

THE MINUTES OF THE REGULAR MEETING OF JANUARY 3, 2024.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, January 3, 2024, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

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

Motion by Mr. Mears seconded by Mr. Collins and carried unanimously to approve the Agenda as circulated. Motion carried 4-0.

Motion by Mr. Mears, seconded by Mr. Butler to approve the Minutes of the November 9, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4-0.

PUBLIC COMMENT

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

OTHER BUSINESS

S-23-27 Toback Flex Park

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a 27,000-square-foot 15-unit flex park building, a 19,800 11-unit flex park building, parking, landscaping, and other site improvements. Conditional Use No. 2290 to allow for the use of the site as contractor flex space was approved by the Sussex County Council at their meeting of Tuesday, May 10th, 2022, through Ordinance No. 2849. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 235-30.00-6.21. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Revised Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

S-23-57 Lands of James R. Powell & Judy R. Powell

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of four (4) one-story 4,200 square foot storage buildings, RV/Boat storage parking, landscaping, and other site improvements. Conditional Use No. 2437 was approved by the Sussex County Council at their meeting of Tuesday, July 18th, 2023, through Ordinance No. 2941. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 134-15.00-19.02. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Revised Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

Lands of Dean P. Anderson, Monica C. Johnson, & Paul I. Anderson

Minor Subdivision Plan off a 25-ft Easement

This is a Minor Subdivision Plan for the creation of two (2) Lots and residual lands to be served by a twenty-five (25) foot wide ingress/egress access easement. Proposed Lot 1 will consist of 7.33 acres +/-, proposed Lot 2 will consist of 7.33 acres +/-, and the residual lands consist of 9.02 acres +/- . A shared-use maintenance agreement is to be established for use of the shared access road. The Parcel is located on the northeast side of Deep Branch Road (S.C.R 315). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-14.00-23.02. Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for both preliminary and final approval.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to approve the Minor Subdivision Plan off a 25 ft. easement as a preliminary and a final. Motion carried 4-0.

Lands of Jessica Didomenicas Brooks

Minor Subdivision Plan off of a 30-ft Easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off of a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 consists of 3.7717 acres +/-, and the residual lands consist of 3.7717 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 Bi State Boulevard (Route 13A), approximately 0.30-mile south of Allens Mill Road (S.C.R. 454A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-13.00-39.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off a 30 ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

Lands of Heather L. Malone

Minor Subdivision Plan off of a 50-ft Easement

This is a Minor Subdivision for the creation of two (2) lots plus residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.5949 acres +/-, proposed Lot 2 consists of 1.1621 acres +/-, and the residual lands consisting of 23.6606 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 County Seat Highway (Route 9), approximately 0.31-mile northeast of Warrington Road (S.C.R. 518A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-19.00-21.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off a 50-ft. easement as a preliminary and final. Motion carried 4-0.

Lands of Theresa A. Robinson

Minor Subdivision Plan off of a 50-ft Easement

This is a Minor Subdivision Plan for the creation of four (4) Lots to be served by a fifty (50) foot wide ingress/egress access easement. Proposed Lot 1 will consist of 1.399 acres +/-, proposed Lot 2 will consist of 1.810 acres +/-, proposed Lot 3 will consist of 1.055 acres +/- and proposed Lot 4 will consist of 1.017 acres +/- and the residual lands consist of 1.015 acres +/- . A shared-use maintenance agreement is to be established for the use of the shared access road. The Parcel is located on the north side of Bunting Road (S.C.R. 322), approximately 565-ft. west of Governor Stockley Road (S.C.R. 432). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 133-6.00-49.00. Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for both preliminary and final approval.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to approve the Minor Subdivision Plan off a 50-ft. easement as a preliminary and final. Motion carried 4-0.

OLD BUSINESS

C/U 2447 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS. The properties are lying on the east side of River Road (S.C.R. 490), at the intersection of Morgan Branch Road and River Road (S.C.R. 490). 911 Addresses: N/A Tax Map Parcels: 132-1.00-5.00 (p/o) & 132-6.00-78.03.

The Commission discussed the Application which had been deferred since November 9, 2023.

As Ms. Wingate was absent, the Commission discussed deferring action on the Application until the Commission's next regularly scheduled meeting.

In relation to C/U 2447 Elk Development, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

2022-26 Ballenger Subdivision (F.K.A Warrington)

A cluster subdivision to divide 53.54 acres +/- into one hundred and six (106) single-family lots, to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the south side of Hollymount Road (S.C.R. 48), approximately 0.4 mile east of Beaver Dam Road (Rt. 23). 911 Address: 30558 Hollymount Road, Harbeson. Tax Map Parcels: 234-11.00-103.00 & 103.01. Zoning District: AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since December 14, 2023.

Mr. Mears moved that the Commission grant preliminary approval for 2022-26 Ballenger Subdivision based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a cluster subdivision on land zoned AR-1 located within the "Low Density" Area of the 2019 Comprehensive Plan's Future Land Use Map.

