

MINUTES OF THE REGULAR MEETING OF MAY 20, 2026

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, May 20, 2026, 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 Madam Chair Wingate presiding. The following members of the Commission were present: Ms. Holly Wingate, Mr. Scott Collins, Mr. Jeff Allen, Mr. John Passwaters, and Mr. David Pettyjohn. Also, in attendance were Mr. Jamie Whitehouse – Director of Planning & Zoning, Mr. Vincent Robertson – Assistant County Attorney, Ms. Lauren Cecchine – Planning Manager, Ms. Ann Lepore – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Motion by Mr. Collins, seconded by Mr. Allen, and carried unanimously to approve the Agenda as circulated. Motion carried 5-0.

Motion by Mr. Collins, seconded by Mr. Passwaters, to approve the Minutes of April 15, 2026, of the Planning and Zoning Commission Meetings as circulated. Motion carried 5-0.

OTHER BUSINESS

S-25-01 Sussex CSG1, LLC (C/U 2354)

6-Month Time Extension Request for C/U

On April 28th, 2026, the Planning and Zoning Department received a request for a 6-month time extension for the establishment of a Solar Farm to be located within an Agricultural Residential (AR-1) District. The Conditional Use Application (Conditional Use No. 2354 Sussex CSG1, LLC) was approved by the Sussex County Council at their meeting of Tuesday, October 10th, 2023, subject to eleven (11) Conditions of Approval and the change was adopted through Ordinance No. 2955. Under §115-174 of the Code, *“Approval of a conditional use shall be valid for a period of three years after the date of approval and thereafter shall become null and void unless construction or use is substantially underway during said three-year period.”* Additionally, of further note is that the Preliminary Site Plan for the proposal (S-25-01) received both preliminary and final approval by the Planning & Zoning Commission at their Meeting of Wednesday, February 19th, 2025. At that time, the Department was in receipt of all required agency approvals including Letters of No Objection (LONO) from the Delaware Department of Transportation (DelDOT), Office of the State Fire Marshal, Sussex Conservation District and the Decommissioning Plan for the use. On April 28th, 2026, the Planning & Zoning Department received both the initial request for extension letter including a copy of the anticipated project schedule demonstrating that approval of the use will be substantially underway within 6 months of the expiration of the current approval. The Letter submitted by the Applicant’s legal representative notes that, *“It is anticipated that the facility will be “substantially underway by early 2027 and operational by Fall of 2027.”* The

current status of the project and anticipated project approval timeline are outlined in the Applicant's original request letter dated April 28th, 2026. The Applicant anticipates having all Agency Approvals in hand by August of 2026. Should the Planning and Zoning Commission recommend approval of the 6-month time extension request, the Application will be forwarded to the Sussex County Council for their final decision and approval of this request. If approved by the Sussex County Council, in accordance with §99-40(C)(3) of the Sussex County Code, the Application's expiration date will be extended 6 months from the previous approval deadline of October 10th, 2026, to April 10th, 2027. Tax Parcel: 532-20.00-14.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Allen, seconded by Mr. Passwaters, and carried unanimously to approve the 6 Month Time Extension Request. Motion carried 5-0.

2025-01 Howard Manor

Final Subdivision Plan

This is a Final Subdivision Plan for the addition of one (1) lot into the existing and previously approved Howard Manor Subdivision, for a standard subdivision to consist of twenty-three (23) single-family lots, private roads and open space. The existing Howard Manor Subdivision (recorded at PB 8, PG 614 and revised at PB 8, PG 779) consists of twenty-two (22) single-family lots as a standard subdivision that was approved in February of 1973. The project is proposed to be located on the south side of Atlantic Avenue (Route 26) and the northeast side of Diane Road, approximately .10-mile east of the intersection of Murray Road and Atlantic Avenue (Route 26) in Ocean View, Delaware. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval for the Subdivision. Tax Parcel: 134-11.00-184.00. Zoning: MR (Medium Density Residential District). Staff are in receipt of all agency approvals; therefore, the Plan is eligible for Final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Final Subdivision Plan as a preliminary and final. Motion carried 5-0.

2020-07 Main & MacNamara

Final Subdivision Plan

This is a Final Subdivision for the creation of a standard subdivision to consist of three (3) single-family lots off of an existing easement (Kraus Lane). The Preliminary Subdivision Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, August 24, 2023, subject to four (4) Conditions of Approval. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. The Parcel is located on a private road (Kraus Lane) off the northwest side of Townsend Road (S.C.R. 303).

Tax Parcel: 234-22.00-3.29. Zoning: AR-1 (Agricultural Residential). Staff are in receipt of all agency approvals; therefore, the Plan is eligible for Final approval.

Motion by Mr. Collins, seconded by Mr. Allen, and carried unanimously to approve the Final Subdivision Plan as a preliminary and final. Motion carried 5-0.

S-26-27 Cole World

Revised Final Site Plan

This is a Revised Final Site Plan for a proposed Food Truck to be operated from March 15 through October 15, 2026, with associated parking. The Parcel is comprised of 0.21 acre +/- with access from Bethany Loop. The Parcel is located on the south side of Bethany Loop, approximately 70 feet southeast of Cedar Neck Road (S.C.R. 357). The Planning & Zoning Commission last reviewed this Plan at their meeting on Wednesday May 6th, 2026, where the matter was deferred. Tax Parcels: 134-13.00-1843.00. Zoning: B-1 (Neighborhood Business District). The Revised Site Plan complies with the Sussex County Zoning Code (§115-69 (B) (25)). Staff are in receipt of all agency approvals; therefore, the Plan is eligible for final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Revised Final Site Plan as a preliminary and final. Motion carried 5-0.

S-26-17 Anthony & Jessica Savini

Final Site Plan

This is a Final Site Plan for business service and professional offices and storage for a general contracting and home construction company. Conditional Use 2519 was approved by the Sussex County Council on Tuesday, October 7, 2025, through Ordinance No. 4021. The Parcels are comprised of 5.57 acres +/- with access from an existing lane off of Shingle Point Road (S.C.R. 249). The Parcels are located on the northwest side of Shingle Point Road (S.C.R. 249). Tax Parcels: 235-25.00-33.00, 33.02, & 33.04. Zoning: AR-1 (Agricultural Residential District). The Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Staff are in receipt of all agency approvals.

Motion by Mr. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Final Site Plan as a preliminary and final. Motion carried 5-0.

S-25-67 Michael P. Justice

Revised Final Site Plan

This is a Revised Final Site Plan for two (2) proposed storage buildings (5,000 square feet and 8,000 square feet respectively), loading spaces, and other site improvements. There are existing buildings to be removed from the General Residential portion of the property. Staff note that the

Site was the subject of a previous Conditional Use Application (Conditional Use No. 1599) to establish the Contractor Equipment Storage and Yard use which was approved by the Sussex County Council at their meeting of Tuesday, April 12, 2005, subject to four (4) Conditions of Approval. The change was adopted through Ordinance No. 1768. The parcel is comprised of 3.02 acres +/- with access from Parker House Road (S.C.R. 362). The Parcel is located on the west side of Parker House Road (S.C.R. 362), approximately 0.54 mile northeast of Double Bridges Road (Rt. 54). The Revised Final Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 134-16.00-52.02. Zoning: C-1 (General Commercial District) and GR (General Residential District). Staff are in receipt of all agency approvals; therefore, the Plan is eligible for Final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Revised Final Site Plan as a preliminary and final. Motion carried 5-0.

S-26-28 The Crossings at Oak Orchard, LLC (A.K.A. Riverwinds)

Revised Preliminary Site Plan & Master Plan

This is a Revised Preliminary Site Plan & Master Plan for the addition of two (2) further lots (Lot No. 113 and Lot No. 114) for a total of 114 lots, into an existing and previously approved Manufactured Home Park known as Riverwinds. Riverwinds (F.K.A. Driftwood Park & Oak Orchard West) is a Manufactured Home Park containing one-hundred and twelve (112) units total that received approval through Conditional Use No. 677, which was approved by the Sussex County Council at their meeting of Tuesday, April 27th, 1982, through Resolution No. R 041 82. Staff note that the Site includes a recent Conditional Use Application, Conditional Use No. 2479 filed on behalf of The Crossings at Oak Orchard, LLC. The Application was approved by the Sussex County Council at their meeting of Tuesday, September 23rd, 2025, subject to four (4) Conditions of Approval. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code including Chapter 115 Section 172(G) pertaining to Manufactured Home Parks and all Conditions of Approval. The property is located on the south side of Devon Drive within the Riverwinds (F.K.A. Driftwood Park & Oak Orchard West) Manufactured Home Park, lying on the south side of Oak Orchard Road (Route 5). Tax Parcel: 234-29.00-222.03. Zoning: GR (General Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Revised Preliminary Site Plan & Master Plan as a preliminary, with final approval to be by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

S-26-23 Network Towers

Preliminary Site Plan

This is a Preliminary Site Plan for the construction and establishment of a 150-ft tall telecommunications tower (to include a 4-ft lightning rod), fencing, and other related site improvements. Staff note that subject to the provisions of §115-194.2(A) of the Code which requires the submittal of a Special Use Exception to the Board of Adjustment, the Site was the subject of a previous Application for a Special Use Exception (BOA Case No. 13141), which was approved by the Board of Adjustment at their meeting of Monday, December 8th, 2025. The property is lying on the northwest side of Hastings Farm Road in Seaford, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: AR-1 (Agriculture Residential District). Tax Parcel: 231-9.00-5.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Preliminary Site Plan, with final approval to be granted by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

S-26-22 Rio Motors

Preliminary Site Plan

This is a Preliminary Site Plan for a proposed 6,200 square foot building for use as a first floor 4,800 sq. ft. showroom, a 1,400 sq. ft. second floor office, and other site improvements. The parcel is comprised of 4.05 acres +/- with access from Dupont Blvd. (Rt. 113). The Parcel is located on the east side of Dupont Blvd. (Rt. 113), approximately 900 ft. north of Hickory Street (S.C.R. 405). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 433-6.14-4.00. Zoning: C-1 (General Commercial District). Staff are in receipt of all agency approvals; therefore, the Plan is eligible for Preliminary and Final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Allen, and carried unanimously to approve the Preliminary Site Plan as a preliminary and final. Motion carried 5-0.

S-24-05 Lands of Leslye A. Brossus

Preliminary Site Plan

This is a Preliminary Site Plan to allow for the establishment of a yurt, treehouse structure with a porch, two (2) bathhouse, covered seating area, covered picnic table, associated parking, landscaping and other site improvements. Staff note that the Site was the subject of a Conditional Use Application (Conditional Use No. 2323) filed on behalf of Leslye A. Brossus for a treehouse and yurt to be utilized for short-term rentals to be located within a General Residential (GR) District. The Sussex County Council approved the Application at their meeting of Tuesday, June 13th, 2023, through Ordinance No. 2928 subject to eight (8) Conditions of Approval. The property is located on Lot 45 within the existing Banks Acres Subdivision and lying on the south side of

Reading Street, approximately 0.14 mile south of Old Mill Road (Route 349) in Millville, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval for the use. Tax Parcel: 134-12.00-1198.00. Zoning: GR (General Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Preliminary Site Plan, with final approval to be granted by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

2021-24 Fishers Point Subdivision

Amenities Plan, Revised Final Subdivision Plan & Request to Amend Conditions of Approval

This is an Amenities Plan, Revised Final Subdivision Plan & Request to Amend Conditions of Approval for a previously approved standard subdivision to consist of forty-eight (48) Lots total, private roads and Open Space. Due to the size of the proposal, the previous Subdivision approval did not contain Amenities. However, the Applicant has since revisited the Plans and wishes to add Amenities to the Subdivision. Specifically, the proposal is to a 624 square foot pool house, inground pool, pool deck area, associated fencing and parking. Included in this request is a request to amend the Final Subdivision Plan to add the abovementioned Amenities elements, a request to Amend Condition “B” of the Conditions of Approval which currently requires that, *“approximately 5.30 acres of the Site remains as Open Space”* and amend this Condition to note that, *“approximately 4.188 acres of the Site remains as Open Space.”* Additionally, the request also adds a further Condition of Approval, Condition “S” which states, *“The approved Fishers Point Subdivision shall be revised to include a community amenity consisting of a swimming pool, pool house/pavilion and associated improvements, as shown on the Revised Site Plan. The amenity, including all associated recreational facilities and parking areas, shall be constructed and open for use by residents prior to the issuance of the 29th residential building permit within the subdivision, in accordance with §99-21(E) of the Code of Sussex County.”* The property is located on the southeast side of Stag Run Court within the existing Fishers Point Subdivision. The Revised Final Subdivision Plan, Amenities Plan & Request to Amend Conditions of Approval, aside from the revision of Condition “B” regarding the Open Space acreage totals comply with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval for the Subdivision. Additionally, staff note that the plan complies with the provisions of Ordinance No. 3062 relating to the updated Open Space calculations. Tax Parcel: 133-16.00-81.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, the Plans are eligible for Preliminary and Final approval.

