



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF NOVEMBER 15, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 15, 2012, 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. 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. Burton, and carried unanimously to approve the agenda as amended by moving the third scheduled public hearing, Banks Family Farm Preservation Trust, to be the first public hearing. Motion carried 4 - 0.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to approve the Minutes of November 1, 2012 as corrected. Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #1949 – application of **BANKS FAMILY FARM PRESERVATION TRUST** to consider Conditional Use of land in an AR-1 Agricultural Residential District for relocation of the access easement to proposed borrow pit (C/U #1897), to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.1571 acres, more or less, lying east of Irons Lane (Road 348) 800 feet north of Old Mill Road (Road 349) (Tax Map I.D. 1-34-7.00-186.00).

Mr. Lank advised the Commission that Solutions IPEM had submitted a site plan for C/U #1897 for a proposed borrow pit and it was found that the easement proposed to serve the borrow pit had a somewhat different legal description than the easement reviewed during the original public hearings; that it was determined that the easement needed to go back through the public hearing process to correct the location; and that according to Solutions IPEM the easement is generally in the same location as the original easement; that based on updated site topography the entrance has shifted north along Irons Lane approximately five (5) feet to avoid an existing power pole; and that the easement was shifted on-site to better align with an existing farm road that has always been intended to be utilized as part of the access.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on November 14, 2012 in the form of a memorandum which references that the site is located in the Beaver Dam Planning Area; that wastewater capacity is available for the project; that Ordinance 38 construction will not be required; that central sewer service has not been extended to the area at this time; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the County does not have a schedule to provide sewer service to the parcel at this time; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required at this time.

The Commission found that Frank Kea of Solutions IPEM was present on behalf of the Applicants and stated that this application should be considered an administrative matter; that the statement made by Mr. Lank is accurate as it relates to the easement; that the easement is only moving approximately 5 feet; and that he does not anticipate any impact on the roadway or the entrance location with this change.

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. Smith stated that he would move that the Commission recommend approval of Conditional Use #1949 for the Banks Family Farm Preservation Trust for the relocation of the access easement to a borrow pit approved as Conditional Use #1897 based on the record made at the public hearing and for the following reasons:

- 1) This application is part of a borrow pit application that was previously approved by Sussex County Council with conditions. As part of that approval, the area of the access road to the borrow pit operation was included in the ordinance granting the Conditional Use. After the approval was granted, the Applicant and its land planners recognized that the road needed to be slightly relocated from where it was originally shown.
- 2) This approval simply adjusts or corrects the location of the access road so that the Final Site Plan will accurately reflect where the road is located on the ground. The road is still located in the same general location as where it was depicted during the public hearing on C/U #1897 and the adjustments are very minor.
- 3) This approval of the minor adjustment to the access road location will have no impact on traffic or the neighboring public roadways.
- 4) This approval has no impact upon the primary use of the site as a borrow pit.
- 5) This recommendation is subject to all of the Conditions imposed as part of Conditional Use #1897.

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 based on the reasons stated. Motion carried 4 – 0.0

C/U #1946 – application of **CLEAN DELAWARE, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for land application of class “B” sanitary waste, non-sanitary food processing residuals, and potable water iron residuals, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 259.08 acres, more or less, lying on both sides of Road 201 (McColley Road) and north of and across from Road 202 (Shockley Road) (Tax Map I.D. 3-30-3.00-7.00 and 3-30-4.00-1.00, 1.01 to 1.04, 1.08 to 1.16, 19.00 and 21.00).

The Commission found that on November 5, 2012 the Applicants provided an Exhibit Packet which includes a DNREC letter, dated January 1, 2012; a DNREC Land Application Permit #AGU 1202-5-03 (Effective January 1, 2012); a Project Development Report prepared by Atlantic Resource Management, Inc., dated January 31, 2012; a Clean Delaware, LLC letter, dated August 13, 2012; and a series of location maps.

The Commission found that on November 14, 2012 the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County has a schedule to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that letters of support of this application have been received from Allen Harim Foods, LLC, Severn Trent Services for the Board of Public Works at Lewes, the Town of Bethany Beach, Artesian Resources, Tidewater Environmental Services, Inc., the Town of Bridgeville, J. G. Townsend Jr., and Co., Eastern Shore Poultry, Ralph & Paul Adams, Inc., the Town of Selbyville, and Dogfish Head Craft Brewery.

