

MINUTES OF THE REGULAR MEETING OF JUNE 3, 2026

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, June 3, 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. Ann Lepore – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that C/U 2569 Pivot Energy DEL045, LLC had been postponed, removed from the agenda, and would be re-advertised for a future Planning & Zoning Commission and Sussex County Council meeting date.

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

Motion by Mr. Collins, seconded by Mr. Passwaters, to approve the Minutes of May 6, 2026, of the Planning and Zoning Commission Meetings as circulated. Motion carried 5-0.

OLD BUSINESS

2024-07 Stockley Acres

A cluster subdivision to divide 41.7 acres +/- into eighty-three (83) single-family lots, to be located on a certain parcel of land lying and being in Sussex County. The properties are lying on the south side of Stockley Road (S.C.R. 280), approximately 0.38 mile west of Beaver Dam Road (Rt. 23). 911 Address: 30134, 30104 & 30164 Stockley Road, Milton. Tax Map Parcel: 234-5.00-54.00 & 54.01. Zoning: AR-1 (Agricultural Residential).

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

Mr. Pettyjohn moved that the Commission grant Preliminary Subdivision approval for 2024-07 Stockley Acres with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision of 83 single-family lots on 41.7 acres. This results in a density of 1.99 lots per acre, which is within the density permitted in the AR-1 Zoning District. All of the lots will have a minimum size of 7,500 square feet.

2. The subdivision is located within the Low Density Area according to the Future Land Use Map of the Sussex County Comprehensive Plan. It complies with the current directives of the Plan.
3. The project will be served by central water and central wastewater.
4. The site contains approximately 4.32 acres of non-tidal wetlands as confirmed by a Jurisdictional Determination issued by the Army Corps of Engineers. A Drainage Assessment Report was prepared and provided by the Applicant regarding the wetlands and waterways and a Forest Evaluation has also been supplied. The wetland areas will be protected through the County's Resource and Resource Buffer requirements, and the wetlands are further surrounded by additional open space.
5. DelDOT has determined that the traffic impact of this subdivision will be "Minor" and that a Traffic Impact Study will not be necessary. Instead, the developer will be required by DelDOT to pay an Area Wide Study Fee in addition to constructing various roadway improvements.
6. This subdivision has a design that is superior to that of a standard subdivision for many reasons, including the following:
 - A. The Applicant's Engineer identified areas worthy of preservation and mapped them. This includes a large area of woodlands adjacent to the wetlands that is being preserved in its natural state.
 - B. The lots and amenities are largely clustered on the remaining environmentally suitable portions of the property.
 - C. The areas of the property that will be developed and improved avoid the areas where wetlands are located and comply with the County Resource Protection standards.
 - D. A Forest Assessment has been provided and the design includes the preservation of approximately 30% of the trees on the site.
 - E. The design includes approximately 48% of the site remaining as open space. This significantly exceeds the Code's 30% open space requirement. This also substantially exceeds the amount of open space that would remain within a standard subdivision.
 - F. There will be a buffer that is at least 30 feet in width around the subdivision. In many places this buffer is greater than 30 feet in width.
7. Section 99-9C of the Subdivision Code requires the Commission to consider multiple items relating to the site plan. The Applicant has addressed the requirements of Section 99-9C of the Code and there are conditions of this approval that are based upon these items.
8. As a result of all of these reasons and based upon the record that was presented, this application complies with the standards of the Sussex County Subdivision and Zoning Codes, and it will not have an adverse impact on area properties, roadways or public/community facilities.
9. This preliminary approval is subject to the following conditions:

- A. There shall be no more than 83 lots within the subdivision.
- B. The Final Site Plan shall confirm that approximately 48% of the site shall remain as open space. This open space shall preserve approximately 5.4 acres of the existing trees on the site. The areas of woodlands to be preserved shall be shown on the Final Site Plan as “Non-Disturbance Areas”. Silt fencing shall be installed along the perimeter of these wooded areas to avoid disturbance during sitework and construction.
- C. The Resources defined by Sussex County Code shall be protected, preserved, and maintained as required by Section 115-193 of the Sussex County Zoning Code. The Final Site Plan and Recorded Restrictive Covenants shall include a Resource Buffer Management Plan and shall serve as a guide for the management of regulated Resources and their Resource Buffers.
- D. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
- E. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- F. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision and vegetated and maintained in accordance with Section 99-21A of the Sussex County Code. This buffer shall utilize existing forest or similar vegetation that exists within it. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
- G. The development shall comply with all DelDOT entrance and roadway improvement requirements in addition to the payment of an Area Wide Study Fee.
- H. Sidewalks shall be installed on at least one side of all streets along with a connection to the DelDOT multi-modal path. A streetlighting system that provides lighting in a downward direction with minimal uplighting shall be provided.
- I. As stated by the applicant, the active recreational amenities for the subdivision shall include a clubhouse and pool. These amenities shall be constructed and open to use by the residents of the development in accordance with Section 99-21.E of the Subdivision Code. The Final Site Plan shall contain specific details as to the size and location of each of these amenities.
- J. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- K. Street design shall meet or exceed Sussex County standards.
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- M. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Saturday. No Sunday hours are permitted.

- A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- N. The Applicant shall coordinate with the local school district regarding the location of school bus stops within the subdivision. The location of the bus stop areas shall be shown on the Final Site Plan.
 - O. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. These documents shall include a similar notice that hunting activities may also occur on nearby properties.
 - P. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffers. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
 - Q. As proffered by the Applicant, and subject to the receipt of final, unappealable subdivision plan approval, the Applicant agrees to make a donation of One Thousand Dollars and Zero Cents (\$1,000.00) per lot to the Sussex County Land Trust. Confirmation of this contribution shall be provided to Planning & Zoning Staff.
 - R. There are two existing homes on the property. The Applicant should explore moving and/or donating those homes to an affordable housing organization so that they are not simply demolished. The Applicant shall report on these efforts at the time of Final Site Plan review.
 - S. The Final Site Plan shall include a Grading Plan for each phase of the subdivision. No building permit shall be issued for individual lots until an individual lot Grading Plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual Site Grading Plan.
 - T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Pettyjohn, seconded by Mr. Passwaters and carried unanimously to grant Preliminary Subdivision approval for 2024-07 Stockley Acres for the reasons and the conditions stated in motion. Motion carried 4-1.

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

Mr. Allen voted yea, for the reasons and the conditions stated in the motion.

Mr. Passwaters voted yea, for the reasons and the conditions stated in the motion.

Mr. Collins vote nay, stating he found the proposed subdivision to be out of character with the other residential developments closest to it, and therefore felt it should not exist, and he did not believe that the County Code backed up a denial for that reason.

Mr. Pettyjohn voted yea, for the reasons and the conditions stated in the motion.

Madam Chair Wingate voted yea, for the reasons and the conditions stated in the motion.

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.

Mr. Allen moved that Zion Church Ventures, under application C/U 2631, has requested an amendment to Condition D and the deletion of Condition N of Conditional Use No. 2581 and Ordinance No. 4009.

Condition D prohibited any walled off offices within individual units, and Condition N required a central on-site office within the project.

The prohibition against an internal, walled-off office within any individual unit is consistent with the manner in which this application was presented- that it would primarily be used for personal storage purposes and not for more intensive business uses. In furtherance of this, there is also a prohibition in Condition D against the use of a unit for manufacturing or industrial purposes, or as a mail drop or for food preparation. Condition A also prohibits the use of units for gyms, food service, retail or other more intensive uses. These prohibitions were included to prevent the facility from being converted to more intensive uses than what was presented during the public hearings and creating unanticipated issues with parking, traffic, utility services and other factors. There

was also a concern that the units might be converted in part for use as temporary residences for employees. The inclusion of the prohibition against internal, walled-off offices is consistent with these other existing prohibitions in the Conditional Use. For that reason, it is my recommendation that the Applicant's request to amend Condition D be denied.

