



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 10, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, November 10, 2010, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. Michael Johnson, and Mr. I. G. Burton, III, 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 amended by moving the Consent Agenda portion to the end of the Agenda. Motion carried 3 - 0. Mr. Burton was absent during this portion of the meeting.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of October 28, 2010 as circulated. Motion carried 3 - 0. Mr. Burton was absent during this portion of the meeting.

OLD BUSINESS

C/U #1867 – application of **LAWSON'S PRODUCE, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mulch facility to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.20 acres, lying east of Route 5, south of Railroad and 1,700 feet south of Route 9.

The Commission discussed this application which has been deferred since October 28, 2010.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1867 for Lawson's Produce, LLC based upon the record and for the following reasons:

- 1) The use as a mulch facility will benefit the citizens and the environment of Sussex County. By recycling tree trimmings and other tree materials, there will be a reduction of materials going to the landfills.
- 2) The use, with the conditions placed upon it, will not adversely affect the neighboring properties or community.
- 3) The use is adjacent to the Applicant's family farm, which has been in operation for many years. The use is consistent with Agricultural Operations, as confirmed by the Delaware Secretary of Agriculture.

- 4) The use promotes the Conservation Element of the County's Comprehensive Land Use Plan, and it is consistent with the AR-1 zoning of the property.
- 5) This recommendation is subject to the following conditions:
 1. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps or construction waste shall be accepted at the site.
 2. The Applicant shall install a 6-foot tall solid vinyl fence along the western boundary of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan.
 3. Grinding and dyeing or processing hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday.
 4. There shall be no grinding or dyeing operations within 100-feet of any neighboring property line. The areas set aside for grinding and dyeing shall be shown on the Final Site Plan.
 5. There shall not be any mulch storage within 20-feet of any neighboring property line. The areas set aside for mulch storage shall be shown on the Final Site Plan.
 6. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday. The site shall be gated so that after-hours deliveries or dumping do not occur.
 7. Sales and delivery hours will be limited to 9:00 a.m. to 6:00 p.m. seven (7) days per week.
 8. Water shall be available to control dust and for fire prevention within the site.
 9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Smith, and carried with three 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, with Mr. Ross and Mr. Burton absent.

PUBLIC HEARINGS

In reference to **C/Z #1691** and **C/U #1849**, Gene Bayard, Attorney, came forward and requested that the public hearings be combined for purpose of presentation, and acknowledged that he understands that the decisions will be rendered separately.

C/Z #1691 – application of **LINDER & COMPANY, INC. C/O ANDREA FINEROSKY** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying northeast of Old Mill Road (Road 349) and 450 feet northwest of Railway Road (Road 350), to be located on 34 acres, more or less.

C/U #1849 – application of **LINDER & COMPANY, INC. C/O ANDREA FINEROSKY** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore

Hundred, Sussex County, containing 48.3595 acres, more or less, lying at the northwesterly corner of Railway Road (Road 350) and Old Mill Road (Road 349).

The Commission found that on October 29, 2010 the Applicants had submitted an Exhibit Booklet for these application which included a Executive Summary, references to compliance with Chapter 99-9C of the Subdivision Ordinance, suggested Findings of Fact and suggested Conditions of Approval, with attached exhibits referencing General Information, Architecture, Public Water, Public Sewer, PLUS comments and responses, Transportation, Environmental. The attached exhibits include maps, aerials, letters, reports, studies, and plan documents.

The Commission found that on September 8, 2009 DelDOT provided a Letter of No Objection to the entrance location for the project.

The Commission found that on October 26, 2010 the Sussex Conservation District provided a memorandum referencing that there are six soil types on the property; that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for off-site drainage improvements; and that on-site drainage improvements will be necessary.

