

MINUTES OF THE REGULAR MEETING OF DECEMBER 9, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 9, 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. Michael Johnson, Mr. I. G. Burton, III, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended by changing the order of the public hearings to consider C/U #1879 – Laurel Fire Department, Inc. first and then C/U #1880 – Ellendale Volunteer Fire Company, Inc., and by striking the request for a time extension for Item 5 under Other Business. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of November 10, 2010 as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of November 18, 2010 as amended. Motion carried 5 – 0.

OLD BUSINESS

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.

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

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1691 for Linder & Company, Inc. for a change in zone from AR-1 to GR based upon the record made during the public hearing and for the following reasons:

- 1) The parcel is currently divided between AR-1 and GR zoning. This rezoning will bring the entire property under a single GR zoning classification.
- 2) The rezoning is consistent with neighboring and adjacent properties and the uses, which include other GR zoned lands and MR zoned lands.
- 3) The rezoning to GR will allow this property to be developed with a uniform development plan that is consistent with the types of uses that surround the property.
- 4) The rezoning to GR is consistent with the County's Comprehensive Land Use Plan, and the purposes of the GR Zoning District.
- 5) Letters of support have been received from the various Homeowners Associations within Bethany Bay, and no parties appeared in opposition to the rezoning.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with four (4) votes 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 with Mr. Ross not voting since he was not present during the public hearing.

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 discussed this application, which has been deferred since November 10, 2010.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1849 for Linder & Company, Inc. for multi-family dwelling structures based upon the record made at the public hearing and for the following reasons:

- 1) The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
- 2) The development is on a property that is currently zoned AR-1 and GR, with a recommendation pending before County Council to rezone the entire property to GR. Multi-family dwellings are appropriate for GR zoned land, and they will be consistent with neighboring properties and uses that include other MR and GR zoned lands and single and multi-family developments.
- 3) The proposed use is consistent with the County's Comprehensive Land Use Plan.
- 4) The project will be served or benefitted by amenities, which include a clubhouse, pool, playground, volleyball court, basketball court, tennis court and walking paths.
- 5) With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.
- 6) No parties appeared in opposition to the project, and it is supported by several Homeowners Associations within the nearby Bethany Bay community.
- 7) The development is consistent with the general purpose of the Zoning Ordinance that promotes the orderly growth, convenience, order, prosperity and welfare of Sussex County.
- 8) The proposed density is less than the maximum density permitted in the GR zone.
- 9) This recommendation is, however, subject to the following conditions:
 1. The recommendation is conditioned upon the rezoning of the entire property to GR General Residential by County Council.
 2. There shall be no more than 200 units within the development.
 3. All entrances, intersections, roadways and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
 4. Recreation Amenities shall be completed within the project as follows:
 - a. Community Center/Clubhouse, pool, playground and courts shall be completed on or before the issuance of the 50th Certificate of Compliance/Occupancy.

- b. Multi-modal recreational facilities shall be completed on or before the 100th Certificate of Compliance/Occupancy.
5. The development shall be served as part of the Millville Expansion of the Bethany Beach Sanitary Sewer District.
6. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
7. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
8. No wetlands shall be disturbed except as authorized by State and Federal permits.
9. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
10. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
11. The Applicant shall consult with the local school district's Transportation Manager to determine if a school bus stop is appropriate.
12. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday.
13. The Final Site Plan shall include a landscape plan for the development. Landscape and lawn maintenance shall be the responsibility of the developer or the condominium association.
14. For excavation of the large pond at the center of the development, which has similar characteristics to a borrow pit, the following conditions shall apply to protect the neighboring residential properties and roadways:
 - a. No dredging shall be permitted.
 - b. Water or a water truck shall be available to control dust when conditions require.
 - c. No materials shall be brought from off-site for processing, mixing or similar purposes.
 - d. A construction entrance for the excavation operations shall be established and maintained in good condition.
15. The Final Site Plan for this development shall contain the approval of the Sussex Conservation District.
16. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with four (4) 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 4 – 0 with Mr. Ross not voting since he was not present during the public hearing.

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.

The Chairman referred back to this application, which has been deferred since November 10, 2010.

Mr. Johnson advised the Commission that he has some issues that he would like the Commission to discuss prior to rendering a vote.

