

THE MINUTES OF THE REGULAR MEETING OF OCTOBER 28, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday afternoon, October 28, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse requested the Application for C/U 2272 Charles Stanley be removed from the Agenda under the basis of a letter submitted by the Applicant requesting the Application be withdrawn.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Agenda as revised. Motion carried 3-0.

Mr. Whitehouse stated the Commission had previously acted on the minutes of June 24, 2021, and July 8, 2021; that staff has subsequently noted a few typos and incorrect spelling of names within the minutes, and staff is requesting the Commission to approve the minutes of June 24, 2021, and July 8, 2021, as revised.

Motion by Ms. Wingate, seconded by Ms. Hopkins to approve the minutes of June 24, 2021, and July 8, 2021 Planning and Zoning Commission meetings as revised. Motion carried 3-0

OTHER BUSINESS

Sussex Central High School Addition

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 3-story 303,297 square feet High School addition, accessory buildings, multiple recreational fields, parking, and other site improvements. The proposed addition will become the new High School, while the current existing High School will become a Middle School. The property is located on the west side of Patriots Way (S.C.R. 318). Change of Zone No. 1930 was approved by the Sussex County Council at their meeting of Tuesday, December 1, 2020, in order to change the zoning from AR-1 (Agricultural Residential) to I-1 (Institutional). The plan complies with the Sussex County Zoning Code. Tax Parcel: 133-11.00-105.00. Zoning: I-1 (Institutional Zoning District). Staff are awaiting 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 upon receipt of all agency approvals. Motion carried 3-0.

OLD BUSINESS

C/U 2265 Pro Carpet, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS. The property is lying on the east side of Miller Street, approximately 0.16 mile north of Mount Joy Rd. (S.C.R. 297). 911 Address: 26315 Miller Street, Millsboro. Tax Parcel: 234-21.00-189.00.

The Commission discussed this application which has been deferred since October 14, 2021.

Ms. Wingate moved that we recommend approval of Conditional Use 2265 for Pro Carpet, LLC, for a carpet business based on the record made during the public hearing and for the following reasons:

1. Although characterized as a Conditional Use for a carpet business, the main purpose of this application is to allow the Applicant's employees to park their vehicles and trailers on this site.
2. The site is currently occupied by a home, which will continue to be used for residential purposes.
3. No business will be conducted from the site, and there will not be any customers using the site or deliveries made to the site.
4. The Applicant installs carpeting in new homes. All of this work occurs off-site. The employees either live at the home on this property or come to the property to ride together to the off-site jobs that the business has.
5. The use is really not much different than a company employee driving his or her truck home from work each day and then leaving in the morning to go to a job site.
6. The use will not adversely affect neighboring properties, public facilities, or roadways.
7. No parties appeared in opposition to this application.
8. This recommendation is subject to the following conditions:
 - a. The use shall be limited to parking of vehicles, trailers, and equipment associated with the Applicant's carpet business. No business shall be conducted on the site, and no retail sales shall occur on the site.
 - b. Although the Applicant's vehicles are permitted to park on the site, no vehicle maintenance shall occur on the site.
 - c. No junked, inoperable or untitled vehicles or trailers shall be located on the site.
 - d. The areas set aside for vehicle parking shall be clearly shown on the Final Site Plan and these areas shall be clearly marked upon the site itself.
 - e. Any dumpsters or trash containers shall be screened from view of neighboring properties and the front roadway.
 - f. Because this is a primarily residential area, no sign shall be permitted.
 - g. No storage of hazardous materials shall be permitted on the site. Any other materials associated with the use shall only be stored indoors.
 - h. Failure to abide by these conditions of approval may be grounds for revocation of this Conditional Use.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2265 Pro Carpet, LLC for the reasons and conditions stated in the motion. Motion carried 3-0.