The Commission found that on November 9, 2010 the Sussex County Engineering Department provided a memorandum referencing that this site is located in the Millville Expansion Area of the Bethany Beach Sanitary Sewer District; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$5,768.00 per EDU; that an 8-inch stub has been extended to the property line along the parcel's frontage on Old Mill Road, approximately 285-foot northwest of the parcel's southerly property corner; that conformity to the South Coastal Area Planning Study, 2005 Update will be required; that connection to the sewer system is mandatory; that the proposed project is a recent expansion area and sanitary sewer service is available to the project; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity for the project as proposed; that it should be noted that capacity and system design assumptions were based on the whole parcel size of approximately 50.19 acres that included approximately 1.8 acres of area on the easterly side of Railway Road; that construction of 200 units on the westerly side of Railway Road will leave capacity for only a single family dwelling on the easterly side; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements and procedures; that the County Engineer must approve the connection point; that a sewer concept plan must be submitted for review and approval prior to any sewer connection; that the owner has been notified that the existing dwelling is in violation of County requirements to connect the existing dwelling to sewer within one year of service becoming available; and that a concept plan is required.

The Commission found that on June 22, 2009 the Department received the final PLUS response from the Office of State Planning Coordination; that the PLUS comments and responses are a part of the Exhibit Booklet; and that the final response references that the project is within a Level 2 and 3 as defined by the Strategies for State Policies and Spending; that the State has no objections to the development of this site; that the State did originally express concerns with the

design of the project as it related to traffic concerns, the impact of the project on the environmental features, and access to community amenities; that the Applicants representatives addressed many of the State concerns by stating that they would be considered in the preliminary site plan review; that since the State is not involved with the preliminary site plan approval the State respectfully request that the County consider the concerns and coordination between the developer, the County, and State agencies.

The Commission found that Andrea Finerosky and David Crowley of Linder & Company, Inc. were present with Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A., Garth Jones, Professional Engineer with Becker Morgan Group, Inc. and John Phelps III, Environmental Scientist with Landmark Engineering and JCM Environmental, and that they stated in their presentations and in response to questions raised by the Commission that the project site is surrounded by residential developments; that approximately 16 acres of the site is already zoned GR General Residential; that they have applied for the GR zoning to bring the entire parcel into one zoning classification; that two traffic studies have been performed for this project; that DelDOT will require multiple improvements to roadways and intersections; that the requirements are noted in the Exhibit Booklet; that a "Letter of No Objection" has been received from DelDOT; that the roadway improvements required by DelDOT to be built by the Applicant will cost in excess of \$1,000,000.00; that sewer infrastructure is in place along both roads; that sewer capacity is available to serve the project; that the site is located in a franchised area approved for Tidewater Utilities; that Tidewater Utilities has provided a "Willing to Serve" letter for the project; that a large wet pond is proposed to be located in the center of the project for enhancing the view from the units and for stormwater; that the design of the site will provide for all drainage to go to the pond; that the site will be designed to meet all State and County standards for stormwater management; that the project will be designed to meet or exceed all reduction standards for Nitrogen, Phosphorous and Bacteria per the recommendation of the Pollution Control Strategies; that the site is located in Level 2 and 3 according to the State Strategies; that they have revised the site plan based on some of the suggestions and requirements noted in the PLUS comments; that the Office of State Planning Coordination has voiced no objections; that they will be in compliance with the requirements of 99-9C of the Code with no impact on wetlands, no impact on natural features, County sewer, public water, no impact on local facilities, amenities, and no anticipated impact on schools; that they propose to build all amenities upon issuance of the 50th building permit; that the site is located in the Environmentally Sensitive Development District Overlay Zone; that an environmental assessment and public facility evaluation report was submitted as a part of the PLUS submittal; that the Applicant intends to comply with Delaware Sediment and Stormwater requirements, and to utilize green technology to the extent feasible for stormwater management; that current options include the potential for underground infiltration and groundwater recharge; that there are no known rare and endangered species on this site; that there are two areas of non-tidal wetlands located on the site; that the site plan has been revised to relocate improvements outside of this area of non-tidal wetlands; that another area of non-tidal wetlands exists along a drainage ditch in the central portion of the property; that the development layout will incorporate a large pond with the buildings arranged around the pond; that a large amount of green/open space is planned around the development; that a large buffer around the perimeter of the property is planned; that large areas of green space will separate the buildings from the pond; that 80% of the property will remain in open space; that the Applicant will fund at their own expense public