Mr. Ross advised the Commission that he did not attend the public hearing but that he has reviewed the file and listened to the recording; that he has discussed the buffer issues with Mr. Robertson and reviewed the ordinances; that there are no restrictions on lot lines within buffers; that the buffers need to be clearly identified on the site plan and in the field so that the property owners know where the buffers are; and that he has a motion prepared that will hopefully address this issue.

Mr. Johnson read the following statement: "Mr. Chairman, I continue to maintain that wetland buffers should not and cannot be located within lots. Besides the environmental and ecological issues, I believe there is adequate basis for this in the ordinances. Although 115-193 does not specify that the buffers cannot be within lot lines, nor does it specifically permit it either.

Nevertheless, the prohibition of buffers in lot lines is supported elsewhere in the ordinances. Please refer to Section 115-4 Definitions: "Lot" "...and set apart, for separate use and occupancy, from contiguous parcels..."; and "open space" includes (1)(C) "buffers and forested areas" and (i) "Tidal and non-tidal wetlands."

By the definitions if the wetland buffers are included within the lots, then we are permitting "open space" to be included in individual lots.

Further, Section 115-13 Encroachments; reduction of lot area addresses the issue of encroachment by open space. I further contend that the inclusion of the buffers within the lots results in a reduction of the lot area as the buffers are defined as open space in 115-4.

If wetland buffers are permitted within lot lines, then what is to prevent any other community features to be included: storm water management ponds, parks, recreational facilities, etc.

The inclusion of wetland buffers within lots discredits the subdivision ordinance and zoning ordinance. Besides the degradation of the wetlands buffer ordinance 115-193, it diminishes the intent of 115-194 Conservation Zones. Furthermore, the inclusion of wetland buffers in lot lines does not adequately address 99-9C (2), (3), (10) and 17 and 99-16C.

Note that I did not in the public hearing, nor now have I raised the issue of buffers greater than 50 feet. Rather my concern has been and is, the inclusion of wetland buffers within the lots. The applicant did not raise any hardship issues, only design issues. The inclusion of the wetland buffers within the lot lines were due to the conservation zone requirements for one-acre lots and design.

I can support approval of this project if the wetland buffers are removed from all lots.”

Mr. Johnson advised the Commission that this particular project fronts along the Nanticoke River which is a vital recreational parcel; that in addition the lot lines into the buffers fronts tidal wetlands and that these are of a particularly sensitive nature so given the fact that this property not only borders on the Nanticoke River, it has some extensive wetlands on the edge; that given the special circumstances and special conditions of the land that is the subject of this application he contends that normally 50 foot buffers are probably inadequate but the ordinance only provides for 50 foot buffers and that he is willing to stick with that however he takes exception to say that the 50 foot buffer is inclusive of a buildable area within a lot; that to him, this particular subdivision given the proposed density gives the applicant more than enough land to still get their 99 lots and it's not a question of the Commission taking away lots in this particular case, it's a question of what is best for the environment and that he contends that a buffer zone that is separate from the lots that is part of the open space for a subdivision that is maintained by the developer; until such a time a homeowners' association takes over the maintenance is what is best for, in this case, our environment; that it is a concern to him the fact that there are 99 septic systems proposed but that is permitted; that his issue is what can the Commission do to address and try to in terms of stipulations and putting conditions on subdivisions and that it is his contention is that in this situation given the uniqueness of this property and being right on top of the Nanticoke River the Commission has the responsibility to do what they can to protect the environment at the same protecting the land rights of the property owner; that in this case providing or contending that the buffer should not be in the lot lines is not a taking from the applicant because the applicant can still produce 99 lots and is not detrimental but is rather an enhancement to the protection of our environment and for the record he would like to have his read statement included in the minutes.

Mr. Ross advised the Commission that he appreciates Mr. Johnson's comments and in a policy environment it would probably be appropriate however this is mixing apples and oranges as the Council decided specifically in Section 115-4 (I) to not allow lot lines in tidal wetlands and that they had that same opportunity to make that same restriction for buffers and chose not to; that within the buffers they basically put a setback for the building restriction in the buffer area and they chose to do that with deliberate thought; that he doesn't think that it is appropriate to the Commission to try to change policy, that that's the Council's role and it is the Commission's to take the ordinance and try to implement that and living with the intent of the buffer ordinance and restrictions of what he will be proposing in his motion is that those buffers be clearly marked with permanent concrete markers on the site as well as be shown on the site plan so that whoever does own the property will know that those restrictions are there; that he doesn't think the ordinance stipulates who shall own the restricted area and by telling the property owner he can't sell lots in the buffer area, the Commission is basically denying the developer his right to sell his land; and that it would be for the Council to decide if they so choose to revise the ordinance.

