



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF OCTOBER 27, 2011

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

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

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the Minutes of October 13, 2011 as circulated. Motion carried 4 - 0.

### OLD BUSINESS

Subdivision #2011-4 – application of **BRANSON S. SMITH** to consider the Subdivision of land in AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 31.93 acres into 15 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet and a waiver from the forested buffer requirements, located at the end of Anna Patrick Lane Extended, a private 50' easement, approximately 1,080 feet north of Road 535 (Middleford Road).

Mr. Abbott advised the Commission that the 15-lot subdivision application was deferred on June 9, 2011 pending receipt of a septic feasibility statement from DNREC; that the Applicant and Surveyor were notified of this by letter on June 13, 2011; and that to date, staff has not received the septic feasibility statement or any other correspondence.

The Commission discussed this application and expressed concerns that neither the Applicant nor the Surveyor that prepared the application have responded with a septic feasibility.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to deny this Subdivision application based upon the inadequate record supplied by the Applicant. Motion carried 4 – 0.

## PUBLIC HEARING

C/U #1913 – application of **JEREMY W. SMITH** to consider Conditional Use of land in an AR-1 Agricultural Residential District for yard waste and composting facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.01 acres, more or less, lying west of Road 347 (White's Neck Road) 1,850 feet south of Road 349 (Old Mill Road).

The Commission found that on August 26, 2011 the Applicant filed this application with related documents and surveys/site plans.

The Commission found that on October 17, 2011 the Applicant filed an Exhibit Booklet which contains a color rendering of the proposed yard waste recycling, composting and sales application; a table of contents; a listing of the project team members; qualification for Pennoni Associates, Inc. and their staff; aerial photographs labeling and depicting area subdivisions; a copy of the application form; a copy of the Conditional Use survey/site plan; a copy of the deed and a legal description; a copy of the DelDOT Service Level Evaluation Request Form and response in the form of a Support Facilities Report; comments relating to the twelve (12) issues relating to the Environmentally Sensitive Development District Overlay Zone; comments provided from DNREC Division of Watershed Stewardship, DNREC Division of Water Resources, and the Department of Agriculture; newspaper articles relating to composting and recycling; an Environmental Assessment Report; a copy of some soils information relating to the Hamonton Series, Klej Series, and Rosedale Series soils on the site; a copy of DNREC Guidelines for Yard Waste Composting Facilities; a series of maps and arials; proposed Findings of Fact and proposed Conditions of Approval; and some supporting statements.

Mr. Lank advised the Commission that the DelDOT Support Facilities Report that is normally summarized into the record is a part of the Exhibit Booklet.

The Commission found that on October 6, 2011 the Sussex Conservation District submitted comments, in the form of a memorandum, that references that there are four soil types on the site; 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 required; that it is possible that on-site drainage improvements will be required; and that the Canal Ditch may possibly be affected.

The Commission found that on October 24, 2011 the Sussex County Engineering Department Utility Planning Division submitted comments, in the form of a memorandum, that references that the site is located in the North Millville Planning Area; that wastewater capacity is available; that the current System Connection Charge Rate is \$6,001.00 per EDU; that construction of a central sewer system to serve the area will be completed soon; that a connection point will be provided on the parcel's property line along County Road 347 (White's Neck Road) near the parcel's northeastern property corner; that the project is capable of being annexed into the North Millville Expansion Area Sanitary Sewer District; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the parcel is within the planning area for

sewer service from the North Millville Expansion Area; that a connection point will be provided for the parcel during sewer construction to be completed by approximately the summer of 2012; that if the proposed facility will have a wastewater discharge, connection to the sewer system will be required; that prior to sewer connection, the property owner must request annexation and complete the administrative procedure to have the parcel added to the sewer district; and that a concept plan is required prior to sewer connection.

Mr. Lank provided the Commission with copies of petitions in opposition and letters and emails in opposition and advised the Commission that the petitions contained 149 signatures; that there are 23 letters and emails opposing the application voicing objections to the posting of the public notice sign while the road was closed for sewer construction, noise, odors, contamination of the soils and water, extra traffic, dust, health issues, the possibility of fires, garbage, bugs and animals, trucks, the closeness to the recently approved Blue Hen Organic Facility near Dagsboro, the impact on the residential area surrounding the property, the negative impact on property values, environmental concerns, and the lack of infrastructure to accommodate the project; that the letters and emails were from property owners within Whites Neck Village, West Ocean Farms, Squirrel Run, Bay Forest, the O.T. Collins Limited Partnership, and area residents living along local roads in the area; that there was some duplication of correspondence since some parties submitted letters and emails; and that one party asked that the public hearing be rescheduled since the road was closed due to the sewer construction and that some residents in the area did not receive a notice of the public hearing.

