

THE MINUTES OF THE REGULAR MEETING OF JANUARY 27, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 27, 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, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Ms. Kim Hoey-Stevenson was absent. Also, in attendance were Mr. Seth Thompson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Elliott Young – Planner I, Mr. Chase Phillips – Planner II and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission the agenda was revised on January 21, 2022, to remove application C/U 2270, Gregory P. Mitchell from the agenda; that this application was withdrawn at the request of the Applicant and will be resubmitted and advertised as part of a new application.

Motion by Ms. Wingate seconded by Mr. Mears and carried unanimously to approve the agenda as revised. Motion carried 4 - 0.

Motion by Ms. Wingate, seconded by Mr. Mears to approve the Minutes of the December 9, 2021, and January 13, 2022, Planning and Zoning Commission meetings as circulated. Motion carried 4-0

OTHER BUSINESS

Azalea Woods (2019-8)

Section 1 – Final Subdivision Plan and Landscape Plan

This is a Final Subdivision Plan and Landscape Plan for Section 1 of the Azalea Woods Subdivision, a proposed cluster subdivision to consist of a total of six-hundred and ten (610) lots and associated amenities to include a proposed in-ground pool, clubhouse, pickleball courts, gathering areas and tot lot. Section 1 consists of sixty-five (65) lots total. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, December 19, 2019, for 610 lots. The Applicant is requesting that the subdivision be approved in Phases. Staff are requesting as a condition of the Commission’s approval, a separate Phasing Plan be submitted to the Department of Planning and Zoning to assist in the Commission’s review of future phases of the subdivision and to ensure compliance with the subdivision’s Conditions of Approval. Section 1 of the Subdivision Plan complies with the Sussex County Zoning and Subdivision Code. Tax Parcels: 135-11.00-32.04, 48.00, 49.00 & 56.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals with the exception of the Sussex Conservation District approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Final Site Plan and Landscape Plan. Motion carried 4-0.

Lands of Kathy Lingo (2021-16)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of one (1) lot off a 50-ft wide perpetual cross-access easement. The property is located on the northwest side of E. Trap Pond Road (S.C.R. 62). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of Thursday, July 8, 2021. The applicant has submitted a letter requesting to be exempt from including the one-foot topographical contours on the Final Subdivision Plan. The Final Subdivision Plan complies with the

Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 135-19.00-50.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

Assawoman Lakes RPC (F.K.A Evergreen)

Final Site Plan & Landscape Plan

This is a Final Site Plan for the creation of a Residential Planned Community (RPC) to consist of forty-five (45) single-family lots with access off of Parker House Road with an accompanying Landscape Plan. The property is located on the west side of Parker House Road (S.C.R. 362). The Planning and Zoning Commission approved the Preliminary Site Plan for the RPC at their meeting of Thursday, January 13, 2022. The Final Site Plan complies with the Sussex County Zoning and Subdivision Codes and all conditions of approval. Tax Parcel: 134-16.00-51.00. Zoning District: GR-RPC (General Residential – Residential Planned Community). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Final Site Plan and Landscape Plan. Motion carried 4-0.

Rehoboth Diner

Revised Site Plan

This is a Revised Commercial Site Plan for the Rehoboth Diner for the addition of an outside covered patio, additional parking, and the revision of the stormwater management system. The property is located on the north side of Coastal Highway (Route 1) and contains access off a 50-ft ingress/egress access easement. The Revised Site Plan complies with the Sussex County Zoning Code. The property is also located within the Combined Highway Corridor Overlay Zone (CHCOZ). Tax Parcel: 334-13.00-4.00. Zoning District: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

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

Paola Pacheco Vazquez (S-21-33)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for Paolo Vazquez (S-21-33) for the establishment of a construction business and office with access proposed off a 50-ft ingress/egress access easement. The property is located on the northwest side of Clendaniel Road (S.C.R. 625). The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all conditions of approval. Tax Parcel: 230-12.00-10.04. Zoning District: AR-1 (Agricultural Residential) Zoning District. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan with final approval by staff with of all agency approvals. Motion carried 4-0.

Beachtree Preserve Amenities Plan

Preliminary Amenities Site Plan

This is a Preliminary Amenities Site Plan for the development of a pool and pool house, dog park, playground, pickleball courts, pavilion, grill area, fire pit, mail kiosk, and other site improvements with access off of Jayda Drive within the existing and previously approved Beachtree Preserve (2018-04) Subdivision. The proposed Amenities Plan complies with the Sussex County Zoning Code and all

conditions of approval. Tax Parcel: 234-11.00-49.06. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Amenities Site Plan. Motion carried 4-0.

Lands of Hutson

Minor Subdivision off a 50-ft easement

This is a Minor Subdivision for the subdivision of a 2.0766 acre +/- parcel into one (1) lot and residual lands off of a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 0.75 acre +/- and the residual lands will consist of 1.3263 acres +/- . The property is located on the northwest side of Adams Road (S.C.R. 583). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 530-13.00-42.02. Zoning: GR (General Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off of a 50-ft easement. Motion carried 4-0.

Lands of Davidson

Minor Subdivision off a 50-ft easement

This is a Minor Subdivision for the subdivision of a 7.45 acre +/- parcel of land into one (1) lot and residual lands off of an existing 50-ft wide ingress/egress access easement. Proposed Lot B-1 consists of 3.729 acres +/- and proposed Lot B-2 consists of 3.728 acres +/- . The property is located on the southwest side of Prettyman Road (S.C.R. 254). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 235-29.00-27.00 & 25.06. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

Lands of Raceen Workman

Minor Subdivision off a 12-ft easement

This is a Minor Subdivision for the subdivision of a 1.75 acre +/- parcel of land into one (1) lot and residual lands off of a proposed 12-ft ingress/egress access easement. Proposed Lot 1 consists of .750 acres +/- and the residual lands consist of 0.995 acres +/- . The property is located on the east side of Blacksmith Shop Road (S.C.R. 44). Staff notes there is a tax ditch to the rear of the property of which the tax ditch ROW is measured 70-ft from the centerline of the tax ditch and that all existing improvements are located outside of this established ROW. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-3.00-65.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off of a 12-ft easement with final approval by staff upon the receipt of all agency approvals. Motion carried 4-0.

Lands of Pam Price & Associates, Inc.

Minor Subdivision off of a 50-ft easement

This is a Minor Subdivision for the subdivision of an 11.10 acre +/- parcel of land into three (3) lots off of a proposed ingress/egress access easement. Lot 1 consists of 4.05 acres +/-, Lot 2 consists of 3.35 acres +/-, and Lot 3 consists of 3.69 acres +/- . The property is located on the east side of East Trap Pond Road (S.C.R. 62). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 232-15.00-39.00. Zoning: GR (General Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off of a 50-ft easement. Motion carried 4-0.

OLD BUSINESS

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

A cluster subdivision to divide 73.905 acres +/- into 104 single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the south side of Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Rt. 5) and Hollyville Road. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District).

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

Ms. Wingate moved that the Commission grant preliminary approval for Subdivision for 2021-04 Autumdale (F.K.A. Fairmont) based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 sq. ft.
2. The proposed subdivision will have no more than 104 lots on 73.9 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of 1.41 lots per acre, which is lower than the permitted density within the AR-1 Zoning District.
4. The proposed development will still comply with all DelDOT roadway entrance requirements.
5. There will be a buffer of at least 100 feet from all non-tidal wetlands on the site and a 50-foot buffer from Unity Branch.
6. The proposed subdivision contains approximately 50 acres of interconnected open space, which represents about 69% of the site. There will also be approximately 18 acres of preserved woodlands within the site.
8. The project will be served by central water and sewer.
9. The location is in the Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
10. This subdivision is based on a design that is superior to a standard subdivision. The the design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision. In addition, it is evident from the record that the plan was designed following the process described in Section 115-25 of the Code, with environmental areas identified first, and the location of roads and lots occurring last.
11. The subdivision will not adversely affect the neighboring and adjacent properties.

12. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
13. This preliminary approval is subject to the following:
 - A. There shall be no more than 104 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 50 acres of the site remain as open space, with existing woodlands being preserved as “Non-Disturbance Areas”.
 - C. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - F. There shall be a buffer that is at least 50 feet wide from Unity Branch. As stated by the Applicant, there shall also be a buffer that is at least 100 feet wide from all wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
 - G. The development shall comply with all DeIDOT entrance and roadway improvement requirements.
 - H. There shall be a 25-foot-wide Emergency Access Easement installed between Lots 51 and 52 and also next to Lot 1, providing emergency interconnectivity with Hollyville Road.
 - I. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DeIDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided.
 - J. Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 65th residential building permit. There shall also be additional parking installed at the pool area beyond what was shown on the Preliminary Site Plan. The Final Site Plan shall contain details as to the size and location of these amenities, and the additional parking areas.

- K. There shall be a pathway installed around the central pond. The location and the type of materials used to construct this path shall be shown on the Final Site Plan.
- L. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- M. Street design shall meet or exceed Sussex County standards.
- N. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- O. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 5:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- P. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- Q. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
- R. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- S. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant approval of 2021-04 Autumndale (F.K.A. Fairmont) for the reasons and conditions stated in the Motion. Motion carried 4-0.

