

## THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 9, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 9, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins - Absent, and Ms. Holly Wingate. Mr. Bruce Mears arrived later in the meeting. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, and Mr. Elliott Young – Planner I.

Mr. Whitehouse noted that the agenda was changed to remove 2021-05 Turnberry (F.K.A. Unity Branch) and C/U 2263 Southern Comfort Delaware, LLC (Theodore Banks) which will be heard at a future meeting. Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Revised Agenda. Motion carried 3-0.

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of the July 22, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 3-0

### OTHER BUSINESS

#### **Plantation Square (S-18-54)**

##### Final Site Plan

This is a Final Site Plan for two proposed two-story commercial business buildings totaling 49,450 square feet, 253 parking spaces, and other site improvements on a 6.058 +/- acre parcel located on the southwest side of Plantations Road within the Henlopen TID. Staff notes there are currently 22 parking spaces that are located within the front setback and the applicant is seeking relief from that requirement. Staff also note that interconnectivity is also shown with the parcel located directly to the south currently zoned AR-1. The Preliminary Site Plan Complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-57.01. Zoning: B-1 (Neighborhood Business Zoning District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan. Motion carried 3-0

#### **Riverside Apartments (F.K.A. Riverside Plaza)**

##### Final Site Plan

This is a Final Site Plan for the establishment of five (5) 24-unit, 3-story apartment buildings, one (1) 22-unit, 3-story apartment building, four (4) parking garages, a 2,500 square foot pool house, pool, parking, and other site improvements. The property is located on the southeast side of John J. Williams Highway (Rt. 24) and Oak Orchard Road (Route 5). The Preliminary Site Plan was approved by the Planning & Zoning Commission at their meeting of Thursday, September 8, 2016. This plan complies with the Sussex County Zoning Code. Tax Parcel: 234-29.00-69.01. Zoning: B-1 (Neighborhood Business) Zoning District. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan. Motion carried 3-0

**Eastern Shore Natural Gas**

Preliminary Site Plan

This is a Preliminary Site Plan for Eastern Shore Natural Gas for the creation of a proposed meter & regulator station and other site improvements to be located on the west side of Beaver Dam Road (S.C.R 285) at an existing natural gas site. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-16.00-12.00. Zoning: GR (General Residential) Zoning District. Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 3-0

**American Way Warehouse (American Cedar & Millwork)**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 9,900 square feet, one-story showroom/storage building to an existing site. The property is located on the southwest side of Coastal Highway (Route 1) off American Way. This plan was last viewed by the Planning & Zoning Commission at their meeting of Thursday, July 8, 2021, where the Commission requested interconnectivity to be shown or explained why it cannot be shown. The requested information has been provided. This plan complies with the Sussex County Zoning Code. Tax Parcels: 334-6.00-487.00, 488.00, & 489.00. Zoning: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 3-0

**SoDel Concepts Office - Rehoboth**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 2-story 2,826 square foot office building, parking, and other site improvements. The property is located on the southwest corner of Coastal Highway (Route 1) and Ann Avenue. The applicant is requesting a reduction in the parking requirements from 24 spaces to 12 spaces. The Applicant is also requesting to allow for all 12 spaces to be located within the front yard setback. The plan otherwise complies with the Sussex County Zoning Code. The Revised Preliminary Site Plan was last viewed by the Planning & Zoning Commission at their meeting of Thursday, July 22, 2021, where the Commission requested more detail on what the office will be used for and the elevations of the proposed building. This requested information has been provided. Tax Parcel: 334-20.13-27.00. Zoning: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer for further consideration. Motion carried 3-0

**Cleanbay Renewables (C/U 2113)**

Determination as to whether Substantially Underway

This is to determine whether Conditional Use No. 2113 filed by Cleanbay Renewables, LLC has met the criteria for “Substantially Underway.” Conditional Use No. 2113 was approved by the Sussex County Council at their meeting of Tuesday, July 31<sup>st</sup>, 2018, and adopted through Ordinance No. 2589.

A Preliminary Site Plan was then submitted and approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, July 8<sup>th</sup>, 2021. After a staff review of the site and the appropriate documents being provided, the Sussex County Planning and Zoning Staff sent a letter on August 9<sup>th</sup>, 2021 stating that the Conditional Use had lapsed. The applicant has since provided documentation for reconsideration of staff's findings. The documentation has been provided in the paperless packet. Tax Parcel: 133-6.00-123.00 Zoning: AR-1 (Agricultural Residential) Zoning District.

The Commission discussed the request that C/U 2113 was substantially underway prior to the lapse of the Conditional Use.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously that the Commission determined that C/U 2113 is substantially underway. Motion carried 3-0.

### **Lands of Kenneth & Donna Bender**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for Lands of Kenneth and Donna Bender for the establishment of two (2) proposed lots off a 50-ft ingress/egress access easement. The parcel is located on the southwest side of Memory Road (S.C.R. 613). This proposal is not located within the Henlopen TID. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Code. Tax Parcels: 430-3.00-22.00, 430-3.00-22.01, 430-3.00-23.00 Zoning: AR-1 (Agricultural Residential) Zoning District. Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' easement with the condition that the Applicant submits a shared-use agreement for the easement. Motion carried 3-0.

