

MINUTES OF THE REGULAR MEETING OF JULY 22, 2026

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, July 22, 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, Mr. Jamie Sharp - Assistant County Attorney, Mr. Michael Lowrey – Planner IV, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that the item of Other Business, 2022-18 Wilhaven (F.K.A. Wil King Station) was requested to be removed from the agenda to allow the Applicant to submit additional information.

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. Allen, to approve the Minutes of July 15, 2026, of the Planning and Zoning Commission Meetings as circulated. Motion carried 5-0.

OTHER BUSINESS

S-26-36 Hastings Community Energy Initiative, LLC (C/U 2503)

Preliminary & Final Site Plan & Determination of Compliance with Condition I

This is a Preliminary & Final Site Plan and Landscape Plan for the construction of a solar array facility and other related site improvements. Conditional Use No. 2503 to permit the use of a solar array at the site was approved by the Sussex County Council at their Meeting of Tuesday, September 23rd, 2025, via Ordinance No. 4016. The Plan includes solar arrays, related equipment, landscape buffers, vegetated perimeter buffers, an access road, ancillary improvements, and fencing with gated access. The Conditional Use area is (15.46) +/- acres with the fenced area containing the solar arrays occupies and overall area of (33.80) +/- acres of the Parcel. The applicant is requesting to substitute a Declaration of Restrictive Covenants for the Conservation Easement of Condition I of Ordinance 4016. The Parcel is located on the east side of Normandy Lane, a private lane accessed off Seventh Street. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval for (CU 2503). Tax Parcel: 132-1.00-11.00. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals. A Decommissioning Plan has also been included which addresses the financial security component of the Conditions of Approval; therefore, the Plan is eligible for both Preliminary & Final Approval.

Motion by Mr. Allen, seconded by Mr. Passwaters, and carried unanimously to approve the Preliminary and Final Site Plan as a final, and the Determination of Compliance with Condition I of the Conditions of Approval. Motion carried 5-0.

Lands of Lloyd, Julie, and Tyler Bradley

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 Lot 1 shall consist of 2.198-acres +/- and the residual land shall contain 23.990 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 Kaye Road (S.C.R. 474). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 132-8.00-23.04 & 23.05 Zoning: AR-1 (Agricultural 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. Allen, seconded by Mr. Passwaters and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Steven Garbrick

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 Lot 4B shall consist of 2.591-acres +/- and the residual land shall contain 2.509 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 Cedar Corners Road (S.C.R. 638). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-17.00-59.00 Zoning: AR-1 (Agricultural 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. Passwaters, seconded by Mr. Pettyjohn and carried unanimously to approve the Minor Subdivision Plan off a proposed 30 ft. easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Israel Martinez

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus residual lands. Proposed Lot 1 shall consist of 1.093-acres +/-, proposed Lot 2 shall consist of 3.513-acres +/-, proposed Lot 3 shall consist of 5.476-acres +/-, and the residual lands shall contain 1.188-acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is

located on the southwest side of Cannon Road (Route 18), approximately 500 feet southeast of Wesley Church Road (S.C.R. 561). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 531-4.00-22.10 Zoning: AR-1 (Agricultural 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. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30 ft easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Moore Builders, LLC

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus residual land. Proposed Lot 1 shall consist of 1.3024-acres +/-, proposed Lot 2 shall consist of 1.00-acre +/-, proposed Lot 3 shall consist of 2.486-acres +/-, proposed Lot 4 shall consist of 1.00-acre +/- and the residual land shall contain 1.339 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 Seashore Highway (Rt. 18). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-7.00-34.00 Zoning: AR-1 (Agricultural 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 Minor Subdivision Plan off a proposed 30-ft. easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Kefauver

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 Lot 1 shall consist of 0.759-acres +/-, and the residual land shall contain 2.247-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 Rabbit Run Road (S.C.R. 566). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 131-13.00-7.00 Zoning: AR-1 (Agricultural 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. Passwaters, seconded by Mr. Pettyjohn, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Remkay Investments, LLC

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus residual lands. Proposed Lot 1 shall consist of 1.001-acres +/-, proposed Lot 2 shall consist of 0.833-acres +/-, proposed Lot 3 shall consist of 3.513-acres +/-, proposed Lot 4 shall consist of 3.000-acres +/- and the residual lands shall contain 6.953-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 Fawn Road (S.C.R. 600), approximately 600 feet southwest of Sunnyside Road (S.C.R. 565). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-11.00-11.00 Zoning: AR-1 (Agricultural 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. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft. easement as a preliminary, with final approval to be provided by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

C/U 2598 TPE DE SU245, 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 67.23 ACRES, MORE OR LESS. The property is lying on the southeast side of County Seat Highway (Rt. 9), approximately 0.35 mile southwest from Little Street (S.C.R. 469). 911 Address: 2276 E Trap Pond Road, Georgetown. Tax Map Parcel: 135-19.00-43.00.

The Commission discussed the application which had been deferred since June 17, 2026.

Mr. Collins moved that the Commission recommend approval of Conditional Use No. 2598 for TPE DE SU245, LLC for a solar energy facility in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located within approximately 19.39 fenced-in acres of a larger 67.23-acre tract. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.

3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a parcel of land that is surrounded on three sides by land used for agricultural purposes, including poultry houses. The boundaries adjacent to residential uses will include a 30-foot-wide landscape buffer to screen the use.
5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be “Diminutive”. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
 - D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used within this buffer area shall be included in a landscape plan provided with the Final Site Plan.
 - E. Transformers and similar equipment shall be centrally located on the site.

- F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- H. 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 using Best Management Practices.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to recommend approval of C/U 2598 TPE DE SU245, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Allen abstained.

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

C/U 2623 TPE DE SU300A, LLC, TPE DE SU300B, LLC, TPE DE SU300C, 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 498.53 ACRES, MORE OR LESS. The properties are lying on the southwest corner of Zoar Road (S.C.R. 48) and Lawson Road (S.C.R. 296). 911 Address: N/A. Tax Map Parcels: 234-21.00-75.00 & 138.00.

The Commission discussed the application which had been deferred since June 17, 2026.

Madam Chair Wingate advised the Commission that she was absent from the public hearing, but had listened to the audio and therefore, was prepared to vote.

Mr. Pettyjohn moved that the Commission recommend approval of Conditional Use No. 2623 for TPE DE SU300A, LLC, TPE DE SU300B, LLC and TPE DE SU300C, LLC for a solar energy facility in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located within approximately 102.58 fenced-in acres of a larger 498.53-acre tract. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a large parcel of land that is mostly surrounded by forested areas that naturally screen it from neighboring properties. It is also located adjacent to an existing electrical substation and transmission line. The boundaries adjacent to residential uses will include a 30-foot-wide landscape buffer to screen the use.
5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be “Diminutive”. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
 - D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent

- property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used within this buffer area shall be included in a landscape plan provided with the Final Site Plan.
- E. Transformers and similar equipment shall be centrally located on the site.
 - F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - H. 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 using Best Management Practices.
 - I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to recommend approval of C/U 2623 TPE DE SU300A, LLC, TPE DE SU300B, LLC, TPE DE SU300C, LLC, for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Allen abstained.

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

CU 2633 TPE DE SU95A, LLC & TPE DE SU95B, 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 PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 185.96 ACRES, MORE OR LESS. The property is lying on the west side of North Old State Road (S.C.R. 38A), the east side of DuPont Boulevard (Rt. 113), and the north side of Haflinger Road (S.C.R. 625). 911 Address: 8850 North Old State Road, Lincoln. Tax Map Parcel: 230-12.00-19.00 (P/O).

The Commission discussed the application which had been deferred since June 17, 2026.

Madam Chair Wingate advised the Commission that she was absent from the application's public hearing, however, she had listened to the audio and therefore, was prepared to vote.

Mr. Passwaters moved that the Commission recommend approval of Conditional Use No. 2633 for TPE DE SU95A, LLC and TPE DE SU95B, LLC for a solar energy facility in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located within approximately 59.61 fenced-in acres of a larger 185.96-acre tract. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a parcel of land that is mainly surrounded by forest or land used for agricultural purposes. The boundaries adjacent to residential uses will include a 30-foot-wide landscape buffer to screen the use.
5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be "Diminutive". There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to

- reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
- D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used within this buffer area shall be included in a landscape plan provided with the Final Site Plan.
 - E. Transformers and similar equipment shall be centrally located on the site. The invertors shown within "Site A" on the Preliminary Site Plan shall be more centrally located than what was shown on that plan.
 - F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - H. 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 using Best Management Practices.
 - I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Passwaters, seconded by Mr. Pettyjohn and carried unanimously to recommend approval of CU 2633 TPE DE SU95A, LLC & TPE DE SU95B, LLC, for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Allen abstained.

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

CU 2640 TPE DE SU646, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL

DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 19.74 ACRES, MORE OR LESS. The property is lying on the west side of the intersection of Sussex Highway (Rt. 13) and Camp Road (S.C.R. 532). 911 Address: N/A. Tax Map Parcel: 131-19.00-3.00.

The Commission discussed the application which had been deferred since June 17, 2026.

Madam Chair Wingate advised the Commission that she was absent from the application's public hearing, however, she had listened to the audio and therefore, was prepared to vote.

Mr. Passwaters moved that the Commission recommend approval of Conditional Use No. 2640 for TPE DE SU646, LLC for a solar energy facility in the AR-1 and C-1 Districts based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located within approximately 13.15 fenced-in acres of a larger 19.74-acre tract. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a parcel of land that is mainly surrounded by land that is wooded or farmed. The boundaries adjacent to residential uses will include a 30-foot-wide landscape buffer to screen the use.
5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be "Diminutive". There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:

- A. The use shall be for a ground-mounted solar array. No other types of electric generation

shall be permitted at the site.

- B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
- C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
- D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used within this buffer area shall be included in a landscape plan provided with the Final Site Plan.
- E. Transformers and similar equipment shall be centrally located on the site.
- F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- H. 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 using Best Management Practices.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Passwaters, seconded by Mr. Pettyjohn and carried unanimously to recommend approval of C/U 2640 TPE DE SU646, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Allen abstained.

