

THE MINUTES OF THE REGULAR MEETING OF JANUARY 13, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 13, 2022, 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 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, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, Mx. Jesse Lindenberg – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse stated that the agenda was revised on January 10, 2022, to remove application C/Z 1938 MARS-RE, LLC from the agenda and the Application will be re-noticed for a future meeting on a future date.

Motion by Mr. Mears seconded by Ms. Wingate and carried unanimously to approve the Agenda as revised. Motion carried 5 - 0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the December 16, 2021, Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0

OTHER BUSINESS

Assawoman Lakes RPC (F.K.A Evergreenes)

Preliminary Site Plan and Landscape Plan

This is a Preliminary Subdivision Plan for the creation of a Residential Planned Community (RPC) subdivision to consist of 45 single-family lots with access off of Parker House Road (S.C.R. 362). The plan complies with Chapters 99 and 115 of the Sussex County Code and all conditions that have been established by the Commission. Tax Parcel: 134-16.00-51.00. Zoning District: GR-RPC (General Residential – Residential Planned Community). Staff are awaiting receipt of agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Site Plan and Landscape Plan. Motion carried 5-0.

Patriot's Glen MR-RPC (CZ 1877)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of a Residential Planned Community (RPC) subdivision to consist of 161 single-family lots with access off of John J. Williams Hwy. (Rt. 24). The plan complies with Chapters 99 and 115 of the Sussex County Code and all conditions that have been established by the Commission. Tax Parcels: 234-29.00-66.00, 66.01, & 66.02. Zoning District: MR-RPC (Medium Residential District – Residential Planned Community). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

Brasures Pest Control

Preliminary Site Plan

This is a Preliminary Site Plan for CU 2271 for the amendment to CU 1920 (Ordinance No. 2240) to allow for office space to be located on the parcel and other land improvements. Having access off the east side of Dickerson Road (S.C.R. 389). Staff note that there is existing and proposed parking within the front setback, the applicant has written a letter to forgo this requirement. The plan complies with the Sussex County Zoning Code and all conditions that have been established by the Commission. Tax Parcels: 533-18.00-24.00 & 25.00. Zoning District: AR-1 (Agricultural Residential) Zoning District. Staff are awaiting agency approvals.

Motion by Mrs. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Final Site Plan with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

C/U 2279 Ron Sutton

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (11 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.035 ACRES, MORE OR LESS. The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 0.66 mile south of Garfield Parkway (Rt. 26). 911 Address: 33309 Kent Avenue, Bethany Beach. Tax Parcel: 134-17.11-6.00

The Commission discussed the Application which had been deferred since December 9, 2021.

Mr. Mears moved that the Commission recommend denial of C/U 2279 for Ron Sutton for 11 Multi-Family Dwellings based on the record made during the public hearing and for the following reasons:

1. The Applicant seeks a Conditional Use to permit 11 multi-family units on a 1.035-acre parcel of land. Such a high-density development is not appropriate for this small parcel of land.
2. The Application is not consistent with the other uses and single-family homes in the vicinity. While there are other multi-family developments in the area, they are located on much larger parcels that can accommodate the necessary parking, safe vehicular movement, stormwater management, and other features. This small, one-acre parcel is not suitable for 11 units.
3. The 11 multi-family dwellings would allow an increase in density on this site along Kent Avenue. Kent Avenue is a relatively small, two-lane road with no sidewalks. It is heavily traveled already, and it cannot support the increased traffic that would result from this increased density.
4. Although the current Sussex County Comprehensive Plan indicates that this property is in the Coastal Area, it does not mandate that a Conditional Use for 11 multi-family dwelling units must be approved on this small, one-acre parcel. The Plan states that "Sussex County's base density of 2 units per acre is appropriate throughout this classification." That statement supports the continuation of the existing MR zoning and the 4 units per acre base density that is permitted in the MR District.
5. The current Sussex County Comprehensive Plan suggests that densities greater than 2 units per acre can be justified in the Coastal Area under certain circumstances. However, several of the conditions for this greater density, as mentioned in the Plan, are not satisfied. For example, the proposed 11-unit multi-family development is not in keeping with the area. The proposed multi-family development is not on a main road at or near a major intersection. Instead, Kent Avenue is a narrow, two-lane road at this location. Also, it is not appropriate to create such a

small, standalone Conditional Use property that would be overburdened with the planned 11 multi-family units.

6. Several neighbors appeared in opposition to the application, citing concerns about traffic; the drainage problems that exist in the area that would be increased by this project; the difficulty in accommodating stormwater management on this small parcel in addition to the 11 proposed homes; and other associated impacts. I find this testimony to have merit.
7. For the reasons stated, the proposed Conditional Use does not promote the overall health, safety, convenience, and general welfare of the neighborhood or the County.
8. There is nothing in the record to suggest that the 11-unit Conditional Use is more appropriate than the four dwelling units that are permitted under the existing MR zoning on this small property.
9. For all of these reasons, it is my recommendation that this Conditional Use be denied.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend denial of C/U 2279 Ron Sutton for the reasons and conditions stated in the motion. Motion carried 4 – 1.

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

C/U 2282 Lawrence Davies

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A MICROBREWERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.35 ACRES, MORE OR LESS. The property is lying on the southeast corner of the intersection of Cedar Neck Road (S.C.R. 357) and Hickman Road (S.C.R. 359). 911 Address: 38450 Hickman Road, Ocean View. Tax Parcel: 134-9.00-27.00

The Commission discussed the Application which had been deferred since December 9, 2021.

Mr. Mears moved that the Commission recommend approval of C/U 2282 for Lawrence Davies for a Microbrewery based upon the record made at the Public Hearing and for the following reasons:

1. The use will be located in an existing building at the intersection of Cedar Neck Road and Hickman Road where other commercial and business uses currently exist. This location is consistent with the adjacent zoning and uses.
2. This small use will not adversely impact traffic or area roadways.
3. This small use will not adversely affect the neighboring properties or community.
4. As a small microbrewery, there will not be many deliveries to or from the premises.
5. As a microbrewery, the Applicant will be required to comply with all State and Federal requirements governing the use.
6. The use will be served by Sussex County Sewer.
7. No parties appeared in opposition to this application.
8. This recommendation is subject to the following conditions:
 - a. The use as a microbrewery shall comply with all State and Federal requirements for its use and operation.
 - b. The use shall comply with all Sussex County Engineering Department requirements concerning the connection of the microbrewery operation to the Sussex County Sewer System. In addition, any waste or spent materials associated with the brewing operations shall be stored inside of the building until removed by legal and appropriate methods.

- c. The hours of operation for public access to the microbrewery shall be between 11:00 am and 10:00 pm each day.
- d. There shall be no outdoor music on the patio. The location and size of the patio shall be shown on the Final Site Plan and clearly marked on the site itself.
- e. Since this property is zoned C-1, the signage shall comply with the requirements of the C-1 Zoning District.
- f. All roadway and intersection improvements shall be subject to the requirements of DelDOT.
- g. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2282 Lawrence Davies for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/Z 1944 Executive Lawn Management Property, LLC (c/o John Huss)

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.68 ACRES, MORE OR LESS.

The property is lying on the north side of Lewes Georgetown Highway (Route 9) approximately 0.55 mile west of Prettyman Road (S.C.R. 254). 911 Address: 25141 Lewes Georgetown Highway, Georgetown. Tax Parcel: 235-30.00-6.20.

The Commission discussed the Application which had been deferred since December 9, 2021.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1908 for Executive Lawn Management Property, LLC for a change in the zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is currently zoned AR-1 along Route 9. It was previously approved for use as a landscape business in 2017 as Conditional Use # 2093 and Ordinance #2521. The Applicant seeks to convert the existing conditional use to the C-2 Medium Commercial District to allow greater flexibility in his landscaping business and to allow more retail sales associated with that use to occur from the site. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location along Route 9 will benefit nearby residents of Sussex County by providing a commercial location for the Applicant’s business. Nearby residents will not have to travel to Lewes, Milton, Long Neck, or Georgetown for the retail and service uses that can be provided at this site.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is mostly in the “Low-Density Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.

8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval for C/Z 1944 Executive Lawn Management Property, LLC (c/o John Huss) for the reasons stated in the motion. Motion carried 5-0.

