

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 2, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 2, 2021, at 1:30 p.m., in the Carter Partnership Center at Delaware Technical Community College, Georgetown, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 068 21
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Approve
Minutes**

The minutes of February 16, 2021 were approved by consent.

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Americana Bayside – Village A – Phase 3 (Construction Record) received Substantial Completion effective February 15th.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for January 2021 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 189 troopers assigned to Sussex County for the month of January.

(continued) [Attachments to the Administrator's Report are not attachments to the minutes.]

Rules Mr. Moore read the rules of procedure for public hearings on zoning matters.

**Public Hearing/
Proposed Ordinance to Amend Future Land Use Map and CZ 1923** A combined Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00" and on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS" (Change of Zone No. 1923) filed on behalf of Reed Farms, LLC (Tax I.D. No. 235-13.00-29.00, 29.01 and 235-14.00-570.00) (911 Address: 14888, 14866 & 14742 Gravel Hill Road, Milton).

The Planning and Zoning Commission held a combined Public Hearing on the Proposed Ordinances on December 17, 2020 at which time action was deferred. On February 25, 2021 the Commission recommended approval of both Proposed Ordinances.

(See the minutes of the Planning and Zoning Commission dated December 17, 2020 and February 25, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the applications and noted the documents submitted into the record.

The Council found that David Hutt, Attorney, was in attendance and presented the applications to Council along with Mark Davidson with the Pennoni Group; also present was Richard Reed, Jim Reed and Beverly White, Principals in the ownership of the subject properties. Mr. Hutt reported that Reed Farms, LLC is the owner of two of the three tax parcels that comprise the 67+ acres; the third parcel is owned by Whitewater Enterprises, LLC which is also owned by a member of the Reed family. Mr. Hutt stated that the subject parcels are located at the intersection of Route 16 and Gravel Hill Road and that there will be two parts to the Applicant's presentation – the proposed amendment to the Future Land Use Map and the requested Change of Zone.

Mr. Hutt referenced the Comprehensive Plan and, specifically, the Land Use Chapter and the applications' compliance with the Plan. He stated that the subject properties have access to utilities including natural gas which is to the south; that the properties sit in close proximity to the wastewater treatment plant operated by Artesian; that the properties have extensive frontage onto roadways which are designated by DelDOT as major collectors; that there is

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Proposed
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to Amend
Future Land
Use Map
and
CZ 1923
(continued)**

room for an entrance on Route 16 and possibly two entrances on Route 30 in the future; that the southern boundary of the property is adjacent to the Delmarva Central Railroad line; that the railroad line will reduce truck traffic impacts by shifting freight to rail; that the Proposed Ordinance to amend the Future Land Use Map seeks to change the designation of the three properties on the Future Land Use Map from Low Density to Developing Area, which is one of the County's Growth Areas; that there are seven factors to consider when deciding if a property should be in a Growth Area and he reviewed the applications' compliance with these factors; that the three properties are located within one mile of the Town of Milton; that properties to the north and to the south are currently designated as being in the Growth Area on the existing Future Land Use Map; that the properties are located approximately one-half mile from a Town Center Area; that the Comprehensive Plan states that portions of Developing Areas with good road access and few nearby homes should allow for business and industrial parks; that the properties are in close proximity to a regional sewer treat plant; that Artesian Wastewater Management has spray fields across the road and a pipe that runs along the front of the subject property; that County sewer will be available in the area within five years; that the sewer service issue does not apply as Tidewater has a CPCN for the area and the County does not have to provide the service; that water will also be available through Artesian or Tidewater; that there are a number of commercial businesses and other various zoning categories in the area; that adjacent to the north of these properties is a tract of land of more than 500 acres which is in an agricultural easement and serves as part of the wastewater disposal for Artesian; that there are no wetlands on the property and the properties are not in an excellent recharge area and are not in a flood plain; that the property is identified as being located in the Investment Level 4 Area according to the Strategies for State Policies and Spending; that two of the parcels are unimproved and currently used for agriculture and the third parcel is improved with a residence which would be repurposed or removed from the site depending on the future uses; that DelDOT will require a Traffic Impact Study when the site plan is submitted for the proposed uses within the property; that DelDOT will require the Developer to make certain improvements; that concerns and opposition from the Pemberton Development is regarding the entrance being directly opposite to the entrance to the Pemberton Development; that Route 30 is an alternate truck route; that there is already some industrial uses in the area, i.e. Baker Petroleum and Wyoming Millwork; that approval of this application will result in job creation since future uses of an industrial site would require a work force; and that the Change of Zone is consistent and compatible with other uses in the area.