Mr. Lank advised the Commission that letters or emails in opposition to this application have been received from Jim and Gerry Maher, Richard Watson, Lisa Morris, Carolyn and Robert Donovan, Laura and Stan Lavend, and Jeffrey A. Chorman referencing concerns about the placement of a dump so close to existing homes and land; smells and pest; the effect on the water table; the amount of increased traffic with large garbage trucks invading the quiet farm community; the impact on the small two lane roads that have no shoulders; odors and diseases; the impact on wells; the depreciation of property values; flies and gnats; that the use is not environmentally friendly and is hazardous to public health; that procedures used by sanitary facilities are unsustainable for the planet, unhealthy for ecosystems, not to mention the risk of contamination; that facilities with specific hazardous waste disposal procedures run the risk of inadvertently contaminating the ground water; that once groundwater is contaminated it is impossible to remove hazardous substances; that research indicates that the amount of waste produced by society is on the rise, that the population of the County is still growing, and that this facility will continue to dispose more and more waste materials over time; that the Applicants should be able to find a site that is less populated and desolated to operate the facility; noise pollution; ground and drinking water pollution; run-off of these materials into the Mispillion River and marsh area; that area residents are already putting up with the odors from the Blessings facility on Draper Road; and that the Applicant’s current operations facility on Isaacs Road is currently emitting strong odors.

The Commission found that Gerry Desmond was present on behalf of Clean Delaware, LLC, with James Fuqua, Attorney with Fuqua, Yori and Willard, P.A., Laf Erikson, Soil Scientist with Atlantic Resource Management, Inc., and Chris McCabe of Coastal Compliance Solutions, and that they stated in their presentation and in response to questions raised by the Commission that rather than refer to all of the individual materials proposed to be applied to the property they are going to refer to those materials as bio-solids; that the bio-solids placed on the property are subject to State DNREC regulations; that the site is mostly tilled land and includes several poultry houses; that site evaluations were performed on several locations on the site; that the evaluation studied the topographic and geological conditions of the property; that it was found that the site is suitable for the requested use; that Clean Delaware, LLC has been in business for more than 20 years; that regulations on the use are subject to both State and Federal regulations; that a permit is required from DNREC for land treatment of bio-solids; that DNREC granted approval on January 1, 2012 to utilize all Clean Delaware, LLC sites; that they currently use three other sites for the same purpose; that the other three sites are located at (1) the northeast corner of Routes 30 and 16, (2) near Ellendale, and (3) southeast of Routes 5 and 9 near Harbeson; that the same application methods are proposed for this site; that a copy of the DNREC permit is included in the Exhibit Packet; that the permit references sludge, septage and waste application limitations, other limitations, groundwater limitations, monitoring requirements, stabilized septage, wastes, sludge stabilization process monitoring, vector attraction reduction, soil monitoring, groundwater monitoring, a schedule of compliance, bonding, monitoring, reporting, definitions, management requirements, responsibilities, and special conditions; that the reason for this application is that the Applicants need additional acreage for bio-solids disposal; that Clean Delaware, LLC is approved to accept sludge, septage, and waste from Allen's Harim Foods, LLC (Harbeson Plant), Perdue Georgetown Sludge, the Town of Bridgeville, the City of Lewes, the Town of Milton, and the Town of Selbyville; approved to accept septage from Artesian Resources community wastewater systems, B. Brittingham, Dukes Septic Services, Harry Caswell, Inc., McMullen Septic Services, Inc., Midway Services, Inc., Mobile Gardens M.H. P., Service Energy, LLC, Tidewater Utilities community wastewater systems, and Street Sanitation Services; approved to accept non-sanitary wastes from Dogfish Head Craft Brewery (brewery waste water), Eastern Shore Poultry Products (food processed grease), J.G. Townsend, Inc. (vegetable processing waste water), iron sludge from water treatment plants, Perdue Farms, Georgetown (dewatered sludge cake), RAPA Scrapple, Inc. (grease by-products), restaurant grease trap waste (containing no sanitary waste), and Roos Foods, Inc. (dairy waste); that they are providing a service to businesses, industries, municipalities, and developments in Sussex County by reuse of beneficial food bio-products; that the company currently has 20 employees; that in 1989 the company received approval from DNREC for the use of the other three sites; that they do not dump raw waste or handle hazardous waste; that prior to receiving any products, DNREC must authorize use of the products for crop growth; that the property will continue to be farmed; that they are proposing to create six sections of the property into sections for land application; that the permitted crops in the sections will be corn, wheat, and soy-beans; that buffers (greater setbacks) will be established; that monitoring will be performed; that there will be two types of applications; the application of dry products and the application of wet products; that the dry products will be applied by spreader on a section of the fields and then disked into the soils; that the wet products are subsurface injected