Mr. Robertson advised the Commission that in reference to open space as it applies to buffers, the Open Space Ordinance No. 2011 amended several sections throughout the zoning code and added definitions; that the ordinance doesn't say buffers or other areas of a subdivision are definitely open space; that the ordinance was designed as part of the Comprehensive Land Use

Plan implementation to show that it was a guide in determining minimum open space percentages. It says that buffers may be counted toward minimum open space recommendations, but does not require buffers to be open space and outside of lot lines.

Mr. Wheatley advised the Commission that there are certain sections of the zoning code that need to be revisited such as buffers; that the Commission has to work with what they have; that language needs to be placed in the individual deeds; and that ordinances have to be applied in reaching a decision.

Mr. Johnson advised the Commission that he is not trying to change the ordinance but that the Commission has a unique situation for the environment and recreation; and that he is not trying to change any ordinance; that the site needs protection; who would be responsible for the maintenance of the buffers and that it could be considered a taking.

Mr. Lank advised the Commission that at one time there was not a setback from tidal wetlands; that through public hearings before the Commission and County Council, there became a setback from tidal wetlands that was only 20 feet which was the rear yard setback for agricultural districts and then amended to 50 feet through public hearings; that the wetlands boundary is the lot boundary approximately 90% of the time; and that if the buffer is not a part of the lot, it is at the developer's choosing.

Mr. Robertson reminded the Commission that the ordinance talks about structures and not lot lines.

Mr. Burton advised the Commission that he spent a lot of time reviewing the application and ordinances; and that the buffer is a setback and complies with the ordinance.

Mr. Smith advised the Commission that it appears that there will be disagreement in the decision; that the Commission is a regulatory agency; that the Commission has received a lot of input from various groups; and that the Commission has reviewed all information.

Mr. Wheatley advised the Commission again that it appears the Commission will be able to revisit certain ordinances in the future.

Mr. Ross stated that he would move that the Commission grant preliminary approval of Subdivision #2010 – 4 for Jesse Frederick Conaway and Everett T. Conaway, based upon the record and for the following reasons:

1. The proposed subdivision meets the purpose of the Subdivision Code in that it protects the orderly growth of the County. It also meets the requirements of the Subdivision Code, and the items listed in Section 99-9C of the Code have been favorably addressed.
2. The proposed subdivision with a density of 99 lots on 151 acres of land is significantly less than the density permitted by the existing AR-1 zoning.
3. The proposed subdivision will be a restricted residential development and will not adversely affect nearby uses or property values.

4. The proposed subdivision will not adversely impact schools, public buildings and community facilities or area roadways and public transportation.
5. DNREC has indicated that the site is suitable for individual on-site septic systems. Water will be provided by individual on-site wells.
6. The proposed subdivision is in accordance with the Sussex County Comprehensive Land Use Plan which permits single family lots of $\frac{3}{4}$ acre on septic systems within the County's Low Density Area, and the lots within the Conservation Zone are at least 1 acre in size.
7. This approval is subject to the following conditions:
 - A. There shall be no more than 99 lots within the subdivision.
 - B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, storm water management facilities, erosion and sedimentation control facilities and other common areas.
 - C. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be coordinated with the local school district.
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.
 - G. A forested Buffer shall be shown along the boundaries of the property. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - H. The developer shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 - I. No wetlands shall be included within any lots.
 - J. A system of street lighting shall be established.
 - K. Sidewalks shall be located on one side of all streets in the subdivision.
 - L. Amenities shall include walking paths, a tot lot and park areas. The on-site cemetery shall be preserved and maintained by the Developer followed by the Homeowners' Association.
 - M. All buffers required by Section 115-193 of the County Zoning Code, as depicted on the Preliminary Site Plan, shall be depicted on the Final Site Plan, and referenced within the Restrictive Covenants and Deeds to the lots affected by the buffers. The Deeds and Restrictive Covenants shall state that the buffers must remain undisturbed or in a

- natural vegetative state and that no structures, including accessory buildings, shall be constructed within the buffer area.
- N. The buffer areas required by Section 115-193 of the Sussex County Zoning Code, as depicted on the Preliminary Site Plan, shall be clearly marked on the site with permanent physical markers defining their boundaries. The location and type of these markers shall be depicted on the Final Site Plan.
 - O. The Restrictive Covenants for the development shall include a Notice of Operation of Poultry Farms in the area, the Agricultural Use Protection Notice, Notice of Hunting Activities on adjacent and nearby State Lands, Notice of Wetlands located on the site, and a prohibition of use of all terrain vehicles (ATVs) within the subdivision.
 - P. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 - Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Burton and carried 3 votes to 2, with Mr. Johnson and Mr. Smith opposed, to approve this application as a preliminary for the reasons, and with the conditions stated. Motion carried 3 – 2.