Condition N is less of a concern. As originally presented, this use would have a variety of amenities, including a pool and car wash which would suggest that a central office is appropriate. Although central offices are typically included in a storage facility as part of the design and operation of it, they are not always included as a condition of approval. For that reason, I recommend that Condition N requiring a central office be deleted from the prior approval. By removing this condition, the Applicant will still be able to install a central office, if necessary, it will just not be a County requirement.

In summary, Mr. Allen moved that the request to amend Condition D be denied, and the request to delete Condition N be granted by the Commission.

Motion by Mr. Allen, seconded by Mr. Collins, and carried unanimously to recommend partial approval for C/U 2631 Zion Church Ventures, LLC, by recommending denial of the requested amendment for Condition D, regarding individual unit offices, and recommending approval of the requested deletion of Condition N, regarding the requirement for a central on-site office, as required within the Conditions of Approval for Conditional Use No. 2581 (Ordinance No. 4009), for the reasons stated in 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.

Mr. Allen voted yea, for the reasons stated in the motion.

Mr. Passwaters voted yea, for the reasons stated in the motion.

Mr. Collins vote yea, for the reasons stated in the motion.

Mr. Pettyjohn voted yea, for the reasons stated in the motion.

Madam Chair Wingate voted yea, for the reasons stated in the motion.

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.

Mr. Passwaters stated that he had reviewed the public hearing audio and the Application's public record, and therefore, was prepared and eligible to vote.

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

Mr. Passwaters moved that the Commission recommend denial of Conditional Use No. 2604 for Alvaro E. Perez Roblero for a landscaping business with outdoor storage and parking based upon the record made during the public hearing and for the following reasons:

1. This application is for a landscaping business on a 5.00-acre lot in an area adjacent to other residential properties.
2. The Planning & Zoning Commission is generally supportive of small businesses when they are appropriately located and operated. However, the record indicates that the Applicant has been operating his landscaping business from this property without the proper approvals in a location that is adversely affecting the area.
3. In addition, the Applicant has not satisfied the burden of creating an adequate record in support of the Application.
4. There was opposition to the Application from a neighboring property owner describing the current bad condition of the Property, and the neighbor expressed concerns that this would only get worse if the use is allowed to continue with a conditional use approval.
5. Photographs entered into the record show that there is a large accumulation of trash, logs, mulch and shredded wood and other materials throughout the property and along the boundary with neighboring properties. Under these conditions, it is not appropriate to grant a conditional use on this property.
6. There is testimony in the record that there is a title dispute as to a significant portion of the property. This should be resolved before further disturbance of the property can occur through the approval of a conditional use at this site.
7. There is evidence in the record that the existing condition of the property and proposed use and the materials, equipment and vehicles associated with it, adversely affects the neighboring and adjacent properties.
8. The current condition of the property and the proposed conditional use does not promote the health, safety and welfare of Sussex County and its residents and the record made by the Applicant is not sufficient to support an approval of the Application on these grounds.
9. Based on the record, the Applicant has not shown that the proposed use in this location will satisfy the purpose of a conditional use under the Sussex County Zoning Code. The record

does not confirm that the use will be well-adjusted to its environment with full protection of the neighboring properties and that it is desirable in this location for the general convenience and welfare of Sussex County residents and businesses.

10. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use.

Motion by Mr. Passwaters, seconded by Mr. Pettyjohn, and carried unanimously to recommend denial of C/U 2604 Alvaro E. Perez Roblero, 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 – yea, Madam Chair Wingate – yea.

Mr. Allen voted yea to recommend denial, for the reasons stated in the motion.

Mr. Passwaters voted yea to recommend denial, for the reasons stated in the motion.

Mr. Collins voted yea to recommend denial, for the reasons stated in the motion.

Mr. Pettyjohn voted yea to recommend denial, for the reasons stated in the motion.

Madam Chair Wingate voted yea to recommend denial, for the reasons stated in the motion.

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 at the previous meeting, the Commission left the record open to allow for further opportunity to allow the Applicant to work with the adjoining property owners to potentially revise the Site Plan; that a Revised Preliminary Site Plan was received, and that the entire site had been reconfigured, including the entrance, to provide for the requested voluntary buffers.

The Commission discussed the public hearing which had been deferred since May 20, 2026.

Mr. Collins questioned whether that adjacent property owner, belonging to Southern Delaware Therapeutic Riding, had provided any input on the revised plan.

Mr. Whitehouse stated that the last public comment received was a neutral comment, provided on May 20, 2026, and that no official comments had been submitted since the uploading of the Revised Site Plan on June 2, 2026.

Madam Chair Wingate questioned what date the record closed on.

Mr. Robertson stated that the record was closed on June 1, 2026, and that the Revised Site Plan had been submitted on June 1, 2026, and uploaded to the Online Application Docket on June 2, 2026.

Mr. Collins questioned whether the record should remain open until after the Revised Site Plan was received.

Mr. Robertson stated that the thought was at the time, due to both parties being present at the previous public hearing, that both parties would collaborate and submit a Revised Site Plan jointly, or submit additional comments with further questions or concerns.

Mr. Collins questioned whether other area residents would have any comment on the revised plan.

Mr. Robertson stated that there were no other area residents who testified at the previous meeting, being the first public hearing before the Planning Commission; that the record was still open for the public hearing before the Sussex County Council; that anyone with an interest could review the plan, the recommendations from the Planning Commission and be able to provide public comment on those.

Madam Chair Wingate stated that the application was mostly impacting the Southern Delaware Therapeutic Riding property and operations.

Mr. Passwaters stated that the revised plan appeared to reflect the changed landscape buffer, providing the requested Evergreen tree buffer, rather than the buffer that had previously been proposed.

In relation to C/U 2550 Milton Solar CSS, LLC. Motion by Mr. Passwaters to defer action for further consideration, seconded by Mr. Allen, 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.

The Commission discussed the public hearing which had been deferred since May 20, 2026.

In relation to C/U 2577 Soltage DE DevCo, LLC. Motion by Mr. Pettyjohn to defer action 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.

The Commission discussed the public hearing which had been deferred since May 20, 2026.

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

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).

The Commission discussed the public hearing which had been deferred since May 20, 2026.

Mr. Collins moved that the Commission recommend approval of C/Z 2032 for ELU DeLuca Mid-Atlantic, LLC (Tide Pines) for a change in zoning to an RPC on land that is currently zoned as GR

General Residential based upon the record and for the following reasons:

1. The property is currently zoned GR General Residential. The Applicant is seeking approval of a Residential Planned Community overlay zoning while maintaining the underlying GR zoning.
2. The proposed GR-RPC is in close proximity to the intersection of Legion Road and Route 24 surrounded by other similar residential developments and a variety of nearby commercial uses.
3. The proposed development will have no more than 181 single family and multifamily dwellings within approximately 63 acres. The net density is 2.86 units per acre, which is much lower than the allowable density in the GR Zoning District.
4. Central water and sewer will be provided to the RPC.
5. With the conditions and stipulations placed upon it, the RPC designation is appropriate since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses through a design that exceeds the resource buffer protection requirements of the Zoning Code including the preservation of additional woods along Emily Gut; exceeds the open space requirements of the Zoning Code by preserving 43% of the site as Open space; protects existing and future development through increased perimeter buffers as all lots are forty feet or more from the perimeter of the Property and no homes are closer than fifty feet to the Property boundary; includes walking trails and sidewalks on one side of the streets to create a sense of community; and contains recreational amenities including a pool and pool house along with a stormwater management design that acts as an amenity. The result of this superior design is a development that conforms with the standards of the Comprehensive Plan and recognized principles of civic design, land use planning and landscape architecture.
6. According to the County's current Comprehensive Plan, the project is in the Coastal Area, which is designated as a Growth Area which permits residential development with a mix of housing types of a higher density. This GR-RPC is appropriate in this Area.
7. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code and provided the manner in which each one has been incorporated or addressed on the Preliminary Site Plan.
8. This recommendation is subject to the following conditions:
 - A. There shall be no more than 181 dwelling units consisting of single-family and multifamily dwellings.
 - B. The height, area and bulk requirements shall track Table I and Table II of the Zoning Code, except as modified below:
 - a. Single-Family Homes
 - i. Front Yard – 20'
 - ii. Side Yard – 8'

b. Townhomes:

i. Front Yard – 20'

ii. Rear Yard – 10'

- C. All entrances, intersections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
- D. The RPC shall be served by central water and sewer.
- E. Approximately 27 acres or 43% of the site shall remain as open space.
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be sidewalks on at least one side of the streets. The road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- H. The active recreational amenities for the project shall include a pool house with a minimum size of 500 square feet, a pool with a minimum water surface area of 1,200 square feet, sports courts and walking paths. These amenities shall be completed in compliance with Section 115-194.5 of the Zoning Code.
- I. The Resources on the site shall be protected and buffered as required by Section 115-193 of the Sussex County Code.
- J. A managed area of planted or existing trees and shrubs and associated landscaping that is at least thirty feet wide shall be maintained or installed along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation where it exists. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. Further, along the southern and western perimeter of the site where there are existing trees and shrubs, there shall be a perimeter buffer protection area that is twenty feet wide. All silt fencing shall be located at least five feet from the interior limit of the perimeter buffer or perimeter buffer protection area (the edge of the buffer area or protection area nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area. Signage identifying this perimeter buffer as a "non-disturbance area" shall be installed along the buffer at 100-foot intervals.
- K. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer and buffer protection areas and the woodlands that must be preserved as required by Section 99-21A of the Sussex County Code.
- L. The Applicant shall consult with the local school districts' transportation manager to determine if a school bus stop is appropriate. The location of the bus stop area

- shall be shown on the Final Site Plan.
- M. As proffered by the applicant, prior to the issuance of a building permit for each residential unit, the Applicant shall make a \$500.00 contribution to the Indian River Volunteer Fire Company for a total contribution of \$90,500.00. Thereafter, a monthly contribution of \$8.00 per completed dwelling unit (i.e., a dwelling unit with a Certificate of Occupancy), shall be collected by the property owners association and paid to the Indian River Volunteer Fire Company on a semi-annual basis for a total annual contribution of \$17,376.00. All of these contribution requirements shall be set forth on the Final Site Plan and in the recorded governing documents of the development. A copy of this Ordinance shall also be provided to the Indian River Volunteer Company as a condition of Final Site Plan approval.
 - N. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Friday between 8:00 a.m. and 6:00 p.m. and on Saturdays between 8:00 a.m. and 2:00 p.m. A 24 inch by 36 inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
 - O. During sitework and initial home construction, all dumpsters, roll-off containers or similar containers for trash and construction debris shall be covered to eliminate trash and construction materials from blowing across this property or onto neighboring and adjacent properties.
 - P. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - Q. The Final Site Plan and the recorded governing documents for this development shall include the Agricultural Use Preservation Notice and a similar notice about hunting activities.
 - S. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual Site Grading Plan.
 - T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - U. The Master Plan for this RPC shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Pettyjohn and carried unanimously to recommend approval of C/Z 2032 ELU DeLuca Mid-Atlantic, LLC (Tide Pines) 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

Mr. Allen voted yea, for the reasons and the conditions stated in the motion.

Mr. Passwaters voted yea, for the reasons and the conditions stated in the motion.

Mr. Collins voted yea, for the reasons and the conditions stated in the motion.

Mr. Pettyjohn voted yea, for the reasons and the conditions stated in the motion.

Madam Chair Wingate voted yea, for the reasons and the conditions stated in in the motion.

PUBLIC HEARINGS

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

ORD 26-05

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE I, III AND V §99-5 “DEFINITIONS”, §99-21A “PERIMETER BUFFERS” AND §99-26 “INFORMATION TO BE SHOWN” AND CHAPTER 115, ARTICLES I, XXV AND XXVIII §115-4 “DEFINITIONS AND WORD USAGE” AND §115-221 “FINAL SITE PLAN REQUIREMENTS” AND BY ADDING NEW §§115-194.8 “FOREST PRESERVATION’ AND 115-194.9 “TREE PLANTING REQUIREMENTS”.

Mr. Robertson stated that for the benefit of the Commission, they had a PowerPoint presentation; that this was a continuation of the Land Use Working Group’s recommendation; that this one followed Recommendation No. 13 which called for forest preservation; that it was recommended by all 10 working group members; that of all 20 of the recommendations, this was the one that came the closest to being drafted in ordinance form; that all of them were aspirational; that several of them were more specific than others; that this one was in a form that was close to Code based; that they took that, and had a conversation with the State Forester, Mr. Kyle Hoyd, whom they had requested to attend the public hearing, however, was unable to attend the meeting; that Mr. Hoyd was involved in the drafting, ensuring the language, requirements and terminology were right; that it was very helpful to have independent expert assistance on the Ordinance; that there are eight sections to the Ordinance; that the first 13 to 14 pages of the Ordinance were suggesting changes in terminology for consistency; that similar to Chapter 99-5, they added new definitions; that §99-21.A had to do with perimeter buffers; that it did not change perimeter buffers; that it changed some of the words so that they matched; that the State Forester had helped with most of the terminology; that it was the same situation for §99-26 for Preliminary or Final Plat requirements; that they added language for consistency with the other new language; that §115-4 was the Definition section of the Zoning Code; that they added definitions in that section; that the new part of the Ordinance was contained in Section 5, which created a new Forest Preservation

requirements; that Section 6 created new tree planting requirements; that Section 7 dealt with language making it all work, concerning the Final Site Plan requirements; that the Ordinance is about 20 pages in length; that the first 13 to 14 pages only provide a word change here and there; that the bulk of the Ordinance was reflected on the three to four pages toward the end of the Ordinance; that the suggestions were underlined in italics and reflected in green; that there were new definitions; that these were started in large part with the Working Group; that they were modified and clarified with industry standards by cooperation with the State Forester; that the new definitions were for “Forest”, “Forest Cover”, “Forest Stand Delineation” and “Forest Preservation”; that in large part, the definitions replace current definitions in the Code for Forest Assessment and Forest Assessment Report, particularly the Forest Stand Delineation; that the definitions were more specific than what was currently in the Code for Forest Assessment; that Forest Preservation in all residential development, where there is a forest currently, would be required to perform a Forest Stand Delineation to assess the forest condition on the site; that this is a defined term; that it is a plan and narrative report that identifies the existing forest cover, vegetation, and environmental features on a proposed development site; that the minimum protection for existing forest, when in a Growth Area, 30% of the pre-existing forest must be preserved; that when located within a Rural Area according to the Future Land Use Map, 50% of the pre-existing forest on the site must be preserved; that those 30% and 50% percentages were determined, condoned, authorized, approved and recommended by the Land Use Working Group; that there were priority area for where this should be located, and those are trees, shrubs, and plants located in a 100 Year Floodplain, perennial Non-Tidal rivers, streams and their buffers; that more importantly, because those are also covered elsewhere within the Code, there was a desire to have that preservation area occur contiguous to large, undeveloped tracks or forests within the site; that this would ensure that there were no isolated forest that either tied to off site forests or large tracks on the site; that with a total 40 acre property, with 10 currently forested acres, located within the Growth Area of the Future Land Use Map, would require 30% of the existing forest, not to be confused with 30% of the entire site; that the perimeter buffer is not counted towards the 30% of the forest being preserved; that there was a reason for that; that if the perimeter buffer counted towards the forest preservation, one would be able to retain the forest along the perimeter; that with the forest mitigation they were getting to, one would be planting the perimeter buffer that was required to be planted anyway; that one would end up with the result being that the forest that are attempting to be preserved, being removed, because one would be attempting to comply with their perimeter buffer standards; that there was no point in the Ordinance if the perimeter buffer was counted, and the reasoning that the 30% and the 50% required to be preserved be considered outside of the perimeter buffer.