or spray applied on the fields; that there will not be any storage of equipment on the site other than normal farm equipment; that the equipment will be stored behind the poultry houses; that there will not be any wet product storage on the site; that all of the products have already been treated prior to land application; that very little odors are generated; that they have no plans on composting any products on the site; that they are offering some suggested proposed Conditions of Approval for consideration: 1) All activities shall be as authorized by and in compliance with Clean Delaware, LLC's DNREC permit "Authorization to Operate a Land Treatment System for the Agricultural Utilization of Sludge and Waste Products" (State Permit Number AGU 1202-5-03 and Amendments thereto); 2) This Conditional Use Approval shall remain valid and in effect for as long as the aforesaid DNREC permit exists for this site and shall automatically terminate in the event the DNREC permit expires or is terminated; 3) Land Application Activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday; and 4) No Land Application Material shall be stockpiled longer than seven (7) days on site; that the site is zoned AR-1 Agricultural Residential, which has a stated purpose of providing for a full range of agricultural activities and to protect agricultural lands, as one of the County's most valuable natural resources, from the depreciating effect of objectionable, hazardous and unsightly uses; that the Agricultural Districts are established to protect established agricultural operations and activities; that this type of use is authorized for Conditional Use applications; that they believe that the use complies, provides a service, and benefits many Sussex County businesses and communities; that the process is reviewed, monitored, and controlled by DNREC, making the use appropriate and essential; that the buffer zones referenced are setbacks from dwellings, wells, property lines, streams, drainage ditches, etc.; that they are submitting a copy of the DNREC buffer zone references, which reference that the following setbacks are required for surface application: 200 feet from occupied off-site dwellings; 100 feet from occupied on-site dwellings and potable wells; 25 feet from non-potable wells and public roads; 50 feet from bedrock outcrops, streams, tidal waters, and other water bodies; 25 feet from drainage ditches; that the following setbacks are required for subsurface injection: 100 feet from occupied off-site dwellings and potable wells; 50 feet from occupied on-site dwellings; 25 feet from non-potable wells; 15 feet from public roads; and 25 feet from bedrock outcrops, streams, tidal waters, other water bodies, and drainage ditches; that the products are tested by the clients, then approved by DNREC, and then they can be applied on the farm; that there may be 2 to 6 trucks per day; that the DNREC approval for this site is on hold until the Conditional Use is approved; that the site is viable for the use; that the soils are well drained with fine textured soils; that that have established all well sites in the area; that there are no public wells in the area; that 9 hand auger borings and 10 test pits were conducted to characterize the soil properties on the project area; that DNREC requires bonding and that they are currently bonded; that Nutrient Management Plans are required by DNREC; that the poultry house on the site are in production; that the litter from the poultry houses will not be applied to this site; that a porta-toilet will be located on the site; that there will not be an office or scales located on the site; that the dry product is not a dusty product; that the dry product will be stored in a manure storage type structure or on a concrete pad; that a portion of the farm is irrigated, and that they will not be adding any irrigation; that all setback buffers will be complied with; and that there will be no hauling of dump materials, only approved bio-products.

The Commission found that Brian Churchill, Environmental Scientist with DNREC, stated that he is in charge of the Bio-Solids Program for DNREC; that the Applicant has detailed and described the process; that DNREC supports the benefit of the use as an agricultural application; that the Town of Georgetown, the City of Rehoboth Beach, and Pinnacle Foods also apply bio-solids; that this operation is different from the Blessing composting operation near Primehook Road; and that the use is essential to the County.