C/Z 1948 The Grande at Canal Point Maintenance Corporation

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL NUMBER 15 OF C/Z 1538 (ORDINANCE NO. 1700) AND C/Z 1926 (ORDINANCE NO. 2786) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS. The property is lying on the east side of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road (S.C.R. 271). 911 Address: N/A. Tax Parcel: 334-13.00-334.00, 1448.00-1750.00.

The Commission discussed the Application which had been deferred since December 9, 2021.

Mr. Mears moved that the Commission recommend approval of an amendment to Condition #15 of Change of Zone # 1926 and Ordinance #1700 regarding docks within the Grande at Canal Pointe RPC based upon the record made during the public hearing and for the following reasons:

1. This matter was previously considered by the Commission, and the Commission recommended an amendment to Condition #15 to allow one dock for kayaks and paddleboards. Since both DNREC and the U. S. Army Corps of Engineers have jurisdiction over the location and dimensions of such a dock, the recommended approval was subject to their jurisdiction. After the Council hearing, the Commission's recommendation was amended by Council to include specific dimensions of the dock, which evidently are impossible or impractical to meet according to the record from this current application. For this reason, I move that the Commission's original recommendation be followed, with the County approval being subject to the review and approval of the state and federal agencies who have jurisdiction over a dock like this. This recommendation is again based upon the following reasons:
2. Condition #15 of CZ # 1926 and Ordinance #1700 currently states that "No piers, docks, boat ramps or other water-related facilities shall be permitted" within the Canal Pointe RPC.
3. The Canal Pointe RPC is adjacent to the Lewes-Rehoboth Canal, which is a source of water-related activities for many Sussex County residents and visitors.
4. It was shown during the public hearing that this area of the Lewes-Rehoboth Canal has developed with many personal docks attached to individual lots as well as a large marina associated with the Town of Henlopen Acres.
5. The revised condition #15, which will be limited to non-motorized boats, will have less of an impact on the waterway and the environment than many of these existing docks and the motorized boats that they serve.
6. With one point of access to the Lewes-Rehoboth Canal, there will be a well-designed and permitted dock available to the residents of Canal Pointe instead of multiple undefined points of access that could cause more damage to the Canal and the environment.
7. Condition #15 of CZ # 1926 and Ordinance # 1700 should be amended to state as follows:

- “15. *Subject to the receipt of all applicable permits from the U.S Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, this RPC shall be permitted to have only one dock for the use of residents. This dock shall only be utilized for kayaks and paddleboards. No motorized boats shall be launched or docked at this location. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the RPC. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC. No other piers, docks, boat ramps, or other water-related facilities shall be permitted.*”

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1948 The Grande at Canal Point Maintenance Corporation for the reasons stated in the motion. Motion carried 5-0.

C/U 2277 Avalon Woods Owners Association, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT TO DESIGNATE LOT 39, BLOCK A WITHIN THE EXISTING AVALON WOODS SUBDIVISION AS OPEN SPACE AND TO ALLOW FOR A SHED AMENITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.42 ACRES, MORE OR LESS. The property is lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A). 911 Address: 27826 Avalon Drive, Georgetown. Tax Parcel: 234-15.00-81.00.

The Commission discussed the Application which had been deferred since December 16, 2021.

Ms. Stevenson moved that the Commission recommend approval of C/U 2277 for Avalon Woods for an accessory building in the form of a shed to be located and used by the development's HOA within the development's Open Space, based upon the record made at the Public Hearing and for the following reasons:

1. The use is an existing shed located within a portion of the Open Space of the Avalon Woods subdivision. The Avalon Woods Homeowner's Association intends to use the shed for the storage of the Association's records and other items.
2. This is a very small use that will not adversely impact traffic or area roadways or any neighboring properties within the development.
3. The use will be a benefit to the Avalon Woods Homeowner's Association and the community's residents by providing a convenient and secure location for storing the HOA's records.
4. The use will not require any water or sewer service.
5. No parties appeared in opposition to this application.
6. Ordinarily, the Commission is reluctant to allow a conditional use within a subdivision. However, this is a unique situation because the Applicant is the subdivision's HOA, and the use is for the benefit of the HOA and the residents of the subdivision.
7. This recommendation is subject to the following conditions:
 - A. The site shall be located within a portion of the Open Area of the Avalon Woods Subdivision.

- B. The use shall be limited to the existing shed, which is approximately 12 feet by 20 feet in size. This shed shall only be used for the storage of Homeowner's Association documents and other items. The shed shall not be used for meetings of any kind.
- C. The shed shall be kept in a neat and orderly appearance.
- D. The failure to comply with these conditions of approval may be grounds for termination of this Conditional Use.
- E. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2277 Avalon Woods Owners Association, Inc. for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/Z 1947 Kenneth P. Adams

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT AND AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.33 ACRES AND 0.08 ACRE, MORE OR LESS. The property is lying on the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432). 911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown. Tax Parcels: 133-6.00-50.00 & p/o 50.02.

The Commission discussed the Application which had been deferred since December 16, 2021.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1947 for Kenneth P. Adams for a change in zone from AR-1 to C-3 "Heavy Commercial" based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is adjacent to C-1 property that is currently used by the Applicant's company for its construction, site work, and paving operations.
3. The property is generally located at the corner of Route 113 and Governor Stockley Road. The land on the opposite side of Governor Stockley Road is zoned C-1 and C-2. This is an appropriate location for an expansion of the Applicant's commercial zoning by adding additional C-3 land to the existing C-1 Zoning.
4. This location currently has several accessory buildings on the site, including a former airplane hangar. These buildings will be incorporated into the Applicant's existing operations at the site.
5. As stated by the Applicant, there will continue to be interconnectivity between this land and the existing C-1 land that is next to it.
6. The site will be served by central water and sewer.
7. The site is in the Commercial Area according to the Sussex County Land Use Plan. C-3 Zoning is appropriate in this Area according to the Plan.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1947 Kenneth P. Adams for the reasons stated in the motion. Motion carried 5-0.

PUBLIC HEARINGS

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

2021-15 Cobb Property - A Coastal Area cluster subdivision to divide 54.38 acres +/- into 68 single family lots to be located on a certain parcel of land and lying and being in Baltimore Hundred, Sussex County. The property is located on the northeast side of Zion Church Road (Route 20), approximately 0.5 mile northwest of Lighthouse Road (Route 54). Tax Parcels: 533-12.00-21.00 & 21.03. Zoning: AR-1 (Agricultural Residential District).

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

Mr. Whitehouse advised the Commission submitted into the record was a copy of the Applicant's preliminary subdivision plan, a copy of the Applicant's exhibit booklet, including the Chapter 99-C response, a copy of TAC comments including responses from the Division of Watershed Stewardship, Division of Public Health, U.S. Department of Agriculture and Delaware Electric Coop, a copy of the Applicant's PLUS letter, a copy of the staff review letter, a copy of the environmental assessment including the Public Facility Evaluation report, a letter regarding threatened and endangered species on the site, the DelDOT Service Level Evaluation Response and zero comments in support or opposition.

The Commission found that Mr. William Scott spoke on behalf of the Application, 2021-15 Cobb Property; that also present was Mr. Steve Marsh and Mr. Lawton Myrick, Mr. Drew Boyce, Mr. Ed Launay; that this Application is a proposed AR-1 Cluster Subdivision; that it will have central sewer; that the site is comprised of 52.4-acres; that the site front on Rt. 20; that the site is adjacent to the Waters Run Subdivision; that Ashley Manor and Millcreek Acres are located to the north; that Fenwick West is located to the east; that Wanmar Lake is located to the south across Rt. 20; that the property is currently zone AR-1 Agricultural Residential; that the site is located within the Coastal Area according to the Comprehensive Plan; that the proposed cluster subdivision would contain 68 lots; that there would be one 2-acre out parcel which would be contained by the seller; that the density would be 1.3 units to the acre which is below the 2-units to the acre, as required by the Comprehensive Plan for the Coastal Area within the County Code; that central sewer will be provided by Sussex County; that central water would be provided by Artesian; that Artesian did provide a Ready to Serve Letter which is provided in the exhibit booklet; that stormwater management will be designed to meet Sussex Conservation Districts requirements; that the lots are designed to be a minimum of 7,500 sq. ft.; that sidewalks are proposed to be on both sides of the streets; that the streets will connect to a multimodal path at the frontage along Rt. 20; that in a cluster development open space is required; that the proposed open space is 34.64-acres, which equals about 65% of the project provided; that there would be a 30-ft. buffer around the perimeter of the property; that in some areas there will be mature woods serving as part of the 30-ft. buffer; that of the 29 wooded acres of the property, 25 wood acres is proposed to be retained by utilizing the cluster subdivision structure; that the open space will be managed by a homeowners association which will be put in place for the proposed subdivision; that the residential development will be contained largely to what is currently cleared and unwooded area of the property; that Mr. Ed Launay is present and was engaged by the Applicant regarding wetland impacts; that there are no State related wetlands on the site; that they do not anticipate any impact to

