

MINUTES OF THE REGULAR MEETING OF DECEMBER 10, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 10, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to approve the Minutes of November 19, 2015 as submitted. Motion carried 5 – 0.

OLD BUSINESS

**C/U #2021 – VIII P-LOAN PORTFOLIO HOLDING, LLC**

**An Ordinance to grant a Conditional Use of land in a CR-1 (Commercial Residential District) and an AR-1 (Agricultural Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 29.66 acres, more or less.** The property is located at the southwest corner of the intersection of John J. Williams Highway (Route 24) and Autumn Road (Road 299). (911 Address: None Available) Tax Map I.D. 234-23.00-115.00.

Mr. Lank advised the Commission that this application has been withdrawn. The Sussex County Council approved the withdrawal on December 1, 2015.

**C/U #2034 – BEACHFIRE BREWERY CO., LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a restaurant and brewery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.99 acres, more or less.** The properties are located on the north side of Beaver Dam Road (Road 285) south of Lewes Georgetown Highway (Route 9). (911 Address: 32490 Lewes Georgetown Highway, Lewes) Tax Map I.D. 334-5.00-215.00, 215.01, 216.00, 217.01, 218.00 & 219.00.

The Commission discussed this application which has been deferred since November 12, 2015.

Mr. Johnson stated that he had prepared a motion, but first asked the Commission if they had any comments.

Mr. Burton stated that the use should be successful, but he had some concerns about the location, nearby intersections, and additional traffic.

Mr. Smith stated that in the past he had experienced a similar sale of church property, which can be an emotional process for members of a congregation, but that is not an issue before the Commission; and that he is also concerned about nearby intersections.

Mr. Ross stated that the Commission has to look at this application as a land use decision.

Mr. Johnson stated that his motion is a land use decision; that he hopes that the applicants preserve the church building as stated in their testimony; and that he realizes that traffic will be generated by the business.

Mr. Johnson stated that he moves that the Commission recommend approval of Conditional Use No. 2034 for Beachfire Brewery Co., LLC for a restaurant and brewery based upon the record made at the public hearing and for the following reasons:

- 1) The use is located in the area of the Five Points intersection, where other commercial and business uses currently exist. This location is consistent with the adjacent zoning and uses.
- 2) The property is currently used for a church and residential uses. Given the configuration of this property which is basically at the intersection of Beaverdam Road and Route 9, continued residential use is no longer viable for this site. Likewise, the church, while historic, is too old and too small for long term continued use for that purpose.
- 3) The applicants have proposed a use that preserves much of the church, which is an important aspect of the history of Belltown. This application is unique in its efforts to preserve the church, since any other redevelopment of the property would certainly involve the demolition of the structure.
- 4) The redevelopment of this property into a restaurant and brewery would not adversely affect neighboring properties or the community. As stated by the owners of the church property, the church structure is slowly deteriorating and there are no funds available for repairs. The project will redevelop the entire property in a way that takes a deteriorating structure and converts it to one that is modern and an amenity to not just Belltown but to all of eastern Sussex County as a family type restaurant.
- 5) It also cannot be said that the project is incompatible with the surrounding neighborhood, when it is within sight of a large home improvement center, another large hardware store, a bank, a home improvement contractor and other business uses.
- 6) The use will be served by Sussex County sewer.
- 7) This recommendation is subject to the following conditions:
  - a. As stated by the applicant, there shall be no brewery operations within the former church structure, nor shall there be any patron or service bar serving alcoholic beverages located within the church structure. The kitchen facilities will also be situated in an addition to the structure.
  - b. As stated by the applicant, the existing church structure shall be preserved to the fullest extent possible. The final site plan shall contain details as to the preservation of this structure and its integration into the new restaurant and brewery structure being built on this site.

- c. The use shall comply with all Sussex County Engineering Department requirements concerning the connection of the brewery operation to the Sussex County Sewer System.
- d. All roadway and intersection improvements shall be subject to the requirements of DelDOT.
- e. Stormwater management and erosion and sedimentation control shall be designed and operated using best management practices to promote groundwater recharge,
- f. The Sussex Conservation District shall review and approve the final site plan.
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 1, with Mr. Burton opposing the motion.