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

The Commission found that David Hitchens, State Representative Harvey Kenton, Glenn Watson, Jr., Mary Sue Sharp, David Grant, Neil Shockley, Neil Moore, George Jester, Robert Donovan, Jim Hammond, Charles Moore, Alan Mills, Phillip Bradley, Jason Donovan, Norman Wilfong, Lloyd Webb, Bill Hopkins, Bill Pfaffenhauser, Tracy Ingram, and Wayne Hurd were present and spoke in opposition to this application expressing concerns that the location was not an appropriate location due to the close proximity to the Mispillion River and Flood Plain; that the site is only 0.5 mile from the city limits of the City of Milford and two (2) miles from up-town Milford; that the site is the wrong location for all the right reasons; that the river and wetlands need to be protected; that sludge has heavy metals; that the eco-system along the river needs to be preserved; that several acres of the site flood on occasion; that residents have expressed concerns about additional truck and equipment traffic, noise, odors, well problems, run-off into the river and/or across property lines, depreciation of property values, and insect infestation; that area residents are concerned that zinc, iron, and other chemicals may neutralize adjoining farms resulting in low crop yields; that the use could impact tourism in the area and along the river; questioning if the bio-products will be applied on the same day that they are brought onto the site or within seven (7) days; that school buses travel these public roads two or three times per day; that the roads are very narrow with no shoulders; that DNREC promotes tourism and should be separating tourism from sludge application sites; that the bonding requirement is not adequate to protect the area residents if they should loss the potable wells by intrusion of bio-products; that groundwater contamination, lower crop yields, and the impact on wildlife habitat should be a concern; that there is no benefit to area residents by approval of this use; questioning why the property owner did not want his home farm location included in the application; that the supporters are mid-sized and large businesses and industries, not area residents; questioning the integrity of the providers of the bio-products; that the run-off from the site could impact vegetable growers and crops on adjacent farms; questioning if scrubbers will be required to clean the tires on the trucks and equipment entering at the dirt entrance from dragging mud and bio-products onto the public roads; that there have been issues with run-off impacting the roads in the area; that some of the owners are concerned about impacts on their shallow wells; that all four of the families that surround the site are opposed to the application; that this is a daily use, not a seasonal use like most farm tilling operations; that the public road at this location is not wide enough for two passing vehicles, much less large trucks and school buses; that erosion is a concern; that the use could impact poultry operations in the area; that the water table is rising and this use could impact all wells; that the County needs to be good stewards of the land and should protect this area; questioning if area residents will be notified if any problems occur by DNREC; questioning who monitors the test wells, how often they are monitored, and the creditability of the examiner; questioning if test results are made public;

questioning if buffers are vegetated; that untreated litter from the poultry houses could be picked up and carried into the fields; that the price of well water is more expensive than gasoline; and that the fields are sandy and will be impacted by the bio-solid products, causing more run-off, not percolation.

The Commission found that the Applicant or his representatives responded to questions raised by the Commission and stated that there are some areas of the site that are within flood zone boundaries; that they will be applying bio-products in different sections of the site, not in the same section all of the time; that they will be applying bio-products five (5) days per week, when weather permits, in one section or another; that on this site they anticipate approximately 35% of the application to be on this site in any given year; that disking is not performed in one location continuously, it is performed on multiple locations; that portions of the site are listed as areas to avoid due to flooding or high water tables; that typically the application area is tilled the same day as the bio-products is spread; that they will be utilizing the best soils to eliminate erosion and run-off; that pathogens die in unsaturated soils; that some of the buffers may contain bio-swales and filter strips to prevent run-off to adjacent crop lands; that they have test wells on one of their farms and observation wells on other farms; that they will be converting to monitoring wells; that the fly activity on the Milton farm is due to a dumpster in use, not the application of bio-products; that they have a budget item for fly prevention; that the Ellendale farm has always been monitored and tested, and that no substantial change has been established; that buffers will be grassed and not tilled; and that the monitoring well testing is performed by independent laboratories.

The Commission found that Mr. Churchill added that he needs to review the regulations more closely; that a hydrologist will be assigned to the project; that DNREC will be required to notify neighbors; that buffer requirements can be increased; and that more specific buffer requirements can be included in the permit.

The Commission found that Mr. Fuqua stated that the Applicant can provide copies of testing reports to the neighbors.

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

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

C/U #1948 – application of **SHARON L. SHERWOOD AND VAN SHERWOOD** to consider Conditional Use of land in an AR-1 Agricultural Residential District for professional office use, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.03 acres, more or less, lying northeast of Route One, 150 feet southeast of Millcreek Court, a private street in Millcreek Manor Subdivision at 16649 Coastal Highway (Tax Map I.D. 3-34-1.00-7.01).

