

**THE MINUTES OF THE REGULAR MEETING OF JANUARY 12, 2023.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 12, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, and Ms. Holly Wingate. Mr. Bruce Mears was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Jesse Lindenberg – Planner I, Mr. Michael Lowrey – Planner III, and Ms. Ann Lepore – Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Agenda. Motion carried 4 - 0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, to approve the Minutes of the November 17, 2022, Planning and Zoning Commission meeting as circulated. Motion carried 4 – 0

**PUBLIC COMMENT**

The Commission found there was no one present in the room or by teleconference who wished to provide public comment.

**OTHER BUSINESS**

**Americana Bayside MR-RPC – Freeman Foundation Office**

**Revised Parking Plan**

This is a Revised Parking Plan to re-orient the parking spaces at the Freeman Foundation Office parking lot and increase parking for stage events within the original Phase 1B (Town Center) Site Plan for the Americana Bayside Residential Planned Community (RPC). The proposed plan shows a reduction in impervious cover area and almost the same limits of pavement as the previously approved Plan. Additionally, the number of parking spaces has increased from 88 spaces to 116 spaces total (for an increase of 28 spaces) from the previously approved Plan. The Revised Parking Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 533-19.00-777.01. Zoning District: MR-RPC (Medium Density Residential, Residential Planned Community.)

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried to approve the Revised Parking Plan. Motion carried 3-0. Ms. Wingate abstained.

**S-22-32 Red Mill Pointe Office**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of a 7,000-square-foot office building, with parking and landscaping along Route 1. The parcel is 0.672 acres +/- and is located on the northeast side of Coastal Highway (Rt. 1), in the Combined Highway Corridor Overlay Zoning District (CHCOZ). The applicant has submitted a letter requesting parking within the front setback and a reduction in the number of parking spaces required, due to site constraints. Zoning: CR-1 (Commercial Residential District). Tax Parcel: 334-1.00-5.00. Staff are awaiting agency approvals. Should the Commission

desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

No action was taken by Commission as they have asked Staff to work with the Applicant to provide additional information regarding the request for parking within the front setback and a reduction in the number of parking spaces required.

### **WFP Holding – Shopping Center (C/Z 1842)**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of a 12,000-square-foot commercial and retail building and other site improvements. The parcel is 2.495 acres +/- and is located on the northeast side of Zion Church Road (Rt. 20). Staff would like to note that the applicant is proposing to have parking located within a Tax Ditch ROW, notice has been given that approval from DNREC is required. On January 30<sup>th</sup>, 2018, the Sussex County Council approved of Change of Zone No. 1842 and was adopted through Ordinance No. 2545. Tax Parcel: 533-11.00-82.03. Zoning: B-1(Neighborhood Business Zoning District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approval to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Site Plan, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

### **2021-15 Sandpiper Cove (F.K.A. Cobb Property)**

#### **Request to Revise Conditions of Approval**

On November 30, 2022, the Planning & Zoning Department received a request to amend Condition I of the January 27<sup>th</sup>, 2022, Planning & Zoning Commission Approval of a 68-lot single-family cluster subdivision. Condition I requires, *“Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 20<sup>th</sup> residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities”*. The applicant has requested that the condition be modified to state: *“Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 49<sup>th</sup> residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities”*. The property is located on the north side of Zion Church Road (SCR. 382) and consists of 54.38 acres +/- . Tax Parcel: 533-12.00-21.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to grant approval of the request to revise Condition I of the Conditions of Approval to now state *“Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 40<sup>th</sup> residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities”*. Motion carried 4-0.

### **2005-64 The Estuary**

#### **Request to Revise Conditions of Approval**

On November 30<sup>th</sup>, 2022, the Planning & Zoning Department received a request to amend Condition “U” of the Conditions of Approval for The Estuary (2005-64) cluster subdivision which states, *“Any wells, water towers, or water tanks shall be located at least 300-feet from adjacent boundary lines. Any proposed water tower or tank shall be painted in a sky-neutral color, with no advertising or identifying logo or script, graphic features, or characteristics.”* The existing water main extension along Camp

Barnes Road from Double Bridges Road and the previously proposed (now under construction) elevated storage tank along Roxana Road at Millville by the Sea will provide water supply and storage for the region and assist in maintaining pressure. In order to proactively plan for the impact that ongoing development in the area will have, GMB staff are actively working with Tidewater Utilities (TUI) to evaluate potential sites for future wells and storage facilities. A site has been identified along Double Bridges Road as a viable option where significant uplands are available for these improvements. An accompanying Exhibit has been provided within the Commission's packet this evening with hatching to show this location. In order to accommodate this request and comply with the Conditions of Approval, GMB are requesting that the language of Condition "U" be amended to state, "*Any wells, water towers or water tanks shall be located at least 50 feet from adjacent boundary lines*" instead of the 300 feet limitation as originally approved and stipulated within the Condition. The property is located on the south side of Double Bridges Road (S.C.R. 363) and is part of the existing Open Space within Subdivision Phases 1B, 1C, and 1D. Tax Parcel: 134-19.00-103.00. Zoning: AR-1 (Agricultural Residential District).

No action was taken by Commission as they have asked the Applicant to provide an exact location for the placement of a water tower if such a tower becomes necessary.

**Lands of Absher Farms, LLC**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 34.046-acre parcel into three (3) lots and residual lands. Proposed Lot 5A consists of 6.219 acres +/-, Proposed Lots 5B and 5C both consist of 2.5641 acres +/-, and the residual lands would consist of 22.7744 acres +/- . The parcels would access off an ingress/egress access easement located on the southeast side of River Road (S.C.R. 490A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 132-6.00-67.04. Staff are in receipt of all agency approvals.

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

**Lands of Brittany Baldwin & John Albright**

Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 34.046-acre parcel into two (2) lots and residual lands. Proposed Lot 1 consists of 1.59-acres +/-, Proposed Lot 2 consists of 1.78-acres +/-, and the residual lands would consist of 3.00-acres +/- . The parcels would access off an ingress/egress access easement located on the south side of Hollyville Road (S.C.R. 305). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-27.00-101.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as a preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

**Lands of Michele Reed**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 10.56-acre parcel into two (2) lots and residual lands. Proposed Parcel A consists of 2.96 acres +/-, Proposed Lot B consists of 2.50 acres +/-, and

Proposed Parcel C consists of 3.3 acres +/- . The property is located on the east and west side of Sloan Road (S.C.R. 49). Staff are awaiting a revised plan, which is to include delineation of the 50' buffer from the tidal wetlands on the west side of the property. Otherwise, the Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-17.00-31.03. Zoning: AR-1 (Agricultural Residential District). Staff have received all agency approvals and are requesting final approval by staff upon receipt of the revised plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary, with final approval to be by the staff upon receipt of an updated plan showing buffers and any wetlands on the site. Motion carried 4-0.

### **Lands of M & M Properties**

#### **Minor Subdivision off a 50-ft Easement**

This is a Minor Subdivision Plan for the subdivision of a 10.64-acre parcel into three (3) lots including residual land. Proposed Parcel 1 consists of 0.75 acres +/-, Proposed Lot 2 consists of 0.75 acres +/-, and the residual land consists of 9.14 acres +/- . The property is located on the north side of Holts Landing Road (S.C.R. 346) and all lots shall have access through a combined access easement. Staff are awaiting a revised plan, which is to include a delineation of any wetlands located on the property. Otherwise, the Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 23134-7.00-135.00. Zoning: AR-1 (Agricultural Residential District). Staff have received all agency approvals and are requesting final approval by staff upon receipt of the revised plan.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

### **Lands of John & Carol Holland**

#### **Minor Subdivision off a 50-ft Easement**

This is a Minor Subdivision Plan for the subdivision of a 12.15-acre parcel into two (2) lots including residual land. Proposed Lot 1 will consist of 2.79 acres +/- and the residual land will consist of 9.36 acres +/- . Proposed Lot 1 and the residual land shall have combined access from an existing ingress/egress access easement located on the northeast side of Phillips Branch Road (S.C.R. 302). Staff note that the Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-17.00-11.09. Zoning: AR-1 (Agricultural Residential District). Staff have received all agency approvals and are requesting final approval by staff.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

### **Lands of Trew R2, LLC**

#### **Minor Subdivision off a 60-ft Easement**

This is a Minor Subdivision Plan for the subdivision of a 37.606-acre parcel into one (1) lot and residual lands. Proposed Lot 1 consists of 24.32 acres +/- and the residual lands would consist of 13.18 acres +/- . The parcels would access off an ingress/egress access easement located on the south side of E. Newton Road (S.C.R. 584). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District) and C-1 (General Commercial District). Tax Parcel: 131-6.00-7.01. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 60-ft. easement as a preliminary and final. Motion carried 4-0.

