

MINUTES OF THE REGULAR MEETING OF NOVEMBER 13th, 2024

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, November 13th, 2024, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Lauren Devore – Planner III, Ms. Ann Lepore – Planner I, Ms. Ashley Paugh – Planner Tech and Ms. Jessica Iarussi – Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Butler and carried unanimously to approve the Agenda as revised. Motion carried 5-0.

Motion by Ms. Wingate, seconded by Mr. Collins, to approve the Minutes of September 11, 2024, and October 9, 2024. Planning and Zoning Commission Meeting as circulated. Motion carried 5-0.

PUBLIC COMMENT

The Commission found that no one was present who wished to provide public comment.

OTHER BUSINESS

2022-03 Paradise Meadows

Final Subdivision Plan & Landscape Plan

This is a Final Subdivision Plan and Landscape Plan for the establishment of a cluster subdivision to consist of one-hundred and ninety-one (191) single-family lots, private roads, open space and proposed amenities to include pergolas, a clubhouse, in-ground pool and tot lot. The Preliminary Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Thursday, November 17th, 2022, subject to nineteen (19) Conditions of Approval. The subject property is located on the south side of Cave Neck Road (S.C.R. 88), approximately 1.3 miles east of the intersection of Cave Neck Road (S.C.R. 88) and Diamond Farm Road (S.C.R. 257) in Milton, Delaware. The Final Subdivision and Landscape Plan comply with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 235-21.00-182.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan & Landscape Plan. Motion carried 5-0.

2020-15 The Estuary at Oyster Rock (A.K.A. Oyster Rock Phase 3)

Final Subdivision Plan & Landscape Plan

This is a Final Subdivision Plan and Landscape Plan for the subdivision of a 28.80-acre +/- parcel of land into twenty-one (21) single-family lots as part of a proposed standard subdivision with private roads, open space, stormwater management, existing/planted buffers and other site improvements. The Preliminary Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Thursday, May 13th, 2021, subject to twelve (12) Conditions of Approval. Staff further note that the Application was approved by the Sussex County Council for a Time Extension Request of 6-months pursuant to §99-40 of the Sussex County Code on Tuesday, May 21st, 2024, of which the Application's expiration date was extended from 5/13/2024 to 11/13/2024. Staff are in receipt of a Wetlands Delineation Report from the Applicant which details the jurisdictional status of wetlands within the subject property, which have interpreted in light of recent federal approvals and also describes compliance with County Resource Buffer requirements. It should be noted that this Plan pre-dates the current and more recent Drainage and Resource Buffers Ordinance (Ordinance No. 2852) and therefore is subject to the provisions of the previous Ordinance as it existed when the Plans were originally received (Ordinance No. 521). The property is located on the north side of the existing Oyster Rock Subdivision with access off Sandbar Court, approximately 0.61-mile northeast of Coastal Highway (Route 1). The Final Subdivision and Landscape Plan comply with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 235-16.00-45.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan & Landscape Plan. Motion carried 5-0.

S-22-16 Village Center - Cottages

Preliminary & Final Site Plan

This is a Preliminary & Final Site Plan for the construction of one-hundred and two (102) Multi-Family Cottages and other site improvements. Conditional Use No. 2359 to allow for multi-family (102 units) was approved by the Sussex County Council at their meeting of Tuesday, December 5th, 2023, through Ordinance No. 2964. The property is located on south side of Gills Neck Road (S.C.R. 267). The Preliminary and Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: MR (Medium Density Residential District). Tax Parcel: 335-12.00-3.00 (p/o). Staff are in receipt of all agency approvals and the Plan is therefore eligible for both preliminary and final approvals.

Mr. Robertson stated for the record that this is appropriate to be on for Preliminary & Final Site Plan approval based on the current approvals that are in place; that this is also the subject of a public hearing this afternoon with regard to the design of Stockely Blvd., that if you're going to make a motion to approve the preliminary and final site plan, I would just add that it's subject to possible future revision regarding the design of Stockely Blvd.; that if something changes as a result of the public hearings, the recommendation of Planning and Zoning and the action of Council County later on, then it would require the Applicant to submit a Revised Final Site Plan.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary & Final Site Plan with the stipulation that the plans may be resubmitted and amended later based on the public hearing. Motion carried 5-0.

2021-10 Graywood Springs

Request to Amend Conditions of Approval (Condition K)

On July 12th, 2024, the Planning and Zoning Department received a written request to amend Conditions of Approval for the Graywood Springs (2021-10) Subdivision. Graywood Springs is a cluster subdivision consisting of thirty-eight (38) single-family lots to be located on the east side of Oyster Rocks Road (S.C.R. 264). The Plan received Final Subdivision Approval from the Planning and Zoning Commission at their meeting of Thursday, April 20th, 2023. Specifically, the request is to amend Conditions “K” of the Conditions of Approval as follows:

Condition K – *“There shall be sidewalks on at least one side of the streets and the sidewalk system shall connect with DelDOT’s multi-modal path.”*

The Applicant requests that this “Condition K” be revised to remove the requirement for connection to the to the multi-use path and terminate the sidewalk at the DelDOT improvements (Permanent Easement).

The Applicant contacted the Planning & Zoning Office submitting the request asserting that DelDOT currently has no plans to install a multi-use path on Oyster Rocks Road. The property is located on the east side of Oyster Rocks Road (S.C.R. 264) approximately 0.45-mile northeast of Coastal Highway (Route 1) Tax Parcel: 235-16.00-40.00 Zoning: AR-1 (Agriculture Residential District). Staff have requested confirmation from DelDOT regarding any pending or proposed projects along this portion of Oyster Rocks Road and have received confirmation from DelDOT that there is no plan for a multi-modal path on Oyster Rocks Road at this time.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Requested Amendment of Conditions of Approval (Condition K). Motion carried 5-0.

Lands of Todeso Associates, LLC

Minor Subdivision Plan off an existing 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed (30) foot wide ingress/egress access easement. Proposed “Parcel A” will consist of 1.00-acre +/- and the residual lands (“Parcel B”) will contain 2.03-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the northeast side of Coastal Highway (Route 1) opposite the intersection with Coastal Highway (Route 1) and Postal Lane (S.C.R. 283). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 334-6.00-84.00. Zoning: C-1 (General Commercial District). Staff are in receipt of all agency approvals and would like to note that all Commissioners were given a copy of the Revised Subdivision Plan with the changes.

Mr. Robertson stated that for the record the Revised Subdivision Plan shows a 30-ft easement now, instead of the 22.62-ft that was stated while reading the description.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement. Motion carried 5-0.

Lands of B&B Shore Properties

Minor Subdivision Plan off an existing 60-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off an existing 60-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 9.3977-acres +/- and the residual land will contain 60.3323-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the west side of North Oak Grove Road (S.C.R. 549) approximately 0.34-mile north of West Stein Highway (Route 20). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 531-11.00-3.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 60-ft easement. Motion carried 5-0.