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

Wingate – yea

CU 2642 TPE DE SU94B, 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 39.76 ACRES, MORE OR LESS. The property is lying on the east side of North Old State Road (S.C.R. 213), approximately 600 feet north of Haflinger Road (S.C.R. 625). 911 Address: 9052 Lofland Drive, Lincoln. Tax Map Parcel: 230-12.00-39.00.

The Commission discussed the application which had been deferred since June 17, 2026.

Madam Chair Wingate advised the Commission that she was absent from the application's public hearing, however, she had listened to the audio and therefore, was prepared to vote.

Mr. Passwaters moved that the Commission recommend approval of Conditional Use No. 2642 for TPE DE SU94B, LLC for a solar energy facility in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located on approximately 18.02 acres of a larger 39.32-acre tract. It is adjacent to an existing solar array approved as Conditional Use No. 2347. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a parcel of land that is surrounded on three sides by land used for agricultural purposes. All sides will be buffered with the exception of the common boundary with the solar array approved as Conditional Use No. 2347.
5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be "Diminutive". There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.

7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
 - D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used within this buffer area shall be included in a landscape plan provided with the Final Site Plan.
 - E. Transformers and similar equipment shall be centrally located on the site further away from North Old State Road than what was shown on the Preliminary Site Plan.
 - F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - H. 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 using Best Management Practices.
 - I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.

- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Passwaters, seconded by Mr. Collins, and carried unanimously to recommend approval of C/U 2642 TPE DE SU 94B, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Allen abstained.

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

C/U 2569 Pivot Energy DEL045, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 45.57 ACRES, MORE OR LESS. The parcel is lying on the east and west sides of Norwood Lane, approximately 950 feet southwest of Oak Orchard Road (Route 5). 911 Address: N/A. Tax Map Parcel: 234-29.00-220.00.

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

Mr. Collins moved that the Commission recommend approval of Conditional Use No. 2569 Pivot Energy DEL045, LLC for a solar energy facility in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located within approximately 15.22 fenced-in acres of a larger 45.57-acre tract. The array area complies with all of the Code requirements for separation distances and setbacks from property lines and dwellings.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is farmland that has been owned by the same family for generations. Although it is zoned GR for residential use, the family has stated that they have never had any desire to develop or sell the property. The use as a solar facility will maintain the family's ownership of the property in perpetuity.

5. This Application generally complies with Section 115-172.I of the Sussex County Zoning Code regarding solar arrays.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways, and DelDOT has stated that the traffic impact will be “Diminutive”. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
8. Although there was opposition to this Application regarding the possible visual impact of the use, the site plan complies with or exceeds the Code-mandated requirements for vegetation, screening, fencing, and separation distances. Likewise, while there was a petition submitted into the record, the testimony during the public hearing called into question whether the individuals who signed it are neighbors of the subject property or would be impacted by it in any way.
9. Several immediate, long-standing neighbors of the subject property, testified in favor of this Application and praised the desire to preserve the land from residential development and the traffic that would result.
10. This recommendation is subject to the conditions set forth in Section 115-172.I of the Zoning Code and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. The entire area of the solar array shall be surrounded by a 7-foot-tall fence to comply with the height requirement of the National Electric Code. The fencing shall be a knot-wire agricultural style fencing including an interwoven privacy screening. The privacy screening shall be attached to the fencing with metal fasteners and a tension wire to reduce maintenance. The fence location and type of screening shall be shown on the Final Site Plan. The privacy screening may be removed after ten years from the installation of the solar array. The fencing shall remain.
 - D. The entire area of the solar array shall be surrounded by a buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. It shall also be no closer than 200 feet from a dwelling on adjacent property. The landscaped buffer shall be at least 30 feet wide along the perimeter of the Property adjacent to lands of other ownership. This landscaped buffer shall use existing vegetation or shall be planted with 70% evergreen vegetation and 30% deciduous vegetation that serves as a screen while not impeding the use as a solar array facility. The location and types of vegetation used

within this buffer area shall be included in a landscape plan provided with the Final Site Plan.

- E. Transformers and similar equipment shall be centrally located on the site.
- F. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- G. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- H. 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 using Best Management Practices.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan 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/U 2569 Pivot Energy DEL045, 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

PUBLIC HEARINGS

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

C/U 2465 Sussex Materials, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT AND SAND PLANT SITE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 107.517 ACRES, MORE OR LESS. The property is lying on the southwest side of Hunters Cove Road (S.C.R. 602), approximately 0.43 mile southeast of Owens Road (S.C.R. 611). 911 Address: N/A. Tax Map Parcel: 430-9.00-21.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet and materials, a Wetland Delineation, the property deed, and the Conceptual Site Plan. Mr.

Whitehouse advised the Commission that no public comment had been received regarding the application.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, LLP spoke on behalf of the Applicant, Sussex Materials, LLC; that also present on behalf of the Applicant were Mr. RJ Andrews, Mr. Kenny Web, Mr. Chad Warren, Project Engineer with David Bowen & Friedel, Inc.

Ms. Sindelar stated that the Application was for a Conditional Use to be located within the AR-1 (Agricultural Residential) Zoning District, for an approximately 6.9 acres sand plant, and the excavation of an approximately 31.70 acre borrow pit, extraction, processing and removal of sand, gravel, or stone from the property; that the property is located within the Nanticoke Hundred in Sussex County, and situated off Hunters Cove Road; the parcel was identified as Tax Map Parcel no. 430-9.00-21.01; that the total property acreage was about 103.25 acres; that the advertisement note that the property was approximately 107 acres, however, there had been a subdivision of some strip lots from the perimeter of the site, resulting in a total acreage of 103.25 acres; that the Applicant intended to submit an amended Site Plan before the hearing before County Council; that the proposed Conditional Use area was approximately 48.25 acres; that the property was currently owned by the Applicant, Sussex Materials, LLC, which was a Delaware Limited Liability Company; that the site currently consisted of, and more fully set forth in the Wetland Delineation Report, of scattered historic agricultural fields and woodlands, some of which exhibit signs of logging and were more immature forest, characterized in the report as “Pioneering Forest”; that the property is zoned AR-1 (Agricultural Residential); that all properties surrounding the site were zoned the same; that the property was located within the Rural Area, being a Low Density Area designation, with nearby properties designated the same; that the property was located within the Investment Level 4 area; that the Applicant’s Conceptual Site Plan complied with the specific borrow pit siting requirements, as more fully set forth in §115-172.B of the Code; that no material would be brought off the site for processing, mixing, or similar purposes; that the excavating, extraction, or filling operation would be managed to provide reasonable protection to surrounding properties and neighborhoods, particularly concerning odors, dust, air, and water pollution; that access to the site was provided from Hunters Cove Road; that there was a service road to provide access back to the sand plant and the borrow pit area; that the excavation location would be controlled by property lines, depth, water table and flood criteria; the specifically, the pit was greater than 100 feet from all property lines; that the pit was surrounded by woodlands, agricultural uses, and a limited number of property lines; that surrounding uses to the site were predominantly chicken houses; that generally with borrow pit uses, there would be a lot of concern regarding truck traffic; that the Applicant had spoken with a neighbor who confirmed that 24 hour tractor-trailer related truck traffic occurred, due to the nearby chicken farm uses; that truck traffic would not be out of character for the area; that the landscape buffer complied and exceeded the Code requirements; that a minimum buffer of 250 feet had been provided from the Tax Map Parcel No. 430-9.00-23.00; that a minimum 300 foot buffer had been provided from the adjacent Tax Map Parcel

No. 430-12.00-13.00 and the centerline of the tax ditch which ran along the property; that a varying width buffer had been provided, ranging from 550 feet to 1,000 feet from Hunters Cove Road, except for the location of the access road; that she had submitted into the record a set of Proposed Conditions of Approval which reflected what she had previously stated; that the borrow pit was located a minimum of 200 feet from any dwelling on a property of other ownership; that the Applicant acknowledged and understood that final approval and Notice to Proceed components in order to get final approval; that the submitted documents included a Conceptual Reclamation Plan; that the property was not located within the TID (Transportation Improvement District); that DelDOT indicated that the traffic impact was considered negligible, which was based on an understanding that there would only be three (3) employees located on the site, and approximately twenty (20) to thirty (30) trucks visiting the site per day; that any Site Plan would require DelDOT approval; that there was no potable drinking water to be provided on the site; that sanitary sewer would be provided by use of a Delaware State licensed porta-potty, and therefore, no on-site wastewater disposal systems were proposed to be provided; that the retained woodlands would provide an extensive buffer between the borrow pit and the nearby uses; that there was a small portion, approximately .50 acre, of Federally regulated Non-Tidal wetlands located on the site, which were consistent with the one prong of the tax ditch; that those wetlands were to remain undisturbed; that there were no known historic features present on the site; that the purpose of a Conditional Use was to provide for certain uses, which could not otherwise be well adjusted to their environment in particular locations, with full protection offered to surrounding properties by rigid application of the District regulations; that furthermore, the borrow pit and sand plant were generally of public or semi-public character, and were essential and desirable for the general convenience and welfare of the County; that because of the nature of the proposed use, the importance of its relationship to the plan and the possible impact on neighboring properties, the application would require the exercise of planning judgement on location and site plan; that there currently was a need in the area for materials, dirt, sand and gravel; that the materials removed from the site would be used throughout Sussex County for a variety of residential and commercial uses, as well as road construction; that moreover, the approval of the application would provide a borrow pit and sand plant for the processing and removal of sand, gravel, and stone to be used in construction of private and public works projects in the immediate area, and throughout Sussex County; that the proposed Conditional Use met the purpose of the Code and the Comprehensive Plan, as it was located within an appropriate location, which provided sufficient area for the proposed use, which in other locations, may not be able to be as well adjusted to its environment; that through the placement of appropriate Conditions of Approval, the impact of the borrow pit and the sand plant on neighboring properties would significantly be reduced; that the project met the purpose of the Code and that it promoted the orderly growth, convenience, order, prosperity, and welfare of the County; that the Conditional Use would also promote the health and safety of inhabitants of the County; that the use was considered to be essential and desirable for the general convenience, orderly growth, prosperity, and welfare of the County; that to date the Applicant was not aware of any opposition; that five letters of support had been submitted into the record by the Applicant; that the proposed Conditions of

Approval were standard conditions that were typically imposed on borrow pits; that the proposed Conditions clarified and specified the borrow pit, sand plant, and Conditional Use areas; that she had also added that a water truck should be available to control any dust from road traffic, when conditions would require it; that she had confirmed that the single proposed entrance would be conditioned as an entrance to the pit; that the Applicant proposed hours of operation to run from 6:00 a.m. to 6:00 p.m. Monday through Friday, and 6:00 a.m. to 2:00 p.m. on Saturdays; that no Sunday hours were proposed; that she had clarified that no materials should be stored on any access road, or within any buffers; that any fuel stored on the site would be subject to the authority of DNREC; that otherwise, the provided standard conditions noted that security lighting would be downward screened, as to not shine on properties, and that the Final Site Plan would be subject to the review and approval of the Planning & Zoning Commission.