any federal wetlands on the site; that there will be a 25-ft. buffer provided as required by County Code around the non-tidal wetlands; that the main amenity for the proposed subdivision would be an outdoor pool and bathhouse, a lawn for games, a mail center which will be part of the amenity and a proposed bus stop; that the project was put through the PLUS process; that the PLUS comments and the Applicant responses to PLUS are included in the exhibit booklet; that they also received comments from the Technical Advisory Committee, as well as Planning & Zoning staff; that those comments have been incorporated into the plan; that all comments provided are included in the exhibit booklet; that there is a full analysis of the Chapter 99-9C requirements, Environmental Assessment Report and Public Facility Evaluation Report presented in the exhibit book; that there are specific requirements which must be met to be considered as a Cluster Subdivision; that homes must be clustered on environmentally suitable portions of the property; that they are proposing to preserve almost all existing trees; that the project will be contained primarily on the existing open and cleared area of the site; that open space is required to meet the definition of open space as defined by County Code; that the plan proposed 65% of proposed open space; that using the cluster option will allow the Applicant to contain the mature trees, keeping the trees as a tract together; that there is a 25-ft. setback required around the wetlands, which is proposed; that stormwater management will meet the requirements of the Sussex Conservation District; that the removal of healthy mature trees will be limited; that the design of the proposed subdivision began with identifying all environmentally sensitive areas; that to save the trees they chose to push the development into the existing open and cleared area of the site; that sidewalks are required on one side of the street, but the Applicant is proposing sidewalks on both sides of the street and proposed is an infill development between other communities in the surrounding area.

The Commission found Mr. Lawton Myrick spoke on behalf of the Application; that a sewer system capacity evaluation request was submitted by GMB; that a response was received by the Sussex County Engineering Department on September 14, 2020; that follow up email correspondence took place through January 21, 2021; that a preliminary layout was reviewed and approved by the engineering department staff; that Artesian has confirmed capacity to public water and has reviewed the preliminary layout; that at Artesian's request, the waterline will be looped through the project to connect and existing 16" watermain on Rt. 20, Zion Church Rd. to an existing 12" watermain on Old Mill Bridge Rd.; that the proposed subdivision is located within Delaware Electric Coop service area; that they have been in contact with their personnel about potential utility relocation on the proposed entrance on Rt. 20; that a DelDOT preapplication and project coordination meeting was held on November 2, 2020; that since that time, DelDOT has agreed to a speed limit reduction in front of the site; that preliminary interest plans and the Letter of No Objection (LONO) application have been submitted to DelDOT and are currently under review; that a preapplication meeting was held at the Sussex Conservation District on December 9, 2020; the stormwater management design is still being finalized in coordination with Mr. Launay's final preparation of the jurisdictional determination drawings; that stormwater management designs will be in accordance with DNREC regulations and meet the goals of the Inland Bays Pollution Control Strategies; that the currently do not anticipate any permanent impacts to wetlands onsite; that there is no impact to any flood plain; that there is no significant grade changes; that as such grade relationships, predevelopment and post-development, will be similar; that the surrounding areas are either already developed or developing in nature; that the density is held to 1.3-units per acre; that the proposed front footprint is primarily an area which is already open and cleared; that removal of existing wooded area is limited; that of the existing 30-acres of trees, 25-acres of trees will remain; that there is no anticipated impact to wetlands; that a 25-ft. buffer is proposed around nontidal wetlands; that the open space will include the pool, changing room and an area for lawn games; that a nature trail through the existing woods is proposed and is being designed in conjunction with the preparation of the jurisdictional determination documents; that stormwater management is being designed to be integrated into, and co-exist with the existing

wetlands; that green technologies will be used when appropriate; that due to most of the trees being undisturbed, scenic views will be retained and due to this, the proposed subdivision will integrate well into the existing landscape.

Ms. Wingate questioned if there is a multimodal path proposed and requested someone point out the Henry C. Jackson tax ditch in relation to the site and she questioned if the stormwater management ponds would eliminate some of the current drainage problems in the area.

Mr. Scott stated yes, a multimodal path is proposed to the front of the project, along Rt. 20; that there was a map submitted containing tax ditch information; that there are no tax ditches that affect the site and stormwater management is required to make drainage better than current conditions.

Ms. Stevenson questioned if the 5'x8' bus stop pad, requested by the Delaware Transit Corporation, was located on the submitted plan and she questioned if wetland permits are required as mentioned in the Applicant's PLUS application.

Mr. Myrick stated the 5'x8' bus stop pad is not shown on the current plan but stated it would be included on the final site plan near the front of the site and the Applicant can accommodate the requirement.

Mr. Steve Marsh stated when they applied, they were uncertain how the wetland delineation would come back; that there were some ditch crossings; that the crossings are not located within the jurisdiction of the Waters of the U.S.; that they do not anticipate any impacts to wetlands; that at the request of both Sussex County and Artesian, there will be a temporary crossing to get through the wetlands; that most likely the water will be a directional drill and maybe a jack and boar on the sewer; that these would only be temporary and would be restored.

The Commission found that Mr. Michael Lingenfelter, and his wife Mrs. Joelle Lingenfelter raised concern of drainage issues; that Mr. Lingenfelter stated they have lived at their property since 1993; that they now have issues with their crawl space being wet constantly, when it was never an issue before; that he believes this may be due to the development of a nearby subdivision, but he is unsure; that where he lives is much like a basin; that there is nowhere for water to escape from his property; that on the maps submitted by the Applicant, the wetlands look like a moon, with half of the moon being on the proposed site and the other half being located on their property; that he is not opposed to the the Application; that he is very concerned about drainage being an issue and how it will impact his property; that there is a ditch between his property and the proposed project; that he states the water does not go anywhere; that the water comes across his front lane, running around his property and onto the property adjacent to his; that he stated the flooding has increased; that all the nearby subdivisions are running into Dirickson Creek located on the other side of Old Mill Bridge Rd.; that he feels the way the current plan was submitted it is similar to building a dike; that the flooding issue will most likely wipe out the deer population in the area; that there is an area on the proposed property which is under water all the time; that there are huge ditches which run a cross the property; that there is a pond on the property which has recently turned milky; that it had never been milky for 25 years up until recently; that he and his adjacent properties have wells; that he would be excited to be part of central water and sewer especially if the Application were approved; that Mrs. Lingenfelter questioned how the Application would affect their ability to use their property for hunting and the setbacks for shooting; Mrs. Lingenfelter mentioned concerns regarding liability should residents veer off the trails onto their property; that she mentions current issues with getting out from their property and questions if any traffic lights would be placed.

Ms. Wingate questioned Mr. Lingenfelter if he felt the ditch, on the proposed site, were maintained by the Applicant, would make a difference in drainage issues.

Mr. Lingenfelter stated the main ditch comes off Rt. 20; that the ditch goes into the first pond; that there is another ditch where the water flows, but he does not know where the water flows to; that the water flows from the proposed site onto his property and there are old ditches, which if maintained could potentially make a difference in drainage issues.

Mr. Robertson stated he cannot speak to liability concerns as it is personal to The Lingenfelters; that he is always reluctant to comment on concerns regarding hunting; that their property of six or seven acres already has hunting limitations and he advised The Lingenfelters to consult their attorney with their questions.