Lands of Benner Family Farm, LLC

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan and a Lot Line Adjustment Plan for the creation of four lots (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 0.805-acre +/-, proposed Lot 2 will consist of 2.494-acres +/-, proposed Lot 3 will consist of 3.453-acres +/-, proposed Lot 4 will consist of 1.879-acres +/-, and the residual land will contain 31.921-acres +/- . Lots 1, 2, 3 and residual lands will have access through the proposed 30-ft wide ingress/egress easement. Lot 4 shall have single access from Greenhurst Farm Road (S.C.R. 612A). A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the west side of Shawnee Road (S.C.R. 36) and the north side of Greenhurst Farm Road (S.C.R. 612A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 430-5.00-1.00 & 430-2.00-13.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Jesnel, LLC

Minor Subdivision Plan off a proposed 50-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.2175-acres +/-, Proposed Lot 2 will consist of 1.1002-acres +/-, Proposed Lot 3 will consist of 1.1924-acres +/-, Proposed Lot 4 will consist of 1.7050-acres +/-, and the residual land will contain 4.5380-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located off an existing 50-ft. easement from the north side of German Road (S.C.R. 524). The Minor Subdivision Plan complies with the Sussex County Zoning and

Subdivision Codes. Tax Parcel: 231-13.00-68.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off an existing 50-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of King Development, LLC

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.10-acres +/-, Proposed Lot 2 will consist of 1.76-acres +/-, Proposed Lot 3 will consist of 1.80-acres +/-, Proposed Lot 4 will consist of 1.70-acres +/-, and the residual lands will contain 2.26-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the south side of Brick Granary Road (S.C.R. 217). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-7.00-48.00 & 138.01. Zoning: GR (General Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Rony Lopez Mazariegos

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.00-acre +/-, Proposed Lot 2 will consist of 1.00-acre +/-, and the residual lands will contain 5.62-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the west side of Shawnee Road (S.C.R. 36). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-8.00-8.03. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Lee A. and Mary L. Robinson

Minor Subdivision Plan & Lot Line Adjustment off of a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 13.27 acres +/- and the residual lands will consist of 16.99 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the north side of Conleys Chapel Road (S.C.R. 280B). The purpose of this Minor Subdivision & Lot Line Adjustment is to subdivide Parcel 40.00 and to allow for the conveyance of land into the Anchors Run Subdivision (through the Anchors Run (Expansion) (2023-01)) proposal. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-11.00-40.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals. Additionally, Staff request that the minor typographical error in the “Area Prior to Subdivision” calculation total be corrected from 30.16 acres +/- to 30.26 acres +/- for accuracy and clarity.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Newlin N. Street

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot A will consist of 8.402-acres +/-, Proposed Lot B will consist of 8.411-acres +/-, and the residual land will contain 10.822-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the east side of Beaver Dam Road (S.C.R. 595) and south side of Spruce Road (S.C.R. 595A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-31.00-4.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Sycamore Chase Expansion

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of three lots (3) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access. Proposed Lot A (TM # 134-18.00-53.00) will consist of 4.268-acres +/- and the residual land will contain 2.551-acres +/-, proposed Lot B (TM # 134-18.00-54.00) will consist of 5.238-acres +/- and the residual land will contain 1.597-acres +/-, proposed Lot C (TMP: 134-18.00-54.01) will consist of 14.787-acres +/- and the residual land will contain 3.034-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road and will be accessed through Sunrise Court within the Goodwill Farm Subdivision. The properties are located on the north side of Daisey Road (S.C.R. 370). The

Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 134-18.00-53.00, 54.00, & 54.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals and therefore the Plan is eligible for preliminary and final approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary and Final Minor Subdivision Plan off an existing 30-ft easement. Motion carried 5-0.

Lands of Yoder Properties, LLC

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 0.758-acres +/-, Proposed Lot 2 will consist of 0.758-acres +/-, Proposed Lot 3 will consist of 0.758-acres +/-, Proposed Lot 4 will consist of 2.056-acres +/-, and the residual land will contain 0.937-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the east side of Appels Road (S.C.R. 626), approximately 2,100-foot south of Shawnee Road (S.C.R. 36). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-5.00-55.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

2023-01 Anchors Run (Expansion)

A Cluster subdivision to divide 180 acres +/- into three-hundred and fifty-six (356) single family lots (for an addition of 91 lots to the existing and previously-approved Anchors Run Subdivision) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the east side of Beaver Dam Road (S.C.R. 285) and the north side of Conleys Chapel Road (Route 280B), approximately 0.40 mile north of Stockley Road (S.C.R. 280). 911 Address: N/A. Tax Map Parcel: 234-6.00-19.00, 20.01 & 234-11.00-40.01, 40.02 and p/o 40.00.

The Commission discussed this application which has been deferred since September 11, 2024.

In relation to 2023-01 Anchors Run (Expansion). Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

2023-05 Lockhaven Subdivision

A standard subdivision to divide 81.84 acres +/- into eighteen (18) single-family lots, to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the west side of Round Pole Bridge (S.C.R. 257), approximately 0.48 mile west of Hudson Rd. (S.C.R. 258). Tax Parcel: 235-15.00-34.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since October 9, 2024.

In relation to 2023-05 Lockhaven Subdivision. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

C/U 2454 H&K Group LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 ACRES, MORE OR LESS. The property is lying on northwest side of Shiloh Church Road (Rt. 74) approximately 0.38 mile west of East Trap Pond Road (Rt. 62). 911 Address: N/A. Tax Map Parcel: 232-8.00-44.01. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since October 9, 2024.

Mr. Butler requested that Mr. Robertson read the motion on his behalf.

Mr. Butler moved the Commission to recommend approval of C/U 2454 H&K Group, LLC for a borrow pit based upon the record made at the public hearing and for the following reasons:

1. This application is for a 269.07-acre borrow pit operation within a 309.6-acre site. The excavated area will not exceed 195.83 acres, more or less.
2. A need exists in the area for dirt, sand, and gravel. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
3. The borrow pit is within a much larger wooded parcel leased by the Applicant. The preserved woodlands will provide an extensive buffer between the borrow pit operations and adjacent properties and roadways. It is not likely to be visible from nearby homes or roadways. This is an appropriate location for this use.
4. Based upon information in the record, the area used for burrow pit operations and processing will be at least 1,000 feet from Shiloh Church Road and there will be approximately 1,700 feet between these operations and the nearest off-site home (not including an abandoned dwelling approximately 230 feet away).
5. The Applicant will provide dust control to keep the area roadways free of dirt and dust from trucks leaving the site.