2021-05 Turnberry (F.K.A. Unity Branch)

A cluster subdivision to divide 135.524 acres +/- into 196 single family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the east and southeast side of Hollyville Road, approximately 0.8 mile south of Hurdle Ditch Road (S.C.R. 290). Tax Parcels: 234-16.00-1.01, 1.02, 3.00, 4.00 and 5.00. Zoning: AR-1 (Agricultural Residential District).

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

Mr. Hopkins moved that the Commission grant preliminary approval for Subdivision 2021-05 Turnberry (F.K.A. Unity Branch) based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 sq. ft.
2. The proposed subdivision will have no more than 196 lots on 135.5 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of 1.45 lots per acre, which is significantly lower than the 2 lots per acre permitted in the AR-1 Zone.
4. The proposed development will comply with all DelDOT roadway entrance requirements.
5. As stated by the Applicant, there will be a 50-foot buffer from all non-tidal wetlands on the site and a 50-foot buffer from Unity Branch.
6. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
7. The subdivision contains approximately 88.14 acres of contiguous space, which represents more than 65% of the site.
8. The project will be served by central water and sewer.
9. The location is in the Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
11. In designing this subdivision, the Applicant has complied with the design process outlined in Section 115-25 of the Zoning Code by identifying the environmentally sensitive areas first and then locating the roads and lots last.
12. The subdivision will not adversely affect the neighboring and adjacent properties.
13. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
14. This preliminary approval is subject to the following:
 - A. There shall be no more than 196 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 65% of the site remains as open space.
 - C. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall

- be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. As stated by the Applicant, all lots shall also, be at least 40 feet from the perimeter of the development.
- F. As stated by Applicant, there shall be a buffer that is at least 50 feet wide from Unity Branch. There shall also be a buffer that is at least 50 feet wide from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
 - G. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - H. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided.
 - I. Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 120th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
 - J. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
 - K. Street design shall meet or exceed Sussex County standards.
 - L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - M. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 5:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - N. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
 - O. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
 - P. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
 - Q. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate

of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.

- R. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- S. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to grant approval of 2021-05 Turnberry (F.K.A. Unity Branch) for the reasons and conditions stated in the Motion. Motion carried 4-0.

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).

The Commission discussed the Application which had been deferred since January 13, 2022.

Ms. Wingate moved that the Commission grant preliminary approval for Subdivision 2021-15 Cobb Property based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District and the Coastal Area. The Applicant is seeking clustered lots with a minimum area of 7,500 sq. ft.
2. The proposed subdivision will have no more than 68 lots on 54.38 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of approximately 1.3 lots per acre.
4. The proposed development will still comply with all DelDOT roadway entrance requirements.
5. There will be a 25-foot buffer from all non-tidal wetlands on the site.
6. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
7. The subdivision contains approximately 29.5 acres of woodlands now, and approximately 25 of those wooded acres will be preserved. There will also be 34.64 acres of open space, which represents about 65% of the site.
8. The project will be served by central water and sewer.
9. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
11. Based upon the record, it is apparent that the Applicant complied with the design process of Section 115-25 by identifying and preserving environmental features first, and locating the streets and lots last.

12. The subdivision will not adversely affect the neighboring and adjacent properties.
13. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
14. This preliminary approval is subject to the following:
 - A. There shall be no more than 68 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 65% of the site remains as open space and that 25 acres of existing woodlands are preserved as “Non-Disturbance Areas”.
 - C. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - F. There shall be a buffer that is at least 25 feet wide from all federal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
 - G. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - H. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided.
 - I. Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 20th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
 - J. There shall be a pathway installed throughout the wooded area within the project. The location and type of materials used to construct this path shall be shown on the Final Site Plan.
 - K. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.

- L. Street design shall meet or exceed Sussex County standards.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- N. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 5:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- O. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- P. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
- Q. The Final Site Plan and Recorded Restrictive Covenants shall contain a “Hunting Notice” similar to the Agricultural Use Protection Notice advising all homeowners that hunting activities may occur on nearby properties. The Final Site Plan shall include “No Trespassing” signage on the perimeter of the property.
- R. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- S. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to grant approval of 2021-15 Cobb Property for the reasons and conditions stated in the Motion. Motion carried 4-0.

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).

The Commission discussed the Application which had been deferred since January 13, 2022.

Mr. Mears moved that the Commission grant preliminary approval for Subdivision 2021-12 Miralon (F.K.A. Cool Spring) based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 sq. ft.
2. As stated by the Applicant, the proposed subdivision will have no more than 119 lots on 72.20 acres. This represents a reduction from the 144 lots that were originally applied for.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of 1.6 lots per acre.
4. DelDOT has stated that this development will only have a minor impact on the local area roadways. The proposed development will also comply with all DelDOT roadway entrance requirements.
5. There will be a 30-foot perimeter buffer around the entire site, and all lots will be a minimum of 50 feet from the subdivision's perimeter.
6. The proposed subdivision contains approximately 36.4 acres of open space, which represents about 50% of the entire site.
8. The project will be served by central water and sewer.
9. The location is in the Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
11. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Delaware Code by seeking to identify and preserve environmental sensitive areas first and locating the roads and lots last.
12. The subdivision will not adversely affect the neighboring and adjacent properties.
13. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
14. This preliminary approval is subject to the following:
 - A. There shall be no more than 119 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 50% of the site remains as open space.
 - C. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. As requested by DNREC., a forest assessment shall be conducted to determine if mature forest areas exist on the site and to identify any mature trees. The results of this assessment shall be provided with the Final Site Plan to confirm that the identified areas are preserved within the buffers and open space areas as much as possible, in furtherance of the design requirements contained in Section 115-25F(3)(a)[8] of the Zoning Code.

- F. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
- G. The development shall comply with all DeIDOT entrance and roadway improvement requirements.
- H. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DeIDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided.
- I. There shall be a pathway installed around the ponds at the front of the subdivision. The location and type of materials used to construct this path shall be included in the Final Site Plan.
- J. Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 35th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- K. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- L. Street design shall meet or exceed Sussex County standards.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- N. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 5:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- O. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- P. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
- Q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- R. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the

- individual site grading plan.
- S. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins, and carried unanimously to grant approval of 2021-12 Miralon (F.K.A. Cool Spring) for the reasons and conditions stated in the Motion. Motion carried 4-0.

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.

The Commission discussed the Application which had been deferred since January 13, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1939 Gerald R. and Valerie V. Campbell Trustees for a Change in Zone from AR-1 to B-2 “Business Community” based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low density and medium density neighborhoods.
2. The site has been used as a cabinet shop for decades. Although not discussed in detail during the public hearing, this use may have been in existence long enough for the property to be considered legally non-conforming. Rezoning the property to B-2 is appropriate so that the zoning classification matches the historical use of the property.
3. This property is near other properties that are zoned C-1, which allows more intensive uses than what is permitted within the B-2 zoning sought by the Applicants. The property is also relatively near the boundary of the Town of Greenwood and the business and commercial uses that exist there. B-2 Zoning is appropriate in this location under these circumstances.
4. This location is along Route 13, which is a major arterial roadway in Sussex County. B-2 zoning is appropriate along this section of Route 13 near Greenwood in the vicinity of other Commercial Zoning.
5. The rezoning will not adversely affect area roadways or traffic.
6. The rezoning will also not adversely affect nearby properties or property values.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to the application.
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 Mr. Mears, and carried unanimously to recommend approval of C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees for the reasons and conditions stated in the Motion. Motion carried 4-0.

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

The Commission discussed the Application which had been deferred since January 13, 2022.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to defer C/Z 1960 OA Oaks, LLC for further consideration. Motion carried 4-0.

PUBLIC HEARINGS

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

2021-06 – Coral Lakes (F.K.A. Coral Crossing) - A Coastal Area cluster subdivision to divide 152.32 acres +/- into 315 single family lots to be located on a certain parcel of land and lying and being in Indian River Hundred, Sussex County. The property is located on the southwest side of Robinsonville Road (S.C.R 277) approximately 0.65 mile south of Kendale Road (S.C.R. 287) Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's preliminary site plan, a copy of the Applicant's exhibit booklet, a copy of TAC comments, including comments from the Department of Agriculture, the State Fire Marshal Office, DNREC's Division of Waste and Hazardous Substances, United States Fish and Wildlife, Delaware Forest Service, the USDA Natural Resources Conservation Service, The Division of Public Health, the Delaware Electric Coop, a copy of PLUS comments, the DelDOT Service Level Evaluation Response, a copy of the Traffic Impact Study, 79 letters in opposition, 1 petition in opposition containing 221 signatures, zero letters in support, zero mail returns, and he mentioned Mr. Thomas Brockenbrough with DelDOT was present by teleconference, should the Commission have any questions for him.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Coral Lakes; that also present were Ms. Katia Kalinski, Senior Landscape Designer, Mr. Steve Marsh, P.E. and Director of Operation, and Mr. John Soistman with GMB, Mr. Jim McCully Senior Wetland Scientist of Watershed Eco, LLC, Mr. Bill Conway, Senior Vice President from Century Engineering; that Mr. Conway did perform the Traffic Impact Study and entrance plan, and Mr. John Horner, General Counsel for Schell Brothers, Inc.; that the Applicant has submitted an extensive booklet which has been before the Commission for at least 10 days; that she also submitted proposed Conditions of Approval and a map; that the Applicant proposes Coral Lakes, which was formally known as Coral Crossing; that the Application proposed to divide two undeveloped parcels, equalling a total of 152.34

