

REGIONAL PLANNING COMMISSION  
BUSINESS MEETING  
MINUTES  
October 11, 2018

The Business Meeting of the Regional Planning Commission was held Thursday, October 11, 2018 in the Levy Court Chambers, Room 203, of the Kent County Administrative Complex, 555 Bay Road, Dover, Delaware 19901.

CALL TO ORDER FOR BUSINESS MEETING

The Business Meeting was called to order at 6:30 p.m.

THE PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL AND DETERMINATION OF QUORUM

The following members were present:

William Spanarelli  
Albert Holmes, Chairman  
William Jester, Vice-Chairman  
David Peterman  
Paul Davis  
Gene Thornton  
Denise Kaercher

Also present were:

Sarah Keifer, Director of Planning  
Craig Eliassen, Attorney

ADDITIONS TO, DELETIONS FROM, AND APPROVAL OF AGENDA

On a motion made by Mr. Davis and seconded by Mr. Spanarelli, the Regional Planning Commission voted to APPROVE the agenda of the October 11, 2018 Business Meeting.

APPROVAL OF MINUTES

On a motion made by Mr. Jester and seconded by Ms. Thornton, the Regional Planning Commission voted to APPROVE the minutes of September 13, 2018 Business Meeting.

REVIEW OF APPLICATION STATUS REPORT – Current as of October 4, 2018

LEVY COURT ACTION ON COMMISSION RECOMMENDATIONS:

<u>Application</u>	<u>RPC Rec.</u>	<u>L.C. Action</u>
C-18-05 Potts, Jennifer	Approval	Approved
C-18-06 Rivera, Efrain	Approval	Approved

CS-18-06 Calvert Mechanical Systems	Approval	Approved
CZ-18-05 / LC18-10 MKJ Properties, LLC	Approval	Approved
LC18-09 Site Plan Exemptions	Approval	Approved

### Old Business

None

### New Business

**CS-18-07 Meyer & Meyer, Inc.:** Request Conditional Use with Site Plan approval of a Child Care Center located inside the Growth Zone Overlay District.

On a motion made by Mr. Davis and seconded by Mr. Peterman, the Regional Planning Commission recommend **Conditional Approval** of application C-18-07, for a Child Care Center located inside the Growth Zone Overlay District. This is based on Exhibit A - Staff Recommendation Report dated October 4, 2018, Exhibit B - Public Hearing Testimony dated October 4, 2018, and the findings of fact that:

- a. The subject site is zoned BG – General Business in which a Child Care Center is permitted as a conditional use per Section §205-170 and §205-274 of the Kent County Code;
- b. The application complies with the Comprehensive Plan

Pursuant to Chapters 187 and 205 of the Kent County Code and pursuant to 9Del.C. §§4802 and 4811, the Commission has reviewed the application and the October 4, 2018 Staff Recommendation Report, and, furthermore as part of this approval, the applicant shall comply with all Staff and Agency Requirements as described in the October 4, 2018 Staff Recommendation Report and shall comply with the following conditions:

- a. Due to the parking on the property being maximized by the first floor square footage of the Child Care Center, the plan must specify that the second story shall only be for uses ancillary to the day care, generating no additional parking.
- b. Due to the existing bus stop location on this property, the applicant shall follow the guidelines of §205-43.2 for installation of a bus shelter to be placed behind the proposed bus pad on the site.
- c. A bike rack large enough to accommodate at least four (4) bicycles shall be added to the site plan near the entrance to the building.
- d. The building façade along Rt. 13 shall incorporate architectural elements that make the building look like a front façade as opposed to the back of the building. The final design shall match the material on the roof of the dormers with the roof of the building entrance feature. The colors of the proposed building shall not be monochromatic in nature and should be of a complimentary color scheme between the stone foundation, siding, roof, and other building materials. The roof design with the three dormer windows shall be mirrored on the opposite side of the building.