PUBLIC HEARINGS

C/U #1879 – application of **LAUREL FIRE DEPARTMENT, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a fire department substation to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 4.9652 acres, more or less, lying west of Fire Tower Road (Road 479) 550 feet north of Sycamore Road (Road 466).

The Commission found that this application was filed on October 6, 2010.

The Commission found that the Applicant provided an Exhibit Booklet on November 24, 2010 and that the booklet contains a listing on contact representatives; letters addressed to the Delaware State Fire Prevention Commission and the County in support of the application from the Honorable Robert L. Venables, Sr., State Senator, Robert A. Stuart, Director of the Sussex County Emergency Medical Services, Richard E. Small of Nationwide Insurance, Dale Dukes of Dukes Lumber Company, Inc., Jim Berger, Administrator for Epworth Christian School, Jay James of Planned Poultry Renovations, FrancesAnna Arriola, Administrator for Children's Place Discovery and Learning Center, Maralene K. Givens for The Hen House, David L. Brown, President of Sussex Irrigation Co., Inc., Don R. Groton, the Laurel Fire Department, Inc., the Honorable John J. Shwed, Mayor of the Town of Laurel; a site plan; a color rendering of the

building; a floor plan of the building; a copy of the 2004 Greater Laurel Comprehensive Plan Potential Growth and Annexation Area Map; and a location map.

The Commission found that on November 29, 2010 the Applicant provided suggested proposed Findings of Fact and Conditions of Approval for consideration.

The Commission found that on September 22, 2010 DelDOT provided comments in the form of a Support Facilities Report which references that a traffic impact study is not recommended and that the existing Level of Service "A" of Fire Tower Road will not change as a result of this application.

The Commission found that Mark Sheridan, Past Chief of the Laurel Fire Department was present with Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A., and Mark Dusbiber of Delaware Architects, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the site is in the service area of the Laurel Fire Department; that the site is adequate in size to accommodate the use; that the intended use is a fire department substation; that the site is located in a Low Density Area according to the County's Comprehensive Land Use Plan; that the site is located in an Investment Level 4 area according to the State Strategies; that the use is consistent with both the Comprehensive Land Use Plan and the State Strategies; that adequate site area is available to provide septic and water on-site; that the substation will contain two (2) truck bays; that the building height is planned to be 27-feet; that the floor plan includes a bunk room for up to eight (8) firefighters with restrooms and showers, a kitchenette, a radio room, an office, and mechanical and storage rooms; that the building is not designed for public activities; that no siren is proposed; that the Department has been operating a temporary substation on Sycamore Road since 2004 after receiving approval from the State Fire Prevention Commission; that the main fire station is located on the southwesterly side of the Town of Laurel; that they need a facility on the easterly side of U.S. Route 13; that the substation will improve response time; that, hopefully, the project will be funded through the USDA; that they hope to be operational by the end of 2011; that during emergencies the bunk rooms and other facilities in the substation can provide space for the firefighters to be on-premise and available to respond; that DelDOT did not recommend a traffic impact study; and that the use will be a benefit for emergency services to the easterly side of Laurel.

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. Ross stated that he would move that the Commission recommend approval of C/U #1879 for the Laurel Fire Department, Inc. based on the record of the public hearing and for the following reasons:

- 1) The Conditional Use for a fire station is of a public nature, and it will promote the health, safety and welfare of the residents of Sussex County. It is in an area that will be better served by an additional fire station.

- 2) It is located in a rural area where it will have a minimal impact on neighboring or adjacent properties.
- 3) The Fire Department has stated that the substation is necessary to maintain and improve its fire protection and emergency service to current and future residents of this area of Sussex County.
- 4) This Conditional Use is subject to the following conditions:
 - a. Any security lighting shall be screened away from neighboring properties and County Roads.
 - b. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Mr. Smith, 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 5 – 0.