The Commission found that DelDOT provided comments on August 9, 2012 in the form of a Support Facilities Report which references that Route One at this location is considered a Level

of Service “D”, and that on November 15, 2012 Troy Brestel of DelDOT informed the staff that there was a computer error in the original Support Facilities Report which should have read that a traffic impact study was not recommended.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on November 14, 2012 in the form of a memorandum which references that the site is located in the North Planning Area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that Ordinance 38 construction will not be required; that central sewer service is not available to the parcel at this time; that an on-site septic system must be utilized; that conformity to the North Coastal Area Planning Study will be required; that the County does not have a schedule to provide central sewer service to the parcel at this time; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required at this time.

Mr. Lank advised the Commission that letters in opposition to this application were received from J. Ralph Cintron and Christine Cintron, and Roy L. Wattenbarger and Susan Wattenbarger expressing concerns that the property owners will still have viable use of their property without this request; that a setback variance has previously been granted along the Cintron side yard for the existing workshop/studio; that they are concerned about depreciation of property values; that the use would change the spirit of the neighborhood and infringe on their rights, use, and enjoyment of their property; that the expanded use of the property for a commercial enterprise could adversely impact the surrounding neighborhood or environment in many ways (i.e. light pollution, noise, additional traffic, paving, etc.); that the property has an existing cesspool, gravel driveway, deteriorating privacy fence and a two story building that overlooks their properties in a restricted community; that due to traffic in summer months and on weekends, getting out onto the highway can be difficult; that if approved people would be pulling out to the south of their community only a few feet away from their community entrance; fearing that all of the existing buildings could be torn down and replaced with a massive office building; and requesting that, if approved, a new privacy fence be provided along their community so that no one can enter their property; and that they hope that stipulations could include that lighting, signs, and hours not be excessive, so that they can maintain their property without commercial influence at night. The Wattenbarger’s letter included information they received from DNREC on the cesspool.

The Commission found that Sharon Sherwood was present, presented a services of photographs of the area and the site, and stated in her presentation and in response to questions raised by the Commission that she and her husband purchased the property to improve the residential appearance; that they will be improving the privacy fence on the north side of the site along the neighboring properties back to the rear property corner; that some of the photographs depict a furniture store, a lighting store, an auto repair and muffler shop, a restaurant, along with offices and warehousing uses that exists in the immediate area along the east side of Route One from Old Mill Road north to Red Mill Pond; that some of the photographs depict the site and the improvements on the site, and the interior of the dwelling on the premises and the improvements being made to the dwelling; that she has attached a floor plan of the house to the photographs; that they are proposing to rent the house for office use, or to rent the house for a home business

use; that the previous owners did upholstery work and made draperies; that the two story building to the rear and north side of the site is to be used by the Applicants as an art studio, for their own personal enjoyment, not as a business; that they do not intend to rent out the studio building; that they hope to rent the house with limitations of use during weekdays only; that the site is not a part of the Millcreek Manor Subdivision; that the tree line runs along both sides of the property line; and that the property is more viable as a business use, rather than residential use, due to the location immediately adjacent to Route One.

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

C/Z #1723 – application of **JOHN M. GILMAN** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.25 acres, more or less, lying east of Pyle Center (Road 20) 800 feet northwest of Roxana Road (Route 17) (Tax Map I.D. 5-33-6.00-25.01).

The Commission found that on November 9, 2012 the Applicants provided an Exhibit Booklet which includes a site plan; references to compliance with the Sussex County Comprehensive Land Use Plan; an introduction by the Applicant; a revised Site Evaluation Report; a letter from the U.S. Army Corps. of Engineers relating to wetlands; a copy of the deed to the property; a modified business plan for the property; an interior building plan for the fitness center; information on the proposed fitness equipment; an aerial photograph; suggested proposed Findings of Fact; an affidavit from Laf Erickson, Soil Scientist; a copy of Ordinance No. 2002 for Conditional Use No. 1750; a copy of a DelDOT Support Facilities Report; a support letter from MidCoast Community Bank; an index and photographs of comparable uses in the area; and a petition to support the application containing 16 signatures.