The Commission found Mr. Edward Launay spoke on behalf of the Application; that the site is unique in terms of waters and what has happened on the site; that the areas being referenced as ponds are largely borrow pits created a number of years ago; that the borrow pits are isolated; that there is drainage which runs into the borrow pits; that the borrow pits are not the main drain way which will serve the site once developed; that there is a man-made ditch on the site; that it will not be regulated by the Army Corp of Engineers; that the ditch eventually runs to a wetland area located behind the Waters Run development; that located there, is a pipe near the highway, which the water drains to; that this will be the subdivisions drainage way as well; that the storm water basins will connect, drain into the pipe which runs and drain under Old Mill Bridge Rd.; that there is a highway ditch; that there is a ditch which runs down the left property line and interconnects to one of the old borrow pit areas; that the ditch then runs into a larger borrow pit area which is not located on the proposed property; that the borrow pits have berms; that the borrow pits are interconnected by ground water, but they are not flowing from one borrow pit area to another; that there is a ditch that runs into the system of borrow pits; that there is one borrow pit he believes will be regulated by the Army Corp of Engineers as a wetland and Waters of the United States; that this is due to that particular borrow pit being connected to other wetlands which run through the property and drain to the culvert at Old Mill Bridge Rd.; that the Applicant is not planning on adding any water into the borrow pit system; that some of the smaller borrow pits could be converted into a storm water management system at some point; that he does recognize there may be a problem as the borrow pits are not necessarily connected the ditch which allows it to drain; that this is the reason it is important the Applicant not add any water into the borrow pits; that the Applicant will have to submit stormwater management plans to the Sussex Conservation District for approval; that Sussex Conservation District will review the plans and provide a positive conveyance off the site, which is the ditch system heading towards Old Mill Bridge Rd. to the north; that the Applicant is testifying they will not add any water to the borrow pit areas and he feels this is the only thing within the Applicant's control on the site.

Mr. Hopkins stated often during construction the topography is changed, which results in stopping the water from sheeting over onto adjacent properties; that often the water is retained, or the flow is redirected to a more positive conveyance, and he questioned if this was the expectation for the proposed project.

Mr. Ed Launay stated the expectation is the Applicant will be directing the flow into their stormwater management systems located on the site; that the basins will follow the ditch line in the field, discharging in the area to the east; that he submitted into the record colored renderings and photos showing the different wetlands located on the site; that it also highlights some of the ditches; that it shows the ditch existing on the site heading toward Dirickson Creek; that there currently is no water in

the ditch despite being the middle of winter; that there is water which lays in the ditches and the Applicant can only provide ditch maintenance if the ditch is located on the property.

The Commission found Ms. Roseanne Schneider spoke with a concern regarding the proposed subdivision entrance being directly across from the entrance of Fenwick West development; that there is increased traffic on Rt. 20 than there has been in the past; that she has lived in Fenwick West since 1995; that she lives on the corner of Fenwick West, so she is very aware of the traffic in and out of the development; that there is a small additional entrance, off of New Rd. into Fenwick West, but the entrance directly across from the proposed subdivision entrance is the main entry point for Fenwick West; that one accident did occur previously in from of the proposed site; that traffic travels rather quickly; that when cars are stopping to turn into Fenwick West, cars will be passing, the vehicles waiting to turn, on the shoulder and her concern is vehicles will be trying to exit simultaneously.

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

Ms. Stevenson stated she would like to see a provision placed in the covenants stating there could be active hunting nearby.

Mr. Robertson stated there is already an Agricultural Protection Notice which states expectations of being near land being used for Agricultural purposes; that it is modified for hunting purposes and places residents on notice to expect hunting activities and noise.

Ms. Wingate added if the Application should be approved the Applicant could place No Trespassing on neighboring properties.

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

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

In relation to Application 2021-15 Cobb Property. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

2021-12 Miralon (F.K.A. Cool Spring) – A cluster subdivision to divide 72.20 acres +/- into 144 single family lots to be located on a certain parcel of land and lying and being in Indian River and Lewes & Rehoboth Hundred, Sussex County. The property is located on the northeast side of Cool Spring Road (S.C.R. 290), approximately 1.1 mile south of Fisher Road (S.C.R. 262). Tax Parcel: 234-5.00-37.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission submitted into the record a copy of the Applicant's subdivision plan, a copy of the Applicant's exhibit booklet, including the Chapter 99-9C response, a copy of the staff review letter, a copy of TAC comments including Department of Agriculture, DNREC, Sussex County Engineering Department Utility Planning Division, the Division of Public Health, a copy of the PLUS review and PLUS comments, a letter from Sussex County's Mapping and Addressing Department, three letters of opposition, petitions with a total of 16 signatures in opposition, zero letters in support; that he states as of the afternoon of January 13, 2022, he received a letter from DelDOT which has been circulated to the Commission.

The Commission found that Ms. Mackenzie Peet, Esq. spoke on behalf of the Applicant, 2021-12 Miralon (F.K.A. Cool Spring); that also present was Mr. Jason Palkewicz; that the Applicant has submitted an extensive booklet for consideration; that the Commission has had the booklet for at least 10 days; that the Applicant proposes Miralon, as a cluster lot subdivision to divide 72.2-acres into 119 single-family lots; that the public notice, as advertised, suggested the request was for 144 lots; that requested is 119 lots; the acreage is made up of portions for lots, streets, and open space; that 36.4-acres, a total of 50% of the parcel, will be dedicated to interconnected open space; that the proposed cluster development is superior in design as compared to a standard subdivision; that the cluster subdivision provides significant amounts of open space, landscape buffers to protect and avoid development in environmentally sensitive areas, a stormwater management system which will act as an amenity and natural companion to the natural features on site; that the plan provides amenities, including a pool and bathhouse, in addition to a trail which connects to sidewalks, which are located on one side of the street; that the trail will also connect to the DelDOT multimodal path; that the project is located on the northeast side of Cool Spring Rd., approximately 1.1-mile south of Fisher Rd., approximately 1-mile north of Stockley Rd.; that the property is located adjacent to the Springtown Farms community; that the project is located in the vicinity of Ridings at Rehoboth, Ocean Meadows, Cool Spring Farms and Spring Haven; that the property is located within a low density area; that adjacent properties in all directions are designated the same; that the adjacent properties to the west of the site are Agricultural Land Preservation easements; that properties to the east of the site, located off of Forest Rd., are zoned GR General Residential and located in an existing development area; that the property is currently of vacant use; that the Application proposes a density of 1.65 homes per acre; that the proposed density is permitted by Sussex County Code, as it permits two dwelling units to the acre; that the property is located within Investment Level 4; that the concept plan for Miralon was presented to PLUS on December 16, 2020; that a response letter was provided to PLUS, addressing their comments point by point; that the project also went through the TAC process; that the parcel is located within AR-1 Agricultural Residential zoning district; that the project meets all minimum lot area and bulk requirements; that the project proposes lots which are an average of 10,500 sq. ft. rather than the standard 7,500 sq. ft. typically seen; that the larger square footage is to accommodate a larger home type; that the project complies with Chapter 115-25 E of the AR-1 district design requirements for cluster development for the reasons stated in the project reference material provided by Solutions IPem, LLC; that the project complies with Chapter 115-25 F for a cluster development; that the proposed lots and amenities are located within environmentally suitable areas on the site; that clearing of any existing wooded area is limited to the amount required to develop the project; that the open space provided meets the official definition of acceptable open space, which requires 30% or 21.66-acres; that the project proposes 36.4-acres; that the County Code further requires 6.5-acres of the 30% be on one contiguous tract; that the proposed project provides 33-acres; that a 30-ft. forested buffer is provided; that stormwater will be handled on site, meeting the current State of Delaware regulations; that tree removal is limited to what is necessary to construct the project; that the project reserves scenic views, limiting back to back lots and providing gaps between lots; that the land plan preserves natural facilities, proposing sidewalks and connections to DelDOT's multimodal path; that open space adjacent to natural areas has been prioritized; that as required, sidewalks have been provided on one side of the road; that the proposed development complies with the Chapter 99-9C requirements of the County Code; that the plan integrates the proposed subdivision into the existing terrain and surrounding landscape; that the Applicant proposes significant open space, which total 50% of the site; that the plan provides a 30-ft. buffer around the perimeter of the site; that all proposed lots within the community are a minimum of 50-ft. from the outbounds of the property; that as evidenced by the Geo-Technology Associates, Inc. (GTA) Soil Report, the Applicant