Mr. Robertson read a motion into the record at Mr. Pettyjohn’s request.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Amenities Plan and the Revised Final Subdivision Plan, as a preliminary and final, and to approve the Request to Amend Conditions of Approval, specifically Condition B, so that it now states “approximately 4.18 acres remains as open space” and to add a new Condition S to state “the approved Fishers Point Subdivision shall be revised to include a community amenity consisting of a swimming pool, pool house/pavilion, and associated improvements as shown on the Revised Site Plan, the amenity including all associated recreational facilities and parking areas shall be constructed and open for use by residents prior to the issuance of the 29th residential building permit with the subdivision in accordance with Section 99-21(E) of the Code of Sussex County.” Motion carried 5-0.

Lands of Robert Lee & Wendy Adkins

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual land. Proposed Parcel D shall consist of 2.908-acres +/- and the residual land shall contain 30.632 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 Bunting Road (S.C.R. 335). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 233-6.00-13.01 Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, the Plans are eligible for Preliminary and Final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement as a preliminary and final. Motion carried 5-0.

Lands of Mardawi, Ahmad, Seris, & Alqaryouti

Minor Subdivision Plan off a proposed 50-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus residual land. Proposed Lot A shall consist of 1.00-acre +/-, proposed Lot B shall consist of 1.00-acre +/-, proposed Lot C shall consist of 1.00-acre +/-, and the residual land shall contain 1.012 acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the west side of Martins Farm Road (S.C.R. 291). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 334-10.00-60.12 Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, the Plans are eligible for Preliminary and Final approval.

Motion by Mr. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Minor Subdivision Plan off a proposed 50 ft. easement as a preliminary and final. Motion carried 5-0.

Lands of Mark & Denise Cathell

Minor Subdivision Plan off a proposed 50-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual land. Proposed Lot 3 shall consist of 1.50-acres +/- and the residual land, Lot 4 shall contain 3.00-acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the south side of Whitesville Road (S.C.R. 64). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-7.00-55.04 Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, the Plans are eligible for Preliminary and Final approval.

Motion by Mr. Allen, seconded by Mr. Pettyjohn, and carried unanimously to approve the Minor Subdivision Plan off a proposed 50 ft easement as a preliminary and final. Motion carried 5-0.

Lands of Verma J. Tribitt

Minor Subdivision Plan off a proposed 50-ft easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus residual land. Proposed Lot 1 shall consist of 1.00-acre +/-, proposed Lot 2 shall consist of 1.00-acre +/-, proposed Lot 3 shall consist of 1.00-acre +/-, and the residual land shall contain 26.4159 acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the east side of Pepper Road (S.C.R. 376), approximately 300 feet north of Lazy Lagoon Road (S.C.R. 380). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 533-4.00-37.00 Zoning: GR (General Residential District). Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Pettyjohn, seconded by Mr. Passwaters, and carried unanimously to approve the Minor Subdivision Plan off a proposed 50 ft. easement as a preliminary, with final approval to be granted by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

Mr. Passwaters stated for the record that he had listened to the audio and broadcast of the Planning Commission meeting of May 6, 2026, and therefore he was prepared to vote on those applications.

C/U 2551 Sarah Peterson

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS. The property is lying on Morning Glory Farms Road on the northwest side of Portsville Road (S.C.R. 492), approximately 0.84 mile

east of S. Shell Bridge Road (S.C.R 492A). 911 Address: 8982 Morning Glory Farms Road, Laurel.
Tax Map Parcel: 432-3.00-41.06.

The Commission discussed the application which had been deferred since April 15, 2026.

Mr. Allen moved that the Commission recommend approval of C/U 2551 for Sarah Peterson for an Event Venue based upon the record made during the public hearing and for the following reasons:

1. The site is an 8.45-acre parcel of land owned by the Applicant with direct access to Portsville Road.
2. This use was previously the subject of Conditional Use No. 2373 for a similar event venue. That Conditional Use was denied for lack of a detailed site plan, improper access via a private easement and a property line dispute. All of those issues are now resolved, including a dedicated entrance drive to Portsville Road on land owned by the Applicant.
3. The Applicant intends to hold events that include weddings, baby showers, birthday parties and similar events.
4. The site will have an area available for at least 141 parking spaces based on the site plan that was submitted with the Application.
5. With the conditions and limitations placed upon the Conditional Use, it will not adversely affect neighboring or adjacent properties or area roadways.
6. This use promotes tourism and hospitality activities in Sussex County.
7. This recommendation is subject to the following conditions:
 - A. All events shall end no later than 11:00 p.m.
 - B. Food and beverage service and music or similar entertainment is permitted.
 - C. As stated by the Applicant, there shall be no more than 200 people at any event.
 - D. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads or adjacent properties.
 - E. All access to the site for this use shall be via the Applicant's fee simple roadway connecting to Portsville Road. There shall not be any access for this use via the 10-foot-wide easement shown on the site plan.
 - F. One unlighted sign shall be permitted on the Applicant's property at the entrance along Portsville Road. It shall not be larger than 32 square feet per side.
 - G. A solid wooden or vinyl fence at least six feet in height shall be installed along the eastern boundary of the site along lands of Grace S. Peterson. The type and location of this fencing shall be shown on the Final Site Plan.
 - H. All entrance locations shall be subject to the review and approval of DelDOT.

- I. Any violation of these conditions of approval may be grounds for the termination of this Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Allen, seconded by Mr. Collins, and carried unanimously to recommend approval of C/U 2551 Sarah Peterson, for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

C/U 2631 Zion Church Ventures, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE/OFFICE BUILDINGS AND A CAR WASH (TO AMEND CONDITION “D” AND CONDITION “N” OF THE CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2581 (ORDINANCE NO. 4009) TO ALLOW FOR OFFICE SPACES WITHIN THE WAREHOUSE UNITS AND TO REMOVE THE REQUIREMENT THAT AN ON-SITE MANAGEMENT OFFICE BE ESTABLISHED FOR THE MAINTENANCE AND OPERATION OF THE WAREHOUSE UNITS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 29.55 ACRES, MORE OR LESS. The property is lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcel: 533-11.00-23.00.

The Commission discussed the application which had been deferred since April 15, 2026.

In relation to C/U 2631 Zion Church Ventures, LLC. Motion by Mr. Allen to defer action for further consideration, seconded by Mr. Collins, and carried unanimously. Motion carried 5-0.

C/U 2540 La Dolce Far Niente, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SELF STORAGE FACILITY, AN OFFICE AND OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 7.00 ACRES, MORE OR LESS. The property is lying on the west side of DuPont Boulevard (Route 113), approximately 0.19 mile north of East Piney Grove Road (S.C.R. 329). 911 Address: N/A. Tax Map Parcel: 133-11.00-1.02.

The Commission discussed the application which had been deferred since May 6, 2026.

Mr. Pettyjohn moved that the Commission recommend approval of C/U 2540 for La Dolce Far Niente, LLC to operate a mini-storage facility with outdoor boat and RV storage and an office based upon the record made at the public hearing and for the following reasons:

1. The use as a storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
2. The use will be located along Route 113 which is a major arterial road with access via East Piney Grove Road. It is in an area between Georgetown and Millsboro where several business and commercial uses exist, including a large Sharp Energy facility next door. This is an appropriate location for this type of low-intensity use.
3. The use will be a storage facility. No manufacturing, assembling, fabrication, or similar activities will be permitted on this site.
4. There was testimony in the record that there is a need for storage facilities in Sussex County. This type of use compliments the residential development that is occurring in Sussex County, which do not have their own on-site parking for boats and RVs. It is also a benefit for small businesses that do not have their own on-site storage.
5. This type of storage facility generates a relatively minor amount of traffic when compared with other types of uses. It will not adversely affect traffic on area roadways. DelDOT has stated that the traffic impact will be negligible.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
7. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The use shall be limited to 19 mini-storage buildings and the outside storage of boats and RVs phased as the storage buildings are constructed. None of the buildings shall have water or sewer connections except for Building A, which will contain the central office for the site.
 - B. Security lighting shall be screened with downward illumination so that it does not shine on any neighboring properties or roadways.
 - C. The perimeter of the storage area shall be fenced and gated with electronic access. The location and type of fencing shall be shown on the Final Site Plan. The entrance gate shall be located at least 40 feet from the East Piney Grove Road right-of-way so that waiting vehicles do not line up on that roadway.
 - D. There shall not be any manufacturing, fabrication, or similar activities conducted on the site.
 - E. Because this site has frontage on Route 113, which is a major arterial roadway, the signage for this use shall comply with the sign requirements of the C-2 Zoning District. This is also consistent with the signage allowed next door at the Sharp Energy site.

- F. Stormwater management shall be maintained on site, using Best Management Practices.
- G. Any trash receptacles associated with the use shall be screened from neighboring properties and roadways.
- H. The Final Site Plan shall indicate all RV and boat storage spaces and parking and drive aisles. The location of the outdoor storage and parking spaces shall also be clearly marked on the site itself.
- I. The use shall be subject to all DelDOT requirements regarding entrance and roadway improvements necessary to provide access to the site.
- J. No sales or maintenance of boats or RVs shall occur from the site. No hazardous materials or fuel shall be stored on the site other than what may be in the tanks of boats and RVs on the site. No junked or unregistered boats, boat trailers, or RVs shall be stored on the site.
- K. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.
- L. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission. The Final Site Plan shall include a Phasing Plan depicting the boat and RV storage areas that will exist until all of the phases and buildings are completed.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to recommend approval of C/U 2540 La Dolce Far Niente, LLC, for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

C/U 2604 Alvaro E. Perez Roblero

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS. The property is lying on the west side of Cedar Corners Road (S.C.R. 638), approximately 410 feet south of Redden Road (Rt. 40). 911 Address: 16694 Cedar Corners Road, Bridgeville. Tax Map Parcel: 430-17.00-23.01.

The Commission discussed the application which had been deferred since May 6, 2026.

In relation to C/U 2604 Alvaro E. Perez Roblero. Motion by Mr. Passwaters to defer action for further consideration, seconded by Mr. Allen, and carried unanimously. Motion carried 5-0.

C/Z 2053 Seaside at Lewes, LLC & Derrickson Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 29.97 ACRES, MORE OR LESS. The properties are lying on the northeast side of Coastal Highway (Rt. 1), directly north of Cave Neck Road (S.C.R. 88). 911 Address: N/A. Tax Map Parcel: 235-23.00-1.04 & 235-23.00-1.00 (P/O).

The Commission discussed the application which had been deferred since May 6, 2026.

Mr. Collins moved that the Commission approve C/Z 2053 for Seaside at Lewes, LLC & Derrickson Properties, LLC for a change in zone from AR-1 to C-2 (Medium Commercial) based upon the record from the public hearing and for the following reasons:

1. The Applicant is seeking a change in zone from AR-1 to C-2 (Medium Commercial). The purpose of this district is to allow retail sales and consumer services. It is intended to be located near arterial and collector streets.
2. This property is located along the northbound lanes of Route One across from the intersection with Cave Neck Road. Route One is designated as a “Principle Arterial” roadway by DelDOT and a “Major Arterial Roadway” by the Sussex County Zoning Code. This is also the location of a new grade-separated intersection or overpass serving Cave Neck Road and this property and the large residential development to be built behind it. Both of these projects were taken into account by DelDOT during the design of the overpass project. This is an appropriate location for the C-2 Zoning District and the uses that are permitted within it.
3. There is a mixture of zoning classifications in this general area, including C-1, CR-1, B-1, C-2 and C-3 Districts nearby. This rezoning and the uses permitted within the C-2 Zone are consistent with the other zoning districts and uses in this area, particularly at the location of the new overpass.
4. This rezoning and the permitted uses within it will provide a convenient, nearby shopping and service location for residents of the adjacent residential development as well as other residents of the Cave Neck Road and Route One area north of Nassau. This will eliminate the need for these residents to travel further to Milton or Nassau and Lewes for such services which will reduce traffic on area roadways.
5. There is no evidence in the record that rezoning will significantly and adversely impact neighboring properties or roadways.
6. The property will be served by central water and Sussex County Sewer.
7. There are no wetlands on the property, and it is not located in a Wellhead Protection Area.
8. Any development that occurs on the property will require site plan review by the Sussex

- County Planning & Zoning Commission after taking into account all required agency reviews, including DelDOT, State Fire Marshall and the Sussex Conservation District.
9. No parties appeared in opposition to this rezoning application.
 10. This rezoning promotes the purpose of the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of Sussex County.
 11. For all of these reasons it is appropriate to rezone this property from AR-1 to C-2 Medium Commercial.