6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or neighboring properties. DelDOT has also stated that the use will have a negligible impact on area roadways.
7. The property contains approximately 17.19 acres of non-tidal wetlands. The proposed use will create a minimum 50-foot-wide buffer from these wetlands and will obtain a permit from the U.S. Army Corps of Engineers for any crossing of these wetlands.
8. As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety, and welfare of the current and future residents of the County.
9. The use is subject to approvals from State Agencies including DelDOT and DNREC.
10. This recommendation for approval is subject to the following conditions and stipulations:
 - a. No materials shall be brought from off the site for processing, mixing or similar purposes.
 - b. The excavated area of the borrow pit shall not exceed 196 acres.
 - c. Water or a water truck shall be available to control dust from road traffic when conditions require.
 - d. The only entrance to the pit shall be a paved road from Shiloh Church Road. The entrance shall be fenced or gated to prevent access, but the gate shall be set back at least 50 feet from Shiloh Church Road to allow trucks and equipment to pull completely off of Shiloh Church Road when the gate is closed.
 - e. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 - f. The hours of operation including any dredging shall be between the hours of 7:00 a.m. to 5:00 p.m. Monday through Saturday. No Sunday hours shall be permitted.
 - g. No materials shall be stored on any access roads or within any buffer area.
 - h. Fuel may be stored on-site, subject to all State and Federal regulations.
 - i. No “Jake Brakes” or compression release engine brakes shall be used within the site.
 - j. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 - k. The proposed pit will have a 3:1 side slope down to a 10-foot level bench that will be approximately near or 1 foot below the static water surface.
 - l. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance and protect existing and future developments.
 - m. The Applicant shall comply with all State and County erosion and sediment control regulations.
 - n. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
 - o. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50

feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation and there shall be “No Trespassing/Danger” signs posted at 200-foot intervals around the perimeter of the property.

- p. The non-tidal wetlands on the site shall be delineated and they shall have a buffer that is at least 50-feet-wide except where permitted wetland crossings exist.
- q. A violation of any of these conditions may result in the termination of this conditional use.
- r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Ms. Wingate to recommend approval of C/U 2454 H&K Group, LLC for the reasons and the conditions stated in the motion. Motion carried 3 -2.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – no, Mr. Butler – yea, Chairman Wheatley – no

C/U 2490 Mason Hayes

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTIFAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.45 ACRES, MORE OR LESS. The property is lying on the northeast side of Lincoln Street, and the south side of Jefferson Street (Rt. 1B), at the intersection of Lincoln Street and Jefferson Street within the Rehoboth Manor subdivision. 911 Address: 20455 Lincoln Street, Rehoboth Beach. Tax Map No. 334-19.08-164.00

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Collins moved the Commission to recommend approval of C/U 2490 Mason Hayes, for a 5-unit Multifamily residential development based upon the record made during the public hearing and for the following reasons:

1. The purpose of the GR zone is to provide for medium density residential use, the property is contained within the Coastal area, with close proximity to Route 1 and several similar developments that have been approved and built-in recent years.
2. The property is in an area with a more urban character, including a variety of single, multi-family, small and mid-sized businesses, commercial and office uses and higher density residential development near Route 1 and close to this proposed development. This conditional use is consistent with other zoning and land uses in the area. Multi-family development is appropriate for this property.
3. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan

also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.

4. In this case the purpose of the development is to provide 5 Townhome style residences which is similar to developments in the area.
5. The development is consistent with the Goals set forth in Chapter 8 of the Sussex County Comprehensive Plan regarding Housing.
6. This project is located in an area where the use is consistent with the existing and planned infrastructure.
7. There are no wetlands located on the property.
8. DelDOT has stated that the proposed multi-family conditional use will have a “minor” impact upon local area roadways.
9. As part of the Final Site Plan approval process, the stormwater management design will be reviewed and approved by the Sussex Conservation District, ensuring that the drainage system will be adequately designed and constructed to protect adjoining developments.
10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
11. There is no evidence that this project will adversely affect the neighboring properties, area roadways or community facilities.
12. This recommendation is subject to the following conditions:
 - a. There shall be no more than 5 units in the development.
 - b. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s determination.
 - c. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - d. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - e. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - f. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
 - g. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and between 7:00 am and 2:00 pm on Saturdays from September 15 until May 15 of each year. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - h. A 10-foot-wide forested buffer shall be installed along the eastern and southern sides of the development. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.

- i. Balconies and outdoor patios shall be designed such that they do not overlook neighboring residences.
- j. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall include the “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself.
- k. All lighting on the site shall not exceed 18 feet in height and it shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- l. The trash receptacles shall be standard residential roll-out containers for each of the 5 units. They shall be stored in enclosed areas on the site.
- m. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- n. The developer and then the condominium association or similar type of unified control shall be responsible for the perpetual maintenance of the project’s stormwater management facilities, erosion and sedimentation control facilities, roadways, and other common areas.
- o. The Final Site Plan shall depict or note these conditions of approval, and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2490 Mason Hayes for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2526 Common Ground Hospitality

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND FARMERS MARKET TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.3 ACRES, MORE OR LESS. The properties are lying on the south side of Zion Church Road (Route 20), approximately 0.50 mile west of the intersection of Zion Church Road (Route 20) and New Road (Route 391). 911 Address: 37051 Johnson Road, Selbyville. Tax Map Parcels: 533-11.00-103.00 & 533-11.00-104.00.

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Mears requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved the Commission to recommend approval of C/U 2526 Common Ground Hospitality for a restaurant and farmers market based upon the record made during the public hearing and for the following reasons:

1. The use will occur within a small portion of a 71.3-acre parcel that has had a farm market known as “Johnson’s Country Market” located on it for decades. The remainder of the property will remain in agricultural use. This application simply seeks to add a restaurant to the long-standing use of the property.
2. This use is an extension of ongoing agricultural use of the property and the surrounding farmland. The use promotes the agricultural industry in Sussex County.
3. There is a mixture of commercial and residentially zoned properties in the vicinity of this site, including GR General Residential, HR-1 High-Density Residential, MR Medium Density Residential, L1 Limited Industrial, C1 General Commercial, C2 Medium Commercial, C3 Heavy Commercial, and B1 Neighborhood Business. Surrounding uses include Harris Teeter, Signatures Restaurant, and the Freeman Arts Pavilion near the intersection of Route 20 and Route 54 as well as other commercial and business uses.
4. The site is located in the Coastal Area according to the Sussex County Comprehensive Plan. The Plan states that this type of use is appropriate within the Coastal Area.
5. DelDOT has stated that the use will have a “negligible” impact on area roadways and traffic.
6. The site will have sufficient areas for parking.
7. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
8. This recommendation is subject to the following conditions:
 - a. The use shall be limited to a restaurant and farmers market located on 2.61 acres of the site as shown on the site plan that was presented during the public hearing.
 - b. The restaurant shall not have a “drive-through” capability or design. Any expansion of the use may require an additional public hearing.
 - c. The hours of operation shall be from 10:00 am until 10:00 pm, daily.
 - d. Any security lighting shall only illuminate downward so that it does not shine on neighboring properties or roadways.
 - e. All dumpsters or trash receptacles shall be screened from the view of neighboring properties and roadways. The location of these items shall be shown on the Final Site Plan.
 - f. The consumption of alcoholic beverages shall be permitted within the restaurant and its patios on the site subject to the approval from the Delaware Office of the Alcoholic Beverage Control Commissioner.
 - g. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
 - h. The Final Site Plan shall be subject to the receipt of all applicable agency approvals, including but not limited to DelDOT, Sussex County Engineering, the Sussex Conservation District, and the State Fire Marshall.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2526 Common Ground Hospitality for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2542 Lauden Investments, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION “D” FOR C/U 2264 (ORDINANCE NO. 2813) RELATING TO THE PERMITTED DAYS AND HOURS OF OPERATION FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS. The properties are lying on the southeastern side of Savannah Road (S.C.R. 443A), approximately 0.77-mile northeast of Westcoats Road (Rt. 12). 911 Address: 1302 & 1304 Savannah Road, Lewes. Tax Map Parcels: 335-8.18-15.00 & 16.00.