### **C/U #2035 – SYNAGRO CENTRAL, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for land application of bio-solids as agricultural fertilizer following DNREC approval to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 203.00 acres, more or less.** The properties are located on both sides of Zoar Road, northeast of the Railroad tracks, southwest of Patriot's Way, and on both sides of Governor Stockley Road. (911 Address: None Available). Tax Map I.D. 133-3.00-4.00 and 133-7.00-1.00, 4.00, 11.00 and 12.10 (all of or parts of).

The Commission discussed this application which has been deferred since November 12, 2015.

Mr. Johnson stated that this application is similar to previous applications on adjoining properties owned and farmed by Baxter Farms.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 2035 for Synagro Central, LLC for a conditional use for the land application of bio-solids as agricultural fertilizer based upon the record made during the public hearing, and for the following reasons:

- 1) The proposed use of the subject property is generally of a public or semi-public character and is essential and desirable for the general convenience and welfare of neighboring communities and the County.
- 2) The use will be reviewed, approved, regulated and monitored by the Delaware Department of Natural Resources and Environmental Control.
- 3) The use will create a disposal area for treated bio-solids that will have the sufficient capacity to serve a substantial volume of users in this area of Sussex County.
- 4) The use, with the stipulations and conditions placed upon it, will not have any adverse impact upon the County or its residents.

- 5) This is an expansion of the existing application of bio-solids on adjacent and nearby properties owned by Baxter Farms. The addition of the subject property will allow even better nutrient management on these properties.
- 6) The bio-solid disposal process will be designed to minimize impacts on neighboring and adjacent properties as well as the environment. This includes the rotation of the application of bio-solids on this and other properties with adjacent buffering.
- 7) The use of this property for the application of bio-solids promotes the continued agricultural use of the property. That underlying use for agricultural purposes will not be changed as a result of this conditional use.
- 8) This recommendation is subject to the following conditions:
  - a. The use shall be reviewed and approved by DNREC and shall be designed and constructed in accordance with all applicable Federal, State and County requirements, including those mandated by DNREC and other agencies having jurisdiction over it.
  - b. There shall not be any stockpiling of sludge materials on the site that are not actively being applied to the site as agricultural fertilizer.
  - c. This conditional use shall be valid concurrent with DNREC's permit for the use. If the DNREC permits shall be terminated or expire, this conditional use shall also expire.
  - d. Bio-solid application shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday.
  - e. There shall be buffers of at least 25 feet from all property lines, 100 feet from all off-site dwellings, 100 feet from potable wells, 25 feet from non-potable wells, 15 feet from public roads, 25 feet from streams or other bodies of water, and 25 feet from all drainage ditches. These requirements shall be subject to any increased buffers or separation distances as mandated by State or Federal requirements.
  - f. As stated by the applicant, Tax Map I.D. 133-7.00 Parcel 1.00 is removed from this application and no application of bio-solids as agricultural fertilizer will be applied to this parcel. The applicant stated that vegetables are grown on this parcel and therefore bio-solid application is not appropriate.
  - g. The Final Site Plan shall be subject to the review and approval of the Sussex County 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 5 – 0.

**C/Z #1787 – BDRP, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19.52 acres, more or less.** The property is located south of Beaver Dam Road (Road 285) 2,500 feet west of Plantations Road (Road 275). (911 Address: None Available). Tax Map I.D. 334-5.00-222.01.

The Commission discussed this application which has been deferred since November 19, 2015.

Mr. Johnson stated that the proposal references duplexes rather than large condominium buildings; that he has concerns about traffic on Beaver Dam Road; and that area residents expressed concerns about the size of the housing proposed.

Mr. Burton stated that he has concerns about the jug handled intersection between Route 9, Plantation Road, and Beaver Dam Road, but not as concerned about the entrances to this proposal.

Mr. Ross stated that they are proposing MR Medium Density Residential zoning; that the ownership of this project and the Lewes Crossing project are the same; that covenants are proposed; that access to this project is through a portion of the Lewes Crossing project; that amenities are proposed to be shared between the two projects; that this project is intended to be an extension with the Lewes Crossing project, mixing a cluster subdivision with a duplex project; that he cannot grasp the MR rezoning proposal and duplexes as an expansion to an AR-1 cluster subdivision; that it is not a separate application, it is an extension; that buyers in Lewes Crossing purchased knowing the size and location of the community; and that density is being increased.

Mr. Johnson added that on the south side of Beaver Dam Road, the Lewes Crossing project has no amenities and that an approval could provide amenities for the residents on the south side.

