



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 11, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 11, 2008 in the County Council Chambers, 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. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director, and Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as amended by moving Other Business to the first item of discussion. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of November 12, 2008 as amended, the Minutes of November 13, 2008 as circulated, and the Minutes of November 20, 2008 as circulated. Motion carried 5 – 0.

OTHER BUSINESS

Subdivision #2007-26 – D. M. Properties of Bethel, Inc. Request to Reschedule Hearing

Mr. Lank advised the Commission that Heidi A. Balliet, Attorney with Tunnel & Raysor, P.A., has forwarded a letter requesting that this application be removed from the Agenda for December 18, 2008 and rescheduled for an alternate date in 2009 due to engineering complications; that the application has already been advertised; and that if the Commission agrees to remove this application from the agenda for December 18, 2008, at least, an announcement has been made to advise anyone interested in this application that a public hearing will not be held next week.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously that there is no objection to the removal of this application from the December 18, 2008 public hearings and that the application will be rescheduled at some later date in 2009. Motion carried 5 – 0.

OLD BUSINESS

Subdivision #2007-20 – application of **Golden Acres Limited Partnership** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 85.77 acres into 86 lots, located east of Road 449, 835 feet south of Route 24.

The Commission discussed this application which has been deferred since November 20, 2008.

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

Subdivision #2007-22 – application of **KGH PROPERTIES DEVELOPMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County, by dividing 74.85 acres into 66 lots, (Cluster Development), located east of the intersection of Road 290 and Road 292 and south of Carriage Greens Phase I.

The Commission discussed this application which has been deferred since November 20, 2008.

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

PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be presented.

Mr. Lank advised the Commission that James Fuqua, Attorney, present on behalf of the Applicants for C/Z #1623 and C/Z #1624, has asked to combine the presentation on the two applications since the Exhibit Booklet has been prepared describing both applications.

Mr. Fuqua confirmed his request and asked the Commission to allow him to present both applications as one presentation.

There was a consensus of the Commission to approve the request.

Mr. Robertson advised the Commission that each application will have to be decided separately.

C/Z #1623 – application of **W AND J JONES FAMILY, L.P.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northeast of King's Highway (Road 268) and across from Dartmouth Drive, to be located on 1.96 acres, more or less.

C/Z #1624 – application of **W AND J JONES FAMILY, L.P.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying 181.48 feet northeast of

King's Highway (Road 268) and across from Dartmouth Drive, to be located on 44.49 acres, more or less.

The Commission found that prior to the meeting the Applicants provided the Commission with an Exhibit Booklet with contained Site Data and Contacts, Site Information, references to water service and sanitary sewer service, references to a stormwater management system, with appendices that included a record plan, PLUS comments and responses, references to compliance with Section 99-9C of the Subdivision Code, utility company commitment letters, preliminary site plans, a Wetlands Delineation Report, an Assessment of Cultural Resources Review, a Phase I Environmental Assessment Report, an Environmental Assessment and Public Facility Evaluation Report and Sketch Plan Report, a DelDOT No Objection and Approved Traffic Impact Study, a Summary of Endangered Species and Natural Heritage Assessment, and a response from Sussex County Addressing.

The Commission found, based on comments from the County Engineering Department Utility Planning Division, that in reference to C/Z #1623 the site is located in the West Rehoboth Expansion Area; that the Planning Study assumption for the parcel is 4.0 EDU per acre for AR zoned land for a total of 7.84 EDU; that at the design assumption, capacity can be assumed for an office that not exceed 7,840 square feet; that if more capacity is required, additional information should be provided and a capacity review completed before approval; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that the parcel is served with a 6-inch lateral service which is not adequate for the proposed use and the remainder of the parcel; that installation of an 8-inch lateral at the developer's expense is required for the parcel; that providing service to the remainder of the parcel is also required; that if more than 7.84 EDU are required, downstream sewer line and pump station upgrades may be required; that the County Engineering Department will not approve issuance of a building permit for the project until those upgrades have been completed; and that a concept plan is required.