- e. Only one detached sign may be built on this site and shall be of the monument style to be setback at least 5 feet from the front property line. The top of the sign should not be taller than 6 feet above grade and have a maximum size of 32 sq. ft. No electronic variable signage shall be permitted. Additionally, this sign should incorporate the same stone that is being recommended for the building façade shown in the building elevation submitted with this application.
- f. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.

Mr. Peterman: I vote yes to approve.

Ms. Thornton: Yes, it's in accordance with our Comprehensive Plan.

Ms. Kaercher: Yes for all reasons given.

Mr. Spanarelli: Yes.

Mr. Davis: Yes per motion.

Mr. Jester: Yes per reasons given in the motion.

Mr. Holmes: Yes per Staff Recommendations.

The Commission voted unanimously in favor of recommending **conditional approval** of application CS-18-07.

**CS-18-08 A Paw Above Kennels:** Request Conditional Use with Site Plan approval of a Commercial Kennel & Residence located outside the Growth Zone Overlay District.

Ms. Thornton: For the past 12 years I have never before gotten involved with the business model of an applicant, I've always said let them decide how big the pool is going to be or how big the clubhouse is going to be, but tonight I feel I have to weigh in because the dogs can't speak for themselves. In the past week I've benchmarked with several quality kennels, two of which were in Maryland, and one is in Delaware, but it's right on the Salisbury, Maryland line, so in other words none of these kennels have anything to gain or lose by your application. All these people are people that I train with, and I compete with in agility and dog obedience so they're my friends. I think they were honest with me. In all cases the kennel owners believe that you guys are going to be biting off more than you can chew with 40 runs and no permanent help. All of them have 20 to 24 runs, and all of them have one permanent staff plus at least one person that lives in the house, owns it also works, and they have several part time staff on call. One of them has concrete inside and out with the runs accessible to the dogs 24/7, they have a doggie door thing, come and go themselves. Dogs can poo outside, and sleep clean inside on raised beds. The dogs normally do not poo inside on the concrete as

they prefer to do it on grass. They have several large outdoor areas, and they allow play groups if the owners will pay extra for it and will allow that. The other two kennels have doors that are opened and closed by the kennel staff guillotine style. In one case the runs are grass and the other are concrete. Both these kennels have multiple outdoor runs for single dogs only. In one case there are three runs and the other there are six runs, that is where the dogs go potty, and dog poo is picked up in between each dog; when one dog exits it's picked up and then the other dog comes into a clean area. And here's their typical day; at 7:30 the dogs are cycled out to the outdoor run; they get about 15 minutes outside. Now remember there are multiple runs so it might either be three dogs outside at a time or six outside at a time. They are let loose then collected up in about 15 minutes. Then they are brought back in from their constitutional then they get fed, one hour later they cycle back out in groups of three or six in the individual runs to eliminate their breakfast, at noon they are cycled back out again. In the evening before dinner they are cycled again. One hour after supper they are cycled back another time, and about 10:00 pm they are cycled back for the last time. The dogs have 15 minutes outside per dog, and that's per individual run throughout the day, so that's a lot of outdoor time for the dogs. The dogs do bark, more so when they are excited about getting fed or when a new dog is introduced. If the dogs are not cycled out as often during the day such as like if it's heavy rain or super cold conditions or super-hot conditions something like that they are more restless and more barking because they don't get to go to the bathroom as often. In all cases the people the people live on site, but they have a staff member there as well because cycling those dogs take a lot of work. They also wash the bedding every single day and replace it every single day. The people who live in the house on site say they do not really hear the dogs barking in the summer or in the dead of winter because their house is closed up, the AC is on, the television is on, the radio is on, and so therefore they don't really hear the dogs although all of them said that there is one room in the house where they can hear the dogs if they bark, but of course all three of them live right across the driveway, I mean they are hundreds of feet away they are not yards and yards away. All of them said you cannot prevent the dogs from barking unless you take draconian measures such as a bark collar or say there are kennels where the dogs get yelled at or the cages are hit in order to intimidate the dogs and make them be quiet. None of these people would use those measures of course all of them are disciples of clicker training, positive training, they reward the dogs for being quiet, and they try to train the dogs to be quiet, and if there is a dog that won't be quiet that dog is not allowed to come back to that particular kennel. All of them say that you guys, the applicants, are going to have miserable lives trying to cycle 40 dogs in and out all day especially since you only have one area, and you're only going to let one dog be out at a time due to the noise concerns that you have. All of them get along with their neighbors, none of their neighbors complained before the kennel was built or in one of the cases the kennels were there and the neighbors were already used to it. They don't have any issues with the neighbors, and they're also not very close to their neighbors either. All of them fear that if the neighbors are already upset and don't want you that in today's