and private infrastructure improvements including roads, sewer, water, stormwater management, etc.; that the pond will be benched for safety and partially planted along shorelines to discourage geese; that the concept of the site plan is similar to the Bethany Bay RPC with garages across the street from residential units; that, for comparison, the Bethany Bay RPC project has had 461 units settled to date with only four families with children going to school in the school district; that they believe that this project will be developed in the same manner as far as the number of children going to the school district; that they anticipate some two bedroom units in a price range of \$225,000 and some four bedroom units in a price range of \$375,000; that they have received letters in support from the Bethany Bay Home Owners Association Transition Board, Heron Run Condo Association, Marsh way Homeowners Association, The Bluffs Condominium Association, and the Pointe at Bethany Bay Condominium Association within Bethany Bay RPC; that in summary the letters reference that plots of farmland are being converted to other uses in the area and that residential use is preferred on the neighboring properties to Bethany Bay, rather than commercial or industrial, therefore a change to residential is supported; that, based on the site plan provided, other benefits include: the opportunity to work with the developer on mutual benefits, as Linder & Company will continue to have an interest in the Bethany Bay community while marketing the homes in the final phase of development here; that the plan appears to provide a buffer to our bordering property; that increases in the tax base and rate base for the County and utilities support improvements in the infrastructure; and that a like community will provide prospective members and golf round play for the Bethany Bay Golf Club, which is an important amenity soon to be operated by our community directly; that the developers will work with the Bethany Bay Homeowners Associations; that no tax ditches are affected; that the pond will probably be 3 to 4 times larger than necessary for stormwater to create the water feature; that there is no intent to increase density if the pond is reduced in size; that the maximum number of units will not exceed 200 units; that the well protection area will not be impacted since no development is proposed and buffer areas are being maintained; that a Phase I Environmental Study was performed in 2005; that the Exhibit Booklet contains a copy of a Beers Atlas map that indicates no archaeological significance on the site; that 135 to 140 units could be developed based on the current zoning with no zoning change; that the depth of the pond has not yet been determined; that spoils from the pond will be retained on the site; that the garages are typical 10-feet by 20-feet units; that bonus parking will also be provided in addition to the required parking; that wetlands will be buffered; that no commercial activities are proposed; that the construction entrance will be located at the proposed entrance location unless required by DelDOT; and that the Applicant would be willing to accept conditions addressing the excavation and removal of dirt from the site to create the large pond similar to some of the conditions imposed upon borrow pits.

The Commission found that Mr. Bayard provided copies of the letters from the Bethany Bay Home Owners Association Transition Board, Heron Run Condo Association, Marshway Homeowners Association, The Bluffs Condominium Association, and the Pointe at Bethany Bay Condominium Association within Bethany Bay RPC.

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

At the conclusion of the public hearings, the Commission discussed these applications.

In reference to C/Z #1691:

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action on C/Z #1691 for further consideration. Motion carried 4 – 0.

In reference to C/U #1849:

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action on C/U #1849 for further consideration. Motion carried 4 – 0.

C/U #1870 – application of **ALLEN MCCABE/MCCABE’S FARMS, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for sheet metal fabrication and welding for the poultry industry and offices to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 6.45 acres, more or less, of a 63.07 acre tract, lying north of Seashore Highway (Route 18/404), 620 feet east of Road 528.

The Commission found that on October 28, 2010 the Applicants provided an Exhibit Booklet which contains a color rendering of the site plan, a series of maps and aerials, qualifications of Mark Davidson and DC Group, references to the Comprehensive Plan, a copy of the application form, a copy of the deed to the property, DelDOT comments, a site evaluation for septic from DNREC, Tax Ditch information, and additional maps.

The Commission found that on June 29, 2010 DelDOT provided comments in the form of a Support Facilities Report which references that a traffic impact study was not recommended, and that the existing Level of Service “E” of Seashore Highway will not change as a result of this application.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains six soil types; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it will not be necessary for any off-site drainage improvements; and that it is likely that on-site drainage improvements will be required.