The Commission found, based on comments from the County Engineering Department Utility Planning Division, that in reference to C/Z #1624 the site is located in the West Rehoboth Expansion Area; that the Planning Study assumption for the parcel is 4.0 EDU per acre for AR zoned land proposing to serve 144 residential units and a community center; that capacity is available as long as the 20.3 acre area of open space is included in the project; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,132.00 per EDU; that a connection point is available on King's Highway; that conformity to the North Coastal Planning Study will be required; that connection to the sewer system is mandatory; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures; that the County Engineer must approve the connection point; that the County Engineering Department requires that a Sewer Concept Plan be submitted for review and approval; that the developer will be required to provide gravity service to a proposed commercial use on part of the parcel; and that the County recently adopted new road standards which become effective January 1, 2009 and will apply to this project.

The Commission found, based on comments from the Sussex Conservation District, that in reference to C/Z #1623 the soils are mapped as Fort Mott loamy sand and Hurlock sandy loam;

that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that there is a potential that on-site drainage improvements will be needed.

The Commission found, based on comments from the Sussex Conservation District, that in reference to C/Z #1624 the soils are mapped as Downer loamy sand, Fort Mott loamy sand and Hurlock sandy loam; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; that on-site drainage improvements may be necessary; that Federal and State wetland laws should be checked and followed prior to the use of any mechanical land clearing; and that a large portion of the site contains hydric soils.

The Commission found, based on comments from DelDOT, that there have been several correspondences, including letters and memorandums dated September 7, 2005, January 24, 2007, May 5, 2008, November 6, 2008, and December 11, 2008; that the November 6, 2008 with attached October 29, 2008 letter from McCormick Taylor, Traffic Engineers and Planners, to DelDOT are a part of the Exhibit Booklet; that the December 11, 2008 letter is a revised "Letter of No Objection" and references 144 multi-family units and a 12,000 square foot general office building. The DelDOT letters are a part of the record for both applications and are retained in the C/Z #1624 file.

The Commission found, based on comments from the Office of State Planning Coordination, that there have been several correspondences and responses, including letters dated August 28, 2006, March 21, 2007, October 27, 2008, and December 3, 2008 relating to these applications, and that the December 3, 2008 letter references that the project is located in Investment Levels 2 and 3 according to the State Strategies; that the State has no objections to the proposed project provided it is in compliance with County Codes; that the DNREC noted that Mr. Cuppels of ECI noted that they had received a letter from the Natural Heritage and Endangered Species Program that stated that there are no records of State-rare or federally listed plants, animals or natural communities at or adjacent to the project site; that the Nature Heritage Program has noted that the response letter the applicant refers to is dated June 19, 2005 and does indicate that there are no rare species records in the database; that it should be noted that a rare species survey has never been conducted on the project area; that the letter also mentions the importance for 100-foot wetland buffers to minimize impacts to rare plant species that occur downstream; and that regarding Mr. Cuppels comment that creative landscaping techniques within the project site and specifically at the stormwater management ponds will diminish the attraction of nuisance waterfowl, DNREC representatives would like to meet with Mr. Cuppels to determine what "creative Landscaping Techniques:" they plan to use and how this technique compares to DNREC recommendations that a vegetative buffer or tall grasses, shrubs, trees or wildflowers be left intact around the pond or ponds.

The Commission found that two letters were received from SeaScape Property Management on behalf of Fairway Village; that the letter received in September 5, 2006 referenced opposition to the application; and that the letter received December 1, 2008 references that the owners within

Fairway Village do not directly oppose the project, but do strenuously oppose any access through the community of Fairway Village; that the main access road to the community is shared with the Par 3 Golf Course; that the entrance is extremely hazardous, due to the close proximity of the turn to enter Kings Highway; that many motorists assume travelers are going to continue the right turn and head on to the Cape May Lewes Ferry or to Lewes, as opposed to entering the golf course or the community which just precedes the intersection; that this has lead to several rear end collisions and numerous near misses; that the recent approval of Lazy Susan's Restaurant has already added significantly to the congestion and traffic entering the community, as the parking lot of the restaurant is woefully overburdened; that the owners of the community are concerned about not only adding to this extremely hazardous condition, but, also, increasing any traffic flow within the community, where many children play; that the owners are seeking assurances that any alternative ingress and egress to the project does not include use of Callaway Drive, the main roadway serving the community; that the owners are keenly aware of DelDOT, and other regulatory bodies, generally seeking paths in and out of a new community and support that initiative; that the owners do not want to have the burden of an additional hazardous condition be placed on them; that as a matter of future concern, if the Par 3 golf course were eventually closed the residents would prefer that any access back to this existing facility be permanently cordoned off; and that the owners respectfully request that the County honor their request to prohibit any ingress/egress through the community of Fairway Village.