Mr. Johnson stated that he would move that the Commission recommend denial of C/Z #1787 from AR-1 (Agricultural Residential) to MR (Medium Density Residential) for BDRP, LLC based on the record made at the public hearing and the discussion this evening for the following reasons:

- 1) While this property is located in a developing area in the Comprehensive Land Use Plan, MR zoning might be appropriate in the overlay zone, however given that it is part of an existing single family residential development the addition of this MR parcel is an inappropriate transition.
- 2) Public testimony of existing residents in Lewes Crossing opposed the change of zone to MR and increasing the density of their development and increasing the impact to their structures.
- 3) Even though the parcel may be considered an in-fill, since one side is zoned MR and the other side is part of Lewes Crossing, tying this proposed MR parcel to the existing AR-1 project is not appropriate.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 2, with Mr. Burton and Mr. Wheatley opposing the motion.

**C/U #2033 – BDRP, LLC**

**An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 19.52 acres, more or less.** The property is located south of Beaver Dam Road (Road 285) 2,500 feet west of Plantations Road (Road 275). (911 Address: None Available) Tax Map I.D. 334-5.00-222.01.

The Commission discussed this application which has been deferred since November 19, 2015.

Mr. Robertson advised the Commission that the Commission must make a similar motion to deny this application since the property has not been recommended for rezoning to MR Medium Density Residential.

Mr. Johnson stated that he would move that the Commission recommend denial of C/U #2033 for BDRP, LLC for multi-family dwelling structures based on the recommended denial of C/Z #1787 where the request was made for a change of zone from AR-1 Agricultural Residential to MR Medium Density Residential, because the underlying zoning application received a recommendation for denial, making this application void.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 - 0.

**PUBLIC HEARINGS**

**AN ORDINANCE TO AMEND CHAPTER 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO ALLOW APPLICANTS TO SEEK AN EXTENSION OF TIME FOR APPROVALS FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS UPON WRITTEN REQUEST.**

Mr. Robertson summarized the intent of the proposed Ordinance; and advised the Commission that the staff has already received a number of time extension requests; that the staff will be preparing a listing of the requests; that if the Ordinance is adopted the staff will be preparing a process for presentation to the County Council so that the Council gives consideration to the requests; that the previous blanket time extensions were actions taken by the County Council; that prior to the Council's action on the previous extensions, the Commission had to determine that a project could be extended; that the Ordinance provides legitimate reasons that the Council should considered if a time extension is granted; and that the intent of the Ordinance, as written, is to limit the time extensions to a six (6) month period.

The Commission discussed the Ordinance proposal.

The Commission found that Jimmy Lee was present on behalf of Richard Carlisle for the Deer Creek Subdivision, Subdivision No. 2005-62, and stated that originally it took 3 to 4 years to

receive final approval; that a bank was going to fund the project; that the economy failed; that they need an extension to proceed forward; that another bank is willing to provide the funding; that the project is intended to be an affordable housing project; and that there are too many regulations making it difficult to develop a project.

At the conclusion of the public hearings, the Commission discussed the proposed Ordinance.

Mr. Smith stated that he would move that the Commission approve the Ordinance to amend Chapters 99 and 115 of the Code of Sussex County to allow applicants to seek an extension of time for approvals for subdivision applications, conditional use applications, and residential planned community districts upon written request.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward a recommendation to the Sussex County Council that the Ordinance be approved as circulated. Motion carried 5 – 0.

### **C/U #2036 – JIMI KELLOGG**

**An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for parking of employee vehicles and vans for a cleaning service business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,323 square feet, more or less.** The property is located northeast of Field Lane, a subdivision street, 200 feet southeast of Munchy Branch Road (Road 270-A). (911 Address: 36181 Field Lane, Rehoboth Beach). Tax Map I.D. 334-13.00-873.00.

The Commission found that the applicant provided a survey of the lot depicting the improvements as they exist on the property and a sketch of the driveways on the property.