world of yelp and other online reviews you could get into trouble, it doesn't take to many bad reviews from a neighbor to hurt your business, just letting you know. All of them say that you will violate the Kent County noise ordinance with 40 dogs because they bark inside the kennel. You can have ten out on the side, one barks they all bark, all 40 of them will be barking, and they just feel that your life will be a misery of complaints, and trying to defend yourselves against those complaints. All of them felt that your business model is outdated, that the dogs will be unhappy, that they will bark, your neighbors may not hear the dogs bark as much as they fear, but if they hear them at all they will complain and you will have problems. All of them suggest that you take less dogs, have more outdoor kennels or that you learn how to use a clicker to train the dogs how to be quiet. All of them suggest you consider a sales outlet training facilities dog walks the owners pay for in addition to all the services you are currently offering. It makes the dog's life more fun, but of course it does require more staff. It's not my job to testify or make recommendations on an applicant's business model, it's really just my job to hear public comments, and look at the ordinances that are in place to determine if the criteria has been established for them or the conditions that have been established, but as a person who does speak for dogs I do urge you to take a fresh look at your business model because I don't think that you'll be in business very long if either you do not change your business model or change your location, and that is my personal opinion, and a professional one as a professional dog trainer.

Mr. Davis: Just for the record I would like to have it noted that Chairman Holmes and myself actually went to the site, we do this many times, and had the opportunity to actually interview the neighbors. I think these people that are here tonight with the application, I think their heart is in the right place, but personally I have issues, and I listened to the testimony last week regarding barking dogs. The one gentleman testified that in the winter time when the leaves are gone it's not a buffer, he is exactly right. I've been a member of the SPCA, and I'm very familiar with these dogs barking because a guy called me up at 3:00 in the morning one time complaining about it, but the real issue is this, this is my opinion, and I didn't hear anybody say anything about this until I actually went out there and it dawned on me; this driveway is in a woods, the driveway's been built, and we went to the adjoining properties and walked over to not the site but actually saw how far these, or how close these houses were, but the thing I really noted was, and I asked some of the neighbors; do you have deer hang around this woods, and the answer was yes. Well here's what's going to happen; if this gets approved they can let the dogs out all they want, but those deer come through there night time or in the day time and those dogs are out you know what's going to happen, those dogs are going to be barking. I don't think it's fair to the neighbors when I see as many people come out, and it's not a personal thing I can tell just by the testimony against these people who want to start a business. It's a valid concern that they don't want to listen to dogs barking, and they will bark, and I just think it's the wrong place. The houses are very very close. I actually had them show me the property lines, and what happens if down the road they expand it, add some things there right close to the people's