### OLD BUSINESS

#### **2021-25 Four Winds Farm**

A cluster subdivision to divide 168.9 acres +/- into three-hundred and thirty-six (336) single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the east side of Shingle Point Road (S.C.R. 249), approximately 0.88 mile south of the intersection of Shingle Point Road (S.C.R. 249) and Harbeson Road (Route 5). Tax Parcel: 235-25.00-39.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which had been deferred since April 14, 2022.

Ms. Stevenson moved that the Commission approve 2021-25 Four Winds Farm based upon 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.
2. The subdivision will have no more than 336 lots on 168.9 acres of land resulting in a gross density of 1.99 lots per acre as permitted in an AR-1 cluster subdivision.
3. A Cluster Subdivision permits lots with a minimum size of 7,500 square feet. The average lot size in the subdivision is 8,875 square feet.
4. The proposed development will comply with all DelDOT roadway and entrance requirements.
5. 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.
6. The subdivision contains approximately 86.50 acres of open space, which represents approximately 51.2% of the site. The site includes 31.13 acres of existing woodlands, of which 28.22 acres will be preserved as open space.
7. The subdivision will be served by central water and sewer.
8. The subdivision provides for a total environment and design which 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 by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
9. The subdivision is consistent with the character and trend of the development in the area and will not adversely affect the neighboring and adjacent properties.
10. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
11. This recommendation is subject to the following conditions:
  - A. There shall be no more than 336 lots within the subdivision.
  - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, buffers, stormwater management facilities, and other common areas.
  - C. 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.
  - D. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the

perimeter of the subdivision adjacent land of other ownership in accordance with Section 99-5 of the Subdivision Ordinance. This buffer shall be within the larger 50-foot buffer along the perimeter of the project. This buffer shall utilize existing forest or similar vegetation if 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.

- E. The development shall comply with DeIDOT entrance roadway improvement requirements.
- F. Street design shall meet or exceed Sussex County standards.
- G. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- H. The subdivision shall be served by the Publicly Regulated Central Sewer System.
- I. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
- J. Sidewalks shall be installed on at least one side of all internal streets. A system of fully shielded and downward-screened streetlighting shall also be provided.
- K. 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 Friday and 8:00 a.m. through 2:00 p.m. on 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.
- L. The Applicant shall coordinate with the local school district regarding the location of 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.
- M. There shall be on-site recreational amenities including a clubhouse, outdoor pool and deck, a bathhouse and storage building, a tot lot, and pickleball courts. The size and dimensions of the clubhouse, pool, and deck shall be included on the Final Site Plan. These amenities shall be completed and open to use prior to the issuance of the 140<sup>th</sup> residential building permit.
- N. As proffered by the Applicant, there shall be a buffer of at least 50 feet between the edge of any Federally Regulated Non-Tidal Wetlands and any lot lines. There shall be a minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.
- O. There shall be a 50-foot setback from all lands used for Agricultural Purposes.
- P. The Final Site Plan and recorded Restrictive Covenants shall include the Agricultural Use Protection Notice and a similar notice advising that lands nearby are actively used for hunting.
- Q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- R. 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.
- S. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted

to the Office of Planning and Zoning.

- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve 2021-25 Four Winds Farm for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**Ord. 22-08**

**An Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel 135-11.00-65.00.** The property is located on the north side of Lewes Georgetown Highway (Rt. 9), approximately 620 feet northeast of Gravel Hill Road (Rt. 30). 911 Address: N/A Tax Parcel: 135-11.00-65.00.

The Commission discussed the Ordinance which had been deferred since December 8, 2022.

Ms. Stevenson moved that the Commission recommend denial of an Ordinance 22-08 to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel 135-11.00-65.00 based upon the record made during the public hearing and for the following reasons:

1. This Ordinance seeks to amend the Future Land Use Map within the Sussex County Comprehensive Plan from its current land use designation as a “Low-Density Area” to an “Existing Development Area”. The property that is the subject of this Ordinance is Sussex County Tax Map and Parcel # 135-11.00-39.00.
2. The “Existing Development Area” is designated in the Comprehensive Plan for “existing residential development under the current General Residential and Medium Residential zoning districts, as well as some commercial uses.” The Plan further states that “this particular classification is simply being used to identify these existing scattered zoning areas that have no direct relation to their surrounding zoning and/or the Future Land Use Map.” The Plan emphasizes that this Area should only be used for existing GR or MR-zoned properties. This property is currently zoned AR-1, which is not permitted within the “Existing Development Area” designation. The current “Low-Density Area” designation is consistent with the land’s existing AR-1 zoning.
3. The Comprehensive Plan also reiterates that the Existing Development Area is limited to existing GR and MR land by providing that, “There is no intention to expand this land use classification.”
4. Here, the land in question is currently zoned AR-1, not GR or MR. Although the applicant has also applied to amend the zoning to MR so that a multi-family conditional use can be developed on the property, this possible future zoning and use is not consistent with the intent of the “Existing Development Area”, which is to provide a designation for existing GR or MR land scattered throughout the County. Again, the “Existing Development Area” designation is not intended to accommodate future rezoning of land in the County.
5. There is no dispute that the property is currently developed as a small, manufactured home park that has been in existence for decades. However, it is situated upon land that is zoned AR-1 and it was never rezoned to GR. As a result, it is a legally non-conforming manufactured home park. In other words, it is grandfathered as a manufactured home park on AR-1 zoned land.
6. Because this land is not currently zoned GR General Residential or MR Medium Density Residential, and because the Comprehensive Plan states that “There is no intention to expand this land use classification”, this requested Map Amendment to add a new “Existing

Development Area” on AR-1 land is not appropriate.

7. For all of these reasons, the proposed Map Amendment in Ordinance #22-08 should be denied.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend denial of Ordinance 20-08 for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**C/Z 1959 Charles E. Turner Jr.**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Residential District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 9.72 acres, more or less.** The property is located on the north side of Lewes Georgetown Highway (Rt. 9), approximately 620 feet northeast of Gravel Hill Road (Rt. 30). 911 Address: N/A Tax Parcel: 135-11.00-65.00.

The Commission discussed the Application which had been deferred since December 8, 2022.

Ms. Stevenson moved that the Commission recommend denial of C/Z 1959 Charles E. Turner Jr. for a Change in Zone from AR-1 Agricultural Residential District to MR Medium Residential District based upon the record made during the public hearing and for the following reasons:

1. This property is also the subject of a request to amend the Future Land Use Map within the Sussex County Comprehensive Plan from its current designation as a “Low-Density Area” to a new “Existing Development Area” designation. The Commission has recommended denial of that change to the Future Land Use Map.
2. Under the current “Low-Density Area” designation, a change to MR Medium Density Residential Zoning is not appropriate according to Table 4.5-2 of the Future Land Use Element of the Comprehensive Plan. The property is also surrounded by land with the Low-Density Area Designation.
3. There is no other land with an MR zoning classification in the vicinity of this property. In addition to the inconsistency with the Future Land Use Map, a rezoning of this property to MR would be inconsistent with the zoning and use of the surrounding area.
4. While there is some commercially zoned land in the area, that is primarily oriented to the Route 9/Gravel Hill Road intersection and Route 9 leading to Georgetown. There is no commercially zoned land in the immediate area of this property, particularly the northeast quadrant of the intersection.
5. For all of these reasons, it is not appropriate to rezone this property to an MR Medium Density Residential Zoning District.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend denial of C/Z 1959 Charles E. Turner, Jr. for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**C/U 2320 Charles E. Turner Jr.**

**An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family dwellings (42 units) to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 9.72 acres, more or less.** The property is located on the north side of Lewes Georgetown Highway (Rt. 9), approximately 620 feet northeast of Gravel



Hill Road (Rt. 30). 911 Address: N/A Tax Parcel: 135-11.00-65.00.

The Commission discussed the Application which had been deferred since December 8, 2022.