2. The subdivision will have no more than 106 lots on 53.54 acres of land resulting in a gross density that is permitted in the AR-1 Zoning District. All lots will be at least 7,500 square feet in size.
3. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
4. DeIDOT has not opposed the development. In addition, the subdivision will comply with all of DeIDOT's roadway and entrance requirements.
5. The subdivision will be served by central water and sewer.
6. The subdivision provides for a total environment and design that are superior to that of a standard subdivision including a substantial amount of open space and buffers and it complies with the design requirements and review procedures for an AR-1 cluster subdivision. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code as follows:
 - a. The cluster design permits greater tree preservation than would occur with a standard subdivision design. This design preserves approximately 13 acres or 44% of the existing woodlands.
 - b. The cluster design includes maintaining approximately 52% of the site as open space. This significantly exceeds the 30% minimum required by the Code.
 - c. The cluster design will result in less mass grading of the entire property than would occur with a standard subdivision.
 - d. In general, the Applicant has shown that it identified and preserved environmentally sensitive areas first and then located and designed the roads and lots last.
7. The subdivision is consistent with the character and trend of residential development in the area. Also, with the conditions imposed by the Code and this approval, the subdivision will not adversely affect neighboring and adjacent properties or roadways.
8. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, prosperity, and welfare of the County.
9. This recommendation is subject to the following conditions:
 - a. There all be no more than 106 lots within the subdivision.
 - b. The developer shall establish a homeowner's association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. As shown on the Preliminary Site Plan, approximately 28 total acres, or 52% of the site shall remain as open space.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - e. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the

- existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
- f. The development shall comply with DeDOT entrance roadway improvement requirements.
 - g. Street design shall meet or exceed Sussex County standards.
 - h. The subdivision shall be served by central sewer and central water.
 - i. Sidewalks shall be installed on both sides of all internal streets.
 - j. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction. During site work and initial construction, all dumpsters and roll-off containers shall be covered to prevent construction materials and debris from blowing across the site or onto neighboring properties.
 - k. The Applicant shall coordinate with the local school district for a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
 - l. There shall be on-site active and passive amenities including a playground, clubhouse, swimming pool, and walking trail. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
 - m. There shall be at least 13 acres (or 44%) of the existing forest preserved within this development. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and all of the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
 - n. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
 - o. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - p. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins to grant preliminary subdivision approval for 2022-26 for the reasons and the conditions stated in the motion. Motion carried 3-0. Mr. Butler abstained.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Chairman Wheatley - yea

C/U 2401 OA Sundance Club, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (180 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 48.36 ACRES, MORE OR LESS. The property is lying on the northeast

corner of Old Mill Road (Rt. 349), and the southwest corner of Railway Road (S.C.R. 350), at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (Rt. 349). 911 Address: N/A. Tax Map Parcel: 134-12.00-74.01.

The Commission discussed the Application which had been deferred since December 14, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2401 OA Sundance Club, LLC for Multi-Family Dwelling structures in a GR General Residential Zoning District based upon the record made at the public hearing and for the following reasons:

1. This property has been the subject of several prior applications. Conditional Use No. 1848 was recommended for approval by this Commission and then approved by County Council for 200 multifamily condominium units. Then, Conditional Use No. 2206 was subsequently approved for a similar project with 200 apartment multifamily units. Neither development was built.
2. This application is for 180 condominium units, twenty less than what was previously approved. Instead of large buildings with multiple units, this project will consist of condominium units that have the appearance of individual homes. These individual structures will be consistent with the single-family homes that exist on many neighboring properties.
3. The property is currently zoned GR General Residential. According to the Sussex County Zoning Code, the purpose of the GR District is to provide for medium-density residential uses. The permitted density within the GR District is 4 units per acre. This application complies with the purpose and density of the GR Zoning District.
4. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including other GR properties, MR properties, and C-1 properties. This use is consistent with all of the nearby uses and zoning districts.
5. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
6. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers.
7. The project will be served or benefitted by amenities which include a clubhouse, pool, playground, sports courts, and walking paths.
8. DelDOT has reviewed the proposed project and has determined that the development traffic impact will be minor.
9. With the conditions placed upon this recommendation, there will be no adverse impact on traffic or the neighboring area.
10. This recommendation is subject to the following conditions:
 - A. There shall be no more than 180 Units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. There shall be on-site active and passive amenities including a clubhouse, swimming pool, pickleball courts, gardens, and a dog park. These amenities shall be completed and open to use as required by the Zoning Code.
 - D. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering

- Department.
- E. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - G. No wetlands shall be disturbed except as authorized by State and Federal permits.
 - H. All internal roadways shall be private and maintained by the developer or its assigns. All roads shall comply with Fire Marshal and Delaware Fire Prevention requirements.
 - I. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
 - J. Construction, site work, excavation, grading, and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. During site work and initial construction, all dumpsters and roll-off containers shall be covered to prevent construction materials and debris from blowing across the site or onto neighboring properties.
 - K. The developer shall preserve as many existing trees as possible on the site. Clearing, disturbance, or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees that pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
 - L. There shall be a forested and/or vegetated buffer strip that is at least 20 feet wide adjacent to lands of other ownership. This buffer shall increase to a width of 25 feet along the western boundary line between units 13 and 31 and along the northeastern boundary line between units 54 and 62. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
 - M. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
 - N. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - O. As represented by the Applicant, the development shall be an "age-restricted, over-55" community as that term is generally interpreted under Federal Law and Fair Housing.
 - P. The Final Site Plan shall include an unobstructed area set aside for vehicular access to the subdivision in emergency situations from Railway Road. This area does not need to be improved with paving or stones. Instead, it must be an area outside of any structures and free from obstructions so that the development is not isolated in the event that the main entrance is impassible.
 - Q. The Final Site Plan shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2401 OA Sundance Club, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

PUBLIC HEARINGS

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

C/U 2436 Toney & Charletta Floyd

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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the Applicant’s conceptual site plan, and a copy of DelDOT’s Service Level Evaluation Response. Mr. Whitehouse stated that they received 64 written responses and a petition with 500 signatures.