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Collins stated that based on the circumstances, including the development of this area of Savannah Road as a business and office corridor, and the fact that this property is surrounded by the entrance to the high school and the high school itself along with another office next door, that the hours of operation are no longer necessary here. Therefore, Condition “D” of Conditional Use 2264 (Ord. No. 2813) should be deleted in its entirety.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to delete Condition “D” of C/U 2264 through C/U 2542 Lauden Investments, LLC for the reasons and the conditions stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2543 Toney Floyd & Charlette Speaks-Floyd

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS. The property is lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road (Rt. 5). 911 Address: 32404 Hersel Davis Road, Millsboro. Tax Map Parcel: 234-29.00-274.02.

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Mears requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved the Commission to recommend denial of C/U 2543 Toney & Charletta Floyd for the business of storing and hauling dirt and gravel along with the storage of work equipment and trucks based upon the record made during the public hearing and for the following reasons:

1. This is the second application for the same site, with the same applicant, based on the same sort of primary use. Conditional Use # 2436 had a public hearing earlier this year, with a recommendation for denial from the Planning & Zoning Commission based on 10 different reasons. Before the application was heard by the County Council, the applicant withdrew the application to allow time to clean up the site and come forward with a more specific application for more limited uses on the site. Unfortunately, many of the concerns that existed at the first hearing remain in existence today, and for that reason, it is recommended that the County Council deny this application.
2. The Planning and Zoning Commission remains highly supportive of small businesses that are appropriately located. This is a new business that will create noise, odor and dust. It was recently started in an area near other residential properties without the proper permits. This is neither the appropriate location nor the appropriate circumstances, to grant the requested conditional use. While the Applicant stated that there are other conditional uses in the region, none are as intensive as this use, and they all are more appropriately located than this use.
3. This application is for a dirt storage and hauling business that uses heavy dump trucks and similar equipment on a 2.31-acre property in an area that includes undeveloped land and residential development, but no other nearby industrial businesses like this one. This is not an appropriate location for the Applicant's intensive use, with heavy equipment, large truck traffic, and the noise and other impacts of the use.
4. There was conflicting testimony about the roadway used for trucks and other vehicles associated with the proposed use, and the Applicant has the burden of showing that it has adequate legal access to the site as part of its presentation. It is unclear what private road is being used and photographic evidence and testimony is conflicting on this point. There is nothing in the record to show that the Applicant has the legal right to use either roadway for heavy trucking activities. While the Applicant may be able to clear this up during the hearing before the County Council, this application should receive a recommendation for denial based upon this uncertainty about such an important aspect of the use.
5. There was substantial opposition to the Application from a large group of neighboring property owners with evidence showing and describing the current condition of the Property even after it was cleaned up following the prior hearing. There was photographic evidence and testimony that the noise associated with the use and environmental impacts from the use are significant. The impact of the proposed use is significant both visually and audibly. This is based upon information presented about the activity currently occurring on the site and it is not speculation. Despite what was shown in the Applicant's exhibits, trees have also been clear-cut in the area between the proposed use and the neighboring properties eliminating the natural screening that previously existed.

6. There is evidence in the record that the existing activity on the property and the proposed use and the materials, equipment, and vehicles associated with it, adversely affect the neighboring and adjacent properties.
7. The proposed conditional use does not promote the health, safety, and welfare of Sussex County and its residents.
8. The proposed use in this location does not satisfy the purpose of a conditional use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.
9. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use. As the Commission stated previously, there is a need for the type of business performed by the Applicant in Sussex County. But it must occur at an appropriate location. For this reason, County Staff should again be directed to cooperate with the Applicants if they find a different, more suitable location for their business. If another, more suitable location is found by the Applicants, then any necessary applications should receive expedited scheduling.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend denial of C/U 2543 Toney Floyd & Charletta Speakd-Floyd for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PUBLIC HEARINGS

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

C/U 2457 JBM Petroleum Service, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL BUSINESS TO SERVICE GAS STATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS. The property is lying on the northeast side of Clendaniel Pond Road (Rt. 38) approximately 0.50 mile southeast of Greentop Road (S.C.R. 225). 911 Address: 8913 Clendaniel Pond Road, Lincoln. Tax Parcel: 230-6.00-20.02.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Staff Analysis document, a copy of the applicant conceptual site plan, a copy of the DelDOT SLER, a copy of written comments received from the Sussex County Engineering Department Utility Planning Division and zero comments.

Mr. Dean Vincent, President of JBM Petroleum Service, LLC, spoke on behalf of himself that they have been in business for 12 years and have about 10 employees; that they build and service gas stations and fuel tanks, fuel pumps, and generators; that at their current property they store parts for the employees to pick up before heading out for the day; that there is no fuel stored on the property and employees take their vehicles home so there isn't any vehicle storage on the property; that the hours of operation are 7:30am to 4:00pm, but with 24 hour service calls; that they would like to have sign; that they live on the property and use the pole building for storage.

Upon there being no further questions Chairman Wheatley closed the public hearing.

Mr. Robertson read the motion at the request of Mr. Butler.

Mr. Butler moved the Commission to recommend approval of C/U 2457 JBM Petroleum Service, LLC for a small business to service gas stations based on the record made during the public hearing and for the following reasons:

1. The property is located on a parcel of land that is also occupied by the owner of the Applicant company. The Applicant proposes a small business that constructs and services other businesses that use petroleum products. Most of this activity occurs off-site at the location where the construction or servicing happens. This will basically be the office for this business, with some limited on-site, inside storage.
2. The site is located within the Low-Density Area according to the Sussex County Comprehensive Plan. This low-impact type of use is appropriate within this Area.
3. The property is zoned AR-1 Agricultural Residential. The use of the property for this limited, low-intensity business is generally consistent with the underlying agricultural zoning of the property.
4. The use will not adversely affect area roadways or neighboring properties.
5. This company provides a service to a wide variety of current and future of Sussex County businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County.
6. There was no opposition to this application.
7. This recommendation is subject to the following conditions:
 - a. This use shall be limited to a business that performs off-site service work for gas stations and other businesses that use petroleum. It shall occur within the existing dwelling and the pole building that is located on the site.
 - b. No manufacturing shall occur on the site.
 - c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - d. The hours of operation shall be limited to 7:00 am through 7:00 pm, Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited emergency situations.
 - e. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
 - f. There shall not be any outside storage of materials.

- g. Since this property also includes the Applicant's residence, the Final Site Plan shall clearly show the area where this business will be located on the property.
- h. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking within the property's setbacks.
- i. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2457 JBM Petroleum Service, LLC for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/Z 2020 Samuel Petersheim

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.86 ACRES, MORE OR LESS. The property is lying on the west side of Sussex Highway (Rt. 13), and on the east side of Gordy Road (S.C.R. 70) approximately 150 feet north of the intersection of Sussex Highway (Rt. 13) and Gordy Road (S.C.R. 70). 911 Address: N/A. Tax Map Parcel: 332-1.00-67.03

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's conceptual site plan, a copy of the staff analysis documents, a copy of a survey for the property, a copy of the DelDOT SLER, a copy of a letter from the Sussex County Engineering Department Utility Planning Division and zero comments.