Ms. Stevenson moved that the Commission recommend denial of C/U 2320 Charles E. Turner Jr. for a Conditional Use for Multi-family Dwellings (42 Units) based upon the record made during the public hearing and for the following reasons:

1. This application is for a property that is the subject of a change to the Future Land Use Map from its current "Low-Density Area" designation to a new "Existing Development Area" designation and a Change in Zone from its existing AR-1 zoning to MR zoning. The Commission has recommended that both of these changes be denied.
2. The Rezoning and the Future Land Use Map amendment are necessary to accomplish the multi-family conditional use for 42 units that is the subject of this application.
3. Because the Commission has recommended a denial of both the Map Amendment and the Rezoning, the Commission must recommend a denial of this Conditional Use.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend denial of C/U 2320 Charles E. Turner, Jr. for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**2021-34 Suncrest (F.K.A. Marsh Homestead)**

A Coastal Area cluster subdivision to divide 18.02 acres +/- into forty-one (41) single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the south side of Waterview Road (S.C.R. 279A), approximately 0.19-mile east of the intersection of Camp Arrowhead Road (S.C.R. 279) and Waterview Road (S.C.R. 279A) Tax Parcel: 234-12.00-22.31. Zoning: AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since December 15, 2022.

Ms. Stevenson moved that the Commission approve 2021-34 Suncrest (F.K.A. Marsh Homestead) based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 41 lots on 18.02 acres. This includes 36 lots that are within the permitted density of the site plus 5 "Bonus Density" lots that may be approved under Section 115-25B (3).
3. I do not believe that it is appropriate to approve the "Bonus Density" lots with this application. These additional lots overburden the area of this site that is proposed to be developed. This development is also in an area that is also already being developed at a significant pace, with all other nearing developments proceeding within the permitted density. This application should be treated the same, and there is no basis for approving these additional lots at this location.
4. The location is in the Coastal Area according to the Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
5. The Applicant has adequately addressed the items set forth in Section 99-9C of the

Subdivision Code.

6. The proposed development will comply with all DelDOT roadway entrance requirements.
7. There will be a 30-foot perimeter buffer around the site.
8. The proposed subdivision contains approximately 7.748 acres of open space, which represents about 43% of the entire site.
9. The project will be served by central water and sewer.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space through an undisturbed forested parcel across Camp Arrowhead Road from this site.
11. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
12. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
13. This preliminary approval is subject to the following:
  - a. There shall be no more than 36 lots within the subdivision.
  - b. The Final Site Plan shall confirm that approximately 43% of the site remains as open space.
  - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
  - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision adjacent to lands of other ownership. The vegetation in this buffer shall comply with the planting and spacing requirements of Section 99-5 of the Subdivision Code.
  - f. The land area that is separated from the remainder of this property and located on the south side of Camp Arrowhead Road shall remain in its undisturbed state as open space.
  - g. The development shall comply with all DelDOT entrance and roadway improvement requirements.
  - h. Sidewalks shall be installed on all internal streets with a connection to the DelDOT multi-modal path. A system of downward screened streetlighting shall also be provided.
  - i. Amenities including a clubhouse, pool, and tot lot shall be constructed and open to use by residents of this development on or before the issuance of the 30<sup>th</sup> residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
  - j. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
  - k. Street design shall meet or exceed Sussex County standards.
  - l. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 am through 5:00 pm, Monday through Friday, and 8:00 am through 2:00 pm on Saturday. No Sunday hours shall be permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.

- n. The Applicant shall coordinate with the local school district regarding the location of 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.
- o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas.
- p. 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.
- q. There shall not be any crosswalks or pathways to the open space separated from the lot areas by Camp Arrowhead Road.
- r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office and Planning and Zoning.
- s. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve 2021-34 Suncrest (F.K.A. Marsh Homestead) for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**C/U 2342 Turning Point Energy - TPE DE SU07, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a solar farm to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 27.5 acres, more or less.** The property is lying on the west side of Elks Road (Rt. 46) approximately 0.50 miles west of the intersection of Elks Road (Rt. 46) and Sussex Highway (Rt. 13). 911 Address: N/A. Tax Parcel: 331-1.00-15.01 (p/o).

The Commission discussed the Application which had been deferred since December 15, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2342 Turning Point Energy - TPE DE SU07, LLC for a Conditional Use for a Solar Farm based upon 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. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on 27.5 acres of a larger 107.75-acre farm.
- 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 farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
- 4. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties and there are no homes in close proximity to this site. In addition, there is information and data in the record from an appraiser

that solar facilities do not have a negative impact upon adjacent property values.

5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, dust, or odor will be generated by the facility.
7. There will be a buffer of existing vegetation along the east and west sides of this site to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
  - a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
  - b. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - c. One unlighted 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.
  - d. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
  - e. Any transformers or similar equipment, or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.
  - f. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
  - g. 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.
  - h. There shall be a vegetated buffer of existing vegetation along the eastern and western sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing the solar arrays to function properly.
  - i. The Final Site Plan shall identify 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 and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2342 Turning Point Energy - TPE DE SU07, LLC for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley – yea

**C/U 2343 Turning Point Energy - TPE DE SU163, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a solar farm to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 25.00 acres, more or less.** The property is lying on the west side of Gravel Hill Road (S.C.R. 248) approximately 0.37 mile north of the intersection of Gravel Hill Road (S.C.R. 248) and Lewes Georgetown Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 135-11.00-48.00 (p/o).

The Commission discussed the Application which had been deferred since December 15, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2343 Turning Point Energy - TPE DE SU163, LLC for a Conditional Use for a Solar Farm based upon 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. This is an adaptive use of farmland that will preserve it from more intensive development. It will be located on a part of a larger 41.08-acre farm.
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 farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties. In addition, there is information and data in the record from an appraiser that solar facilities do not have a negative impact upon adjacent property values.
5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, dust, or odor will be generated by the facility.
7. There will be a 25-foot-wide landscaped buffer to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
  - a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
  - b. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - c. One unlighted 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.
  - d. The site shall be secured by fencing with a gate with a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
  - e. Any transformers or similar equipment or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment

shall be shown on the Final Site Plan.

- f. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- g. 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.
- h. There shall be a vegetated buffer that is at least 25 feet wide planted with deciduous and evergreen trees and shrubs around the perimeter of the solar arrays wherever there is not an existing vegetated buffer. These buffers shall screen solar arrays while allowing the solar arrays to function properly. This buffer area, with specifications about the type and location of the plantings, shall be shown on the Final Site Plan.
- i. The Final Site Plan shall identify 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 and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2343 Turning Point Energy - TPE DE SU113, LLC for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**C/U 2344 Turning Point Energy – TPE DE SU113, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a 35-acre solar farm to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 35.58 acres, more or less.** The property is lying on both the east and west sides of East Trap Pond Road (S.C.R. 62), approximately 0.4 mile north of Substation Road (S.C.R. 518), with solar panels to be located on the east side of East Trap Pond Road (S.C.R. 62). 911 Address: N/A. Tax Parcel: 135-22.00-23.00 (p/o).

The Commission discussed the Application which had been deferred since December 15, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2344 Turning Point Energy - TPE DE SU113, LLC for a Conditional Use for a Solar Farm based upon 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. This is an adaptive use of farmland that will preserve it from more intensive development.
- 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 farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
- 4. This site is immediately adjacent to an existing solar farm. This is an appropriate location for an additional solar facility.
- 5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties. In addition, there was information

and data in the record from an appraiser that solar facilities do not have a negative impact upon adjacent property values.

6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. Based upon the testimony in the record, it is evident that no significant noise, dust, or odor will be generated by the facility.
8. There will be a buffer along the western, northern, and eastern boundaries of the site (basically everywhere but the common boundary of this site with the existing solar farm to the south) to screen the view of the solar farm from the nearby properties while allowing the solar arrays to function properly.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the following conditions:
  - a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
  - b. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - c. One unlighted 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.
  - d. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
  - e. Any transformers or similar equipment or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.
  - f. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
  - g. 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.
  - h. There shall be a vegetated buffer along the western, northern, and eastern boundaries of the site (basically everywhere but the common boundary of this site with the existing solar farm to the south) that is at least 25 feet wide and planted with deciduous and evergreen trees and shrubs wherever there is not existing similar vegetation in the buffer area. These buffers shall screen solar arrays while allowing the solar arrays to function properly.
  - i. The Final Site Plan shall identify 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 and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2344 Turning Point Energy - TPE DE SU163, LLC for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Chairman Wheatley - yea

**RECESS**

4:17 p.m. – 4:25 p.m.