The Commission found that James Fuqua, Attorney, was present on behalf of the Walt Jones Family with Gary Cuppels, Professional Engineer from ECI (Environmental Consultants International, LLC), and Guy Dimartino, Traffic Engineer from Traffic Planning and Design, Inc. and that they stated in their presentation and in response to questions raised by the Commission that they are proposing to rezone the two parcels into two zoning categories, CR-1 Commercial Residential and MR-RPC Medium Density Residential – Residential Planned Community; that the project will be titled Hunters Walk; that the two parcels will be interconnected; that the application includes three parcels, the driving range, the 3-Par Golf Course, and a 2.3 acre lot; that the site for the CR-1 zoning has been redesigned to relocate parking out of the front yard and to provide for a multi-modal path and landscaping; that one (1) entrance will serve both projects; that the rezoning is appropriate since the adjoining parcels to the north and south of the 2.3 acre lot are already zoned C-1 General Commercial; that they are proposing to develop 144 multi-family units in the MR-RPC parcel; that they originally submitted to PLUS with a proposal for 178 multi-family units in 11 buildings; that they are now proposing 144 units in 9 buildings; that the 3-Par Golf Course will be preserved; that the 3-Par Golf Course will have access from two (2) locations, one (1) from the existing drive and one (1) from the multi-family project; that the two (2) access points shall not be interconnected; that an interconnection could be created for emergencies only; that some of the recreational features include tennis, swimming pool, multi-modal court, sidewalks on both sides of the streets, street lighting, County specification streets, and stormwater management facilities, which will include Best Management Practices; that space is available for a school bus shelter; that the Federal Wetlands to the rear of the Golf Course will be preserved and left undisturbed; that a minimum of 50-feet of undisturbed buffer will be provided from the wetlands; that 84% of the existing woodlands will be left undisturbed; that 84% of the site will remain in open space, both active and passive; that the Golf Course is a part of the calculated open space; that if the Golf Course ceases to operate in the future the land will be preserve as permanent open space; that in

designing the site, the traffic impact study, the wetlands report, the cultural resources report, and the Phase 1 Environmental Assessment, and the 99-9C criteria were reviewed; that they have ability to serve letters from all of the public utilities; that the sewer EDU calculation provides for 144 EDU for the residential units, 3 EDU for the commercial and 2 EDU for the community center for a total of 149 EDU; that shopping is available in the area; that medical service facilities area available; that the Traffic Impact Study indicated that it will be necessary for some roadway improvements; that the access from Kings Highway will also provide access to the parcel to the south side of the entrance; that the site is located in Investment Levels 2 and 3 according to the State Strategies; that the State voiced no objections to the two applications; that the site is bounded on the south by a multi-family use; that according to the Comprehensive Plan Update the site is located within the Environmentally Sensitive Developing Area, a growth area, where housing types include multi-family uses, and that RPC zoning and Village style development is appropriate; that the site offers housing opportunities and usable open space; that the project will be phased; that the first phase will include the commercial areas; that the following phases will be for the multi-family structures from the front toward the back; that the project will be marketed as an active adult community; that CR-1 zoning is consistent with the area; that the MR-RPC zoning is the same as the Bay Crossing project to the south; that the Jones family will continue to maintain the golf course; that the golf course will be turned over to the Homeowners' Association sometime in the future; that the bus stop is planned within the CR-1 area; that the stormwater management facility will provide for drainage for both parcels; that proposed commercial building is intended for professional office space; that when the Traffic Impact Study was being prepared the other developments in the area, i.e. Senators, Governors, Cadbury, Hawkseye, and the commercial shopping center were also considered in preparing the calculations; that DelDOT will be requiring the applicant to contribute through cost-share contributions for road improvements; that the stub streets in the multi-family section provide access to the existing maintenance building and as a turn-around; that the proposed units are multi-family units, not townhouses; that silt fencing will be set at buffer line, not at the wetlands; that one of the multi-family buildings will have underground parking; and that the existing stormwater management easement serves other properties.

The Commission found that Mr. Fuqua submitted Findings of Fact for the CR-1 zoning application, and Findings of Fact and suggested Conditions of Approval for the MR-RPC zoning application.