The Commission found that Ms. Charletta Floyd spoke on behalf of her application; that also present was Mr. Toney Floyd. Ms. Floyd stated that they were requesting a Conditional Use of their property that they have used for a dump truck business since 1999; that they obtained this property through family inheritance and have been using it to house six dump trucks, work equipment and a shop to work on the equipment; that the business hours are 6:30 am to 6:30 pm Monday through Friday; that at times, occasional overtime is required to prep the trucks for the next day; that Saturday hours are 8:00 am to 5:00 pm with no hours on Sundays; that the business delivers, for major companies, as well as individual homeowners, carrying stones and dirt, and this property is strictly for the business use and not for their home.

Chairman Wheatley asked if the people were taking pictures with the permission of the Applicants and if it would be considered trespassing.

Mrs. Floyd stated that they did not have permission to be on the property and that they were trespassing.

Mr. Robertson asked how long the business has been at this site out of the 25 years they have been operating.

Mrs. Floyd responded that they had been at this location for almost two years.

Mr. Roberston asked if the company hauls stone only or if they store the stone on site also.

Mrs. Floyd responded that they have some storage of dirt and stones on site, but primarily it is hauling in and out of the property.

Mr. Robertson asked if there are any crushing operations, like the crushing of concrete being done on the property.

Mrs. Floyd responded that that no crushing was happening on site.

Mr. Robertson asked for a description of the properties surrounding the site.

Mrs. Floyd responded that the property is part of an almost 30-acre property that was originally owned by Mr. Floyd’s mother; that the property was split between the Applicant and another family member; that

next to this parcel is a cousin and next to that parcel is another property that the Applicant's own, and they developed the roadway into this parcel for the business and the neighbors to use by paving all of Hersel Davis Rd. from Oak Orchard Rd.

Mr. Mears asked if the maintenance of the work vehicles was performed within a garage, if oil changes were being performed, if oil was being stored and evacuated from the property properly, the number of employees that access and park at the site, if waste disposal was being brought back to the site and if the Applicant would desire a business sign.

Mrs. Floyd responded that the maintenance was done in a garage, the oil was stored and evacuated properly, that they had five employees, three of whom take the business trucks home at night; that the trucks do not dispose of waste at the site, and they were interested in a sign.

Mr. Collins asked if there was any dust that was being created by the dumping of the stone, disrupting the neighbors.

Mrs. Floyd responded that the dust is not disruptive to the neighbors because the storage piles are closest to the front of the building and not on the side or behind the building closest to the neighbors.

Mr. Butler asked if the business would be willing to change its hours of operation, if the Application were approved, to be considerate to the neighbors.

Mrs. Floyd responded that it would not be feasible to start their operation after 7:00 am as their trucks are scheduled to be at job sites by that time.

Mr. Butler responded that by changing the start time of the operation it would alleviate some of the protests for the Application from the neighbors as the noise level would be starting later in the morning.

Chairman Wheatley questioned when business operations began at the site.

Mrs. Floyd responded that they originally did not operate at the property but had developed it by clearing all the land and once that was complete, they began storing their trucks there.

Chairman Wheatley responded that the property is currently zoned General Residential (GR) and the business operating there is not permitted through that Zoning Ordinance. Chairman Wheatley questioned how the Applicants became aware of the wrong zoning of the property, and questioned if they received a violation for the property.

Mrs. Floyd responded that they were told by the County that they were not zoned properly after Mr. Floyd was violated for burning something on the property.

Mr. Whitehouse stated that the County did receive a complaint about the business that was taking place there in August of 2023 and a Notice of Violation was issued in October of that year, triggering this Application to be submitted.

Mr. Collins questioned if the Applicants still possessed the property where the business was previously located, and questioned if they could return to that site.

Mrs. Floyd responded that they did not possess the property where the business was previously located; that the property was rented and the family who inherited the property no longer wanted to rent the property.

Mr. Butler questioned if the Application was to be approved and stipulations were added to change the hours of operation, would they be willing to comply, in an effort to show they are willing to work with the neighbors.

Mrs. Floyd stated that they were willing to change the hours of operation if the Application stipulations required it.

The Commission found that there was no one who wished to speak in favor of Application C/U 2436 and four people who wished to speak in opposition to it.

Mr. Bob Verdugo, spoke on behalf of residents of Peninsula Lakes, in opposition to the Application with concern to the location and type of business that is being operated within a residential area; that there is a petition with 500 signatures signed in opposition of this conditional use application; That the residents were provided with a minor subdivision plan on January 5, 2023, that indicated that there were two lots plus another for residential use; that the cutting of trees and clearing of land was performed for the single family homes; that on April 4, 2023, the Conditional Use application was submitted for the storage of work equipment and trucks on the property; that the Constable visited the property in August and a violation was issued for working outside of the terms of the Conditional Use application; that the current Conditional Use Application is being requested for a construction supply company within a medium density residential zone and a general residential zone no longer the minor subdivision they were initially told; that work vehicles come and go, with excessive weight, bringing materials to be stored at the property; that they have several photos from the nature path in Peninsula Lakes, where the trees have all been knocked down now leaving the sightline completely open with no barrier to the sound of equipment and trucks; that the stormwater runoff going to Indian River Bay has no barriers on the applicants side and there is concern for potential contamination; that on the applicants property there is 400 gallon fuel tanks, 250 gallon fuel tanks, 50 gallon containers and leftover oil and filters laying all over the property; that the residents have spoken to the Sussex Conservation District and they are planning to evaluate the land; that the health and welfare of the residents of Peninsula Lakes Community are being affected detrimentally; that there are several residents who have emphysema and/or chronic respiratory disease and are being affected by the operation being run due to the dirt, particulates, combustion fumes and air pollutants; that the use of the nature trail and woody common area, the preservation of wildlife and residential outdoor space is being negated and diminished; that the original intent and natural buffer that was envisioned by the Commission and the Peninsula Lakes Development Plan of this area is now diminished; that residents of Peninsula Lakes Community spent over \$300,000 in outdoor living space and cannot use or enjoy it as the activities of the business are going on right behind them. Mr. Verdugo provided photos from adjacent neighbors' property and aerial drones, showing large, elevated piles of materials throughout the property, the storage of work trucks, and a storage container.