Council members raised questions regarding the possibility of moving the entrance that is proposed across from the Pemberton Subdivision entrance; asking if the Applicant is willing to meet with the Pemberton HOA; questioning what type of uses could fit within the property; and commenting on the possibility of significant additional truck traffic.

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Hearing/
Proposed
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to Amend
Future Land
Use Map
and
CZ 1923
(continued)**

Public comments were heard.

There were no public comments in support of the application.

Helen Ralston, Anthony Scarpa, Carol Remenick and Keith Steck spoke in opposition to the Proposed Ordinances: stating concern about sewer service availability and about possible contamination of the aquifer; stating that the aquifer is already contaminated due to agriculture activities in the area; questioning how they propose to get water to the industrial site and how they propose to handle the wastewater; stating that there are other more suitable locations along the rail line for this project; stating that the rail line will not totally reduce truck traffic; stating that there are environmental concerns, including pollution caused by heavy industrial; expressing concern about traffic and the reconfiguration of the road; stating that the proposed development will cause a significant increase in noise and light pollution, as well as traffic; stating that there would be pollution from diesel trucks; stating that an environmental impact study is needed; stating that the future impact on the Pemberton community is unknown; stating that heavy industry being built on this land would adversely affect the character of the area; stating that property values in the area will decline; stating that there is concern about industrial fires and the ability to fight those fires; stating that Artesian does not have a wastewater treatment plant in the area; stating that the heavy industrial use could adversely impact the health of the waterways in the area with stormwater run-off in the nearby Pemberton Branch and other small streams which empty into the Broadkill River; and stating that there has been insufficient study and planning done for the proposed project.

Mr. Steck noted that he previously submitted comments into the record. Mr. Steck commented on sewer service in the area and he stated that there is conflicting information about the sewer service; that part of the confusion is due to information provided leading up to the Commission's public hearing, part of it is from the minutes of the Planning and Zoning Commission and part of it is from the presentation on this date. He stated that Tidewater is, in fact, the only sewer service in the area; that Tidewater has the only sewer service plant in the area; that Artesian does not have a plant nearby; that the sewer treatment plant site north of Milton is a site for sewer treatment – a 90 million gallon lagoon that will hold treated wastewater from the Allen Harim chicken processing plant in Harbeson; that there is a pipe line that runs along Route 30 to get from Allen Harim to the sewer treatment site; that water and sewer are essential for any site, especially an industrial site; that he questions if this site is going to have to rely on septic and well water; that the information is misleading and the County should contact DNREC for clarification; and that this should be clarified before action is taken on the Proposed Ordinances.

Council members raised additional questions regarding sewer and water service and regarding State Fire Marshal Office requirements.

(continued) **There were no additional public comments.**

The Public Hearing and public record were closed on both Proposed Ordinances.

M 069 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00”.**

Defer

**Action on
Proposed
Ordinance
to Amend
Land Use
Map**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

M 070 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COM-PREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS” (Change of Zone No. 1923) filed on behalf of Reed Farms, LLC (Tax I.D. No. 235-13.00-29.00, 29.01 and 235-14.00-570.00) (911 Address: 14888, 14866 & 14742 Gravel Hill Road, Milton).**

Defer

**Action on
CZ 1923**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

(Mr. Schaeffer was out of the room during the vote.)