acres, into 315 single-family lots as a cluster subdivision; that the entire project is located in AR-1 Agricultural Residential Zone and is located within the Coastal Area; that the Coastal Area is a designated growth area according to the 2018 Sussex County Comprehensive Plan; that a portion of acreage is to be devoted to lots, streets, and 75.51 acres is to be devoted to interconnected open space; that this is a total of 50% of the parcel; that the proposed cluster development is superior in design to a standard subdivision as the project proposes significant amounts of open space, landscape buffers to protect environmentally sensitive areas onsite; that this includes regulated non-tidal wetlands; that the project proposes a stormwater management system that will act as an amenity and natural companion to the natural features on site; that the plan provides for amenities including a pool and pool house, a dog park, pocket parks to be used by community residents and walking trails; that the walking trails will connect to sidewalks which are to be located on one side of the street and connecting to DelDOT's shared use path; that the project is located in Lewes on the southwest side of Robinsonville Rd., opposite Webbs Landing Rd.; that parcel 67 is 82.87 acres and parcel 84 is 74.25 acres; that parcel 67 is owned by Adkins Co.; that parcel 84 is owned by Mr. John & Linda Novosel; that nearby subdivisions include Chapel Green, Tanager Woods and Chase Oaks; that the property is currently of vacant use; that if approved there will be 315 single-family lots, with a density of 2.05 units per acre; that Sussex County's base density is two units per acre; that this would allow for 304 units by right; that the County Code provides for an option where the density can be increased, with option density bonuses in AR-1; that the optional bonuses involve payment of fees which fund permanent land preservation elsewhere in the county; that the Code requires a payment of \$20,000 cluster fee per unit in excess of two dwellings per acre; that the Applicant will comply with the requirement for 11 units in excess of 304 units; that the concept plan for Coral Lakes was presented to PLUS on December 18, 2020 for 304 homes; that the Applicant proposes 315 homes; that there is no requirement to go back through the PLUS process as the increase of 11 units is permitted under the density bonus; that a response letter was provided to PLUS which addressed comments point by point; that the preliminary plan was sent through the TAC process; that Coral Lakes complies with the County Code, Section 115-19 and the Comprehensive Plan by proposing a low density, single-family residential development which protects water resources, water sheds and scenic views; that AR-1 Zoning requires a minimal lot area of 7,500 sq. ft., a minimum lot width of 60 ft., a front yard setback of 25 ft., a side and rear yard setback of 10 ft. and a maximum building height of 42 ft; that all proposed structure will comply with the height, area and bulk requirements of the Code for cluster subdivisions with central sewer; that the proposed lots will be a minimum of 7,500 sq. ft., a maximum of 11,573 sq. ft. and an average lot size of 7,886 sq. ft.; that Section 4.4.2 of the Comprehensive Plan discusses the structure of the Future Land Use Plan, confirming Sussex County is divided into two planning areas; that these areas are growth areas and rural areas; that the subject parcels of the Application are located within the Coastal Area; that the Coastal Area is a designated growth area which permits development of single-family homes and encourages a clustering option provided there can be significant, permanent, common open space is preserved and the development is connected to central water and sewer services; that Coral Lakes proposes 50% open space and will be connected to central water and sewer services; that the project is located within Investment Levels 3 and Level 4; that a small portion of the site located in Investment Level 3 according to the State Strategies for State Policies and Spending Map; that the Cabinet Committee on State planning issues, through the Office of State Planning Coordination, developed the first Delaware Strategies for State Policies and Spending map in 1999, requiring updates every five years; that the most recent update was in 2020; that the State Strategies were designed to help the Committee guide State investment decisions and serve as a framework in coordinating plans and actions of local governments; that Chapter 4 of the Sussex County

Comprehensive Plan explains the State Strategies for the State Policies and Spending map classifies areas within Investment Levels 1, 2, 3 or 4; that the four Investment Levels clarify the State Policies and priorities for expenditure of State funds on infrastructure; that the Comprehensive Plan stated the State Strategies for State Policies and Spending map are not parcel based, and are not to be considered a land use plan; that it is required any land development be in compliance with the Comprehensive Plan, meeting all relevant Codes and Ordinances of the local jurisdiction; that the proposed project is located within the Coastal Area, which is a designated growth area according to the Comprehensive Plan; that development of single-family homes in the Coastal Area is permitted and consistent with the Comprehensive Plan in Investment Levels 3 and 4; that the State may not prioritize funding in Investment Levels 3 and 4, but does not mean development cannot take place within these classification levels; that major subdivisions have consistently been approved in Investment Level 3 and 4 in Sussex County; that there was a USB submitted into the record; that on the USB, there is a map, prepared by GMB which shows the Investment Level classification layer, in addition to major subdivision approved in the area; that by hand count there are 43 subdivisions approved within Investment Level 4 within proximity of the sight; that the project complies with Chapter 115-25 E of the AR-1 District Design Requirements for cluster developments for the reasons stated within the project reference material prepared by GMB; that the proposed development complies with the community design section of the Comprehensive Plan; that housing types are limited to single-family detached dwellings; that a minimum of 30-ft. forested buffer will be provided; that proposed homes in Coral Lakes are more than 50-ft. from the perimeter of the site; that no proposed lots have direct access to any State maintained roads; that all lots will be configured outside of regulated wetlands; that the site was evaluated for the existence of regulated wetlands by Watershed Eco in 2020; that the Applicant received an approved Jurisdictional Determination on April 12, 2021 which was submitted into the record, along with the Wetland Delineation prepared by Watershed Eco; that the approved Jurisdictional Determination identified jurisdictional wetlands, in addition to non-jurisdictional areas, which are isolated low areas with no connection to Navigable Waters of the United States; that the Sussex County Code does not define wetlands, other than in the context of buffer zones; that Section 115-193 defines wetlands as, “a private or state wetland as defined by the Delaware Department of Natural Resources and Environmental Control regulations and maps as promulgated pursuant to Chapter 66, Title 7 of the Delaware Code”; that the isolated low areas identified in the approved Jurisdictional Determination do not meet DNREC’s definition of wetlands; that therefore the low areas do not meet Sussex County’s definition of wetlands and are otherwise unregulated; that in addition to the non-jurisdictional areas, there are regulated non-tidal wetlands onsite; that all proposed lots in Coral Lakes will be configured outside of the regulated wetlands and regulated non-tidal wetlands; that the Applicant proposes a 50-ft buffer from the non-tidal jurisdictional wetlands in excess of the County Code’s 25-ft buffer requirement from non-tidal wetlands; that this equals two times the width required by the County Code; that the proposed community will be served by central water and wastewater systems; that wastewater is anticipated to be provided by Sussex County; that water service will be provided by Tidewater; that this is confirmed in the Will Serve letter submitted into the record; 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 of the site; that the approved Jurisdictional Delineation and agency responses from the National Marine Fisheries, U.S. Fish and Wildlife Service and DNREC Heritage have been submitted into the record; that Mr. McCulley will address any questions related to the agency responses; that the open space provided meets the official definition of open space as contained in Section 115-4 of the Code and other open space requirements of the Code; that the required open space is equal to 30%, which is equal to 45.7-acres for the project;

that the Applicant proposes 50% of open space, which is equal to 75.51-acres; that the Code further requires that 30%, or 13.7-acres, is required to be located on a contiguous tract of land; that the project proposes 46.03-acres of contiguous open space; that this equals three times the required open space required by County Code; that open space in a cluster development further requires a pedestrian trail system be accessible to residents, which has also been provided; that a 30-ft. forest buffer is provided; that stormwater will be handled onsite and will meet the current State of Delaware regulations; that clearing of any existing wooded area is limited to the amount required to develop the project; that forested areas in the buffer will remain; that preservation of the woodlands has been prioritized in environmentally sensitive areas, where jurisdictional non-tidal wetlands are located; that the project preserves scenic views, limiting back to back lots and provided gaps between lots; that the land plan preserved natural facilities, proposed sidewalks and connections to DelDOT's proposed shared use path; that open space adjacent to natural areas has been prioritized; that existing grades and drainage areas are considered in the lot layout; that the proposed development plan complies with the Chapter 99-9C requirements by integrating the subdivision into existing terrain and surrounding landscape; that as the plan shows, the Applicant proposes a total of 50% open space of the entire site, providing a minimum 30-ft landscape buffer and all proposed lots within the community are a minimum of 50-ft from the outbounds of the project; that there are isolated low areas located onsite in addition to jurisdictional non-tidal wetlands; that all lots will be configured outside of the regulated wetlands and a minimum 25-ft buffer from jurisdictional non-tidal wetlands will be provided; that in total, 50-ft will actually be provided; that the project is located within Flood Zone X; that all proposed lots are located within Flood Zone X as well; that there are no known sites which require historic preservation onsite; that the plan minimized impacts on natural features; that the plan preserves large tracts of open space and preserves scenic views; that there will be a minimization of tree, vegetation, soil removal and grade changes; that screening from objectionable features from neighboring properties and roadways will be provided by the 30-ft. landscape buffer around the perimeter of the site; that water will be provided by Tidewater Utilities as evidenced within the Will Serve letter; that wastewater is anticipated to be provided by the County; that all runoff from Coral Lakes will be directed via the closed roads section and storm drain network into a stormwater management system consisting of best management practices; that the proposed development is designed in a way to minimize erosion, sedimentation, changes in groundwater levels, increased rates of runoff, potential for flooding and design of drainage so groundwater recharge is maximized; that the plan accounts for safe vehicular and pedestrian movement within the site in two adjacent ways; that the entrance into the community will be designed per DelDOT standards; that all roadways will be designed in accordance with Sussex County's road standards; that five foot sidewalks are proposed on one side of the road along with an anticipated trail connecting to DelDOT's proposed multimodal path; that it is anticipated Coral Lakes community will cause current property values to remain the same or increase; that the proposed subdivision will not adversely affect the adjacent farmland with considering the proposed landscape buffers, existing wooded areas to remain and non-tidal regulated wetlands remaining untouched; that the community is not anticipated to have a negative impact on schools, public buildings and community facilities; that the proposed single-family homes are likely to attract retirees and second-home residents; that noted within GMB's subdivision report, the Applicant will meet and coordinate with the schoolboard Superintendent to assess the developments impact and respond accordingly; that in respect to the Cape School District, there is a lot of growth currently happening; that there are a number of new elementary schools have been constructed; that there was recently a new wing added on to Cape Henlopen High School; that there is one proposed access point from Robinsonville Rd.; that the development is located within the Henlopen Transportation Improvement District, which was