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

The Commission found Betsy Farlow, Michael Tyler, Barbara Vaughn, and John Maytako were present in opposition and expressed concerns about public notice and the lack of time to respond to the applications; possible burial sites and archaeological sites on the property; safety concerns due to traffic for pedestrians, cyclists, and emergency personnel and patients going to the Beebe Medical facility; that more right-of-way is needed to provide for shoulders and pulling off from the roadway; that the use contributes to the problem; that a curve exists on both ends of the entrance location; that the Dartmouth Drive and Route One intersection is already failing; that impervious surfaces should be minimized; that 17% of the site is impervious surfaces; that stormwater ponds attract nuisance waterfowl; that bio-swales and bio-recharge can be achieved on this site; that affordable housing is needed; that development should be maintained at the

current zoning; that rezoning impacts this gateway to the City of Lewes, Cape Henlopen State Park and the Cape May Lewes Ferry; that action should be taken until at least one week after the County Council makes a decision on the L.T. Associates applications; that Kings Highway is a major thoroughfare and will be impacted by any additional development; that there is a fear of a possible major gridlock on Kings Highway, Route One and Dartmouth Drive; that the application could have a possible environmental impact on Pot Hole Creek; that there are concerns about the safety of pedestrians and cyclists; that Kings Highway is a major access to Beebe Medical, Lewes, Cape Henlopen; and that they would not oppose a standard subdivision.

The Commission found that Mr. Tyler submitted written comments to be made a part of the record.

The Commission found that Mr. Cuppels and Mr. DeMartino responded to some of the questions and stated that the CR-1 site will have positive out-fall and drainage to the stormwater management facility, and that there are no traffic calming features proposed on Kings Highway.

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

In reference to C/Z #1623: Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

In reference to C/Z #1624: Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1754 – application of **JOHN J. STRYHOLUK AND JAMES G. STRYHOLUK** to consider the Conditional Use of land in an Ar-1 Agricultural Residential District for a boat storage facility to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 9.39 acres, more or less, lying at the northwest corner of U.S. Route 113 and Road 565 (Deer Forest Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended ; that the site is adjacent to U.S. Route 113 and subject to the policy of DelDOT's Corridor Preservation Program; that the Program proposes to maintain the capacity of the existing highway; that according to the State Strategies the site is located in an Investment Level 4 area; that no new or expanded direct access to U.S. Route 113 will be permitted in this area; and that access will be permitted to an existing secondary road (Deer Forest Road).

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated and maintained sanitary sewer district; that the site is located within the Western Sussex Planning Area #1; that an individual septic system is proposed; that conformity to the Western Sussex Planning Study will be required; and that the proposed project is not in an area where the County currently plans to provide sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Hammonton loamy sand and Hurlock loamy sand; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements since there is a small area of hydric soil on the property; and that if any mechanical land clearing occurs on the site, all State and Federal wetland laws must be followed.

The Commission found that Robert Mills, a friend of the Applicant, was present on behalf of the Applicant, who was sick and could not attend, and stated that the entrance will be from Deer Forest Road; that the Applicant will do whatever the County requires; that a 50-foot wooded buffer is proposed along U.S. Route 113 and along the Tax Ditch; that the business will be open 7 days per week; that the boat storage area will be stoned and fenced; that no security lighting is proposed; that security cameras will be installed; that the proposed building is planned for the temporary storage of boats and vehicles; and that a sign will be installed on the building, not the site.

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

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

Mr. Johnson stated that he has concerns about the lack of any real record of information.

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 denied due to the lack of a record to support the application. Motion carried 5 – 0.

C/U #1818 – application of **MEMORIAL VOLUNTEER FIRE CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a fire station to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.978 acres, more or less, lying southeast of Road 224 (Slaughter Beach Road), 700 feet southwest of Road 224A (Rutt Road).

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the Level of Service of Slaughter Beach Road will not change as a result of this application.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is not located in a County operated and maintained sanitary sewer district; that the site is located within the North Coastal Planning Area; that an individual septic system is proposed; that conformity to the North Coastal Planning Study will be required; and that the proposed project is not in an area where the County currently plans to provide sewer service.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Downer sandy loam and Ingleside loamy sand; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some minimal on-site drainage improvements.

The Commission found that William Tobin, Treasurer of the Memorial Volunteer Fire Co., Inc. was present and stated in his presentation that there is a need for a fire station away from the beach; that during storm events the firemen occasionally have to travel through flood waters; that a need exists for a better response time during emergencies; that the main fire station will remain in Slaughter Beach; that this site will be utilized for a fire sub-station; that all events will still be held at the main station; that there will not be any fundraisers held at this station; that they will erect fencing along the Ritter property; that the site will be landscaped; and that they have received eight (8) letters in support of the application from area residents.