**PUBLIC HEARINGS**

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

Chairman Wheatley recused himself and left Chambers. Ms. Stevenson assumed the role of Chair for this Application.

**2021-36 Wynford Preserve (F.K.A. Prettyman Road Development, LLC)**

A cluster subdivision to divide 50.50 acres +/- into one hundred (100) single-family lots to be located on a certain parcel of land lying and being in Broad Kill Hundred, Sussex County. The property is lying on the south side of Prettyman Road (S.C.R. 254), approximately 0.87-mile northwest of Lewes-Georgetown Highway (Rt. 9). Tax Parcel: 235-29.00-25.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the PLUS comments, the Applicant's Preliminary Subdivision Plat, the Staff Analysis, the Exhibit Booklet, which included the Applicant's Chapter 99-9C response, a copy of Technical Advisory Committee (TAC) comments including comments from the Division of Watershed Stewardship, U.S. Fish & Wildlife, and Sussex County Engineering Department, a copy of the Applicant's Traffic Impact Study (TIS) and DelDOT's response to this, a copy of the Environment Assessment and Public Facility Evaluation Report. Mr. Whitehouse noted that two written comments were received, and one appeared to be in opposition.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Application, 2021-36 Wynford Preserve (F.K.A. Prettyman Road Development, LLC); that also present were Mr. Stan Aldridge, Mr. Brett Mangum, and Mr. Jamie Sechler; that she requested to submit proposed Conditions of Approval into the record; that some unique conditions were proposed, after discussions had between the developer and adjacent neighbors; that the Applicant proposes Wynford Preserve, which was formally known as Prettyman Road Development; that the project is cluster subdivision to subdivide 50.50 acres +/-, into 100 single-family lots; that of the 50.50 acres, a portion will be devoted to lots and a portion will be devoted to streets; that 49% of the property is to be devoted to open space, subject to final site engineering; that the proposed cluster subdivision is superior in design to a standard subdivision as the project proposes significant amounts of open space and landscape buffers; that some of the landscape buffers are in excess of the 30-ft. buffer requirement; that a stormwater management system will act as an amenity and a natural companion to the natural features on the site; that the plan provides for amenities which include a pool and bathhouse, sidewalks on both sides of the roadways; that the sidewalks will connect to the proposed multi-modal path; that the project is located on the southside of Prettyman Road, located within Broadkill Hundred in Georgetown, Delaware; that the property is located near other residential developments, which include Azalea Woods, Weston Willows, Silver Oaks, Deerwood, Beaver Dam Estates and Hawthorne; that interconnectivity has been proposed to the adjacent community of Hawthorne; that the property is located within a low-density area per the Comprehensive Plan; that the property is located within Investment Level 4 of the State Strategies for Policies and Spending Map; that the Concept Plan was presented to PLUS on May 26, 2021; that a PLUS response letter was subsequently provided by Davis, Bowen and Friedel, Inc. (DBF) on February 22, 2022; that the property is located with the AR-1 (Agricultural Residential) Zoning District; that all proposed residential structures will comply with the height, area and bulk requirements for cluster



subdivisions with central sewer; that the project complies with §115-19 by proposing a low-density, single-family residential development that protects water resources, water sheds, forested areas and scenic views; that the project complies with Chapter 115-25(E) of the AR-1 District for the design requirements for cluster developments for the reasons included within the project reference material; that the project complies with Chapter 115-25(F) for a cluster development; that the proposed lots and amenities are located within environmental suitable portions of the property; that the developers intends to keep the existing woodlands on site; that there are no wetlands located on the site; that the open space provided meets the official definition of open space; that the open space is in excess of the 30% requirement; that the proposed open space is 49% of the site; that stormwater will be handled onsite; that stormwater will meet all current State and local requirements; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape; that the plan preserves existing wooded areas; that a 30-ft. landscape buffer is proposed around the site; that a 40-ft. landscape buffer is proposed between the site and adjacent residential developments; that stated in proposed Condition G, the Applicant has provided specific language to the location of where the 40-ft buffer is proposed; that this Condition was proposed as a result from an adjacent neighbors' request; that there are no known areas on the site which require historic preservation; that the plan preserves large tracts of open space and scenic views; that there will be a minimization of tree and soil removal, along with grade changes; that efforts will be made to preserve the existing vegetation located on the site, within the buffers and open space areas of the site; that in the areas the vegetation cannot be preserved, the vegetation will be supplemented to meet the County's buffer requirements; that screening from objectionable features from neighboring properties will be provided by the proposed landscape buffers; that the adjacent neighbors and developer have discussed the potential for instillation of dirt berms, which would be landscaped; that proposed Condition H addresses the dirt berms, stating that the dirt berms shall be installed to the maximum degree permitted by applicable agencies and to be vegetated in a manor consistent with best practices; that water and wastewater services will be provided by Artesian; that Stormwater Management and Sediment Erosion Control Plan will be prepared for the review and approval by Sussex Conservation District; that the stormwater management facilities will be designed in accordance with Delaware and County standards; that the proposed development is designed in a way to minimize erosion, sedimentation, changes in groundwater levels, increased rates of runoff, potential for flooding and design of drainage allowing groundwater recharge to be maximized; that the site is not located in an area of excellent groundwater recharge; that there is a small portion of the property located with the Wellhead Protection Area; that according to DNREC's Division of Waste & Hazardous Substances, the project overlies an active groundwater contamination investigation which has been conducted by DNREC's Division of Waste & Hazardous Substance Remediation Section; that the investigation is an issue the neighbors are concerned with; that a Phase 1 Environmental Assessment was performed of the site; that the purpose and scope of the assessment was to identify the existing and potential releases of hazardous substances on or around the site, to inquire previous ownership and uses of the site and to identify other recognized environmental conditions on the site; that the environmental assessment concluded that the site historically consisted of vegetated woodland areas and farmland; that the assessment also confirmed that the investigation, being performed by DNREC, was initially specifically concerned with the Homestead Campground site, located across from the project site; that in 2005, TCE, being a hazardous substance, was discovered in the main supply well to the Homestead Campground; that at that time DNREC stepped in to provide an emergency well installation to provide non-impacted water to the Homestead Campground site; that in May of 2006, DNREC conducted an inspection of the campground based on a concern that substances found at the campground potentially could have migrated onto adjacent properties; that due to this concern, DNREC monitors the areas surrounding the campground site; that there is a particular concern to the adjacent Hawthorne community, where wells have been installed, an existing agricultural well exists and an irrigation well installed; that for the subject site, the developer will comply with all DNREC requirements as the site is developed; that proposed Condition N states that irrigation and wells shall only be installed in accordance with the

DNREC requirements; that the plan accounts for safe vehicular and pedestrian movement within the site and to adjacent ways; that the entrance to the site shall be designed in accordance with current DelDOT standards; that the entrance to the community, as well as the pedestrian pathways will be reviewed and approved by DelDOT; that the plan proposes interconnectivity to the adjacent Hawthorne community; that it is anticipated the proposed subdivision will cause nearby property values to remain the same, if not increase the values of properties in the area; that the proposed project will not negatively impact the agricultural land, as the maps reflect there is no active farming in the area; that other communities are located within the immediate vicinity of the property; that the project will be reviewed and approved by DelDOT; that McCormick Taylor completed a review of the proposed development's Traffic Impact Study (TIS), which was prepared by Davis Bowen & Friedel, Inc. in February 2022; that based on the TIS, they recommended the realignment of Prettyman Road, north of Rt. 9, to address the skewed angle of the intersection; that at the intersection, the developer will be responsible for making an equitable shared contribution toward the improvement; that the developer will be responsible for frontage and turn lane improvements; that per DelDOT, the developer is required to provide interconnection with the Hawthorne community; that the project is compatible with other land uses in the area, with a number of residential communities nearby; that there will be an officiant stormwater management system, which will act as an amenity; that runoff will be treated for water quality and quantity prior to discharge; that the proposed plan is consistent with the Comprehensive Plan for the reasons submitted within the exhibits packet prepared by DBF, Inc.; that Wynford Preserve will enhance the area with a well designed plan, amenities and limited impacts to the total site area; that the design provides large amounts of open space; that the homes will have a neutral to positive impact on property values within surrounding communities, as well as generating additional revenue for the County; that passive amenities are to include areas of open space; that active amenities include a proposed pool and clubhouse; that the proposed community meets the standards set forth by the County and the State and the community will provide a superior living environment for future residents.