Mr. Samuel Petersheim and Mrs. Glenda Petersheim, the applicants spoke on behalf of themselves that they want to sell storage buildings and display backyard properties, backyard structures, gazebos, pergolas, and pavilions; that the property is directly across from another commercial lot so there is no infringement of a residential area.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved the Commission to recommend approval of C/Z 2020 Samuel Petersheim for a change in zone from AR-1 "Agricultural Residential" to B-2 "Business Community" based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low-density and medium-density neighborhoods.
2. The site is in the Developing Area according to the current Sussex County Comprehensive Plan. B-2 zoning and the uses permitted in that District are appropriate in the Developing Area according to the Plan.
3. This location is in an area along Route 13 where there is a larger commercially zoned area of land that includes a large store complex and warehousing as well as other retail and commercial uses.
4. The rezoning will not adversely affect area roadways or traffic.
5. The rezoning will also not adversely affect nearby properties or property values.
6. No parties appeared in opposition to this Application.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 2020 Samuel Petersheim for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2545 J. G. Townsend Jr. & Co.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS. The property is lying on the east side of Kings Highway (Rt. 9) and the south side of Gills Neck Road (S.C.R. 267) at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: 16673 Kings Highway, Lewes. Tax Parcel: 335-12.00-3.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the conditional use site plan, a copy of the applicant's exhibit booklet, a copy of the presentations received from the applicant's, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the DelDOT SLER and we have received 129 responses in opposition and two responses that were classified as neutral and a petition with 369 signatures in opposition to the application.

Mr. David Hutt, Esq., of Morris & James, spoke on behalf of the owner, J.G. Townsend Jr., & Co., and the applicant, Jack Lingo Asset Management, that this application is in relation to two specific conditions of Conditional Use #2359, Ordinance #2964; that the original application was heard on May 25, 2023, for a Conditional Use to put multifamily dwellings of 102 units on about 25 1/2 acres of land and on December 5, 2023, County Council adopted Ordinance #2964; that 2 conditions are the reason for this case, Condition "H" and Condition "R"; that Condition "H" regarding interconnectivity is part of the original application, which references portions of the Sussex County Comprehensive Plan and the importance of interconnectivity between parcels of land within subdivisions and this is consistent with Comprehensive Plan, Section 12.2.3, which directly encourages interconnectivity between parcels; that it's also consistent with strategies 12.1.4.2 and 12.1.4.3, which states that the County should encourage interconnectivity between parcels and create multiple alternative methods for automobiles to reach a property; that the master plan reflected sound land use principles which puts the most intense activity, such as commercial or business activities and higher densities for residential uses closer to main roads; that the main roads that Sussex County and DelDOT refer to as arterials, major arterials and collector roads, and then the more distant one gets from those areas, the intensity and the density will generally speaking decrease; that when you have that type of sound land use planning and a singular owner it's an opportunity for the County to have master planning so that there can be things like shared stormwater management, pedestrian and vehicular interconnectivity; that when the master planning was done, the working assumption was that the intersection of Clay Rd. and Stockely Blvd., the road that extends from Kings Highway past the village center commercial and the village center cottages to the Governor's community, it was thought that that would be a signalized intersection; that DelDOT has decided that this would be a roundabout since the plan was developed, however it was always part of the plan to have that connection there; that at the May 2023 hearing, there was a rendering of the future village center commercial along that faces King's Highway, right behind that is the village center cottages, then behind that you can see an aerial image that includes the Governors Community; that this afternoon's application will be to create a four way intersection on Kings Highway with Stockley Blvd. directly across from Clay Rd., going past the future village Center commercial area, past the cottages and immediately to the entrance of the Governor's Community off of the future Stockely Blvd.; that Stockely Blvd. is intended to be a boulevard with islands in the middle and the travel lanes on either side; that those travel lanes extend to the property line and bisect the island and the travel ways; that the interconnectivity is the exact same interconnectivity that was shown on the Governor's site plan when that was presented in 2008 to the Planning Commission and County Council; that the same bisected road with an island in the middle extending to the property line and then ultimately out to an intersection with Clay Rd. is what has been shown on all site plans, record plans, and condominium declaration plans since this was laid out prior to 2008; that the discussions that occurred during the public hearings before the Planning Commission and County Council, the applicant asked Mr. Mumford at Davis, Bowen and Friedel to redesign that point of interconnection to address traffic calming measures; that the redesign was to address the concern that people would travel off of Stockely Blvd. and accelerate through Stockely Blvd. past the village center commercial and cottages area and then into the Governor's Community; that Davis, Bowen and Freidel came up with a plan to have the connection point at the Governors Community townhomes and then to the village center cottages; that Stockely Blvd. would have the islands and the sides of the road on either side and

pinch the roadway to be narrower and then the second addition to was to put in elevated crosswalks to calm traffic; that for reference, there are 323 record plots that relate to the Governor's Community, either record plans or condominium declarations, and 320 of them included the interconnectivity; that with respect to Section 9H, directly addressed in the Planning Commission's recommendation on this application it stated this interconnectivity has been part of the developer's master plan for this entire area and has been shown and approved by Sussex County at each stage of development; that along Gills Neck, Rd. the indication and evidence that once construction is completed, this interconnectivity must remain open to all vehicular traffic at all times without obstruction; that County Council adds obstructions to that condition as they ask for there to be a gate installed with card access; that the applicants request to the Planning Commission is to strike the language that County Council added to Condition "H" and then add language that states while the interconnection must remain open, to address the concerns about this becoming a shortcut where people will speed through these connected communities, the applicant shall install an elevated crosswalk as a traffic calming measure at the boundary line between the Governors Community and the cottage community; that Condition 9 R was added by County Council and is a landscape plan for the subdivisions frontage along Kings Highway and being consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan; that the only connection point that this application has with Kings Highway is the intersection of Clay Road and Stockely Blvd., and there wouldn't be any landscaping at that intersection to maintain consistency with the Lewes Scenic and Historic Byway Corridor Management Plan; that Mr. Mumford and the applicant met with The Byways Committee, the Chairwoman Mary Roth, suggested that rather than delete the condition that the condition be modified so that it relates to the portion of the property that is on Gills Neck Rd. which is a part of the scenic byway around the City of Lewes; that that's the change to the conditions that are different than the requested changes that were filed with the initial application, that the references to Kings Highway are deleted and in their place Gills Neck Rd. has been inserted.

Mr. Collins asked if there were any other traffic calming measures that could be put in place other than just the elevated crosswalk.

Mr. Hutt stated that there would be limited speed limits within the communities.