recently adopted by DelDOT and Sussex County; that DelDOT did require a Traffic Impact Study be conducted; that the developer is required to pay a fee per dwelling in lieu of performing a Traffic Impact Study (TIS); that if the proposed development is not consistent with the payment of the fee, a TIS will be required; that the project is compatible with other nearby land uses, and therefore compatible in design, density, homestyle and land use; that there will be an officiant stormwater management system, which will act as an amenity; that runoff will be treated for quality and quantity prior to discharge and the plan is consistent with the Sussex County Comprehensive plan for reasons previously stated and submitted into the record.

The Commission found Mr. Jon Horner spoke on behalf of the Application, that he is the general counsel for the Applicant; that they took a thorough due diligence of the property; that the review included a Wetland Delineation and a Jurisdictional Determination; that the delineation identifies all wetlands and the Jurisdictional Determination determines which of the wetlands are regulated by the federal government and the U.S. Army Corp of Engineers; that having identified the low wet areas on the site toward the front of the property, as well as the jurisdictional non-tidal wetlands located to the rear of the property, they worked with Mr. McCulley and their engineers to understand the ecological impact of the wetlands on the site and its suitability of development; that in regards to the non-tidal wetlands located to the rear, they asked the engineers to confirm that the plan would comply with the proposed Sussex County Buffer Ordinance, despite it currently not being applicable to the proposed development; that the pre-improvements are located 50-ft from the jurisdictional wetlands; that due to this, the proposed plan would comply to the proposed Sussex County Buffer Ordinance; that the engineers and Mr. McCulley advised the low wet areas to the front of the property are isolated wetlands, which are not regulated by the Army Corp of Engineers, DNREC or Sussex County; that the limited benefits of the low wet areas were water storage and water quality; that the engineers confirmed any water quality benefits derived from the low wet areas could be replicated or improved through the site design; that they also explored if there was any flora or fauna present within those areas; that they submitted to various agencies to perform investigations regarding this; that it is not required by County Code to make the submissions for these investigations, but they desire to be stewards of the land; that no endangered or threatened species were found in those areas; that if the investigations had shown the water quality or storage of the isolated wetlands could not be replicated or improved, they would not have chosen to develop the site; that if any of the investigations had shown any threatened or endangered species, they would have found the site to be unsuitable for development; that after all the investigations it was found the site was suitable for development, while complying with County Code, addressing environmentally sensitive areas, and provided for a superior design; that they felt the site was suitable for the cluster provisions of the Code; that they have stayed out of the most environmentally sensitive area of the non-tidal jurisdictional wetlands; that the Army Corp of Engineers does allow for permits to be obtained for wetland crossings; that there was an opportunity to cross the wetlands and place homes to the rear of the property; that they chose to completely avoid the area due to the presence of the non-tidal jurisdictional wetlands; that they could have chosen to cross the wetlands without the need of an Army Corp permit, with the use of pilings and a bridge, but still chose not to do so; that the cluster option is designed for these types of situations of keeping development out of environmentally sensitive areas in favor of the more suitable areas; that the plan has evolved based on feedback from the community; that they received a letter from residences of the Chapel Green community which expressed concerns regarding stormwater management and potential for runoff onto their properties; that once the letter was received, they reached out directly to the Chapel Green residences in an effort to meet, discuss their concerns and attempt to address their comments or questions; that they were in the process of scheduling a meeting

when the Chapel Green community indicated they were not interested in meeting with them at that time; that they advised the Chapel Green community their door is always open for discussion and communication; that despite not meeting with them, the comments were taken to the engineers to be addressed; that the plan involved to install drains to the rear of all lots adjacent to Chapel Green to overdesign the stormwater management system and the requirements of Sussex Conservation District do not allow of water discharge to other sites.

The Commission found that Mr. Jim McCulley spoke on behalf of the Application; that he is the owner of Watershed Eco; that the mapping of the wetlands began in 2018; that the confirmation of the wetland mapping was done in 2020; that on April 12, 2021 U.S Army Corp of Engineers issued a Jurisdictional Determination (AJD); that an ADJ is a final action by the Army Corp of Engineers; that it is good five years; that their AJD does not expire until April 12, 2026; that the AJD identified jurisdictional waters on the site; that these were the non-tidal wetlands, which are depicted on the plan; that the AJD also identified areas which were not under the jurisdiction of the Army Corp of Engineers; that this included the uplands on the site and the low wet areas which were previously mentioned; that isolated wetlands were the subject of the Supreme Court decision on January 9, 2001; that this decision is known as the Southern Waste Agency of Northern Cook County (SWANCC) Decision; that the Supreme Court stated the U.S. Army Corp of Engineers and the U.S. Environmental Protection Agency (EPA) should not be regulating isolated wetlands and waters as federal jurisdictional areas if there is not a significant nexus to navigable waters; that there were data requests submitted, which resulted in responses from Natural Marine Fisheries on November 20, 2021, U.S. Fish and Wildlife Service on November 20, 2021 and DNREC Heritage Department on December 10, 2020, confirming there are no rare or endangered species on the site and the proposed plan does meet the requirements of the newly proposed Buffer Ordinance.

The Commission found that Ms. Katia Kalinski spoke on behalf of the Application; that she is a landscape architect with GMB; that GMB is required to submit plans and reports to several local and State agencies who compare existing and proposed site conditions; that the plans are reviewed for changes in land use, land cover, topography, and ground water conditions; that GMB was required to, and has, submitted sediment and stormwater plans to the Sussex Conservation District; that stormwater must meet quality and quantity management requirements to ensure there are no adverse impacts; that the plans from GMB exceed the levels of treatment required by current regulations; that GMB proposes a system of 13 wet ponds to be use as stormwater management; that proposed are a series of yard drains, along the back lots which abut neighboring parcels, to direct runoff to the stormwater management wet ponds; that in addition to the yard drain network GMB has proposed a 30-ft. landscape buffer from all property boundaries, which will remain intact and undisturbed; that the drainage will remain consistent with the existing conditions; that any runoff between Coral Lakes and Chapel Green will be intercepted by the drains installed along the rear yards of the proposed lots of Coral Lakes; that the stormwater management system will reduce offsite peak flows during the one, two, ten and hundred year rain fall and winds; that stormwater quality management requirements must be met; that quality management requirements are based off of three criteria; that this criteria is the total area disturbed, soil types within the area and the existing versus proposed land uses; that the quality requirement is a volume which must be treated during the Resource Protection Event; that this is roughly equal to a one year storm event; that DNREC has provided a tool called the Delaware Urban Runoff Management Model; that this model helps calculate the required Resource Protection Event Treatment Volume and the proposed system of wet ponds roughly triple the amount required.

Mr. Hopkins requested more information on the drains at the back of the proposed lots and confirmation of the location of the wetlands.

Ms. Wingate questioned if the drains will be placed only on the lots adjacent to Chapel Green or if the drains will be placed around the entire outside perimeter of the project, she questioned if there were any plans for interconnectivity as mentioned in DelDOT's comments and mentioned for the record the submitted Proposed Conditions are for Coral Lakes as they listed Cool Springs in error.

Chairman Wheatley questioned if there were stricter stormwater management requirements due to the Sarah Run located on the property; that he questioned if there was an airstrip near the proposed development; that he mentioned if there is an airstrip present, he recommends, should the project be approved, there be a notice of possible low flying aircraft; that he mentioned with the last Presidential Administration there was a relaxation in the way wetlands were determined; that currently there are lots which previously would have been considered to be in a wetland area; that regarding the Jurisdictional Determination is valid for five years, he questions if the regulations were to change before the project was approved and built, what effect would it then have on the project.