The Commission found that DelDOT provided comments on July 30, 2015 in the form of a Support Facilities Report referencing that a Traffic Impact Study was not required, and that the current Level of Service “B” of Munchy Branch Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on December 9, 2015 in the form of a memorandum referencing that the site contains two soil types; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be required; and that it is not likely that any on-site drainage improvements will be required.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on December 9, 2015 in the form of a memorandum referencing that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available if the proposed use does not exceed approximately 1.0 Equivalent Dwelling Unit (EDU) of sewer assessment; that the planning study and design assumption for the parcel is 1.0 EDU based on a residential use on a residentially zoned parcel of less than 1.0 acre; that if the

proposed use is expected to exceed 1.0 EDU, additional information should be provided and a capacity review completed prior to approval; that Ordinance 38 construction is not required; that the current System Connection Charge Rate is \$5,775.00 per EDU; that the parcel was provided with a 6-inch sanitary sewer lateral located along the parcel's frontage on Field Lane and the existing home is connected to the sewer system; that conformity to the West Rehoboth Expansion Area Planning Study will be required; and that a concept plan is not required.

Mr. Lank advised the Commission that two letters have been received to date in opposition to this application referencing that the properties in the area are residentially zoned; that the applicant should seek another location where commercial uses are permitted; that spot zoning causes future applications for other business/commercial uses; that the use has existed for approximately four (4) years; that the business has continued to grow causing more vehicles to and from the site; that traffic occurs all day long in and out of the property; that there are at least 5 company vehicles and employee vehicles on the site; that at any time there could be 10 or more vehicles coming and going; that the paved portion of the property seems to grow and the front yard has very little space that is unpaved; that parking has recently been added that could accommodate at least another 10 vehicles; that the applicants are receiving large commercial truck deliveries of cleaning supplies at this location on neighborhood streets; and that depreciation of property values is a concern.

The Commission found that Jimi Kellogg was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he and his wife own a cleaning business; that they care about their neighborhood; that they cannot afford to lease a store front for their small business; that they have 12 full time employees; that they have extended their driveway; that they have three work vans and two family vehicles; that three employees drive to their property and pick up the work vans to pick up other employees off-site; that they have tried to improve their home and driveways; that they live on the premises; that across the road from their property, within 200 feet, is a store front with three business uses; that they have tried not to be a nuisance; that the other employees park their personal vehicles at the K-Mart and Food Lion parking lots; that normal business hours are from 8:00 a.m. to 4:00 or 5:00 p.m.; that they were receiving deliveries twice a month when they have the contract for maintenance of the Social Security offices, which are no longer their clients; that currently there are no regular deliveries; that their normal work days are Monday through Friday, with an occasional Saturday and Sunday during the summer months; and that he is not aware of any deed restrictions against commercial activities.

The Commission found that Jennifer Kellogg was present in support and stated that they can track their employees whereabouts since the work vehicles have GPS units; that occasionally employees park at the Lowes and Giant parking lots; that the employees that park their vehicles on the site are the employees that drive company vehicles to job sites; that UPS and FedEx trucks do deliver packages to the site; that she lives on the site and is always driving in and out of the site; and that they expanded the driveways to accommodate traffic to and from the property.

The Commission found that there were no parties present in support of, other than the applicant and his wife, or in opposition to the application.



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

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

**C/U #2037 – GILBERT J. BERNOSKI, JR.**

**An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for an auto repair shop to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.101 acres, more or less.** The property is located northeast of Mount Joy Road (Road 297) 0.4 mile east of Gravel Hill Road (Route 30). (911 Address: 26371 Mount Joy Road, Millsboro). Tax Map I.D. 234-21.00-50.00.

The Commission found that the applicant provided a survey/site plan of the property depicting the improvements and driveways on the property with his application filed on August 25, 2015.

The Commission found that DelDOT provided comments on July 30, 2015 in the form of a Support Facilities Report referencing that a Traffic Impact Study was not recommended and that the current Level of Service of Mount Joy Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on December 9, 2015 in the form of a memorandum referencing that the site contains one soil type; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be required; and that it is not likely that any on-site drainage improvements will be required.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on December 9, 2015 in the form of a memorandum referencing that the site is located in the North Coastal Planning Area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Planning Study will be required; that the proposed site is not in an area where the County has a schedule to provide sewer service at this time; and that a concept plan is not required.