Mr. Chairman questioned if any of this was visible from the Peninsula Lakes Community.

Mr. Butler questioned if Mr. Verdugo felt the Applicant's business operations could continue, if they were willing to work with the community, or if he felt there could be no compromise.

Mr. Verdugo stated currently, the community believed it is a hard no as they have not heard a proposal that would suggest otherwise and would reduce the potential of any annoyance to the neighborhood; that the business itself does not belong in the residential area as it will diminish the values of the neighboring homes and ultimately the County has done a lot of work to develop the long term plan to raise the value to the area, and the neighbors feel this is the way for the Applicants to work around having to go for re-zoning request.

Mr. Chairman responded that a Conditional Use is a better option than a change in zone because changes of zone leave the whole area open to a broad parameter of anything that is permitted within that zone, and a conditional use will only allow what is spelled out in a specific ordinance and more specifically certain conditions.

Mr. Gary Weeks spoke in opposition to the Application with regards to the noise disruption, the loss of wildlife and outdoor space being destroyed and the overall health effects to him and his neighbors: that the noise first began with chainsaws, which were cutting trees down; that now the dumping of the trucks and heavy equipment running all hours of the day; that the ash and pollutants from the fires burning were being noticed about 0.5 mile away; that the neighbors excitement from wild turkey and deer in their yards has diminished and they are no longer visible; that overall he and his neighbors purchased their homes to enjoy peace and quiet and now fear that their health could be affected by this business continuing to run in their backyards.

Ms. Karen Sipe spoke in opposition to the Application. Ms. Sipe stated that the residents of this community are not people who just moved to Sussex County and are demanding changes, but rather people who live here, work here, and volunteer here.

Mr. Carl Kintner spoke in opposition to the Application with concern to the amount of noise that is being produced from the property and that regardless of the options to make relations between the Applicant and the residents it will not change the level of noise that is produced from back up beeping or truck dumping.

Mr. Robertson questioned what equipment was on this property; that based on the Eagle View aerial photo, aspects of the business were crossing over onto adjacent parcels, making enforcement of a Conditional Use difficult, and he stated that the activity area of the business operations seemed much larger than the area applied for in the Conditional Use request.

Mr. Floyd responded that he has a wheel loader, a skid steer, and a screener, which has never been used, a dirt roller, and a bulldozer, which is only used off-site; that his trucks are only being stored on his property and not on the adjacent parcel.

Mr. Chairman stated that the activity area is much larger than the area in which the Applicants applied for and if they were to approve the conditional use they would be in automatic violation as all of their practices are spilling over onto adjoining parcels not listed in the conditional use application.

Mr. Mears asked for an explanation of the use of the gravel shaker.

Mr. Floyd stated that the gravel shaker was recently purchased but has not been used and that it would only be stored at the property and not used there.

Mr. Robertson stated that this Application does not permit the use of that gravel shaker on site and would put this application into violation if he were to use it, and the Applicant only applied to store work equipment and dump trucks.

Mr. Butler questioned what the fuel tanks and oil drums are for and how are they being cared for and disposed of.

Mr. Floyd stated that he purchased the fuel tanks to fill his trucks on-site rather than going to a gas station; that the oil drums are filled when he does maintenance on his equipment and then he has someone who picks up the full barrels to dispose of them.

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

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

In relation to C/U 2436 Toney & Charletta Floyd. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

RECESS

4:50 pm – 5:20 pm

C/Z 1992 Reed Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS.

The property is lying on the west side of Gravel Hill Road (Rt. 30), approximately 300 feet south of Milton Ellendale Highway (Rt.16), and the south side of Milton Ellendale Highway (Rt. 16), approximately 300 ft. west of Gravel Hill Road (Rt. 30). 911 Address: 14742 Gravel Hill Road, Milton. Tax Map Parcel: 235-13.00-29.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the survey, the Staff Analysis, a copy of the DeIDOT Service Level Evaluation Response, and a copy of a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated zero comments were submitted for the Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Reed Properties LLC, and the Owner, Whitewater Enterprise, LLC; that also present was Mr. Brandon White, who is a part of the ownership group of the two LLCs. Mr. Hutt stated that the Application was for three acres, located near the intersection of Rt. 16, also known as the Milton Ellendale Hwy; and Rt. 30, also known as Gravel Hill Rd, which is south of Rt. 16 and becomes Isaacs Rd; this application seeks to rezone the property from AR-1 (Agricultural Residential) District to C-2 (Medium Commercial) District; that the property wraps around the Iron Works Facility at that intersection, located within commercial zoning, but has an industrial type feel given the nature of their work; that diagonally across Rt. 16 is Kemp's Liquors and as you travel East on Rt. 16 towards the Town Of Milton you come to a site that is under construction presently, which is the Jerry Ann McLamb Medical Pavilion that's being constructed by Beebe Healthcare; that the Town of Milton's corporate limits are about one mile from this site, so it's just West of the Town of Milton; that to the South of this property and to the West are other parts that are owned by the Reed family, in which the name comes from; that to the West of the properties that are family owned there is a substantial agricultural and poultry operation located off of Rt. 16; that when moving across to the Northwest quadrant, the area is in agricultural preservation, that is part of the spray areas that Artesian refers to as SURF, or Sussex Regional Reclamation Facility, which is a series of agricultural fields and woodlands that are used for their wastewater treatment process; that moving to the other side of now Isaacs Rd., or Rt. 30, is Kemp's Liquors and Iron Works, which is on the South side, also has a location, office and other activities on the North side of that property; that one can see there are residential subdivisions if you move to the South a little bit, which is beyond the property limits, but the family owns properties that extend from Rt. 16 down to the railroad near the Pemberton community, situated along Gravel Hill Rd.; that there are no improvements on this property based on the tax map, other than two billboards located along the Eastern boundary of the property adjacent to the IronWorks site; that other than the billboards, the property is unimproved and as you can see used as part of agricultural activities at this time; that there are a wide variety of uses ranging from industrial, commercial and poultry south of the railroad tracks; that people are familiar with Baker Petroleum site and Wyoming Mill Works, which are industrial type use; that as one moves toward Milton, there is the medical use that was mentioned and several other businesses; that as one approaches the municipal limits the zoning map corresponds with that; that as one would anticipate, the Iron Works site is zoned C-1 (General Commercial), as is their other site on the Northside of Rt. 16; that the Kemp's Liquor site is B-1 (Neighborhood Business); that there is a fairly