Mr. Passwaters questioned whether an existing forest would be saved to create the buffer on a wooded lot.

Mr. Robertson stated that one would have to do that currently anyway; that a developer would have to preserve the existing forest and the perimeter buffer; that they would not gain anything; that for another example, if the perimeter was forested, one could eliminate all the forest that Sussex County were trying to preserve on the site; that one would preserve the forest along the perimeter,

which they would be required to retain anyway, and Sussex County would lose everything that they were trying to protect on the site, because all of it would go toward the perimeter buffer, or one could replant the perimeter buffer; that a site where there is no forest along the perimeter buffer, theoretically, would count towards one mitigation, as also stated within the Ordinance; that this would result in all the forest, or a good part of it, being removed, and it undermines the intent of the forest preservation.

Madam Chair Wingate questioned how calculations were formulated when given a larger parcel of 100 acres, containing several sections of forest.

Mr. Robertson stated that the requirement would remain 30% of the total amount of forest on the site; that there is a desire to maintain contiguity, and it would be determined whether portions were being eliminated from each of those forest areas or if one forest area would be retained, while removing the other.

Mr. Collins questioned whether the Ordinance specified a preference for forest to be contiguous, whether multiple stands could be separated, or whether replanting to the existing forest was encouraged.

Mr. Robertson stated Sussex County Code did specify a preference, however it was stated elsewhere, in Chapter 99.

Mr. Pettyjohn stated that he had read that part of invasive species could be removed; that if a large swath of bamboo was preserved but later was proposed to be removed because it is considered invasive, he questioned whether it would become a complicated issue.

Mr. Robertson stated that the area would need to qualify as a forest; that he questioned whether bamboo would qualify as a forest; that an example would be that it would not increase the percentage of forest that one would be required to preserve, in regard to bamboo, and it would not count towards the 30% requirement.

Mr. Pettyjohn questioned whether invasive species could be counted at all as forests.

Mr. Robertson stated that would be defined within the definition of the Forest Stand Delineation, where it talks about the condition, the location, the acreage, the forest species, the composition, and age; that these would be addressed through the Forest Stand Delineation; that within the preservation requirements, it talked about preservation of 30% of the pre-existing forest, and forest as defined as a vegetative community, dominated by trees or other woody plants covering a land area of 10,000 square feet or greater, including land that formerly had forest cover, and will be naturally and artificially regenerated; that the wording was originally provided by the State Forester, who was not present to discuss specifics to tree types; that going further into the Ordinance it stated that the following trees, shrubs, plants, and specific areas were considered a priority for retention and protection, and shall be left in an undisturbed condition; that the

Ordinance talked about the trees and shrubs located in the 100 Year Floodplain, but also contiguous forest that connects to the largest undeveloped land, and most vegetated tract; that the Ordinance did not get into the specific tree types; that on the mitigation plan, it talked more about if one were to replant trees, what types of trees should be plant; that there were caliber requirements; that it should create a biological community, dominated by native trees and other woody plants; that it spoke to size, height and other things; that the Ordinance mentioned one would have to plant back if one had to mitigate; that one of the issues the Commission had always ran into was the preservation and protection; that it was one thing to show where the preservation line was on a Site Plan; that it was another thing to make sure that the line stayed put during site work and grading; that there is a requirement in the Ordinance that the existing forest, to be protected, shall be protected using (ANSI) A300 Standards with fencing, staking, and continuous ribbon installation; that this terminology again came from the State Forester; that it is specified that the forest or limited disturbance shall not be cleared, graded, re-graded or grubbed; that there was the ability to mitigate; that if there were the need or intention to remove more than 30%, the desire was to allow that, because there might be site reasons why one would need to do so; that they did not want the Ordinance so rigid that there was not any availability for mitigation; that one can mitigate, but one would have to reforest an area; that within the Growth Area, at least two times the area cleared, in excess of the permitted amount; that within the Rural Area, at least 2.5 times the area cleared; that within a presented example, 30% of the forest equaled three acres to be protected; that should the forest need to be cleared for some reason, the developer would have to mitigate at two times that area; that if a three acre area to be preserved were to be cleared, six acres would be required to be reforested, and that this allows for some flexibility, but does not become so easy.

Madam Chair Wingate questioned how and who would be responsible for keeping track and regulating the proposed requirements.

Mr. Robertson stated that Mr. Whitehouse had a flowchart to present to the Commission that would help address Madam Chair Wingate's concerns; that there was a mitigation plan supplied; that if one were to remove the trees, they would be required to supply a Mitigation Plan to the Planning & Zoning Department, which would include a Planting Schedule; that there would be inspections of that, prior to any permits being issued; that this would include permits for the next phase of any development; that the forest and mitigation areas would be inspected by staff, and have to be free of defects and in good health prior to the Issuance of Substantial Completion, as defined within the Code; that this is used for many things, including grading, sidewalks, and streets; that there would be a Mitigation Plan, along with a bond, or other requirement consistent with the current bonding requirements; that the current bonding requirement is 125% of the planting costs or a minimum of \$50,000, whichever is greater; that these things would be in place to ensure the development is not constructed without any trees, the inability to plant trees, or any damages to the trees which were to be protected; that the Mitigation Plan is proactive part of the Site Plan; that if down the line, the developer, HOA or homeowner were to damage the areas that were planted or to be protected, they would be required to replant at a rate of two times the area that was improperly damaged or removed; that this would be over and above the mitigation area and/or the

original forest area; that additionally, a fine equal to the area damaged multiplied by \$4.356 per square foot would be required; that this fine requirement was based on penalties Sussex County already had in Code with regard to resource buffers and other places; that the fee was calculated a bit differently, but it is the same per square foot price or fine; that if there were damages within a development that was underway, staff would withhold permits until the issue was rectified; that within Recommendation No. 13 of the Working Group was a tree planting requirement for all residential development, including mixed-use; that there were new tree planting standards; that within the Growth Area, there would be one tree per 10,000 square foot of residential, and one tree per 5,000 square foot of non-residential; that within the Rural Area, two trees would be required per 5,000 square foot of residential, and one tree per 3,000 square foot of non-residential; that this could be satisfied by the retention of existing forest, in excess of the forest requirements; that this requirement was more for properties that were fully cleared, requiring trees to be planted back on the property; that there is not a requirement that a forest be replanted; that the replanted trees could be boulevard trees or placed within open space; that much like the Mitigation Plan, a Planting Schedule, inspection and Performance Bond would be required, and would be no different than what Sussex County currently required for Landscape Plans, and with the way the Ordinance was currently drafted, the Ordinance would become effective six months after the Ordinance was approved by the County Council.