Ms. Wingate questioned the location of the open space and the distance between the road and the homes in relation to the proposed Condition for multi-modal improvements on the site, the location for the proposed dirt berms, and clarification on the chemicals found by DNREC.

Mr. Hopkins questioned clarification on the concern regarding the water for the area.

Ms. Stevenson questioned if there will be monitoring or processes to ensure the TCE chemical does not travel through basements and/or pipes.

Ms. Peet stated there was an exhibit submitted which reflected the location of the proposed open space; that there is a permanent well located at the Homestead Campground site; that contamination was found at the campground site; that there was concern and evidence regarding the movement of the TCE plume to adjacent properties; that studies were performed at the campground site since 2018 or 2019; that there is a monitoring well located at Hawthorne; that any approved irrigation well would be required to be permitted through DNREC; that there is no active test site located on the subject property; that no chemicals have been found on the subject site; that an Environmental Assessment was performed and submitted; that this issue was discussed during the PLUS process; that the issue proposed concern to neighbors and due to this, the Applicant has proffered a condition to ensure any irrigation well would be required to be installed in accordance with the DNREC's requirements and standards.

Mr. Jamie Sechler stated the Plan PL3, reflected 50-ft. of distance, which included additional right-of-way provided for Prettyman Road; that additionally, a 15-ft. pedestrian easement (PE) is proposed, where the shared multi-use path would be placed; that there is an additional 30-ft. to the rear lot lines; that after conversations with adjacent neighbors, the developer is proposing a 40-ft. buffer and dirt berm

to be placed to the eastern portion of the site, where the property is adjacent to residential lots; that subject to grading, the developer intends to provide between 3-ft to 5-ft dirt berms where possible; that the TCE plume, where the contamination is located, is in a deep aquifer; that irrigation wells are located higher than the plume; that the irrigation well currently located on the property is located higher and shallow enough to where there is no concern; that the wells within Hawthorne, have potential to extract too much water, allowing the potential for contamination to expand; that this is the reason the area of Hawthorne is being monitored; that the water supplied from Artesian will not be drawn from that plume at all and there will be continued monitoring performed by DNREC.

The Commission found there was no one present who wished to speak in support of the Application and three people in opposition to the Application.

Mr. Scott Sipe spoke in Opposition to the Application; that he stated there was already a thousand homes approved within one mile of the area; that there is enough traffic on Rt. 9 and Prettyman Road currently; that the letter provided by the State Planning Coordination on June 25, 2021, stated that the proposed development would be located within Investment Level 4; that Investment Level 4 supports spending for agricultural preservation, natural resource protection and the continuation of the rural nature of the areas; that the State has no intention to invest money on improvements and infrastructure in Investment Level 4 areas; that with the amount of homes approved in the future, the area will be overwhelmed; that the State made it clear they feel the proposed development is inappropriate, being a wasteful use of the State's resources; that Wynford Preserve will add to the unforeseen negative ramifications associated with continued overdevelopment of the area; that DBF, Inc had referenced the Hawthorne subdivision and Homestead campground as being large residential projects; that he disagreed, as he stated the campground is only open from spring through the summer, closing from fall until spring during the year; that when the campground is closed, the campers and RVs are removed from the site; that he fears that campground could open year-round in addition to Wynford Preserve being approved; that the proposed plan he initially reviewed reflected a tot lot on the property, to the rear of his property; that currently the proposed plan reflects a proposed pool in that location; that the pool will provide noise and he did not feel the proposed location of the pool is appropriate.

Mr. John Lingo spoke in Opposition to the Application; that proposed Conditions of Approval had just become available to adjacent property owners that day, despite their request to have the proposed conditions a week prior to the meeting; that his concerns have been partially addressed within the proposed conditions; that on September 13, 2022, a meeting was held at a model home within Hawthorne; that many property owners located adjacent to the proposed property attended the meeting, along with representatives of Insight Homes and Insight subcontractors; that several specific agreements were reached at the meeting; that a topic of concern was to street lighting, which seem to be addressed in proposed Condition M; that another topic of concern was to the buffer areas; that he questioned why a 50-ft. buffer was required for the Hawthorne subdivision, with only a 30-ft. buffer required for the proposed development; that at the meeting the adjacent property owners requested a 50-ft. buffer; that the Insight Homes representative compromised with a 40-ft. buffer; that upon the request from adjacent neighbors, Insight agreed to place 3-ft. to 5-ft. dirt berms, with each berm being approximately 100-ft. long; that space is to be provided between berms to allow for drainage; that the berms are to start at the beginning of the development, with the majority of the dirt being taken from the existing field located on the property; that Insight are to place all trees and bushes as required by Sussex County; that neighbors had originally suggested a fence be placed; that Insight agreed to install Arborvitae bushes at the peak of the third berm; that will fill in as they grow to complete a full barrier; that the Arborvitae bushes are to be planted by Insight in the first fall season, following the installation of the berms; that the neighbors are requesting screening be placed before the start of construction; that Insight stated the changes to the buffer zone would be noted and recorded with Sussex County; that the proposed

Condition H speaks to the dirt berms, but do not provide all the details agreed upon at the meeting; that he understood other agencies may require changes to the Conditions of Approval; that he requested any change which would diminish the screening and buffer in anyway, require a new public hearing; that this will allow adjacent property owners an opportunity to speak in support or opposition to any changes and he believed adjacent property owners are entitled to know of any changes made to the development.

Mr. David Hall spoke in Opposition to the Application; that he does not have opposition to the development, subject to the concerns being addressed; that he submitted a 2012 extensive report from DNREC which was used regarding the TCE plume; that his home is adjacent to the subject property; that he spent the last year working with Insight representatives, Sussex County Planning & Zoning, DelDOT and DNREC to understand the scope of the land and surrounding area; that working with the agencies, he was appointed the contact person for the adjoining neighbors; that there is great concern regarding the TCE plume; that DNREC has identified that the TCE plume begins at the south side of Rt. 9 to the east side of Rt. 30; that DNREC has not completed their investigation; that DNREC informed him that in Spring 2023, they will be investigating the west side of Rt. 30, in the area of the ponds and DelDOT maintenance yard; that DNREC has been aware of the TCE issue since 2005; that in 2005 a well was randomly tested by Delaware Department of Public Health; the well was being used for public consumption; that a 425 per billion reading was taken at that time; that according to EPA standards, any reading above five is concerned unhealthy; that after the reading, DNREC was contacted; that from 2006 until 2011 DNREC performed various monitoring; that the 2012 reported submitted was the most formal study performed; that the report supplies a list of all the test performed; that four permanent wells were placed; that a number of borings were performed; that the report states the TCE plume is located almost up to Rt. 5, north of Harbeson; that he submitted a map, reflecting the various readings in various locations along the location of the plume; that the proposed location for Wynford Preserve is reflected as "farm field" on the submitted map; that DNREC has solely performed monitoring of the site from 2012 until 2017; that there are three wells, located together where the Homestead Campground is currently located; that the three wells were voluntarily abandoned by DNREC, with the idea that the proposed project would be built; that no monitoring has taken place over the past five years on the wells; that the wells have never been retrofitted for a testing port; that his information was obtained from Mr. Patrick Boettcher, Project Manager with DNREC; that he believed there had been communication issues, as there are three different departments within DNREC involved in the issue; that Mr. Patrick Boettcher with DNREC had made it very clear that the pumps on the irrigation wells were oversized; that this would allow them to pump much more from the aquifers than DNREC would like to see pumped; that the concern is to a collapse, which would negatively impact the TCE issue; that he is unsure if the well meters have been agreed upon as of yet; that there was an Allocation Water Permit from DNREC to Insight Homes in 2021 with the intention to install the meters to ensure too much water is not being taken; that the installation of the meters has not been performed yet; that TCE is a bottom dweller; that once it arrives to a water source, the TCE stays in that location; that the TCE can be located at various depths, being 40-ft, 80-ft, or 100-ft. under the ground; that when Insight had the wells drilled, there was guidance provided by DNREC as to where the wells should be placed; that the four wells that have been drilled were placed outside of the plume; that the testing performed on the subject land, where homes are to be built, resulted in 15 to 1,540 parts per billion, which has exceeded the acceptable amount of TCE by 300 times; that TCE can cause multiple forms of cancer and neurological, lung, kidney and heart issues; that long term exposed to TCE can cause Parkinson's Disease; that there is a monitoring well being placed on the west side of the property; that according to Mr. Boettcher with DNREC, there is an agricultural well, located at the first house along Prettyman Rd., which could also be used for monitoring; that the concern is too much water is being taken from the aquifers and the weight of the development and infrastructure may lead to a collapse; that they would request the well monitoring and testing be started again; that Mr. Boettcher did speak with an Insight representative with the intent the wells would be retrofitted; that he feels there is a timing issue; that he requested the Commission to

delay the development of the property, to help ensure the welfare and safety, by allowing the monitoring and testing of the wells to begin again; that Mr. Boettcher did state remediation of the site could be required; that the biggest question is if the area is still safe and if development has had any impact on the plume.