Mr. Tobin submitted copies of the referenced letters.

Mr. Tobin submitted a copy of the proposed building plans for the fire station.

The Commission found that there were four (4) parties present in support of the application that gave no testimony.

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 #1818 for Memorial Volunteer Fire Co., 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 in a rural area where it will have a minimal impact on neighboring or adjacent properties.
- 3) The Fire Company 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. It will significantly improve response time for the community and Sussex County residents.
- 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 #1793 – application of **BLUE HEN ORGANICS, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a compost facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 45.384 acres, more or less, lying east of Road 402A (Baker's Road), 2,000 feet south of Route 26.

The Commission found that prior to the meeting the Applicant provided the Commission with an Exhibit Booklet which contained a presentation outline and data sheet, a series of maps and aerial photographs, a site plan, a copy of the DNREC application for a permit to operate a yard waste composting facility, background information, a September 10, 2008 approval letter from DelDOT, an Office of the State Fire Marshal Fire Protection Plan Review Report, copies of comments from the Solid and Hazardous Waste Management Branch of DNREC and the Sussex Conservation District, and copies of credentials for their engineering consultants.

Mr. Lank provided the Commission with a corrective Data Sheet for the Exhibit Booklets.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the Western Sussex Planning Area #5; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found, based on comments received from DelDOT, that on February 1, 2008 the Department requested additional information pertaining to trip generation and trip distribution, and that on September 10, 2008 the Department granted a revised commercial entrance permit for the site.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Hammonton loamy sand, Hurlock loamy sand, Mullica mucky sandy loam, and Mullica-Berryland complex; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that a tax ditch may be affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements since the majority of the site is ditched; and that the Applicant must follow all State and Federal wetland laws.

The Commission found that a letter in support was received from John Timmons advising that he had met with Robert Tunnell and discussed the application and that he believes that the recycling of the components into compost is needed to reduce material going into the landfill and provides a value added product which is organic fertilizer; that Mr. Tunnell advised Mr. Timmons and Joseph Calhoun that he will provide legal easements across the site for access to their properties; and that Mr. Timmons will support the application if the legal easement agreement remains in effect.

The Commission found that an E-mail was received from Bill Behrmann referencing that he had performed some internet research and discovered some possible risks to this family if this facility

is permitted, and that the heavy truck traffic would be out of character for this quiet area. Mr. Behrmann referenced an EPA website that illustrated these risks.

The Commission found that Robert Tunnell, III, was present with Eugene Bayard, Attorney, of Wilson Halbrook & Bayard, P.A., Zack Crouch, P.E., of Davis Bowen & Friedel, Inc., and Craig Coker of Coker Composting & Consulting Technical Composting Services and that they stated in their presentations and in response to questions raised by the Commission that the general area is predominantly agricultural in nature with poultry operations, manure storage facilities, and propane storage facility; that the closest residence is 1,140 feet to the property line; that the site is presently farmed; that the 0.6 acre of forested wetlands on the site will be left undisturbed; that the existing 6-inch well will be utilized for fire protection; that an on-site individual septic system will be utilized; that they have satisfied all of DelDOT requirements and have received an approved entrance plan; that they anticipate a maximum of 22 trucks per day from the site; that the existing easement that crosses the property will be relocated to the north side of the property for access to adjoining properties; that a 50-foot perimeter landscaped buffer will be provided; that an 80-foot buffer will be provided from the tax ditch; that a 24-foot drive will go around the activity; that there will be no disturbance of any wetlands or woodlands; that the site is not in an area of excellent recharge; that the site is not located in a flood zone; that 3 years have been spent studying composting and included visiting sites throughout the United States; that Blue Hen Disposal and Baywood maintain 200 acres and have to purchase compost from out-of-state; that the compost will be made from yard trimmings, brush, twigs, stumps, and manure; that yard waste cannot be dumped in landfills in New Castle County now and probably in the future in Sussex County; that Blue Hen Disposal serves 12,000 to 13,000 customers; that the use will start with approximately 5 employees; that they anticipate that the total number of employees could reach 10 to 15 in the future; that they will take vegetated material, grind it, form wind rows, compost, cure, mix, store and package the composted material for distribution; that there will be a 200-foot safety zone from the grinder; that Mr. Coker has designed 27 projects in 9 states; that the closest project would be in either Wilmington (under construction) or Carroll County, Maryland (in operation); that the primary market for the compost is for agricultural or horticultural use; that permits are required from the State Solid and Hazardous Waste Management Branch of DNREC; that DNREC has no objections to the use once the County grants approval of the use at this site; that they anticipate objections relating to dust, odors, stormwater, and truck traffic; that a water truck will be on site to control dust; that once established the vegetated buffer will intercept dust; that the product is normally sold in large volumes to farmers, landscapers, etc.; that the letter received from the Solid and Hazardous Waste Management Branch references that: the Branch has reviewed the application and that the revised application adequately addresses the questions and comments about the original application and is essentially complete, except for zoning approval and financial assurance; that the Branch cannot grant approval for the facility until the Branch has received approval from the local zoning authority for composting activity, and that the Branch plans to issue approval for this composting facility as soon as the zoning approval process is complete; that they believe that this is a smart re-use of materials which would be lost; that the use promotes the Conservation Element of the Comprehensive Plan; that the use promotes the Economic Element of the Comprehensive Plan; that there should be no negative adverse impact; that the use is compatible to the agricultural uses in the area; that material processing hours will be from 7:00 a.m. to 5:00 p.m. Monday through Friday; that Waste Acceptance hours will be from 7:00 a.m. to 4:00 p.m.