Mr. Steve Marsh, an engineer with GMB stated by County Code they are required to run calculations in catch the runoff from a ten year event; that this means the ten year event must stay within the banks without spilling over; that it is then connected into the drainage system for the entire project, where it is then directed into the stormwater management ponds; that the jurisdictional wetlands are shown in the hatched area, to the rear of the projects; on the rendering; that the drains will be placed to the rear of lots abutting another development, or any location where the runoff would run offsite; that they will be intercepting the flow, directing the flow back onsite into the stormwater management system; that they would be happy to look into interconnectivity possibilities; that they cannot connect anywhere which is already developed; that to the north side is Tanager Woods; that if an alternative exit is an issue, they could split the front stormwater system in half to use for a secondary emergency exit from the site and it would not be used as a daily exit, but for emergency use only; that coming offsite it is a blue line stream which ties into Sarah Run and Love Creek; that the Sussex Conservation District requires it be shown they have adequate capacity; that they are reducing the hundred year event, in terms of peak flow and it is all under the review of Sussex Conservation District in terms of adequate capacity of receiving waters.

Ms. Kalinski stated the presence of an airstrip typically would be mentioned in the PLUS comments, however, it was not mentioned in comments for the proposed project, but they will look into it.

Mr. McCulley stated there would be no effect on the AJD until the five-year expiration date; that there have been several changes; that under the Trump Administration changes were made; that under the Biden Administration there were changes; that what is consistent is the isolated wetlands were addressed by the Supreme Court in 2001 and this does not rely on what each Administration does, it relies on the decision made by the Supreme Court in 2001.

Mr. Horner stated the rules have changed from the era of the Trump Administration regarding the Waters of the United States rules; that the original rule was struck down by an Arizona District Court approximately six months ago; that the current rules are in flux; that as Mr. McCulley correctly stated the SWANCC case and even under the new interpretations which have been proffered following the Trump Administration to current, the isolated wetlands are not regulated.

Mr. Thompson stated based on his current understanding, he agreed with Mr. Horner's statements regarding regulated wetlands.

The Commission found that Mr. Sergei Boboshko spoke in opposition to the Application; that he lives in Chapel Green; that he stated there is an active airstrip; that the airstrip runs along the northern boundary of the Adkins property; that the project has a long and frustrating history; that the overdevelopment of Sussex County has led to the establishment of organizations such as, Sussex 2030 and SARG; that the first attempt to develop the property occurred in 2009; that the previous proposal called for 209 residential units, on 152 acres, of which 142 acres was forested; that the proposal was to remove 35 acres, or 25% of the forest; that the State responded with their standard reasoning and language, stating why they did not support, but opposed development in Investment Level 4 areas; that all participating State agencies which reviewed the application also agreed they did not support development in Investment Level 4 and opposed the project; that the agencies mentioned issues with potential archeological, historical and cultural significance, poorly draining wetlands and flooding, negative impacts on the environment and wildlife from deforestation and negative impacts on air and water quality; that the developer at that time, did not acknowledge the State and various agencies comments to the project; that the developer did indicate the project would be revised to conform to all requirements and recommendations by the State and participating agencies; that at that time the owners and developer did not pursue the project for reasons not publicly recorded; that in 2010 there was a new application submitted for the property; that this application proposed 160 residential units on the same 152 acres, of which 143 acres were forested; that the application proposed to remove 72 acres of forest or 50% of the forested site; that this request was double what had previously been proposed; that the response from the State and participating agencies was the same as with the previous application; that they did not support the proposed development due to the same issues and concerns as stated with the previous application; that the submitted project design would not meet the current Pollution Control Standards and had a lack of Sussex County wastewater infrastructure; that the application went forward to the Planning & Zoning Commission; that the Planning & Zoning Commission reviewed the application at their meeting of July 22, 2010; that the Commission granted preliminary approval on August 12, 2010 with set conditions; that there were multiple other attempts to develop the property which led to the fourth application called Coral Crossing; that the application called for 304 residential units, which was then revised to increase to 315 residential units; that the total acreage remained at 143 acres, with a proposal to remove 110 acres of forest, equaling 77% of the site; that the majority of the current acreage is found to be in Investment Level 4, with a small section classified in Investment Level 3; that this was established with the regular, five year update, to the State Strategies and Policies, which determine 28 separate factors when determining Investment Levels; that on December 18, 2020 the State responded stating they do not support development of the site; that they requested the Applicant concentrate building with the Level 3 portion of the site in addition to working toward preserving the wetland areas; that the State also mentioned filling the wetland areas, building homes and infrastructure will directly result in future adverse drainage and flood impacts; that the various State agencies made over 80 comments which discussed concerns with traffic, deforestation, wetlands, buffer zones, wildlife and other issues; that he has a major concern with what he calls, "Deforestation Inflation"; that over the years the deforestation proposal began at 35% of the site, increasing currently to 77% of the mature forest; that when speaking with other people the two major concerns are the deforestation and traffic concerns; that deforestation effects are not only limited to the cutting of a tree, but results in widespread negative impacts to wildlife, flooding, air quality and recreation; that the quality of life is a fundamental issue, which motivates the residents of

Sussex County which cannot be ignored and the request the Commission deny the Application request for Coral Lakes.

Ms. Wingate questioned if the Application proposes to fill any wetlands.

Mr. Marsh stated the plan does not propose to fill wetlands.

The Commission found that Ms. Jill Hicks spoke in opposition to the Application; that she lives in Chapel Green; that she did have additional petitions to submit into the record; that she does not agree with the comments made regarding adjacent property values increasing or staying the same; that currently houses have a view of the woods; that removing the view of the woods, placing two to three houses in its place, and removing the sound of wildlife, will damage the value of the properties; that she questions how they will place the drains to the rear of the lots without disturbing the proposed buffer; that there is an FAA approved airstrip nearby; that there is an airplane on the ground in one of the photos provided by the developer; that her property borders the Adkins parcel; that she lives adjacent to the woods which is proposed to be clear cut; that the trees on her property are connected to the woods, of the subject project, by a very dense root system; that the Adkins parcel, on its own, is landlocked, with no access to area roadways; that on the property the trees, wetlands, and wildlife have been left undisturbed for decades or longer; that on January 23, 2020 the former Administration wrote the Navigable Water Protection Rules; that it left natural features, such as upstream waters which feed tributaries, rivers, bays, oceans and intermittent isolated wetlands unprotected; that on January 21, 2021 the current Administration signed an executive order to vacate the previous Administration's Navigable Water Rule; that this required Waters of the United States to return to pre-2015 rules, and establish these waters may be protected under Federal jurisdiction; that on January 24, 2022 she spoke with the Army Corp of Engineers for clarification as how these rules related to the current Application; that it was stated it would have been prudent for the Applicant to be in compliance with the current rulings; that the National Law Review, published December 22, 2021, stated the order is unclear if it applies only to existing projects in development stages or if it operates retrospectively potentially effecting permitted projects yet to commence construction; that this Application has not been approved or permitted; that the case is made, the project should be evaluated under the current WOTUS rules which have been reverted back to the pre-2015 WOTUS rules; that the report prepared by Watershed Eco, submitted 14 months ago admittedly uses the rules which have since been vacated and no longer apply; that GMB attached a report performed on the site by the U.S. Army Corp of Engineers; that a member of the U.S. Army Corp stated the attached document is not an analysis or submitted by the Army Corp of Engineers; that what was attached was a interim form, which is completed by the Applicant, and does not represent a field inspection by the Army Corp of Engineers; that on the second page of the attached form the field inspection section is not checked off and there is no signature present from the Army Corp of Engineers; that the U.S. Army Corp of Engineers can not and will not enter the site, unless directed by the owner; that the National Wetland Inventory provided by the U.S. Fish and Wildlife Service show there can be as many as 56.67 acres of wetlands present on the site; that regardless of the wetland definition, which was changed in 2020, the wet areas are still wet; that these areas are filled with water much of the year; that in the summer there is a loud chorus of frogs, and currently there are a large number of geese; that this is a sign of the presence of water and a very healthy ecosystem; that the frogs, snakes and turtles are a sign of healthy ecosystem; that those amphibians are thinned skin, being unable to survive in polluted environments; that the presence of geese indicated there must be depth to the present water; that it is possible under the remanded rules the wetlands shown in the National Wetland Inventory could be deemed as jurisdictional, particularly under the revisions forthcoming; that also studies now show retention ponds are not as efficient as