## OLD BUSINESS

### **2020-08 Lockhaven**

A standard subdivision to divide 125.8 acres +/- into 25 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 west side of Round Pole Bridge (S.C.R. 257), approximately 0.48 mile west of Hudson Rd. (S.C.R. 258). Tax Parcel: 235-15.00-34.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since June 24, 2021.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to close the record for Subdivision 2020-08 Lockhaven. Motion carried 3 – 0.

### **C/Z 1945 Gulfstream Development, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.33 acres, more or less.** The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-56.05.

The Commission discussed this application which has been deferred since August 26, 2021.

Ms. Wingate moved that the Commission recommend approval of **C/Z # 1945** for **GULFSTREAM DEVELOPMENT, LLC** for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. The project is located in the Coastal Area according to the County Comprehensive Land Use Plan. MR Zoning is appropriate in this Area according to the Plan.
2. This site is intended to be joined with the adjacent property, which was the subject of CZ #1896 and CU #2197 that approved MR zoning and 52 multi-family duplex units on that property.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The property is adjacent to land that is currently zoned MR. In addition, there are other properties in the area that are zoned MR, C-1, and B-1 as well as the Bayside project. This rezoning is consistent with other zoning and land uses in the area.
5. The rezoning to MR will not have an adverse impact on neighboring properties or the community.
6. MR zoning is appropriate for this site because medium density development is appropriate where central water and sewer are available. In this case, sewer service will be provided by Sussex County and adequate wastewater capacity is available. Water service will be provided by a publicly regulated water company.
7. For all of these reasons, MR Medium Density Residential Zoning is appropriate for this location.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval for C/Z 1945 Gulfstream Development, LLC. Motion carried 3 – 0.

#### **C/U 2292 Gulfstream Development, LLC**

**An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family (32 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.33 acres, more or less.** The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-56.05.

The Commission discussed this application which has been deferred since August 26, 2021.

Ms. Wingate moved that the Commission recommend approval of **C/U # 2292** for **GULFSTREAM DEVELOPMENT, LLC** for Multi-Family Dwellings in an MR Medium Density Residential District based upon the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 32 multifamily dwellings on 8.33 acres. This results in a density of approximately 3.84 units per acre. That density is consistent with the adjacent Bay Knolls at 3.90 units per acre and other nearby developments. 3.84 units per acre is also consistent with the MR District, which permits up to four (4) units per acre.
2. This site is in the Coastal Area according to Sussex County Comprehensive Plan. This type of development is appropriate in the Coastal Area according to the Plan, which states that medium and high densities are acceptable when a site is near commercial uses, is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist here.
3. The proposed development will not have an adverse impact on the neighboring properties or roadways.
4. DelDOT reviewed the applicant's planned project and has issued a letter stating that it will generate fewer than 50 vehicle trips any hour and fewer than 500 vehicle trips per day therefore

no Traffic Impact Study is required. DelDOT's review indicated that it considered the proposed development's traffic impact to be "negligible" in the context of DelDOT's agreement with Sussex County regarding land development coordination.

5. Approximately 3.59 acres, or 43% of the project, will be open space.
6. Although this is a Conditional Use, the items set forth in Section 99-9C of the Subdivision Code have also been favorably addressed by the applicant.
7. The development will be served by central sewer provided by Sussex County and central water provided by a publicly regulated water company.
8. This project will be combined with the adjacent Bay Knolls project which will be superior to 2 two separate standalone projects. For example, the present application will add on-site amenities such as a pool and community center for both this site and Bay Knolls. It will also provide a safer single entrance to become part of a four-way intersection with the Herons' Ridge at Bayside Community.
9. This recommendation is subject to the following conditions:
  - a. The maximum number of residential units shall be 32.
  - b. All entrances, intersections, roadways, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.
  - c. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
  - d. The project shall be served by central water to provide drinking water and fire protection.
  - e. Interior Street design shall meet or exceed the Sussex County Street design requirements.
  - f. As proffered by the applicant, there shall be sidewalks on both sides of all streets and roadways.
  - g. The applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all "Limits of Disturbance" within the site. These "Limits of Disturbance" shall be clearly marked on the site itself.
  - h. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7 AM and 6 PM Monday through Saturday. There shall be no construction activities at the site on Sundays. A 24 inch by 36-inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
  - i. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
  - j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50<sup>th</sup> building permit within the combined projects.
  - k. The applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance, repair, and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion, and sediment control facilities, and other common elements.

- l. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using best management practices.
- m. The Final Site Plan shall contain the approval of the Sussex County Conversation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- n. The applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.
- o. 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 2292 for Gulfstream Development, LLC for the reasons and conditions stated in the motion. Motion carried 3 – 0.

#### PUBLIC HEARINGS

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

Mr. Mears joined the meeting at 5:40 p.m.

#### **2021-03 Lands of Evans E. Norwood**

A standard subdivision to divide 24.9 acres +/- into 4 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 Stockley Road (S.C.R 280) approximately 0.58 mile west of Beaver Dam Road (Route 23). Tax Parcel: 234-5.00-55.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Soil Feasibility Study, a letter from Sussex County Engineering Department Utility Planning Division, a copy of DelDOT's Letter of No Objection, zero comments, and one mail return.