has located stormwater management facilities based on extensive borings and soil report; that there are no wetlands located on the site; that there are no known areas requiring historic preservation on the site; that the project provides large tracts of open space, providing scenic views; that there will be a minimization of tree, vegetation, soil removal and grade changes; that disturbance onsite will be limited to the areas required for homes, roads, stormwater management and utility installation; that screening of objectional features will be provided from neighboring properties and roadways; that the screening will be provided by the proposed 30-ft. landscape buffer, existing forested areas, stormwater management facilities and by the fact, the proposed lots are located 50-ft. from the outbounds of the property; that water will be provided by Artesian as evidenced in the Will Serve Letter; that Miralon is located within the Sussex County Tier III Certificate of Public Convenience and Necessity (CPCN) area; that arrangements will be made with a commercial trash hauler to provide trash collection; that all runoff will be directed via the closed road section and storm drain network into a stormwater management system consisting of best management practices; that the proposed development is planned to avoid erosion, sedimentation, changes in ground levels, increased rates of runoff, potential for flooding and design of drainage, so groundwater recharge is maximized; that the plan accounts for safe vehicular and pedestrian movement within the site and to adjacent ways; that the entrance will be designed to DelDOT standards; that all roadways will be designed to Sussex County standards; that it is anticipated the proposed community will cause current property values to remain the same or increase; that the proposed community will not adversely affect adjacent farmland, due to the proposed landscape buffer and previously existing wooded areas providing separation to surrounding properties; 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 the site access is located off of Cool Spring Rd.; that the Applicant has discussed roadway improvements with DelDOT, specifically regarding frontage on Cool Spring Rd. and entrance improvements; that the project is compatible with other land uses, as it is adjacent to and in the vicinity of a number of other similar residential communities; that the project is therefore compatible in design, density, homestyle and land use; that there will be a officiant stormwater management system, which acts as an amenity and runoff will be treated for water quality and quantity prior to discharge.

Ms. Stevenson requested confirmation that the lots are located at a minimum of 50-ft. from the edge of the property; that she questioned the amount of road frontage and questioned how it is determined Miralon will not affect the schools, public buildings, and community and she questioned what “relatively adjacent” stands for in reference to the other residential communities and how the communities are compatible to the proposed subdivision; that Ridings at Rehoboth and Ocean Meadows are located on Beaver Dam Rd., that one community discussed is a manufactured home community; that other discussed community has a half-acre and ¾-acre lots and questioned if there is a specific calculation to come up with what is considered within the vicinity of a site and questioned if a Forest Assessment conducted.

Ms. Peet stated the lots are located at least 50-ft. from the edge of the property; that the entrance area on Cool Spring Rd. and frontage area within the vicinity of the entrance is where entrance improvements have been discussed with DelDOT; that the substantial impact to schools, public buildings, and community are based on the comments provided by PLUS; that to the east of the proposed site, located off of Forest Rd., the areas are located within GR General Residential Zoning District; that in the vicinity of the site specifically is Ridings of Rehoboth; that they use the Subdivision layer of the Sussex County Maps to determine the vicinity to the site; that the communities mentioned were only provided as a sampling of communities within the vicinity of the site; that the Department of Agriculture did request

a Forest Assessment be complete in a letter submitted and to her knowledge the Forest Assessment has not been completed.

Mr. Jason Palkewicz stated the frontage is 400-ft., which is the area fronting the road; that the DeIDOT road improvements will be constructed along the extended frontage; that this will include where the strip lots were subdivided off; that the Applicant will improve the road but he cannot say if any property will be required to be taken; that turn lanes will not be placed; that proposed are shoulders and travel lanes; that the Applicant cannot take property unless a property owner gives it to him; that a Forest Assessment has not been completed; that he does not believe there is a Forest Assessment anticipated to be completed at this time; that regarding how adjacent subdivisions were chosen, they chose communities from the subdivision layer of the County map which had lots on the site already; that they chose not to include any communities which were not yet constructed or finished; that there is no specific calculation used to determine “the vicinity” from the site and regarding impacts on schools and communities they rely on the comments from PLUS.

Mr. Hopkins stated past the proposed development on the left, there is a lane that refers to itself as Cool Spring Private Development and he questioned if the two properties share the same owner.

Mr. Palkewicz stated he does not know if it is the same owner and stated the Applicant is not calling the project Cool Springs, as the name had already been used.

The Commission found that Mr. Kevin Landkrohn spoke in opposition to the Application; that they live directly across from the proposed development; that they both have already signed the petition; that they also have submitted individual comments; that they have come up with more comments and questions; that they questioned if only people within 200-ft. of the property were notified; that he mentioned concern about street lighting; that there are not many street lights in the area; that he feels the lights could be a generator for light pollution in the area; that the statement was made the Applicant anticipates no adverse impact on property values; that he cannot understand how the development would not negatively affect his property value by increased traffic flow and construction noise; that he feels these issues would cause difficulty for him to sell his home; that he mentions the entrance to the proposed subdivision is off a two-lane road; that the entrance is located around a blind curve and should be something to consider when dealing with the proposed density of housing.

The Commission found that Mrs. Kathy Landkrohn spoke in opposition to the Application; that she stated comments were made stating there will be no negative impact of infrastructure and schools; that she fails to see how that can be so; that she has a concern about the removal of the forest; that she mentioned the previous Application for Cobb Property is developing in already open space with little to no tree removal; that the subject property is completely forested; that the removal of the forest will affect the wildlife and surrounding properties; that she request the Commission require a Forest Assessment be completed; that there are old trees present in the existing woods; that she recently saw a Pileated Woodpecker, which requires contiguous forest and old forest in order to nest and propagate and she has also seen hawks, eagles, owls and other types of birds in the area.

Mr. Whitehouse stated in terms of the physical postcard notifications, all owners on record are notified for properties within 200-ft. of the subject property boundaries; that in addition there is a yellow site notice placed at the site frontage; that press notices are placed in newspapers at least 15 days prior to the public hearing; that it is noticed and publicized on the Sussex County website and the Application also went through the PLUS process, requiring notice on the State website and from the County level, there are multiple notices which go out.

The Commission found that Mr. Doug Romaine spoke in opposition to the Application; that he is concerned about the water management system and potential mosquito issues it could cause; that he questioned if the 30-ft. buffer will be made up of natural, already existing trees or will the buffer be made of much smaller plantings; that he has concerns regarding traffic and the infrastructure; that he questioned if a left turn lane is being placed and if so how will it be constructed; that he questioned, with only one way in and out, how do residents get out of the community in an emergency if the entrance is blocked; that he mentions concern about impacts on schools; that he questioned if the homes will have interior sprinkler systems; that he is concerned with homes being closed together a fire could easily spread; that he questioned if Artesian will provide wastewater management on the site and he does not believe the necessary piping exists to pump wastewater offsite.

Mr. Robertson stated the trees would stay; that if the Application were to be approved, there is a standard Condition the Commission developed stating that within the buffers if there is any existing forest or trees, they remain undisturbed and be shown this way on the final site plan and silt fencing would be located on the inside of the buffer to ensure no disturbance during site work.

Chairman Wheatley stated the one entrance and exist speaks to interconnectivity; that there is a bit of give and take to the subject; that law enforcement prefer there only be one way in and one way out, in the situation there would be a chase; that the fire department would like to see two points of entry and exit; that he states the Commission does try to provide interconnectivity whenever possible; that it is a known concern; that interior sprinkler systems are beyond the prevue of the Commission; that he believes sprinklers would not be placed, as it is not a requirement in Delaware; that there will not be an on-premise wastewater system; that Artesian will pump the wastewater and treat offsite; that there must be existing piping for Artesian to tie into, or piping will be required to be placed and construction for piping would depend on the location of the tie in point.

Mr. Palkewicz stated the stormwater management ponds are proposed to be wet detention ponds, where the ponds have a constant pool of water in them; that the community will be required to have a company maintain the ponds once built; that there will be a left turn lane into the property, which was a requirement by DelDOT; that 10-ft. is the minimum separation between buildings before firewalls are required; that proposed the homes are 20-ft. apart; that the intent is to keep the existing trees; that the County Code states if the existing trees do not comply to the buffer requirements, the Applicant is required to supplement the buffer or make it comply to the requirements; that this will be comprised of tall and small vegetation to provide the fully vegetated required buffer; that there will be a pump station located on the property; that the force main will be pumped off the property and head south, down Cool Spring Rd. to an existing force main down the road; that any construction work to the force main would take place at the next intersection down and the majority of construction work will take place on the shoulder of the road.