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**

Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**

CU 2201 **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMP-
GROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND
LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY,
CONTAINING 8.0 ACRES, MORE OR LESS” (Conditional Use No. 2201)
filed on behalf of Pine Acres, Inc. (Tax I.D. No. 234-24.00-39.02 and 39.06)
(911 Address: 25491 Dogwood Lane, Millsboro).**

**Public
Hearing/
CU 2201
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on January 21, 2021 at which time action was deferred. On February 11, 2021, the Commission recommended approval with the following conditions:

- A. There shall be no more than 58 camping or RV sites within this Conditional Use area. No more than 6 guests shall be permitted per site.**
- B. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT.**
- C. The campground shall be connected to Sussex County's central sewer system.**
- D. The campground shall be connected to a central water system for domestic use and fire protection.**
- E. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- F. This expansion area shall be surrounded by a 50-foot-wide landscaped buffer.**
- G. Each campsite shall be permitted to have one accessory building of no more than 64 square feet with a maximum height of 10 feet. The accessory buildings shall be of uniform design and size.**
- H. Campground restrictions shall be submitted as part of the site plan review. These shall include "Quiet Hours" between 11:00 p.m. and 7:00 a.m. each day.**
- I. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.**
- J. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.**
- K. The Applicant shall identify all "dwellings" in the vicinity of the property that require a 400-foot buffer pursuant to Section 115-172.H(3) of the Sussex County Code. Except for the dwellings that are the subject of the approved variance in Board of Adjustment Case No. 12428, all campsites and cabins shall be a minimum of 400 feet from any dwelling that exists at the time of Final Site Plan approval.**
- L. All campsites must be 2000 square feet in size and at least 40 feet wide.**
- M. No cabin or campsite shall have direct access to any road outside of the boundaries of the campground. Access to the campground shall be gated and restricted so that the only access shall be from Radie Kay Lane.**
- N. There shall be no sales of campsites or camping units, including park models, RVs, travel trailers or cabins.**
- O. This expanded camping area shall comply with all of the requirements of Section 115-172H, with the exception of the variance approved in Board of Adjustment Case Number 12428.**
- P. No entertainment or similar organized activities shall be permitted in this expansion area of the campground.**

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CU 2201
(continued)**

- Q. The Final Site Plan shall include the conditions established by this Conditional Use No. 2208 and by Board of Adjustment Case No. 12428.**
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated January 21, 2021 and February 11, 2021.)

Jamie Whitehouse presented the application and noted the documents submitted into the record. Mr. Whitehouse also noted that the ownership of the property has changed since the application was first submitted (from Pine Acres, Inc. to Sun Leisure Point Resort, LLC).

The Council found that David Hutt, Attorney, was present on behalf of the application with Mark Davidson and Alan Decktor with the Pennoni Group, and Jackie Maguire representing Sun Leisure Point Resort, LLC (Sun Leisure). They stated that Sun Leisure is a resort community made up of manufactured homes (211), recreational vehicles (RVs) (317), and a marina (305) boat slips located off of Long Neck Road; that the application consists of two (2) parcels for a total of eight (8) acres; that the application is for 58 additional RV sites on the eight (8) acres; that Leisure Point was sold to Sun Leisure in 2019; prior to the sale, the original owner filed the Conditional Use application; that it was determined that a variance from the separation distance requirement would also be necessary for this property; that the variance request was heard by the Board of Adjustment on June 1, 2020 and the variance was granted on July 6, 2020; that the property is zoned AR-1 and a Conditional Use is required for a campground in addition to the special requirements of Sussex County Code 115-172 (H) – these requirements were reviewed and compliance to these requirements was explained; that there are 17 other manufactured home parks and three RV parks in the area; that this is the nature of the Long Neck area; that the nearest neighbors are three residences along Long Neck Road; that other uses in the area include manufactured home/RV parks, single-family residential homes and farmland; that a Service Level Evaluation request was submitted to DelDOT; that DelDOT's response was that traffic would be negligible; that access to the site would be by using the existing entrance into the proposed expansion off of Radie Kay Lane; that the site is located within a Growth Area – the Coastal Area according to the Comprehensive Plan; that the majority of the parcel is located in the Investment Level 2 Area according to the Strategies for State Policies and Spending, with a small portion in the Investment Level 3 Area; that public utilities are available for this site; that the site is located within a Sussex County sewer service area; that there are no wetlands on the property and the property is outside of a flood plain area; that the property is within a wellhead protection area; that an Environmental Assessment Report was completed; that the application meets the nine (9) special requirements for RV parks; that there is a 50 foot landscaped buffer proposed around the perimeter of the site; that a bathing facility and pool facility are proposed; that Sun Leisure is a gated resort; and that sites are to

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CU 2201
(continued)**

be available year-round; that this expansion of an existing RV resort contributes to the prosperity and welfare of the County by having another opportunity for guests to stay; that this portion of the site would be subject to all of DNREC's and the Sussex Conservation District's requirements for stormwater management; and that the application complies with the Comprehensive Plan and the Zoning Code. Mr. Hutt reviewed the preliminary site plan for the application site.