Mr. Passwaters questioned the number of anticipated trucks per day, as he had concerns regarding the number of trucks, when considering the chicken farm, and the weight of those trucks.

Ms. Sindelar stated that 20 to 30 trucks were anticipated per day; that she understood Mr. Passwaters' concerns, regarding the wear and tear on the roads; that ultimately, DelDOT confirmed that the impact would be negligible, based on the number of trips; that any Site Plan would be subject to DelDOT's review and approval; that the Applicant had spoken with many of the surrounding neighbors, to whom had supplied the previously mentioned letters of support, and many of the neighbors had mentioned that they preferred something with buffering, rather than a housing development.

Madam Chair Wingate questioned whether any improvements were required, as she did not see anything indicated on the Conceptual Site Plan.

Mr. Chad Warren, P.E. with David Bowen & Friedel, Inc. spoke on behalf of the Applicant. Mr. Warren stated that the site would be required to go through the full DelDOT approval process and pre-application meeting; that DelDOT would tell them what would be required, and what would be warranted based on the traffic on the road and their site's ADT; that any requirements necessitated by DelDOT would be provided along the site frontage or wherever needed; that currently, no improvements were being required by DelDOT, and they had not currently initiated that process.

Mr. Allen questioned the number of trucks to be located on the site at one time, as he expressed concerns regarding there being no shoulder along the road and the entrance being narrow.

Mr. Kenny Webb spoke on behalf of the Applicant. Mr. Webb stated that the number of trucks would vary; that there would be days where no trucks would come to the site; that there may be days where 20 trucks come to the site to pull out loads; that at other times there may be five trucks; that there was no way to tell; that the trucks will come in when they need dirt or hit a big dirt order; that most of the

time they have 10 trucks at most, and the entrance that DelDOT will require them to have would be able to handle the anticipated traffic.

Mr. Collins stated that he assumed the entrance would have a gate, which would hopefully be set back far enough to allow trucks to pull off the road, should they happen to arrive before the facility opened, and he did not want the trucks parked on the side of the narrow road.

Mr. Webb stated that DelDOT would require them to provide an area where the trucks could pull up and turn around, without entering the site.

Mr. Pettyjohn questioned whether the access was wide enough to allow for two dump trucks or tractor trailers to easily pass each other and provide space to where the trucks could line up if they had to.

Ms. Sindelar stated that was the intention.

Madam Chair Wingate stated that the plan did not note the width of the access road and that she would be interested in that notation being a Condition of Approval.

Ms. Sindelar stated that the submitted plan was conceptual in nature; that the Final Site Plan would indicate the width of the road, as it was a standard procedure to provide that information and was a requirement of the Code.

Madam Chair Wingate whether there would be a fuel tank stored on the site, and she requested clarification regarding proposed Condition 7(1), which stated that “*no material will be brought from off the site for processing*” and questioned the Conditions intention, as she understood the use to be for digging dirt and hauling the dirt off site.

Ms. Sindelar stated that a fuel tank was intended but would also be conditioned to be in compliance with any applicable DNREC regulations; that, with respect to the borrow pit operations, the intention of proposed Condition 7(1) was that any materials would be processed at the sand plant, located on the site, and then leave the site after the materials had already been processed and washed and that condition was a typical for similar types of applications.

Mr. Robertson stated that usually it was a standard condition, and it was to keep people from hauling materials onto the site.

The Commission found that there was no one present who wished to speak 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 2465 Sussex Materials, LLC. Motion by Mr. Passwaters to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

RECESS

4:11 P.M. – 4:45 P.M.

Mr. Robertson recused himself from the next application and left Council Chambers.

Mr. Jamie Sharp, Assistant County Attorney, entered Council Chambers in Mr. Robertson's place.

C/Z 2061 Sandie, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM DENSITY RESIDENTIAL - RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL - RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR C/Z 673 (ORDINANCE NO. 294) IN RELATION TO THE ADDITION AND USE OF RECREATIONAL AMENITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 4.29 ACRES, MORE OR LESS. The property is lying on the south side of Plantations Boulevard, approximately 0.46 mile north of Cedar Grove Road (S.C.R. 283) and 0.14 mile west of Plantation Road (Route 1D & S.C.R. 275). 911 Addresses: 18462, 18464 & 18466 Plantation Boulevard, Lewes. Tax Map Parcel: 334-6.00-553.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Presentation materials and exhibits, a Revised Site Plan, a survey, the Staff Analysis Report, a letter received from the Sussex County Engineering Department's Utility Planning Division, the DelDOT Service Level Evaluation Response Letter, a letter received from the State Fire Marshal's Office, and copies of past Ordinances and meeting minutes, including Ordinance No. 294. Mr. Whitehouse advised the Commission that a total of 211 public comments had been received regarding the application, which included multiple pages, multiple documents and a petition.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, LLP spoke on behalf of the Applicant, Sandie, LLC and the owner and operator of Dave Marshall Tennis & Pickleball; that also present were Mr. Dave Marshall, member of Sandie, LLC and the owner and operator of Dave

Marshall Tennis and Pickleball, Mr. Carlton Savage, Civil Engineer with Scaled Engineering, Inc., Mr. Dennis James (D.J.) Hughes, II, P.E., Traffic Engineer with For Sure Hughes, LLC; and Ms. Kim Hoey Stevenson, former Planning & Zoning Commissioner for District 3 and Public Relations Professional with Hoey Communications Group; that other members of the team who were not present for the hearing included, Mr. Jeffrey Wolf, Architect with Jeffrey Wolf Architecture, and Ms. Amy Reese, Landscape Architect with Love Dirt, LLC.

Ms. Sindelar stated that she represented Sandie, LLC, the applicant and property owner, in connection with their Change of Zone application, in connection with the property designated as Tax Map Parcel No. 334-6.00-553.02; that the application sought an amendment to the Comprehensive Zoning Map of Sussex County from an MR-RPC (Medium Density Residential – Residential Planned Community) to an MR-RPC (Medium Density Residential – Residential Planned Community) for the purpose to allow for a recreational area, for public access, and to improve the site further with recreational facilities and amenities, such as an indoor (not outdoor) pickleball and racket courts, an outdoor pool, parking areas, and sidewalks to the recreational area; that this request would thereby amend the original approval for Change of Zone, C/Z 673, which was approved in August 1985; that this application involved a lot of history; that initially, the Applicant, with support from prior legal representation, before she became involved, understood that they could rebuild the facility, which is currently being proposed, but without the pool, by simply obtaining a building permit; that the previous pool was destroyed by a fire; that the Applicant learned that the proposal was required to proceed through Site Plan review, and approval processes, which would not have been a public hearing; that ultimately, during Site Plan review, a letter from the Board was evaluated by the Planning & Zoning Commission, and ultimately resulted in the scheduling of the current public hearing; that the Applicant was requesting to rebuild and replace the recreational facilities, some of which were lost in a fire in 2024; that Sandie, LLC is the owner and the Applicant of the application; that Sandie, LLC owned the property in fee simple, having acquired the property in 2008, with Dave Marshall Properties, LLC; that later by a deed dated, December 16, 2010, Dave Marshall Properties, LLC conveyed its entire interest to Sandie, LLC; the Dave Marshall Tennis and Pickleball is the tenant of the property, and is a well-known, long-standing racquet sports facility operated by Dr. Marshall and his son, Jordan, and a dedicated team, all embodying a friendly mom-and-pop culture; that the club offers year-round indoor and outdoor play, featuring both, indoor hard courts and outdoor clay courts for tennis; that with Dr. Marshall's extensive experience coaching players on the Association of Tennis Professionals and the Women's Tennis Association Tours, the facility provides professional coaching, clinics and private lessons for players of all skill levels; that the club enjoys strong community interest support in Sussex County, as demonstrated by the overwhelming support for the application; that memberships were affordably priced, making them accessible to many residents of Sussex County; that Dr. Marshall had operated the recreational amenities since 1995; that the property itself encompasses approximately 4.29 acres, as confirmed by survey, and was situated on the south side of Plantation Boulevard, about 0.46 mile north of Cedar Grove Road (S.C.R. 283), and 0.14 mile west