Mr. Mears stated that throughout the Comprehensive Plans one of the things the County strives for is master planning, and the current Master Plan Ordinance that is being worked on includes large parcels of property, that would include state maintained roads, wide boulevards as part of that larger property and connect the different residential uses and densities along with the commercial uses and office uses to the infrastructure; that in this case, Mr. Hutt has talked about, this property has been master planned since the 1990s; that we saw the applications come in one at a time, but there was a master plan that was showed informally to the County throughout that process from day one and of course that was modified as the different plans occurred, but it always anticipated that there would be interconnectivity; that when this was approved last time with this condition Ms. Hoey-Stevenson was very adamant that this remained in place because, the Senators language, said something like there should also be interconnectivity with the adjacent properties, but she anticipated that this might become an issue; that her intent was well known and would survive in perpetuity that the condition in its entirety was that this project is interconnected with the adjacent

commercial areas facing King's Highway, as well as the Governor's Community, which is itself interconnected with the Senators Community; that this interconnection is part of the larger plan for the residential development of Kings Highway and Gills Neck Rd.; that this interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from; that this interconnection or interconnectivity has been part of the developers master plan for this entire area and it has been shown and approved by Sussex County at each stage of development along Gills Neck Rd.; that this was very clear language that was used in putting together this condition; that the other thing to consider is if this is going to go by the master planning of the County and then it completely undermines that initiative by doing a redesign after going through the full master plan.

Mr. Robertson stated that one of the things that everyone is concerned with is the backup on Kings Highway and how this interconnectivity will move traffic off of Kings Highway sooner for these developments and make it easier for members of those communities to get in and out of them more efficiently.

Mr. John Wright, from the Department of Public Safety, EMS Division, spoke in regards to the application that artificial barriers and roadways ultimately affect response times for EMS; that EMS look to meet an 8 minute response time and with a 12.2 minute response time in some of the lowest fire districts; that with additional road barriers those times will be even slower.

Mr. Michael Wolfe, President of Governor's Condominium Association, spoke in opposition to the application that they want to discuss a siren activated gate arm; that they went through the community to find the best solution to this and this gate arm doesn't violate any rules, no laws, statutes or doesn't place a significant burden on the developer, rather, it's intended to protect the children, grandchildren, and adult residents in our neighborhoods; that The Planning and Zoning Staff Analysis dated November 4th, 2024 and posted in the record, fails to consider the safety of adjacent communities, in particular the Governor's Community and the amendment cites 2 reasons for requesting elimination of the gate; that providing card access to Governors residents would place a burden on the village center cottages, Property Owners Association, and property management; that such a burden could easily be mitigated either by modifying the shared services agreement between the two communities that's already in place for pond and open space management or by enabling the Governor's property management company to manage the gate resident system for control; that the second one is the installation of the gate goes against the spirit of interconnectivity as originally intended by the Kings Highway and Gills Neck Road master plan; that we maintain that interconnectivity must never take priority over safety; that no street connection was required for the Hawkeye Community and everyone keeps bringing up Kim Hoey-Stevenson and that's the community she lives in; that that was another JLAM project along Gills Neck Rd. clearly demonstrating that in Jay Lambs view the master plan, vehicle interconnectivity is an option, not a requirement; that the master plan sets forth design principles and strategies, advocates designs that are sensitive in their context, it does not mandate interconnectivity; that excessive traffic along Kings Highway and Gills Neck Rd. will continue to worsen with the influx of hundreds of new homes and associated vehicles; that shifting traffic through residential neighborhoods fails to provide the kind of comprehensive solution needed to prioritize the safety of residents, and promotes alternate forms of transportation, including walking and cycling; that

its Planning and Zoning and County Councils responsibility first and foremost to provide for the safety and welfare of the county residents under the law and within the framework of the Sussex County Comprehensive Plan; that many residents are concerned about the safety of their families and believe that eliminating the gate is a terrible idea; that JLAM indicates that they don't understand how to implement the card access requirement in their approval; that we have professionals in our community that are willing to work with them to develop the card access system; that they would consider removing the card access requirement as long as JLAM considers installing an emergency siren activated breakaway gate with a camera system so it can be monitored; that the community would also agree to oversee the management and maintenance of the gate arm; that the interconnectivity states its necessary for safe vehicular and pedestrian movement, but with the location of this gate if it is removed there is immediate danger to the people who utilize our clubhouse, pools, children's playgrounds and sports courts; that our community has written over 120 letters and submitted a petition with over 375 signatures explaining why eliminating the gate requirement would be dangerous to our residents.

Mr. Rick Hansen, of Collins Rd., spoke in opposition to the application that he was the former President of the HOA for Governor's during the transfer of the development from JLAM to Governors; that the gates are critical for the safety of Governors residents; that JLAM's opposition is to gate management and that the master plan has changed numerous times for that development corridor interconnectivity; that it's an ideology that makes great sense, but it doesn't always take into consideration the well-being of the people that it impacts; that there are other areas that gates and barriers to enter are able to go as long as it can allow access; that Kings Highway is a traffic disaster and all it's going to do when Stockely Blvd. opens up, is create a cut through; that when the ferry traffic lets out, Clay Rd. to Gills Neck Rd. will be a cut through because it's a perfect boulevard of two lanes each way; that the traffic circles aren't going to solve the traffic problem and the crosswalk button by the high school is going to impede the flow of traffic; that originally it was asked that JLAM during development, not open the connection except for bicycles, pedestrians and emergency vehicles and they refused; that it was said that the gate and interconnectivity was in the master plan; that sometimes maybe a master plan needs to be changed or modified; that when the residents of Governors asked for an emergency gate they refused, then we asked Planning & Zoning to support an emergency gate only and that was refused; that Governors asked JLAM for a monument sign and traffic calming features to be added to the one entrance and they have added it; that Mr. Hansen has emails between himself and Nick Hammonds about the design layout; that when we were asking for a gate he says you're not going to get a gate, so you have to do something to protect the kids; that was an idea of Governors presented to JLAM, not the opposite way; that JLAM states the interconnectivity is consistent with the master plan for the area; that the plan calls for interconnectivity between Senators, Governors and The Village Center; that Senators doesn't want connectivity, they wanted a gate; that the Hawkseye subdivision didn't want a gate to be connected to Senators and Governors doesn't want to be connected to The Village Center; that it's going to be people that don't live in the communities that want this cut through; that it's not the residents of the village center, they're going to have two exits, it's not Senators, they have two exits; that why should one developer be allowed to keep a plan that endangers the safety and quality of life of residents of a development they no longer control; that does this gate impact the traffic counts in the area and Anna Maria Fermato of DelDOT

said that it's not finalized as of yet so she cannot give an answer; that the need for interconnectivity does not mean only vehicular traffic, but it can be multimodal or pedestrian traffic.

Mr. Lee Thompson, of Governors Community, spoke in opposition to the application that he is speaking in terms of a parent who has children in Cape Henlopen High School, and when school starts and lets out traffic at that light is a problem; that there are times that a car can sit through several light cycles before being able to get through; that with the traffic backup, people will often drive the median to the light down Kings Highway and then turn onto Gills Neck Rd. and do a U-turn just to avoid sitting through the light even longer; that if there is an interconnected road that begins at Clay Road and Stockely Blvd. those same people who want to avoid this traffic light are going to use this interconnection as a cut through.

Mr. Howard Berger, of Collins Rd., spoke in opposition to that Section 13.2.4 of the County Plan talks about the disadvantages of interconnectivity and the dangers from through traffic; that the plan should see that roads are designed as to eliminate any problems from the interconnectivity; that the only change the developer is offering since County Council denied its proposal is the elevated walkway and some street narrowing; that nothing in the Staff Review or in the proposal effectively deals with the safety issue from through traffic.