The Commission found that on November 9, 2010 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex Planning Area #1; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where Sussex County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that two letters have been received in support of the application and that in summary the letters reference that the Applicants are members of the Delmarva Poultry Industry, Inc.; that among its membership of 2,000 members are local businesses like McCabe’s Mechanical Services, Inc. that do work for the chicken companies; that the company has been

servicing the millwright and mechanical needs of Allen Family Foods, Inc. since 1998; that the Applicants have proven time and time again that they can be trusted to complete very complex mechanical projects with low margins for error and demanding deadlines; that the Applicants demand quality out of its own organization and far exceed the competition; that in recent years, Allen Family Foods, Inc. has undergone numerous retooling operations and that these projects have the potential to dramatically interrupt the business and potentially devastate livelihoods that depend on the company success, if not carried out as designed; that the Applicants have excelled in providing the service, commitment, and professionalism needed to keep Allen Family Foods flexible and successful in these endeavors; and that Allen Family Foods consider the Applicants a valued partner in this volatile economy. The letters were from the Delmarva Poultry Industry, Inc. and Allen Family Foods, Inc.

The Commission found that Allen McCabe of McCabe Farms, LLC was present with James Fuqua, Attorney with Fuqua, Yori and Willard, P.A., and Mark Davidson of DC Group and that they stated in their presentations and in response to questions raised by the Commission that the site is located approximately 2 miles west of the Del Tech Campus; that a minor subdivision of the property has been approved; that they intend to relocate the business from the Sussex County Industrial Park; that they are proposing to build two buildings: a one-story workshop of approximately 9,600 square feet, and a one-story storage building of approximately 4,800 square feet; that the existing home on the premises is intended to be converted into an office for the business; that a new entrance will be located just east of the existing entrance, which will be removed; that the entrance will be built to State specification; that adequate space is available on site for parking; that stormwater management will be located to the rear of the property; that the septic area will be located to the front of the property; that there are no wetlands or environmental features; that the company creates stainless steel conveyors and other equipment for food service companies, primarily for poultry companies; that the company services and repairs existing equipment and fabricates and installs new equipment; that approximately 80% of their customers services are in the poultry industry; that they are proposing 15 employees in the fabrication shop, 3 office employees, and additional employees and subcontractors during larger projects; that normal business hours are from 7:30 a.m. to 4:30 p.m. Monday through Friday; that some emergency services are necessary during downtime in industrial facilities for installation of equipment with hours of 6:00 a.m. to 6:00 p.m. on weekends; that their maximum hours should not exceed 6:00 a.m. to 6:00 p.m. daily; that welding supplies are delivered twice per week; that stainless steel may be delivered daily; that all materials are stored indoors; that waste materials will be stored in bins and dumpsters behind the building; that all work will be performed indoors; that the site is located along a major collector highway; that the Comprehensive Plan references the site being within a Low Density Area; that the use predominantly serves agricultural industry uses and directly serves agriculture; that the Comprehensive Plan also references that industrial uses that support or depend on agriculture should be permitted; that the use requested is appropriate since it supports agriculture, the agricultural industries and employment; and that an entrance plan has been submitted to DelDOT.

The Commission found that Mr. Fuqua submitted suggested Findings of Fact and suggested Conditions of Approval.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1870 for Allen McCabe/McCabe Farms, LLC for sheet metal fabrication and welding with offices based upon the record made during the public hearing and for the following reasons:

- 1) The use will support the County's agricultural, business and industrial uses.
- 2) The use is centrally located within the County, which provides convenience for the Applicant's clients in Sussex County and throughout the Delmarva Peninsula.
- 3) The use is consistent with the County's Comprehensive Land Use Plan.
- 4) No parties appeared in opposition to the application.
- 5) This recommendation is subject to the following conditions:
 1. The use shall be limited to metal fabrication, welding and related activities.
 2. The hours of operation shall be limited to 6:00 a.m. to 6:00 p.m. Monday through Friday with weekend operations when off-site installations are scheduled.
 3. With the exception of materials screened from view and stored in bins, there shall not be any outside storage. The location of the permitted storage bins shall be shown on the Final Site Plan.
 4. One lighted sign shall be permitted, not to exceed 32 square feet in size per side.
 5. Any security lights shall be screened from view so that they do not shine on neighboring properties or roadways.
 6. Any dumpsters shall be located at the rear of the buildings and shall be screened from view of Route 18.
 7. If approved by the Sussex County Council, the Conditional Use shall expire unless it is substantially underway within 3 years of the Council's approval.
 8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U #1871 – application of **CANDLEBERRY CREEK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of Conditional Use No. 1265 (Ordinance No. 1284) antiques and craft shop and wildlife and folk art by adding the sale of swing sets, sheds, outdoor furniture, fencing and various garden and yard accessories to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.05 acres, more or less, lying west of Route One, 3,540 feet north of Road 198 (Truitt Road).