The Commission found that Ms. Eul Lee and Ms. Arlene Bell spoke by teleconference with questions and concerns regarding the proposed acreage of trees to be removed, how contiguous open space was calculated, concerns regarding the widening of the road for the entrance, concerns of the entrance location around a curve, concerns for wildlife with the removal of the trees

Mr. Palkewicz stated contiguous open space definition is the contiguous parcel plus the crossing of one road; that the open space is comprised of the perimeter of the property, the two ponds located to the left of the property and across the road; that the open space between Lot 116 and Lot 106 would not be considered contiguous open space; that they intend to save more trees than shown on the preliminary plan; that because they do not know exactly what will be required to be cut down, they

show more trees being cut down than intended; that the rendering reflects what the Applicant would intend to keep; that the site plan reflects a worst-case scenario of trees to be removed; that 67-acres of trees are proposed to be removed; that the DelDOT improvements proposed are regrading of the curve, providing proper superelevation to the curve, provide a left turn lane into the property, place shoulders along the road and provide a net widening of the road, providing wider travel lanes.

Ms. Stevenson suggested the public research Sussex County Land Trust and donate and she explains it is a non-profit organization that purchases properties within Sussex County to ensure the properties do not get developed.

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

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

In relation to Application 2021-12 Miralon (F.K.A. Cool Spring). Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

C/U 2297 Schell Brothers, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS. The property is lying on the northeast side of Warrington Road (S.C.R. 275) approximately 0.25 mile southeast of John J. Williams Highway (Rt. 24). 911 Address: N/A. Tax Parcel: 334-12.00-127.02

Mr. Whitehouse advised the Commission submitted into the record is a copy of Ordinance No. 2479 from C/U 2046 dated December 13, 2016, a copy of a letter from the Applicant, a copy of the DelDOT Service Level Evaluation Response, the staff analysis, zero comments in support or opposition and one mail return.

The Commission found that Mr. Jon Horner, Esq. spoke on behalf of the Applicant, Schell Brothers, Inc.; that he is the general counsel for Schell Brothers, Inc.; that the Application is a request to change the working hours in the community known as Arbor Lynn to be consistent with the other Schell Brother communities; that Arbor Lynn currently has an 8:00 am start time; that every other Schell Brother community has a 7:00 am start time; that they have found allowing the contractors to arrive at the site earlier has a positive impact on traffic, as well as the ability to construct the homes; that most people are up by 7:00 am and Arbor Lynn is a bit isolated from other residential communities which would have noise impacts from the proposed time.

Mr. Hopkins questioned if Saturdays were the day the Commission moved the start time back to 8:00 am; that he questioned why the Commission chose an 8:00 am start time and he stated 8:00 am is when school bus traffic becomes an issue.

Mr. Robertson mentioned the start time has been staying at 7:00 am on Saturdays but often has an earlier end time; that the 8:00 am start time may have been derived by what was previously proffered; that the original Application predated the Commission's current practice; that he believes the Commission's current practice may have originated from past Schell projects; that he suggests if the Condition were

amended, it should be amended to also include the signage in English and Spanish and this will make it clear to all contractors coming to the site what the approved hours of construction are.

Ms. Stevenson questioned if the previous Application had a clear stop time; that she believed it may have been 5:00 pm; that she would like to see construction stop on Saturdays due to the number of people in the area during the summer.

Mr. Mears stated he felt it is better to get construction done earlier but allow hours on Saturdays than to by removing 52 workdays from the year.

Ms. Wingate stated by allowing Saturdays, it provides contractors to make up their pay from any missed hours due to inclement weather.

Mr. Horner stated he also believed the stop time to be at 5:00 pm; that he is not requesting any relief to the stop time and only requesting a start time at 7:00 am.

The Commission found 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.

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

Mr. Robertson clarified the only requested change would be the change in the hours of operation from 8:00 am to 7:00 am and adding the language regarding the sign; that the 6:00 pm being the end of operation and Rt. 24 being the only point of construction access was listed in the prior Ordinance.

Mr. Mears moved that the Commission recommend approval of C/U 2297 for Schell Brothers, Inc. to amend the hours of operation for the development known as Arbor Lynn (C/U 2046 and Ordinance No. 2479) so that Condition K of that approval now states:

- K. “Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday, between the hours of 7:00 am and 6:00 pm, no Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign, in English and in Spanish, confirming these hours shall be prominently displayed at the entrance to the site during construction. Route 24 shall be the only point of construction access to the site.”

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval for C/U 2297 Schell Brothers, Inc. for the reasons and conditions stated in the motion. Motion carried 5-0.

C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 3.16 ACRES, MORE OR LESS. The property is lying on the west side of Sussex Highway (Route 13), approximately 0.81 mile south of Adams Road (S.C.R. 583). 911 Addresses: 9155 & 9167 Campbell Lane, Bridgeville. Tax Parcel: 530-17.00-2.01.

Mr. Whitehouse advised the Commission submitted into the record is a copy of the staff analysis, a copy of the Applicant's conceptual site plan, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's exhibits and Applicant's exhibit booklet and zero comments in support or opposition.

The Commission found that Mr. John Sergovic, Esq. spoke on behalf of the Application, C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees; that also present is the Applicant's daughter, Ms. Pam Washington Hermann; that she grew up on the property; that the conditional use for a cabinetry shop was granted in 1973; that this business is currently still in use and has been for almost 49 years; that with Mr. Campbell's increasing age he would like to ensure if something should happen to him, the property could be used for general business use in the future, rather than limited to a cabinetry shop; that he did provide a written submission of compliance with the 2018 Comprehensive Plan; that the area is located within a low density area; that the Comprehensive Plan states that business within the area should be largely confined to addressing the needs of agricultural activities and homes; that cabinetry does address both needs; that since the property has served as a cabinetry shop for the last 48 years, it would appear this use has been in support of agricultural activities and homes; that if this were not true, the business would not have been able to operate in its existing location; that the current business use has not had any adverse effects to adjacent neighbors; that he did read the staff report; that the business operation has been low impact, and under the radar; that the neighborhood is made up of mixed uses; that there is the Applicant's cabinetry shop, All-Span, a large Delaware Electric Coop facility, and there used to be a realtor office nearby as well; that there are one to two other commercial uses in the nearby area and the request is to bring update the zoning map to conform the business use of the property.

The Commission found that Ms. Pam Washington Hermann spoke on behalf of the Application; that the property is currently operated as a custom cabinet shop; that there are three showrooms on the site; that this allows customers to come in to see in person the different cabinet styles and finishes; that customers work with designers to choose cabinets; that the designer designs the cabinets to fit exactly to the specifications of the customers' kitchen; that her father has been a cabinet maker his whole life and he is very good at his profession; that the cabinets are manufactured onsite; that the raw materials are delivered; that the cabinets are constructed by hand; that they service most of Delaware and southern Maryland for her father's whole life; that there are currently four full-time employees and one part-time employee; that her father is consulting in addition to the employees.

Mr. Hopkins states he feels the request is good housekeeping; that it is a reasonable request and within 600-ft. of a main highway should be considered business or commercial almost by default.

Mr. Mears stated he agreed with Mr. Hopkins, and he stated he has seen the company's cabinetry work, which is excellent.

Chairman Wheatley stated he is very familiar with the cabinetry use, and he agrees with both Mr. Hopkins and Mr. Mears.

The Commission found 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.

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

In relation to Application C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

C/Z 1960 OA Oaks, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS. The property is lying on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384). 911 Address: N/A. Tax Parcel: 533-11.00-82.00

Mr. Whitehouse advised the Commission submitted into the record is a copy of Ordinance 2621 for C/Z 1858 from December 11, 2018, a copy of a letter received from the Applicant, a copy of the staff analysis and Department of Staff memo, DelDOT Service Level Evaluation Response, a copy of the Applicant exhibits including suggested revisions to the Conditions, which include proposed clean copy to the Conditions of Approval, zero comments in support and opposition.