Mr. Whitehouse presented to the Commission a flow chart on how the Ordinance was crafted; that it was split into three sections; that the flow chart was designed to follow clockwise; that one would start with the application processes; that from there the flow chart questioned whether the application was for residential or mixed-use residential, does the site contain a forest, was the forest proposed to be disturbed; that depending on the answers, one would follow each step along the way; that depending on the answers, the flow chart would indicate the requirements, or the protocol if requirements were not followed; that the chart process splits depending on whether the site is located within the Growth Area or not; that the chart, in the end, returns to the same section, indicating everything required to get to before the Planning & Zoning Commission; that from a decision the chart then flows into the various steps of implementation, such as what a Planting Schedule must contain, what steps are required for implementation, such as tree protective fencing, staking, and continuous ribbon; that it addresses bonding, releasing of bonds, and violations; that subject to having no violations, once two years have passed from the holding of the bond and planting of trees, the bond may be released, reaching the end of the flow chart.

Mr. Robertson advised the Commission that the flow chart was more of an internal document for the Commission and County Council.

Mr. Pettyjohn stated if one were to own a 100 acre parcel, with 50% of the site being wooded; that possibly a developer were to approach this person regarding potential development; that in the meantime, the person was approached by a logging company, deciding to clear cut, he questioned whether this circumstance would be a work around the proposed requirements, whether there would be a timeline requirement between the developer taking over or would it fall underneath the

reforestation requirements, and how Sussex County can protect the future, while also respecting landowner rights.

Mr. Robertson stated that the requirements would be placed subject to the time of the Application submission; that within the definition of forest, it talks about including land that formerly had forest cover, however, there was not a look back period on that specifically; that there are still tree planting requirements; that if one does not have any forest, one will be required to comply with the tree planting requirements; that a landowner or farmer may decide to remove trees for more land, to till or to sell off timber; that if the land is under contract, it would be contingent on getting all approvals; that as a land owner, unless you are under contract, and the contract obligates you to clear-cut trees first, in terms of the timing with the application, there is any number of things that make that not a certainty, and should it happen, staff would consider the time of the application submission.

Mr. Robertson stated that the County has the ability to view properties through Eagle View technology, and staff would know what existed at the time of application submission.

Mr. Collins questioned whether there was a requirement for the Fee Schedule to increase with inflation, or if the amounts were set in the written Ordinance.

Mr. Robertson stated that the amount would be required and set by what was written in Code, and that it was broken down to per square foot as it was easier to do that with forest.

The Commission found that there were five people present who wished to provide comments regarding the Ordinance.

Mr. Eric Whal, registered Landscape Architect with Pennoni and current President of the Delaware Native Plant Society provided comment on the Ordinance. Mr. Whal stated that he writes articles in Letters, being a Camp Rehoboth monthly magazine called *The Dirt*; that he also was a member of the Tree Commission for the City of Milford; that to truly protect the ecological integrity of Delaware's Coastal Plain, the Ordinance must prioritize the physical size, species, composition, and successional age of a forest; that the area of the forest stand is the most critical factor due to the edge effect; that this would be where the edge of the forest stand, approximately 20 to 25 feet, where the most invasive species can occur, because it receives more sunlight, more rainwater, and more nutrients; that the ratio when forest sizes are minimal, such as the 10,000 square feet definition, the ratio with the edge to interior habitat increases; that forest edges are high stress zones, where increased sunlight, wind, and human activity alter the microclimate; that these conditions favor the rapid spread of invasive species, like Multi-flora Rose, Japanese Stilt grass, Chinese Bittersweet, and Bradford Pear; that historically, Southern Delaware's landscapes have seen numerous changes in the last two centuries due to human occupation; that much of the original landscape was cleared in the first half of the 20th century, and the second-half of the 19th century

for both agricultural activities, such as orchards, grains for milling and timber harvesting, for the shipbuilding industry found around Milford, Milton, Millsboro, and Millville; that most of the old growth forest were removed during that time period; that a monoculture of fast-growing softwoods, such as Loblolly Pine or a stand dominated by invasive species provides minimal support for the local food web; that a mix of native hardwoods, oaks, and hickories produce or supports hundreds of diverse species of lepidoptera and other insects who form the base of the terrestrial food chain; that the currently proposed changes do not offer specific language on species, rather it is left generic, defining the forest as a vegetated community, dominated by trees and other woody plants, covering a land of 10,000 square feet or greater; that the 10,000 square foot minimum size for woodlands assumes that the wooded area is healthy, free of invasives, and meets the definition of a mature forest from edge to edge; that under §115-194.8, Forest Preservation, Paragraph B, it stated that perimeter buffer would not count towards the Forest Preservation requirements; that Sussex County was proposing that these area, as well as stormwater facilities, would no longer count towards the open space potentially; that in his opinion, the measure combined would result in a density reduction, without changing the actual Ordinance that provided two dwelling units per acre; that he performs feasibility studies for both developers and for nonprofits for the determination of the land value; that by removing all those areas, it would result in a reduction in the number of units that could be provided, and therefore reduces the value of the property; that under the tree planting requirements of §115-194.9, it states that shade trees installation should be required to be 2.5 inches in caliber; that it is well documented by nursery and landscape literature that planting younger trees, being 1.5 inches or smaller, such as saplings and whips, being more of the reforestation type things they perform, have a much better rate of establishment than planting larger bald and burlapped trees; that this may be due to the impacts of the root zone when using containerized trees versus larger bought and burlapped trees, which are dug at the nurseries and the roots are already under stress; that there had been studies which suggested that planting younger trees, that are containerized, once established, overtake in growth rate a tree that had been planted at 2.5 inches; that he believed the County, State and municipal jurisdictions have a responsibility to look towards the future and properly plan for the vision that the Ordinance is hoping to achieve; that when reviewing from higher elevation, large tracts of woodlands and vegetative cover exist as well as farmland and private property across the State, within the AR-1 (Agricultural Residential) Zoning District; that these areas are considered opportunities to begin to reconnect the green open spaces, including park development and open space in many areas and trails; that the perimeter buffers, resource buffers and other open spaces that are designed with purpose could provide ecological corridors, as well as educational and recreational opportunities; that he had been chosen to work on Symphony Glen; that on the site, there was a historical drainage area that is farmed over, along with two pockets of wetlands; that with their design, they are rehabilitating the natural drainage area, and re-establishing the drainage area to follow through the whole way through the different properties, protecting and preserving what they can; included to that are meadows, which are not discussed in our area; that there is an

important ecosystem to include as a transition to establish woodlands, because it also establishes habitat resources for certain species of ground birds, ground nesting birds, pollinator species, and other ecosystem services that are provided by different types of ecosystems; that this can provide eco-tourism also; that trails can provide educational components within communities; that wooded lots are more appealing, and have a higher value when designed.

Mr. Robertson stated that the Commission had heard that there would be unintended consequences of all the grading requirements and questioned whether Mr. Whal was able to get lots close to trees, as he had been told it was required to clear the entire lot to ensure the site drained correctly.

Mr. Whal stated that site grading was an art form too; that when considering development there are different layers of information one must look at, being environmental features, existing grading, and soil properties; that all these things layer on top of each other; that if one can lay out the road system in a way that is more in line with the natural grade, there would be a better chance of saving more trees at the backs of the properties, as it would not require as much grading; that he hoped other developers, engineering teams and County officials are inspired to balance nature and the built environment; that moving forward, Sussex County will always need more housing, but Sussex County also needs more open green spaces, ecological escapes and ecosystem services; that there are pathways forward that accommodate our necessities of food, water, and shelter with our need for a thriving mother nature, and this is one of those paths.