natural wetlands; that this due to erratic flow; that if the flow is too fast, it becomes less efficient; that the temperature of retention pond water is higher than the temperature of the natural forested wetlands; that this is due to retention ponds being exposed to the radiation of the sun; that temperatures downstream can be negatively impacted; that the Coral Lakes plan proposes to use Sarah Run as an outfall; that Sarah Run flows through Chapel Green crossing under the culvert under Aintree Drive; that the picture provided of Sarah Run, by the Applicant, did not show the culvert managing the flow of Sarah Run; that shown in the picture is a culvert which provides for a neighbors ditch, which runs under his driveway; that with an inch and a half of rain there has been flooding previously near Sarah Run; that Sarah Run travels from the Adkins property, through the culvert, where the flooding often takes place, then behind the houses of Autumnwood Way, cutting behind Alderleaf Dr. and Aspenwood Dr., before reaching Herring Creek, leading to the Rehoboth Bay; that disturbing the soil around Sarah Run could have a negative impact downstream whether the outfall of Coral Lakes flows or not; that the previous Application was put through the PLUS process in 2019 where the wetland delineation confirmed the presence of 30 acres of wetlands; that it was proposed the wetlands were to be untouched with approximately half the number of homes currently proposed; that the wetlands shown for the current project was proposed to be 4.87 acres; that as a result of the April 21, 2020 clarification on Navigable Water Protection Rule, the newest project application proposes to disturb or fill upwards of 25 acres of non-tidal wetlands; that it is stated the non-tidal wetlands provide significant flood extenuation, water quality benefits and provides habitat for plant and animal species; that developing the area will directly result in adverse draining and flooding impacts for residences; that there were changes made between the site plan on file as of December 18, 2021 and the plan provided to the public, within the online packet, uploaded on January 21, 2022; that there were changes made to the 13 retention ponds, the proposed trees and shrubbery to be planted, and the location of the subdivision entrance; that the proposed entrance is now located closer to Tanager Woods; that Tanager Woods is a 168 unit subdivision in the beginning stages of construction; that the most recent PLUS review was provided on November 5, 2020; that they request a current PLUS review be performed; that it will take 13 retention ponds to handle the amount of water which currently exist onsite; that the request is for 315 homes regardless of the damage it causes to wildlife and the valuable ecosystem; that Watershed Eco observed the property in June and July, rather than December through May; that the PLUS review of 2019 stated DNREC mapping identified the presence of hydric soils; that the Inland Bays are part of an environmentally sensitive watershed which can be negatively impacted by a high amount of impervious cover creation, removal of forested vegetation and the filling of hydric soils or wetlands; that the make up of the soil, as indicated by the USDA Soil Map, shows the unsuitability of the site for development; that both soil types, are defined as very limited in the suitability for development; that it was stated in the PLUS comments hydrologic soil, Group C and D were identified across most of the site; that these soils are not conducive to utilizing infiltration stormwater best management practices, such as bioretention and infiltration basins, which are required to meet infiltration requirements; that the PLUS Review Application for 2011-05 stated the presence of 50-acres of open space with 304 homes; that the current Application for 2021-06 states the presence of 75-acres of open space with 315 homes; that she questioned how the open space, with 11 additional homes, increased by 25-acres or 50% of the site; that with this the impervious surface will increase with the 11 additional homes; that the 11 additional homes are not reflected in the 2011-05 PLUS review; that it is notable the State nor the developer mention or quantifies how much the water table will change when removing 110 acres of water-absorbing trees; that according to AmericanForest.org a large tree can, in a single day, can soak up about 100 gallons of water from the ground; that the trees are very beneficial to wetlands and poor draining soils; that in

a forest this size, the large trees prevent flooding and maintain the water table; that if the woods are removed, the water table will rise; that to her understanding none of the water rise will be prevented by the proposed retention ponds of Coral Lakes; that if the woods are removed, the trees against her home, which are part of the forest root system, act as a buffer to the trees on the existing properties; that they will become more vulnerable to high winds; that this will pose a risk to all the properties; that she request a denial of clear cutting the forest to help avoid placing the existing residences and residence's properties at risk; that she is of the opinion the Applicant is attempting to rush the Application through in hopes of avoiding the pre-existing 2015 WOTUS rules, which are now in effect, the revisions to come and to preempt the Sussex County Buffer Ordinance; that the State and County mission statements proclaim they both will work to preserve the environment which defines Sussex County, while enhancing our health, safety and welfare and she requested the Commission make a negative recommendation to the Coral Lakes subdivision.

Mr. Marsh stated the existing woods will be retained; that the 30-ft buffer will stay; that the proposed yard drainage system will be located on the Coral Lakes side of the buffer; that the drainage system will be interior to the buffer of retained existing woods; that any runoff from Coral Lakes, into those backyards, will be intercepted by the drains; that any runoff coming from Chapel Green, onto Coral Lakes, will also be intercepted due to the retained buffer and drains and if they retain part of the buffer, which is a higher grade than the backyards of Chapel Green, they will be unable to intercept the flow as it will be contained to the Chapel Green property.

Ms. Kalinski stated beyond the 30-ft. buffer, there is an additional five feet where the yard drains will be installed; that the drains will not affect the homes of Chapel Green and the drains will be located outside of the lots, in a five-foot strip between the 30-ft. buffer and the rear lot lines.

The Commission found that Mr. William Hicks spoke in opposition to the Application; that his property is adjacent to the proposed subdivision; that the property is not suitable for the proposed subdivision; that according to the U.S. Fish and Wildlife Service's National Wetlands Map, there are large areas of wetlands present on the site; that based off the map it is easy to estimate approximately half of the site is considered wetlands of one type or another; that he is concerned about flooding the properties currently have; that on page 142 of the Application, the engineer acknowledges the presence of 76-acres of wetlands on the site and the southern parcel will be drained by a culvert beneath Aintree Dr.; that he presented a picture, depicting flooding, of the location where Sarah Run enters the culvert under Aintree Dr.; that due to Sarah Run being one of two outfalls for the proposed development, he questioned what will the development do to exacerbate the existing flooding issue in Chapel Green; that he questioned how will the outfall of Coral Lakes be managed; that the Wetland Delineation report, which was prepared by the developers consultant, did not mention the presence of clay; that he feels a potential reason may be the borings were only completed to the depth of 20-in.; that if the Application is approved, over 1,100 dwellings will front on Robinsonville Rd. for the two mile segment between Rt. 24 and Barnwell Dr., which is the entrance to Tidewater Landing; that these homes will belong to Arcadia Landing, Beachtree Preserve, Chase Oaks, Tanager Woods and Tidewater Landing; that Coral Lakes would be the largest of the subdivisions; that Coral Lakes will be adding to an already overburdened country road; that the 315 homes of Coral Lakes will only have a single entranceway; that the proposed entranceway will be located .25-mile of Tidewater Landing, right next door to Tanager Woods and .25-mile from Chase Oaks; that this results in 1,000 homes dumping onto Robinsonville Rd. within a .25-mile section; that Robinsonville Rd. and the surrounding roads are not capable of supporting the traffic load; that his comments are not anecdotal, but are supported by recent traffic studies which were completed for the area; that the JMT Traffic Study was

completed for the subject site and submitted to DelDOT on January 22, 2022; that the study was based on 4,303 vehicles per day; that the study identified numerous Loss of Service Deficiencies (LOS); that DelDOT is constantly trying to improve the local infrastructure system, but explosive growth in the area has made the task nearly impossible; that if the local traffic problems were to be combined with original traffic problems, one can envision traffic chaos residents are currently experiencing; that DelDOT's 2017 Traffic Study showed the worst observed traffic congestion in Sussex County; that the study found in areas, travel in high demand conditions, can take five to six times longer than compared to uncongested periods; that during peak summer hours, if drivers wish to travel from Lewes to Rehoboth Beach, the driver would need to plan 45 minutes for a trip which should take eight minutes during uncongested conditions; that Coral Lakes will increase traffic both locally and regionally, while adding to the existing traffic problems; that Robinsonville Rd. is a narrow, two-lane road for the entirety of its length; that the Cape Henlopen School District reports several school bus stops along the road; that with over 1,000 homes being added to the area, there will be several more school buses traveling the road; that the increased traffic of Coral Lakes will propose increase safety risks to the students who have bus stops located on Robinsonville Rd.; that since the proposed site is primarily within Investment Level 4, the State will contribute little to no funds to improve infrastructure and emergency services; that this will cause the local municipality to pick up the cost for added law enforcement, fire and medical services; that the development of Coral Lakes will pose significant flooding risks and potential home damage in adjacent areas; that this will only exacerbate traffic congestion in the area; that the site is unsuitable for development and he request the Commission deny the Application.

Chairman Wheatley stated the Commission is aware of what the law is regarding wetlands and what the Applicant is required to do according to the Sussex County Ordinance; that if the staff confirms the Applicant is in compliance and the provided testimonies by the experts are accurate, the Commission will most likely allow it; that the wetlands maps do not control decisions; that the wetlands maps are the first word, not the last word; that the last word is the Jurisdictional Determination from the Army Corp of Engineers; that the Commission does have a Jurisdictional Determination for the proposed Application; that the wetlands have already been decided and determined; that current flooding, which already exists, is not a problem for any developer; that current flooding on one property is not considered a problem for a developer of another property; that the drainage issues on Chapel Green properties and Chapel Green streets are not the subject of the current public hearing; that the law prohibits the Applicant to make any existing flooding condition worse than what currently exists; that any runoff, greater than what already exists, is prohibited from the Coral Lakes property to Chapel Green properties and any proposed system must be designed with that law in mind.

Ms. Wingate questioned if there are any plans for road improvements on Robinsonville Rd. or any adjacent roadways to Robinsonville Rd.

Mr. Thomas Brockenbrough, with DelDOT, spoke by teleconference; that he stated Robinsonville Rd. is located within the Henlopen Transportation Improvement District (TID); that in this regard there are concept plans for improvement; that there are no DelDOT projects planned for Robinsonville Rd. currently; that developments in the area are required to pay fees which are collected and used toward DelDOT projects, but there are no DelDOT projects scheduled for Robinsonville Rd. at this time.