Mr. Smith stated that to the best of his knowledge he is not related to Jeremy Smith and that he does not have any business or financial relationships with him.

The Commission found that Jeremy Smith was present with Mark Davidson and Doug Barry of Pennoni Associates and that they stated in their presentations and in response to questions raised by the Commission that the proposed Conditional Use is for the recycling of yard waste, composting, and sales; that the color rendering of the site plan depicts that they are proposing to utilize 17 acres in the center of a 39 acre property; that they acknowledge that the property is located in an Investment Level 2 according to the State Strategies and an Environmentally Sensitive Developing District according to the County Comprehensive Land Use Plan; that the Exhibit Booklet contains a copy of an Environmental Assessment Report; that they have tried to address all of the necessary environmental issues; that they are proposing an organic yard waste system to serve the residents and businesses in the area, thereby eliminating the need for materials to be hauled to the State landfill; that the Environmental Protection Agency (EPA) recommends the composting of yard waste; that the Applicant has attempted to reach out and contact area residents; that the Applicant realizes that he will need approvals from DNREC and other State agencies if approval is granted, i.e. DNREC Air Permit, DelDOT, Sussex Conservation, etc.; that the existing entrance and driveway are proposed to be utilized to serve the project; that they are proposing to move the entrance to the middle of the site in the future to be reconnected to the existing driveway to separate the entrance from the adjoining subdivisions to the north and south; that they are proposing a 10' wide buffer between the driveway and the adjoining subdivision to the south; that they referenced DNREC comments included in the Exhibit Booklet; that the site is not located in a flood plain; that they will provide the 300' DNREC setback; that a 50' buffer will be provided along the rear of the property; that no

recycling activities will occur within 100' of a water source; that Organic Yard Waste is defined by the DNREC as "plant material residues resulting from lawn maintenance and other horticultural, gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter"; that Organic Yard Waste does not include de minimus plant material residues inadvertently mixed with inorganic contaminants, e.g. soils, stones, or trash not suitable for composting which may continue to be land filled; that a Yard Waste Composting Facility is defined by the DNREC as "a facility that is used to compost organic yard waste"; that the term includes land affected during the lifetime of the operation, including, but not limited to, areas where composting actually occurs, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated on-site or contiguous collection and transportation activities, and other activities in which the natural surface has been disturbed as a result of or incidental to operation of the facility; that the site is fairly level and that there should be no negative runoff; that the State Department of Agriculture considers forests and forest products as an agricultural use; that no dumping of kitchen or waste products will be permitted; that they have responded to all of the references to the Environmentally Sensitive Developing District Overlay Zone in the Exhibit Booklet; that the stormwater design for the site will primarily be contained on-site and will incorporate the existing farm pond with a secondary discharge to the tax ditch system located along the easterly property line that will meet DNREC and Sussex Conservation District regulations; that during the design of the stormwater practices the Applicant will work with the Sussex Conservation District to achieve the Best Management Practices for the development of the site; that a Nutrient Budget was prepared via DNREC's Nutrient Protocol and, resultant data indicate that the mandated Total Maximum Daily Loads (TMDLs) was met for this site; that the amount of Phosphorous and Nitrogen currently discharged will be reduced by the design of this project; that the existing poultry house will be converted into storage and equipment storage; that no endangered species were found on the site; that there are no tidal or non-tidal wetlands within the area proposed for the facility; that the existing woodlands will remain wooded; that the facility is approximately 1,000 feet from Whites Neck Road; that no historic or cultural resources exist on the site; that there is no need for sewer service for the project, and that they are proposing to utilize a porta-toilet temporarily; that the grinding equipment will meet the requirements of DNREC; that the DNREC Guidelines For Yard Waste Composting Facilities document has some general requirements, siting restrictions, access control, references to residual disposal, nuisance control, emergency response, air resources protection, water quality protection, alternative technologies for composting, and registration of the compost product; that they offer suggested proposed Findings of Fact in the Exhibit Booklet, which were summarized; that they offer suggested Conditions of Approval in the Exhibit Booklet with a suggested amendment, which included: A) The hours of operation 7:30 a.m. to 7:00 p.m., Monday through Saturday, and Sunday be appointment and demand; B) All storage areas, process areas and trash container areas will be no closer than 300-feet of any occupied dwelling on an adjacent property; C) All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT and within the time periods required; D) Stormwater management and erosion and sediment control facilities shall be constructed in accordance with all applicable State and County requirements and shall be operated utilizing Best Management Practices; E) The site shall have one non-illuminated on-premise sign of which the sign shall not exceed 32 square feet on any side or facing, identifying the uses permitted on the premises; F)