Mr. Hutt addressed some concerns/questions that have been heard:

- will Sun Leisure be conducting criminal and background checks – no, not in this section of Sun Leisure, only in the manufactured home park;
- will there be rules regarding the use of golf carts, i.e. who can drive them, insurance requirements, speed limits – yes, the existing rules will apply to this section of the park;
- will there be a curfew – yes, the Applicant has agreed to quiet hours which have been stipulated in the proposed conditions;
- will there be an access easement – there are 2 lots that exist that use the Leisure Point access (these are the lots from which the variance was sought) – along the entrance there is an opening that is 50 feet wide (a recorded easement so there are no structures or impediments) so that if the owners of those lots in the future want to stop using the existing access and want to build a parallel access next to it to get to their lots, that has been accommodated for.

Mr. Hutt noted the Applicant's request to amend Condition N recommended by the Planning and Zoning Commission to read as follows: "There shall be no sales of campsites." Mr. Hutt stated that Sun Leisure does sell RVs; these RVs are on a campsite and there is no separate showroom area. This request is made so that the expansion site will be consistent with the existing site.

Council members raised questions regarding the number of persons permitted per site and whether or not they have to be related and the proposed year-round use of the campsites, and concern that the sites could become a residence. The Applicant responded to these questions: (1) stating that the sites are limited to 6 registered people per site; however, with discretion, accommodations may be allowed for families, and (2) the License Agreement will not allow the claiming of a residency.

Public comments were heard.

There were no public comments in support of the application.

Debbie Fields, Jason DiGirolamo, Marilyn Wilson, Yul Lee, and James Russum spoke in opposition to the application: expressing concern about the lack of a requirement for background checks; stating that the new owners are not enforcing rules in the existing park; stating that they get no

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Hearing/
CU 2201
(continued)**

cooperation from Sun Leisure at all; stating the need for a lane for people to drive in and not be in line with campers; stating concern that people find loopholes to stay year-round; stating concerns about the environmental impact on Guinea Creek; stating concerns about drainage/flooding; stating concerns about a decline in property values with a RV park in the area; stating that the park used to be seasonal and now it is year-round; expressing concern about the traffic on Route 24 and adding RVs will make it more heavily congested; stating that the two properties most affected need complete access to their lands and that they have been locked out of their access; expressing concern about the dangers of Dogwood Lane due to a blocked view since the entrance is blocked by trees that need to be removed; stating concern that this application is impacting family and farm lands; and expressing concern about the possibility of more crime.

In response to questions and concerns raised by Council, the Applicant stated that the problems regarding access to the affected property will be addressed.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 071 21
Defer
Action on
CU 2201**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on Conditional Use No. 2201 filed on behalf of Pine Acres, Inc. (Sun Leisure Point Resort, LLC).

Motion Adopted: 5 Years.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Recess

At 4:35 p.m., Mr. Vincent announced a recess until 5:00 p.m.

Reconvene

At 5:00 p.m., Mr. Vincent reconvened the meeting.

CU 2201

Mr. Vincent asked Mr. Moore to read the short title of Conditional Use No. 2201 again for the purpose of formally deferring action.

**M 072 21
Defer
Action on
CU 2201**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Conditional Use No. 2201 filed on behalf of Pine Acres, Inc. (Sun Leisure Point Resort, LLC).

Motion Adopted: 5 Years.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**Public
Hearing/
CZ 1891
CZ 1892
and
CU 2193**

A combined Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 6.4 ACRES, MORE OR LESS” (Change of Zone No. 1891), the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 8.53 ACRES, MORE OR LESS” (Change of Zone No. 1892) and the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (128 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 6.4 ACRES, MORE OR LESS” (Conditional Use No. 2193) filed on behalf of Chappell Farm, LLC (Tax I.D. No. 235-23.00-1.02 (portion of) (911 Address: 30511 Cave Neck Road, Milton).