The Commission found that Mr. Jeff Seemans spoke in opposition to the Application; that he requested the Commission deny the Application based on the plan's lack of respect for the site's 152-acre intrinsic, natural, physical features and the plans lack of adherence to the Cluster-Subdivision

provisions of Sussex County's Zoning Code; that in 1969, *Designed With Nature* was written; that it is the greatest book on how best to plan land which has ever been written; that within the book it is said man must become the steward of the biosphere, and to do this man must design with nature; that there are four soil types present on the 152-acre site; that three of the four of these soils have very limited capacity to support homes with basements; that one of the four, has a very limited capacity for homes, even without the presence of a basement; that he questioned what the implication of this would be; that he feels it is easy to make the connection the soils all have high water tables; that the State PLUS report mentions how poorly draining the soils are; that stormwater management shall be designed to promote groundwater recharge and groundwater quality; that this is a requirement; that when you see 13 different stormwater management ponds on the proposed site plan, extending from Robinsonville Rd. extending all the way back, to the further extent of the project, and factor in all the impervious surfaces from the proposed 315 rooftops, driveways, sidewalks, he estimates over 14,000 linear feet of street in the proposed community; that it is easy to see there will be a lot of stormwater runoff; that he questioned if there is adequate permeability in the soils to allow the water in the retention ponds to percolate; that the PLUS report mentions the Application proposes to disturb and fill upwards of 25-acres of non-tidal wetlands; that now only five acres of non-jurisdictional wetlands under the new ruling will remain; that he requests the Commission read Item 6 from Subsection E of the Cluster Development Provision, which is the Design Requirements of Cluster Development; that the Cluster Provision states all lots shall be configured to be contained completely outside of all wetlands; that this was stated by the developers counsel but she added the word "regulated" regarding the wetlands; that with the Code it states all wetlands; that the Code does not differentiate between the jurisdictional and non-jurisdictional wetlands; that clear cutting of the forest will not stop in Sussex County until County Council passes a Forest Preservation Ordinance; that even the Cluster Provision is not consistent in this regard; that in one section it mentions the removal of healthy mature shall be limited and also mentions this fact does not inhibit the development of wooded parcels; that he questions if this is considered designing with nature; that after reviewing the 339 pages of information regarding this project, he noticed four maps; that two were from Watershed Eco and two from the National Wetlands Inventory Maps; that the maps from Watershed ECO can be located on page 192 and page 240; that the maps from the National Wetlands Inventory can be located on page 229 and page 276; that all four maps refer to a label stating Nanticoke Indian Tribe; that he could not locate any comments from the reviewing agencies or the Applicant's consultants regarding any implications of what the label could mean in terms of an archeological investigation; that he cannot guess what could be discovered, but believes it could have an impact on the site plan; that within Subsection F, Review Procedures for Cluster Development mentions designs which are superior, while listing nine criteria; that he questions if the proposed preliminary plan is considered superior; that if the plan is superior, why are 13 individual stormwater management ponds being proposed on highly questionable, poor draining, high water table soils; that he questions if the plan is superior if the plan proposes to fill almost all wetlands, in violation of the Cluster Section of the Zoning Code; that the plan shows a very segmented walking system which is highly dependent on the public sidewalks adjacent to the streets; that the plan shows a very minimal perimeter buffer, especially adjacent to the existing subdivision; that the plan offers only very narrow strips of forest are shown between lots; that he finds it very difficult to believe the narrow strips of forest can be preserved during site grading; that the plan is not superior and he requests the Commission deny the current plan and request the Applicant to submit a complete revision of the plan.

The Commission found that Ms. Kerry Russo spoke in opposition to the Application; that she lives within the Chapel Green community; that she, her husband, and their neighbors are directly impacted by the decision of the 2021-06 Coral Lakes Application; that regarding Chapter 99-9C of Sussex

County Code, a review for approval of any subdivision, includes 17 provisions; that she has concerns with Provisions 1 3, 4, 5 and 6; that as demonstrated in the Application, the request is to destroy 110-acres of living, breathing forest; that human-driven forest removal demolishes ecosystems, displaces and kills generations of wildlife; that by removing the existing forest canopy, it exacerbates the climate change, increases the temperature, changes weather patterns, increases flooding and removes oxygen; that the builder cannot replace a 100 yr. old or more root fungi system, feeding into the surrounding ecosystem; that this is similar to demolishing a forest, slaughtering the soldiers and opening up the flood gates of the moat, while replacing it with a line of cinderblocks and a string of evergreens with no links to a healthy root system; that a study must be done for graves and artifacts, considering the forest age and the Native American settlements in the area; that when focusing on Provisions 5, 9 and 12, according to the environmental scientist increased air pollution is due, in part, to the release of greenhouse gases; that it is a fact trees have carbon capture abilities; that this ability protects all of us; that the existing forest absorbs carbon dioxide from the atmosphere acting as a valuable carbon sink; that deforested areas lose the ability creating the release of more carbon is released from the exposed soil; that trees also help control water levels in the atmosphere, helping regulate the water cycle; that according to the Penn State Extension, forest filter can regulate the flow of water due to the leafy canopy intercepting rainfall; that forest floors act like a sponge, typically absorbing 18-in. or precipitation before gradually releasing the natural channels and recharge in the groundwater; that in a North Carolina Watershed study, the mean infiltration rate went from 12.4 inches per hour down to 44 inches per hour when a site was converted from a forest to a suburban turf; that it equaled a 66% difference in infiltration rates; that other studies have found similar results; that the roll of trees and forest in managing stormwater and protecting water quality is only beginning to be understood by some engineers, planners and community leaders; that the Chesapeake Bay Executive Council stated forest are the most beneficial land used for protecting water quality due to their ability to capture, filter, retain water and air pollution; that forest are essential to the provision of clean drinking water for over 10,000,000 residence of a watershed; that forest provide valuable ecological services, economic benefits including carbon sequestration, flood control, wildlife habitat and forest products; that regarding Provisions 6, 9 and 12, the Application does not address the impact to existing homes value and existing residence quality of life; that replacing a beautiful forest, which has diverse wildlife with rooftops, roadways and lighting is objectionable; that as companies continue to cut down forest in our area, for short monetary gains, they leave residence with long-term home devaluation, flood related costs and health consequences; that in the long run it is more expensive for Sussex County, as the County will be required to clean up the mess without the natural, mature barriers which currently exist; that adding to the area population, without the natural protection of forest is irresponsible and morally reprehensible; that all of the impacts discussed matter and she request the Commission deny approval of the Application.

Chairman Wheatley mentioned he believed there was a general misconception to whom makes the approval of the subject Application; that the Application will not go to County Council; that the Planning & Zoning Commission is the body which grants the approval or denial; that this is due to the Application being considered a “straight subdivision”, which is a standard subdivision request; that there are very specific rules within the County Code which govern the creation of subdivisions; that if Applications conform to the required rules they are generally allowed to proceed; that this is also referred to as “by right”; that he may not be 100% comfortable with it, but it is technically correct; that developers do have a right subdivide their property within the rules; that the Commission make recommendations to County Council when there is a Change of Zone or a Conditional Use involved; that subdivisions requesting a RPC Residential Planned Community would require a recommendation

from the Commission to County Council; that a straight subdivision, such as the subject Application, decision is made by the Planning and Zoning Commission.

The Commission found Ms. Susan Petze-Rosenblum spoke in opposition to the Application; that her property backs up to the proposed development; that she and her husband moved here in 2015, but have frequently visited the area for the last 20 years; that she has many concerns regarding the development of the subject property; that she is concerned about the wildlife, giving a voice to fellow creatures who cannot speak for themselves; that the elimination to so much forested space will be a death sentence to the wide variety of wildlife currently living on the property; that on the property there are various types of wildlife; that some of these include families of deer, multitudes of birds, snakes, salamanders, frogs, bats, raccoons, turtles and foxes; that the grey fox is important to note, as in June 2010 the general assembly amended Title 29 of the Delaware State Code to designate the grey fox as Delaware's State Wildlife Animal; that the grey fox is a unique and primitive species, believed to be seven to ten million years old, which is indigenous to Delaware; that these animals may not be endangered species, but it does not mean they do not add to the beauty, health and life of the area; that replacing a large forested area upsets the balance of nature and ecosystem which is required to survive in the long term; that the removal of the forest will diminish residents quality of life; that within the paperless packet, located on pages 92, 94 and 95, it is noted 30% or 33-acres of woods would be preserved; that those referenced acres do not make up a contiguous block of woods, but rather corridors for wildlife to traverse the property; that she feels the statement suggests the corridors provide places for the animals to walk around the neighborhood, but does not provide adequate places to live; that when looking at areas surrounding the property, you will see the areas are clear cut and most of the natural area is paved over and developed; that this leaves no place for the wildlife to go, as there are no other significant woods in the immediate area for the wildlife to migrate to; that she feels the wildlife will perish on the roads, stop reproducing, die of starvation or disease; that based on what she has read within the current Sussex County Comprehensive Plan, this is not what Sussex County desires to happen; that within the Comprehensive Plan the vision statement for future land use and conservation both seek balance with economic development, while preserving land natural resources and the rural character of the County; that the Coral Lakes development does not fit within the Comprehensive Plan; that she requests the denial of the Application; that she is also concerned her property will be subject to flooding; that her property is adjacent to the Sarah Run wetlands; that the area routinely overflows when it rains; that in her home she already has a sub-pump, dehumidifier and smart fans in her crawl space; that last year she spent several thousands of dollars to have a french drain installed to divert some of the water from her rear yard toward the wooded area of her property nearest the wetlands; that before the drain was installed, there would be small ponds of water which would take days to dry from her back yard and she sees no other remedy if they encounter increased flooding.