substantial area of C-1 that is situated along Rt. 16 on both sides of the highway; that the orangish color that is south of that C-1 zone is the County's High Density Residential district; that the other lands that are south of the family owned lands are zoned AR-1, as is the subject property; that the grayish area south of the railroad tracks is HI-1 (Heavy Industrial), where Baker Petroleum and Wyoming Mill Works are located; that the Future Land Use Map for this property is unshaded which means that is within the low density area; that the low density area is one of the County's rural areas within the Comprehensive Plan; that immediately adjacent to the property of the C-1 properties is the beige color, which are all in the developing area; that if one moves toward the Town of Milton you get to the town center, the darker color, which is anticipated to be either within municipal limits or within their annexation area; that to the south of the property the industrial uses have an industrial designation on the Future Land Use Map; that in describing this low density area, the Comprehensive Plan for Sussex County states that business development should be largely confined to businesses addressing the needs of these uses; that the two uses that its referring to are in the preceding sentence, are agricultural activities and homes; that the purpose of this application is for a satellite location for my clients business, which is a well drilling business, Aquatech Water Specialties; that as the site is larger than what would be needed for just the satellite building or offices, the goal is to create some flex warehousing where contractors in the area could serve residences, businesses and homes as anticipated within the low density area; that according to Table 4.5-2, of the Comprehensive Plan, titled Zoning Districts Applicable to Future Land Use Categories, the C-2 (Medium Commercial) Zoning District is an applicable zoning district within the low density area on the Future Land Use Map; that because C-2 is one of the applicable zoning districts for this area pursuant to the Comprehensive Plan, it is important to look at what the Zoning Code states is the purpose of that C-2 (Medium Commercial) district; that the Zoning Code states, the district supports uses that include retail sales and performance of consumer services; that it permits a variety of retail, professional and services businesses; that the district shall be primarily located near arterial and collector streets; that it accommodates community commercial uses that do not have outside storage or sales; that this application is consistent with the purpose of the C-2 zoning district as I just read it from the Code; that its goal is to support service businesses and it is located near arterial and collector streets; that there is substantial frontage along Rt. 16 of the Milton Ellendale Highway and it has frontage on Rt. 30 or Gravel Hill Rd.; that DelDOT has designated both of these roads as major collectors and Gravel Hill Rd., which is also Rt. 30, is also alternate to Rt. 5 and has been designated by DelDOT as a truck route; that Gravel Hill Rd. is one of the more important NS truck routes that connects areas in Northern Sussex County, starting with Milford to areas in central and Southern Sussex County, going past Milton and then down to Georgetown, Millsboro and beyond; that Rt. 16 is one of the primary East West corridors in Sussex County; This property's location, just off of this intersection is a key component and reasons why C-2 is an appropriate zoning district for that; that the property meets the height, area and bulk requirements that are in the Zoning Code for a C-2 parcel; that this requires a minimum of 15,000 sq. ft. of area, a minimum width of 75 ft., and a minimum depth of 100 ft; that this property meets all of the requirements and it can meet all the other setbacks, height, area and bulk requirements that would be part of any construction, given the three acre size and the frontage along the roads; that there are no wetlands located on the property; that the property is not within a floodplain as it is shown within Flood Zone X on the FEMA map, which reflects the site to be located outside of the 500 year floodplain; that there are no Chapter 89 or source water protection issues which means the property is not located within an Excellent Recharge Area or a Wellhead Protection Area; that central water and central sewer are available to the property through Artesian and Tidewater which is viewable from the CPCN map; that one of the primary concerns is traffic; that a Service Level Evaluation Request was sent to DelDOT; that DelDOT responded that the application should be considered without a Traffic Impact Study (TIS); that the determination of traffic for that site will be made upon specific use, the ultimate specific use and the site plan for that use; that this property has been the subject of two other land use applications, one is referenced in the staff review report as a conditional use application in 2008; that the property was smaller then, only two acres,