C/U #1880 – application of **ELLENDALE VOLUNTEER FIRE COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a fire department substation to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 16.62 acres, more or less, lying east of North Old State Road (Road 213C) 400 feet north of Lofland Drive (Road 38A).

The Commission found that this application was filed on October 6, 2010.

The Commission found that the Applicant provided an Exhibit Booklet on November 24, 2010 and that the booklet contains a listing on contact representatives; letters addressed to the Delaware State Fire Prevention Commission and the County in support of the application from the Honorable V. George Carey, State Representative, the Honorable Joseph W. Booth, State Senator, the Honorable Gregory Fuller, Sr., Register of Wills for Sussex County, the Honorable David L. Wilson, State Representative, Eddy J. Parker, Director of the Sussex County Assessment Division, Robert A. Stuart, Director of the Sussex County Emergency Medical Services; a site plan; a floor plan of the building; color renderings of the building; and a map of the Ellendale Fire Company 2009 Calls for Service.

The Commission found that on November 29, 2010 the Applicant provided suggested proposed Findings of Fact and Conditions of Approval for consideration.

The Commission found that on September 22, 2010 DelDOT provided comments in the form of a Support Facilities Report which references that a traffic impact study is not recommended and that the existing Level of Service “A” of Road 213 will not change as a result of this application.

The Commission found that Dave Jones of the Ellendale Volunteer Fire Company, Inc. was present with Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A., and Mark Dusbiber of Delaware Architects, LLC and that they stated in their presentations and in response to questions raised by the Commission that the site is zoned AR-1 Agricultural Residential; that they are requesting a Conditional Use for a fire substation; that there will not be any public activities at the site; that the County’s Comprehensive Land Use Plan depicts this site in a Low

Density Area; that the State Strategies depicts this site in an Investment Level 4; that adequate space is available on the site for septic and water; that there are no wetlands mapped on the site; that the substation is proposed to have three (3) truck bays that drive thru the building; that the building is proposed to contain 8,100 square feet with a height of 32-feet; that the building is designed to contain a mechanical room and storage, a gear wash room, restrooms with showers, a radio room, and an office; that adequate parking can be provided; that one third of the Company service area is in the Lincoln area; that they have applied for USDA funding; that they hope to be operational by October 2011; that they are not proposing a siren at this location; that the application has been reviewed by the State Fire Prevention Commission; that the use will provide a better response for fire and emergency protection for the residents of the Lincoln area; and that the use is a public use designed and proposed to benefit the area.

The Commission found that Constance Holland, Director of State Planning, stated that the State is well aware of the need for fire and emergency protection in the area; that the site is located in an Investment Level 4 which makes reference to safety, health and welfare issues; that the State supports the use; and that the Office of State Planning supports the use.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1880 for Ellendale Volunteer Fire Company, Inc. based on the record and for the following reasons:

- 1) The Conditional Use for a fire station is of a public nature, and it will promote the health, safety and welfare of the residents of Sussex County.
- 2) It is located on a large tract of land where it will have a minimal impact on neighboring or adjacent properties.
- 3) The Fire Company has stated that the substation, in this location, is necessary to maintain and improve its fire protection and emergency service to current and future residents of this area of Sussex County. This location in Lincoln is also an area that has experienced growth that has also had an increased demand for 911, EMS and Fire Services.
- 4) This Conditional Use is subject to the following conditions:
 - a. Any security lighting shall be screened away from neighboring properties and County Roads.
 - b. The Final Site Plan shall be subject to the review and approval of the 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 stated. Motion carried 5 – 0.

C/U #1874 – application of **ED HILEMAN DRYWALL, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a storage facility to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.1621 acres, more or less, lying northwest of Route 17 (Roxana Road) 800 feet north of Road 388 (Bixler Road) and 0.4 mile south of Road 52C (Phillips Road).

The Commission found that this application was filed on September 10, 2010.

The Commission found that on November 12, 2010 the Applicant provided an Exhibit Booklet which contained an executive summary, copies of correspondence from Sussex County, correspondence from DelDOT, a copy of the deed, a copy of the building permit for the structure, a site plan, and a series of maps.

The Commission found that a letter was received from DelDOT on September 24, 2010 referencing that the Department has no contention with the Applicant using the existing entrance to the property for the proposed storage building.