The Commission found Ms. Ann Conlon spoke in opposition to the Application; that she lives in Chapel Green; that she also owns a building lot on Aintree Dr.; that part of the Coral Lakes Application, which includes two reports by Mr. McCulley; that she is concerned about Mr. McCulley's definition of jurisdictional wetlands and waters; that this appears on page 188 and page 236 of the Application; that in each report he states agencies have defined WOTUS Waters of the United States by regulation since 1970's with the latest definition becoming effective on June 22, 2020 in the Navigable Waters Protection Rule (NWPR); that Mr. McCulley completed his reports for Coral Lakes on November 16, 2020; that eight months later, August 4, 2021, within the 237 pages of the Federal Register, a notice appeared indicating the NWPR, which Mr. McCulley had based his reports

on, was about to be revised; that one month later on September 20, 2021 an article appeared in the National Law Journal announcing the EPA and U.S. Army Corp of Engineers would be embarking on another rule making progress to redefine WOTUS; that two months later on November 18, 2021, in a document called “Current Implementation of Waters of the United States” the Environmental Protection Agency, announced they would be reinstating a pre-2015 definition of WOTUS; that they invited stake holders to submit comments up until February 7, 2022; that therefore the bedrock of Mr. McCulley’s wetland opinions may be based on outdated NWPR regulations; that since the EPA and Army Corp of Engineers are in the process of changing the NWPR, she questioned if it would be better to wait for the changes to become effective, especially as the regulations may apply to jurisdictional waters and wetlands; that she requested the Commission delay making a decision on the proposed Application; that she mentioned she has two water tables under her lot within Chapel Green, one table at three feet and another table at seven feet and they do have high water tables within Chapel Green.

Chairman Wheatley stated there are pending rule changes; that the important thing to note is the rules are currently pending; that the Commission must make decisions based on the rules which currently exist; that he does understand the concern; that the pending change in rules may still play a factor in the Commission’s decision; that the Commission cannot base a decision solely on rules which do not yet exist; that he did request the Commission’s counsel to confirm the current rules and regulations stated by the Applicant were accurate; that according to Mr. Thompson’s statement the Applicant has acted within the rules which are currently in place and the current rules are the criteria in which the Commission must make their decision.

The Commission found that Mr. Paul McVinney spoke in opposition to the Application; that he believes Sussex County is overdeveloped and requested denial of the Application.

The Commission found that Mr. Frank Schmitt spoke in opposition to the Application; that he lives in Aintree Dr.; that his property abuts the proposed development; that he was confused by statements made by counsel for the Applicant; that diminishing the Investment Level 4 issue based on the fact, Sussex County has previously built developments in Investment Level 4 and requested more information be provided based on the statement made.

Ms. Peet stated she only provided background information regarding development within Investment Level 3 and 4; that she had no intention of diminishing the State Strategies and Spending map or suggest the State does not plan to fund direct State expenditures to development within the area and she stated according to the Comprehensive Plan, development has, can and is occurring within Investment Level 4 areas, especially within the Coastal Area, which is considered a designated growth area.

The Commission found Ms. Merrilee Levesque, Ms. Janet Le Digabel, Mr. Gary Rosenblum spoke by teleconference with concerns regarding traffic, infrastructure, wetlands, concerns for the potentially historical nature of the Nanticoke Indian Tribe area, concerns about the impact on the environment, a suggestion to provide the property to Sussex Land Trust for preservation, a request for a traffic study to be performed on Robinsonville Rd and the request to defer a decision for the Application.

Mr. Whitehouse confirmed there is a Traffic Impact Study (TIS) included in the record.

Mr. Horner stated they were not aware of the nature of the Nanticoke Indian Tribe label; that it was never mentioned in the PLUS review; that they will look into it; that if anything is found with any historical significance, they will bring it to the Commission's attention and it is their understanding there are no historical areas located on the site.

Ms. Kalinski stated the Nanticoke Indian Tribe label is listed on the Sussex County tax map.

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 Subdivision 2021-06 Coral Lakes (F.K.A. Coral Crossing). Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 4-0.

C/U 2317 William E. Martin, II

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SIGN AND VEHICLE GRAPHICS BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS.

The property is lying on the northwest side of Wolfe Neck Road (S.C.R. 270), west of the intersection of Wolfe Neck Road (S.C.R. 270) and Munchy Branch Road (S.C.R. 270A). 911 Address: 35583 Wolfe Neck Road, Rehoboth Beach. Tax Parcel: 334-6.00-340.00.

Mr. Whitehouse advised the Commission submitted into the record is a copy of DeIDOT Service Level Evaluation Response, a copy of the Applicant's site plan, a copy of a letter from the Applicant, a copy of the staff analysis, two letters of support, and one mail return.

The Commission found that Mr. William Martin spoke on behalf of his Application; that also present was Mrs. Melissa Martin; that they are the Applicants; that they do agree with what was read into the record by Mr. Whitehouse; that he grew up in the area; that they live close to the proposed property and he desires to bring his business as close to his home as possible while staying within the area he currently serves.

Ms. Wingate questioned how many employees are proposed, hours of operations, if a sign is desired; that she questioned the location the work will be performed, where the materials and chemicals will be kept, and where the disposal of material and chemical waste will take place.

Mr. Martin stated he currently has two employees; that his mother occasionally assists with bookkeeping; that he does employ, one to five, Sussex Central interns; that proposed hours of operation would be 9:00 am until 5:00 pm Monday through Thursday and 9:00 am until 4:00 pm on Fridays; that there would be no weekend work; that he does request a sign; that he is most interested in having a sign on the building; that the fabrication and production are performed inside the building; that materials are kept in a small shed located on the property; that all chemicals and paints are stored inside the building and he does have proper disposal of all material and chemical waste.

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/U 2317 William E. Martin, II. Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

C/Z 1943 Shirley and Gordon Price, Jr.

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRES, MORE OR LESS.

The property is lying on the north side of Atlantic Avenue (Route 26), approximately 0.13 mile northwest of Roxana Road (Route 17). 911 Address: 34861 Atlantic Avenue, Ocean View. Tax Parcel: 134-11.00-175.00.

Mr. Whitehouse advised the Commission submitted into the record is a copy of the Applicant's boundary survey, a copy of the PLUS Response, a copy of the staff analysis, a copy of a letter from the Applicant, a copy of the DelDOT Service Level Evaluation Response, zero comments in support, zero comments in opposition and zero mail returns.

The Commission found that Mrs. Shirley Price spoke on behalf of her Application; that her husband Mr. Gordon Price was not able to be present as he recently had a kidney transplant; that they purchased their property on Rt. 26 in 1981; that the corridor then was much different than it is today; that at the time, it was a perfect location, a home they could afford, allowing them to raise their family, work and be involved in the community; that they never gave much thought to what the future may hold; that when they purchased the property the only commercial area was Holts Dispensary; that everything else was fields and houses; that the first major change was when an application was submitted for a liquor store across the street from the property; that they negotiated with them, allow them to be the best neighbors they could be while minimizing the impact to Rt. 26; that many other businesses followed after that; that her neighbor to the west runs a heating & air company; that to the east there is now a new and more modern Holts Dispensary, known as Holts Liquor Store, with a very well lit parking lot; that across the street is Parsell's Funeral Home; that there are other small businesses in the area; that at one time, she returned home from being away, to a double decker billboard on her property line; that she never received notice of the billboard placement; that because of this, she contacted Mr. Lawrence Lank; that he informed her the State regulated signs; that after some thought, Mr. Lank decided there needed to be a sign committee for Sussex County; that she was happy to provide input to the sign committee; that as time went on she and her husband knew they could not stop the inevitable; that in the world of land use planning, her property is a logical location for commercial zoning; that her property is no longer a residential area; that it can never be residential again; that her property's highest and best use is commercial; that she requests the necessary zoning to give her property its highest and best use, to fit it where it should; that she is surrounded by commercial zoning; that this is permitted within the land use plan and she requested the Commission make her property whole with the surrounding commercial zoning.

That Mr. Mears stated when a residential property is stuck between two commercial properties, it would be difficult to sell, and the Comprehensive Plans permits it.

Ms. Wingate and Mr. Hopkins stated the Application request made perfect sense.

Chairman Wheatley stated enhancing property value is not a goal in land use; that consistent application of zoning is and when looking at the map, there is an obvious issue to fix.

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 1943 Shirley and Gordon Price, Jr. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

ADDITIONAL BUSINESS

Mr. Whitehouse stated he will be adding the bus tour with the Planning & Zoning Commission and County Council will be added to a future agenda and the tour was delayed due to events that had previously intervened.

Mr. Whitehouse welcomed back Mr. Chase Phillips- Planner II to the Planning & Zoning Department.

Meeting adjourned at 8:36 p.m.

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