The Commission found that on August 17, 2012 DelDOT provided a letter and Support Facilities Report that reference that the Department understands that the developer is only seeking a rezoning of the land for financial reasons and to lease part of the existing structure on the property for office space; that the Department would be willing to postpone a decision on their requirement for a Traffic Impact Study until the subject land has been rezoned and a specific use, beyond what currently exists and the proposed office use, has been identified; that when a specific use has been identified and development is being pursued, the Department will determine through the site plan process whether a Traffic Impact Study is necessary; and that the current Level of Service “C” could change to a Level of Service “D” when the site is fully developed.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments on November 14, 2012 in the form of a memorandum which references that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed at this time; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the County does not have a schedule to provide central sewer service to the parcel at this time; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required at this time.

Mr. Lank advised the Commission that a letter in opposition to this application was received from Paul Trionfo questioning if the Commission would want a strip mall in their neighborhood; questioning what happened to the big plans for a sports complex on the site; and referencing that the Applicant removed the forest on the site and burned the stumps during a no burning period that required firemen from four (4) areas to put out the fires; and referencing that the Applicant does not live on the property.

The Commission found that John Gilman was present with Elizabeth Soucek, Attorney with Sergovic, Carmean & Weidman, P.A., and that they stated in their presentations and in response to questions raised by the Commission that the site has had Conditional Use approval for athletic fields and related parking (C/U #1750/Ordinance 2002) since 2008; that the economic downturn has impacted the use of the property; that the Applicant is now proposing to create an office or offices on the second floor of the existing building by applying for B-1 Neighborhood Business zoning; that the Applicant has been unable to secure enough funds to fully open the fitness center; that the B-1 zoning will provide flexibility to rent the upstairs portion of the building; that he has been advised by banks that they can only provide funding for his project if he can rent space to generate outside business revenue; that the proposal is in compliance with the Comprehensive Land Use Plan since it will encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that devoting the land to active recreational uses will serve tourism; that the site is located in a Low Density Area where business development should be largely confined to businesses addressing the needs of the uses of agricultural activities and residential development; that the application is compliant due to the focus of retail and office uses that will be providing convenience goods and services to nearby residents; that the Applicant is an entrepreneur who does not seek financial partnership with the County, only approval of a B-1 zoning classification to meet financial criteria of his lender to allow additional revenue sources necessary to finance the implementation of the primary uses addressed in his Conditional Use previously granted; that part of the purpose of the B-1 zoning classification references that it is the intent to serve the needs of a relatively small area, primarily nearby rural, low-density and medium density residential neighborhoods, and to enhance the general character of the district and its compatibility with its residential surroundings; that signs are limited to those accessory to businesses conducted on the premises, and the number, area and type of signs are limited; that the active recreational uses are still intended; that the Applicant has owned the property for 19 years; that the site is currently restricted to minimal uses due to septic limitations; that DelDOT currently has limited the use of the site to not exceed more than 200 trips per day; that there are 31 business or commercial uses in the Roxana area; that the Exhibit Booklet contains petitions in support of the application from 16 residents within one mile of the

site; that the rezoning should not adversely impact the community or property values; that the building is completed, the entrance and driveway are completed with curbing, and that he still is intending to install the fitness equipment for the fitness center on the first floor of the building.

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. Smith stated that he would move that the Commission recommend approval of C/Z #1723 for John M. Gilman for a change in zone from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District based upon the record made at the public hearing and for the following reasons:

- 1) The Applicant states that he intends to continue the use as a fitness and sports complex on the site as permitted by C/U #1750, and that the rezoning to B-1 is more appropriate for this use and this site than the Conditional Use designation.
- 2) This is for a change of zone to B-1 zoning along Route 20 and near the Route 17 intersection. This location on these thoroughfares is appropriate for B-1 zoning.
- 3) The site is located in the Environmentally Sensitive Developing District Overlay Zone, which is a Developing Area under the Comprehensive Plan. B-1 Districts are appropriate in this Developing Area.
- 4) There are other commercial and business zonings and uses in the immediate vicinity of this project, including boat storage, an HVAC company, central storage units, another sports complex and other business and retail uses.
- 5) The use will not have any adverse impact on neighboring properties, traffic, or roadways.
- 6) The permitted neighborhood business uses in the B-1 District will serve the surrounding residential uses and will be compatible with them.
- 7) No parties appeared in opposition to the proposed rezoning, and several neighboring parties signed a petition in favor of the application.

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 4 – 0.

OTHER BUSINESS

Tidewater Utilities, Inc.