The Commission found that Ed Hileman was present with Frank Kea of Solutions IPEM and that that stated in their presentations and in response to questions raised by the Commission that Mr. Hileman acquired the property in 2005; that he obtained a building permit in 2009 for a storage building; that his original intent was to store his personal vehicles and belongings in the building; that he started using the building for his drywall business for storage of materials, vehicles and equipment; that he received a letter of violation from the County Planning and Zoning Department and then immediately began the process for a Conditional Use; that he hopes to continue using the building for the drywall business; that the business is in operation from Monday through Friday from 7:00 a.m. to 5:30 p.m.; that he would like to have a small sign identifying the business for deliveries; that he has not had any delivery problems; that a security alarm system and security lighting system already exist on the site; that he has no objection to enclosing the dumpster area; that he can relocate the temporary porti-toilet so that it is out of sight of the neighbors; that the existing eight (8) parking spaces are gravel; that adequate space is available on the site for parking; that the site drains toward the rear property line; and that DelDOT did not require a traffic impact study.

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

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

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

C/U #1875 – application of **FREDERICK J. TAYLOR, JR.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automotive sales lot to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 2.73 acres, more or less, lying at the southeast corner of Route 24 and Road 461 (Old Stage Road).

The Commission found that this application was filed on September 22, 2010.

The Commission found that the Applicant submitted a survey of the property showing the existing improvements and driveway, and a proposed location for the display of automotive vehicles, with notes referencing that the owner does not intend to do any paving on the property;

that he only intends on having 1 to 5 vehicles for sale at any one time and that the vehicles will be located in a grass area; that parking for up to 8 customer vehicles is available within the circular driveway; that the vehicles displayed will be no closer to Route 24 than 100 feet; that the office is within the dwelling; that business hours will be from 7:00 a.m. to 5:00 p.m.; that the entrance and exit is located on Road 461; and that the circular driveway can be utilized as one way traffic.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on August 6, 2010 and that the comments reference that a traffic impact study was not recommended; and that the existing Level of Service "D" of Route 24 and the existing Level of Service "A" of Road 461 will not change as a result of this application.

The Commission found that Frederick Taylor was present and stated in his presentation and in response to questions raised by the Commission that Mr. Lank has described his proposal; that he has spoken to some of his neighbors and heard no objections; that he is submitting for the record a petition in support containing eight families voicing no objection to his intent; that there are at least 12 business uses within one mile of his residence; that he likes working on cars; that he does not anticipate any security problems; that his business hours are proposed to be from 7:00 a.m. to 5:00 p.m. Monday through Saturday; that he would like to erect a lighted sign; that he has lived on the site for 13 years and will continue to live there; that if the business works out and needs to be enlarged, he would like to relocate the business to U.S. Route 13; that all vehicles displayed will be at least 100-feet from Route 24; that he may light the display area in the future; and that he has no objection to limiting the lighting to downward illumination.

The Commission found that Mr. Taylor submitted the referenced petition and list of businesses.

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. Ross stated that he would move that the Commission recommend approval of C/U #1876 for Frederick J. Taylor for an automotive sales lot for the following reasons:

- 1) There are several businesses within 0.5 mile of this property. This proposed use will be consistent with the nearby uses.
- 2) The Applicant has indicated that he intends to continue to reside on the property.
- 3) Several parties signed a petition in favor of the application.
- 4) The property is located on Route 24, and with the conditions and stipulations placed upon it, the application will not adversely affect neighboring properties or the community.
- 5) This recommendation is subject to the following conditions:
 - a. No more than six (6) vehicles shall be displayed for sale on the property at any one time.
 - b. No junked or inoperable vehicles shall be stored on the property.
 - c. The vehicles for sale shall be located only in those areas designated as areas for the display of vehicles for sale on the site plan.

- d. The hours of operation shall be limited to 7:00 a.m. until 5:00 p.m. Monday through Saturday.
- e. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- f. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- g. The Applicant shall comply with all DelDOT entrance requirements.
- h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Smith, and carried with three (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 – 2 with Mr. Wheatley and Mr. Johnson opposing the motion.

C/U #1876 – application of **DOUGLAS R. MORGAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for automotive repair, welding and fabrication to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.52 acres, more or less, lying south of Road 207 (Johnson Road) 150 feet east of U.S. Route 113.

The Commission found that this application was filed on September 29, 2010.

The Commission found that the application included a survey/site plan of the property depicting a 54-feet by 60-feet shop building and relating driveways and parking.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on September 22, 2010 and that the comments reference that a traffic impact study was not recommended, and that the existing Level of Service “C” of Johnson Road will not change as a result of this application.