Mr. Lank provided the Commission with a copy of the survey of the 2.05 acres with sketching of the proposed location of the sheds and swing sets.

Mr. Lank advised the Commission that DelDOT comments were not requested since the intended use is a continuation of an existing Conditional Use.

The Commission found that on November 9, 2010 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that this site is located in the North Coastal Planning Area; that an on-site septic system is proposed to be utilized; that conformity the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently has plans to provide sewer service; and that a concept plan is not required.

The Commission found that on October 26, 2010 the Sussex Conservation District provided comments in the form of a memorandum which references that the site contains two soil types; that the Applicants will be required to follow recommended erosion and sediment control practices and to maintain vegetation upon completion of construction; that there are no storm flood hazard areas or tax ditches affected; that it will not be necessary for any off-site drainage improvements; and that it is not likely that on-site drainage improvements will be required.

The Commission found that a letter was received from Robert L. Graham and Ethel C. Graham in opposition to this application and that the letter expressed concerns that they did not originally have any objections to the craft shop; that the business was started prior to receiving approval as a Conditional Use; that the Conditional Use was granted with certain conditions of approval; that since that approval was granted children swings, sliding boards, other outdoor furniture and sheds were placed on the property along with outdoor banners and signs; that another Conditional Use was applied for and action was deferred; that additional displays have been set up for sheds and fencing; that night lighting has been added; that traffic on Route One is extremely high and it is difficult to enter the highway during the summer time, especially from Thursdays through Saturdays; that there is no deceleration or acceleration lanes to or from the business, and no plans have been made to construct them; that it is quite common during the summer to observe cars parked on the edge of the highway to inspect the outdoor items displayed for sale; that this is a traffic hazard; that parking is restricted with no signs directing patrons to a parking area and the parking area is not improved with hard surfacing; that the area of the site is occasionally flooded; that there are no provisions to control sedimentation and erosion from the farmed areas; that any surfacing of parking areas or entrances to the craft shop will only exacerbate the flooding in the general area; that there is only one other commercial establishment, fruit and vegetable market, from Milford to Waples Pond; that actions of the past by the Applicant shows that everything he has done has been done before the County even knew it; that the craft shop was open before he originally applied for a Conditional Use; that outside displays were set up before any request was made; that this time expansion of outside displays were again set up before any request was made; that his actions show ultimate disrespect for the neighbors of the business and the County rules on zoning and land use; and that we as neighbors are both decidedly opposed to this application. Attached to the letter were six photographs of the site and view of the site from the neighboring property.

Mr. Lank reminded the Commission that on March 25, 2010 the Applicant was present for a public hearing to consider a Conditional Use (C/U #1819) for the same use; that the Commission recommended approval with conditions; that the Applicant failed to appear before the County

Council and that the County Council had to deny his request for a Conditional Use; and that the County Council granted permission for the Applicant to reapply for his Conditional Use without having to wait for a year to apply.

The Commission found that Michael Rhue was present on behalf of Candleberry Creek and stated in his presentation and in response to questions raised by the Commission that the shed display has been expanded outside of the Conditional Use boundary onto a portion of the adjacent farmland; that he would like to continue to sell sheds, swing sets, fencing, outdoor furniture, and various garden and yard accessories as expand of his current Conditional Use for the sale of antiques, crafts, and wildlife and folk art; that business hours are from 10:00 a.m. to 5:00 p.m. daily; that he does not need any additional signage; that samples of fencing are displayed; and that the fencing includes aluminum and vinyl fencing of various heights.

Mr. Robertson expressed some concern about the Applicants expanding the use of the property without obtaining any approvals.