The Planning and Zoning Commission held a Public Hearing on these applications on January 21, 2021 at which time action was deferred. On February 11, 2021, the Commission recommended approval of these applications with the following stipulations attached to the Conditional Use:

- A. The maximum number of residential units shall be 128.**
- B. The Applicant or its successor, as Landlord, shall be responsible for the perpetual maintenance of the development’s roadway, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. All entrance, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. There shall be a vegetated or forested buffer of at least 40 feet in depth. This shall include existing vegetation that shall be expanded to include varying landscape stock, including trees that are at least 1.5 inch caliper at 5 feet of height and shrubs of 5-gallon minimum size. As proposed by the Developer, there shall also be a privacy fence along the common property line with Red Fox Run. All of this shall be shown within a landscape plan included as part of the Final Site Plan for the project.**

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CZ 1891
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and
CU 2193
(continued)**

- G. Construction activities, including site work and deliveries, shall only occur between 7:30 a.m. and 7:00 p.m. Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- H. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- I. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- J. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- K. The interior street design shall meet or exceed Sussex County's street design requirements.**
- L. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.**
- M. Recreational amenities shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family building.**
- N. A Certificate of Occupancy will not be issued for commercial use buildings until the completion of the overpass.**
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated January 21 and February 11, 2021.)

Jamie Whitehouse presented the application and noted the documents submitted into the record.

The Council found that John Paradee, Attorney, was present with Michael Riemann and Christopher Duke of the Becker Morgan Group, and Christian Hudson and Jamin Hudson, Principals of Chappell Farm, LLC. Mr. Riemann presented a brief 3D visualization of the proposed project, showing two commercial pads that front on Route One, one for a proposed pharmacy or retail and one for a convenience store with fuel sales, a mixed use building (a 3-story building with some boutique retail on the ground level and 2 levels of multi-family above), a proposed fitness center, a pool facility, multi-family buildings, a playground, stormwater facilities, pedestrian walkways, a mini-storage commercial facility, and a gate-house going into Red Fox Run.

Mr. Riemann, Mr. Duke, and Mr. Morgan reported on the proposed project stating that the site contains approximately 15 acres of property along Route One and Cave Neck Road, that Red Fox Run is to the north of the property and Paynter's Mill is to the south; that there are existing commercial uses on the property; that utilities are available to the site – sewer and water; that the project started in 2018 and they held a lot of community meetings and performed a lot of community outreach; that some concerns were raised

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Hearing/
CZ 1891
CZ 1892
and
CU 2193
(continued)**