The Commission found that Evans E. Norwood was present on behalf of his Application. Mr. Norwood stated that he has applied for the proposed subdivision to provide land for his granddaughters and he had nothing more to add at this time.

Ms. Stevenson questioned if there will be a written agreement for the road leading back to the lots stating who will be responsible for the maintenance of the road and questions if Mr. Norwood suspects any negative impact on roads, schools, sewer, or water.

Mr. Norwood stated he plans to take care of all maintenance of the road and he has someone in place to provide maintenance should he become deceased; that he believes the subdivision will have no impact on roads, schools, sewer, and water; that his granddaughters are young; that he does not intend to build on the property for another 10 to 13 years and he plans to have water and sewer on the properties at that time.

Mr. Robertson questioned if there are any wetlands located on the proposed property; that he questioned if the subdivision will have a negative impact on the soil, topography, or wetlands and if Mr. Norwood has septic feasibility.

Mr. Norwood stated there are no wetlands located on his property; that he does not believe there will be any negative impact to the soils, topography, or wetland areas from his proposed subdivision and that he has had the land perked.

The Commission found that Mr. Luther Leighton was present in support of the Application; that he owns the property adjacent to the proposed property; that he feels that Mr. Norwood's wishes are to have his family next to him; that fortunately, he was able to do that for his family; that his two daughters live adjacent from him; that he feels Mr. Norwood has been a fixture for the community for many years, dating back to this family before him; that Mr. Norwood is a historian of the area and he feels allowing the ability for Mr. Norwood's family to live on that property would be a positive thing.

The Commission found that there was no one present 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 Hearing, the Commission discussed the Application.

Ms. Stevenson moved that the Commission approve 2021-03 – Lands of Evans E. Norwood Subdivision based upon the record made during the public hearing and for the following reasons:

1. This Application seeks approval of 4 lots within 24.9 acres of land. That is well below the density that is permitted in the AR-1 Zoning District.
2. This Application addresses the considerations of Section 99-9C of the County Subdivision Code.
3. The subdivision will not adversely affect neighboring properties, area roadways, schools, or other public facilities.
4. No parties appeared in opposition to this Application, and the neighboring property owner appeared in favor of it.
5. Because of the small size of this subdivision with only 4 lots that are to be conveyed to the Applicant's family, a waiver from the buffer and road construction requirements is appropriate.
6. The Applicant has stated that he will provide the road maintenance for the roadway providing access to these lots.
7. No further subdivision of these parcels can occur without having another public hearing.
8. Because all required agency approvals have been received, this application is suitable for both preliminary and final site plan approval.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant approval for the subdivision for the reasons stated in the Motion. Motion carried 4-0.

**2021-04 Autumdale (F.K.A Fairmont)**

A cluster subdivision to divide 73.905 acres +/- into 104 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 Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Rt. 5) and Hollyville Road. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's subdivision plan, a copy of the Applicant's exhibit book, a copy of a letter from DelDOT, a copy of the staff analysis, a copy of the Applicant's Chapter 99-9C response, a copy of a letter received from the

Mapping and Addressing Department; a copy of the PLUS response and the Applicant's response to the PLUS response, a copy of the TAC comments, a letter from the Department of Agricultural, zero comments of support and opposition, no mail returns and the Mapping and Addressing letter received had a slight difference in the spelling of Autumndale and requested this issue be addressed.