Ms. Peet requested to submit the most recent conversation, as of January 4, 2023, had with Mr. Patrick Boettcher, P.G., Hydrologist with the Remediation Section with DNREC; that the DNREC comments state that they will not allow wells above the TCE plume area, located on the Prettyman Development site; that the developer will be notified to plan accordingly; that there is an irrigation well located on the property, which can irrigate the entire property while avoiding the TCE plume and wells should be installed on the eastern portion of the property.

There was no one present by Teleconference who wished to comment regarding this Application.

Upon there being no further questions, Vice-Chair Stevenson closed the public hearing.

Chairman Wheatley returned to Chambers.

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

In relation to 2021-36 Wynford Preserve (F.K.A. Prettyman Road Development, LLC). Motion by Ms. Wingate to defer for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0. Chairman Wheatley did not participate.

**C/U 2337 Community Power Group, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.327 ACRES, MORE OR LESS.** The property is lying on the north side of Beach Highway (Route 16), approximately 0.20 mile east of Dupont Boulevard (Route 113). 911 Address: 18019 Beach Highway, Ellendale. Tax Parcel: 230-26.00-39.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Conceptual Site Plan, the Applicant's PowerPoint Presentation, a letter from Sussex County Engineering Department Utility Planning Division, a letter from the U.S. Fish & Wildlife Department; the DelDOT Service Level Evaluation Response and a copy of the Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission one letter of opposition was received.

The Commission found that Ms. Whitney Hughes, Project Manager with Community Power Group, spoke on behalf of the Application; that Community Power Group (CPG) was founded in 2010; that CPG has been developing solar farms over the last 12 years; that CPG have more than 100 solar farms across the United States with projects located in Maryland, Delaware, Virginia, New York, Illinois, Massachusetts, Connecticut and Colorado; that CPG emphasizes using local labor on all projects; that CPG uses domestic equipment, pollinator friendly ground cover and game fencing whenever possible; that the subject site is located along Beach Highway in Ellendale; that the property consists of 52.23 acres; that approximately 26 acres is proposed for solar use; that the system size is four megawatts AC community solar garden; that the property is split zoned with AR-1 (Agricultural Residential) and C-1 (General Commercial); that solar farms are permitted as a Conditional Use within both districts; that the property is undergoing an annexation petition as part of the Town of Ellendale Comprehensive Plan;

that CPG has communicated with Town Council President, Mr. Aaron Moore; that CPG has received confirmation that the proposed zoning will be Residential Business, which will still allow for commercial land use; that the proposed zoning will not impact the Conditional Use application; that a DelDOT review has been completed for the property; that the surrounding area is mostly comprised of general commercial and agricultural residential parcels; that commercial is located adjacent to the west of the site; that agricultural residential uses are located adjacent to the eastern portion of the site; that the property meets all minimum lot width, area and depth requirements of AR-1 and C-1 Zoning; that the proposed project has a front setback of 55-ft. from the front property line to the fence; that there is a minimum of 20-ft setback from the side and rear property lines; that the solar facility and associated fencing will not exceed 15-ft. in height at any location, complying with the height requirements; that a buffer is proposed along portions of the site; that the buffer will consist of deciduous and evergreen trees along the southern half of the array; that existing vegetation is to remain along the northern and western property lines; that CPG uses Crystalline Solar PV panels, which are made of glass, with antireflection; that CPG does not use the thin-film as it does contain toxic chemicals; that CPG will use Single Axis Tracking (SAT) racking system, which will track the sun's path to obtain the most productivity; that CPG conducted a FAA approved noise and glare analysis; that there will be little to no noise generated from the proposed use; that the nearest residential dwelling is approximately 560-ft. from a transformer; that no glare was produced along the nearby routes and home; that 17-ft. spacing will be provided between the panels, with 16-ft corridors and a minimum of 20-ft. of space between the fence and panels; the CPG proposes pollinator friendly ground cover and game fencing for the property; that solar farms are never truly abandoned; that CPG prepared a decommissioning plan, which requires there to be financial security to ensure funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the project; that additional surety comes from the fact that the salvage value of the equipment is beyond the cost to dismantle the solar farm; that the solar farm will be insured for any natural disaster damage; that in the event of a company bankruptcy, the most valuable asset of the bankruptcy proceedings is the solar farm, which only requires sun to generate revenue; that the proposed project is for Community Solar; that Community Solar gardens are required to be located on approximately 20+ acres; that CPG receives a "credit" for the amount of energy it places back to the grid; that the "credits" are sold back to the community at a discount; that the "credit" and/or discount is reflected on a separate line on subscriber's electric bill and the subscriber receives discounts to their electric bill.

Mr. Hopkins questioned how the property will be maintained and if agrovoltatics are proposed

Ms. Hughes stated CPG does consider agrovoltaic maintenance on their projects; that agrovoltatics are not proposed for the proposed project; that the property will have a mowing schedule established for the maintenance of the ground cover and landscaping and the mowing schedule is included within their Operations and Maintenance Manual.

The Commission found that no one was present in the room or by teleconference who wished to speak in support or opposition to the Application.

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

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

In relation to C/U 2337 Community Power Group, LLC. Motion by Mr. Hopkins to defer for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MARINE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.70 ACRES, MORE OR LESS.** The property is lying on the east side of Cool Spring Road (S.C.R. 290) approximately 0.28 mile north of Stockley Road (S.C.R. 280). 911 Address: 20635 Cool Spring Road, Milton. Tax Parcel: 234-5.00-40.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, the Staff Analysis, the Applicant's Survey, a letter received from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that zero mail returns and zero comments were received.

The Commission found that Ms. Laura Karlik spoke on behalf of her Application; that she and her husband initially submitted the Application because their current property was sold, requiring their business to locate elsewhere; that they have found a location in Rehoboth for their business; that they are requesting the Conditional Use to allow for customers to drop off their boats to their personal property; that her husband would then take the boat from their personal property in Milton to their business in Rehoboth and they have lived at the subject property since 2002.

Ms. Stevenson questioned why the proposed use did not qualify for a Home Occupation.

Mr. Whitehouse stated the Application is nearly a Home Occupation but did not qualify due to the outside storage, storage of materials at the site, as well as the storage and maintenance of boats, which are not made on site.

Ms. Wingate questioned if storage for chemicals was provided, the number of boats proposed to be on-site at a time, hours of operations, and if a sign is requested.

Ms. Stevenson questioned where the boat work is performed on the site, and she questioned the amount of noise generated from the proposed use.

Ms. Karlik stated her husband does provide storage for all chemicals, with any waste being removed from the property; that she would guess no more than five boats to be located on the property at one time; that they do not intend to use the property for boat storage; that she was unsure of working hours, but agreed upon Monday through Saturday hours, with no hours on Sundays would be appropriate; that they would like a sign in the future; that Mercury Marine does require a certain size; that she has had discussions with Mr. Lowrey regarding the Sign Permit application; that most of the boat work is performed outside; that smaller boats can be pulled inside; that the use would not generate any more than typical outdoor equipment; that she has neighbors who cause more noise with engines than the proposed use and they will comply with the conditioned hours of operation to ensure any noise occurs only within the set hours.

The Commission found that no one was present in the room or by teleconference who wished to speak in support or opposition to the Application.