Motion by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to recommend approval of C/Z 2053 Seaside at Lewes, LLC & Derrickson Properties, LLC for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn, Madam Chair Wingate - yea

PUBLIC HEARINGS

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

C/U 2550 Milton DE Solar CSS, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 30.55 ACRES, MORE OR LESS. The property is lying on the west side of Harbeson Road (Route 5), approximately 850-feet south from the intersection of Diamond Farm Road (S.C.R. 257) and Harbeson Road (Route 5). 911 Address: N/A. Tax Map Parcel: 235-26.00-17.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conditional Use Site Plan, the Applicant's exhibit and presentation materials, the Staff Analysis Report, a letter received from the Sussex County Engineering Department's Utility Planning Division, and the DelDOT Service Level Evaluation Response letter (SLER). Mr. Whitehouse advised the Commission that two written public comments had been received regarding the application and had been included within the Commission's Paperless Packet.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, spoke on behalf of the Applicant, Milton DE Solar CSS, LLC. Mr. Falkowski stated that also present were Mr. Steve McDonough and Mr. Paul Reducha with Ameresco, Inc., as well as Mr. John E. Tracey, Esq. with Young Conaway Stargatt & Taylor, LLP.

Mr. Falkowski stated that the application was for a community solar project, located in Milton, Delaware, just south of Milton along Harbeson Road; that the site was located near the intersection of Carpenter Road and Harbeson Road, to the west side of Harbeson; that the site consisted of 30.55 acres within the AR-1 (Agricultural Residential) Zoning District; that the application proposed a 13.60 acre Conditional Use area; that the array area, being the fenced area was proposed to be 11.52 acres; that the proposed solar array was positioned in the center of the site; that access would be taken off Harbeson Road; that the new access point would be located to the south end of the site; that the access would be a new 14 foot wide road, with turnaround provisions per the State Fire Marshal's Office, as well as a knox box at the fence for emergency personnel; that there was a notch out located in the back of the property; that the notched out area was a lower area of the site; that the Site Plan reflected the contours, and that there was a lower, depressed area through that portion of the site; that the area was not the greatest for farmland, nor was it the greatest for solar arrays; that the area was left there to mimic the natural drainage, as it did collect in the area, and would spill off into the ditch; that the plan provided a 30 foot wide landscape buffer, which was really the landscape buffer required for subdivisions, and applied to solar projects; that the 30 foot buffer requirement had become the Sussex County standard; that the plan proposed a 30 foot wide, triple row, staggered landscape; that it would be a 70% to 30% mixture of evergreen and deciduous species; that the buffer would surround the entire perimeter of the property or of the fenced area; that the proposed fencing would be a seven foot high fence, with a mesh screening; that there would be pollinators underneath; that the pollinators would be a meadow grass that would be planted in and around the solar array, and all of the landscaped area; that the design standards were fairly typical; that the community solar project would benefit the local community through the subscriber program by providing lower power costs; that the use would not generate much traffic, with only one to two visits per month; that because of this there would be no increase in traffic; that the project proposed a renewable energy source that would not produce odors, dust, gas, smoke or fumes; that there would be little to no noise; that there would be a small hum at the inverter, which would be centrally located on the site, being more than 450 feet away from neighbors; that at the property line, there was no noise; that directly next to the inverters, there would be a small hum, which would be a whisper at most; that the pollinators to be planted in the array area, and throughout was proposed by design, as it would reduce runoff; that Sussex Conservation District had recognized it as an acceptable practice for solar projects; that it was something that had been tried and test, and would allow them compliance with their regulations; that there would be no herbicides, no chemicals, and no pesticides used to control weeds; that as required, they would post the Decommissioning Bond and decommission the project at the end of its life; that the projects lease period was for 25 years; that at the end of the 25 years, the project would either be decommissioned or there would be an option to renew the lease; that they had performed a Glare Study on the project for aviation and for the neighbors, which was included in the submitted packet under Appendix 2.12; that the Glare Study showed that there would be no adverse impact on the neighbors, Georgetown Airport or any other aviation; that he was aware that

there had been a lot of discussion on the interconnection process; that Becker Morgan Group has personally been processing solar applications since 2021; that he understood there was question as to why the project could go through Sussex County's process, get approved, but seemingly were not being built; that the interconnection process was a very long process; that it was generally a three and a half to five year process; that the Sussex County Conditional Use process was currently roughly a two to a two and a half year process; that this was the reasoning for the gap the Commission was seeing with some of the solar projects; that the current site was in a great position, because they were through most of the steps already; that the first step was to apply to Delmarva Power, at which time they get assigned in the queue; that they need to perform an Interconnection Study to require system upgrades, depending on where the property is, what distribution upgrades are necessary to facilitate the project in its location; that Delmarva Power provides a cost estimate, which will get signed, and those costs are paid by the Developer; that those costs are large costs to bear, prior to having Sussex County's approval; that the issue was kind of a chicken and egg scenario, where a project may want to wait until they receive Sussex County's approval before they pay the costs and sign the agreements; that the current project has already gone through the study, had already gotten the cost estimate, and had already paid for those upgrades prior to the public hearing; that before they applied for the Conditional Use, they were between Step 4 and Step 5; that Step 5 would require distribution upgrades to be completed by the end of the year; that should the project receive approval, they would start construction in September 2026, allowing the timing to align perfectly with the completion of the distribution upgrades; that the Commission would see the project come to fruition much quicker than other projects in the past; that the Commercial Operation Date (COD) would be April 2027; that they had received a letter from the adjacent neighbor, being the site of a therapeutic horse farm and riding center; that they had reviewed the letter, and had spoken within the owners, going through all of their concerns; that they did not read the letter so much as being in opposition, but rather more of a letter requesting things that they would like to see incorporated; that they believed that had addressed every one of the requested items; that some of the items were addressed through standard County Conditions; that some of the expressed concerns were regarding traffic, the use of pesticides, the request for pollinators, and concerns regarding runoff; that all of these concerns were being addressed within the proposed plan, the landscape screening, the proposed fencing, Decommissioning Bond, and the performed Glare Study; that these were the issues highlighted within the letter, and he felt they had all been addressed; that there was a comment requesting a 200 foot buffer from the property to the north; that they are roughly 75 feet away from the property line to the nearest array; that while they are unable to provide 200 feet, they were providing an increased buffer along the north property line; that they would be more than happy to increase the landscape buffer, if necessary, along the north side as well; that the facility is a public utility under public utility use of the Sussex County Zoning Code; that the project met the Conditional Use in that it is of public or semi-public character, essential to and desirable for the general convenience of and welfare of Sussex County residents; that the application promoted Chapter 7.3 of the Sussex County Comprehensive Plan,

which encouraged renewable energy; that there would be no adverse impacts as he had noted; that they proposed adequate landscape buffering and perimeter fencing; that there would be no increased traffic; that traffic would consist of one to two visits per month, as required for periodic inspection; that many solar facilities are located on remote systems; that if there were damage, it would notify the company, who would come out immediately to fix the issue; that the project would not create any significant noise, glare, lighting, dust or odor; that the project complied with Ordinance No. 2920; that landscape screening had been a kind of new standard; that they had not seen it often in Sussex County as those project are just coming into fruition; that they had a project in Bridgeville currently going into construction with another solar client; that the Bridgeville project would have the mesh screening; that there had been a lot of strides in ensuring that the mesh screening would work efficiently, and not create a maintenance concern; that he had seen in other counties where the mesh screening began coming off the fencing; that they believe this was due to the mesh being installed with plastic zip ties, which was an industry standard; that essentially, the mesh screening become wind sails in the middle of a farm field; that they had developed a detailed which provided tension wires on the top and bottom of the fence, as well as using beefier stainless steel metal straps; that this method should keep the mesh screenings from coming off the fence paneling, also being up the fence post structures to accommodate the additional force of the wind, and they felt, moving forward, the Commission should not see any issues regarding that.

Madam Chair Wingate questioned whether Mr. Falkowski had indicated that it was anticipated that the project would have approval by Delmarva Power (DP&L) by the end of 2026.

Mr. Falkowski stated the upgrades mentioned were necessary; that there were upgrades that Delmarva Power could construct; that those improvements to the system would be complete by the end of the year (2026).

Mr. Passwaters stated Mr. Falkowski had mentioned the slight humming, and little to no noise of the project; that the project would be located only 75 feet from the therapeutic horse center, who provided a lot of outdoor riding lessons; that those horses are not used to those noises; that he expressed concern regarding what may happen with the children and adults who ride the horses; that he understood horses were very native animals; that he knew the arena and center had been in place for over 15 years, providing wonderful things for the community; that he understood there was discussion regarding the 200 foot buffer; that if the project were approved, he would love to see the 200 foot buffer; that for the landscape buffer, there would be five Evergreens planted, every 100 linear feet, with the rest being canopy trees, and he would like to see more Evergreens placed within the landscape buffer.

Mr. Falkowski stated that he agreed with Mr. Passwaters regarding the placement of Evergreen trees; that at one point, the County buffer looked like 10 Evergreen trees per 100 feet, and double stacked, which he believed to be a better buffer; that the required buffer was essentially the Subdivision Ordinance buffer, which required deciduous trees; that deciduous trees lose their leaves in the wintertime; that they were not opposed to a different composition; that he felt more of 100% Evergreen buffer would be more appropriate, than the required composition; that they would be happy to work with the Commission on whatever composition they would like, and would mix or substitute with whatever the Commission would like.

Madam Chair Wingate questioned the trees reflected in the rendering, as they appeared to be well established trees, and questioned whether the tree height would be provided upon planting.

Mr. Falkowski stated that the provided rendering depicting five years established trees and stated that the tree height would not be provided automatically.

Mr. Passwaters questioned the caliber of the trees, and requested potentially providing a one-to-two-inch caliber trees; that he presented to the Commission a photographs of a constructed facility within Kent County near Viola; that because mesh screening was not required within Kent County, they had voluntarily provided the mesh screening; that the photograph did not depict a required Sussex County landscape buffer; that the project was under construction, and the mesh screening had been installed on the fencing; that the photograph helped provide an idea of what the project would look like, without the fully established five to 10 year beautiful looking landscape buffer; that the mesh screening would shield the view from neighbors; that they hope to be able to provide examples within Sussex County soon, as the project begin to be built; that the inverters would be located 450 feet from the property line, with an even further distance to the nearest building; that the project would create little to no noise, and it would be a whisper quiet at the property line.

Mr. Falkowski stated and submitted exhibits into the public record regarding the proposed landscape; that he believed they had specked a larger caliber of tree, but he would need to confirm with the Landscape Plan; that the trees were proposed to be larger than one inch.

Mr. Steve McDonough with Ameresco, Inc., national renewable energy provider; that Ameresco, Inc. had offices in Columbia, Maryland and Washington D.C.; that the inverter had been centrally located within the array to purposely shield as much noise from neighboring properties as possible; that the inverter would be located roughly 450 feet from the nearest property; that the only noises made, were made during the day while they generate electricity; that there would be no noise at night; that during the day, at the property line, the decibel level would be about 35 to 38 decibels, which was equivalent of a rural ambient background noise, which was denoted to be about 30 to 43 decibels, and that the anticipated noise fell within the background noise of a rural area.

Mr. Pettyjohn stated that he had a feeling that studies had been performed, and he felt that was great; that he knew animals had more sensitive hearing than humans; that he knew frequencies played a different effect on that; that an example would be a dog can hear a dog whistle, when a human cannot; that he questioned whether studies had been performed regarding the noise impact on horses; that the horses were there for therapeutic reasons with children and others who have struggles, and stated that the last thing anyone would want was for a horse to react negatively to the noise.

Mr. McDonough stated that he did not know the impact on horses; that horses who operate in a therapeutic environment were generally horses who do not spook easily; that he could not say for sure, but that was his understanding from his limited knowledge of those types of horses, and that he did not honestly know the impact of the noise and frequency on a horse outside of the fact that it would be barely audible at the provided distance.

Mr. Allen questioned the life expectancy of the mesh fencing and the material, and whether a tension cable could be added to the middle to keep the mesh from blowing.

Mr. Falkowski stated that the mesh fencing was constructed of a plastic polypropylene material; that he imagined that the mesh fencing would have the lifespan of the solar facility, being 25 years; that there would be tension cables installed at the top and bottom; that it was quite a challenge when the mesh fence requirement came about, to ensure that they could adequately attached the mesh to the fencing, ensuring that the mesh stated; that the deeper structures are embedding the posts more to account for the wind load on the fence; that they would be installing with tension wire and stainless steel straps; that they had been looking at meshing that provided wind cutouts every 10 feet, to allow the wind to cut through them; that the one they had particularly looked at provided the same 70% opacity, however, the way it was weaved provided a striped appearance, but provided more wind passage; that those types of meshing are being used a lot for baseball fields, and they last forever.