including a right-in right-out access on Roue One, buffers between the project and Red Fox Run, light glare, the proposed location of the pool amenities and playground near Red Fox Run, connecting sidewalks and pads, timing of commercial pads on Roue One relative to the proposed interchange, fencing and berms along Paynter's Mill, pedestrians crossing Cave Neck Road and utilizing amenities in Paynter's Mill, and a concern about condo'ing the project. Mr. Riemann reviewed the current plan for the project which is for 156 apartment units, split between the four multi-family buildings and the mixed use building with boutique retail; approximately 44,000 square feet of commercial – one pad for a convenience store with fuel sales and a second pad for a pharmacy or retail store; one access point would be a right-in from Route One; providing an interconnection to the property to the west; two access points on Cave Neck road; proposing 555 parking spaces, exceeding County requirements; adequate fire lane coverage throughout; the pool and playground facilities have been relocated to be further away from Red Fox Run; buffers were increased to 40 feet and fencing was added; re-designed the mixed-use building to improve visibility from Route One so that the commercial uses would be viable; increase the number of pedestrian pathways throughout; added an interconnection into Red Fox Run including a proposal to have a gated access; they are agreeable to working with Paynter's Mill to help install and support their installation of a fence and berm along the Paynter's Mill side of the project to dissuade people from crossing Cave Neck Road; buffer increased to 40 feet, with a mix of trees and plantings to include fencing; that a fence is also proposed along the western property line; that they have been awaiting DelDOT's interchange which elevates Cave Neck Road above Route One; that DelDOT's schedule is that they are in the design process between Fiscal Year 2020 and 2022, with construction between 2024 and 2026; that they have made sure their project integrates with DelDOT's; there will be a round-about at the proposed project's access point onto Cave Neck Road; that DelDOT is proposing to cul-de-sac the existing Red Fox Run access to eliminate that access directly onto Route One; that DelDOT's project is moving forward with or without this proposed project; the Applicant will be required to contribute to DelDOT's project; that the proposed project's access from Route One is not direct, it is off of a service road; that part of the application is for rezoning and the proposed zoning will fill the gap from C-3 zoning to MR zoning; that the proposed project is consistent with the area; that the proposed project is located in the Coastal Area according to the Comprehensive Plan; that the proposed zoning is consistent with the Plan; that the density proposed is 12 units per acre which is consistent with adjacent densities (all C-1, C-2, and C-3 adjacent zonings allow 12 units per acre as a matter of right; that density permitted in both the C-3 and MR zoning being proposed is 12 units per acre based on County Code; that they are requesting a density of 10.5 units per acre; that they propose full-time on-site management; that a traffic study was performed; that they have provided a copy of the DelDOT approved Traffic Impact Study (TIS); that there was a typo in the original TIS that had the number of apartments units incorrectly and that the traffic study has been corrected and DelDOT has

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Hearing/
CZ 1891
CZ 1892
and
CU 2193
(continued)**

issued a revised letter and that 156 total apartment units is the corrected number; that there are 7 DelDOT projects in the area that the Applicant will be contributing towards; that the project will be phased and that they made a commitment at the Planning and Zoning Commission public hearing that they would construct the apartment side of the project as Phase One and they would not do the construction of the commercial pads until the interchange is open to the public and they remain committed to that; that their calculation of the density is correct; that the difference in apartment units from 94 units to 156 units and the effect on trip generation on the overall site would be immaterial and this proved true in the updated DelDOT analysis; that the methods used to estimate trip generation for land development are well documented industry standards; and that the difference between DelDOT's updated traffic study and the original study was only about 5 percent in total trip generations.

Public comments were heard.

John Snow, Christian Hudson and Jamin Hudson spoke in support of the application. They stated that the project was modeled a lot after The Village of Five Points; that there was public outreach for comments and concerns and that they worked with neighbors and made changes to the plan; that they try to mitigate any affects on area properties and roadways; that the project will provide affordable housing in the County; and that the proposed retail activities on the site will keep people off of Route One.

Jeff Stone (representing SARG - Sussex Alliance for Responsible Growth), Rich Borasso, Rita Dumain, Terry August, John Saul, Eul Lee, and Valerie Wood spoke in opposition: referencing the density proposed and how it was calculated; traffic generation and its impacts on the residents and visitors; the long term implications of the Route One corridor; that if the Council should defer a decision on this development until the grade-separated interchange at Cave Neck Road and Route One is completed; that if the Council should determine to move forward, SARG is asking that the approval of the rezonings be deferred and that the conditional use application be denied; that the methodology used to calculate the density of this project is incorrect and if approved, would allow a density far exceeding anything in the area; stating that the Traffic Impact Statement and the Traffic Impact Study Review Letter originally provided to the County and used as the basis for review by the Planning and Zoning Commission was not accurate and was based on incorrect information, did not accurately project the impacts of the project on area roads and intersections, and the information now provided to the Council has been amended but has not received Planning and Zoning Commission review; that the Route One corridor from Minos Conaway to Milton is depicted in the Comprehensive Plan as an overwhelmingly low density development area yet many of the recent development proposals have been for high density development, both residential and commercial; that the trips generated by this project are undercounted and that the traffic will multiply by a measure of six-fold as a