Monday through Sunday; that Compost Sales hours will be from 7:00 a.m. to 4:00 p.m. Monday through Sunday; that all loads brought in to the site will be inspected prior to acceptance; that DNREC requires that an un-acceptable waste dumpster be located on site; that if a load is unacceptable by the On-site Manager it can be refused; that the site will be gated; that when the gate is closed the site is closed; that minimal poultry litter is utilized on site and that there will be a limited storage pad on site which will be made a asphalt; that the manure can be stored in a manure shed on site; that the stormwater management pond will be lined; that an agricultural well with a hydrant exist on the northeasterly corner of the site; that they will coordinate with the Dagsboro Volunteer Fire Company on how to work compost fires; that the maximum height of a storage pile will be 8-feet; that the maximum height of a windrow will be 12-feet; that all buildings on the site will be single story buildings; that the only noise will be the grinder, vehicle noise, and the back-up beepers on vehicles; that noise should not be an issue due to the distance from residences; that DNREC requires 300-foot separation; that the closest residence is 1,140 feet away; that all run-off will be directed toward the stormwater management pond and will then be recycled onto the compost piles; that both the DNREC and Sussex Conservation District have approved the site and stormwater management plan; that a small percentage of poultry waste is mixed into the compost; that the inspection process is performed on the pad sites, not in vehicles delivering the yard waste; that the buffers will be a part of the first phase of the project; and that the landscape plan will be provided to depict the trees, evergreens, shrubs, etc. planned.

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

The Commission found that Diann McCahill, William Behrmann, Samsur Baksh, Patrick Patterson, Bruce Rickards, and Daniel Wisniewski were present and spoke in opposition to this application expressing concerns that contaminated poultry litter may be delivered to the site and could impact local poultry operations; that blackbugs could be delivered to the site in yard waste; that the agri-recycle operation in Laurel stores all of the poultry litter indoors; that Road 402A is a narrow tar-chip road which will need to be improved if this project is approved; that dust is a major concern; that truck parking waiting for processing could be a concern; that the area is known as "The Swamp" because the soils are poor; that trash dumping already exists on Blueberry Lane; that air quality is a major concern; that truck traffic is a major concern; that noise is a concern due to the woodchippers, grinders, windrow machines and back-up beepers; that the water table is very shallow and run-off could encroach into the water table; that if the stormwater management pond overflows the run-off will end up in the tax ditch and could impact the watershed; that health hazard concerns include the dust, nitrates, fungus, odors, poultry diseases, etc.; that the project should not begin until the landscaped vegetated buffers are planted and grown; that depreciation of property values is a major concern; that water quality problems are almost untreatable; and that truck traffic does not coordinate well with school buses, pedestrian and children along a narrow roadway like Road 402A.

The Commission found that Mr. Coker responded that wood products site have the same problems with dust; that a fully vegetated buffer eliminates some of the dust problems and that operational management on the site can control the dust, i.e. water truck, vegetated buffers, etc.

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

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

Meeting adjourned at 10:15 p.m.