houses. I just don't think it's the right thing for us to do, and my plans are to vote no, if the Commission votes for it fine we'll pass it on to Levy Court, but I want to support the people that live there, there's no homes on the property, these people apparently bought the property wanting to put this type of business, and that's great, but I also have to consider the people that this is their homes. Lot of these people have been there for a long long time, they've got their investments there, and I personally would not want to live that close and hear those dogs barking. It's going to be an issue, it's always an issue with the County, and the thing that we have to think about, if this should get passed, who's going to enforce it when they start barking? You call the State Police they're not going to come out if the dogs are barking, you call the animal control by the time they get out there the dogs don't bark no more because I actually experienced this one time when I was on the Levy Court. A guy called me, I called the SPCA 3:00 in the morning, they went out the dogs weren't barking, and they leave and the dogs bark again, so it's one of those things that's a catch-all, you really can't enforce it, and the problem is our people in Kent County live out there have to tolerate it. I know it's not a personal thing of this family that's wanting to put this business, but I just am not prepared tonight under these terms, and the amount of dogs, I mean, even if you only had five dogs the same thing could happen. I'm looking after those neighbors who live next door, I met them, very nice people, and I think they have a very valid point, thank you Mr. Chairman.

Ms. Kaercher: Ms. Thornton does know, I respect her knowledge, and everything that she said, and she researched it the way she did. Last week I was thinking to myself well it's not out in the country where, you don't put something like this in the middle of a city, location is somewhat of an issue, but certainly this location is better than a lot of others that I can think of as far as the people around that location. My question for Staff is, and I guess of my fellow Commissioners; after what I heard Ms. Thornton say is this something if it was tabled, and we have a new design can it come back that way?

Ms. Keifer: I think if it were tabled, and the Commission called for most specifically the issue of noise to be further addressed, in keeping with Mr. Davis' comments I think that is reasonable. I would suggest that comments about the business plan is not something the County regulates. If the issue is noise perhaps giving the applicant additional time to try to address Commissioner Davis's concerns, at least have that opportunity that is not out of the realm.

Ms. Thornton: I would say I do agree with Sarah, and in fact I said twice that is wasn't my place as a Commissioner to comment on their business model, but I want them to be successful. Why should we have a big (inaudible) after their business fails. We want our young people to come start businesses, and our military to have a home here in Delaware and to stay with us.

On a motion made by Ms. Kaercher and seconded by Mr. Jester the Regional Planning Commission recommend to **table** CS-18-08 for **30 days** with the hopes that we as a Commission can feel more comfortable that noise control is being seriously dealt with with the design.

Mr. Davis: I just question whether you have 40 dogs, 540 dogs or if you have 2 dogs, I don't know how you address the issue of barking dogs. You could have one dog that can be just as much of a problem as 47 dogs, and I don't know how you would address that, and I don't know what we are going to accomplish. It seems to me these people have money invested, and I think personally, that we need to vote it up or vote it down. You know how I feel about it so if you pass it fine dandy me, that's the way it goes I have now problem with that, but to lay it on the table to see how they are going to address that, they have already addressed that issue to the best of their ability with that certification from the guy that does the acoustical work, it's in their form, they already addressed the issue how they are going to handle that. I don't know if I'm satisfied with that when the dogs go outside the building and here comes three deer running along the woods, and the dogs start barking. It was a nice report, the guy did an excellent job on that report, but when they are outside how, I don't see what we're going to accomplish, it's just my opinion, I'd just simply vote it up or vote it down. I don't think we should drag this out for the neighbors or particularly the application itself, thank you.

Mr. Peterman: Can we ask them if they would be willing to make any additional...

Mr. Holmes: This is not a public hearing you cannot do that.

Mr. Peterman: Then we won't be able to ask them what we want to know in 30 days correct? Then we can ask them? (Yes) And then in 30 days we are going to vote it up or vote it down.

Ms. Thornton: I would like to make one comment about barking dogs; I have a guest suite over my garage, and people who my dog doesn't know come and go, and sometimes they bring dogs, and my dog doesn't bark at them. She sees them out in the backyard, and she goes out and says hi, she doesn't bark. She will bark when the doorbell rings, other than that she doesn't bark, so just because there are dogs, if you use positive reinforcement they don't always have to bark.