of Plantation Road (Rt. 1D) and Route 275; that the 911 addresses were 18462, 18464 and 18466 Plantation Boulevard, Lewes, Delaware, being Tax Map Parcel No. 334-6.00-553.02; that the property was zoned MR-RPC (Medium Density Residential – Residential Planned Community), falling into the Plantation’s Residential Planned Community, which was established through Change of Zone No. 673, changing the zoning from MR to MR-RPC; that some of the adjacent properties are zoned the same; that there was also a mixture of residential, agricultural, commercial and business uses nearby; that the property was located within the Coastal Area, which was a designated Growth Area in Sussex County per the 2018 Comprehensive Plan; that the Comprehensive Plan indicates that the Coastal Area can accommodate development, provided that specific environmental concerns are addressed; that a range of housing types, including single-family homes, townhomes, and multi-family units are permitted; that additionally, retail and office uses are appropriate, although larger shopping centers should be positioned with access along arterial roads; that mixed-use developments are also encouraged; that medium to high density residential, ranging from four to 12 units to the acre were also considered to be suitable, provided that central sewer and water is provided, as well as near employment centers and along main roads; that the 2025 Delaware Strategies for State Policies and Spending Map identifies the property as being located predominantly within Investment Level 1, with a small portion being located within Investment Level 2; that site was surrounded by similarly designated properties; that Investment Level 1, reflected areas already developed in urban and suburban style, where infrastructure was present or readily available, and where future redevelopment or infill projects are encouraged by State policy; that Investment Level 2 areas encompassed less developed regions within municipalities, rapidly growing areas in the County with impending water, and wastewater services, areas adjacent to Investment Level 1, and smaller towns and rural villages that should grow consistently with their historic characters, along with suburban areas, and public utilities; that in both Investment Level 1 and Investment Level 2 areas, State investments and policies should endorse and encourage a diverse range of uses and densities, promote alternative transportation options, optimize existing public and private investments, and enhance community identity and integrity; that additionally, according to the Sussex County’s Comprehensive Plan §410, in Investment Level 1, it was the State’s intent to use its spending and management tools to maintain and enhance community character, promote well-designed and efficient new growth, and facilitate redevelopment in Investment Level 1 areas; that in Investment Level 2, it was the State’s intent to use its spending and management tools to promote well-designed development in those areas; that such development provides for a variety of housing types, user-friendly transportation systems, essential open spaces, recreational facilities, and other public facilities and services to promote a sense of community; that the property is part of the Plantations RPC, which included single family lots, and condominium units collectively referred to as the Plantations property, detailed in the Declaration Plan for Plantations, recorded as Plot Book 36, Page 96; that the original RPC application was considered by the prior Commission at their meeting of May 16, 1985; that the application was subsequently approved at the County Council meeting on August 27, 1985, through Ordinance No. 294, which was contained within the record; that the Ordinance was very simplistic in nature, and

was nothing like what Ordinances would be currently in terms of conditions; that previously, the property and the Plantations were owned by Crown Estates, a Delaware partnership, who developed the project; that it included the residential components, but it also included the recreational area, as well as the spray irrigation area; that the recreational area, Phase One Residential area, Expanded Residential area, and Spray Irrigation area were all a part of the original approval; that the underlying Declaration of Covenants, Conditions, and Restrictions for the Plantations, recorded as Deed Book 1461, Page 54, provided language to the effect that every owner of a condominium unit, lot or improvement upon payment of a fee, has the right to enjoy the recreational area, the recreational properties, and the related facilities; that this right was subject to specific conditions, one of which permitted the developer and its successors to allow non-owners to use the recreational property and facilities for a reasonable fee; that additionally, the developer can establish permissible commercial uses within that area, construct structures for other uses, and lease them to operators, owners and managers of businesses; that these provisions clearly indicate that from the inception of the Plantation's RPC, the intention was to create a recreational area, with facilities to be accessible to both residents of the community, as well as to the public; that therefore, the current proposal to enhance the recreational facilities, some of which were lost as a result of a fire, within the recreational area, aligns with the original intent of developing this particular property, as part of the larger RPC and as confirmed by the documents of public record; that all of the mentioned documents were held within the public record; that even if owners were not on actual notice, which seemed unlikely given the existence of the recreational area since the community's inception, which were in plain sight, owners were at least on constructive notice; that there are documents of public record, which clearly outline the recreation area, how it was intended to be used, and its size; that the recreation area had been used exactly in that way since its inception; that arguments to the contrary hold no water; that several comments were submitted suggesting that the original approval was not compliant with the RPC code, implying that the acreage designated for the use was somehow excessive or not permitted; that to the contrary, one might argue that the allocated space was actually undersized, given the total acreage of the RPC, which was approximately 154.59 acres; that the existing acreage allocated for the recreation area, therefore does comply with the RPC Code, and specifically §115-119.B, which specifies a standard of one acre per 100 dwelling units, with a total of 608 dwelling units, 376 in Plantations East, and 232 in Plantations West; that this standard allows for a recreation area of approximately 6.08 acres; that therefore, the recreation area, at approximately 4.29 acres, complied with the requirement; that Ms. Sindelar presented to the Commission Google Earth aerial images from March 1992, which reflected the original recreational facilities, and a portion of the property record card; that the property card reflected that in the early 90s, two pools, storage buildings, and tennis were permitted by Building & Licensing at that time; that there were questions regarding the use and continued use; that for a long time, and since inception, the facilities had been used by others, not just the community residents; that the record contained a 1994 article announcing the hiring of a new general manager and tennis director; that an advertisement from 1995 described the area and the community as resort living; that indicated that it was not only the residential component, but also the recreational component; that

historical records indicate that the use had existed, operated and was permitted since the mid-80s; that she presented an image from 2005 illustrating the recreational facilities that were available; that on the image one could see that there used to be two pools; that there had been historical swim meets at the property; that the larger, Olympic sized pool was retired, due to a crack in the liner, and the cost of replacement was cost prohibitive; that a picture from July 2010 showed what existed at the time, but also reflected a parking area that Dr. Marshall used to rent from the community; that there previously was a dispute regarding the use and rental of the parking lot, which ultimately escalated into litigation between the Applicant and the community; that the key point was to note that there used to be a parking lot on the property, where everyone parked to use the space; that the parking area eventually became too costly for Dr. Marshall to continue renting the space; that the area was partially retired and grassed over; that she believed there were dumpsters within that area currently; that in the 1980s, condominium owners in the Plantations RPC paid recreation fees for access to the property, while outside memberships were also available; that as early as 1988, Mr. Walter Chappie Layman, a member of the original ownership group, attempted to contract Dave Marshall Tennis Services to run a tennis program at the property, although there was no agreement reached at that time; that by the early 1990s, the recreational areas were established, even before some of the residential units; that by the mid-1990s, around 1995, Dave Marshall Tennis began staffing and managing the tennis program at the property; that around 1990, the Property Owners Association of the RPC chose to opt out of the recreational fee that was paid, leading many owners to participate in specific recreational areas that they utilized; that the membership fee was an a la carte; that the fee structure became uniform for both owners and the broader outside community; that initially, Mr. Dennis Vandermeer operated an academy offering memberships and weekend clinics; that in 2008, the Applicant and Dave Marshall Tennis acquired the property, shortly after, facing challenges from the housing market crash; that during this period, a collaborative relationship developed between the residents of the Plantations RPC and Dave Marshall Tennis; that the relationship included compensating residents for the use of the parking areas, allowing the HOA to place a dumpster on the property for trash collection, maintaining a library and meeting room in one of the recreational facilities, which allowed meetings for the community to be held at a minimum cost, and providing use of a maintenance storage shed at no cost; that this long-standing relationship eventually led to a lawsuit stemming from a fee dispute regarding the Applicant's use of the parking lot; that the issue evolved into a broader dispute over access to the property, which resulted in an agreement between the parties; that under the agreement, the Applicant is required to pay a fee to the Plantations Owners Association, Inc., with specific payment terms outlined in the agreement; that this agreement was designated as the Declaration of Cross Easement and Maintenance Agreement, recorded as Deed Book 4154, Page 292; that the drafter of that document was Mr. David Hutt, Esquire; that there had been discussions regarding amending the agreement, which the Applicant was considering; that to date, the Applicant had paid approximately \$150,000 to the Plantations Owners Association, Inc. for historical parking area usage and the easement rights granted under the agreement; that the Applicant was not aware, as they were not a member of the community, of how the Plantations Owners Association uses or has used the fees;

that the easement fee, which was described and defined as a maintenance fee within the agreement, was supposed to be used and should be used for the joint use of the Plantations Boulevard easement area; that between 2013 and the fire in 2024, the vibrant tennis, pickleball and fitness facility operated at the property; that it also offered activities such as hot yoga, Pilates, Weight Watchers, counseling, and other programs to paying members; that in 2024 full memberships for the gym, tennis, and pool access was \$950 annually with no additional fees; that while memberships were priced at approximately \$1,300 per year; that for those seeking partial access to the facility, there were a la carte pricing with gym memberships at \$15 per month, with full access at \$250 per month, or \$500 for a family of five; that given the short capital contribution and HOA amenity fees in other communities, especially within Rehoboth and Lewes, she felt those prices were very reasonable; that tennis members were considered full members; that the club, over its history, and time at the property had gained recognition through its professional tennis coaching, with players coached by Dr. Dave Marshall, achieving success at prestigious events like Wimbledon, the U.S. Open, French Open and World Tour Finals; that camps were also offered featuring Hall of Famers, Mike and Bob Bryan, along with Madison Brengel, Megan Fudge, and Ryan DeHart; that this operation continued until a fire of unknown origin happened on January 12, 2024; that the fire resulted in the total loss of the previous clubhouse; that in its simplest form, the current application proposed to reconstruct the recreational facilities in the fire; that the operations support many local fundraisers such as the Lewes Fire Company, Camp Rehoboth, the YMCS, the annual Cape Gazette 5K, the Harry Cave Foundation, First Responder fundraisers, the Community Resource Center, the Big Fish Foundation, the Bryan Brothers Foundation and many others; that the existing recreation facility included six indoor courts, comprised of two tennis courts and four pickleball courts; that there were four outdoor tennis courts; that there was a gym, storage facilities, restrooms, and parking; that currently, there were 45 parking spaces on the site with two ADA compliant spaces; that when entering the property, one could see the existing parking lot, some landscaping boulders with no parking signs; that they proposed to place additional signage to address some of the off-site parking issues; that on January 12, 2024, the prior clubhouse caught fire due to unknown causes, which resulted in a total loss; that the foundation of the building was tied to the foundation of the pool; that when the fire occurred, it was advised from a structural integrity perspective, to also abandon the pool; that the prior clubhouse was approximately 13,383 square feet; that the proposal included constructing a new building of approximately 9,984 square feet to serve indoor courts; that they are proposing a clubhouse about 3,399 square feet smaller than the previous clubhouse; that the proposed building would be designed to be more integrated into the property, as it will align more with the existing structures, rather than the previous clubhouse which extended closer to the property lines and the condominium units on the one side of the entrance; that the new plan reduced the footprint of the prior building, allowing it to blend more seamlessly with the surrounding improvements on the site; that the proposal features a pool and a proposed deck area, describing the disturbed area; that they had and were continuing to have discussions with the community about the size of the pool; that the proposal also contemplates an additional 62 regular parking spaces, and an additional four ADA compliant spaces, along with