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

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

In relation to C/U 2375 Shane & Laura Karlik. Motion by Ms. Wingate to defer for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 4-0.

Chairman Wheatley granted the Applicant's request to combine the presentations for the next two Applications, ORD. 23-02, and C/Z 1995 Janice CRP3, LLC, as they were related.

**ORD. 23-02**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NOS. 334-5.00-153.00 & 334-5.00-153.02.** The properties are lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcels: 334-5.00-153.00 & 334-5.00-153.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Boundary Plans, the property's legal description, and a letter received on behalf of the property owner.

Mr. Whitehouse advised the Commission that no comments were received for the Application; that the request is to change the Commercial designation to the Coastal designation on the Future Land Use Map and that due to having written responses from PLUS on both the Future Land Use Map Amendment and the Change of Zone request, this will not be required to return to PLUS to proceed through the new PLUS process.

**C/Z 1995 Janice CRP3, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 61.39 ACRES, MORE OR LESS.** The property is lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcel: 334-5.00-153.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the DelDOT Service Level Evaluation Response, a copy of the PLUS response, the Preliminary Subdivision Plat, a copy of the Applicant's Exhibit Booklet which included the Chapter 99-9C Response, the Applicant's Environmental Assessment and Public Facility Evaluation Report, a copy of a Jurisdictional Determination Letter, Groundwater Recharge Letter and drafted deed restrictions, submitted by the Applicant. Mr. Whitehouse advised the Commission that no comments were received for the Application.

The Commission found that Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Applications; that also present were Mr. Ring Lardner with Davis, Bowen & Friedel, Inc., and Mr. Jon Hoffman, representative of the owner and developer; that in May 2021, an amendment to the Future Land Use Map was filed via a letter submitted to Mr. Whitehouse; that in June 2021, the request went to the Office of State Planning Coordination; that three zoning applications were submitted in addition to the Future Land Use Map request; that a Change of Zone application, which sought to change the zoning designation of a portion of the property from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that another Change of Zone application was submitted, which sought to change



the C-1 (General Commercial) zoning to MR zoning; that a Conditional Use application was submitted for townhomes; that a minor subdivision of the property did occur; that a storage facility, previously known as AAA Storage, located at the right corner of the property, was subdivided off of the main property; that after discussions and review with staff it was determined the multiple application requests could be simplified into one application in addition to the Future Land Use Map amendment, that are the subject applications; that the current Application is seeking to change the combination of AR-1 and C-1 zoned land to an MR-RPC (Medium-Density Residential – Residential Planned Community); that the initial name was changed; that the project was originally known as Ritter Farm; that the current project name is Vintners Reserve; that Vintners Reserve reflects the sites proximity to the Nassau Valley; that the property is located immediately west of the Nassau Overpass; that immediately to the north and west of the property is the Whispering Pines Manufactured Home Community; that to the southeast of the property is The Vineyards at Nassau Valley with the vineyard and winery; that the Lewes Volunteer Fire Department is located adjacent to the property; that the Whispering Pines Community was approved in 1971, as C/U 25; that the majority of the property is located within Investment Level 2; that a small portion of the property, at the location of the storage facility, is located within Investment Level I; that the 2045 Future Land Use Map, within the Comprehensive Plan, designates the property within the Coastal Area and Commercial Area; that the Application request is to have one consistent designation, for the Coastal Area; that Table 4.5-2 within the Comprehensive Plan identifies applicable zoning districts for each of the Future Land Use Map categories; that the only applicable zoning districts within the Commercial Area are the business and commercial districts; that to allow for any other use aside from business or commercial would require a Future Land Use Map Amendment; that the Coastal Area includes all the business and commercial zoning districts, as well as MR (Medium-Density Residential), GR (General Residential) and HR (High Density Residential) Zoning Districts; that at one time, Commercial Zoning did permit for residential use; that due to this, there are residential properties located within the Commercial zoning near the site; that C-1 (General Commercial) and CR-1 (Commercial Residential) did permit for residential uses; that the property consists of 61.7 acres with the split zoning of AR-1 and C-1 Zoning; that the request is to change to zoning entirely to MR Zoning with an RPC (Residential Planned Community) overlay; that the Applicant is seeking approval of 316 townhomes; that the C-1 portion of the property consists of 4.2 acres; that the AR-1 portion of the property consists of 57.5 acres; that the State describes Level 2 areas are similar to Level 1 areas, being locations where State investments should support a wide range of uses and densities; that State investments should encourage departure from the typical single-family dwelling developments to promote a broader mix of housing types and commercial sites, encouraging compact mixed-use development where applicable; that Chapter 8 of the Comprehensive Plan echoes the concerns expressed by the State; that 90% of all building permits were issued for single-family homes, with 10% of permits being for multi-family homes in 2016; that the gap between single-family and multi-family issued permits increased in 2017 and 2018, leaving only five percent of the issued building permits for multi-family homes; that the Coastal Area is described as being some of the County's most desirable, designated in locations that can accommodate development, providing a special environment where environmental concerns are addressed; that there are no wetlands located on the property; that the Coastal Area permits for a range of housing types, including single-family homes, townhomes and multi-family homes; that medium and higher densities, being four to 12 units per acre), can be appropriate in certain locations; that medium and higher densities can be supported in areas where central water and sewer are provided, where sufficient commercial uses and employment centers, where the density would keep in character of the area, where located along a main road, or located at or near a major intersection, where there is adequate levels of service or where other considerations exist that are relevant to the requested project and density; that the 316 townhomes requested, which results in a density of 5.12 units per acre; that the densities of the most immediate neighbors to the project are 6.10 units/acre for Whispering Pines, 11.94 units/acre for The Vineyards at

Nassau Valley and 12.00 units/acre for Sandbar Village; that Lewes Crest, located across the street from the project, has a density of 10.00 units/acre; that the projects meet all the factors of when medium to higher densities are appropriate; that Tidewater Utilities will provide water service to the site; that the site is located with Tier I of the Sussex County Unified Sanitary Sewer District; that there are plenty of commercial uses and employment centers in any direction; that the site is situated along a main road; that DelDOT classifies Rt. 1 as an other principal arterial road; that the County Code classifies Rt. 1 as one of the seven major arterial roadways within Sussex County; that to the north of the project, DelDOT has a Grade Separated Interchange planned at the intersection of Rt. 1 and Minos Conaway Rd. in the near future; that when this takes place, Janice Rd. will become more a service road; that the project will contribute to the Henlopen Transportation Improvement District (TID); that the proposed project does keep in character to the surrounding areas of Whispering Pines, Sandbar Village and Lewes Crest; that the MR Zoning District is the County's medium-density district; that MR Zoning Code purpose is described as areas which are expected to become generally urban in character, where sanitary sewer and public water supplies may or may not be available at the time of construction; that areas nearby the property are currently considered urban in character; that the purpose of an RPC is to encourage large scale developments as a means to create a superior living environment, through unified developments to provide of the application of designed ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the RPC overlay was chosen, as it would allow for several sizes of townhomes to be offered; that the RPC overlay offered multiple open spaces areas and central amenities; that the open spaces areas make up over 45% of the total site; that there is a request to reduce the average lot size, which allow for the greater amount of open space; that by using the proposed design of the site, the RPC overlay and proposed screening, the project protects the existing residence and businesses located along Rt. 1; that all of the same characteristics which make the property appropriate for MR Zoning, also apply for the Coastal Area designation; that the project complies with all the considerations for Growth Areas listed in §4.4.2.1; that Chapter 4 describes Commercial Growth Areas, being for large scale retail ; that the proposed use is a far less intense use than large scale commercial; that a less intensive use makes far more sense given the existing residential uses surrounding the property; that Chapter 4 and Chapter 8 of the Sussex County Comprehensive Plan indicate that the proposed Coastal Area designation for the site, allowing for residential uses, is appropriate for this property within Sussex County; that in relation to the requested Future Land Use Amendment, the PLUS comments stated *this parcel is surrounded by Coastal Area, and is currently slated for a higher area use, being commercial; that it is also located within Investment Level Areas 1 and 2 according to the Strategies for State Policies and Spending; that the State has no objection to the amendment as written*; that upon review of the actual project, the State noted the property was located in Investment Level 2 and stated in *Investment Level 2 reflects areas where growth is anticipated by local, County and State plans in the near term future*; that *State investments will support growth in these areas*; that one provision mentioned was that Sussex County makes the amendment to the Future Land Use Map, otherwise the project would be deemed inappropriate, creating a conflict between the Comprehensive Plan and Zoning Code; that the Applicant would request the Commission recommend approval for the amendment to the Future Land Use Map, as well as changing the properties designation to an MR-RPC (Medium-Density Residential – Residential Planned Community) for 316 townhomes; that he did request to submit Findings of Fact and proposed Conditions of Approval for the applications; that proposed Condition B, for C/Z 1995, propose the front yard be a minimum of 20-ft. and a rear yard minimum of 10-ft.; that the data column on the site plan reflected a front yard of 25-ft. and a rear yard of 15-ft.; that the reason for the change, is it would be desirable for all the townhomes to not have the same setback; that Condition B(4) proposes the combined front and rear yard are required to be 40-ft.; that the 40-ft requirement does match the requirement by County Code; that with the proposed condition, it will allow some townhomes to be located at 20-ft., with some being located at 25-ft.; that proposed