Madam Chair Wingate stated that she had stated many times that the Commission does not know what they do not know; that she was the original Commissioner who suggested the woven fabric to be placed as a condition; that unfortunately, the Commission cannot tell whether the imposed conditions were appropriate or not, as they have not seen any completed solar projects, and she questioned whether damage to the mesh fencing would be part of the remote notification.

Mr. Falkowski stated that any damage to the mesh fencing would be part of the monthly periodic inspections; that notification would not be provided remotely; that there would be no way to tell whether the fence came undone or whether damage had occurred, and if they were aware of a large windstorm, they could visit the site to investigate.

Mr. McDonough stated that the site would have regular operation and maintenance would be performed every six months, at which time the mesh fabric would be inspected for any required replacements; that if someone were to notify them of damage, they may visit within the six month period; that the mesh fencing would be located behind the landscape buffer, and they would replace or repair any damages as soon as they were notified, otherwise inspections would be performed every six months.

Mr. Allen stated that he felt six months was a long time.

Mr. Collins stated that he understood there to be a 75 foot perimeter proffered between the horse farm and the solar array; that he understood that the Applicant proffered to plant the 75 foot area; that he thought the Applicant could plant the compliant 30 foot wide landscape screening and then Evergreens for the remainder of the buffer, which would probably meet the County Code without any exception, and that the additional vegetative screening may help with the concerns the horse farm had.

Mr. Falkowski stated that the requested 200 foot buffer would seriously impact the array layout; that they provided the 75 feet; that in response to Commissioner's Passwater's comment, he had suggested additional Evergreens, as they did have space to add another row or substitute the deciduous species with Evergreens, and they certainly had the space to beef up the buffer.

Mr. Collins stated that it sounded like the Applicant could provide several more rows of Evergreens.

Mr. Falkowski stated yes, they could provide several more rows of Evergreens.

Mr. Collins stated that during the construction phase of the project, there would be a fair amount of noise; that he questioned what things the Applicant might be able to do to minimize the amount of noise and disruption to the horse farm, and he stated that it might mean coordinating with the horse farm around days that they do not have a lot of active riders.

Mr. McDonough stated that they had discussed the issue; that they had constructed projects at a lot of schools and universities, where they had to work around their scheduled; that they had discussed that they did not want to impact their operations during construction; that they are willing to work with them with days that they do not have operations, kids or visitors on days where they work closer to the horse farm; there would be minor things that they could do; that they had previously worked with many of organizations where they had to accommodate schedules; that

they do not wish to impact their operations or their clients, and they will be meeting with the therapeutic horse farm tomorrow (May 21, 2026) to discuss a variety of things including that.

Mr. Pettyjohn stated that within the presentation it was mentioned that the project would be a benefit to locals and businesses by placing power back into the grid; that he questioned whether the property would stay privately owned, or to be rented out, and questioned how the project would be a benefit to the local community, as he understood the money to return to the solar company or the landowner as a profit or offset.

Mr. McDonough stated that the project is a Delaware Community Solar program; that is was designed to meet some of the goals that the State of Delaware had established around renewable energy; that anyone who would like to participate would be required to be within the Delmarva Power territory; that those eligible participants would receive a 10 % credit on their electrical costs, which would be reflected on their bill; that this was the main point of the program, to provide a 10% reduction off the electricity costs; that eligible participants could be anyone from immediately adjacent of the site to anyone within the broader Delmarva Power territory; that they had not selected a community solar provider, but they can often focus on the immediate local community, or they can go broad over Delmarva; that they had not selected anyone, and had not spoken with them about the program, but it would be something they would be willing to offer as a focus more on the local community within Sussex County, and should the horse farm want to join, they would have to sign paperwork.

Mr. Falkowski stated that it was free to sign up, and once subscribed to the program, one can begin taking benefit; that the premise of the program was that the homeowners can only individually place so much on their property or roof; that the community solar program was developed so that collectively one could do a 30 acre or 11 acre array, up to four megawatts AC; that then locals or anyone on the Delmarva Power grid could benefit from a collective array, rather than a series of arrays on everyone's roofs.

Madam Chair Wingate stated that it surprised that anyone with Delmarva could sign up, and that there would be enough generated to allow a 10% reduction for that many people.

Mr. Falkowski stated that generally it goes into the grid; that the grid reaches everywhere, and the only caveat is that one must be a Delmarva subscriber to be able to sign up for the program.

Mr. McDonough stated for clarification that the project only generates so much electricity; that it was not for all of Delmarva; that anyone within Delmarva sign up for the program; that it would probably support above the electricity consumption of roughly 400 or 500 homes; that it would be limited to about 400 to 500 average residences that would subscribe into the program, at a first

come first served basis; that if they wanted to focus on Sussex County, they would need to work with the community solar subscriber organization to focus their efforts in finding subscribers within Sussex County.

Madam Chair Wingate questioned whether the Commission could designate that this focus for any application; that Sussex County is the one being put out with the solar arrays and therefore, the solar arrays should be serving Sussex County.

Mr. McDonough stated yes; that they do focus their efforts in Sussex County, trying to get as many subscribers in Sussex County as possible, but if they are unable to get those subscribers, they then must go to the broader Delmarva.

Madam Chair Wingate stated she understood, however, felt that Sussex County should come first.

Mr. Pettyjohn stated that it was proposed that no pesticides or herbicides would be used and questioned whether that truly meant that they would never be used, how often ground maintenance would occur, and what the 75-foot buffer would consist of if it were not to be planted with trees.

Mr. McDonough stated that the site would be planted as a pollinator meadow; that their intention was to never use herbicides or pesticides; that he had not been part of any project where herbicides and/or pesticides were used; that their intention moving forward was to take that same approach; that mowing would take place two to three times per year; that they were still talking to the landlords of how they are going to use the remainder of the property; that they could only control within the 13 acre lease area; that he had spoken to the landowner; that there is still opportunity for the current farmer to use the land outside of the lease area to do farming should they wish to continue to do that.

Mr. Robertson questioned whether subscriber benefits were limited to residential or commercial properties.

Mr. McDonough stated that it was large and small; that the most beneficial is for the small commercial and residential properties; that the program was most beneficial for those properties, and also financially beneficial for them; that they are incentivized to find small commercial and residential customers; that the intention for these was to be at least 50 % small commercial and 50% residential; that it will likely be a higher portion of residential from what they had been hearing about the community solar subscriber organizations out there; that they have no intention of doing anything with a large general corporation; that the program would also benefit low and moderate income residents as well, and there is a focus for a 10% minimum to be lower to moderate income subscribers.

The Commission found that there was no one present in support of the application, and four people were present in opposition to the application.

Ms. Linda Berdine, President of the Board of Directors for Southern Delaware Therapeutic Riding Facility (SDTR), spoke from a neutral position with concerns regarding the application. Ms. Berdine stated that the SDTR facility was a nonprofit who served all of Sussex County; that for the last few years they had been working with Dr. Jane Goodall, world renowned conservationist; that she was very pro solar energy, and had an appreciation for the solar energy farm; that she was not speaking in opposition to the application, rather requesting responsible changes and enforceable protections; that she expressed concern regarding the compatibility with their services which involved medically vulnerable individuals, and horses with unpredictable reactions; that SDTR was a unique neighbor; that they strongly felt the application presented a safety issue, as they serve children, veterans and individuals with disabilities as a therapeutic riding center, not a horse farm; that they provide medically and therapeutically structured programs, which had been in operation since 1988; that in 2025 alone, they had served 690 participants, with the support of 150 local Sussex County volunteers; that horses are prey animals; that horses react instantly to sudden movement, noise or visual disturbance; that these instant reactions could lead to risk or injury to disabled riders, volunteers or staff; that due to this, it elevates the issue from a nuisance to a safety risk; that typical buffers and setbacks were designed for residential and general visual screening; that they were not designed for therapeutic environments, animal behavior and sensitivity or outdoor medical programming; that they providing outdoor riding right along the fence line; that because of this, they requested enhanced site-specific conditions that they felt were very justified and necessary; that the most critical for them was the startling and spooking risk; that glare impacts are not only from the screens, but the other different pieces of equipment; that they had performed research on horses; that there was difference between a horses hearing and human hearing; that they had recognized a direct link to injury to their riders and the risk that this imposes; that noise of construction, beeping of a truck, heavy equipment, and pile driving could disrupt or halt their programming; that the horses remain on their property 24/7; that she expressed concern regarding concentrated runoff, which may cause mud and hazard areas for the horses and riders; that after construction the ongoing operations, site mowing and inverters will create continued disturbance; that they requested a 200 foot buffer, which they felt was critical versus the 50 foot buffer provided on the plan; that the plan had provided a 200 foot buffer from a house on the property, and questioned why they could not be afforded the same buffer; that it was nice the Applicant considered a full screen of Evergreens, however, they requested much larger Evergreens; that they needed a minimum of a seven foot barrier between their horses and what would be going on in relation to the solar panels; that they would like to have a Construction Coordination Plan; that she expressed concern regarding the flapping of the mesh fencing material; that they would like to have an incredible communication channel between the two organizations; that they would like to possibly relocate the position of the solar arrays; that the risks were very predictable, not

speculative; that the impacts would be ongoing and difficult to reverse; that once built, one cannot fix layout, drainage or proximity issues; that their program was expanding into a wellness program, which was being initiating that year; that they would be putting in a sensory trail that is proposed to run along the property line; that they only had 10 acres to work with; that SDTR was not a customer of Delmarva Power, and therefore would not be eligible for the 10% electricity reduction.

Madam Chair Wingate stated that Ms. Berdine mentioned a different layout for the array panels and questioned whether there was a particular layout Ms. Berdine had in mind.

Ms. Berdine stated that their property line was the longer boundary line; that she had walked the boundary line yesterday with an engineer who performed all the measurements, and they felt the requested 200-foot buffer could be achieved by removing some of the panels down the line, moving them inward to where the L-Shaped open space currently was.

Mr. Robertson stated that currently the site was being tilled; that he questioned what impact the farm equipment or any aerial application of pesticides currently had on the horses.

Ms. Berdine stated currently the most impact they receive is from the housing community with barking dogs; that they would have to put together a whole new program to desensitize their horses; that the process would take months; that they had previously desensitized the horses, working to get them exposed to the tractor and farming equipment, and it was an entire program where they not only train people, but also the horses.

Mr. Collins stated that he questioned what compatible uses could exist on the property, that by-right people could build that may create a problem.

Ms. Kelly Boyer, instructor and Program Director with Southern Delaware Therapeutic Riding Facility (SDTR), spoke from a neutral position with concerns regarding the application. Ms. Boyer stated that she had been with the program for 24 years; that the tractor did impact their lessons to a degree, where they may have to make a decision on what horse, and may have to switch horses out, as it depended on the horse, the personality or the horse, and the state of the horse that day; that this was the same for planes flying over for spraying; that she expressed concern regarding the impact to their participants, as they had many participants with sensory sensitivities; that airplanes currently can be impactful to their riders; that their participants can hear tones, that they do not hear; that their participants can hear the humming of the lights in a room; that she expressed concern regarding construction noise during September to April; that this would occur during their veterans program; that loud noises would be a big risk for them; that they would have about three session of veteran program during that time frame and it was just as much about considering the welfare and safety of the participants as well as the horses.

Mr. Tom Peet, resident of Lewes and past board member of Southern Delaware Therapeutic Riding Facility (SDTR) spoke in opposition to the application. Mr. Peet stated that his son had also been a rider at the program; that his son had attended Howard T. Ennis School for 18 years; that they currently serve Cape Henlopen's Sussex Consortium; that the Commission needed to understand that it was a different equation when considering a person of special needs; that things must be done differently; that he was not able to run a vacuum cleaner, do dishes or clap; that when his son went to the SDTR farm, it was the most peaceful existence he had outside of his time at Howard T. Ennis; that everything was carefully controlled; that he felt the solar farm could be built, however the Applicant would really have to talk to SDTR; that the workers on the ground with the bobcat and the tools, may not be as sensitive as the representatives who were currently present; that communication would be really important; that he was concerned that SDTR may need to shut down during construction; that they were required to shut down during COVID and they barely made it through; that he questioned whether they could afford to shut down again, and that SDTR was a very important facility.