Mr. Wheatley stated that previous recommendations have no bearing on this application and that the application should be considered on its own merit.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #1871, the application of Candleberry Creek, for the expansion of Conditional Use #1265 (Ordinance No. 1284) to include the sale of swing sets, shed and garden products based on the record made at the public hearing and for the following reasons:

- 1) The use is for the expansion of an existing Conditional Use that permitted the sale of antiques, crafts, and wildlife and folk art. This Conditional Use, with the conditions and stipulations placed upon it, is a reasonable expansion of the existing uses.
- 2) The use serves a community need for the types of products that will be sold.
- 3) The sheds are delivered by the manufacturer to the purchaser.
- 4) The expansion of the existing Conditional Use will not result in a substantial increase in traffic.
- 5) Because the site is surrounded by other property owned by the Applicant's family, there will not be any adverse affect on properties of different ownership.
- 6) This recommendation is subject to the following conditions:
 1. Outside storage and displays of sheds, swing sets, and garden products shall be permitted on the site. The location of the display areas shall be shown on the Final Site Plan.
 2. There shall be no more than a total of 30 swing sets and/or sheds displayed on the site at any one time.
 3. All outside displays shall be located at least 60 feet away from the right-of-way of Route One, with the exception of one swing set and shed that can be located no less than 40 feet from the right-of-way.

4. The Final Site Plan shall contain the location of all entrances, driveways and parking areas.
5. The use shall be subject to all DelDOT approvals.
6. As stated by the Applicant, the hours of operation shall be between 10:00 a.m. and 5:00 p.m., but open 6 days per week.
7. Any sheds sold from the premises shall contain a notice that a shed placement requires a permit from Sussex County.
8. This approval shall be limited to the Applicant and his family. If the business or the site is transferred to anyone other than the Applicant or his family, this Conditional Use, which is an expansion of Ordinance No. 1284, shall expire.
9. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

Subdivision #2010-4 – application of **JESSE FREDERICK CONAWAY AND EVERETT T. CONAWAY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 160.2 acres into 99 lots, located south of Road 78 (Woodland Ferry Road), 100 feet east of Road 490A (River Road) and east of the Nanticoke River.

Mr. Abbott advised the Commission that the record contains the following: the Technical Advisory Committee review of June 22, 2010, the applicant's response to PLUS comments dated July 7, 2010, the Attorney's supporting statements dated July 9, 2010, an Exhibit Booklet that was received on October 7, 2010, a letter and an e-mail from the Delaware Nature Society received November 9, 2010 and an e-mail copy of DNREC's complete PLUS comments received November 4, 2010; and that they are a part of the record for this application.

James Fuqua, Attorney, Jerry Friedel, P.E., Don McCoy, PLS and D.J. Hughes, P.E. with Davis, Bowen & Friedel, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that this is a 99-lot standard subdivision application; that the site contains approximately 151 acres; that the site is located on the south side of Road 78 approximately 2,700 feet east of the entrance to the Woodland Ferry; that this site is the same site that was the subject of two cluster subdivisions in 2009; that those applications were for 84 lots on 101 acres and 40 lots on 49 acres; that the Commission denied the two previous applications; that this application has been redesigned into one application taking into consideration the reasons stated for denial of the two previous applications; that the proposed density of this subdivision is 0.65 lots per acre; that the site contains 52.8 acres or 35% open space; that the minimum lot size is 0.75-acres; that there are 31 lots that are at least 1 acre in size since they are located within the 1000 foot Conservation Zone; that on-site septic and wells are proposed; that DNREC has issued a septic feasibility statement indicating that the site is suitable for on-site septic systems for 99 lots; that the proposed entrance is at an existing road known as Belfast Lane; that the site is wooded; that the site was tilled agricultural lands years ago; that the site contains Federal and State wetlands on the southern portion of the site; that a 9