**Public
Hearing/
CZ 1891
CZ 1892
and
CU 2193
(continued)**

result of this project; that the County must demonstrate the will to support the Comprehensive Plan and make a clear determination now as to what the character of this corridor will be before it is overwhelmed by development following the construction of the interchanges at Minos Conaway, Cave Neck Road and Route 16; that the proposed project exceeds permitted density for multi-family structures in MR zoning; that the proposed project is not consistent with the surrounding land use; that they now propose a different phasing plan than what was proposed to and made a condition of approval by the Planning and Zoning Commission; that this important corridor section needs a true corridor plan; that approval of these applications will set the tone for future development along this corridor; that Red Fox Run is the community most impacted by the development; that the intersection is already accident-prone; that the proposed density is not consistent with the surrounding area; that the density calculation is erroneous and flawed; that the decision to approve the Conditional Use will set an unwanted precedent for the SR-1 coastal corridor; that the phasing plan reflecting that the Applicant would not do the construction of the commercial pads until the interchange is open is not included in the TIS; add a condition that the commercial use occupancy be delayed as has been proposed; clarify how density was determined and work within the bounds of the permitted density for multi-family dwellings within a MR District; that a density of 12 is too high for the area; engage with the Applicant and DelDOT to assure the accuracy of the TIS and provide the County and the public with an accurate assessment of the traffic impacts created by this project over the next 5 years based on the approval; that there is concern about the County's project review process; commenting on reasons for approval given by a Planning and Zoning Commission member; concerns that DNREC did not submit comments for the PLUS review; stating that Council should be sufficiently satisfied with the references or lack thereof of the Applicant's attention to the source water protection ordinance in compliance with requirements of the Delaware Source Water Protection Law, especially when one of the proposed uses will require a fuel tank on the site; stating that most of the homes in Red Fox Run are located on this same excellent ground water recharge area for their well water and they want assurances that it will be protected; that the entrance and exit of Red Fox Run to Route One fails every day and it will not get better; that the residents of Red Fox Run ask for the County's assistance in working with the Developer and DelDOT to assure that the Final Site Plan for Chappell Farm and the grade separation preserves and promotes the welfare and safety and interests of their residents and they want assurances that the connection road will be put in and the interconnection closed off, and they want assurance that before the grade separation goes in, that the road does not go in and Red Fox Run becomes a short cut from Route One southbound to Cave Neck Road; that the Planning and Zoning Commission did not give proper and appropriate weight to the character of the surrounding area; that the area is not urban as stated by one of the Commission members; that the Applicant is proposing 20 dwelling units per acre; that in Paynter's Mill, there is a broad expanse of green space and the project has nowhere near the density of the planned density in the proposed

**Public
Hearing/
CZ 1891
CZ 1892
and
CU 2193
(continued)**

project; that you cannot consider an increase in density without considering the area; that during the Commission's vote on February 11th, one Commission member stated that the increased density in the area impacts nobody as DelDOT is constructing a fly-over overpass at the intersection of Cave Neck Road and Route One and this statement defies logic and reason; questioning a gas station in the area; noting discrepancies in the online packet for this application, the staff analysis, and the application; and that the proposed project is irresponsible development in this area. Ms. Wood noted that Mr. Schaeffer should recuse himself from the discussion and vote on this project.

There were no additional public comments.

The Public Hearing and public record on all three applications were closed.

**M 073 21
Defer
Action on
CZ 1891**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to defer action on Change of Zone No. 1891 filed on behalf of Chappell Farm, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 074 21
Defer
Action on
CZ 1892**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to defer action on Change of Zone No. 1892 filed on behalf of Chappell Farm, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 075 21
Defer
Action on
CU 2193**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to defer action on Conditional Use No. 2193 filed on behalf of Chappell Farm, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 076 21
Go Into
Executive
Session**

At 7:14 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session to discuss a matter relating to pending litigation.

Motion Adopted: 5 Yeas.

M 076 21

(continued)

Vote by Roll Call:

**Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Executive Session	An Executive Session of the Sussex County Council was held at the Carter Partnership Center at Delaware Technical Community College to discuss a matter relating to pending litigation. The Executive Session concluded at 7:53 p.m.
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M 077 21 **At 7:55 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley,**
Reconvene **to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Absent; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

E/S Action **There was no action on Executive Session matters.**

M 078 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to adjourn**
Adjourn **at 7:55 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Absent; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

Robin A. Griffith
Clerk of the Council

{An audio recording of this meeting is available on the County's website.}