Ms. Jo Allegro-Smith, Executive Director of Southern Delaware Therapeutic Riding Facility (SDTR) spoke in opposition to the application, on behalf of their participants, instructors, volunteers, and horses. Ms. Allegro-Smith stated that the program served folks with cognitive and physical disabilities, as well as veterans; that they are starting a program for those with Parkinsons; that they are currently in a growing phase; that when the property owners, Cindy and Doug visited in 2021, they stated that they wanted to be good neighbors, and they would keep in touch with SDTR with any future plans; that unfortunately they did not receive any updates as the project moved forward; that for most organizations, the lack of communication is inconvenient, however, it could bring SDTR to a halt; that their main concern was all about safety; that the project could create real safety risks; that sudden changes in noise, traffic, construction, could startle the horses, or the riders, placing everyone at risk; that she appreciated Mr. Steve McDonough reaching out, however, he had only done so the week prior to the current public hearing; that SDTR was really unaware of the proposed plans; that SDTR were requesting clear communication with the owners and the developers; that they really desired focusing on the 200 foot buffer, rather than the proposed 50 foot buffer; that they would like to see landscaping, screening plans, berms and trees that would be eight feet in height placed along the boundary; that they request the inverter placement be placed as far from their pastures as possible; that they suggested the placement of a solid fence along the boundary line closest to the horses; that they requested advance notice of construction phases, especially pile driving dates; that they understood the project proposed no use of weed pesticides or herbicides; that they requested to be informed about what is being planned to be used currently and over the lifetime of the solar project; that they would like to see a site map with the exact locations of inverters, access roads, trees and fencing; that the most important would be coordination around activities that could impact their horses and their riders; that they wanted

to be good neighbors; that they were not opposed to the project; that they were a very unique and transformative center, who were changing lives in Sussex County, and they wanted the project to move forward in a way that would protect everyone involved.

Mr. Paul Reducha with Ameresco, Inc., responded on behalf of the application. Mr. Reducha stated that Ameresco, Inc. did not only develop, they also construct the projects, therefore, they are the boots on the ground; that they finance, own and operate the projects long term; that they had operations for not only their own projects, but for other developers and solar projects of which they did not own; that they had dedicated project managers on site, who are Ameresco employees; that they do subcontract work out, things such as electrical; that they would have an Ameresco person on site; that they could work through schedules, be it a daily morning meeting, as it was something they were used to doing; that they have had previous interesting situations, such as being adjacent to gun ranges, at which point they accommodated schedules along that adjacent use; that he understood the situation, as his wife was a special needs teacher, who had worked with therapeutic horses as well; and he respected what SDTR provided, and desired to be good neighbor.

Madam Chair Wingate questioned whether reconfiguration could be achieved, and how many months of construction the project would require.

Mr. Reducha stated that they could review the issue; that the project would be constructed on set strings; that it would not be similar to Legos where five could be removed, and then replaced in a different direction; that unfortunately, whole rows would be required to be removed; that they would be onsite the next day to discuss how they may be able to accommodate; that he believed the issue was around noise; that something they had previously provided was to provide sound walls around the inverters, so that the noise would not propagate outside of those walls; that they had previously stated that construction would be performed through the months of September to April; that the core construction would be performed within three months, and even shorter were the majority of the work is being performed; that at that point it would mostly be wiring and placing panels; that those three months would be where they would be very hands-on, connected and communicating with SDTR, attempting to work around their programs, and they are required to work within the parameters of what they have.

Mr. Pettyjohn questioned whether the portion of the site, which was missing placement of the solar arrays, was due to that being an area of low land; that whether it mattered if the array was placed on a low land, as the pole could be placed at a different height, and whether the land had always been tilled.

Mr. Reducha stated yes that the area of missing solar arrays was due to that area being considered low land.

Mr. Falkowski stated that they had come across issues on other solar projects, particularly within New Castle County, where there was a bit more grade; that they typically did not run into much grade within Sussex County, as mostly it was flat farm field; that as indicated on the Site Plan, there was a six foot drop into a fairly large depression within that area; that the land had been tilled; that it stayed fairly wet; that on the provided aerial, there was browning in the corner, which indicated crops that were not growing well; that he believed that to be due to oversaturation; that the farmer had indicated the area was not great for farming because of the depression being five to six feet deep; that they had some projects that had moved forward with construction, which did not have any significant grading or filling in those areas; that it did become a problem with long term maintenance; that the posts placed in those depressions could cause wiring and other things to potentially be underwater, and electric and water do not mix well.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

Mr. Robertson recommended the Commission hold the record open for 10 calendar days to allow for update from Applicant following the scheduled meeting with the Southern Delaware Therapeutic Riding (SDTR) representatives, for the possibility of the project being revised to accommodate requests from SDTR.

In relation to C/U 2550 Milton DE Solar CSS, LLC. Motion by Mr. Passwaters to defer for further consideration, holding the record open for ten (10) calendar days to allow an update from the Applicant following the meeting with the community about whether there are any possible revisions to the submitted Site Plan, seconded by Mr. Collins, and carried unanimously. Motion carried 5-0.

C/U 2577 Soltage DE DevCo, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 32.94 ACRES, MORE OR LESS. The property is lying on the south side of Millsboro Highway (Route 24), at the intersection of Millsboro Highway (Route 24) and Phillips Hill Road (S.C.R. 472). 911 Address: N/A. Tax Map Parcel: 133-20.00-75.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conditional Use Site Plan, the Applicant's exhibits, the Applicant's presentation materials, a letter received from the Sussex County Engineering Department's Utility Planning Division, the Staff Analysis Report, and the DelDOT Service Level Evaluation Response (SLER) letter. Mr.

Whitehouse advised the Commission that zero public comments had been received regarding the application.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, LLP spoke on behalf of the Applicant, Soltage DE DevCo, LLC; that also present were the current property owners, Mr. Phillip E. Messick and Mrs. Eloise W. Messick, Mr. Steven Fortunato, P.E. with Bohler Engineering, Mr. Jon Marco Sanchez, Develop Manager for Soltage, and Mr. Matt Jennette, Vice President of Geo-Technology Associates, Inc.

Ms. Sindelar stated that Soltage was an independent power producer, who specialized in the development of financing, ownership, and operation of distributed, smaller, localized scale solar and battery storage projects; that since its establishment in 2006, the company had successfully developed and constructed over 125 clean energy projects across 18 states; that in Delaware, Soltage had a notable presence already with completed projects in Sussex County, New Castle County, and with additional projects currently underway in Kent County; that the projects within Sussex County are located within unincorporated land, specifically within Lewes and Dagsboro; that the Lewes site was currently operational; that the Dagsboro site had finished construction of the solar facility over six months ago, and was awaiting Delmarva Power and Light to complete interconnection construction in order for it to become operational; that Soltage had operated two other facilities in Wilmington since 2014; that Soltage had entered into a Ground Lease agreement with the Messicks for development and operation of the proposed use; that the Applicant had submitted an exhibit book, which included an executive summary, overview of the project, written compliance, an overview of the project, written compliance with certain zoning and solar siting considerations and 14 exhibits; that the Applicant was requesting a Conditional Use approval, within the AR-1 (Agricultural Residential) District within the Low Density area for a solar array facility; that the propose solar array facility, is a community solar project, operating under Delaware's Clean Energy Facility Program; that ultimately the project will connect to the Delmarva Power and Light grid, facilitating the transfer of generated clean electricity to the local distribution network; that as a community energy facility participating in Delaware's program, the project was designed to provide guaranteed bill savings to participating Delmarva Power customers without requiring any change to their existing electric service, utility account, or electric reliability; that subscribers continue to receiving service from DP&L (Delmarva Power); that the project provides bill credits through the program; that any Delaware Delmarva Power & Light customer would be eligible to receive those credits with the project; that upon approval, the facility was anticipated to generate a total of 3.5 megawatts of alternating current (a unit measuring the power output of the renewable energy source); that the solar array facility was designed for installation in a single phase, with no current plans for incremental development; that she understood there had been past concerns about the viability of some of the projects; that the particular project had obtain its interconnection approval; that the site is located along Millsboro

Highway (Rt. 24), at the intersection of Phillips Hill Road; that the acreage of the parcel was 33.59 acres; that the new development area was approximately 19.9 acres; that the property was zoned AR-1 (Agricultural Residential), and located within the Low Density area; that the site was located within Investment Level 4, near properties that are similarly situated; that access to the site would be provided from Millsboro Highway, from Rt. 24; that the internal streets and access ways were provided to each solar array area, to allow for maintenance and upkeep; that DelDOT confirmed the project would generate a diminutive impact on traffic; that the solar setbacks required by Code had been met; that 100 foot setback was required from the front; that they had proposed a 101.5 foot setback from the front; that to the east and west sides, a 50 foot setback was required, and a 50 foot side setback was proposed; that to the south, a 50 foot setback was required, and a 73.4 foot setback was proposed; that to the opposite side, a 50 foot setback was required, and a 54.6 foot setback was proposed; that the dwelling unit setback of 200 feet was required; that the nearest home was 204.8 feet away; that a minimum of 100 feet from streets and buffers had also been provided, and would be maintained as shown on the Site Plan; that the project would use pollinator-friendly ground cover, which provides benefits to a nearby crop yield; that woodland clearing is proposed; that approximately 13.47 acres of woodlands would be preserved; that although performing a Forest Assessment was not a requirement for the project, they felt it was critical given the contemplated tree clearing for the site, and she requested that Mr. Matt Jennette, Vice President of Geo-Technology Associates, Inc. speak upon the performed Forest Assessment.

Mr. Matt Jennette, Environmental Scientist with Geo-Technology Associates, Inc. who performed the Forest Assessment for the site; that the purpose of a Forest Assessment was to identify stand age, dominate trees and overall habitat quality in an attempt to identify areas for potential retention in high quality forested areas on the site; that for the particular site, there was 33.4 acres of forest; that the site was primarily forested; that historically, the western two-thirds of the site were maintained as a pasture or meadow; that on the eastern side, one -third of the site was historically wooded; that accordingly, much of the site was early successional pioneer species, including tulip poplars, loblolly pines, red maples, sweet gums, and trees that were generally of lower quality and lower habitat value; that most of the trees were 12 to 15 inch diameter trees; that there were no shrubs, understory, or leaf litter; that this was due to it being mostly younger forest; that there were not a lot of invasive species; that most invasive species are primarily located along the highway, where more light is able to come into the site; that along the southern portion of the property, where the adjacent property under logged the site recently, there were some invasives coming in from that property; that there was a lot of wind that came in from the southern portion of the property; that due to this, they had seen some trees blowing down in the area, because they cleared the forest somewhat recently; that comparatively, the forest on the eastern 1/3rd of the site was a bit older, providing a early to mid-successional forest; that this area had been forested since the 1930's based on the oldest aerials available; that this area provided a slightly better forest, as it was mostly dominated by American Holly's; that the area was remarkably dense to walk through; that there

was not a lot of wildlife going through that area; that there were some habitat breaks in there, where some of the larger trees had fallen over, which allowed some smaller shrubs and early successional trees to colonize into little habitat break area; that by and large, it was almost entirely a dense stand of American Holly, being a good tree for the wintertime, when there would not be a lot of fruit or berries around; that females produce berries, however, it was a rather low-quality tree; that it was not a mass producing tree or a tree we would want to see for deer or larger wildlife; that there was another small stand located in the central portion of the site, where there was 100% Loblolly pine, and the pines were keeping some of the other species from colonizing in that area also.