C/U 2267 Cynthia B. Gibbs

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS. The property is lying on the southwest side of Hollytree Road (S.C.R. 226), approximately 0.28 mile southeast of Fleatown Rd. (S.C.R. 224). 911 Address: 11420 Hollytree Road, Lincoln. Tax Parcel: 230-20.00-9.10.

The Commission discussed this application which has been deferred since October 14, 2021.

Mr. Hopkins moved that the Commission recommend approval for Conditional Use 2267 for Cynthia B. Gibbs for a catering business based upon the record made during the public hearing and for the following reasons:

1. Based upon the description of the proposed use made during the public hearing, this use is very nearly a home occupation, as it will occur within the Applicant's residence. Because there may be one or more employees, a Conditional Use is required.
2. This use will occur within the house on a 6.12-acre property. Except for the catering truck or trailer parked on-site when not in use, it will not even be evident that the catering business will be occurring on the property.
3. No events will be conducted on the property. The Applicant has stated that all of her catered functions occur off-site.
4. The use will not adversely affect neighboring properties or roadways.
5. The use will not require any additional utility services beyond what currently exists for the Applicant's residence on the property.
6. No parties appeared in opposition to this Application.
7. This recommendation is subject to the following conditions:
 - a. The use shall be limited to a catering business. No events catered as part of the Applicant's business shall occur on the site.
 - b. The site shall maintain its residential appearance and the catering business shall be conducted from the home on the property.
 - c. One lighted sign shall be permitted. It shall not be any larger than 32 square feet in size.
 - d. No catered events shall occur on this property.
 - e. The failure to comply with any of these conditions of approval may result in the revocation of this Conditional Use.
 - f. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommended approval of C/U 2267 Cynthia B. Gibbs for the reason and conditions stated in the motion. Motion carried 3-0.

C/U 2268 Staci C. & Winfield S. Walls Jr.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS. The property is lying on the southwest side of Gull Point Road (S.C.R. 313), approximately 0.52 mile southeast of John J. Williams Highway (Route 24). 911 Address: 30600 & 30606 Gull Point Road, Millsboro. Tax Parcel: 234-33.00-44.00.

The Commission discussed this application which has been deferred since October 14, 2021.

Ms. Wingate moved that the Commission recommend approval of Conditional Use 2268 for Staci C. & Winfield S. Walls, Jr. for a boat shrink wrapping business within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for a boat shrink wrapping business on approximately 3.97 acres. The use will occur on the same property occupied by the Applicants' residence.
2. The shrink wrapping associated with the use will be performed by the Applicants. According to the Applicants, there will not be any additional employees.
3. The proposed Conditional Use is located near Route 24 and along Gull Point Road near area waterways, docks, boat ramps, and marinas. This is an appropriate location for this type of use.
4. There is a need for the use proposed by the Applicant in this area of Sussex County.
5. This use is limited in nature and will not involve any off-site buildings. Boats will be brought to the site for shrink wrapping and then hauled off-site to wherever they will be stored. There will not be any boat storage on the site other than boats owned by the Applicants and their family.
6. There are other businesses in the area, including WMF Marine, a body shop, and a construction business. This use is consistent with these other small business uses in the area.
7. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
8. The use as a boat shrink wrapping facility is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
9. No parties appeared in opposition to this Application.
10. This recommendation for approval is subject to the following conditions:
 - a. The use shall be limited to a boat shrink wrapping business only, which shall include temporary storage of boats, materials, and equipment related to the operation of this business. The use shall only occupy a 2.0-acre portion of the entire property, and that 2.0-acre area shall be shown on the Final Site Plan. This area shall be located to the rear of the site so that it is screened from view of Gull Point Road.
 - b. There shall be no retail sales occurring from the site.
 - c. No maintenance of boats shall occur on-site.