The Commission found that Ms. Mackenzie Peet was present on behalf of the Applicant, Autumndale; that also present are Mr. Tim Green, Director of Land Development with Schell Brothers, Mr. Jason Palkewicz with Solutions Integrated Planning Engineering and Management, LLC and Mr. Ed Launay with Environmental Resources, Inc.; that the Applicant has submitted an extensive exhibit booklet; that the Commission has had the exhibit booklet for 10 days; that the exhibit booklet included the major subdivision application, DelDOT correspondence, TAC comments, the preliminary plan, PLUS Applications, site plan and comments, Autumndale's project reference material which was prepared by Solutions, Artesian's Will Serve letter, Geotech's Soil Report, a letter written by Mr. Launay and a letter from Fish and Wildlife confirming no threatened or endangered species are located on the proposed property and the Preliminary Jurisdictional Determination and Wetland Lineation Plan; that she would like to submit Conditions of Approval for the Commission's consideration; that they are adding the letter N to the name Autumndale; that the Application name will now be spelled Autumndale; that she will be discussing the AR-1 Agricultural Residential Cluster Development requirements of Municipal Code, Section 115-25E and Section 115-25F and the Municipal Code 99C requirements; that the Applicant proposes Autumndale, formally known as Fairmont, a cluster lot subdivision to divide 73.9 acres more or less into 104 single-family lots; that of that acreage a portion is to be devoted to lots, a portion is to be devoted to streets and 50-acres more or less, which is a total of 69% of the total acreage of the parcel, shall be devoted to the interconnected open space; that the proposed cluster development provides an environment and design which are superior to a standard subdivision because the project clusters homes on an environmentally suitable portion of the property, provides for a significant amount of open space in addition to landscape and wetland buffers to protect and avoid development in environmentally sensitive areas onsite; that the site is located on the southside of Hollyville Rd. (S.C.R 48); that it is approximately .43-mile south of Harbeson Rd. which is commonly known as Rt. 5; that the property is located in the vicinity of the residential communities known as Independence, Welsh Run, Weatherby, Pelican Point, Woodridge, Falcon Crest and Stonewater Creek; that the property is currently of vacant use; that if granted approval by the Commission there will be 104 single-family lots with a density of 1.41 homes per acre as permitted by Sussex County Code; that the Sussex County Code allows two units per acre based on the growth site area; that the property is located in a low density area per the Comprehensive Land Use Plan; that the property is located within Investment Level 4 of the State Strategies for Policies and Spending Map; that the concept plan for Autumndale was presented to PLUS on September 23, 2020 and a response letter was subsequently submitted to PLUS which addressed the response comments point by point; that the parcel is located in AR-1 Agricultural Residential Zoning District; that this requires a minimum lot area of 7,500 sq. ft., a minimum lot width of 60-ft., front yard setback of 25-ft., side and rear yard setbacks of 10-ft. and a maximum building height of 42-ft.; that the Application complies with the purpose of the Municipal Code Section of 115-19 by purposing a low density single-family residential development that protects water resources, watersheds, forested areas and scenic views; the project also complies with the requirements of the AR-1 District and AR-1 Cluster requirements; that Municipal Code Section 115-20 of the AR-1 permit single-family detached homes on individual lots; that Municipal Code Section 115-21 also allows for outdoor amenities for use by community occupants and their guests; that all community signs will conform to Sussex County Code Section 115-159.2; that specifically the Application complies with Chapter 115-25E; that the proposed cluster development complies with the community dense design section of the Comprehensive Plan; that only single-family detached homes are proposed within the Cluster Subdivision in compliance with that requirement; that a 30-ft. forested buffer is provided to the adjacent properties; that homes are more than 50-ft from nearby agricultural uses; that the proposed homes are more than 50-ft from the perimeter of



the site; that no lots within the proposed community are located closer than 50-ft. from adjacent properties; that there will be a 30-ft. forested buffer; that no proposed lots have access to State maintained roads; that as indicated in the PLUS Application submission the wetlands have been delineated and development will avoid those wetlands; that a wetland buffer has been provided; that the lots are a minimum of 100-ft. from the non-tidal wetlands; that a 50-ft. buffer has been provided from Unity Branch; that the proposed community will also be served by central sewer and wastewater systems; that the Will Serve Letter has been provided and included in the booklet from Artesian Water Co. Inc.; that pursuant to Chapter 115-25F the Developer applied for a cluster development in accordance with Chapter 99; that this section requires homes to be clustered on environmentally suitable portions of the track and provided for a total environment and design which is superior to that which would be allowed under regulations for the standard option; that it must meet specific criteria; that the proposed lots and amenities are located within an environmentally suitable areas of the site which avoid wetlands and waterways; that the clearing of any existing wooded area is limited to the amount required for the project; that the open space provided meets the official definition of an acceptable open space contained in Section 115-4 of the code and other open space requirements of Sussex County Code; that specifically the Sussex County Code requires 30% of open space; that this equals to 22.17-acres for the proposed project; that the Applicant has proposed significantly more at 50-acres; that the Sussex County Code also requires an additional 30% of that open space to be located on one contiguous track of land; that this project proposes 50-acres of contiguous open space; that a minimum of a 25-ft buffer is provided around the existing non-tidal wetlands; that a 50-ft buffer is provided from Unity Branch; that stormwater will be handled onsite and will meet the current State of Delaware regulations; that all stormwater facilities will be private and maintained by the developer until a Homeowners Association (HOA) can assume ownership and responsibility for stormwater facilities; that stormwater management and storm drainage shall be in accordance with Sussex County Soil Conservation District and Sussex County Engineering requirements; that recharge or structurally equivalent best management practices will also be provided; that tree removal shall be limited to what is necessary to construct the project; that the project also preserves scenic views to waterways, wetlands and wooded areas for homeowners and passersby by limiting back to back lots and providing space between lots; that the land plan preserves natural facilities, including wetlands, waterways and wooded areas, and proposes sidewalks and connections to DelDOT's multimodal path; that as required, sidewalks are provided on at least one side of the street; that the cluster development will preserve the natural and historic areas; that the project is not located in a designated growth area; that the plan integrated the proposed subdivision into existing terrain and surrounding landscape; that the Applicant provided significant open space which totals 69% of the entire site; that preserved forested non-tidal wetlands are provided with a minimum of 30-ft landscape buffer to all surrounding property; that there will be a 50-ft. buffer from Unity Branch; that all proposed lots within the community are a minimum of 50-ft. from property line; that as stated in the Soil Feasibility Report provided, the Applicant has located stormwater facilities based on the extensive soil borings and soil report; that there is a minimum use of wetlands; that the PLUS Application and plan indicated that all delineated wetlands would be avoided, the lots are a minimum of 125-ft from the wetlands and there is a 50-ft. buffer from Unity Branch; that there are no known areas that require historic preservation on site; that the plan preserves large tracts of open space at 69%; there will be a minimization of tree, vegetation, soil removal and grade changes; that the disturbance onsite will only be limited to those required for homes, roads, stormwater management and utility instillation; that screening of objectional features from neighboring properties and roadway will be provided by the proposed 30-ft. landscape buffer and a minimum of 50-ft. from the property lines is provided; that water will be provided by Artesian Water Co. Inc. as evidenced in the Will Serve Letter; that community wastewater service is also anticipated by Artesian Water Co. Inc.; that arrangements will be made with a commercial trash hauler to provide for trash collection; that all runoff from the community will be directed by the closed road section and storm drain network into a stormwater management system; that the stormwater management system, consisting of best management practices for stormwater treatment