Ms. Sindelar stated that the Applicant proffered a forested buffer, which would be maintained around the perimeter, and was reflected on the Site Plan; that where trees do not exist within the buffer, the Applicant proposed reforestation to occur; that the Applicant proposed reforestation by providing no more than 10 Evergreen trees per 100 linear feet; that they performed an exercise to consider the goal of the buffer, what it should look like, and what people wanted to see with respect to solar project; that they determined that Evergreens made more sense, which is what they proposed by form of a condition; that they would be submitting another detail prior to the public hearing before the County Council with respect to fencing; that the Applicant proposed a fixed, non-agricultural style fence, which was reflected in the provided rendering; that in September 2021, the Delaware legislature enacted laws that facilitate Conditional Use applications for community solar projects; that the legislation promoted renewable energy projects, which enabled public participation, ultimately reducing energy costs for subscribers; that Governor Carney, signed the bill at a private solar facility that was located within Wilmington, and operated by Soltage; that in terms of zoning, the Comprehensive Plan, Conditional Use, and solar siting considerations, the property was zoned AR-1 (Agricultural Residential); that these types of uses had been routinely approved within the AR-1 (Agricultural Residential) District, and determined to be consistent with the same; that solar arrays were permitted through Conditional Use under §115-194.B of the Code, and required compliance with Conditional Use requirements as outlined in Article 24; that the project was located within the Low Density area, being a rural area, with similarly situated properties nearby; that the proposed facility supported Goal 7.3 of the Sussex County Comprehensive Plan, which advocated for renewable energy options, such as solar arrays; that the Comprehensive Plan further encourages utility level renewable development to enhance the prevalence of renewable energy statewide; that Delaware mandated that retail electricity suppliers generate 25% of electricity sold within the state from renewable sources, with a minimum of 3.5 sourced from solar PV by mid-2026; that as the Code provides that the property owners in each district can undertake certain uses of their property by right, while certain uses are prohibited outright, and other are allow upon receipt of a Conditional Use approval from Sussex County; that the Code provides that the purpose of a Conditional Use was to provide for certain uses, which could not be well adjusted to their environment in particular locations with full protection offered

to surrounding properties by rigid application of the district's regulations; that these uses are generally of a public or semi-public character, being essential and desirable for the general convenience and welfare; that because of the nature of the use, the importance of the relationship to the Comprehensive Plan, and the possible impact not only on neighboring properties, but on a large section of the County, the Application required the exercise of planning judgement on location and Site Plan; that the proposed facility was a public utility use under the Code; that it meet the purpose of the Conditional Use because it had a public or semi-public character; that it was essential and desirable for the general convenience and welfare of Sussex County residents; that buffers had been provided to address potential adverse impacts, minimize those impacts on neighbors; that security measure had been provided in the form of fencing; that the submitted plan was compliant with the solar siting considerations; that the plan complied with the landscape buffer requirements; that the location was more than 200 feet away from nearby residential units; that the transformers and similar equipment would be centrally located on the site, being at least 200 feet from any nearby dwelling; that the facility would operate as a ground mounted solar farm in accordance with the Code, with security measures being met; that a Decommissioning Plan had already been provided, and was included within the record; that the Decommissioning Plan would ensure complete reclamation upon abandonment, discontinuance or termination of the use; that as part of the Decommissioning Plan, there would also be a financial security sufficient to covering the decommissioning and removal of the panels at the end of their life cycle; that the intent was for the facility to have a life cycle of 40 years; that there was a lease in place for 25 years, with options for extension good through 40 years; that the Final Site Plan would undergo final review and approval of the Planning Commission; that approximately 4.5 acres of wetlands would remain undisturbed; that currently it was unclear whether the wetlands were jurisdictional or not; that they decided to design the site providing the required wetland buffer; that as part of Site Plan review, they would be confirming whether or not the wetlands were jurisdictional or not; that a voluntary forested buffer and maintenance of woodlands had been provided; that to mitigate the impact of woodland clearing that Applicant had committed, contingent upon final, unappealable approval, to contribute funding for reforestation at a rate of three acres reforested for every two acres cleared at a rate of \$3,000 per acres, and the donation would be made to the Land Trust, who which she requested Mr. Jon Marco Sanchez, Develop Manager for Soltage, provide additional information on.

Mr. Jon Marco Sanchez with Soltage stated that the project was referred to as the Sussex Millsboro Project; that the project would participate in the Delaware Community Solar Program, which was designed to provide guaranteed savings to participating Delmarva Power customers in Delaware, with no changes to their existing service; that any DPL (Delmarva Power & Light) customer could sign up from them; that they were required to provide at least 15% of their subscribers to be low income; that they were proposing a roughly 20 acre facility, which was expected to generate the equivalent annual electric usage of about 750 Delaware households; that assuming with the 10%

discount in the first year of their operation, they estimated that they would provide at least \$135,000 in subscriber savings in the first year, and more than eight million in projected savings over the life of the project, assuming static electric, actually assuming a 2% increase in electric costs year over year; that apart from those savings, they also pay for upgrades on the grid; that these upgrades would range from project to project based on the location; that they could go anywhere from a few \$100,000 into the millions, which help improve reliability on other projects that Delmarva Power would eventually have to pay for and then rate base out to all the customers via an increase in electric rates; that that the project would support Delaware's broader energy goals; that they did have renewable energy targets in the State and solar carve-outs; that we need energy in the country more than ever, especially in Delaware where a lot more electricity is used than produced; that tree removal was proposed for the application; that due to this they had voluntarily reached an agreement to fund the reforestation efforts at a three to two ratio, being for every two acres cleared, they would fund three acres of reforestation within the Sussex County Land Trust in the form of a donation; that this was something that the Delaware Chapter of the Sierra Club supported, as an option for mitigation, and they were committed on providing, contingent on the approval of the application.

Ms. Sindelar stated in conclusion that the proposed Conditional Use aligned with the AR-1 (Agricultural Residential) Zoning District, where similarly situated solar projects had been routinely approved; that the Concept Plan had been designed in compliance with the Sussex County Solar Ordinance and was also consistent for the reasons stated within the Comprehensive Plan. Ms. Sindelar submitted into the record proposed Findings of Fact, and proposed Conditions of Approval for the Commission's consideration.

Madam Chair Wingate questioned what number of subscribers were required to be low-income subscribers, and whether the project would serve anyone within Sussex County.

Mr. Marco Sanchez stated that 15% of subscribers were required to be low-income subscribers; that anyone located within Delaware, within the Delmarva Power territory would be eligible, and they would be willing to make a commitment to targeting customers within Sussex County first.

Mr. Pettyjohn stated that it appeared that the majority of the areas where the solar arrays were proposed, are areas located within Delaware Electric Co-op's services; that none of the neighbors closely affiliated with the areas are eligible for the benefit of the solar farm; that DP&L (Delmarva Power & Light) serviced the towns and municipalities; that those areas would be the only ones who could take advantage of the solar programs, and he questioned whether there was any similar agreement with Delaware Electric Cooperative?

Mr. Marco Sanchez stated that Delaware Electric Co-op was not mandated to participate in the program; that their participation would be completely voluntary, and that they currently do not have a similar program available to them.

Mr. Passwaters requested confirmation that the Applicant proffered that for every two acres of trees cleared from the site, that the Applicant would provide funding for three acres of trees to the Sussex Land Trust.

Mr. Marco Sanchez stated yes, and that Mr. Passwaters statement was correct.

The Commission found that no one was present in support of or in opposition to the application.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2577 Soltage DE DevCo, LLC. Motion by Mr. Pettyjohn to defer for further consideration, seconded by Mr. Collins, and carried unanimously. Motion carried 5-0.

C/U 2592 Soltage DE DevCo, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR COMMERCIAL SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 85.3 ACRES, MORE OR LESS. The property is lying on the south side of Radish Road (S.C.R. 338) and on the north and south side of Hickory Hill Road (S.C.R. 82) and Indian Town Road (S.C.R. 408), approximately 940 feet east from Mumford Road (S.C.R. 409). 911 Address: N/A. Tax Map Parcel: 133-20.00-51.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conditional Use Site Plan, the Applicant's exhibits and presentation materials, the Staff Analysis Report, a letter received from the Sussex County Engineering Department's Utility Planning Division, and the DelDOT Service Level Evaluation Response (SLER) letter. Mr. Whitehouse advised the Commission that no public comments had been received regarding the application.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Soltage DE DevCo, LLC; that also present were the current property owners, Mr. C.W. Mitchell and Ms. Cecilia Mitchell, being trustees of the Cecilia K. Mitchell Revocable Trust, Mr. Zac Meyer, Develop Director for Soltage, Mr. Steven Fortunato, P.E. with Bohler Engineering, and Mr. Matt Jennette, Vice President of Geo-Technology Associates, Inc.

Ms. Sindelar stated that she would not introduce Soltage again, but rather request to incorporate the background information provided in the prior public hearing for C/U 2577 Soltage DE DevCo, LLC into the record for C/U 2592 Soltage DE DevCo, LLC by reference; that the application sought approval for a Conditional Use of land located within the AR-1 (Agricultural Residential) Zoning District, within the Low Density Area for a solar array facility; that the proposed use was for a community solar project, operating under the Delaware's Clean Energy Facility Program; that upon approval of the project, the Applicant would install a pair of four megawatt solar energy facilities, which would generate a combined total of eight of electric power; that the project was designed for installation in one phase; that however, as indicated on the plan, phasing was contemplated; that the reason being, to get the solar energy to market as quickly as possible; that two phases had been contemplated; that Phase 1 had been made for interconnection, which was anticipated in approximately a month; that Phase 2 interconnection was anticipated in approximately three to four months; that the goal was to bring the entire project together; that there can be co-location of two projects together, provided that they do not exceed the four megawatt capacity, and was the reason the plan was structured that way; that this was a State requirement; that the equipment would only be constructed in phases if there were a delay in the issuance of the interconnection approval for Phase 2, which was not anticipated at that time; that their goal was to bring Phase 1 on first, to allow for the product to get to market sooner; that there was an ability to bifurcate the process, however it was all dependent on when the interconnection approval would be provided; that the site was located between the Hickory Hill Road and Radish Road; that the section of property that was opposite the street, came up in consideration of wetland areas, as well as forest to be retained; that the acreage was approximately 85.09 acres, with a net development area of 58.45 acres; that the property was located within the AR-1 (Agricultural Residential) District, Low Density Area and the Investment Level 3 and 4 areas; that access would be provided from Hickory Hill Road; that there would be internal streets for maintenance, which were reflected on the Site Plan; that DelDOT indicated limited traffic, stating that the proposed use would have a diminutive impact on nearby traffic; that solar setbacks had been met or exceeded; that a 100 foot setback was required from the north, with 183.2 feet proposed; that a 50 foot setback was required from the west side, with 104.7 feet proposed; that a 50 foot setback was required from the south, with 98.7 feet proposed; that a 50 foot setback was required from the east, with 66.6 feet proposed; that a 200 foot setback was required from dwelling units; that the proposed a setback of 207.6 from dwellings; that she presented to the Commission street view renderings of what the site looked like currently, what the site would look like after planting, and what the site would look like in 10 years; that in some areas there would be maintenance to the existing forest; that other areas would be buffered; that they proposed a 30 foot wide buffer to consist of 10 Evergreen trees per linear feet; that the wetland area was located across the street, consisting of approximately 5.02 acres; that no solar arrays were proposed in that area; that in terms of the compliance with the Zoning Code, Comprehensive Plan, Conditional Use and Solar Siting considerations, she requested to incorporate by reference the previous states made with respect to the previous project, which were

also applicable for the current site; that the landscape buffer, as required by §115-172.I were proposed with a minimum of 100 feet from any streets and a minimum of 50 feet from all property lines; that the panels would be located 207.6 feet away from any dwelling on any neighboring property, therefore being in excess of the minimum 200 foot setback; that equipment would be centrally located on the site; that the facility would operate as a ground mounted solar farm; that signage would be in compliance with the Code; that security measures would be in place with an agricultural style fence; that a Decommissioning Plan had been submitted; that final approval would be subject to the Commission's review and approval; that the project was in compliance with the Solar Ordinance; that the 5.02 acres of wetlands would remain undisturbed; and there would be voluntary maintenance of woodland; that there would be a Land Trust donation made with the same ratio, being the two to three as well, and she requested that Mr. Matt Jennette of Geo-Technology Associates, Inc. provide additional information regarding the performed Forest Assessment.

Mr. Matt Jennette, Environmental Scientist with Geo-Technology Associates, Inc. (GTA) stated that GTA had performed a Forest Assessment for the site, with the purpose of identifying areas that were higher priority for retention based on species composition, stand age, and overall habitat quality; that the site was separated into three tracks of land, being north of Hickory Hill Road and south of Hickory Hill Road; that they looked at both areas to help paint a full picture of the forest and resources on the site; that the highest quality forest was the forest south of Hickory Hill Road, associated with Iron Branch, which formed a southern property boundary; that the forest in that area was in great condition; that it was dominated by Lizard's Tail and netted chain fern in the herbaceous layer; that the area had great shrubs, clethra, spicebush, viburnum, and other things really good for wildlife habitat, especially birds; that the largest trees on the site were located within the wetland area; that of all the specimen trees observed, the trees greater than 30 inches in diameter were trees located within the wetland; that when progressing north, there was a nice forest which buffered the wetland area; that this area had a lot of mass producing trees, consisting of oaks, beeches, and hickories that were really valuable for wildlife habitat potential, where the trees buffered the wetlands; that there was a moderately sloped hillside buffering the wetland there; that when moving on to the site as a whole, there were 37.5 acres of forest on the tract of land north of Hickory Hill Road, compared to the Millsboro site he last spoke on, the current site was a bit more mature, being considered a mid-successional stage forest; that typical for Sussex County, a lot of the mid-successional stage forests are really dominated by red maple; that red maples are not a great tree, but are native; that it produced quality habitat value; that they did see more mature trees, such as oaks and hickories popping up, but were limited to little isolated areas; that there were no full stands of oaks or hickories; that what hurt the site was the amount of edge habitat there was; that when one were to look 100 feet to 150 feet from the agricultural field edge, at the bottom and then Radish Lane at the top, there was more light produced and infiltrating in that area, which leads to a lot of invasive species; that there were a lot of Oriental Bittersweet, Japanese Honeysuckle

and Smilax trees, which inhibited wildlife value along the edges; that the nicer forest was found to be primarily in the northern part of the stand, located closer to the road, and along the property line.