acre parcel is not a part of this application; that the site borders the State of Delaware Nanticoke Wildlife area, the Nanticoke River and agricultural lands; that other developments such as South Woodland, Patty Cannon Estates, Layton's Riviera, Cypress Point and Kew Garden Subdivision are in the immediate area; that the parcel has been owned by the Conaway family for a very long time; that there is a large family cemetery located on the site; that the property is zoned AR-1 Agricultural Residential and the proposed subdivision is a permitted use in this zoning category; that the site is located in a Low Density Area per the Comprehensive Land Use Plan; that 0.75 acre lots are permitted in the low-density areas; that the project complies with the zoning and subdivision codes and the land use plan; that the proposed subdivision is in character with the other developments in the area; that the site is located within the Laurel School District and the applicant is proposing a bus stop if required by the school district; that the site is in the Laurel Fire Department fire protection district; that a homeowners' association will be formed and all lot owners will be required to be members of the association; that amenity and recreation features will include trails, park areas, tot lots, picnic tables and an observation area along the Nanticoke River; that environmental considerations were taken into account of the design of this project; that the lots within the Conversation Zone have a minimum of 1 acre with 150 feet of lot width; that a 50-foot buffer is proposed from the State tidal wetlands and a 25-foot buffer from the Federal wetlands; that there are no wetlands on the individual lots; that a 100-foot buffer from the Nanticoke Wildlife Area is proposed; that there will be no disturbance to the wetlands; that selective lot clearing will be permitted; that the applicants will comply with recommendations from the U.S. Fish and Wildlife Service in regards to the Delmarva Fox Squirrel that may be in the area; that the site is made up of six parcels; that there is an existing dwelling on the site that will be on an individual lot and will conform to the setback requirements; that the State Historic Preservation Office has visited the site; that the design complies with Section 115-194 of the zoning code; that there are 10 lots proposed along the Nanticoke River; that a 20-foot buffer will surround the perimeter of the project; that the entire 9 acre residue parcel is entirely wooded; that all of the wetlands will be designated as open space; that no trees or vegetation will be disturbed within 100 feet of the State Wildlife Area; that there will be an additional 50-foot no building area; that the 0.75 acre lots will retain 20 to 30% of forest areas; that the 1.0 acre lots will retain 30 to 40% of forest areas; that this will be accomplished through selective clearing; that trees will be planted along the interior streets within the development; that all lot owners will have access to the Nanticoke River; that the streets will be private and constructed to Sussex County specifications; that sidewalks will be provided on at least one side of all streets except the main entrance boulevard; that Best Management Practices will be followed during storm water management and erosion and sedimentation control design and maintenance; that the site drains to the west to adjoining tributaries; that there will be open swales throughout the development; that the storm water management design will maximize groundwater recharge; that the items referenced in Section 99-9C are addressed in the Exhibit Booklet; that the scenic views of the Nanticoke River will be protected; that the design was reviewed by the State through the PLUS process and the State's comments have been answered and incorporated into the project; that the applicant's have addressed the comments made by the Technical Advisory Committee; that the elevation is 5-feet at the River and the lots are higher than that; that a Letter of Map Amendment will be applied for through FEMA; that a Delmarva Fox Squirrel study will be performed if so required; that there is no known habitat at this time; that 150-foot buffers for hunting safety purposes has been retained; that the applicant has met with DeIDOT officials after the PLUS meeting; that the

entrance location has been moved to comply with DelDOT's requirements; that a traffic impact study was required since 99 lots are proposed; that the traffic impact study has been submitted to DelDOT and is currently under review; that DelDOT has indicated that the Level of Service A will not change as a result of this application; that improvements will be required for site access only; that a 175-foot deceleration lane will be required for Phase 1 which is lots 1 through 50; that road widening will be required for Phase 2 which is for lots 51 through 75; and a by-pass lane will be required for Phase 3 which is for lots 76 through 99; that the proposed subdivision will not have any significant impact on traffic in the area; that the applicants have attempted to address all reasons for denial of the previous applications; that they agree with the concerns indicated by the Delaware Nature Society however burdens cannot be imposed on private property owners; that the restrictive covenants will include the agricultural, wetlands, hunting and all terrain vehicle notices; that under Delaware Law, when an application complies with all requirements, the Commission is required to approve the subdivision; that the project was designed to law; that pollution is due to the agricultural industry; that only a 50-foot buffer is required from State wetlands; that there is currently nothing located on the residue parcel; that no consideration for a buffer has been given to the John Smith Trail; that the John Smith Trail is a waterway; that individual boat docks will be left up to the individual lot owners; that the boat docks are subject to DNREC approval; that all buffers can be delineated by monumentation; that the family cemetery will be retained and maintained; that the project would be built out in approximately 10 years; that a pool and clubhouse are not proposed; that there will be an architectural review committee; that the dwellings in the development will be geared toward nice homes; that the homes will be stick built; that no modular or manufactured homes will be permitted; and that the homes will begin around 2,500 square feet in size; that the majority of septic systems will be LPP systems; that no mound systems are anticipated; and that some soils may be able to handle standard septic systems; and submitted proposed findings of fact and conditions of approval into the record.