where the area at the southern end of the property was not within or not part of the property; that at that time Aquatech was going to move its entire operation from the Lewes area to this location; that for various reasons that did not occur, even though the County Council did grant approval of the conditional use; that however, the conditional use did lapse for non-use; that currently, the main location would stay in Lewes and the subject site would be a satellite location, allowing other contractors to use the flex space opportunity at this intersection; that it was thought that a change of zone application would be a more appropriate application, rather than trying for another conditional use; that otherwise every time a new business wanted to join we would have to go back through the land use entitlement process; that in addition to the 2008 application, the property was also the subject of an assemblage of three properties that started at Rt. 16 and went down to the railroad, which was a change of zone application seeking to change the designation of all 67 acres, the entire family property, within that portion from AR-1 (Agricultural Residential) to the HI-1 (Heavy Industrial), being the same district as the Baker Petroleum immediately to the South; that the application was C/Z 1923; that the Planning Commission recommended approval of that change of zone to the Heavy Industrial district; that unfortunately, County Council did not see that the same way and we the application did not achieve three affirmative votes; that this application is much smaller land area and is a much less intense application than the prior Heavy Industrial zoning district application; that this change of zone is appropriate given the location of these three acres of the property is bordered by two major collectors, two of Sussex County's primary east-west and north-south roads being Rt. 16 and Rt. 30; that the remainder of the property boundaries are the Iron Works site, which is zoned C-1 (General Commercial), and used more industrial than a commercial type fashion; that the remaining boundaries are other lands owned by family members; that if the application is successful before County Council and the neighbor to the south and west did not like a use, they would need to take it up with a family members at that time; that based on the Comprehensive Plan, the Zoning Code of the location of this property, and the nature of the character of the surrounding area my client requests that the Planning Commission recommend to County Council that the change of zone application be approved. Mr. Hutt requested to submit the proposed Findings of Fact at the conclusion of his presentation.

The Commission found that there was no one who wished to speak in support of or in opposition to C/Z 1992 Reed Properties, LLC.

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

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

In relation to C/Z 1992 Reed Properties, LLC. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4 – 0.

C/Z 1993 Ocean One Holdings, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS. The property is lying on the west side of Coastal Highway (Rt. 1), and the southeast side of Broadkill Road (Rt. 16), at the intersection of Coastal Highway (Rt. 1) and Broadkill Road (Rt. 16). 911 Address: N/A. Tax Map Parcel: 235-8.00-39.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Exhibit Booklet, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's Traffic Impact Study, a copy of the DelDOT response to the Traffic Impact Study, and a copy of the Staff

Analysis. Mr. Whitehouse stated that the Application received nine written comments, which were included in the Commission's paperless packet.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Ocean One Holdings, LLC; that also present were two principal owners, Mr. Joel Sens, Mr. Chris Kalil, and additionally, Mr. DJ Hughes, P.E. and Senior Traffic Engineer, with DBF, Inc. Mr. Hutt stated that the application relates to 64.8 acres, which amounts to the frontage along Rt. 16 and Rt. 1, Rt. 1 running left to right, and Rt. 16 going up and down; that the 50.7 acres making up the remainder of the property will remain as its current zoning of AR-1 (Agricultural Residential); that the property is located along the eastern side of Rt. 16, outside the Town of Milton; that the property lies at the intersection of Rt. 1 (Coastal Highway), and Rt. 16 (Broadkill Rd), and directly across from the Rookery Golf Course; that currently, DelDOT has a construction project underway at this location to install a grade-separated interchange for Rt. 1, to go over top of Rt. 16 (Broadkill Rd); that when looking at the Google Earth image, one can see the property is located at the corner of Rt. 1 and Rt. 16; that the Rookery Golf Course is directly across Rt. 1 on the Eastern side; that immediately to the south of the property is the Milton NAPA Auto Parts store; that to the west of the property is an assemblage of lands that is within an Agricultural Preservation District and the Smith Landing Campground situated along the river; that along Rt. 16 west toward the Town of Milton and the intersection of Reynolds Rd., is the Lockwood Design and Construction office, a self-storage facility adjacent to that and Frantic Frets Music and Antique store; that adjacent to that is Fuel Automotive; that north of Rt. 16 in close proximity to the site is the Eagles Nest facilities, whose uses include a church, a preschool and the elementary and middle school campuses for Delmarva Christian School; that to the north of that is the Deep Branch Family Campground; that between the church and the campground there is a proposed assisted living facility that the Planning Commission had approved a Preliminary Site Plan, with Final Site Plan approval currently being worked on; that to the northeast side of Rt. 1, across from the Rookery Golf Course is a GR (General Residential) subdivision, Grants Way; that to the east of the Rookery Golf Course is the subdivision, Woodfield Preserve; that presently there are no improvements to this property and it is currently used for agricultural purposes; that the property is within an area where there is a diverse amount of uses ranging from various businesses to schools, golf courses, churches, campgrounds and agricultural area; that this property has fewer residential areas with individual residences along Rt. 16 and some of the roads that come off of Rt. 16 and Rt. One but there are only two residential communities within close proximity; that many of the items discussed correspond with the appropriate zoning designation; that when one looks at the Zoning Map, one can see it is consistent with sound land use, by having commercial ventures, activities and zoning along intersections, like Rt. 1; that following Rt. 1, there is a C-1 (General Commercial), commercially zoned property at the intersection of Rt. 5, and another C-1 parcel located at the intersection of Deep Branch Rd and Rt. 1; that travelling south you will see another C-1 zoning at the Eagles Nest facilities, a commercial zone on both sides of Rt. 1 and Hudson Rd; that commercial zones continue on the north to south and east to west side of Rt. 1 extending to Eagle Crest Rd and Cave Neck Rd; that the County has approved two more change of zone requests at Cave Neck Rd. and Rt. 1 for C-3 (Heavy Commercial) being for Chapel Farm, also known as C/Z 1982 and C-2 (Medium Commercial) for Alice Robinson, known as C/Z 1916; that the Future Land Use Map designates the property as being located within a developing area, which the County has designated as an area of growth; that the property is at the location of a major intersection within Sussex County; that DelDOT has listed Rt. 1 as principal arterial; that Sussex County Zoning Code classifies Rt. 1 as a major arterial roadway being one of three primary North-South corridors in the State of Delaware; that Rt. 16 is another primary road within Sussex County being an East-West corridor designated by DelDOT as a major collector; that the property is located at the intersection of major roadways recognized by both DelDOT and Sussex County; that currently, DelDOT is spending more than \$30 million to create a grade separated intersection at this location; that central water is available to this property through Artesian Water Company