Mr. Zac Meyer, Develop Director for Soltage, who stated that the highest quality forest was located on the part south of the road, which they proposed to leave undisturbed; that for every two acres of trees removed, they would fund three acres of reforestation with the Sussex County Land Trust; that they had spoken with the Sussex County Land Trust, who were on board with the concept; that the understood that the Sierra Club for Delaware supported their proposed reforestation concept as well; that it was his understanding that they had suggested an equal amount of acres; that they are exceeding that suggestion with a three to two ratio; that the project would help the Delaware Renewable Energy targets; the current project would service approximately 1,70 homes, totaling approximately \$18 million in energy savings for subscribers, over its 40 year life expectancy; that the project was pretty far along with the interconnection process with Delmarva Power & Light; that although the project had not yet received a formal approval and cost letter, per their previous conversations with DP&L, it had led them to believe that the projects would indeed be able to proceed and afford their interconnection cost upgrades; that regarding the fencing, they would suggest using a fixed, non-agricultural style fence; that they were willing to use the standard for Sussex County; that if the Commission preferred they stick with a chain link fence with the mesh screen or interwoven slabs, they were happy to provide that; that however, they wanted to propose fencing that they had been constructing on many other projects around the County; that this fencing was more of a nice farm style fence, which he felt was more attractive with the vegetative buffer; that in the years before the vegetative buffer thickens out, he would rather see a farm style fence with solar beyond, than to see a chain link fence with screening on it and barbed wire, but they would move forward with whichever fencing the Commission required; that they would be submitting details regarding the proposed fencing prior to the public hearing before the County Council; that instead of chain link, the fence would provide narrow holes in the fence; that this type of fencing would likely be seen around a cow or horse pasture; that safety would be first and foremost; that for the National Electric Code, no matter the fence style, it must be a minimum of seven feet in height; that the fence would be wood posts, with metal between the wooden posts, providing wider holes without barbed wire.

Madam Chair Wingate stated that generally the Commission required the woven screening; that the issue went back to her point that there are many solar applications before the Commission; that they have placed Conditions of Approval for the applications, but had not yet seen any of the projects built; that the Commission does not know what they do not know; that the Commission has not been able to see a constructed solar project to review whether the imposed conditions were appropriate or not, and she felt they were in the middle of a growing pain, but also felt the Commission should remain consistent.

Mr. Meyer stated that they were happy to provide standard fencing if that was what the Commission preferred.

Ms. Sindelar stated in conclusion that the proposed Conditional Use aligned with the AR-1 (Agricultural Residential) District, which was consistent with the County's Solar Ordinance and the Comprehensive Plan. Ms. Sindelar submitted into the record proposed Findings of Fact, and proposed Conditions of Approval for the Commission's consideration.

Mr. Robertson stated that the Code did not provide specific details on fencing; that the fencing requirements had been more of a standard requirement imposed by the Commission; that there was a buffer requirement; that to Madam Chair Wingate's point, the Commission was all ears on the best scenario, but the Commission had not seen a lot of complete solar projects, and therefore yet to know what the best scenario might be.

Mr. Collins stated that he agreed with the prior Applicant regarding the screening material on the fences, and the rate at which it deteriorates.

The Commission found that one person was present in support of the application, and that no one was present in opposition to the application.

Mr. C.W. Mitchell, owner of the property, spoke in support of the application on behalf of himself and his family. Mr. Mitchell stated that his family had owned the land for six generations; that their goal was to continue to be farmers and good stewards of the land; that they were excited about the solar opportunity; that the funds would generationally help his family; that the property is not what they considered productive agricultural land; that it was currently being tilled, however, was not considered top quality soil.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2592 Soltage DE DevCo, LLC. Motion by Mr. Pettyjohn to defer for further consideration, seconded by Mr. Collins, and carried unanimously. Motion carried 5-0.

RECESS

5:45 PM – 5:55 PM

C/Z 2032 ELU DeLuca Mid-Atlantic, LLC (Tide Pines)

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY (181 DWELLING UNITS) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 63.28 ACRES, MORE OR LESS. The properties are lying on the south side of Legion Road (S.C.R. 298), approximately 0.51 mile south of John J. Williams Highway (Route 24). 911 Address: N/A. Tax Map Parcels: 234-29.00-265.00 & 264.00 (P/O).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Site Plan, the Environmental Assessment, the Applicant's Exhibit Book, the Drainage Assessment Report (DAR), the Applicant's presentation materials, the Staff Analysis Report, the sewer provider letter, the State PLUS comments, a letter received from the Sussex County Engineering's Utility Planning Division, the DelDOT Area Wide Study Fee Memorandum (AWSF), the Delaware Department of Transportation Service Level Evaluation Response letter (SLER), and responses from the Technical Advisory Committee, including letters from the Delaware Electric Co-op, DNREC Division of Drainage, the State Fire Marshal's Office, and Delmarva Power. Mr. Whitehouse advised the Commission that three written public comments had been received regarding the application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, ELU DeLuca Mid-Atlantic, LLC; that also present were Mr. Joe DeLuca and Mr. Reese Rosenthal, Principals of ELU DeLuca Mid-Atlantic, LLC, Mr. Jason Palkewicz, P.E. with Solutions, IPEM, Mr. Marc Cote, P.E. & Certified Planner with the Rossi Group, and Mr. Matt Jennette, Environmental Scientist and Vice President of Geo-Technology Associates, Inc. (GTA).

Mr. Hutt stated that the application was for a Change of Zone for all of one parcel, and a portion of another parcel; that the total acreage involved was 63.21 acres; that while the application was dominated as a Change of Zone application, it was a bit of a misnomer; that the end result would be the same underlying zoning; that they were requesting a RPC (Residential Planned Community) overlay to be placed over the current zoning; that presently the property was zoned GR (General Residential); that the property is located along the west side of the Legion Road; that various existing communities were located within the area; that the site was current undeveloped; that the application proposed 181 total units, to include a mixture of 107 single-family detached homes and 74 townhomes; that the application could easily be described as an infill project which would be consistent with the surrounding area; that the Site Plan was created and tailored to match the physical characteristics of the property, as well as the surrounding area; that the site was located on the west side of Legion Road; that Legion Road began at Route 24 (John J. Williams Highway), and ran to Tributary Road, within the Peninsula Lakes community; that the American Legion Post

28 was located at the intersection of Legion Road and Route 24; that if one were to travel east from the intersection of Legion Road and Route 24, the next signalized intersection was Bay Farm Road, being the intersection were Harris Teeter, Walgreens and other commercial opportunities were located; that at that traffic signal, Bay Farm Road would be to the left and Autumn Road would be located to the right; that when traveling west on Route 24 from the Legion Road intersection to the next signalized intersection, would be the location of Mary Mother of Peace Church; that across the street from the church was the location of Royal Farms; that when switching back across Route 24, there was the location of the Nanticoke Indian Museum; that when heading back east, towards Legion Road on Route 24, there was the Trading Post Plaza; that at this location, Mount Joy Road was located to the north, and Oak Orchard Road was located to the south; that Route 24 was one of the primary east to west corridors in Sussex County; that the mentioned traffic signals and businesses was a representative of the Route 24 corridor, and its significant amount of residential uses, commercial businesses, employment opportunities, and business centers along the length of Route 24; that according to the State Strategies Map, the property was primarily located within Investment Level 2; that there was a small portion near Emily Gut, located on the eastern side of the property, located within Investment Level 3; that the Office of State Planning Coordination and the State Strategies document, indicated that for Level 2, investments in policy should support and encourage a wide range of uses and densities, promote other transportation options, foster efficient use of existing public and private investments, and enhance community identity integrity; that it went on to state that investments should encourage departure from the typical single family dwelling developments and promote a broader mix of housing types; that it stated the State's intent was to use its spending and management tools to promote well-designed development in these areas; that such developments provide a variety of housing types; that the application proposed two housing types; that was what Residential Planned Communities allowed; that according to the chart provided within the 2025 State Strategies document, it included a policy focus; that the first bullet point of the policy focus was for a broader mix of housing and commercial options; that the next was for efficient use of public and private investments and then infrastructure investments for new growth; that the most important part was for the broader mix of housing options is what Level 2 encouraged; that in short, this was an area where the State expected and encouraged growth and more specifically, departure from single-family detached developments; that according to the Future Land Use Map, the site was located within Coastal Area, being one of the County's seven growth areas; that everything surrounding the property was located within the same Coastal Area; that northwest of the site there were areas located within the Low Density Area; that the Comprehensive Plan describes the Coastal Area; that it talks about having a range of housing types that should be permitted and specifies including single-family homes, townhomes, and multi-family units; that this is exactly the housing proposed within the current application; that the predominant zoning classification for the area was GR (General Residential), being the same as the subject property; that immediately east of the site are properties located within the MR (Medium Density Residential) Zoning, which was very similar to the GR District as far as density and types of uses;

that most of that area was the Peninsula Lakes community; that additionally, there were HR-1 (High Density Residential) zoned properties, along with various commercial areas including C-1 (General Commercial), CR-1 (Commercial Residential), C-2 (Medium Commercial), and B-1 (Neighborhood Business) are all represented along the Route 24 corridor; that all of this highlighted the mixture of businesses, various residential opportunities, including medium to higher density residential uses within the immediately surrounding area; that the purpose of the GR (General Residential) Zoning was to provide for medium density residential development use, including all manufactured homes, and was an apt description of the area; that when looking at a one or two mile radius around the site, one can see all the various community names represented on the map; that the application proposed 181 total units, with a gross density of 2.86 units to the acre; that because they were proposing an RPC (Residential Planned Community), there was a different way to calculate density; that pursuant to §115-126, there was a different way to calculate density; that those included areas for churches, schools, State wetlands or Tidal wetlands, commercial uses, and then either 25% as a number for streets or the actual area of the streets; that all of those things could be deducted when calculating density within an RPC; that the only one of these that applied to the current property was the actual area of the streets which was 8.6 acres; that when the application's RPC's net density was calculated, it equaled to 3.31 units to the acre; that this was consistent and less than the density of many of the other residential projects located within the one and two mile radiuses of the site; that within a one mile radius of the site there was Victoria's Landing at 11.4 units to the acres, Plover Point at 2.6 units to the acre, the Crossings at Oak Orchard at six (6) units to the acre, Patriots Glen at 3.1 units to the acre, Riverside at 6.7 units to the acre, and Driftwood Village at four (4) units to the acre; that within a two mile radius of the site there was Bayshore at 8.9 units to the acre, Baywood Garden Villas at 9.4 units to the acre, Lingo Estates at 3.9 units to the acre, and Enchanted Acres at four (4) units to the acre; that most of nearby communities were higher than the proposed 3.31 units to the acre, as was proposed for the current application; that Mr. Matt Jennette and his team with GTA performed a number of forms of analysis of the property; that the purpose of an RPC (Residential Planned Community) was to encourage large scale developments as a means of creating a superior living environment through unified developments and to provide for the application of design ingenuity while protecting existing and future developments in achieving the goals of the Comprehensive Plan; that in order to create that superior living environment, or a well-designed community, the property was studied to determine its primary ecological factors; that this process also occurs with Cluster Major Subdivision applications; that not only was this consistent with the Comprehensive Plan, the Zoning Code and sound land use planning, it also matched the Office of State Planning Coordination Statement in its PLUS Review for the project; that it noted that based on comments from State agencies, if the parcel contained environmental concerns or other constraints to development, the State requested that the Applicant and the local jurisdiction work with State agencies to design the site with respect to those environmental features, which would help create a more sustainable development; that one of the first things that occurred was a Wetland