and discharge, in accordance with the State of Delaware and Sussex Conservation District standards to prevent surface and groundwater pollution; that the proposed development has planned a way to minimize erosion, sedimentation changes in groundwater levels, increased rates of runoff potential for flooding, and design of draining so that groundwater recharge is maximized; that the plan also accounts for safe vehicular and pedestrian movement within the site and adjacent ways; that the entrance to the community will be designed per DelDOT standards; that all roadways will be designed in accordance with Sussex County standards; that 5-ft. wide sidewalks are proposed on one side of the road, along with an anticipated trail connecting to proposed DelDOT multimodal path to encourage and promote pedestrian traffic; that it is anticipated that the proposed community will cause current property values to remain the same if not increase the value of other properties in the area; that the proposed subdivision will not adversely affect adjacent farmland considering the provided landscape buffers, as well as the existing wooded area and wetlands which provide a natural buffer and separation of the community from farmland; that the community is not expected to have an adverse effect on schools, public buildings and community facilities as evidenced in the PLUS comments; that there have been a series of discussions with DelDOT concerning the area roadway improvements, specifically regarding offsite transportation and frontage improvements; that the entrance improvement area is anticipated to include turn lanes into the community; that the project is compatible with other land uses; that it is adjacent to other residential communities and in the vicinity of Independence, Welsh Run, Weatherby, Pelican Point, Woodridge, Falcon Crest and Stonewater Creek making the plan compatible in design, density, homestyle and land use; that Unity Branch is located on the site, however the nearby waterway should not be adversely affected due to the provided 50-ft. buffer; that the plan is consistent with the Sussex County Comprehensive Plan, which was updated as of March 2019, for the reasons stated in the materials submitted; that Autumnedale will enhance the area with well planned design, upscale homes, amenities with limited impact to the total site area; that the homes will have a neutral to positive impact on the property values on the surrounding communities and will generate additional revenue for Sussex County; that the proposed passive amenities include a large amount of open space; that active amenities include a proposed pool with a bath house, as well as designated areas of open space; that the design preserves and enhances existing views through non-disturbance areas and extenuates certain features of the existing terrain; that the proposed community of Autumnedale will meet the standard set forth by Sussex County and the State of Delaware and will provide a superior living environment for future citizens.

Ms. Stevenson questioned if the 20-ft. wide emergency access easement at the end of Lot 51 and Lot 52 will be paved and questioned the proposed multimodal path where its location will be.

Mr. Palkewicz stated there is proposed emergency access that will be paved; that there is another pedestrian access located at the other cul-de-sac that will also be paved; that there will be two ways in and out and he stated there will be a multimodal pathway located along the frontage of the property.

The Commission found that Mr. Dale Coker spoke in opposition to the Application; that he lives across the street from the proposed development; that he has lived in the area for 14 years; that in his experience the area has always had drainage issues; that the area floods; that he did have an engineer from Solutions ask him about the drainage ditch along Hollyville Rd.; that the engineer told him for the proposed development, DelDOT will have to acquire 12-ft. of his front yard; that he feels the traffic has become an issue with all of the surrounding subdivision development; that he uses his front yard and is looking at the proposed development as being a safety issue; that he feels the developer should spend the money to place the road on the proposed property and not his; that the drainage issue has been remedied on his property and he does not want to see drainage become an issue for him again; that the issue is the pipe that runs underneath Hollyville Rd.; that he was told by the engineer it is an 18-in pipe; that the road will have to be widened to accommodate the subdivision and that a 24-in pipe would need to replace the

18-in pipe; that he is not willing to sell 12-ft. of his property for the proposed subdivision; that he purchased his home on an acre of land and intends to sell it on an acre of land and he does not want Hollyville Rd. any closer to his home than it already is.

The Commission found that Ms. Debra Coker spoke in opposition to the Application; that she and her husband spent about \$13,000 for drainage solutions on their property due to flooding issues; that they had many underground pipes and a ditch placed for the drainage solution; that DNREC had assessed their property and provided a plan many years ago; that now the water drains within 24 hours and she is concerned about the additional 208 vehicles on the road being a safety issue.