Security Lighting will be provided and will have downward illumination and shielded so that no illumination will encroach over any property line; G) All required buffers will be shown as a part of the Final Site Plan; H) Prior to the beginning of the fourth year of business from the date of the Certificate of Occupancy, the Applicant will relocate the access road to the facility from the south boundary line to the middle of the property which will then align with the placement of the entrance; I) All DNREC requirements for yard waste composting will comply; J) The uses shall be limited to recycling, composting and sales of the material; K) The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission and will delineate the operations of the facility; that the Applicant lives within 2 miles of the site and hopes to build on the site in the future; that the materials will not include vegetable and fruit material, household kitchen waste, food products, or chicken manure; that a DNREC noise permit will be required; that the Applicant has agreed to install self adjusting control devices on all vehicles used on the site to reduce beeping noises; that dust will be controlled by water and a water truck if necessary; that the access road will probably be improved with crusher run or crushed concrete, not dirt; that DelDOT is requiring a Class C entrance; that the closest fire company is the Millville Volunteer Fire Department; that the two closest recycling centers are the Eastern Recycling facility and the Blue Hen Organic facility; that there is currently no residence on the site; that the site will be gated to control access; that the composted material will be stored in bins; that they will be purchasing some mulch for resale; that some of the mulch will be color dyed on site; that at the start of the business it will be operated by the Applicant and one employee; that in the future the Applicant hopes to have up to 20 employees; that the majority of the trucks coming to the site will be landscaping company vehicles and privately owned pickup trucks; that impervious pads will be provided to store the materials; and that if needed for demand, a larger well may be provided to provide fire protection.

During the process of the public hearing, the Applicant provided the Commission with a survey/site plan showing the realignment of the entrance and driveway; amended suggested Conditions of Approval to reference the realignment; and descriptive sheets on back-up alarms.

The Commission found that there were no parties presented that intended to speak in support.

The Commission found that Bonnie Patrick, Michael Cuzzo, Penn Frey, Sally Kuneicki, Earl Kuhn, Ronald Blackburn, Stanley Barthwick, Dawne Cuzzo, Paul Estle, Angela Frey, Sondra Connor, Elizabeth Christian, Domonic DiMarco, Carl Bonaventura, and Bob Dougherty were present in opposition to the application and expressed concerns that some area residents did not receive notification of the public hearing; that it is realized that there is a need for this type of use, but not in a residential area; noise; truck traffic; fires; the lack of buffering, i.e. no mature tree line along the Squirrel Run Subdivision to the south; that food waste could be a part of the composted material; questioning if people will have to pay to drop off materials; concerned about runoff of chemicals and other hazardous materials; that there is no public water in the area and that the use could impact residential wells; concerns about methane production in the piles of compost; questioning the type of permits required from DNREC; questioning the number of vehicles coming to and from the site and the type and size of the vehicles; concerns about the impact of the traffic on pedestrians and bicycle riders that utilize local roadways; concerns about the impact on the local roadways by the truck traffic; questioning how the vehicles will be kept clean; that the driveway should be designed and built to provide changes in the surface of the

driveway so that the truck tires do not carry dirt and mud out onto Whites Neck Road from the site; questioning the types of equipment to be utilized on the site, i.e. shredders, grinders, loaders, etc.; odors; concerns about operational hours and the number of days; that seven days a week will impact the area residents; that there are concerns about well contamination; questioning how the facility will improve property values; questioning if a weigh station will be erected on the site; concerns about locating a commercial use in a residential area; that the additional traffic will impact area roadways; that there have been difficulties getting out on Route 26 from Old Mill Road and this will only increase the difficulty; that signalization is needed now; that there is no additional need for mulch since there are several facilities in the general area that provide mulch; that if this application is approved it will negatively impact the residential quality of life for the residents in the area; that approval of this application will eliminate the quiet neighborhood that the residents of the area have enjoyed; that the site is within 1.5 miles of the Inland Bays and that the Bays will surely be impacted negatively by this type of project; questioning how will unacceptable yard waste be controlled and handled; that drinking water will be impacted and could become contaminated; questioning the size of the trucks that will be bringing in yard material mulch from other facilities to start the business, and referencing that they will most likely be tractor-trailers; and questioning if 200 trips per day means 200 vehicles in and out, or a total of 200 trips by 100 vehicles.