CU #1877 – Amended Condition

Mr. Abbott advised the Commission that this is a request to amend condition of approval number 4; that this condition states “the tower shall be painted white or a sky neutral color and no signage or other lettering shall be permitted on it; that the applicants are requesting that this be modified to permit Tidewater’s name and logo on the tower; that since this condition originated with the Commission’s recommendation, the Commission has the authority to amend the

condition if it chooses to do so; and that the Commission was previously provided a copy of the letter from the applicant's attorney and copies of minutes from similar applications.

Mr. Abbott advised the Commission that Mr. Willard's letter is requesting that the condition be amended to allow signage just of the Tidewater name.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to amend the condition to allow the Tidewater name on the tower. Motion carried 4 – 0.

Subdivision #2007 – 43 -- Cool Spring Equities, LLC

Spring Town Farms Subdivision – Revised Preliminary

Mr. Abbott advised the Commission that this is a revised preliminary plan for a 41-lot cluster subdivision with 0.5 acre lots; that the Commission originally granted preliminary approval for a 67-lot, 7,500 square foot cluster subdivision on August 19, 2009; that the revised preliminary plan has been reduced by 26 lots and the street layout has been revised; that the DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic disposal systems on one-half acre lots; that the preliminary approval for this application was extended until January 1, 2013 by Ordinance No. 2208; that the staff is questioning if it is necessary for a new application; that if a new application is not required, and the Commission approves the revised plan, it has been the Commission's practice to keep the original approval date; and that the Commission was previously provided a copy of the revised site plan.

Mr. Abbott advised the Commission that the engineering firm has advised the staff that they have some of the agency approvals at this time for the revised plan.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the revised plan as a revised preliminary. Motion carried 4 – 0.

Subdivision #2004 – 35 -- McRyan Properties, LLC

Crescent Shores – Amended Conditions

Mr. Abbott advised the Commission that this item was deferred at the October 25, 2012 meeting to allow Mr. Burton an opportunity to visit the site; that this is a request to amend some of the conditions of the preliminary and final site plan approval; that this 38-lot cluster subdivision received final record plan approval from the Commission on April 13, 2006; that the developers are in the process of turning the project over to the homeowners' association; that the HOA is requesting that the Commission determine that the existing buffer is sufficient and requests that no more plantings be required; that they are requesting that the buffer adjacent to the storm water management area not be required to be planted; and they are requesting that the tot lot not be required to be installed; that they are requesting that these items be eliminated due to the extra maintenance costs and liability concerns; that the staff received a letter from the President of the HOA; and that the Commission was previously provided a copy of this letter prior to the October 25, 2012 meeting.

Mr. Burton stated that he would move that the Commission amend the buffer area shown on the Final Site Plan for Subdivision #2004 – 35 for McRyan Properties, LLC for the Crescent Shores development, so that no more plantings are required and that the area adjacent to the storm water management pond does not need to be planted; that more than 67% of the property owners have consented to this revision; that also, this subdivision was approved prior to Ordinance No. 1984 which modified the buffer requirements, so there were different standards that applied to it at the time; that this modification of the buffer is consistent with the County’s buffer policy in place at the time the subdivision was approved; and that the Commission approves the applicant’s request to delete the tot lot; that at the same time, this is an amenity to families in the development; that while the tot lot may be deleted, the area where it was to be located must be cleared and maintained as useable open space for the families within the development.

Motion by Mr. Burton, seconded by Mr. Smith and carried unanimously to amend the conditions for the reasons and with the conditions stated. Motion carried 4 – 0.

Executive Session

Pending Litigation pursuant to 29 Del. C § 10004 (b)

At 9:51 p.m., a motion was made by Mr. Smith, seconded by Mr. Burton, and carried unanimously to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to Pending Litigation. Motion carried 4 – 0.

At 9:52 p.m. an Executive Session of the Sussex County Planning and Zoning Commission was held in County Council Chambers for the purpose of discussing issues relating to Pending Litigation, which included reports and advise from legal counsel regarding it.

At 10:16 p.m., a motion was made by Mr. Smith, seconded by Mr. Burton, and carried unanimously to come out of Executive Session, to reconvene the Regular Session, and to pursue the strategy and recommendation of legal counsel made during the Executive Session. Motion carried 4 – 0.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to adjourn the meeting. Motion carried 4 – 0.

Meeting adjourned at 10:17 p.m.