sidewalks, which will all be subject to final engineering; that from a financial perspective the proposed pool would be a total loss to Dr. Marshall and the business, however, he was offering the pool for good neighborly relations and considering that a pool had previously been present at the property; that it was his understanding that a vast majority of residents are excited about the prospect of the pool; that she present the Commission a conceptual design, and architectural rendering for the proposed build, which maintained earth toned colors, which were requested and proffered as a condition; that Dr. Marshall painted some other buildings on site green to blend in with existing vegetation, which had been requested by some members of the community; that the purpose of the MR Zoning District was to provide for medium density residential development in areas that were or were expected to become generally urban in character, where sanitary sewer and public water supplies would be available at the time of construction; that the recreational use would resemble typical uses and practices in residential communities and would be compatible with the area; that the use had existed since the communities inception, supported by governing documents of the community, and aerial images dating back to the early 90s, which publicly advertised the concept of resort and club life; there thereby informing the community of its presence; that whole the Applicant acknowledged the public use of the property, and its existing and proposed uses, §115-29.E of the Code permits recreational activities, such as tennis courts and swimming pools to operate as private membership facilities, not for commercial purposes and subject to certain siting requirements; that it was also common in private developments to impose an amenity fee, similar to the membership fee, but often at a higher rate, to maintain and enhance recreational facilities, ensuring they remain accessible and well-managed for all residents; that therefore, the proposed use fits within the permitted activities in the MR District, and aimed to enhance the community and its enjoyment; that the purpose of the RPC District Overlay 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 and ingenuity, while protecting existing and future developments, while achieving the goals of the Comprehensive Plan; that the stated purposes of the MR District and RPC Overlay are addressed and met in the proposed application; that both central water and sewer services were available; that the property was situated in an area with more urban characteristics, surrounded by numerous existing residential developments, as well as a variety of small and large businesses and commercial uses, more predominantly located on Route 1, but also conveniently located close to Route 1, and Five Points; that the application replaces the prior clubhouse that was lost to a fire, and would enhance the recreational amenities with the addition of new courts, pool, parking, sidewalks, and landscaping; that they had included a conceptual Landscape Plan, which primarily showed where landscaping would be proposed; that they were continuing to work with the Board and the community, as it related to additional screening that may be appropriate; that a Preliminary Site Plan was submitted into the record; that the Site Plan was conceptual, and was not to be considered a final, as based on the community comments, and the Commission's recommendations, modifications may be required as necessary to improve the use and its coexistence with the residential community; that the building was proposed to be tucked tight with the rest of the existing improvements; that this would allow for

double the existing parking spaces; that additional site data and parking calculations could be located on the plan for review; that the Applicant was the recipient of the Delaware Sports Tourism Investment Fund Grant Award in the amount of \$1 Million; that the grant operates as a match fund, meaning the Applicant's expenditure of up to a million dollars would then be matched by an amount equal of up to a million dollars; that there was a lot of questions related to traffic, and what was represented in the grant proposal; that the Applicant's Traffic Engineer would speak to the traffic, trip generation and traffic flow; that access to the property was provided from Plantations Road, using certain internal streets of the Plantations in accordance with the Declaration of Cross Easement and Maintenance Agreement; that her client had paid, in connection with the use, over \$100,00, despite the untrue statements suggesting there had been no contribution from her client to the maintenance of the streets; that the issue of access, use and maintenance fees, for those access ways were established by written recorded agreement and recorded easement plot, which had already been litigated and decided; that there had been requests for changes to the underlying agreement and related changes to the capital funds and maintenance fees, which her client was reviewing and currently considering; that her client was not looking to relitigate the issue, but was willing to consider amendments; that he had paid over \$100,000 to the community to maintain the current roadways; that he had offered to assist with repaving, and was willing to continue that conversation; that any outcome must be fair; that there needed to be accountability for the maintenance of the roadways, as it was not entirely evident what historical improvements had been made; that any consideration for the use of the easement should be proportional to the Applicant's use, and Ms. Sindelar requested to have Mr. Carlton Savage speak on the stormwater, to be followed by Mr. Hughes to discuss traffic for the project.

The Commission found that Mr. Carlton Savage, Principal and Sr. Civil Engineer with Scaled Engineering, Inc., spoke on behalf of the application's stormwater management. Mr. Savage stated that they had already had conversations with the Soil Conservation District in Sussex County; that on September 29, 2025, they had a meeting to discuss what would be required for rebuilding the application; that based on that meeting, it was determined that that they would be a non-residential standard plan; that those requirements were listed; that some of those requirements are less than an acre of disturbance; that they were about 0.75 acres of disturbed land; that the pre-existing land cannot be forest, which it was not; that the application was originally built in 1985; that a lot of the areas had stormwater management, but under older regulations; that therefore those areas would be considered unmanaged for stormwater; that one must compare the curve number pre and post, to what was there and what was designed; that based on that comparison, one could see that the majority of the site was paved with the original proposal; that the current proposal eliminated some of the pavement; that the runoff that would be generated by the proposal would be less than what was there previously; that the site does sheet flow in a couple different directions, heading towards a ditch where there were trees in the back, crossing the parking lots and heads to ditches; that there were also stormwater management pipes across the property on the site which came from the stormwater management ponds; that those pipes had been cleaned out in the past; that discussions had been taken regarding

those maintenance items as well; that the standards for the application required by Sussex Conservation District (SCD), would be the submission of a Standard Non-Residential Plan; that there would be silt fencing provided; that they would provide all the requirements of the plan, but not any detailed calculations other than showing the two; that they were on the path of getting their Site Plan approval; that in 2025, they received an email from the Sussex Conservation District requesting final plans, and should the current application be successful, they would continue the process with the Soil Conservation District.

Madam Chair Wingate stated they Mr. Savage mentioned that the standards had changed and questioned if they were still required to manage any stormwater runoff.

Mr. Savaged stated absolutely, that the standard plan was one of the processes; that there was a detailed plan and a standard plan; that the detailed plan typically involved when one needs to build a stormwater management item because one would be increasing runoff; that in cases where runoff was not increased, such as the current application, where it would be less impervious, and the runoff would be decreased, no detailed plan would be required.

Mr. Dennis James (D.J.) Hughes, II, P.E., President and Sr. Traffic Engineer with For Sure Hughes, LLC spoke on behalf of the application's traffic impact. Mr. Hughes stated that as part of the application, a DelDOT Service Level Evaluation Request was required; that consistent with DelDOT and Sussex County's MOU (Memorandum of Understanding), DelDOT responded that the application would have a diminutive impact on local roadways, which equaled an increase of fewer than 50 trips per day; that previously the fire that destroyed a building that was larger by about 4,000 square feet; that the building they were proposing to rebuild was about 4,000 square feet less than the previous building; that the proposed pool and deck were basically replacing the previous improvement; that before the application was submitted, they had submitted their Site Plan to DelDOT; that DelDOT responded by providing a Letter of No Impact, where DelDOT stated there would not be any improvements associated with the application, and that no further review would be required by DelDOT; that DelDOT and general traffic engineers are required to follow the national standard of the Institute of Transportation Engineers Trip Generation Manual; that the 12th edition being the most current edition; that they had discussed the recreational area, and the appropriate land use Code 495, which was a recreational community center; that a recreational community center included meeting rooms, social quarters, swimming pools, saunas, whirlpools, racquetball, handball, pickleball, tennis courts, indoor and outdoor facilities, exercise classes, and also could be open to public access, public use, and there would typically be a membership fee charge; that the previous use included Hot Yoga, Irish dance classes, Pilates, and Weight Watchers, as well as counseling, along with the existing pickleball and tennis courts; that the current application proposed to only have pickleball courts insides, with a pool and deck outside, which used to exist previously; that when one totaled up all the buildings, the previous facility, excluding the storage building, was 40,000 square

feet, which totaled 1,153 trips per day, not just 1,153 cars per day; that this basically equated to 577 cars in and out each day; that the morning peak hour came out to 81 trips in and out; that the evening hour came out to 116 trips in and out; that the recreational community center covered all the previous and current proposed uses; that with replacing the building with a smaller building, it equaled about 1,055 trips per day, equating to just under 530 cars coming in and out; that the morning hour would equal 74 trips per day, and the evening hour would equal about 106 trips per day; that the supporting data and calculations came from the ITE (Institute of Transportation Engineers Trip Generation Manual); that there had been a lot of discussion regarding the pickleball tournaments, especially when people heard 500 players; that those 500 players would be over the course of three days; that at any one time, there would not be any more than about 40 to 50 players on the site; that parking was also an issue of concern; that there was 47 existing parking spaces, and 66 parking spaces were proposed; that parking would be more than doubling; that there would be 113 parking spaces on the site, including ADA combined parking spaces; that if the ITE stated, if one held a daily week or weekend tournament, sometime between Monday and Friday, it would generate 666 total trips, which would be like 334 cars entering and exiting; that during the morning it would be 33 trips; that in the afternoon it would be 75 trips; that on Saturdays those trips counts would go up; that the trip count for the previous use was 1,153, with the daily use actually being higher at 1,055 trips; that on Saturday there would be 898 ADT, equating to 499 acres in and out throughout the course of the day; that it would be spread throughout the course of the day; that 130 trips would be the highest hour; that traffic flow was one of the most stated concerns within the submitted comments, and expressed at their open house; that they had discussed making a one-way entrance, and improving signage to ensure everyone knows how to get to and from the site; that there were also expressed concerns regarding headlights; that they would eliminate head-in parking where headlights would be a concern; that they had discussed a hedgerow to block headlights, however, he did not believe there was enough room on their site to provide a hedgerow; that one would be able to make a U-turn to get out; that they had decided to keep a two-way coming out; that the issues mentioned were Site Plan issues; that the Site Plan would be required to go through Final Site Plan review; that there had been discussions regarding speed bumps; that he would recommend tables or humps, as they were more gradual; that speed bumps come with noise than generally people do not like; that gated access was already provided, which acted like a speed table; that the gate would not be open when during a pickleball tournament; that when they visited the site at 2:00 p.m. on a Friday there were 60 pickleball players and 20 tennis players on the site; that there was plenty of parking at that time; that they were proposing to double the parking; that regarding the pickleball court tournaments, they assumed up to 17 courts being the most that would be played during tournaments; that the traffic numbers previously provided were based on 17 pickleball courts being used as the maximum during a tournament; that the average daily traffic during the weekday was 667, and the average daily traffic is 898 on a Saturday; that those traffic counts were based on a maximum of 17 courts during a tournament; that within the existing facility, on July 4th weekend, there was a tournament, and 12 to 15 would be a good number assumption per year.