The Commission found that Gilbert Bernoski, Jr. was present on behalf of his application and stated in this presentation and in response to questions raised by the Commission that he is the property owner; that his father-in-law lives in the dwelling; that he leases the pole building to a gentleman to repair vehicles; that originally there were two gentlemen working on the premises; that no signage is proposed; that the tenant is also a truck driver and works during the evening and on weekends doing auto repairs; that it is a part time business; that some work is performed indoors and some outdoors; that adequate ventilation exists within the building; that he does not know how his tenant disposes of the fluids after the repair work is performed; that the repair work will not go past 10:00 p.m.; that there are currently 3 or 4 vehicles outside waiting for repair; and that the maximum number of vehicles to be stored outside will be six.

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

The Commission found that Rudolph Daisey, Jr. and Janet Daisey were present in opposition to the application and expressed concerns that the use is not consistent with the residential character of the area; that accountability is a concern; that the presentation by the applicant has been very vague; that in May of 2014 there were more vehicles on the site than there are now; questioning the whereabouts of an bathroom facilities; questioning if the tenant has a business license; that the area is predominantly residential in character; that traffic is an issue; that the business could operate 24 hours 7 days per week if approved; that over time there have been 200 to 300 vehicles in and out of the site; and that the travel trailer to the rear of the pole building may be occupied.

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

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

### **C/U #2039 – PERFORMANCE INJECTION EQUIPMENT CO., LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for manufacturing and installation of performance automotive parts and accessories to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 34,740 square feet, more or less.** The property is located northeast corner of DuPont Boulevard (U.S. Route 113) and Betts Lane. (911 Address: 24994 Betts Lane, Georgetown) Tax Map I.D. 133-6.00-110.00.

The Commission found that the applicant provided a survey/site plan depicting the location of the improvements on the property with the application filed on September 22, 2015, and an Exhibit Booklet on December 1, 2015. The Exhibit Booklet contains a copy of the application form; a copy of the deed to the property; a listing of property owners within 200 feet of the address site; a copy of the survey of the property; a cover letter from Aaron C. Baker, Esquire of Baird Mandalas Brockstedt, LLC; a series of photographs of the property; a series of photographs of the nearby commercial activities; a location map of the site; and a copy of the applicant's website advertisement.

The Commission found that DelDOT provided comments on July 30, 2015 in the form of a Support Facilities Report referencing that a Traffic Impact Study was not recommended and that the current Level of Service "C" of DuPont Boulevard (U.S. Route 113) will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments on December 9, 2015 in the form of a memorandum referencing that the site contains one soil type; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that no off-site or on-site drainage improvements will be required.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on December 9, 2015 in the form of a memorandum referencing

that the site is located in the North Coastal Planning Area; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Planning Study will be required; that the proposed site is not in an area where the County has a schedule to provide sewer service at this time; and that a concept plan is not required.

Mr. Lank advised the Commission that this site was previously approved for an office and warehouse for a heating and air conditioning business (C/U #1493) for Ron and Doneita Witke, and was utilized for that purpose until several years ago. C/U #1493 was originally approved by the Sussex County Council on May 13, 2003 with five conditions of approval.

Mr. Lank added that the property owner was advised that the on-going business activities that are currently in operation are a violation of the Zoning Ordinance and that a new Conditional Use application was required.

The Commission found that Chris Hitchens of Performance Injection Equipment Co., Inc. was present with Aaron Baker, Esquire of Baird Mandalas Brockstedt, LLC, and that they stated in their presentation and in response to questions raised by the Commission that the building contains approximately 3,000 square feet; that trees buffer the lot along the rear; that a solid fence has been erected along the northerly property line; that the previous business, a heating and air conditioning business moved out in 2013; that they manufacture, research, and test performance automotive equipment; that the use is not a general repair shop; that they sell performance parts through their website; that they tune vehicles on a dyno in the shop; that the shop is ventilated and the doors are now kept closed during testing; that he currently has one employee and anticipates no more than three including himself; that he has 10 or fewer customers visit the site during any given week; that he has applied for the Conditional Use to bring the business into compliance; that there are many established business and commercial uses in the area and referenced Kruger Trailers, Pep-Up, Georgetown Speedway, Infinity Choppers, a hair salon, AD-Art; Classic Autos, Stockley Materials, M.L. Joseph Construction, Iron Works, and others; that some of those businesses are zoned commercial, some are conditional uses, and some may have pre-existed zoning; that the use is not inconsistent with the Comprehensive Land Use Plan; that the Exhibit Booklet presented contains photographs of other businesses in the area, and suggested Findings of Fact and Conditions of Approval for consideration; that no outside repair work is performed; that the applicant sent letters to his neighbors explaining the dyno process and the activities being conducted on the site; that any fluids removed from vehicles are placed in an approved container and removed by a licensed handler; and that metal parts are recycled.