Mr. Whitehouse stated for the record that the Comprehensive Plan has been quoted as the correct Section, but for the purpose of the minutes, there is no misinterpretation of the final paragraph says *“that there are a few perceived disadvantages relating to increased interconnectivity, such as increasing through traffic on residential streets. However, there are ways to plan and design connected roads better to avoid or minimize through-traffic impacts on residential streets. The focus needs to shift to encouraging Subdivision design that can provide a balanced mix of residential seclusion and local connectivity while maintaining commercial viability of the subdivision.”*

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Ms. Laura Wolfe, of Governors Community, spoke in opposition to the application that they are a tight-knit community and everyone looks out for each other; that if someone is speeding through the development or driving unsafely, then everyone will knock on each other's doors and let them know to slow down; that if you allow the interconnectivity there no longer is that recourse ability of knowing who to approach; that Governors Community is full of pedestrian traffic and children and allowing this interconnectivity will just put all of them in danger.

Mr. Garrick Hughes, a member of the Board of Directors of the Governors HOA, spoke in opposition to the application because his concern is that the increase in traffic on these roads is going to bring an increase in road repairs and at whose expense, since they are private maintained roads.

Mr. Jeff Irwin, of Collins Rd., spoke in opposition to the application that the roundabouts are not built for large vehicles and even firetrucks will have a hard time navigating the turns around the roundabouts.

Mr. Scott Beagle, a Governors resident, spoke in opposition to the application that if you allow people to have access to the community then there is a possibility of them trying to utilize the amenities that they see as they pass through.

Mr. Toby Port, of Collins Rd., spoke in opposition to the application that when purchasing their home, it was listed as a private community, but with this interconnectivity from Stockely Blvd. to Kings Highway it is now going to have a main public road running through the community; that people will take this cut through to avoid sitting through the traffic lights, which can be multiple cycles during busy times of the day or busy season.

Ms. Debbie Marie, of Temple Rd., spoke in opposition to the application that the biggest concern is that the residents of Governors will have to take on the cost of the maintenance of these roads of interconnectivity as they are classified as private roads and with that all of the increased cut through traffic will put wear and tear on them.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2545 J.G. Townsend Jr. & Co. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Ord. 24-05 Chapter 99

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE II, SECTIONS 99-9, “PUBLIC HEARING ON PRELIMINARY PLAT APPROVAL OR DISAPPROVAL” OF THE CODE OF SUSSEX COUNTY REGARDING DESIGN CRITERIA FOR ALL SUBDIVISIONS.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance as it was introduced to Sussex County Council on October 15, 2024, and five written comments which were included in the paperless packet.

The Commission found that Mr. Vince Robertson, Esq. spoke on behalf of the Ordinance. Mr. Robertson stated that the initiative derived from prior Comprehensive Plans; that the current County Council adopted the most recent Comprehensive Plan; that there was discussion regarding the implementation of the Comprehensive Plan; that there had been previous presentations to the current County Council regarding Development Design ideas; that there were five broad categories decided on in March 2023; that the categories consisted of Superior Design, Subdivision Standards, Forest Preservation and site work; that these categories were ultimately boiled down at a joint workshop with the Planning Commission and County Council in September 2023; that it was modified to include the Perimeter Buffer work that the Commission did and the Subdivision Standards, which is essentially the criteria of Chapter 99-9 C; that this was a subject that County Council felt strongly about; that they have addressed Resource Buffers and Perimeter Buffers; that currently in Chapter 99-9C there are 17 items of criteria to be considered; that over the past few years there has been question as to what it means to consider something; that at times, the

Commission receives very explanatory responses to the criteria; that other times the Commission receives a response that the Applicant will consider the criteria; that he questioned, what does it mean to consider; that there has been talk for some time about changing the criteria considerations, by clarifying them and making the criteria requirements rather than considerations; that an applicant will now have to satisfy the criteria, not just consider the criteria; that the Ordinance does not propose a re-write the Chapter, rather only a modification; that previously stated, the approval of a subdivision shall include consideration of the following; that now the Ordinance proposes for the approval of a preliminary plat, the applicant shall provide the following criteria are satisfied, and manner in which each one is satisfied through the design of the preliminary plat; that the Ordinance proposes that the burden be placed on the applicant to make a record that the project has satisfied all areas of criteria; that the first item of criteria is the integration of the proposed subdivision into the existing terrain and surrounding landscape; that this Ordinance proposes that the applicant is required to show that the proposed subdivision is integrated into the existing terrain and surrounding landscape; that it simply makes the previous consideration a requirement; that the second item of criteria is minimal use of wetlands and floodplains; that this criteria is also addressed with the recently adopted Resource Buffer requirements; that the new Ordinance now proposes that the applicant must comply with the Resource Buffer requirements; that the next item of criteria is preservation of natural and historical features; that the Ordinance has added to this criteria, as a result of the work performed that was related to the perimeter buffer conversations; that natural and historical features are preserved and forest fragmentation is minimized; that in addition, a forest assessment shall be conducted with a Forest Assessment Report to be included with the preliminary plat; that if woodlands or mature forest that contain high habitat value are found, these areas shall be conserved to the maximum extent possible; that they chose to use the term "Forest Assessment" and "Forest Assessment Report", as those terms are used in the Perimeter Buffer Ordinance; that the next item of criteria makes the consideration of the open space and scenic view consideration a requirement; that the consideration of the minimization of tree, vegetation and soil removal, has now been reworded to be a requirement; that the same has been done with the screening of objectional features from neighboring properties and roadways, which was reworded from a consideration to a requirement; that the next criteria is that supply of potable water to future residents for the proposed subdivision is safe and adequate for their use; that this criteria is already being complied with, by the submission of a Willing & Able to Serve letter; that the next criteria addresses the provision for safe sewage disposal; that the means and methods of sewage disposal are adequately addressed for the proposed subdivision; that this will be provided by a private provider, DNREC or Sussex County Sewer; that the next item of criteria addresses minimization of erosion and sedimentation; that it has been paired down to say that erosion and sedimentation is minimized and the methods and minimization are adequately identified; that the Ordinance is now requiring how the applicant will achieve this; that the next item is not necessarily in Chapter 99-9C, which relates to groundwater levels; that changes to groundwater levels are required to be minor; that groundwater recharge is maximized as a result of the proposed subdivision, and that the methods of both are adequately identified; that this criteria is currently in Code, but is worded differently; that; that this Ordinance adds the requirement that there will not be increased rates of runoff or increased risk of flooding onto adjoining properties from the design and construction of the proposed subdivision; that the methods used to achieve those criteria are adequately identified; that he felt it is a benefit to the applicant, to the public, and to the Commission; that the questions regarding runoff are asked all the time; that this will require