Mr. Jester: I second that motion because I was on the fence about this kennel all along, but after they heard about their neighbors comments, and Mr. Davis' concerns, and others I don't think it's the position of us tonight to just throw it out and vote it down. I think they have the opportunity to address the additional issues that we have brought forward, and with the acoustical survey that talks about part of it, but I did have a problem with some of the things that they had proposed on their site. If you looked at the number of dogs like Ms. Thornton has said, and they had no time or not enough time to get them all out, and the run only having one run. I used to raise dogs 100 years ago, I guess you could say now I raised some different kinds of dogs in my life, but I just think that everybody needs the option instead of just beating everybody up, I certainly appreciate all the neighbors what they said, and where they live, and I appreciate what they presented, and all the time and money, and effort they spent in what they did in their preparing, but I just feel as though give them another 30 days without voting this down to give them the

opportunity to address the other issues that came forth during this hearing.

Mr. Spanarelli: I too am kind of on the fence, and I had to think back to, and I live in a tight neighborhood, and there's a person up the street who has a porch, and she leaves her little dog out there most of the day, because it barks constantly, she can't keep it in the house because she can't stand it. She's been corrected, and this dog barks all day long. We have a screened in porch and there is no control of the dog, she doesn't really get involved, and it drives us crazy, so please think about that on this noise problem.

Mr. Peterman: One more comment on Ms. Thornton's statement, and her being a dog trainer, and I met her dog. She does a beautiful job with her dog, her house doesn't have a different dog coming in every other day or every other week, her house is her dog's house, that property out there is not going to be these dogs permanent address, and those dogs will not be trained, likely, as good as Ms. Thornton's dog is. That makes a big difference too with what Mr. Davis was saying.

Mr. Davis: I guess I have a question of Staff, I probably should know this answer; at some point and time should this pass, this is a conditional use, they move, they sell it to someone else that's in the same type of business. Do they have to come in and reapply or does it go with the property?

Ms. Keifer: It goes with the property.

Mr. Davis: See that becomes another issue. You have people here I think are very credible, and I mean they had a lot of the answers. Doesn't mean that the next person if they decide to sell it, have a good business and someone else comes in, and then they create a major problem, and I just really have issues with that. Nothing against these people I think they are very nice, I think they answered some good questions last week, but if they sell that property to someone else which they may, they bring a kennel, you don't know what they are going to bring in there, so you we ought to look at that, thank you.

### **Polling Commission**

Mr. Peterman: Yes.

Ms. Thornton: Yes because I fear if we don't it'll be voted down tonight without giving them a chance to do anything.

Ms. Kaercher: Yes.

Mr. Spanarelli: Reluctantly I say yes.

Mr. Davis: No, I just think it's improper to do that, we've heard the evidence, and they know what the issues are, I know what the issues are I've been out there,



talked to some people, I don't support it, so my vote is no, but I'll accept the findings of the Commission.

Mr. Jester: Yes per my second.

Mr. Holmes: I vote no, and we went out and looked at the property. The gate was locked, we called the engineer, he never got back with us, so I vote no.

The Commission voted 5 yeas 2 nays in favor of **tabling** application CA-18-08 for a period of 30 days.

**CS-18-09 Frederica Park & Ride / Sports Medicine Facility:** Request Conditional Use with Site Plan approval of a Park & Ride / Sports Medicine Facility located outside the Growth Zone Overlay District.

On a motion made by Ms. Thornton and seconded by Mr. Jester, the Regional Planning Commission recommend **Conditional Approval** of application CS-18-09, a conditional use site plan for a Park & Ride / Sports Medicine Facility located outside the Growth Zone Overlay District. This is based on Exhibit A - Staff Recommendation Report dated October 4, 2018, Exhibit B – Public Hearing Testimony dated October 4, 2018 and the findings of fact that:

- a. The subject site is zoned AC - General Business, in which a Park & Ride / Sports Medicine Facility is permitted as a conditional use with site plan per Sections 205-48 and 205-305, of the Kent County Code; and
- b. The application complies with the Comprehensive Plan.