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

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

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

There was a consensus of the Commission to hold one public hearing that includes both applications for **C/Z #1789** and **C/U #2038**, the applications of **Good Earth Market, LLC**, and that the decisions will be decided individually on each application.

**C/Z #1789 – GOOD EARTH MARKET, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 10.17 acres, more or less.** The property is located south of Atlantic Avenue (Route 26) approximately 1,800 feet west of Roxana Road (Route 17). (911 Address: 31806 Good Earth Lane, Ocean View). Tax Map I.D. 134-11.00-181.00, 181.01, 181.02, & 181.03.

**C/U #2038 – GOOD EARTH MARKET, LLC**

**An Ordinance to grant a Conditional Use of land in a CR-1 (Commercial 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 4.75 acres, more or less.** The property is located south of Atlantic Avenue (Route 26) approximately 1,800 feet west of Roxana Road (Route 17). (911 Address: 31806 Good Earth Lane, Ocean View). Tax Map I.D. 134-11.00-181.03.

The Commission found that the applications for **C/Z #1789** and **C/U #2038** were submitted on August 27, 2015 with related surveys/site plans, and that the applicant provided an Exhibit Booklet on November 25, 2015 for consideration. The Exhibit Booklet contains references to the Project Team; a series of maps and aerials; a copy of Ordinance No. 1962 for **C/U #1715** establishing an office, professional space, café restaurant, and meeting space on the site; a DNREC septic approval for the site; copies of approvals from the Office of the State Fire Marshal for the existing activities; a copy of a DeDOT approval for the existing activities; copies of Sussex Conservation District approvals for the existing activities; a site map; copies of deeds to the property; copies of listings for area residents; surveys and site plans; renderings and floor plans of the proposed cottages; photographs of activities conducted on the site; maps and references to the Comprehensive Land Use Plan; references to the Environmentally Sensitive Developing District Overlay Zone; an Environmental Assessment Report and Public Facilities Report; DeDOT comments and correspondence; County Engineering comments and a map of the Millville Sanitary Sewer District; and suggested proposed Findings of Fact and Conditions of Approval.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on December 9, 2015 referencing that there are three soil types on the property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be required; and that it may be possible that on-site drainage improvements will be required.

The Commission found that the County Engineering Department Utility Planning Division provided comments on December 9, 2015 in the form of a memorandum referencing that the property is located in the North Millville Expansion of the Bethany Beach Sanitary Sewer District; that sewer capacity is available for up to 4.0 EDU per acre; that there will be adequate capacity so long as the parcels do not exceed a total of 40.6 EDU (10.15 acres x 4.0 EDU per acre = 40.6 EDU); that it is unknown at this time whether Ordinance 38 construction will be required; that the System Connection Charge Rate for the area is unknown at this time; that sewer service is not available to the parcels at this time; that sewer service will become available in the future, possibly as soon as the fall of 2016; that Parcel 181.1 is a landlocked parcel and will require a utility easement across an adjoining parcel in order to connect to the future sewer system; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the parcels are in the Millville Expansion of the Bethany Beach Sanitary Sewer District and connection to the sewer system is mandatory; that improvements on the parcels must connect within one year of sewer service becoming available; that up-zoning from AR-1 to CR-1 causes the potential for development projects that exceed the capacity of the downstream sewer system; that a project that exceeds 4.0 EDU per acre on the referenced parcels will not be approved by the County Engineering Department until the developer completes an evaluation of the sewer system and constructs necessary upgrades identified in the evaluation; that the capacity evaluation and construction of upgrades will be at the developer's expense; and that a concept plan is required.