The Commission found that Ms. Pamela Schwartz spoke in opposition to the Application, that she lives on Hollyville Rd.; that she lives right around the curve of Hollyville Rd.; that she has lived on Hollyville Rd. before it became alternate Rt. 24.; that traffic is horrendous on Hollyville Rd.; that she feels the proposed subdivision will increase to the traffic issue and congestion; that there is only a flashing light at the intersection of Rt. 5 and Hollyville Rd.; that she sees the congestion and back up there; that she feels this is a safety issue for children getting to and from school and people going to and from work; that the proposed subdivision will create more traffic than Hollyville Rd. can handle; that the surrounding subdivisions named by Ms. Peet are mostly located off of Rt. 5, which is a much wider road with shoulders; that Hollyville Rd. is a small country road which cannot accommodate the addition of 104 houses without some improvement to the road and she is concerned about losing her land to eminent domain.

The Commission found that Mr. Grant Schwartz spoke in opposition to the Application, that he and his wife live in the last house before Hurdle Ditch Rd.; that he has lived there for 20 years; that he is concerned about increased traffic issues; that he can recall five incidences where cars drove through his property; that drainage is an issue; that on his property there is no proper drainage solutions and adding the proposed subdivision will make his drainage issues worse.

Mr. Whitehouse stated that Mr. Claudy Joinville and Mr. Todd Sammons with DelDOT were present by teleconference.

The Commission found that Mr. Marvin Tunnell spoke in opposition to the Application; that he lives on the property adjoining the proposed property; that the field holds a lot of water; that the water comes across Unity Branch; that his property is a catch place for the water runoff; that at one time the water came within six feet of his home; that he is not the type of person to tell a man what to do with his land, however, what the developer is proposing to do is now going to affect his property and he requests to know the distance between his property and the proposed development.

Chairman Wheatley stated that the law requires the developer to design the proposed facility in such a manner that it will not have a negative impact on any property any more than the impact currently is; that if the developer does not do so, there is the ability for recourse; that there are proactive measures that can be taken if the proposed Application gets approved and he requested Mr. Palkewicz come up to address the question of distance between properties for Mr. Tunnell and any additional information regarding drainage issues.

Mr. Palkewicz stated that Lot 51 is the closest proposed lot to Mr. Tunnell's property; that the corner of Lot 51 is a little over 100-ft. from the property line; that the developer does have to manage any water runoff at the same or less rate that it currently is; that generally the developer would make the drainage better by running the water back onto the site into proposed stormwater facilities or capture the water

and run it through buffers around the wetlands and the developer will not be placing additional water on adjacent properties.

The Commission found that Ms. Valerie Wood spoke by teleconference in opposition to the Application with drainage concerns and she requested to know who would be responsible for any future drainage issues should the Application get approved.

Chairman Wheatley stated that Sussex Soil Conservation District is responsible for regulating stormwater management and ensuring drainage provisions get constructed as they are required; that the Sussex County Engineering Department also have inspection responsibilities to the project in general; that there are multiple overlapping agencies and reviews to prevent negative situations from happening and typically if construction is going to cause drainage issues, the issues arise before completion of the project creating an opportunity to remedy any negative situations prior to the completion of the project.

Ms. Stevenson questioned if DelDOT will be requesting 12-ft. of the Coker's front yard and questioned if there is a secondary plan in the situation the Coker's are not interested in selling their property.

Mr. Robertson stated the question is if the 12-ft. is necessary and typically DelDOT requires the developer to give up land for additional roadways, roadway expansion, and multimodal pathways and trails; that normally DelDOT does not require this from properties unrelated to the Application unless the Application triggers intersection improvements, at which DelDOT could do so.

Mr. Palkewicz stated they have met with DelDOT on the project; that they are requiring widening of the road; that this is typical regardless if there are intersection improvements or not; that the widening always takes place on both sides of the road; that the goal is to keep the road where it is currently located; that this sometimes involves speaking with the neighbors to obtain easements or right-a-ways; that mostly speaking with neighbors is to address any concerns; that DelDOT is requiring shoulders to be placed on the road as well as road drainage; that if widening the road on both sides is not an option, there is the capability of moving the road more so onto the proposed property; that moving the road does come at a higher expense and involves more difficulty; that moving the road is a doable option; that this is a fallback option and these are issues worked out during the engineering and permitting process.

Mr. Todd Sammons with DelDOT stated that the widening of the road will be determined during the engineering process; that as the development stands they have not currently made a formal submission with regards to design plans; that a formal submission with design plans is required; that DelDOT, in conjunction with the developer, will identify what right of ways are currently placed; that DelDOT always strives to fit roadway widening to be that of minimal impact to the surrounding residence and potential future development; that at times there is substantial right of way already in place, not needing the developer to acquire any additional; that it is the developers responsibility to acquire any right of way easements they need; that if the developer runs into any challenges, they return to DelDOT; that DelDOT will then try to work with the developer to shift the road alignment; that the road is considered a Collector Road, which typically means 12-ft. travel lanes with eight foot shoulders are required based on the amount of traffic that uses it; that there is an option to shrink travel lanes down to 11-ft.; that there are options to do closed drainage; that there are options to minimize right of way and easement impact; that he cannot give any guarantees as the design is not complete and DelDOT takes all of this into consideration as well as the development community and DelDOT is more often successful than not at minimizing impacts and concerns of surrounding property owners.

Ms. Wingate questioned DelDOT if there are any future projects scheduled for Hollyville Rd. in the future.