Mr. Collins questioned whether Mr. Hughes could provide the traffic numbers for the Plantations community itself, compared to the provided traffic count numbers, to provide the Commission with a relative traffic impact.

Mr. Hughes stated that he did not have the number off the top of his head, however, he did have the calculation noted, which could be provided during the rebuttal period; that he believed it to be around 2,000 ADT for the community, based on the number of single-family and multi-family units equaling 232 units, and it was definitely more than what the recreational community center was.

Mr. Collins stated that it sounded like the proposal would bring in almost 1/3rd of what traffic would be brought into the development.

Mr. Hughes stated 1/3rd was roughly about the percentage of traffic.

Mr. Allen questioned how many hours per day a normal pickleball tournament would run, as he had concerns regarding the impact study which estimated 47 cars, per hour, per court.

The Commission found that Mr. Dave Marshall, member of Sandie, LLC and the owner and operator of Dave Marshall Tennis and Pickleball, spoke on behalf of the application. Mr. Mashall stated that a typical tournament would run from 9:00 a.m. to approximately 5:00 p.m. or 6:00 p.m.; that the tournaments run in groups, being 3-0, a break, then 3-5 and 4-0, moving forward in that manner; that the tournaments are completed in levels; that tournaments are usually two to two and a half hours; that people come and leave; the pickleball is not a spectator sport; that pickleball was a participant sport; that people arrive for the tournament, and usually arrive with their partner; that generally there would not be two separate cars, which happens a lot when people from the community come to play; that the tournaments are all day, however, the brackets last about two to two and a half hours.; that they cannot have 500 people at once, because they are unable to manage that number of people, and they would only be able to manage it over a certain amount of days.

Ms. Sindelar stated in conclusion that they had pulled together a set of Findings and Conditions, which she requested to submit into the record; that she had shared a version of the conditions with Mr. David Hutt, Esq., the community's attorney; that the version currently being submitted did not incorporate any of Mr. Hutt's comments, which they had received that morning; that she had not had an opportunity to review his comments; that they would work with Mr. Hutt on the suggested changes with the goal of coming into terms by council; that the Conditions clarified what the use was, being a recreational facility and amenities for public access, including provisions for community engagement and events; that the hours of operation proposed were 6:00 a.m. until 10:00 p.m., Monday through Sunday; that a security system already existed on site, but would be enhanced considering the new build; that all security lighting, which was a request of the residents, would be downward screened;

that parking would be in compliance with the Code; that the Final Site Plan would indicated drive aisles; that they would condition further and clarify the one-way traffic pattern that Mr. Hughes had previously discussed; that a Final Site Plan would include a Landscape Plan, which would show all limits of disturbance; that they were developing additional landscaping and screening plans with the goal of presenting those additional details to County Council; that they had proffered a Signage Plan to show where parking is allowed and where parking would be prohibited; that for areas of prohibited parking, appropriate warnings would be posted; that the Applicant was agreeable to also displaying a map on their website outlining designated and prohibited parking areas, along with notice, confirming that any vehicles parking in violation of those regulations, would be towed at the owner's expense; that any trash receptacles and dumpsters would be shown on the Final Site Plan; that they had agreed to have earth toned colors, consistent with the Applicant's rendering for the new building; that as Mr. Savage had previously discussed, all stormwater management would be in compliance with the applicable regulations; that regarding the construction, site work, and deliveries, just to an from the property, they had provided the standard condition that would generally be placed with a residential community, providing restrictions on construction hours; that the Preliminary and Final Site Plans would be subject to the review of the Planning Commission; that should the request no be approved, Dr. Marshall would continue to operate the use, as it currently exists; that ultimately, the courts are critical for his business and his livelihood, as well as for the success of the club and its future; that if Dr. Marshall could not maintain a successful business within the community, with the addition of the proposed facilities, he may be forced to consider selling the property, and any potential alternative just based off surrounding uses, would likely be residential; that her statement was not intended as a threat, but rather a sort of reality; that if Dr. Marshall cannot operate at the site, he will be required to move on; that the proposal was not for a booming business; that it was a mom and pop operation, as it was family ran; that the operations were critical to Dr. Marshall and his family's livelihood; that Dr. Marshall was committed to goodwill and collaboration with the community, despite some of the past and continued misunderstandings and disagreements with some members of the community; that Dr. Marshall was actively engaged with the current Board; that Ms. Hoey-Stevenson and her team had been very helpful in maintaining consistent outreach and communication; that a open house was held the past Friday, July 17, 2026, from 2:00 p.m. to 4:00 p.m.; that there was a great turnout; that Dr. Marshall agreed to enhance the site, the aesthetics of the site; that he engaged a traffic engineer to provide information regarding traffic at the public hearing, and in the future; that Dr. Marshall was willing to talk through contributions to road maintenance; that she was confident that she and Mr. Hutt, Esq. could work through that together; that Dr. Marshall had provided additional on-site parking; that he was willing to add more on-site parking; that he had adjusted some of his programming to remove Isish Dance; that some people were concerned about the noise of the prior use on the site; that Dr. Marshall also offered a 10% membership discount to community residents for the proposed facilities; that he was agreeable to reasonable infrastructure improvements, including contributing to the repair of the road, landscaping upgrades, and installing screening where appropriate; that Dr. Marshall was offering the new pool, despite it financially being a total loss for him; that she

appreciated that all residents may not support the proposal, however the reality was that the facility had always existed and residents should have been aware of its presence; that it was really troubling to think that some voices, which are a minority, could shut down the proposal; that many in the community, not only within the Plantations, but in the broader Sussex County community, rely on, and enjoy the use; that it was worth considering the implications of allowing those who wish to see Dr. Marshall fail, to dictate the future of the community facility, especially after it was partially destroyed due to a devastating fire; that in many communities, amenities of this nature, come with substantial amenity fees; that this facility was an affordable recreational resource that serves both the community and the broader public, being a staple for the area; that many within the community know the value Dr. Marshall had brought to the community, showcased in numerous letters of support; that one general letter captured the essence of what the organization meant; that it stated that the organization served the community, and the proposal would better meet the current needs, including indoor, not outdoor, pickleball courts, expanded parking, and a community pool; that importantly the proposed footprint is smaller than the prior facility; that the letter also emphasized the professionalism and smooth operation during events, even major tournaments, minimizing traffic congestion and parking challenges; that the facility had also supported numerous non-profits and charitable causes previously mentioned; that one proponent of the application. Mr. Leon Robinson wrote *“Today more than ever in the community mobile device world, we have now become a place like Dave Marshall Tennis and Pickleball facility update, expanded and improved is what people need. It would be able to serve even more members of the community, as well as creating a first-class visitor destination that uplifts and supports the entire area. Dr. Marshall is not just a coach or business owner. He’s a father of two, and a mentor to many youths that have come to his facility”*; that a letter submitted by Mr. Bob Bryan, Captain of the United States Davis Cup Team, underscored the importance of community facilities for family and children, emphasizing their roles in promoting healthy lifestyles, and community connections, stating *“Facilities like Dave’s are important community assets. They provide children with a place to learn, families with a place to spend time together, and adults and seniors with opportunities to stay active, health, and connected. They also attract visitors from throughout the region, supporting local restaurants, hotels, and businesses while contributing to the local economy.”*; that Ms. Sindelar request to submit additional letters of support received from residents in the community, as well as some of the information handed out at the open house that succinctly summarized and highlighted a lot of what was covered during the current public hearing, but much more abbreviated; that she requested the Commission’s recommendation of approval, subject to reasonable conditions; that should the application be approved, they were open, willing and able to continue work with the residents as plans move forward to address their concerns, and she was confident that all concerns could be addressed through imposition of conditions or in the form of an amendment to the previously mentioned agreement.

Mr. Collins stated that in general, the Commission was very supportive of businesses and providing recreational facilities for a wide variety of different types of activities for the citizens of the County,

and certainly within the resort area; that at the same time, he expressed concerns regarding the traffic counts that the Plantations already had, as he felt they were pretty terrible; that he believed, on any given weekday, especially during the summer season, but even in the off seasons, traffic was becoming very difficult; that he had visited the site, at which time he had to wait approximately nine minutes to make a left turn to exit; that he requested additional insight to the difference of traffic, and that he understood DelDOT had indicated that the proposal would not provide a significant impact, however, the citizens of Sussex County did not seem to believe that.

Mr. Hughes stated that he felt the key thing to remember was that there was a building existing before; that the previous building was larger; that the previous building was destroyed by a fire, and replaced with a smaller building; that the proposal went to DelDOT, where they basically had indicated that based on the MOU (Memorandum of Understanding) of the different levels, the proposal would be fewer than a 50 trip increase, and would actually be considered a decrease.

Mr. Allen questioned whether the vehicle trip calculation would be considered by membership more so that the building size.

Mr. Hughes stated that DelDOT's traffic counts were based on the square footage of the buildings; that this was generally the calculation uses; that every application is required to be submitted to DelDOT for a Service Level Evaluation Request (SLER); that DelDOT's response was their words, not his; that DelDOT determined the proposal was an increase of less than 50 trips, which designated the application as a diminutive impact; that DelDOT was also provided the Site Plan, which is considered for entrances purposes, not just over all traffic; that DelDOT responded with a Letter of No Impact; that building size generally provides the most data, and that was generally what was used.

Mr. Collins questioned whether tournaments were part of the prior Conditional Use.

Ms. Sindelar stated that they used to have tournaments under the previous Conditional Use, and tournaments were currently ongoing.

Mr. Collins questioned how frequently the tournaments were held and questioned whether the Applicant would be willing to accept an imposed condition limiting the number of tournaments to be held per year.

Mr. Dave Marshall stated that currently a tournament is held every month; that they no longer offer Pilates, which created 20 to 30 people every hour; that Pilates was held in the back building; that the gym was gone, which had about five to 10 people at one time; that there was a counseling business; that the pickleball building would have five courts, and five courts multiplied by four people, equaled a total of 20 people.