Pursuant to Chapters 187 and 205 of the Kent County Code and pursuant to 9Del.C. §§4802 and 4811, the Commission has reviewed the application and the October 4, 2018 Staff Recommendation Report, and, furthermore as part of this approval, the applicant shall comply with all Staff and Agency Requirements as described in the October 4, 2018 Staff Recommendation Report and shall comply with the following conditions:

- a. The waiver from §187-60, Sidewalks requiring frontage sidewalks is **approved**. Given the association between this property and the Sports Complex, the applicant shall complete the pedestrian sidewalk connection along the access road to the sidewalk within the Sports Complex facility.
- b. Due to its proximity, the architectural features and styles from main building at the Sports Complex are appropriate to use in establishing a cohesive and harmonious architectural style in this new commercial area of Kent County. The new building shall incorporate the blue roof accent, white columns, different roof lines and the split façade on the walls but avoid the bare gray exterior block seen on the upper half of the structure at the Sports Complex. Due to the configuration of this property, these architectural features shall be incorporated into all 4 sides of the proposed building.
- c. Any detached sign built shall be of the monument style to be setback from the front property line in accordance with the code. The top of the sign should not be taller than 10 ft. above grade and have a maximum size of 100 sq. ft. Detached signage

may only be located along Bay Road and Milford Neck Road and should incorporate the design features that are cohesive with the proposed building façade.

- d. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.

Mr. Peterman: I vote yes to approve.

Ms. Thornton: Yes per the reasons given in my motion.

Ms. Kaercher: For all reasons given.

Mr. Spanarelli: Yes for the motion given.

Mr. Davis: Yes for motion, I think it's a great project, and thank all of them for doing that.

Mr. Jester: Yes per the motion.

Mr. Holmes: Yes, it's a great project, and I wish them much success with it.

The Commission voted unanimously in favor of recommending **conditional approval** of application CS-18-09.

**CZ-18-06 / LC18-12 Crothers, Bryan:** Request to amend the Zoning Map / Comprehensive Plan from IL (Limited Industrial) / Industrial to AC (Agricultural Conservation) / Low Density Residential located inside the Growth Zone Overlay District.

On a motion made by Mr. Spanarelli and seconded by Mr. Davis, the Regional Planning Commission recommend **Approval** of Ordinance LC18-12 to amend the Comprehensive Plan Map from Industrial to Low Density Residential and amend the Zoning Map from IL (Limited Industrial) to AC (Agricultural Conservation). This is based on Exhibit A - the Staff Recommendation Report dated October 4, 2018, Exhibit B - public testimony dated October 4, 2018 attached hereto and the findings of fact that:

- a. There are other AC zoned properties to the west of the subject site, and the proposed rezoning would be consistent with the residential use nature of the property within the surrounding area.
- b. The Kent County Comprehensive Plan will be amended to coincide with the single family character of the surrounding area.

Mr. Peterman: I vote to approve.

Ms. Thornton: Yes, it's in accordance with our Comprehensive Plan.

Ms. Kaercher: Yes for all the reasons given.

Mr. Spanarelli: Yes per my motion.

Mr. Davis: Yes for all reasons given.

Mr. Jester: Yes per the motion.

Mr. Holmes: Yes per Staff Recommendations.

The Commission voted unanimously in favor of recommending approval of ordinance LC18-12.

**Public Comments**

None

**Commission Comments**

Mr. Holmes requested business cards for the Commission.

**ADJOURNMENT**

On a motion made by Mr. Jester and seconded by Mr. Spanarelli, the Regional Planning Commission voted unanimously to ADJOURN the Business Meeting of October 11, 2018 at 7:10 p.m.

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Albert Holmes, Jr.  
Chairman

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Sarah E. Keifer, AICP  
Director, Kent County Planning Services

Respectfully submitted by:

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Nancy L. Thompson – Senior Secretary  
Kent County Department of Planning Services