The Commission found that Mr. Jim Fuqua, Esq. spoke on behalf of the Applicant, C/Z 1960 OA Oaks, LLC; that also present was Mr. Preston Schell; that the Application requests amending certain Conditions of Approval to C/Z 1858; that the original Application requested a change of zone to HR-1 RPC High Density Residential, Residential Planned Community for a 14.8-acre parcel located on the northeast side of Zion Church Rd.; that the proposed used was for 178 unit rental apartment development; that 36 of the apartment sites having income qualifications in order to create a workforce housing opportunity; that the workforce housing opportunity is geared for the moderate to lower income residences within Sussex County; that the need for workforce housing within Sussex County was documented in and designated as a goal within Sussex County's Comprehensive Plan; that in 2008 the County enacted an Ordinance called Sussex County Rental Program to encourage development of affordable rental housing; that unfortunately as of 2018, when the original Application was filed there had been no rental projects proposed under the terms of the Ordinance; that this was due to the requirements of the Ordinance; that it did not seem to working in attracting anyone to make a proposal; that in 2018 the Applicant proposed the Ashton Oaks development; that it is a market rate development but would have the workforce housing component to it; that the Applicant proposed Conditions for the workforce qualifications which were based on the County's requirements, but were different; that they were modified from the County's requirements to allow it to be more economically feasible for the project to work; that the original Application was approved by County Council in December 2018; that it was approved subject to Conditions A through Condition S; that the Applicant is currently requesting to modify Condition B, G and I; that Condition B addressed the operation and tenant qualifications, regarding income, for the 36 workforce housing units; that the current request is not a land use request the Commission typically handles; that the request is more of an economic and housing formula; that Mr. Schell will explain the need and reasoning for the change request; that Condition G addressed the development, streets and parking area; that what is currently being requested is a clarification of the requirements; that Condition I addresses the time for completion of the recreational amenities; that typically on subdivisions, the amenities are tied to a building permit; that in this Application's case, it is an apartment building complex which calls for a different type of construction than

building individual homes and none of the Conditions in any way are intended, nor do they interfere with the goal of providing 36 workforce housing units as part of the development complex.

The Commission found Mr. Preston Schell spoke on behalf of the Application; that he has previously submitted a letter for the record; that he feels some people might say nothing was changed to Condition B; that the previous errors were made by the Applicant; that the previous language came from the Applicant and they are attempting to create their mistakes; that they are attempting to lease 36-units, at set prices, to households making 70% area median income (AMI); that they are still proposing this; that the problem lies within the original language provided by the Applicant, which allowed the rent to be a moving target; that they have since spoken with their affordable housing professionals; that the professionals stated the original language proposes something which would be impossible to manage; that with the original wording, it targets people at a certain rent level; that as soon as the tenants make more than 70% of AMI the lease can no longer be renewed; that this would create tons of turnover within the affordable units; that it is structured similar to the County's new rental program; that the first requested change to Condition B, they took a provision of the 30 year restriction, which was in B1 called "Restricted Units" and is now called "Rent" and moved it up; that it is still 30 years; that it still remains at 36 units; that the rent will now be set; that this allows it to be an identifiable rent; that it will change as AMI changes with the County; that all three bedroom units restricted within the project will have the same rent; that all two bedroom units restricted within the project will have the same rent; that the rent will be set according to United States Department of Housing and Urban Development (HUD) standards for households in Sussex County making 70% of AMI; that the biggest change made is they no longer have to deny the renewal of a lease as soon as they make above 70% AMI; that if you look at the eligible income level within the County's new proposed program it goes from 50% to 100% of AMI; that when they spoke with some of the affordable housing professionals in the County, they stated they are not required to go to 100%; that it was recommended to go to 80%; that there are plenty of households which would qualify; that there is plenty of need in the County; that if a household comes into the project making 68% AMI, their rent is set assuming they make 70% AMI; that if the household were to do better, making 71% AMI, the lease will still be able to be renewed; that tenants are required to reapply every year; that once tenants make 81% AMI the lease would no longer be renewed; that inclusive housing is where market rate units are located next to subsidized units; that if the lease was not able to be renewed, what typically happens is the tenant gets moved to a market rate unit; that the tenant isn't required to move at all; that the unit they live in then becomes a market rate unit, requiring the next available unit to be an affordable unit; that the problem was caused by the Applicant's relative ignorance, due to having never done this before; that the Applicant is requesting to fix the problem before having a built project; that after speaking with members of the Delaware Housing Coalition and Milford Housing Corporation it was mentioned the higher demand will be for the three bedroom affordable units, rather than the one and two bedroom units; that they have requested to allow a change to Section 5, Unit Integration, allowing more three affordable bedroom units; that it would only allow one to two extra three affordable bedroom units; that within Condition G of the original Ordinance, they would be required to place a sidewalk to the far side of the road, which most likely no one would use; that also the buildings in the back, which back up to the wetlands, a sidewalk would be required right next to the multimodal path; that they spoke to Mr. Hanz Medlarz, Sussex County Engineer, who agreed it made no sense; that Mr. Medlarz did suggest there be more interconnectivity between the sidewalks and trails proposed; that the change to Condition G came directly from Mr. Hanz Medlarz; that the amenities take about six months to build; that when constructing the buildings, they try to get their contractors to get as much done before leaving the site; that once contractors leave the site, it is difficult to get them back; that once a contractor is done the first building, they have them move on to the second building; that apartment complexes, unlike condos, are built all at once; that buildings are not built, then wait for the building to sell,

before moving on to building the next; that with apartment complexes the goal is to construct the building as fast as possible; that they try to shoot for four weeks, but realistically it is closer to six weeks between building starts; that the issue is, if they begin the first building and the amenities at the same time, they will begin the second building six weeks later, building three at 12 weeks and building four at 18 weeks; that the issue is the buildings could be built in four and a half months, but the amenities will not be completed; that they will not be allowed to pull building permits for building four because the amenities will not be completed; that when projects are stalled, the chances of losing subcontractors increase; that to avoid this happening the Applicant request the building permit be tied to building six; that the Applicant is not going to not build a 24 to 32 unit building in order to slow play the amenities; that the Applicant would still be invested in completing the amenities as soon as possible; that with what is requested the project would still be tied to a permit and will accommodate the Applicant's timeline of construction.

Ms. Stevenson questioned if it was typical for the Applicant to begin construction of buildings at the same time as the amenities.

Mr. Schell stated it is typical they build both at the same time, as they use the building as their leasing office; that leasing is a lot easier to have a physical leasing office where people can come to get a feel for interior and things, than it is out of a trailer or offsite; that occasionally they have began amenities three to six months after the start of the first building; that they do not intend to do that for the proposed project; that the back up at the commercial permitting office is far greater than the timeline it takes to get a residential building permit; that they have submitted their commercial building permit, and at times have had to wait three months to receive permits from the County on the clubhouses; that at times this has caused a delay to the start of the clubhouses; that this issue is anticipated with Ashton Oaks; that when they are ready to submit the final site plan to the Commission, they will also be ready to submit to the County for the commercial building permit, for the amenities and the clubhouse and they are attempting to get ahead of it as much as they can.

Mr. Robertson mentioned this proposed project is a different project being a rental versus a subdivision; that the Condition was placed on amenities for a subdivision, just as subdivisions are bonded, avoiding third-party people who purchase a lot, waiting on amenities which never come; that in the proposed Application the developer owns everything; that it would be in the developers best interested to complete the amenities; that before the Applicant applied, there was a good conversation which was had between Mr. Schell, his group and the County Community and Housing people to understand what was being requested; that one concern from changing it from 50% to 80% AMI, the Applicant will not be pegged at 70% AMI for people coming in the door and if someone applied at 71% or 72% AMI, the Applicant would have an opportunity to lease to them, as well as offset it with someone who may be a 68% or 69% AMI.

Mr. Schell stated if a household is making 75% of AMI, he will still lease to them at a rate set to 70%; that it is a fixed rate; that in that situation the resident would, in a sense, get a discount; that he agreed with what Mr. Robertson stated was correct; that the way it was previously structured, he was incentivized to grab residents as close to 70% AMI as he could; that if he were to do that, he would be setting himself up for a lot of turnovers due to the likelihood of the tenant surpassing the 70% AMI is higher and this would cause him the inability to renew the tenant's lease.

Mr. Robertson stated the County was concerned since the average would be at 70% AMI, the Applicant could potentially rent to multiple 75% tenants and no tenants who were at 60 to 65% AMI; that the County suggested a line, which was in the memo and it would still balance out at 70% to the tenants within the 36 units.