Ms. Sindelar stated that Dr. Marshall's calculations were where Mr. Hughes' trip generation numbers came from, and there was a lot of very detailed traffic and trip generation numbers provided that supported Mr. Hughes' presentation.

Madam Chair Wingate stated that what the Commission may be seeing regarding the traffic impact may be from all the other projects.

Mr. Collins stated that he felt there was an opportunity for DelDOT to place another roundabout.

Mr. Hughes stated that a roundabout was about to be constructed; that the proposed roundabout would alleviate making a left-hand turn, whether one was coming out of the tennis courts or from Orton Circle, and one would only be able to make a right turn.

Mr. Pettyjohn questioned whether summer camps were provided for children who do not drive.

Mr. Marshall stated that they just had a summer camp, where 40 children attended and they were dropped off.

Mr. Pettyjohn questioned whether there was a drop-off plan, whether there was a back-up plan, and whether there was a fire lane required.

Mr. Marshall stated that they annually hold a weeklong camp, being the Gaby & Dave's Annual Tennis Camp, provided by himself and Madison Brengle's mother; that it is a sleepover camp; that they rent condos, and it was not an everyday drop off in the morning, pick up in the afternoon situation.

Mr. Savage stated that buildings of 10,000 square feet or more trigger the fire lane requirement; that he assumed the buildings were previously approved by the Fire Marshal, back in 1985; that the proposed building was smaller than 10,000 square feet; that they will need to submit their Final Site Plan to the Fire Marshal for approval; that there was discussion regarding reducing the lane coming in; that he felt the one way would be fine, however, he would not suggest going with a smaller width on both as the width would be needed for a fire lane and fire apparatus; that all the lanes are typically designed to be 24 feet wide; that the Fire Marshal would contact them with any questions; that if flipped, one would be required to drive around the building to get into the parking located in the middle of the site; that the felt their proposed configurations were best for moveability.

Mr. Pettyjohn questioned whether parking space was currently being rented to the development.

Ms. Sindelar stated that parking space was not currently being rented to the development; that the annual maintenance fee was in connection with the easement agreement, having nothing to do with

any exterior spaces, and was only for the road in and road out, more or less; that Mr. David Hutt, Esq. had much more knowledge regarding the historical dispute, and the resultant easement agreement, and they were in current discussions about possible changes to the easement agreement.

Mr. Collins questioned whether the Commission could require the agreement to be updated prior to the potential Final Site Plan review, in an effort to ensure that any updated contribution amounts or similar was all worked out between the homeowner's association and the Applicant's organization.

Ms. Sindelar stated that as it stood today, she was not comfortable with Mr. Collin's proposed condition; that she needed to work with Mr. David Hutt, Esq.; that she had only received the information from him earlier that morning; that she had not had an opportunity to vet or review the provided information; that currently, she considered the proposed condition unreasonable, however, she could not say it would not happen, and currently it required further review.

Mr. Jamie Sharp questioned the number of tournaments, whether the Applicant was willing to condition the number of tournaments per year, and whether vendors or food trucks were proposed for the tournament events.

Madam Chair Wingate stated that the Applicant proposed 12 to 15 tournaments annually, as 12 tournaments were currently being held annually.

Mr. Marshall stated that the only time they brought in food trucks was for first responders; that Kyle Schaefer had brought in food trucks to feed the people themselves; that this was part of a charity tournament where they had donated their facility to the Schaefer Foundation for first responders; but otherwise, they do not do food trucks.

Ms. Sindelar stated that if there was any example of a situation of an exception to that rule, they had discussed applying for a Sussex County Special Event through the Special Even application process.

Mr. Sharp questioned whether there were any specific grant requirements, specific to the tournament; that he understood there was previous reference to the Delaware Sports Tourism but questioned whether there were limitations based on that with a directive to have more outside people using the facility than people perhaps within the Plantations or the surrounding area.

Mr. Marshall stated that the tournaments would have less people over the weekend that the current number of people; that the difference was that people from the community pay \$8.00; that when people from the outside come, they were paying a much higher fee, because they are playing a tournament versus a community drop-in, and there would be less people throughout the three days than there would be each day.

Mr. Sharp questioned whether it was safe to state that the primary use of the additional facility, including the pool, would mainly be for the residents of the Plantations and the community surrounding it, and requested a percentage estimate of memberships from residents of the Plantations.

Mr. Marshall stated that the pool would 100% be for the community of the Plantations; that he did not know an estimated percentage of Plantation residents with memberships; that there were at least 10 to 15 tennis players located on both side; that there was a good amount, but he was unsure of an exact number; that there were more Plantation resident memberships when there was a gym, Pilates, and a pool, but they had not had those things for two years.

Mr. Sharp questioned whether there were hopes to build those things back up for the residents of the Plantations.

Mr. Marshall stated that he was absolutely planning to provide the pool; that he hoped to bring back the gym and the courts; that it was a win-win for the amenity of a pool for the people who live there; that he believed there had been historical studies stating that where there is a pool, property values rise; that there were two sides to every issue; that everyone needed to look at it as a neighborhood, and for people who are renting, where there is no pool, people would not want to go there.

Mr. Sharp stated that there were multiple comments both in support and in opposition, however, there was a comment submitted regarding access pathways for residents of the Plantations, and questioned whether good, navigable pathways, via foot or bike, would be provided.

Mr. Marshall stated that there would be access provided; that residents would be able to walk over the berm on the side, by the back tennis courts; that residents could walk through the grass field, where the parking lot used to be located; that the new pool would be in front of the old pool house; that they were able to save that from the fire; that residents would not have to walk on the road where the circle is; that there were no sidewalks provided within the Plantations community, and there were sidewalks provided on the subject site.

Mr. Sharp stated that he had noticed in the 2013 maintenance agreement, it talked about the maintenance fee that Mr. Marshall paid for contributions; that he questioned whether he had been making those contributions; that there was a note that stated unless there was a change in use; that it appeared that maybe there had been some preliminary discussions with the HOA about that, and whether the proposed use would constitute as a change in use under that prior agreement, and he questioned whether they had discussions with the HOA regarding this.

Mr. Marshall stated that he had been making those contributions; that Mr. David Hutt, Esq. had gotten back to Ms. Sindelar, Esq. earlier that morning; that there were different points that they had been

going back and forth on; that they had been in discussions with the Board for the past five to six months in an effort to move forward, and there was an open line of communication.

Mr. Sharp stated that within the submitted written comments, a question was brought up regarding the TIS (Traffic Impact Study), and he questioned, regarding trip generation, whether DelDOT's Service Level Evaluation Response considered when the clubhouse was in existence, to what was being proposed currently.

Mr. Hughes stated that with DelDOT, anything that existed within the last three years was considered existing; that he did not believe DelDOT provided any specific numbers within their letter; that DelDOT had stated that it was an increase of less than 50 vehicle trips per day; that per the regulations, if it was existing three years ago, they considered it existing; that therefore, DelDOT would have been comparing the existing facility, which existed within the last three years and before the fire, to what was currently being proposed; that the total square footage was 40,011 square feet, including everything but the storage building; that 36,000 square feet was being proposed, resulting in a 3,999 square foot decrease than what existed and burnt down.

Mr. Sharp questioned how long the tournaments were proposed to be.

Mr. Marshall stated that the tournaments were over three days, consisting of Friday, Saturday and Sunday, resulting in 45 days a year.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the Plantations Condominium Association, Inc., as well as the Plantations Property Owners Association, Inc., being the two associations that govern the Plantations Residential Community within which the subject site currently lies. Mr. Hutt stated that the associations were neutral on the application; that the associations have left support and opposition up to the individual residents of the community, that the Planning Commission essentially had two options, being recommended approval or denial of the application; that should the application be recommended for approval, there would certainly be conditions placed on that approval; that as a matter of prudence, in the case the Planning Commission ultimately recommended approval of the application to County Council, he would conclude his presentation with some recommended conditions that would be important to protect the existing residents of the Plantations community; that §115-118 states the purpose of the RPC (Residential Planned Community) District, 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; that his proposed conditions were intended to protect existing developments; that in this case was 231 residents within the Plantations; that Ms. Sindelar has presented some history regarding the Plantations; that the RPC was adopted in August of 1985 as Ordinance No. 294; that as referenced, there were no Conditions of Approval on

Ordinance No. 294; that within the Ordinance, there were three facts found, which basically stated that there was going to be an RPC; that the other historical document that was referenced during the presentation was a portion of the declaration that created the community, being an 11 page document; that the Commission saw the provisions presented earlier, regarding what was referred to as the recreational property in that document; that he would submit that one of the things that had led to the consternation that had existed historically as represented by the litigation which was referenced, was that there was a shift in time over the use of that; that typically, when one sees a recreational facility, one sees a pool or a pool house within a community, which is thought of as the community amenity; that the Declaration supports that and even states it; that Article 3 states that every owner of the condominium unit lotter improvement upon payment of the fees established by the developer, has a right of enjoyment in and to the recreational property and recreational facilities; that over time, that went from being a community facility and amenity, to pretty much a wholly commercial enterprise, situated in the middle of the community; that there are some residents who pay the fees and participate in that, however, it was not connected like one would typically think of regarding a community pool or community clubhouse; that the original declaration had a Right of First Refusal for the Property Owners Association, to be able to purchase that property of a little over four acres located within in the middle of the Plantations; that very curiously, within three years of the developer putting that declaration of record, they sold it to a third-party entity, which happened to be owned by the developer; that the developer essentially extinguished the right of First Refusal on their own; that the RPC would not be the same if it were enacted today; that the current Delaware Uniform Common Interest Ownership Act would stand in the way of that type of activity occurring; that he wanted to focus on protecting the existing community, which was part of the RPC Code; that in this case, it was the 231 property owners who would be the most impacted; that every time a person wants to visit the site, they would be required to drive through the gated access of the Plantations community to get there; that sometimes when there is an RPC with a commercial component, the commercial component would be located on the road and other than any interconnectivity that exists between the residential use and the commercial use, they are not necessarily tied together; that the three parties, being both associations and Sandie, LLC are very tied together, as one can see from the Site Plan; that many concerns had been expressed regarding traffic and parking; that secondly, concerns had been expressed regarding the construction process itself; that other expressed concerns were regarding the nuisance factors that happen anytime commercial and residential are combined and located right next to each other; that another concern was regarding landscaping; that the primary concern was that of parking and traffic; that regarding construction, one of the primary concerns was that the only entrance was located down Plantations Boulevard through the gated access to the community; that if the application were more of a typical fashion, there would be a construction entrance for all construction equipment, so that it would not travel down a finished road within the community; that there was concern regarding the impact of construction on the residents of the community, regarding the hours of operation; that the construction could create dust and trash from dumpsters; that these issues would be a great inconvenience to what was a very existing and mature community; that other concerns