and sewer is available through Artesian Wastewater Management; that the Comprehensive Plan states that a growth area within appropriate intersections, commercial uses should be allowed within developing areas with good road access and few nearby homes should allow for business and industrial parks; that the Comprehensive Plan states that developing area infrastructure should have central water and sewer facilities; that all of these features of the Comprehensive Plan meet the description of the property and purpose of this application; that the Application's consistency with the description of developing areas and the comprehensive plan, the application is consistency with the purpose of the C-3 Zoning District as it sits along a major arterial road and the application is intended to serve local and regional residents as well as the traveling public; that the Office of State Planning Coordination publishes the state strategies for state policies and spendings regarding how the state views land use on the state strategies map, this property has been designated as being within Investment Level 3, which states the site is located in an area favorable for longer term planning and anticipation of future development; that for the property to be a C-3 zoning, it is required to be a minimum of one acre, a minimum of 75 feet wide, and a minimum of 100 feet deep, all of which this property meets; that the primary portion of the property does not contain wetlands; that the area at the southern tip of the property does show a wetland area; that if this application is successful, those wetlands would be formally delineated and the requirements of Sussex County's Resource Buffer Protection requirements would be applied and followed; that the majority of the property is not in a floodplain, however there is a potential for a portion to be within an AE designated area, but given its location, it would not impact any use or development; that there are no Chapter 89 Source Water Protection areas on the property, as there is no Wellhead Protection areas, nor does the property contain any Excellent Groundwater Recharge areas; that central water and sewer are available through Artesian Water Resources; that a Willing & Able letter to provide central water and sewer letter to this site was provided to Mr. Whitehouse from Artesian Resources; that a Service Level Evaluation request was sent to DelDOT and the report indicated that DelDOT, through its conversations with the developer, knew of potential uses, and with the size and acreage involved that a traffic impact study would be a requirement due to the impact on the traffic here; that as of December 26, 2023 a Traffic Impact Study Review Letter from DelDOT clarified the maintenance of the proposed service road and on/off ramps would be the state's responsibility moving forward; that Ocean's One Holdings, LLC acquired the property in 2019 at which time it was 120 acres; DelDOT acquired 4.5 acres in the northeast corner of the property as part of the grade separated intersection improvements; that since the acquisition DelDOT and the Applicant have had several discussions about the potential uses of the property in order to create a plan to incorporate improvements to the current grade separation as to prevent anyone from going back and reworking the entirety of it; that the application is the next step in that process; that they requested the Commission look at the Traffic Impact Study and realize that this is a proposed concept; that the developer currently has no contracts or letters of intent and this is a conceptual vision for potential uses; that the Applicant's vision for the property is a retail and entertainment complex for not only local residents but tourists who travel the Rt.1 corridor; that the current Traffic Impact Study Review Letter relates to the entirety of the parcel, being the full 115 acres, and the subject request is only on just a portion of that property; that one of the key components of the Traffic Impact Study Review Letter is the offsite requirements that the developer will have; that some of which DBF, Inc. added into an image provided to show them if the application should be successful; that there are the DelDOT Development Coordination Manual Entrance and frontage improvements, the design and construction of a service road between Broadkill Rd and the southerly limits of the property, to which the service road will need to be built to State standards and dedicated to public use for this property and the property to the south of the service road will start at Rt. 16 and extend all the way to the southern boundary; that a service road is required at this location because Rt. 1 is included within DelDOT's Corridor Capacity Preservation Program; that a second requirement in the Traffic Impact Study Review Letter is the design and construction of a dual lane roundabout as the property's access point comes off of Rt. 16; that this would require a relocation of Ramp C, and it would be incorporated, going through the access point to Rt. 1; that the offsite

improvements include an on/off ramp to and from the service road to Rt. 1 as a connection point, an all-way stop-controlled intersection with exclusive roads for the service road where it intersects with Rt. 1, a traffic signal installation and agreements at two intersections created by the grade-separated interchange and approximately \$105,000 contribution to the traffic signal revolving fund for potential future traffic light at Zion Church Rd along Rt. 16; that the last requirement is the closure of the third median South of Rt. 16 and Rt. 1 to prevent cross over traffic from one side to the other; that this is not a site plan review being presented, but rather DelDOT's off site improvement requirements; that when one adds all of the areas for the service road, the roundabout and the on/off ramps to Rt. 1, the total acreage is 7.8 acres of the site which is adequate for the service road; that design details have yet to be determined and this is only a potential concept; that the application is different from others because it allows road improvements to precede the improvements that would come from the site plans for change of zone since the grade separation is already under way; that the intended use of this property is in the nature of a business or commercial park and when looking to the surrounding area it is consistent with the references in the Comprehensive Plan; that there are few nearby homes, you have infrastructure improvements with traffic and it is located within a busy intersection; that this application has nine letters submitted, five of which are in support of the application; that the letters are from Representative Stelle Parker Selby, a representative from Milton, the Milton Chamber of Commerce, Kent Sussex Leadership Alliance, Southern Delaware Tourism and the Sussex Economic Development Action Committee, and for all of the stated reasons, the Applicant requests that the Planning Commission recommend to County Council that the change of zone application be approved.

Mr. Collins stated that since there are no specific plans and no specific businesses in place, the site could be anything commercial.

Mr. Roberston questioned if the Application had gone through PLUS.

Mr. Hutt stated that the project had not gone through PLUS because the requested zoning classification is consistent with the Comprehensive Plan and it does not qualify for the Office of State Planning to review it, but a site plan that exceeded 50,000 sq. ft. would require a PLUS review.