Mr. Jon Horner, Esq. spoke on behalf of the Home Builders Association of Delaware. Mr. Horner stated that there was two major issues with the proposed Ordinance; that he had submitted a letter expressing his concerns regarding forest preservation and forest cover within the proposed Ordinance; that the definition of forest significantly deviated from the Land Use Reform Working Group's recommendation; that the definition within the Ordinance is a vegetative community dominated by trees and other woody plants, covering a land area of 10,000 square feet or greater, including land that formerly had forest cover, and will naturally or artificially regenerated or will be naturally artificially regenerated; that this definition was incredibly broad; that he questioned what was artificial and could be naturally artificially regenerated; that Mr. Robertson had spoken to areas that would be cleared two weeks before a submitted application; that he questioned what about four weeks, four months, four years or 10 years; that he questioned whether an area, which was reforesting itself, made of saplings, small trees, and invasive species, would be considered a forest; that he questioned where the definition came from; that the definition is problematic; that the recommendation from the Working Group had a minimum of 100 trees per acre with at least half of the trees being a certain caliber at a certain height; that the idea was not looking at just quantitative; that they were looking at qualitative; that they recognized that not forest were created equal and they wanted to focus on mature trees; that regarding the plain language of the Ordinance, he questioned what it would apply to, and what would it not apply to; that the Ordinance is unclear;

that regarding invasive species, if he had a 10,000 square foot spot of only invasive species, it would be considered a forest; that the Ordinance was not in alignment; that it was needed to protect mature forests, and forests that had significant ecological value; that they did not need a nebulous definition; that he questioned whether, per the definition of artificially regenerated meant that every piece of dirt in Sussex County could be a forest; that he did not understand how the definition could even be applied; that the Working Group invested significant time considering what a forest was, what was worthy of preservation and saving; that the Working Group agreed that if there were not mature trees, it was not an area they were seeking to protect; that they were seeking to prevent large, mature forests from being removed; that he would fully support a look-back period, rather than the current language regarding regenerated land trees; that the Buffer Ordinance provided a look back period, and he questioned why the current Ordinance could not also; that they do not want people to clear cut trees, in an attempt to avoid the requirement; that they wanted mature trees to be valued and preserved; that the definition required a ton of work, as it was unworkable from a practical point perspective in the land use context; that another issue was the stacking of requirements; that he questioned whether preserved forest would count towards the open space requirements; that the language was not clear; that buffers would not count towards the open space; that he provided an analysis in his submitted letter; that buffers and mature areas should count; that if mature trees are located within a buffer and preserved, the area should absolutely count; that with the stacking requirements, on a non-square parcel or a parcel narrow in the front, going back, the buffers would take a lot more land out of it; that would equal to 35% to 70% of the parcel, depending on the geometry of the parcel; that if we are preserving forest, whether it be as a result of the Forest Preservation Ordinance or a result of the Buffer Ordinance, than we should do so; that the Buffer Ordinance should go back to the forest definition; that it would recognize that certain forests, and certain trees are more valuable than others; that if Sussex County were to adopt a look back period, they would have to certify that that there was no change to the Land Use Plan; that if Sussex County were to do that, there would be significant penalties; that they were previously told as developers, that if they wanted to speed up their process, to obtain a forestry permit, and clear the property; that it would speed up the process and avoid the need for permits later; that now, they rules and regulations have changed, which no longer permit that to be done; that because of this, he was in support of a look back period, only if the definition is right; that if it is not right, and the definition is broad, it will not work; that the Ordinance provided deviations in mitigation ratios and tree planting ratios, from that proposed by the Reform Working Group; that the Land Use Reform Working Group had discussed mitigation fees in lieu, however it was not part of the provided recommendations; that it was something the Home Builders Association felt strongly should be considered; that they want a large continuous tract of woodlands to be preserved permanently; that they did not want disjointed, newly formed woodland tracks which did not offer a lot of ecological value; that when there are mitigation requirements that require on-site mitigation, one would be required to find a spot on the site to plant trees to call a forest; that this would not serve the goal of having large, continuous or large contiguous tracks of mature

forests; that the Land Use Working Group had proposed a mitigation fee in lieu; that if one were to disturb an area, rather than plant trees within another area, being a standalone reforested area, give the money to the open space fund to provide funding to preserve large tracts of valuable resources in Sussex County from ever being developed, and he felt a mitigation fee in lieu was a better goal than throwing a few trees somewhere on the site to say they had reforested.

Mr. Robertson confirmed that preserved forest would count towards the open space requirements; that clear cutting was dependent on what category one fell into and that SCD (Sussex Conservation District) would be involved also.

Mr. Collins questioned that given where the development tends to be happening, would the fee in lieu reasonably be set at the price per acre, including additional cost of planting forest, where it needed to be replanted for the property being developed.

Mr. Horner stated that regarding what the developer paid for the land, he did not feel that would necessarily be the right math; that the math he would personally feel was fair would be to look at the most recent round of preservation easements that had been sold, whether it be farmland or woodland preservation, which would provide a direct analog to get a certain number preserved.

Mr. Collins stated that his thinking was that if someone were developing within the Coastal Area, that there may be preservation needed in the Coastal Area as well, and one would want to be able to afford land in the Coastal Area to acquire and maintain.

Mr. Horner stated that from a public policy perspective, it would drive up costs in the Growth Area, where the land is more expensive; that if there was a requirement to pay more for mitigation within the Growth Area, it would be going against a lot of what was currently being seen; that they want to drive the growth into the Growth Areas, but that is also where the land is more expensive; that one was located within the Growth Area, and all of a sudden they get higher density, having to pay a higher per acre price, and now mitigate at their per acre price, it would drive people back out, and this would be something to consider from a public policy perspective.

Mr. Robertson stated that there would still need to be some geographic connection.

Mr. Collins stated that there should be benefits to the people in the region that the development is located in.

Mr. Horner stated that if it were to go into a fund that was administered by the County, then that would be within the County's purview to do; that there would also be people who are willing to sell those rights; that ultimately, placing that into a fund for the County to use for preserving large

tracts of land; that if the County desired to prioritize the Coastal Area, then they must understand that they would pay more per acre for those rights; that the money would be received from the fee in lieu; that the alternative would be disjointed reforestation on individual parcels, which would not be serving the best interest of the public.

Madam Chair Wingate stated that she believed Mr. Collins was suggesting compensation be provided for the increased costs, which she understood and agreed with.

Mr. Steve Sinclair, current resident of Millsboro, and former State Forester, and current Board member of the Sussex Preservation Coalition, spoke on behalf of the Sussex Preservation Coalition (SPC). Mr. Sinclair stated that he was previously a State Forester with the Vermont Department of Forest Parks and Recreation for 43 years, with the last 18 years working as the State Forester and Director of Forest; that the SPC wholeheartedly supported the important and long-needed Ordinance, but had several modification suggestions; that Delaware has roughly 350,000 acres of forest land, equaling to about 28% of forest land; that of the 160,000 acres within Sussex County, almost 50% of Delaware's Forests are located within Sussex County; that recent studies by the Delaware Forest Service indicated that Sussex County had lost 43,000 acres of its forest land since the year 2000; that although Delaware's total forest acreage had remained constant over the past 20 years, the only reason was that the forest cover in Kent and New Castle County had been decreasing; that this fact made the proposed Ordinance very timely, important and necessary; that the Ordinance was a result of the Land Use Reform Working Group's Recommendation No. 13; that it hit much of what they had formed regarding tree preservation and tree planting requirements, as well as forest definition and mitigations; that of all the recommendations, only two dealt with natural resource issues, the current Ordinance being one of them; that the Ordinance was a reference to the ANSI A300 standards for tree planting and protection, being a national standard recognized by all tree care industries, in terms of how to protect trees and plant trees appropriately; that the SPC supported the idea of conducting a Forest Stand Delineation, as they are very common in municipal and State Ordinances; that the State of Maryland's Forest Conservation Act, requires a developer to perform a Forest Stand Delineation; that the SPC supported the idea of the timing on bonds and guarantees, and that those requirements would be up front; that although they did have some modification suggestions associated with the additional tree planting requirements, the SPC was also in support of the requirements; that the SPC felt that adding a purpose statement to the whereases would articulate not only the values and benefits of trees and forests, but would spell out the goals and purpose of forest preservation; that they felt it would also provide a general framework on how it would work; that this would be similar to what was currently in the Resource Buffer Ordinance; that in addition to being a former State Forester in Vermont, he was also involved in the State of Delaware, working with Mr. Kyle Hoyd, a Delaware State Forest Community Forestry Advisory Council; that he was pleased to hear that Sussex County had contact Mr. Hoyd for his input and expertise on the Ordinance; that one of the things that he and Mr. Hoyd