The Commission found that Susan Ryan was present on behalf of the applications of Good Earth Market, LLC, with Mark Davidson, Principal Land Planner of Pennoni Associates, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the property is owned by the applicants and/or family members; that the site is currently improved by a market, a café, offices, and a meeting place; that the site is on Route 26, a minor arterial road, and is adjacent to a Conditional Use for a future Beebe Medical Facility; that an 84 Lumber store and yard are in close proximity to the east; that the site is located in an Investment Level 2 and 3 according to the Strategies for State Policies and Spending document; that the conditional use portion of the applications is to allow three 900 square foot cottage/cabin type buildings on the premises for rentals, primarily for special events; that the expansion of the existing facilities includes growth of the theme of the property with the Good Earth Market, the chicken coops, gardens for vegetables and flowers, and a brewpub restaurant including on premise sales of alcoholic beverages, not off-premise sales; that the farm theme will be maintained; that they intend to maintain the open appearance of the site; that the stormwater management pond already exist and is intended as an attraction; that outdoor wedding venues are intended, with no permanent structures; that the site is located in an Environmentally Sensitive Developing District Overlay Zone and meets the purpose of that zone; that County sewer is available to serve the site; that in the future, Tidewater Utilities will be providing central drinking water and water for fire protection; that currently there are three wells on the site; that CR-1 Commercial Residential zoning is appropriate in an Environmentally Sensitive Developing Area according to the Comprehensive Land Use Plan; that the Good Earth Market has been operational for 11 years and is supported as an agri-tourism use; that she and her husband live on the premises; that the new sewer lines and improvements to Route 26 will be a benefit to the existing and proposed uses on the site; that Tab 9 of the Exhibit Booklet contains suggested Findings of Fact and Conditions of Approval for consideration; that the site plan submitted is intended to show the

intent of the owners on how they would like to develop the site; that some of the current events that have taken place on the site include farm dinner events, arts and crafts shows, seminars for cooking, open houses, and presentations; that CR-1 Commercial Residential zoning was chosen, rather than B-1 Neighborhood Business zoning, since the CR-1 zoning has more flexibility for the uses on the site; and that the planned three cottages will be rentals.

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

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

**In reference to C/Z #1789:**

Mr. Smith stated that he would move that the Commission recommend approval of Change in Zone #1789 for Good Earth Market, LLC from AR-1 (Agricultural Residential) to CR-1 (Commercial Residential) based on the record made during the public hearing and for the following reasons:

- 1) Commercial zoning is appropriate for this parcel of land in that it is located along Route 26, which is a significant roadway. It is also in close proximity to the intersection of Route 17 and Route 26, where other commercial and service activities currently exist.
- 2) The property is partially in a Developing Area according to the Sussex County Comprehensive Land Use Plan, where CR-1 zoning is appropriate.
- 3) The rezoning will not adversely affect neighboring properties or roadways.
- 4) The area that is the subject of this application already encompasses two Conditional Uses.
- 5) The property will be served by central sewer as part of the Sussex County Millville Sanitary Sewer District.
- 6) No parties appeared in opposition to the application.
- 7) The proposed zoning meets the general purpose of the Zoning Code in that it is located in an appropriate location for a wide variety of commercial miscellaneous service activities generally serving the area. And, it is located along an existing major thoroughfare where a general mixture of commercial and service activity now exists which is essential and desirable for the general convenience, orderly growth and welfare of the County.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

**In reference to C/U #2038:**

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 2038 for Good Earth Market, LLC for multi-family dwelling structures based upon the record made during the public hearing and for the following reasons:

- 1) Although this is an application for multi-family dwelling structures, they are small cabins that will be used as part of the expansion of the current Good Earth Market as a wedding venue and tourist venue. They will be a part of that use. This is not an application for the primary use as higher density multi-family residential development.

- 2) There will not be any more than three (3) units on the property.
- 3) The three (3) units will not adversely affect neighboring properties or area roadways.
- 4) The use of the property as a wedding facility, with on-site cabins, will provide a service to residents and visitors to Sussex County.
- 5) The units will have sewer service as part of Sussex County's Millville Sanitary Sewer District.
- 6) No parties appeared in opposition to the proposed Conditional Use.
- 7) This recommendation is subject to the following conditions:
  - a. There shall be no more than three (3) units on the site.
  - b. The units shall be served by County sewer.
  - c. These units are being approved as part of an overall redevelopment of this site as a wedding venue and tourist venue, and are considered part of the overall use. Should that use as a wedding venue and tourist venue terminate or expire, this conditional use shall also automatically expire.
  - d. Stormwater management and erosion and sedimentation control shall be constructed using best management practices in accordance with all State and County requirements.
  - e. 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 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.