Delineation of the property, which was conducted by GTA; that the delineation showed the existence of just under one acre, specifically 0.96 acres, of Non-Tidal wetlands located along the eastern boundary of the property, along Emily Gut; that the U.S. Army Corps of Engineers issued an approved Jurisdictional Determination (AJD) on September 13th, confirming the delineation; that the first step was the delineation of the wetlands along Emily Gut, and the approved Army Corps of Engineers Jurisdictional Determination; that the next step was to identify any other ecological features that existed on the site; that this was the wooded areas of the site, which were reflected in a green color on the presentation; that the areas reflected in purple were agricultural fields which existed on the site; that as part of the process, GTA did a Forest Assessment Report and a Drainage Assessment Report, assigning a list of priorities, with respect to those resources on the site; that with respect to the actual resource, as the term is defined in the Zoning Code, the wetlands were a resource that required resource buffering; that layers of resource buffering were provided adjacent to those wetlands; that the next priority was level was given to the trees and the woodlands, with the next priority being the agricultural areas; that after delineating the wetlands, studying the site, taking into consideration the performed assessments and reports, the lots were then added, followed by the street network; that the land plan was then prepared, so that the wetlands and the area at the eastern side of the parcel would not be disturbed at all; that the land plan was designed in a way so that 12.8 acres (26%) of the woods would remain; that Open Space A, consisting of 23.7 acres, equaling 37% of the site, not only created a greater buffer between the resource wetlands, but additionally included an amenity; that it was useful open space to the residents of the future community, as they would be able to walk on a walking trail through the area; that while the application was filed before the current perimeter buffer Ordinance, which requires a 30 foot buffer, as well as perimeter buffer protection area, it was found that the plan could meet those requirements on the southern and western boundaries of the site; that in addition to the 30 foot perimeter buffer, the Applicant was proffering within the proposed conditions, an additional 20 feet of perimeter buffer protection area along the southern and western boundaries; that this would allow more preservation of woods; that the entrance would be off Legion Road; that there would be a required right turn lane added; that the 30 foot perimeter buffer would be added to the area which was currently agricultural field; that there would be an amenity center right as one would enter the community; that the amenities were proposed to include a clubhouse, pool house, and some sports courts; that when moving further into the community, was the location of the wetlands along the eastern boundary, along with the resource buffers, and Open Space A consisting of 23.7 acres; that the plan proposed an additional open space area, consisting of four acres, equaling a total of 27.5 acres (43%) of open space for the entire project; that the walking trail within Open Space A provided a connection to the location of the amenity area; that the same walking trail connected to a sidewalk network in the community; that the sidewalks would be located on one side of the streets throughout the community; that street lighting would be provided throughout the community; that other superior design feature was to treat the 50 foot agricultural separation distance requirement as a setback, rather than just a separation distance; that in addition

to the 30 foot perimeter buffer, and in some cases the 20 foot perimeter buffer protection area, there are no lots closer than 50 foot along those areas; that it is not a separation distance, but rather a true building setback; that from the Peninsula Lakes community, there was an organic buffer provided by Emily Gut, with the addition of Open Space A to buffer the two communities from each other; that the FEMA Flood Map indicated that the properties were located within the Flood Zone X, which is an area outside of the 500 Year Floodplain; that central and public utilities were available to the site; that Tidewater Utilities had provided a Willing and Able Letter, confirming the availability of central water; that the Sussex County Engineering Department confirmed that there was capacity for central sewer to the site; that there were no Water Protection Areas, as defined in Chapter 89, which included Wellhead Protection Areas and Excellent Groundwater Recharge Areas; that a Property Owners Association would be formed to manage all of the open space and common areas; that there was a memorandum in the record from Mr. Robertson's office, reviewing all of the various provisions, ensuring they were met within the sample set of Restrictive Covenants; that the property was located within the Indian River School District; that the Applicant would coordinate with the school district regarding the location of a bus stop; that a DelDOT Service Level Evaluation Request was filed with DelDOT; that DelDOT's response indicated that the traffic impact for the proposed community would be a minor impact; that when a project provides a minor impact, rather than performing a Traffic Impact Study (TIS), the Applicant may pay an Area Wide Study Fee (AWSF) in lieu of that Traffic Impact Study; that there would be a right turn lane added onto Legion Road, as part of the creation of the entrance to Tide Pines community; that Legion Road is an improved road; that the road was improved as part of the Peninsula Lakes community construction; that Legion Road, from Route 24 to the Peninsula Lakes community, met the DelDOT Functional Classification of a local road; that there would be two, 11 foot travel lanes and five foot shoulders outside of those travel lanes; that DelDOT had reported that a traffic signal was to be installed at the intersection of Legion Road and Route 24, in Fiscal Year 27; that the proposed traffic signal would be helpful for not only the Tide Pines community, but for the Peninsula Lakes and others who access Legion Road; that the Applicant had hired Mr. Marc Cote, P.E. & Certified Planner with the Rossi Group, to perform an analysis on the level of service at the nearest intersections; that the intersections where the entrances were studied were the entrance to Tide Pines, Peninsula Lakes, and the Legion Road and Route 24 entrance; that particularly with the traffic signal, the conclusion was that there was no degradation below a level of Service D; that he had questioned Mr. Cote about how the straightaway and the road would work; that Mr. Cote indicated that the road was too short to do a true segment analysis, where actual straightaways or the distances between intersections were analyzed; that the reports were submitted as part of the application's project book; that within those reports, Mr. Cote indicated that there was sufficient capacity for the additional demand from the Tide Pines community along Legion Road; that Mr. Cote noted that there was a generally accepted capacity of 1,700 vehicles per hour in each direction and 3,200 vehicles per hour in both directions for a road of that nature; that the peak hour trips projected to be generated were 137, and therefore there was adequate

capacity as the project did not approach anything close to those type of vehicles per hour in either direction; that within the project book, there were a number of items; that in addition, there were references to various Chapters, not only Chapter 4 of the Comprehensive Plan, but other ways that the application complied with Chapter 5 regarding Conservation, Chapter 6 regarding Recreation and Open Space, Chapter 7 regarding Utilities, Chapter 8 regarding Housing, and Chapter 12 regarding Community Design; that with respect to the Coastal Areas, the Comprehensive Plan stated that there should be a range of housing types, including single family homes, townhomes, and multifamily units, going on to state that medium and higher densities, of four to 12 units per acre could be appropriate in certain locations, where supported by central water and sewer, and when near sufficient commercial uses and employment centers, where it would be keeping in character of the area, and where located along a main road or at/near a major intersection, where adequate level of service, or whether there are other considerations that exist, which were relevant to the requested project and density; that the application's purpose of the General Residential (GR) District was to provide for medium density residential use; that the application was not considered a medium density residential use, as it did not propose four to 12 units to the acre; that not only was the proposed density below the Comprehensive Plans definition of medium to high density, that both the net or RPC density of 3.3 units to the acre, as well as the gross density of 2.86 units to the acre are short by nearly a unit to the acre of the base density within the GR (General Residential) District, which allowed a subdivision with 10,000 square foot lots, equaling a base density of the GR (General Residential) Zoning District at 4.3 units per acre; that the proposed application was well below that number; that the property was located within an area where central water and sewer would be provided; that there are plenty of commercial uses and employment centers along Route 24; that the proposed project would be keeping within the character of the area; that there were various existing communities within the area, creating the project to be considered and infill project; that the intersection of Route 24 and Legion Road was considered a major intersection and will likely become more major after the traffic signal would be placed; that as demonstrated in the Traffic Analysis performed by the Rossi Group, there was an adequate level of service; that Super Design elements required as part of the RPC plan included the Resource Buffer Protection requirements, and all the additional woods added along the resource; that the resource itself was actually within the Peninsula Lakes property, however the Tide Pines site would be located adjacent to it; that the design proposed to provide a resource buffer of 30 feet, and additionally the acres of woods to surround that resource buffer; that the application exceeded the Open Space requirements by providing 43% open space, located in one block of land, adjacent to the resource that was being protected; that one of the goals of any RPC was to protect existing and future developments; that this was achieved by increasing the perimeter buffers, with a significant buffer provided adjacent to Peninsula Lakes, with all other adjacent properties receiving the benefit of not only the 30 foot perimeter buffer, but along the southern and western boundary the additional buffer protection area; that the application also proposed that the agricultural separation distance be treated as a setback; that the project included walking trails, sidewalks on one side of the street

and amenities for all of the residents; that the result of all of these thing was a superior design development that conformed with the standard of the Comprehensive Plan, as well as the principles of civic design, land use planning and landscape architecture; that within RPC districts, it was permitted to modify some of the typical Bulk Area standards, as part of the design and ingenuity for the RPC; that on Page 5, Condition B of the proposed Conditions of Approval, the application, with respect to single-family homes, proposed a Front Yard Setback of 20 feet with a Side Yard Setback of eight (8) feet; that with respect to the townhomes, the application proposed a Front Yard Setback of 20 feet, with a Rear Yard Setback of ten (10) feet, with a required 30 feet, rather than 40 feet; that the proposed setbacks allowed for more compact lots, which allowed for the greater protection of open space and the perimeter buffer; that Condition J related to the perimeter buffer, and included language regarding the southern and western boundary where the Applicant was proffering the perimeter buffer protection area, outside of the perimeter buffer itself; that within Condition L the amenities are listed with a minimum size square footage rather than specifying something else; that this was proposed in hopes that it would be easier for the Planning Commission and the staff; that should the application be approved, the question would be would there be a minimum of a 500 square foot pool house or does the water surface area of the pool meet the 1,200 square foot minimum shown; that Condition S, as proffered by the Applicant, stated at the issuance of each building permit for each residential unit, the Applicant would make a \$500 contribution to the Indian River Volunteer Fire Company, equaling a total contribution of \$90,500 by the build out of the project, and in addition, the Applicant proposed that the governing documents for the community, would include a monthly contribution of \$8.00 per unit, which would be an annual contribution of \$17,376 to be paid to the Indian River Volunteer Fire Company.

Mr. Hutt requested to submit a set of proposed Findings of Fact and proposed Conditions of Approval into the record for the Commission's consideration.

Mr. Collins stated that he appreciated the preservation of woodlands, as well as the contribution to the fire department.

Madam Chair Wingate questioned whether Legion Road was a Delaware Department of Transportation (DelDOT) maintained roadway, as there had been a letter received in opposition expressing concerns regarding the roadways.

Mr. Hutt stated that Legion Road is maintained by the Delaware Department of Transportation (DelDOT) and was not privately maintained by any other community or organization.

The Commission found that one person spoke from a neutral position, and no one was present in support of or in opposition to the application.

The Commission found that Mr. Bob Verdugo spoke from a neutral position, on behalf of the Peninsula Lakes Board of Directors. Mr. Verdugo stated that the Applicant presented a good plan, but requested careful planning by the Commission; that he expressed concerns regarding stormwater management, potential negative impacts to Emily's Gut, and other environmentally sensitive areas connected to Emily's Gut, running to the Indian River Bay, flooding, and environmental degradation; that he requested strong oversight be provided by DNREC and the Sussex Conservation District; that the plan did not provide significant buffers; that the plan provided little open space, and additionally he expressed concern regarding the stormwater swales, road culverts, ditching, drainage access areas, Traffic Impact Study (TIS) deficiencies, and cut through traffic; that he requested Sussex County encourage lighting standards designed to minimize impacts on neighboring homes, wildlife habitats, wetlands and natural environments. Mr. Verdugo requested to submit Conditions of Approval proposed by the Peninsula Lakes community.

Madam Chair Wingate stated that she understood Mr. Verdugo's concerns; that she stated that Mr. Verdugo's concerns were outside of the Commission's purview, as they were regulated by the Soil Conservation District (SCD), and stated that legally, the developer could not push water onto another existing property; that the runoff would be the developers to maintain, and the plan would be required to go before the Soil Conservation District.

Mr. Robertson requested that the Applicant provide a response to the expressed concern regarding runoff conveyance.

The Commission found that Mr. Jason Palkewicz, P.E. with Solutions, IPEM spoke on behalf of the application. Mr. Palkewicz stated that the drainage conveyance would be along a pipe stem, which was located on the Peninsula Lakes property; that the project roadway would be designed to not interfere with that flow; that it drains most of Legion Road; that they will have a stormwater pond that would discharge into that portion of the gut as well; that once you get further towards the main chunk of the property, the center of that becomes right along the property, and that portion of it is on the Peninsula Lakes property.

Mr. Robertson stated he believed the takeaway was that it was not on the subject site; that there would not be any grading that would interfere with it because it is not on someone else's property, and it was safe to say that the stormwater from the new road for the development would capture its own stormwater and convey it internally within the development.

Mr. Jason Palkewicz stated that Mr. Robertson's comments were correct, and that they would bring the stormwater to the stormwater ponds on the site.

Mr. Hutt stated that they had a brief discussion before the public hearing with the folks from Peninsula Lakes; that he hoped in the provided presentation that the importance of Emily Gut, the wetlands and the resources were fully accounted for and taken into account; that a 30 foot Resource Buffer Protection buffer was provided, as required by Code; that there are acres of land along that resource, and they recognize the importance of that Emily's Gut serves, not only to the property, but to Peninsula Lakes as well.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/Z 2032 ELU DeLuca Mid-Atlantic, LLC (Tide Pines). Motion by Mr. Pettyjohn to defer for further consideration, seconded by Mr. Collins, and carried unanimously. Motion carried 5-0.

PUBLIC COMMENT

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

Meeting adjourned at 7:00 p.m.

Planning and Zoning Commission meetings can be monitored on the internet at www.sussexcountyde.gov.