had discussed was the definition; that he questioned the rationale behind the definition; that he understood Mr. Hoyd's response to be that he wanted to keep the definition broad because all forest were different; that a forest could be comprised of all different species and sizes, which all provide different values; that he felt Mr. Hoyd's definition was too general; that scrub trees are not a forest, and was not a forestry term; that there was no question that there were invasive plants throughout the Northeast; that typically, there would not be a forest comprised of 100% invasive plants; that the SPC's minor changes mimic what he had found in his literature search of more common definitions across the spectrum of use; that he had added two qualifiers; that the first was regarding the number of required trees; that the SPC suggested the addition of 100 trees per acre at minimum; that it would be standard practice; that it would also mimic what Sussex County would be requiring for mitigation planting; that for mitigation planting, Sussex County was requiring 100 trees per acre; that he questioned why not make the establish number of 100 trees per acre in order for it to maintain a forest; that with 100 trees per acre it would create a canopy closure of somewhere around 70%; that some forest, especially young forest, could have 500 to 1,000 trees per acre; that a mature forest could only have 50 trees per acre, if they are all 40 inches in diameter; that because of this, he felt 100 trees per acre was a food standard; that the other qualifier that the SPC suggested was having a minimum requirement of 50 feet in width; that it would be wider than a perimeter buffer, as the requirement for a perimeter buffer was 30 feet; that this supports Mr. Wahl's comment to if a forest is not intact, if it is not large enough, there would be potential of intrusion by invasive plants, as well as, wind and light injury; that their suggested requirement would be a minimum to have any form of ecological function and long-term viability; that he did not like the idea of recognizing forests that previously had forest cover or that will be regenerated or reforested; that he felt it opened up the opportunity for someone to clear cut and then sell to a developer; that due to this, he felt that part should be eliminated; that currently, a Forest Stand Delineation definition includes both conducting the inventory and developing a plan; that those are two separate activities; that a Forest Stand Delineation is an inventory of existing trees, which is performed through a standard sampling system; that a forester will not measure every tree on a 20 acre block; that they have a sampling system which measures the trees, calculates stand information based on species composition, size classification, height, health, and maintenance requirements; that he felt the definition should be just that, rather than the requirement for a forest preservation and maintenance plan; that he SPC felt that the plan should be emphasized as it would be able to provide specific guidance on the type of forest habitat and values that should be preserved along with the maintenance plan; that he questioned how a developer would know which tracts are the most valuable; that by performing a Forest Preservation Plan, the forest delineation information could be used to consider specific stands and tracts of forest; that this will allow one to decide which ones have the type of forest habitat and value that should be retained and preserved, and which ones could be removed; that the requirement of a Forest Preservation and Maintenance Plan is similar to what Sussex County is already requiring under the Resource Buffer and Perimeter Buffer requirements; that the Perimeter Buffer Management Plan identifies steps and processes to

protect the forest during construction and long-term maintenance of the forest over time, including overall forest health, invasive species control, and tree removal; that because forest are not static, just because they are preserved, did not mean they would stay that way over time; that forest will mature, trees would die, and new trees would grow; that there needs to be a maintenance plan; that it would be valuable to the developer, as well as homeowners associations (HOAs) who would eventually maintain it over time; that he felt it was important that Sussex County separate forest delineation to just performing inventory, but add the provision of a Forest Preservation and Maintenance Plan; that another good example would be the need for clarity on the protection of forest being preserved; that currently the Ordinance referenced ANSI 300 standards for forest protection; that the ANSI 300 standards talk about fencing, but he questioned where the fencing would be placed; that under the ANSI 300 standards, one would pick every tree along the border of the forest to be protected; that one would determine the diameter and multiply by 1.5 and convert the number into feet; that the total would equal to what the buffer should look like around the forest stand; that this was great, as it took into account a larger tree who would have a bigger root zone, and would need more protection; that in reality, performing this in the field would be extremely difficult; that having the Forest Preservation and Maintenance Plan, it will spell out how the forest will be protected and maintained over time; that the developer could spell out how they will create the buffer; that this will provide better clarification for the developer and for the homeowners associations who would take over; that an all too common process is a developer removes all the trees due to grading issues; that the new proposal of §99-9-C discuss planning steps necessary during the initial plot plan development, where natural resources are mapped out, and critical areas are set aside; that this is a great first step for forest preservation; that the value of mature trees cannot be replaced with new plantings; that the existing mitigation language allows a developer, for one reason or another, to cut forest down and replant the forest somewhere else; that the Forest Preservation Ordinance should preserve the forest where they are located, because that is where the forest is most valuable; that he would suggest that the Ordinance state that no forest area beyond the required preservation requirements shall be removed if through no fault or forethought of the developer forests are removed above the preservation requirements, the following mitigation standards shall be met, and then one may continue with mitigation; that concern had been raised regarding having to retain perimeter buffers might impact the developer in terms of providing utilities; that he felt this was a reasonable approach, to which mitigation should be allowed; that allowing mitigation just because the developer does not like the location of the forest, will disservice the whole purpose of the Ordinance; that the suggested language is very similar to that of the Resource Protection Ordinance as well, but should not mimic the Resource Buffer Ordinance; that he found the tree planting and landscape plan requirements to be confusing, as it combined the planting standards for planting forests lost during mitigation, as well as additional tree planting that tree canopy increased within the development; that the SPC felt that there should be a detailed Landscape Plan for the entire development; that they did not find where the County required the developer to submit a detailed Landscape Plan for the entire development; that a

Landscape Plan was a standard requirement in almost every jurisdiction he had ever been in contact with; that it would go a long way in improving the appearance of and the appeal of developments in Sussex County; that some developers do a good job on their own landscaping without requirements, and others do not; that Pelican Point, where he personally resided, the landscape was abysmal; that he went to the County, and the only plans of record were for the perimeter buffers; that there were no plans for landscaping around the clubhouse, along town greens, and along the streets; that a detailed Landscape Plan, prepared by a licensed landscape architect, would cover the entire property, spelling out the design, the species, and the standards to ensure that the right tree goes in the right place; that specifics on the location of required landscaping along entrance drives, trees and open spaces for shade, appropriately sized street trees between curb and sidewalks, and that minimum of one tree, per house lot, in a front yard should be placed.

Mr. Robertson questioned why it would not be the homeowner's decision when the home is built as to whether the landscape is planted or not.

Madam Chair Wingate stated that some homeowners do not want a lot of trees to mow around, and that it was a personal preference.