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

Byard Layton and Roy Whitaker, adjoining property owners, were present in opposition to this application and stated in their presentations that there is an active poultry operation that adjoins the site; that fans blow towards the site; that future owners will complain about noises, odors and dust from farming operations; that farmers are protected by the right to farm law; that there are plenty of vacant lots within other subdivisions in the immediate area; that there are 2 or 3 bald eagles that habitat the area; that drain fields need to be at least 10-feet from trees; that the design of the project is not based on actual facts; that wetlands on the site have been filled in the past; that the filling of wetlands has caused drainage problems in the area; that new homes will be built in flood plains; that forested areas will be destroyed; that the site is an excellent recharge area; that approval of the development will cause problems to drinking water and the aquifer in the area; that the bald eagles are an endangered species and there should be a minimum 600-foot buffer from their nesting area; that there is a wildlife refuge that adjoins the site; that visual buffers from the Nanticoke River should be a minimum of 100-feet; that the Delmarva Fox Squirrel habitats the area; that they have concerns about when the traffic impact study was conducted; that motorists speed on Woodland Ferry Road; that all of DNREC's comments were not included in the PLUS comments; questioned if the Laurel School District has commented on the application; that the items referenced in Section 99-9C have not been adequately addressed;

and submitted photographs of the area and a letter of opposition from an adjoining property owner who was not able to attend the meeting.

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

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

OTHER BUSINESS

CU #1866 – Trustees of Church of Christ

Preliminary Site Plan – Road 92

Mr. Abbott advised the Commission that this a preliminary site plan for the expansion of an existing cemetery; that this conditional use was approved on August 10, 2010 with 2 conditions; that the site plan is the same as the one submitted for the public hearing; that 96 additional plots are proposed; that DelDOT has issued a letter indicating that the existing entrance is suitable for the proposed expansion; that the site plan complies with the 2 conditions of approval; and that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0.

Sam Yoder & Son, Inc.

CU #1447 Amended Condition – Route 16Mr. Abbott advised the Commission that this conditional use for the expansion of Conditional Use #1067 to allow meat cutting and retail sales was approved on April 16, 2002 with the condition that there shall be no Sunday business hours; that the owners are requesting that this condition be deleted; that the condition originated at the Commission level and that the Commission has the authority to amend the condition; and that the condition was originally proffered by the applicants during the public hearing.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to amend the condition of approval by deleting in its entirety “There shall be no Sunday business hours.” Motion carried 4 – 0.

CONSENT AGENDA

Mr. Smith advised the Commission that he would not be participating in the discussion of the Consent Agenda items.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 3 votes to none, with Mr. Smith not participating, to approve the Consent Agenda as circulated. Motion carried 3 – 0 – 1.
The Consent Agenda included:

CU #1750 – Percy, Inc.

This is a request for a one-year time extension. This Conditional Use for a fitness center and athletic fields was approved on October 28, 2008. The Commission granted a one-year time extension on November 12, 2009 retroactive to the anniversary date of approval. This is the second request and the last that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until October 28, 2011.

CU #1781 – Rodney W. Smith
Time Extension

This is a request for a one-year time extension. This Conditional Use for multi-family dwelling structures and commercial use was approved on October 28, 2008. The Commission granted a one-year time extension on October 14, 2009. This is the second request for an extension and the last that the Commission has the authority to grant. If an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until October 14, 2011.

Subdivision #2005 – 85 – Ernest H. Hosse, III
Time Extension

This is a request for a one-year time extension. The Commission granted preliminary approval on February 20, 2008 and granted a one-year time extension on March 18, 2009. This is the second request for an extension. If an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until February 20, 2011.

Subdivision #2006 – 10 – Lacrosse Homes of Delaware, Inc.
Time Extension

This is a request for a one-year time extension. The Commission denied this application on June 28, 2007. The County Council granted preliminary approval on December 16, 2008. The Commission granted a one-year time extension on November 12, 2009. This is the second request for an extension. If an extension is granted, preliminary approval will be valid until December 16, 2011.

Motion by Mr. Johnson, seconded by Mr. Burton and carried 3 votes to none, with Mr. Smith not participating, to approve the items on the Consent Agenda, as noted. Motion carried 3 – 0 – 1.

Meeting adjourned at 7:15 p.m.