that advised that the site contains six soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas affected; that it is not likely that off-site drainage improvements will be required; that it is possible that on-site drainage improvements may be required; and that the project should not have any effect on the tax ditch on the westerly property line.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on June 21, 2010 that advised that the site is located in the Northern West Rehoboth Expansion Planning Area; that central sewer

service is not available to the parcel at this time; that use of an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the parcel is in a future service area of the West Rehoboth Expansion Area and does not have sewer service available at this time; that the County does not have a schedule to provide service; and that a concept plan is not required.

Mr. Lank provided the Commission with a copy of Ordinance No. 937 for Conditional Use No. 1036 for Padula Construction and advised the Commission that the County Council granted the approval for five years; that the landowner was advised of the violation of the time limit granted in May of 2008; and that he filed his application in June of 2008.

The Commission found that Harold J. Bowden was present with Tom Monroe, contractor, and that they stated in their presentations and in response to questions raised by the Commission that they have received a petition from two families and six individuals that own land or reside along Old Mill Road in support of the application; that Mr. Monroe has less equipment stored on site than previously stored by Padula Construction; that business hours are normally from 8:00 a.m. through 3:00 p.m. Weekdays; that Mr. Bowden lives on the property along Old Mill Road; that they still agree with the Conditions of Approval from Ordinance No. 937; that there are 6 or 7 vehicles or pieces of equipment stored on the property; that all of the equipment and vehicles are operational, and none disabled; that top soil, stone, and dirt are stored on the property; that the primary function of the business is paving driveways; that no blacktop, new or used, is stored on the property; that a brush line exists to the rear of the property, a line of Loblolly Pines exists on the side, and a brush line and fencing exists along the front; that Mr. Monroe is self-employed; that the maximum number of employees that he may have for a job will be 5; that the only employee coming to the site would be a driver for one of the vehicles; that the other employees meet at a job site; that there is no fuel stored on the site; and that they are not aware of any objections to the application.

The Commission found that Mr. Monroe submitted the petition referenced.

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

The Commission found that William Landon, an adjoining landowner, was present in opposition to this application, submitted two photographs of his property and seven photographs of the project site, and stated that he purchased his property, removed an old house and several vehicles, and built a new house; that the County Council approved the storage yard in 1993; that two years ago he attempted to sell his property and was advised by Realtors that buyers were opposed to the storage yard; that he has been protesting the storage yard for years; and that he is concerned about the impact on his property values and the properties of others in the several subdivisions that now exists along Old Mill Road.

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

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

C/Z #1685 – application of **SHELAH BRANCH FARMS, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying north of Route 20 (Hardscrabble Road) and 1,200 feet west of Road 431 (Shortly Road), to be located on 9.024 acres, more or less.

Mr. Lank advised the Commission and those in attendance that this application will be rescheduled for a later date and that the Applicant is in the process of applying to PLUS (Preliminary Land Use Service) for comments from agencies.

C/Z #1686 – application of **WORKMAN'S STORE, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, land lying at the northwest corner of Shortly Road (Road 431) and Hardscrabble Road (Route 20), to be located on 24,743 square feet.

The Commission found that on June 14, 2010 the Applicants provided an Exhibit Booklet for consideration and that the Exhibit Booklet contained a site plan, qualifications for Mark H. Davidson, a description of Design Consultants Group, L.L.C. and DCG Environmental Services, Inc., a copy of the application form, a copy of a letter from the Sussex Conservation District referencing that the project is exempt from Sediment and Stormwater Regulations as long as disturbance is less than 5,000 square feet, a copy of the deed and survey of the property, copies of correspondence with DelDOT, a copy of a PLUS application dated June 2, 2010 and e-mail correspondence to and from the Office of State Planning Coordination, and a series of aeriels and maps.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on December 30, 2008 and that the Report references that a traffic impact study was not recommended; that the existing Level of Service "C" of Route 20 will not change as a result of this application; and that the existing Level of Service "A" of Road 431 will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on June 15, 2010 and that the memorandum references that the site contains two soil types; 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 it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on June 21, 2010 and that the memorandum references that the site is located in the Western Sussex Planning Area #5; that an individual on-site septic system is proposed; that conformity to the Western Sussex 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 the Applicants had provided a copy of a Site Evaluation Report prepared by DCG Environmental Services, Inc.

The Commission found that Peter and Rosemary Brown, neighboring property owners, submitted a letter, dated June 18, 2010, in support of the application.

The Commission found that Tim Elder of Workman's Store, LLC was present with Mark Davidson of Design Consultants Group, L.L.C. and that they stated in their presentations and in response to questions raised by the Commission that the Applicants want to reopen the Workman's Store; that the property is zoned AR-1 Agricultural Residential; that the use is non-conforming; that it has been over two years since the business closed and the regulations require a new application to re-open; that a property across Route 20 is zoned B-1; that DelDOT did not require a Traffic Impact Study; that they have met with DelDOT and that DelDOT is requesting that curbing be installed along Route 20; that no access will be permitted to Route 20; that DelDOT is willing to grant approval of a one-way driveway and parallel parking; that they met with PLUS representatives yesterday and that given the site history, previous uses, and Investment Level 4 status the Office of State Planning Coordination is not going to object to the application; that the building is in need of repair; that the use will support the residents in the area; that B-1 zoning will open the property up to use; that the site is very limited and not capable of being altered because it will cause compliance with all other agency requirements if improvements are removed and new improvements are proposed; that their intent is to renovate the existing structures; that the site has previously been used for a restaurant, general store and feed and farm supply sales; that they are proposing to utilize the building for a restaurant and general store; and that adequate space is available to meet the minimum parking 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. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration and to leave the record open for PLUS comments for 10 days, and for any required response to the PLUS comments. Motion carried 4 – 0.

Meeting adjourned at 9:30 p.m.