## OTHER BUSINESS

### **Lands of Joseph Rogers off Delmar Road**

Minor Subdivision with a 50' easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one (1) parcel of land and a 50 ft. easement. The proposed lot would be 1.4 ac. +/- and the residual would be 1.9 ac +/- . The property has a horseshoe driveway. The Planning Commission needs to determine if the northwest access point along Delmar Drive is adequate to be considered an existing driveway for the creation of the 50 ft. wide easement to the proposed lot. If the access point is determined not to be adequate the applicant will need to submit a major subdivision application. The Planning Commission may approve a minor subdivision off a 50 ft. easement as long as the existing driveway is utilized for the easement as the access to the property exists. The property is zoned AR-1 (Agricultural Residential District). The property is located on the northeast side of Delmar Drive north of W. Jewel Street. The tax parcel number is 532-20.00-26.00. Staff is awaiting approval from DelDOT.

There was discussion regarding the horseshoe driveway. The Planning Commission determined that the use of the existing horseshoe driveway would be adequate for an access for the proposed 50' easement.

Motion by Mr. Ross and seconded by Mr. Smith and carried unanimously to approve the minor subdivision upon receipt of approval from DelDOT. Motion carried 5-0.

**Lands of Ghabour off Gravel Hill Road**  
Minor Subdivision with a 50' easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of three (3) parcels of land with a 50' private road. The proposed lots would be 3.7 ac. +/-, 2.2 ac. +/-, and 10.371 ac. +/- . Three is the maximum number of lots permitted off a private road and all further subdivisions shall require a major subdivision. The minor subdivision includes the creation of a 50 ft. private road. The existing entrance is not completely included within the 50 ft. private road. The Planning Commission needs to determine if the partial use of the existing entrance is acceptable for the minor subdivision or if the applicant should submit as a major subdivision. The Planning Commission may approve a minor subdivision off a 50 ft. easement as long as the existing driveway is utilized for the easement. The property is zoned AR-1 (Agricultural Residential District). The property is located on the west side of Gravel Hill Road south of Springfield Road. The tax parcel number is 234-8.00-49.00. Staff is awaiting approval from DelDOT.

There was discussion regarding the entrance to be used as the 50' easement. The existing entrance is an entrance and not a driveway that is typically used for access.

Motion by Mr. Johnson and seconded by Mr. Burton and carried unanimously to deny the minor subdivision and recommending that a major subdivision be submitted for the property. Motion carried 5-0.

**C/U #2031 – East Coast Auto, Inc.**  
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary Site Plan for the establishment of used car sales. The use for used car sales required a Conditional Use. The Planning Commission recommended approval of the Conditional Use at their meeting on September 24, 2015. The County Council approved the Conditional Use at their meeting on November 3, 2015. The parking for the display of vehicles has been relocated to comply with the front yard setback requirements. The Conditions of Approval need to be indicated on the Site Plan prior to Final Site Plan approval. The property is zoned AR-1 (Agricultural Residential District). The tax parcel number is 531-11.00-40.00. Staff is in receipt of approval from the Sussex Conservation District and DNREC. Staff is awaiting approvals from DelDOT and the Office of the State Fire Marshal.

Motion by Mr. Smith and seconded by Mr. Johnson and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon the conditions of approval being placed on the site plan and the receipt of all agency approvals. Motion carried 5-0.

**Creative Assemblies**  
Preliminary Site Plan



Ms. Cornwell advised the Commission that this is a preliminary Site Plan for the construction of a 9,000 SF equipment supply and repair building. The use is a permitted use within the C-1 (General Commercial District). The plan also proposes a minor subdivision of the property. The minor subdivision does not require Planning Commission approval. Staff is recommending that the minor subdivision be recorded prior to Final Site Plan approval. The site complies with the required number of parking spaces, however, the parking spaces are located within the front yard setback requiring approval from the Planning Commission. The site also complies with all other requirements of the Zoning Code. Staff is awaiting approval from the other reviewing agencies. The tax parcel numbers are 131-15.00-39.00 and 39.05. The property is located on the south side of Rifle Range Road east of Sussex Highway.

Motion by Mr. Smith and seconded by Mr. Johnson and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals and the minor subdivision being recorded prior to final site plan approval. Motion carried 5-0.

#### ADDITIONAL BUSINESS

Mr. Johnson asked if the Commission could discuss the boundaries of the Commission and the boundaries of the County Council at some future meeting.

There was a consensus of the Commission to have a discussion on the agenda for the first meeting in January 2016.

Meeting Adjourned at 9:21 p.m.