The Commission found that Ms. Patrick submitted photographs of the site and area for the record.

The Commission found that Mr. Davidson and Mr. Smith responded to questions raised by the Commission and in response to questions raised by those parties present in opposition that there should not be any methane gas; that in reference to experience, Pennoni Associates has staff that includes 50 or more Environmental Engineers and that they have designed similar projects, and that Mr. Smith has experience in this field because he currently operates a maintenance business that includes lawn service; that the State Strategies reference agricultural uses in an Agricultural Residential District; that the use is considered a method of green recycling; that trucks will not exceed 6-wheelers, and will primarily be pickups with small landscaping trailers; that the 200 trips is referenced as 100 vehicles in and out of the project; that a weigh station may be provided in the future; that a permit is required from DNREC to establish the decibel levels; that there are 16 sites in Sussex County that provide this service, i.e. "Eastern" near Frankford, "Blue Hen Organic" near Dagsboro; that the Sussex Conservation District will have to approve the conversion of the existing pond into a stormwater pond and that they cannot directly discharge runoff; that unacceptable yard waste will be removed from the acceptable materials, stored, and hauled away on a weekly basis; and that all activities will be at least 300 feet from any residential structures on or off the site.

At the conclusion of the public hearing, the Chairman asked for a show of hands by those present in support of this application with 2 responding, and those in opposition to the application with 40 responding.

Commissioner Johnson stated that this site has previously been utilized for poultry houses and actively farmed, and that it could be developed with approximately 100 homes based on the zoning and central sewer.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration and to allow Mr. Burton time to review the application record, if he so chooses. Motion carried 4 – 0.

#### OTHER BUSINESS

##### Baywood GR/RPC Revised Final Site Plan – Phases 5 & 6 – Road 298

Mr. Abbott advised the Commission that this is a revised site plan to replace 130 multi-family units with 86 single-family lots in Phase 5; that Phase 6 contains 25 single-family lots and there are no revisions to Phase 6; that the proposed setbacks are 10-feet from all lot lines; that since this is a RPC, the Commission may amend the setback requirements; that all agency approvals have been received; and that the Commission was previously provided a copy of the revised site plan.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the revised Final Site Plan as submitted. Motion carried 4 – 0.

##### Forest Landing MR/RPC Revised Amenity Area Site Plan – Road 84

Mr. Abbott advised the Commission that this is a revised site plan for a one-story 3,456 square foot clubhouse, a 6,813 square foot swimming pool, 2 tennis courts and a pool storage and equipments buildings; that 24 parking spaces are proposed; that the layout of the pool and the location of the tennis courts are the revisions; and that the Commission was previously provided a copy of the revised site plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Site Plan as revised. Motion carried 4 – 0.

##### Chipotle Mexican Grill Preliminary Site Plan – Route One

Mr. Abbott advised the Commission that this is a revised site plan for a 2,200 square foot restaurant for the Tanger Outlets site; that the setbacks meet the requirements of the Zoning Code; that when the outlets were constructed, parking was based on 5 spaces per 1,000 square feet of gross leasable area; that the ordinance has been changed to require a 20% increase in parking for buildings or groups of buildings exceeding 75,000 square feet; that the developers are requesting that the parking still be calculated at 5 spaces per 1,000 square feet of gross leasable area; that Section 115-164 permits the Commission to modify the parking requirements if they feel that the requirements are excessive and unreasonable; that if not, the applicant's would need to apply for a variance; and that the Commission was previously provided a copy of the revised site plan and a letter from the applicants explaining this request.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action on this conceptual site plan revision for more information and further consideration. Motion carried 4 – 0.

Subdivision #2005 – 91 - - Highland Development Corp.  
Ferry Cove Subdivision – Revised Amenity Area and Amended Condition of Approval

Mr. Abbott advised the Commission that this is a request to revise the location of the required community center and swimming pool from the rear of the site to the front of the site between Phases 1 and 6; that the developer is also requesting to amend the condition of approval requiring the community center and swimming pool to be built within one year of the issuance of the first residential building permit to building the community center and swimming pool prior to the issuance of the 103<sup>rd</sup> residential building permit; and that the Commission was previously provided a copy of the revised site plan and a letter from the developer.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to approve the revised amenity area and the requested amendment to the Condition of Approval. Motion carried 4 – 0.

#### ADDITIONAL BUSINESS

Mr. Lank provided the Commission with a copy of the final version of the Time Extension Report on Subdivisions, Residential Planned Communities, and Conditional Uses.

Meeting adjourned at 8:55 p.m.