Condition B(5) states side yard be 10-ft and 10-ft, with the average lot area of 3,000 sq. ft.; that the Code requires every lot size be a minimum of 1,600 sq. ft.; that the proposed Conditions proffer that lot size be a minimum of 2,000 sq. ft.; that proposed Condition J identifies the areas where a perimeter buffer is not proposed, being along Road A, the entrance road and located behind the Lewes Fire Station; that proposed Condition L describe the recreational amenities and the requirement of when amenities are to be completed; that Condition L proposes a minimum square footage of water surface for the pool area; that the condition will allow Planning & Zoning staff to objectively determine compliance in the future and a minimum square footage approach was taken for the proposed bathhouse as well.

The Commission found that Mr. Ring Lardner, with Davis, Bowen & Friedel, Inc. spoke on behalf of the Applications; that the property is located along Janice Rd., which is classified as a local road per the DelDOT Functional Classification Map; that Janice Rd. is parallel with Rt. 1; that Janice Rd. shares the right of way with Rt. 1; that the property is not located within the 100-Year Flood Plain; that Mr. Edward Launay with Environmental Resources, Inc. did perform a Wetland Delineation; that the delineation was submitted to the U.S. Army Corp of Engineers; that the U.S. Army Corp of Engineers did determine that there were no Waters of the U.S. and no wetlands located on the property; that based on historical photographs, the wetland area is the location of a previous borrow pit which helped construct Rt. 1; that there is a small Excellent Water Recharge Area, consisting of 1.324 acres, being less than 2.2% of the total site, located to the southwest corner of the site; that there are no special requirements per Chapter 89 for the project; that the impervious area, within the 1.3 acres, will be less than one half or 1% of the total site, being well below the 35% threshold which requires additional mitigation within the recharge area; that the soils located on the site are conducive for development of the property; that the DelDOT Minos Conaway Grade Separate Interchange Project will improve Janice Rd. to the local road standards; that proposed are 11-ft. travel lanes, five foot shoulders with a five foot sidewalk that will connect to the Trailhead Parking Lot, which will provide connectivity to the Georgetown trails; that the project is located within the Henlopen Transportation Improvement District (TID); that conversations were had with Ms. Sarah Coakley, DelDOT Principal Planner with the Henlopen TID; that Ms. Coakley did confirm the project is eligible to be located within the TID; that DelDOT assigned only 81 single-family homes as the proposed trip generation for the site; that they were able to demonstrate the traffic projection is in compliance with the trip generation from the 81 homes plus an allowable percentage, therefore they are eligible to remain within the TID; that a 50-ft access easement is proposed, which will be jointly shared with the storage facility; that the entrance will consist of left-turn and right-turn lanes; that the turn lanes are still being determined through the design process; that the internal roads will be designed to exceed Sussex County standards; that the pavement width for the roads will be 32-ft. in width, which exceeds the 24-ft. width requirement; that the small loop roads within the development will be 24-ft. in width; that each lot will have a minimum of two parking spaces; that additional overflow parking is provided throughout the site; that the total overflow parking includes 147 parking spaces, which are in addition to the two provided parking spots per lot; that the project will include a 20-ft. forested buffer along the northern, southern and eastern edge of the site; that they are requesting a waiver to the required forested buffer along the rear of the Lewes Fire Station and along the portion of the storage area, due to the tight access for the placement of the road; that with the provided open space, there will be plenty of screening from the Lewes Fire Station; that the project does propose a forested road interconnection for emergency personnel from the Vineyard parcel; that a pedestrian connection is proposed to allow pedestrian movement to the Vineyards and winery or for pedestrians wishing to access the Georgetown Trail; that Nassau Commons does have a project forthcoming in the future; that at a minimum, activities are to include a dog park, an unorganized play area and a pocket park with playground equipment; that the location of the playground areas will be shown on the Final Site Plan; that within the open space, located within the middle of the site, will be the location of the central

amenities; that these amenities will include 42 parking spaces, 3,500 sq. ft. pool house, 2,000 sq. ft. pool and a pickleball court; that the project proposes 29 acres of total open space, which is about 47% of the project area; that stormwater management will be designed to meet or exceed DNREC standards; that they will be utilizing the area of the previous borrow pit for stormwater management; that the project is proposed a RPC (Residential Planned Community); that due to this, they are requesting two deviations from the standards of the Code; that they are requesting the average lot area be reduced from 3,630 sq. ft. per lot, to 3,000 sq. ft.; that they are requesting the side yards be reduced from 20-ft. to 10-ft.; that as presented the project complies with the Code; that the project was reviewed by PLUS; that the current plan is slightly different than the plan reviewed by PLUS; that PLUS provided a letter confirming a second PLUS review was not required; that DBF, Inc. prepared an Public Facilities Investment and Environmental Assessment Report; that with the mitigation measures implemented, the project is consistent with the Comprehensive Plan; that the Technical Advisory Committee (TAC) reviewed the plan; that the project will be served by Sussex County Sewer; that Tidewater Utilities will provide water to the site; that Delmarva Power will provide electric; that Chesapeake Utilities will provide gas; that Comcast and Verizon are available for phone and cable; that Chapter 99 responses were submitted into the record; that the project is integrated into existing terrain; that the site does not contain wetlands or flood plains; that the plan provides buffer to screen from objectionable features; that the plan prevents pollution of surface and groundwater; that the plan provides for safe vehicular and pedestrian movement; that the plan mitigates the impacted area roadways and transportation and the plan is compatible with other land uses.

Mr. Hopkins stated we felt the proposal was beneficial, as the proposed use could remove the need for 500 homes between Gravel Hill and Georgetown, off Rt. 9.

Ms. Stevenson stated she did not agree with Mr. Hopkins; that she felt the people will live along Gravel Hill to Georgetown, regardless of whether the project is approved; that she felt the proposed homes will be second homes for many residents and she questioned the size of the smaller areas of provided open space.

Ms. Wingate questioned if there was an estimated time when DelDOT will be performing the DelDOT improvements to Janice Rd.

Mr. Lardner stated within Exhibit F; that the data sheet located on the Preliminary Site Plan list the open space areas; that the smallest area of open space is .15 acre; that the largest is just over an acre; that the open spaces range in size throughout the site and he believed the DelDOT improvements could begin as early as June 2023 according to the Capital Transportation Program.

The Commission found that no one was present in the room or by teleconference who wished to speak in support or opposition to the Applications.

Ms. Eul Lee spoke by teleconference regarding this Application. Ms. Lee stated that she does not oppose the multi-family development but had safety concerns and if there is sufficient access for emergency vehicles if vehicles are parked on the streets within the development. Ms. Lee asked if there is a possibility for interconnectivity to provide an additional ingress/egress to the development.

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

At the conclusion of the public hearings, the Commission discussed the Applications.

In relation to ORD. 23-02 relating to Tax Parcel Nos. 334-5.00-153.00 & 334-5.00-153.02. Motion by Ms. Stevenson to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

In relation to C/Z 1995 Janice CRP3, LLC Motion by Ms. Stevenson to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

**ADDITIONAL BUSINESS**

Mr. Whitehouse advised the Commission a Disclosure Form had been circulated, that required completion and return and advised the Commission of a training event, scheduled for the first week of February in the afternoon.

**Meeting adjourned at 6:46 p.m.**

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