the applicant to answer those questions affirmatively; that the current Code already addresses the impact on property values; that the new Ordinance revised the wording to say that area property values will not be adversely affected; that the preservation and conservation of farm lands are addressed; that the new Ordinance has revised the wording a bit by stating that any active farmland adjacent to the proposed subdivision is adequately preserved through the design and construction of the proposed subdivision; that in many cases there are separation requirements from Agricultural Preservation areas; that if there is active farmland, the applicant must show how they are protecting and preserving that area; that the criteria relating to the impact on schools, public buildings and community facilities has now been revised to say that the applicant must consult with the local school district where the subdivision will be located; that currently Sussex County sends letters to the local school districts, whenever there is a land use application; that this provides notice on the front end, and will provide the opportunity for comment and bus stop locations; that the next criteria comes from the Memorandum of Understanding with DelDOT; that previously the Chapter stated that the effect on area roadways and public transportation must be considered; that it has now been changed to say the subdivision is either within an established Transportation Improvement District (TID) or the subdivision endeavors to maintain the current DelDOT level of service on all adjacent roads and intersections; that after the subdivision is completed and in now event will allow the level of service to degrade below a Level of Service D; that the new Ordinance will require the applicant to show that the proposed subdivision is compatible with area land uses, that there will not be any adverse impact on area waterways; that there will be safe and efficient vehicular and pedestrian movement within the site and to and from adjacent developed properties; that the new Ordinance adds the phrase regarding interconnectivity; and the Ordinance is not a complete re-write, only revised to make the previous consideration into requirements.

The Commission found that there were six present who wished to speak in relation to the proposed Ordinance.

The Commission found that Mr. Ring Lardner, P.E. with Davis, Bowen & Fridel, Inc. provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Jon Horner, Esq. on behalf of the Homebuilders Association of Delaware provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Rich Borasso spoke on behalf of the Sussex Preservation Coalition and provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Steven Sinclair spoke on behalf of the Sussex Preservation Coalition and provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Kenneth M. Usab, P.E. with Morris & Ritchie Associates provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, provided neutral comments and suggestions for the proposed Ordinance.

Mr. Robertson stated there has been some conversation regarding Forest Assessments and Forest Assessment Reports; that these terms are already defined within the Code, and the Code states that the reports are to be prepared and certified by a licensed landscape architect, certified arborist, or licensed forester, or a forester designated by Society of American Foresters as a certified forester.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Ord. 24-05 Chapter 99. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

Ord. 24-06 Open Space

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV, SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND CHAPTER 115, ARTICLES I & XXVIII, SECTION 115-4 “DEFINITIONS AND WORD USAGE” AND §115-220 “PRELIMINARY SITE PLAN REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING OPEN SPACE.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the

The Commission found that Director Jamie Whitehouse spoke on behalf of Ord. 24-06 regarding Open Space.

Mr. Whitehouse stated that the topic of open space, the joint Planning and Zoning Commission-County Council Development Design Initiative Workshop that was held on September 21st, 2023; that this this was one of the items identified in that joint workshop; that it is an 8-page Ordinance, open space is actually defined in two places, and much of the length of the current Ordinance is to address that in both places; that what the Ordinance seeks to do, primarily, is to change the definition of open space; that Mr. Whitehouse highlighted Lines 55-83 to summarize some of the main changes; that the first section lists the uses that are included in the definition of open space; that play areas still continue to be included in the definition of open space, but playgrounds and tot lots are not included in the definition of open space, and that specifically because the difference between play areas and playgrounds and tot lots is that they're improved, they have buildings and structures which reduces their openness; that its contrary to the very goal of what open space is; that this section also seeks to change tidal and non-tidal wetlands to “tidal and non-tidal wetlands” and renames them to “resources”, which aligns with the resource buffer Ordinances and the definitions in code that have already been adopted by County Council; that it removes sidewalks from the definition and removes spray irrigation areas; that lines 86 to 105 lists the uses that are not included in the definition of open space; that it expands the list of uses that are not included; that clubhouses, community buildings, recreational facilities including swimming pools, game courts, tot lots, playgrounds, pavilions and other similar facilities such as patios and impervious

recreational community facilities are now specifically excluded; that with the previous definition that the focus and intent is on physical man-made improvements and structures that by definition are not open; that Lines 104 to 105 in the proposed revisions are medians, boulevards, parking islands and other often narrow and unusable strips of land that are being excluded; that we've seen cases and examples where large areas of thin, narrow strips of land are included in the open space definition, and cumulatively that can be a large area of land that's not significantly usable; that there are 99 subdivisions that have been through the Planning and Zoning Commission and various states have approval of implementation; that we have Brentwood, Estates of Bridgewater, Tower Hill and North Star is currently pending, but it has a subdivision element that we wanted to look at due to its size; that if you look at the table, we plotted the open space in acres and then we looked at the percentage of the overall site that open space acreage reflects; that what we calculated, went into the drawings and measured the amenity area within those subdivisions and we subtracted it from the total amount; that if you look at Brentwood the total number of acres, there's over 100 acres of open space in that development representing approximately 60.1% of open space of the overall site; that the amenity came up as 2.17 acres which we subtracted, down to 98.45 acres and it reduced the overall percentage from 69% to 67.7%; that we wanted to replicate this across other subdivisions because there's a drop in open space associated with the changing the definition but, it was not mathematically significant; that another example was a development on Robinsonville Road formally known as Coral Lakes, chosen because of its size; that it has 77.90 acres of open space representing 50% of the site, we looked at the amenities and calculated all the area and amenities, including sports courts, a dog park, a trail system, amenities, clubhouse, and pool, and totaled all of it, as 3.302 acres, which would, if that was not counted in the definition of open space, that would reduce it down to 74.618 acres, which overall reduced the open space percentage from 50% down to 48.98%, which we wanted to show was not significant mathematically and it wouldn't put the development below the minimum requirement as outlined in the subdivision code; that the Ordinance in Lines 220 to 221 for multifamily and townhouse developments, the ordinance adds greater precision as to how open space is to be calculated, and historically, the Commission has seen site plans where the footprint of a multifamily building is shown and then for the purposes of open space, then for calculation of open space, it's as if you step out of the back door of a townhouse and then you're in open space, which is not how open space is practically experienced by those living in the dwellings; that what the Ordinance seeks to do is add greater precision and it removes the land area, within an area that's 40 feet from the front, 10 feet from the side and 10 feet from the rear of any multifamily or townhouse, it specifies that there is a rectangular area around that.

Mr. Robertson indicated that the intent was making multifamily dwellings consistent with single family dwellings; that if there was a subdivision, the person's 7,500 square foot lot would not count towards open space, but if it's treated as a condominium, a multifamily, there's no lot so the open space runs right up to the footprint of the building, so we just wanted to have an apples to apples open space calculation, and noted that the numbers were essentially just same setback numbers that you get on a lot size.

The Commission found that four people were present who wished to speak in relation to the proposed Ordinance.

The Commission found that Mr. Steven Sinclair spoke on behalf of the Sussex Preservation Coalition and provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Ring Lardner, P.E. with Davis, Bowen & Fridel, Inc. provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Jon Horner, Esq. on behalf of the Homebuilders Association of Delaware provided neutral comments and suggestions for the proposed Ordinance.

The Commission found that Mr. Kenneth M. Usab, P.E. with Morris & Ritchie Associates provided neutral comments and suggestions for the proposed Ordinance.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Ord. 24-06 Open Space. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Meeting adjourned at 8:20 p.m.

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