related to noise, headlights of people parking at the facilities, and hours of play; that he believed everyone knew and appreciated how well landscaped and maintained the Plantations community was; that concern was expressed that the commercial use would need to be required to reflect that in its Landscape Plan; that a good example of the communication that had already occurred between the Applicant and the community was the Landscape Plan Ms. Sindelar presented to the Commission; that the proposed Landscape Plan was an attempt to be responsive to some of the concerns that had been raised to Sandie, LLC; that the plan was reflective of the existing landscaping within the Plantations already; that should the application be acted on favorably, the Associations would request that a condition requiring landscaping to continue back, so that the commercial site, within the Plantations, would have the same cohesiveness, with respect to landscaping; that Ms. Sindelar did share her client's proposed conditions with him in advance of the hearing, so that he could share them with the Property Owners Associations; that he requested to submit a markup of those conditions; that the new conditions had not yet been shared with all of the Homeowners Association members; that the Board was neutral to the application; that should the Commission act favorably on the application, those were the types of conditions that would protect the residents of the community; that the first item was that the language being heard about tennis, pickleball and the outdoor swimming pool was too broad; that recreational facilities and amenities could accompany or describe a number of things; that they would like it to get down to what those uses will be; that he refined the hours of operation to add a time period for the activities; that the Applicant proposed 6:00 a.m. to 10:00 p.m.; that with respect to someone playing sports or participating in swimming, that the time be between 7:00 a.m. to 9:00 p.m.; that this left a little room on either side, for the Applicant to prepare courts or do whatever necessary to begin and end a day; that the second one was additional, which stated that all pickleball courts play and events will be indoors; that he believed that condition was proposed by the Applicant; that pickleball had become a very controversial sport; that he believed if the play was indoors, a lot of the controversy would be diminished; that the third proposed condition related to the water surface area of the pool; that a 3,500 square foot pool was proposed, being an attempt to get back the pool that previously existed on the site; that there would also be a time frame for construction, similar to what the Commission would generally impose, or what the Code currently states regarding when amenities needed to be constructed; that the proposed condition would have a requirement that the pool construction would be completed within six months from the date of Final Site Plan approval; that the fourth condition was one proffered by the Applicant, being that after completing construction of the new facilities, to include the pickleball center, swimming pool, and parking areas, and within six months thereof, that Plantation Boulevard would be milled and overlaid throughout that process; that the existing Cross Access Easement and Maintenance agreements shall be update to reflect the permitted use; that propose Condition No. 6 there was an addition to the parking being marked with respect to which direction the travel would go; that there was a proposed condition that there would be a one-way flow of traffic to and from the circle at the end of Plantations Boulevard; that it was important, as there are people who try to go the wrong way; that signage or anything that could be done in order to make sure there is an orderly flow of one-way traffic into and out of the site would

be very helpful; that proposed Condition No. 7 provided additional language regarding landscaping; that there was language about being consistent with the existing plantings in the adjacent Plantations Residential Community; that the largest area of addition to that talks about the northern boundary of the property, which was the location of the new parking area; that there would be a continuous border, whether it is vegetation or fencing, be installed along the parking perimeter to separate the area from the residential area located immediately adjacent to it; that there was a height limit stated, because of the current height of the Plantations greenery; that six feet would be the maximum height that would work underneath that to fill that in; that the Applicant proposed signage regarding designation for parking spaces; that they request the Commission review a Signage Plan regarding entry and access, ingress, and egress to and from the site; that proposed Condition No. 10 mentioned a speed bump being installed; that it related to the entrance seen on the far right side, into the parking lot from the time one leaves Plantation, the circle or roundabout through the parking lot is a long straight road or drive aisle; that when there is a long, straight road in front of someone, they naturally go faster; that the placement of a speed bump or speed hump would provide some traffic calming measure to discourage that type of activity; that the last two proposed changes were regarding any trash receptacles or dumpsters are screened from the adjacent property lines; that with respect to the earth tone colors, there was proposed language to add that they be consistent with the color palette that was already within the adjacent residential community; that his comments were not intended as support or opposition, and should the Planning Commission act favorably on the application, to consider the proposed changes to those conditions as there were things that would help protect the existing residents of the community.

Mr. Sharp stated that he had previously questioned Ms. Sindelar about the Maintenance Agreement, and he questioned whether it was the HOA's position that would need to be amended should the application be approved.

Mr. Hutt stated that it would be the HOA's position that the Maintenance Agreement would need to be amended should the application be approved, and as Ms. Sindelar had stated, discussions had already begun with respect to that amendment.

The Commission found that there were six people present who wished to speak in support of the application, and there were 15 people present who wished to speak in opposition to the application.

The Commission found that the following people spoke in support of the application: Ms. Maria Francu, Mr. Christopher Pajak, Mr. Frank Fumagalli, Ms. Robin Verdery, Ms. Laurie Bronstein, and Ms. Megan (Margaret) Rice, on behalf of the non-profit, First State Pickleball Club.

The Commission found that the following people spoke in opposition to the application: Mr. Arthur Garcia, Mr. Dino Costas, Ms. Kathy (Kathleen) Tyler, Ms. Jeanmarie Dolan, Mr. Lawrence Mullen,

Ms. Emily Wheatley, Mr. Jim Anderson, Ms. Diana Sampayo, Mr. Ryan Cox, Ms. Susan Towers, Mr. Rob Goldberg, Ms. Carrie Anderson, Ms. Billie Travalini, Mr. Duane Arnold, and Ms. Susan Gilbert.

Madam Chair Wingate questioned whether any consideration had been given regarding a separate permanent entrance to the commercial facility.

Mr. Savage stated that he had not considered anything other than the application and Site Plan currently before the Planning Commission; that larger improvements would require a lot more requirements from DelDOT, as well as a lot more stormwater management, and it would take the current application from basically a replacement type project, to something that would create a much larger impact on not only the Plantations community, but the surrounding properties as well.

Mr. Collins questioned whether any disclosures that had been made to buyers in the past regarding the status of the property, and what it could be used for, be placed into the record to help build the record regarding the awareness or not to the residents regarding how the property could be used.

Ms. Sindelar stated that those disclosures were already within the record; that the provided disclosures included the declaration, and the ads, which were included within her PowerPoint presentation; that she was unsure if the submitted information was provided within the disclosures when buying; that she was unsure how she would come by that information, and she and Mr. Hutt could potentially have conversations regarding those documents.

Ms. Sindelar spoke as part of the permitted five-minute rebuttal period. Ms. Sindelar stated that their team take years to pull together applications, as it was an iterative process; that the process requires the application to go through various different iterations of plans that are informed by public comments and meetings with members of the public; that she could not speak to the why some members of the public and the community were not able to access the information; that this application had engaged a professional relations person, who was responsible for communications which were communicated to the Board; that they had met with Board members, as well as with some people who opposed; that from her perspective, they worked really hard to engage with the public; that the grant information was included within the material; that it was not a secret; that the information was included in their application material, which was included in the public record; that they focus on all the details; that they had a team of credentialed professionals, including engineers, specifically civil engineers, and traffic engineers who took a lot of time and effort to go through the plans to make sure that they were well adjusted to the community; that as she represented, they were willing to work, and continue to work with the community and Mr. Hutt, Esq. to make sure they get it right; that they believed all issues mentioned during the hearing could be addressed in the form of reasonable conditions, and therefore, they would request for a recommendation of approval accordingly; that for clarification, referencing minor versus major support of the project, she was

specifically referring to the hundreds of letters and signatures that were on the public docket that overwhelmed the number of opponents; that her statement was substantiated, and she requested to hand over her remaining time to Mr. Hughes, to provide clarification regarding traffic points.

Mr. Hughes spoke as part of the remaining permitted five-minute rebuttal period. Mr. Hughes stated that someone had previously stated that there would be no more than 50 players on the site per day; that what the Applicant had stated was that there would be no more than 50 players on the site at one time; that the per day traffic information provided clearly showed that there would be over 500 cars per day for the daily use; that DelDOT's Plantation Road Project was proposed to include a roundabout; that the site was located within the DelDOT Henlopen TID (Transportation Improvement District); to return to Mr. Allen's questioned regarding the square footage based on the daily use of the recreational center, the pickleball courts were based on 17; that it was based on courts, not square feet; that he had previously overstated the traffic counts for residential use; that the 200 single family units would be about 2,000; that the 200 multi-family condo units versus 32 single family units, which equated to a total of 1,537 ADT; that when one totaled the 1,055, it equaled 2,592; that this equated to a 40-60% split regarding the traffic; that the possible speed hump was a Site Plan issue that they could work out; that he could not recall where he had seen one placed in a parking lot; that he would assume everyone would prefer a speed hump over a speed bump, as there definitely would be noise associated with speed bumps, and generally with sporting events, located on the website, there are parking maps provided to indicated where participants are permitted to park.

Mr. Sharp questioned whether there would be any outside loudspeakers or any similar devices proposed as part of the application, and when considering the pool and the tournaments, he questioned how parking was envisioned and would interplay with those using the pool.

Mr. Marshall stated that no loudspeakers were proposed as part of the application.

Ms. Sindelar stated that what was designed on the site was in compliance with the Code; that there was enough parking available to accommodate the usage on the site; that the breakdown of how the numbers were calculated were located in the Site Data Column; that for anyone opposed, they were available to speak with them; that she felt if they could sit down, they would be able to explain, as some of the information was really hard to understand, and they were happy to meet with anyone who wanted to meet and discussed 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/Z 2061 Sandie, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Passwaters 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 7:55 p.m.

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