Mr. Burton stated that he abstains from participating in this public hearing.

The Commission found that Douglas R. Morgan was present and stated in his presentation and in response to questions raised by the Commission that he has requested a Conditional Use to allow for service to residential and agricultural users in the area; that the use will support the County’s agricultural, business and residential uses; that the use is centrally located near U.S. Route 113, which provides convenience for his clients; that the use shall be limited to automotive repair, welding and fabrication; that his primary purpose is light-duty automotive repair and some agricultural repairs; that he will be doing some light-duty welding; that he will not be working on anything exceeding one (1) ton; that waste fluids will be handled by a licensed handler; that he is now in operation; that parts that have been replaced will be taken to a salvage yard weekly; that there will not be any outside storage; that he has not yet met with DelDOT on the entrance; that landscaping already exist and provides a nice screening from neighboring properties; and that he feels that he supports agricultural uses.

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

The Commission found that Thomas Jester and Alex Lettand were present in opposition and expressed concerns that the business could impact an existing repair business on an adjacent parcel; that the adjacent business has been operational for 13 years; that Mr. Jester was told that he had to find a commercial parcel to develop a repair shop; that if the County keeps approving Conditional Uses in the area the whole road will be repair shops; and that one repair shop in the area is enough.

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

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1876 for Douglas R. Morgan for automotive repair, welding and fabrication based upon the record made at the public hearing and for the following reasons:

- 1) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or the community.
- 2) The site is adjacent to land that is zoned B-1 Neighborhood Business, and is near an intersection of U.S. Route 113 and Road 207, Johnson Road.
- 3) The use provides a needed use that is essential and desirable for agricultural uses within Sussex County and for the residents of the County.
- 4) This application is subject to the following conditions and stipulations:
 - a. Any security lights shall be installed or maintained on the buildings, and they shall be screened so that they do not shine on neighboring properties or roadways.
 - b. No repair or fabrication work shall be performed outside.
 - c. The use shall be limited to metal fabrication, welding and related activities.
 - d. The hours of operation shall be limited to 6:00 a.m. to 6:00 p.m. Monday through Friday.
 - e. There may be one lighted sign on the property advertising the business. The sign shall not exceed 32 square feet in size on either side.
 - f. The location of dumpsters shall be shown on the Final Site Plan and shall be screened from view of neighboring properties and roadways.
 - g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four (4) 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 and stipulations stated. Motion carried 4 – 0 with Mr. Burton not participating in the vote.

OTHER BUSINESS

Matthew and Karen Weidman

a. Time Extension

b. CU #1736 – Site Plan – Road 277

Mr. Abbott advised the Commission that this is a request for a one-year time extension and preliminary site plan review for the expansion of a towing service and storage of vehicles and

boats; that the conditional use was approved on December 2, 2008 with six conditions; that the Commission granted a one-year time extension on January 20, 2010 retroactive to the anniversary date of approval; that this is the second request for an extension and the last that the Commission has the authority to grant; that if an extension is granted, it shall be retroactive to the anniversary date of approval and approval will be valid until December 2, 2011; that the preliminary site plan complies with the six conditions of approval and are referenced on the site plan; that all structures exist; that 8 evergreen trees are proposed to be planted in front of the 5 parking spaces in front of the garage; that fencing and an existing hedgerow are shown; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Mr. Johnson questioned if an inspector has inspected the site lately.

Mr. Lank advised the Commission that he was by the site and it appeared that the site has not changed.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to grant a one-year time extension. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 5 – 0.

Subdivision #2005 – 57 – Blackwater Creek, Inc.
Time Extension

Mr. Abbott advised the Commission that this is the fourth request for a one-year time extension; that this request was deferred at the October 28, 2010 meeting; that preliminary approval was granted on October 26, 2006 and the Commission granted one-year time extensions on November 14, 2007, September 17, 2008 and November 12, 2009; that the County Engineering Department advised the staff by e-mail that they will allow the project to proceed with a note being attached to the final record plan approval; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval and preliminary approval will be valid until October 26, 2011.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to grant a six (6) month time extension, retroactive to the anniversary date of preliminary approval. Preliminary approval is now valid until April 26, 2011. Motion carried 5 – 0.