Mr. Sinclair stated that if the Ordinance is attempting to improve the quality of life for the residents of Sussex County, where forest cover is being lost, anything that Sussex County can do to increase tree canopy in our built and unbuilt developments would be of value; that he proposed landscape plants and trees to be placed around clubhouses, playgrounds, and other community resources, along with visual buffers between houses and infrastructure facilities; that they proposed interior and exterior screening be provided, as previously suggested in past Ordinances; that street trees are not only for aesthetics; that they improve the air, the shade and provide other ecosystem values; that the SPC does not want to see islands or pockets of remaining forest; that they wanted to try to preserve what was good; that this was the reason for the Forest Stand Delineation and a plan to identify the forests that provide value and benefit, requiring preservation; that the Ordinance is proposed to go into effect six months after its adoption, unless the development had submitted a completed application; and he questioned what a completed application meant.

Mr. Whitehouse stated that a completed application referred to a formally submitted land use application and fee paid to Sussex County; that he stated the definition of forest generated by staff along with the State of Delaware Forester, was very different than the recommendation proposed by Mr. Sinclair; that he requested Mr. Sinclair professionally outline his thoughts on why the State Forester's definition and Mr. Sinclair's definitions were different.

Mr. Sinclair stated when he had spoken with the State Forester on the phone, they had a conversation on forced definition; that he had told the State Forester the SPC wanted to place a bit

of tightness on the definition; that the State Forester stated that he purposely left it broad, and that he did not try to delve into it anymore than that.

Mr. Robertson stated that the subdivision being referred to by Mr. Sinclair was a fairly old subdivision; that to Mr. Sinclair's point, during the public hearings, the Planning Commission would see very green Site Plans, with trees everywhere; that once construction took place, there were no trees anywhere; that a lot of the conditions placed on subdivisions are to hold people to what the proposed during the public hearing; that currently, Applicant's are required to provide a Landscape Plan that are held to bonding requirements as well, and that the Commission had tried to enforce requirements, and Grading and Landscape Plans, to ensure these issues do not happened.

Mr. David Hutt, Esq. with Morris James, LLP, provided comment regarding the Ordinance. Mr. Hutt stated that the definition of a forest was unenforceable; that he agreed with Mr. Horner regarding the definition; that he supported the Land Use Reform Working Group's definition of forest; that regarding look back periods, he questioned when the period would start and stop; that the uncertainty of this is what rendered the definition unenforceable; that the point of the Ordinance was to adopt something enforceable; that if the Commission would lay out clear rules, people would follow them, as they would be required to; that he had not seen a complete forest of invasive species; that he agreed with Mr. Horner, as under the definition of the Code, one would see edges along fields that were predominantly invasive species for the reasons Mr. Whal spoke about; that the edge is where invasive species would be; that if they met the 10,000 square foot threshold, he did not believe that was the purpose of the Ordinance, and was not what Sussex County was attempting to accomplish; that in Line 475 it indicated that trees and vegetation located within any forest or mitigation area shall be free of defects and in good health prior to the issuance of substantial completion in accordance with §99-31 of the Code; that he questioned what if the forest was not healthy in the first place; that how a forest is defined is key, and important because it may be that there were a lot of invasive species; that there may have been a lot of downfall, and things that were on the base, which could provide certain types ecological benefits; that he understood if someone were doing mitigation, they could measure whether or not the trees look like they were growing and thriving in whatever place they had been planted; that to say an existing forest had to be free of defects and in good health seemed like a problem with the definition of forest; that maybe the definition needed to be stricken from the mitigation section; that he felt the definition should have the qualitative components referenced; that he wanted to support he fee in lieu concept previously mentioned by Mr. Horner; that there are many layers within the development process, from stormwater to important ecological resources; that sometimes it may make sense for it to be there; that in saying there had to be this replanting, when there is likely greater ecological value in preserving existing forest; that there had been discussion regarding what the right value would be; that setting that at the right value would be important; that the fee in lieu concept was better than randomly planting trees; that the first municipality, being the City of Rehoboth Beach, to have a tree ordinance is struggling with locations to plant trees; that this issue leads to trees being placed

where they do not provide meaning or true ecological benefit, and that largely his concerns were regarding the definition.

Mr. Robertson stated that they did not want the fee in lieu to become a strictly economic decision of losing existing forest; that it would just be cheaper to do that; that there needed to be some relationship between the fee and the trees being preserved off-site; that it would not become some payment that goes nowhere and would not accomplish anything; that it was not meant to be a penalty, but they did not want it so cheap that everyone would do it, and they wanted to find the right balance.

Madam Chair Wingate stated that she felt the Commission were suggesting that there be a Forestry Report submitted as part of every application.

Mr. Richard Borrasso, resident of Milton, provided comment regarding the Ordinance. Mr. Borrasso stated that he served on the Resource Protection Working Group for 10 to 12 months; that at that time the group agonized over the buffer options; that he stated §115-193.G is a section on Buffer Options, providing a number of different ways that easements could be used to take the place of reducing the resource buffer, and he questioned had there been any buffer options exercised based on the Ordinance.

Mr. Whitehouse stated that staff had seen options utilized in terms of buffer averaging; that he could not recall one where there had been off-site through an easement; that most Applicants want to place it on the site and use the averaging to make it work.

Mr. Collins stated that he agreed with some of the points that were made around the definition of forest; that he hoped the definition could be refined, and applying the same look back to existing forests or existing forest in alignment with the buffer requirements to do so, seemed to be more consistent.

Madam Chair Wingate stated she agreed with Mr. Collins; that she would want a professional to provide the Forest Assessment, Archaeology Study and others.

Mr. Robertson stated that to some extent, Applicants must already provide some of those documents per the Perimeter Buffer requirements; that it was defined who must perform the Forest Stand Delineation; that it must be performed by a licensed landscape architect, certified arborist, or licensed forester or forester designated by the Society of American Forester, as a certified forester.

Mr. Collins stated that they would want to make sure they do not run into the City of Rehoboth example, where locations for reforestation cannot be found, but would want to charge enough to

be able to acquire land somewhere in the proximity of the site being developed, and that otherwise they would not be getting the value they should be getting for Sussex County.

Mr. Robertson advised the Commission that within the Code there was a set geographical area that one would be required to stay in; that they had made a conscious decision that they were not doing anything if the perimeter buffer was counted towards the forest preservation; that both the perimeter buffer and the forest preservation count towards open space numbers; that the open space and forest preservation are not stacked, and they work together; that the purpose of it was if the perimeter buffer took up the 30% or close to it, within the Growth Area, he questioned what had been accomplished, and he stated it was the same circumstance within the Rural Area.

Mr. Collins stated that there were multiple suggestions to reduce the tree diameter requirements to 2.5 inches from 3.5 inches; that this suggestion seemed rational, and that in his personal experience, transplanting larger trees did not tend to succeed as well.

Mr. Passwaters stated that larger trees are much harder to source as well.

Madam Chair Wingate stated that she felt Mr. Whal had made good points regarding preservation and construction and should both be considered.

Mr. Robertson stated that there was something to be said for going back and looking at the grading and street design requirements to see whether they could be tweaked; that part of where they were getting this on the street design requirements was from where the swales go and the geometry of sidewalks in relation to curb, gutter and street widths, and there are really narrow streets within the subdivisions which make it difficult to do anything.

Mr. Collins stated that the issue then led to parking on the streets, to where emergency services cannot get through.

Mr. Pettyjohn stated that street trees could create hazards and issues in 10 to 15 years.

Mr. Collins stated that planting the wrong type of tree could create issues.

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

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

In relation to ORD 26-05 regarding Forest Preservation. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Allen 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 5:33 p.m.

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internet at www.sussexcountypa.gov.**