Mr. Schell stated it would not matter any longer due to the rent being fixed and the reality is if 36 people walk in the door, who qualify at 51% of AMI we would be required to lease to them.

Mr. Robertson stated the County's concern, would be the flip side of the situation; that if 36 people were to walk in making 78% of AMI, they would be leased to and no one in the '50s or '60s would have the ability to lease.

Mr. Schell stated they will have a third party consultant advise them, particularly through the first two to three years, on how to proceed with the project; that if tenants are between 50 and 80%, they do not care where the tenant is within that range; that if they begin to realize all tenants walking in the door are at 78% and they realize they are missing the lower end of the qualifying household, they will turn to Milford Housing Development Corp. for guidance on how to market to the lower-income households and they legally cannot discriminate.

Mr. Robertson stated it was not meant to discriminate and there was just concern for all 36 units being used for households closer to 80% which would then not leave availability for households under the 70% which was originally contemplated.

Mr. Schell stated that is true, but if they were to do that, they would have to be playing games with the applicants in the sense they would be prioritizing someone with a higher percentage of AMI.

Chairman Wheatley questioned if there is an average set, would it take care of the issue.

Mr. Schell stated they can do that, but there will be scenarios where it may average to 71% and when a household walks in making 75%, he will have to deny them.

Mr. Robertson stated the question is whether the County is comfortable changing from the 70% threshold to the 80% threshold.

Ms. Schell stated the County's new proposed program goes to 100%; that the County's existing program with Coastal Tide is 50 to 100%; that he felt they were pulling the requirement down; that they did this after speaking with Milford Housing Development Corp; that they stated they did not have to worry because there are plenty of households between 50 to 80% in the market; that there was no need to go to 100% to ensure the units are always full; that they are proposing 20% below the 70% of AMI and only 10% above the 70% of AMI; that this provides some room for flexibility and unless there is an administrative reason they cannot, he would agree to a clause stating that at all times the Applicant will Area Median Income of the initial income of tenants moving into the project, on average are at or below 70% of AMI.

The Commission found that Mr. Russell Huxtable spoke in support of the Application; that he is the Vice President for the Milford Housing Development Corporation; that Milford Housing Development Corporation is a private, nonprofit affordable housing developer; that they offer affordable home ownership and home repair programs throughout the states; that they are also owners and managers for multifamily housing developments; that they own about 1,600 units of affordable rental housing; that they manage about 2,200 units of affordable rental housing; that they are in support of the Application because there is an affordable housing crisis within our communities, county and state; that the proposed Application is a way to address the crisis in one small way; that regarding Section B, what is proposed does provide a bit more consistency in operations; that it allows for the development to happen more consistently; that this is how tax credits are done; that they own some tax credit units; that some units are set at 40%, some at 50%, and some units at 60%; that it is a bit more complicated than the proposed Application; that they are not concerned of households renting at 78%; that there is fair housing concerns; that there are a lot of households

in need of affordable housing; that these people will be making less than 80% of AMI; that whomever comes in first, is who needs to be served; that they cannot pick and choose; that once a household meets the qualification, they are required to serve them; that this is the law; that is why there is no concern of steering only toward those making 78%; that there are waiting list at all complexes; that there will be stats kept and accountability toward what is being put out there; that the believes there will not be a great issue of an influx of clients making 78% and above renting the units and if all 36 units were filled with people making 75% with moderate income, they would very quickly hit the 80% threshold, creating availability for the next person.

Mr. Hopkins questioned how people are held accountable and questioned if there was a monthly certified list provided, which is maintained on record; that if someone were to have applied three years ago and questioned if they had not yet been selected, there would be a record to reference in that regard.

Mr. Huxtable stated there are waiting lists, which every complex has; that the lists could be 10 households long to 100 households long; that the property managers will call the first person on the list to inquire if the household is still in need; that if they are in need they are then asked to submit the required documentation to get them qualified; that if a household is no longer in need they continue to go down the waitlist.

Mr. Robertson stated there is a report and annual audit, which is required to be provided by a CPA Certified Public Accountant who is independent of the developer, which would state the developer is complying with all requirements and provided statistics; that this was a previous Condition of Approval, and this would allow the County to verify the Conditions were being met.

Ms. Stevenson questioned within the 36 units, would the one-bedroom, two-bedroom, three-bedroom units be divided evenly, only altering if there is a greater need for a three-bedroom unit.

Mr. Schell stated the way the Ordinance is currently written they must offer the 36 units in the exact proportion to the total number of units within the entire project; that of the 178 units, if approximately 25% of the units are one-bedroom, they are required to offer exactly eight one-bedroom units as affordable; that only 20% of the units are three-bedrooms; that would require them offering six to seven three-bedroom units; that after speaking with Mr. Huxtable; that the Delaware Housing Coalition, it was recommended to have more three-bedroom units and this is the reason they have requested the change and they would proportionately decrease the one and two-bedroom units.

Mr. Robertson stated there were no concerns to the type of units; that offering more three-bedroom units made sense as it provides more flexibility; that he reminded members of the public the current Application is requesting to modify the Conditions of Approval which were imposed on the original approval; that the Commission will not take comment suggesting the original approval should be undone or objections to the development, as the original Application was already approved and the Ordinance is already in effect.

The Commission found Mr. Jack Cain spoke in opposition to the Application; that he is the President of Batson Creek Estates Homeowners Association; that back in 2018 he appeared for the public hearing when it was voted the original project not be approved to move forward; that there are many members with him who were also at the previous hearing, also in opposition to the Application; that OA Oaks has failed to comply with the specific terms of Section R of Ordinance 2621 which was approved on December 11, 2018; that it stated a deed restriction should be approved by the office of Planning & Zoning, and should be recorded with the Recorder of Deeds office for Sussex County within 30 days of the Ordinance approval; that it was not until November 2, 2021 that OA Oaks recorded the restriction in Deed Book 5582, Page 337; that the developer drafted the proposed conditions of approval which were adopted, it seems unreasonable

the developer was unaware of the Condition for the required recordation within 30 days of the Ordinance approval; that the litigation challenging the results concluded on May 7, 2020; that this was 18 months prior to the recordation of the deed restriction; that Section 16 of the Ordinance addresses the reason for the required deed restriction; that there were also concerns if the RPC is not built or expires the area could be developed as a high-density subdivision; that Sections 115 – 125 of County Code states the County where applicable shall require the appropriate deed restriction be filed to ensure compliance with the developers plan limiting the density if the approval should be voided for any reason; that the developer violated the terms of Ordinance 2621 and should be declared null and void and the density of 2.178 units per acre should be re-established.

There were 18 members present in the room who affirmed the statements made by Mr. Cain.

The Commission found Ms. Sheri Kastner spoke in opposition to the Application; that she questioned when trip patterns are conducted with existing and proposed developments; that she questioned what the rent schedule would be; that she questioned what the current market rate is.

Chairman Wheatley stated the current public hearing is to discuss the affordable housing piece of the previously approved Application; that it is not a re-hearing on the merits of the project; that trip patterns are conducted when DelDOT schedules them to be done; that the rent scheduled is not a subject of the current public hearing; that Ms. Kastner would have to call to inquire what the current market rate is as it is not a land-use issue, but an economic issue.

Mr. Robertson stated they have been speaking about the rent schedule and whether it would be 70% of AMI; that the regular apartments would be at market rate; that the County does not set market-rate values

The Commission found Ms. Diana Huber spoke in opposition to the Application; that she is the daughter of Ms. Nellie Brasure who owns the property adjacent to the project site; that she questioned if the buildings were proposed to be three stories rather than four stories and she questioned if the setback of 10-ft. is correct.

Chairman Wheatley stated the original approval was not based on stories; that as long as the building conforms to the height regulations of the County Code, it is the number of units that are regulated, and he stated the subject of the current public hearing was the affordable housing rental structure and the entrance and sidewalks.

Mr. Whitehouse stated the rear property setback is 10-ft. for the particular zoning district; that this requires the buildings to be located a minimum of 10-ft from the outbound of the property and the site plan also contains a buffer which is greater than 10-ft.

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

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

In relation to Application C/Z 1960 OA Oaks, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Whitehouse introduced Mx. Jesse Lindenberg to the Commission, who recently joined the Planning & Zoning Department as a Planner I.

Meeting adjourned at 8:22 p.m.

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