Mr. Sammons stated there are no proposed DeIDOT Capital Transportation Program (CTP) projects for Hollyville Rd. scheduled at this time.

Ms. Stevenson questioned when was the last Traffic Impact Study (TIS) performed on Hollyville Road.

Mr. Sammons stated that there is currently a TIS on Hollyville Rd. being finalized, which was originally for Unity Branch; that as soon as it is finalized it will be released to Sussex County as well as the public; that he believes it will be finished within the next one to two weeks and the TIS was performed taking Autumndale subdivision in consideration along with Unity Branch.

Ms. Peet stated there was a TIS performed on the neighboring community, Unity Branch, which was originally on that evening's agenda but was pulled; that there will be a traffic expert to discuss the TIS with the Commission at the Public Hearing for Unity Branch; that the TIS is not specific to the Autumndale Application, but there were considerations made concerning the Autumndale project as part of the TIS and that the TIS is forthcoming.

Ms. Stevenson and Ms. Wingate both stated they would like to see the Traffic Impact Study before taking any action on the proposed Application.

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

In relation to Application 2021-04 Autumndale (F.K.A Fairmont). Motion by Ms. Stevenson to defer action and hold the record open for the receipt of the Traffic Impact Study (TIS), the DeIDOT Traffic Impact Study Review Letter, and for an additional 10 business days, after the announcement of the receipt of the TIS and TIS review letter, allowing for public comment on the submitted documents, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

### **C/U 2262 Matthew Hete**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwellings (4 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.25 acres, more or less.** The property is lying on the southeast side of Postal Lane (S.C.R. 283), approximately 0.22-mile northeast of Plantations Road (S.C.R. 275). 911 Address: 34360 Postal Lane, Lewes. Tax Parcel: 334-6.00-686.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the DeIDOT Service Level Evaluation Response, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis and the Applicant's survey, a copy of the Sussex County Council meeting minutes from July 28, 2020, 13 letters of support, one mail return; that the Commission may recall the proposed parcel from the Planning and Zoning Commission meeting of June 25, 2020, where the previous application requested a Change of Zone from AR-1 Agricultural Residential to MR Medium Residential along with a corresponding Conditional Use and the current Application request is only for a Conditional Use without the request of a Change of Zone.

The Commission found that Mr. Kevin Smith and Mr. Matthew Hete were present on behalf of the Application; that this project was before Planning and Zoning and Sussex County Council last year for a completely different use; that the client has decided to propose single-family homes on the property in a condominium-style format; that it appears to be four separate units on one parcel; that with the parcel being 1.249-acres it comes out to 3.2 units per acre; that he requests to read into record a letter; that the

proposed request is for four single-family style homes in a condominium development; that the units depict a one car garage and a six car parking pad driveway; that the density for the proposed layout is 3.2 units per acre; that the single-family style home is indicative of the current conditions in the immediate vicinity of the property; that the developer of Lands of Hete, LLC made every attempt to assure the design of the project conforms to the articles as present in the Sussex County Code; that the developer would like to ensure the members of the Planning and Zoning Commission are aware of what investigations have been performed on the proposed property during the public hearing; that attached to the letter are findings associated with Lands of Hete, LLC; that all documents contained shall be on record with Planning and Zoning's file; that the hope is the documents can be used as a guide to the Commission on making the recommendation and decision on the proposed Application; that he submitted into the record the letter he read and a written proposed findings of fact for the property; that the Application requests a Conditional Use for single-family condominium-style development on a parcel of land on the southside of Postal Lane; that the property is 1.249-acres in size; that the property is identified by the Sussex County Assessment Office as Sussex County Tax Map 334-6.00-686.00; that the property is currently zoned AR-1 Agricultural Residential; that the property is located within the Sussex County Environmentally Sensitive Development District Overlay Zone; that the property is located across from Sandy Brae which is zoned MR Medium Residential; that there are other developments located in the immediate vicinity of the proposed property that are zoned MR; that these developments are Plantations East, Plantations Summercrest, and Maple Wood; that there are also commercial development nearby, such as Pelican Square, Heritage Inn, Bob Evans, Tangler Outlets and Midway Shopping Center; that according to the Sussex County Comprehensive Plan the property is identified for future land use purposes as Mixed Residential; that the Strategies for State Policy and Spending identify the area as an Investment Level I; that the project is in character with a long history of development and approved applications for development in the immediate area; that the proposed development will provide housing in an area where infrastructure and transit services area available; that this thereby meets the general purpose of the Sussex County Zoning Ordinance by promoting growth, convenience, order, prosperity, and welfare of Sussex County; that the project will be served by central water through Tidewater Utilities; that wastewater collection will be provided through Sussex County by the Dewey Beach Sanitary Sewer District; that this recommendation of approval is subject to the following Conditions; that there should be no more than four dwelling units on the subject parcel; that the final record plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission; that he did prepare Chapter 115-194.3 compliance within a letter which he submitted into the record; that the letter stated, if the Application was acted favorably upon, the proposed drainage design would be subject to the approval of Sussex Soil Conservation District for stormwater management; that if DelDOT requires roadway improvements or drainage improvements that road frontage will be required as well; that water and sewer can be provided by Tidewater Utilities and Sussex County; that four units per acre meets the requirement of Sussex County; that four units per acre seems pretty small considering the area; that there are no threatened species indicated on the proposed property; that there is no indication of tidal and nontidal wetlands being located on the proposed property; that the proposed layout of the development promotes open space; that what is proposed to be impervious is what is currently shown on the plan; that there may be a sidewalk to a step but generally .789 acres or 63% of the site should remain green open area; that potentially Sussex Conservation District may request to have a BMP infiltration area placed on the property; that regarding public and private infrastructure, in the immediate area there is a parking facility provided for wastewater and water utilities; that there are no know historical and cultural resources located on the property; that currently there is only one single-family residence located on the property; that the Applicant has gone to Sandy Brae Development and to the neighbors along Postal Lane over the past year with the preliminary plan to ensure the surrounding neighbors approve of the Applicant developing the property and the Applicant presented into the record two additional letters of support from surrounding neighbors that were not originally included.