Subdivision #2007 – 20 – Golden Acres Limited Partnership
Time Extension

Mr. Abbott advised the Commission that this is a second request for a one-year time extension; the Commission granted preliminary approval on January 14, 2009 and granted a one-year time extension on December 16, 2010; that if an extension is granted, preliminary approval will be

valid until January 14, 2012; and that the Commission was previously provided a copy of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to grant a one-year time extension. Motion carried 5 – 0.

Subdivision #2007 – 27 – Jestice Farms, LLC
Time Extension

Mr. Abbott advised the Commission that this is a second request for a one-year time extension; that the Commission granted preliminary approval on January 14, 2009 and granted a one-year time extension on December 16, 2009; that if an extension is granted, preliminary approval will be valid until January 14, 2012; and that the Commission was previously provided a copy of the request.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to grant a one-year time extension. Motion carried 5 – 0.

Subdivision #2008 – 6 – Bay Twenty, LLC
a. Time Extension
b. Request for Site Work

Mr. Abbott advised the Commission that the request for the time extension is not needed since the preliminary approval was under the three year time period; that this is a request to commence limited site work prior to obtaining final record plan approval; that the applicant's engineer is requesting permission to relocate tax ditches and place fill in accordance with the State and Federal Wetlands Permit; that they are also requesting permission to plant the forested buffer with seedlings since the lots that will be affected by the buffer zones will not be marketed for sales for several years and that this will allow time for the buffer to grow; that usually site work is not permitted until final record plan approval has been granted and the record plan is recorded; that if this request is approved, a precedent could be set; and that the Commission was previously provided a copy of the request and a copy of the site plan.

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

Discussion of Sub-Regional Planning

The Commission had a general discussion on Sub-Regional Planning, sometimes referenced to a Master Planning or Regional Planning.

Mr. Johnson stated that he asked that this item be placed on an agenda for discussion since he had attended several seminars/workshops in the Lewes area and realized that the area towns of Lewes, Rehoboth Beach and Dewey have shown some interest in looking at the area on a sub-regional basis; that participants in the seminars/workshops were from State agencies, the towns

and the public; that discussions with these groups would be good governmental coordination and creates a good land use process.

Mr. Wheatley asked Constance Holland, Director, and Bryan Hall, Circuit Rider, of the Office of State Planning Coordination, to come forward and participate in the discussion.

Mr. Hall presented the Commission with a two page brochure titled "Master Planning in Delaware: the What, Why, Who, Where and How" prepared by the Office of State Planning Coordination for the Commissioners review.

Ms. Holland and Mr. Hall made reference to sub-regional planning taking place in Middletown and Milford; stated that regional planning provides for future predictability, and gives citizens a benefit to know what's going to happen in the future; that Sussex County is rather large and could be divided into several sub-regional areas, and referenced specifically the beach area, the farming area, and the highway corridors of U.S. Route 13, U.S. Route 113, and Route One; that sub-regional planning looks at roads, sewer, preservation, hospitals, schools, residential uses, etc.; that the University of Delaware has been working on a process and that the process documents should be available early 2011; that sub-regional planning provides another tool for public use; that commitments are needed from the Towns, the County, the State, and the public sector; that Seaford and Blades could be a sub-regional district; that Lewes, Rehoboth, Dewey, and Henlopen Acres could be another; that memorandum of agreements are necessary; and that a sub-regional plan, if approved, would required incorporation into Comprehensive Land Use Plans, and would required submittal for State approval of the amendments to the Comprehensive Plans.

The Commission thanked Ms. Holland and Mr. Hall for their input and attendance.

ADDITIONAL BUSINESS

Mr. Robertson provided the Commission with copies of a December 3, 2010 letter from James A. Fuqua, Jr., Attorney with Fuqua, Yori and Willard, P.A. in reference to the proposed revisions to Condition No. 10 imposed on The Peninsula project. Attached to the letter were copies of The Peninsula Golf & Country Club Escrow Agreement for Membership Deposits, the Declaration of Covenants, Conditions, and Restrictions for The Peninsula, and The Peninsula Golf & Country Club Fourth Amended, Consolidated and Restated Membership Plan.

This information was being provided for the Commission's review, not for discussion since it was not an Agenda item.

Mr. Robertson advised the Commission that these documents could be discussed as an Agenda item on a future meeting.

Since some of the Commissioner's would not be in attendance for the first meeting in January, there was a consensus to place the application back on the agenda for the second meeting in January for consideration.

Meeting adjourned at 9:20 p.m.