The Commission found that there were three people who wished to speak in support of C/Z 1993, Oceans One Holdings, LLC, and four people who wished to speak in opposition to the Application.

Mr. Scott Thomas, Executive Director for Southern Delaware Tourism, spoke in support of the Application regarding the opportunities with respect to tourism and promoting visitation and new entertainment for not only those who are traveling here but also those who already live here.

Ms. Karen Falk, Executive Director of the Milton Chamber of Commerce, spoke in support of the Application regarding the potential to significantly enhance our local economy, generate employment opportunities, increase consumer spending, and foster a dynamic business environment.

Ms. Karen Sposato, a resident of Milton, DE for 30 years, spoke in support of the Application regarding the project elevating the Milton region with much-needed shopping, entertainment, and lodging.

Mr. Naoto Kada, a property owner of Milton, DE for 25 years, spoke in opposition to the Application regarding the buffer zone for the project; that Mr. Kada stated his property sits directly across from the project location; that he had to give up 150 ft. of frontage to DelDOT and would like to have a buffer zone put in with heavy vegetation to minimize the noise from the heavy commercial zone.

Ms. Monique Fitzhugh, a property owner near the planned development, spoke in opposition to the Application regarding the idea that there is no plan in place for the development and that approving a change of zoning before knowing what the applicant is proposing would create problems as they are asking to

change from agricultural to heavy commercial, leaving the possibilities open to anything from a theme park to a gas station.

Mr. Rich Barrasso spoke on behalf of Sussex Alliance for Responsible Growth, also known as SARG, in opposition to the Application regarding the concern of the safe travel along Rt. 1 due to the capacity being exceeded based on the current designs and that the plan to change zones to the highest use for C-3 without a plan in place for site development could lead to more issues as the project moves on.

Mr. Donald McLamb, a neighboring property owner, spoke in opposition to the Application stating that the reason there are no homes within close proximity to the site is because his wife's family, who owns the property next to it, has put about 300 plus acres into Farmland Preservation to keep it from being developed and continue farming it for life; that the family also owns the campground on that same property and has concerns about the increased traffic, access roads and environmental concerns that develop with a heavy commercial district such as the issue of runoff.

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

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

In relation to C/Z 1993 Ocean One Holdings, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/Z 1998 Louis, Janet & William Melton

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 NEIGHBORHOOD COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS.

The properties are lying on the southwest side of Old Mill Road (S.C.R. 349) and the northwest corner of Railway Road (S.C.R. 350), at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349). 911 Address: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A. Tax Map Parcels: 134-12.00-73.00, 73.01, 73.02, & 73.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, a copy of the Applicant's exhibits, a copy of DelDOT's Service Level Evaluation Response, and a copy of the Staff Analysis. Mr. Whitehouse stated that there are four comments received for the Application, with one being a duplicate.

RECESS

7:00 pm – 7:07 pm

A brief recess was taken for technical difficulties.

The Commission found that Louis Melton, the Applicant, spoke on behalf of his application. Mr. Melton stated that he proposed a change in zoning from a GR (General Residential) to a B-2 (Neighborhood Community) district; Mr. Melton paraphrased the purpose of the district as to provide primarily office retail, shopping, and personal services to serve the needs of a relatively small area; Mr. Melton stated that he had performed research and found that the population of Sussex County has grown by about 300 people a month; that he stated the baby boomer curve is going to continue with the demographics to the area; that there are approximately 2,000 homes within a mile range of the parcel listed in the Application; that those homes are being occupied by a median age of 63 and the aging demographics comes with the demand for more personal services in which they are asking for a rezoning of this area to provide infrastructure support off of Rt. 26; that with the increased traffic on Rt. 26 the accessibility of such services as beauty salons, accounting services, medical, etc. are difficult to access during the summer and is reason to allow for the

infrastructure to be developed to help the local residents; that across the street from the property is the Sundance Club, which only has one main entrance, which along with the development of Evans Farm will need to widen Old Mill Rd to provide ingress and egress, by doing so we will benefit from those; that currently, there are two other structures on the property; that on the left is a 3,200 sq. ft. building which has a garage and a 1,200 sq. ft. apartment; that the middle lot is currently empty and on the right is a home; that the middle lot is the location they would like the infrastructure to go, but currently they did not have anything specific; that they did not believe this is suitable for any nighttime activities like a restaurant or bar due to the traffic pattern; that some opposition was submitted stating that there were no businesses in the area, but he had found approximately six or seven businesses within a close proximity.

The Commission found that there was no one who wished to speak in support of Application C/Z 1998 Louis, Janet & William Melton and one person who wished to speak in opposition to the Application.

Mr. Dave Bartlett, spoke on behalf of residents in Banks Acres, in opposition to the Application regarding the surrounding Commercial zoning within a one mile circumference of the proposed property; that the current area has an influx of empty commercial properties that the above stated businesses could go into rather than changing the current zone; that the area in and around the requested area for the most part is residential and farms and zoned as AR-1; that placing a commercial building in the center of that zone would be completely out of character; that by allowing the zone to be changed to B-2 there would be nothing stopping the development of any nighttime activity even if the Applicant stated that was not what they are proposing; that ultimately, the proposal will create a traffic nightmare, it could place unwanted or unneeded businesses in an area that is currently all residential in nature and would have the possibility of future unwanted businesses in the area, thereby decreasing property values for existing property owners, and he requested that the Planning Commission deny the request for a change in zone.

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

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

In relation to C/Z 1998 Louis, Janet & William Melton. Motion by Mr. Mears to defer for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Meeting adjourned at 7:45 p.m.

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