The Commission found that Mr. Matthew Hete spoke on behalf of his Application; that he performed a lot of due diligence working with the neighbors to make sure they approved of the proposed project and helped overcome any objections the neighbors may have; that he has spoken to all three nearby developments as well as all adjacent neighbors; that all neighbors are in support of the project; that this is shown in the written letters of recommendation for the project; that his proposed plan is to place single-family homes that fit into the neighborhood; that there will be no mobile homes or excessively large homes, only homes that are conducive to the surrounding area; that he has children and his ultimate goal is to try to keep them in the area; that his children cannot continue to live in the area and have employment here because there is not a place affordable for them to live; that his intention is to place single-family homes on this property, making it affordable for his children to move into; that it is not his intention to sell after placing the homes; that he wanted to keep the proposed homes for his family; that to make it easier on the neighborhood he made a one driveway entrance and exit; that this had previously been a subject of objection by Sandy Brae and other associations; that they were concerned about multiple driveways, so he created only one entrance off of Postal Lane; that he believes DelDOT is considering performing some widening of the road as he previously read this in an article within the Cape Gazette; that he has friends that are builders; that they are taking down homes in the Lewes and Rehoboth areas; that he would like to take advantage of the homes that will be plowed down and relocate them to the proposed property; that he hopes in doing this it will keep the heritage of Lewes and Rehoboth alive; that the surrounding area is listed as MR, but his intention is to keep the area Agricultural Residential.

Ms. Stevenson questioned how many units per acre are permitted within the AR-1 Zoning District and questioned if the Applicant has enough space for the widening of the road as she feels the road desperately needs it.

Mr. Whitehouse stated since the zoning is not changing, this Application falls within the density bonus provisions of the AR-1 Zoning District; that a multi-family application may propose to increase above two dwellings units to the acre but no more than four dwelling units to the acre; that each unit, over the two dwelling units per acre, must contribute the density bonus fee; that this fee is per unit; that off the top of his head, in this location, it is \$20,000 per unit for two additional units and this would go to an off-site open space contribution.

Mr. Robertson stated that money goes into the funds administered by the land trustee; that then Sussex County uses that money to purchase off-site open space; that an example of this was the big property near the rail trail along Rt. 9 and there have not been many Applicants to do this in the past.

Mr. Smith stated the Applicant will provide the necessary right of way that DelDOT requires.

Mr. Hete states he intends to add a walking path, biking path, or sidewalk along the parcel's frontage; that although this may not extend down the street, he hopes this would be beneficial to the neighborhood.

Mr. Mears stated the Applicant remedied the parking concerns the Commission had from the previously proposed Application.

The Commission found that there was no one 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.

In relation to Application C/U 2262 - Matthew Hete. Motion by Ms. Stevenson, to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

**ADDITIONAL BUSINESS**

Mr. Whitehouse stated that the Planning and Zoning Department has approximately 25 site plans awaiting review from the Commission; that he questioned if the Commission would be interested in attending an additional Planning and Zoning meeting on a Wednesday afternoon, approximately between 3:00 pm and 5:00 pm, to potentially looking at other business items only.

Chairman Wheatley stated he approved of the additional meeting on a Wednesday; that he feels it should be done every month; that if a meeting is held for only other business and old business, the meeting would probably not last more than two hours; that he feels in those two hours the Commission could address 40 to 50 items; that this may allow the Commission to add an extra public hearing onto the agenda of the already scheduled Commission meetings; that he feels having the extra meeting could help current matters; the public could attend but there would be no public testimony taken; that the Commission could be flexible on the dates and times and he feels if Planning and Zoning are going to have these regulations, the least they can do is provide good service.

Mr. Mears stated it is an additional meeting but does fall within normal business hours.

Ms. Wingate questioned if staff would be able to keep up with the work.

Ms. Scott stated in addition to the already stated, it would help Planning and Zoning staff clear pending business left behind from the departure of Planners Chase Phillips and Nicholas Torrance.

Chairman Wheatley stated he hopes the Sussex County Staff and Administration are sensitive to how important the work is; that if Planning and Zoning need help, they only need to ask; that this is the heart and soul of what the County Government does and he wants to make sure the Planning and Zoning Department have everything they need.

**Meeting adjourned at 7:05 p.m.**

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