- d. No unregistered or permanently inoperable boats, trailers, or watercraft shall be stored at this site.
- e. There shall not be any boats permanently stored on this site other than the Applicant's own boats or watercraft.
- f. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Sunday.
- g. All business-related equipment and materials shall be always kept in a neat and presentable appearance.
- h. The existing landscape buffer shall continue to be maintained between the southern side yard property line and the neighboring property for the entire duration the use is operated on the property. The Final Site Plan shall identify this landscape buffer area.
- i. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- j. One lighted sign shall be permitted. The sign shall be no larger than 32 square feet per side.
- k. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
- l. The Applicants shall comply with DelDOT requirements, including any entrance or roadway improvements.
- m. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- n. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommended approval of C/U 2268 Staci C. & Winfield S. Walls, Jr. for the reason and conditions stated in the motion. Motion carried 3-0.

C/U 2269 Dennis Nelson Jr.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRACTOR TRAILER PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.17 ACRES, MORE OR LESS. The property is lying on the northeast side of Craigs Mill Road (S.C.R. 556), approximately 0.42 mile north of Woodland Road (S.C.R. 536). 911 Address: 26147 Craigs Mill Road, Seaford. Tax Parcel: 531-12.00-129.00.

The Commission discussed this application which has been deferred since October 14, 2021.

Ms. Wingate moved that the Commission recommend denial of Conditional Use 2269 for Dennis Nelson, Jr. for tractor-trailer parking based upon the record made during the public hearing and for the following reasons:

1. This Application was initiated because the Applicant was operating his business from the site without the necessary approvals for it.

2. Although this is identified as an application for tractor-trailer parking, it was revealed at the hearing that the Applicant currently operates his trucking business from the site. Multiple tractor-trailers come and go from the site driven by others. Fuel is delivered to the site. Also, the Applicant is performing repairs to his trucking equipment on the site and keeps several junked trucks on the site that are inoperable or being stripped for parts.
3. This site is not an appropriate location for this type of use. There are no other business or commercial uses in the area and it is surrounded by lands owned by the Nature Conservancy and other environmentally sensitive areas. This is not an appropriate location for this type of industrial use.
4. The property is located on a rural road that is not designed for the regular truck traffic generated by this use. The use would deteriorate these roadways. A use such as this should be located along a highway or major arterial roadway that is designed and built for heavy truck traffic.
5. Several parties testified in opposition to this use for the reasons outlined in this Motion including concerns about truck traffic, incompatibility with the residential surroundings, environmental concerns, and deterioration of area roadways. I agree with all of these stated concerns.
6. I am not opposed to small businesses and wish them success. In this case, it sounds like the Applicant started a small business with one truck operated by him which has now grown into multiple trucks and drivers. That business growth should be commended. But, the business has outgrown this location, and it should be moved to a more appropriate location.
7. For all of these reasons, I move that we recommend denial of this Conditional Use.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommended denial of C/U 2269 Dennis Nelson, Jr. for the reasons stated in the motion. Motion carried 3-0.

PUBLIC HEARINGS

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

The Commission took a 3-minute recess.

Ms. Stevenson joined the meeting at 3:36 p.m.

2021-08 The Knoll

A Coastal Area cluster subdivision to divide 14.66 acres +/- into 33 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the east side of Irons Lane (S.C.R. 348), approximately 0.44 mile north of Holts Landing Road (S.C.R. 346). Tax Parcel: 134-7.00-163.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Subdivision Plan, a copy of the Applicant's Chapter 99-9C response, a copy of the Applicant's exhibit booklet, a copy of the staff review letter, a copy of the Technical Advisory Committee comments including United States Department of Agriculture (USDA) and Division of Public Health, DelDOT's Service Level Evaluation Response, the PLUS comments and the Applicants response to the PLUS comments, a letter from Sussex County Engineering Department Utility Planning Division, two comments in opposition and zero letters in support.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, The Knoll; that also present were Mr. Brad Absher the Principal of Irons Knoll, LLC, Mr. Jeff Clark with Landtech Land Planning and Mr. Chris Pfeifer with George, Miles & Buhr, LLC; that the Application is for a 33-lot subdivision; that it is located on 14.6-acres that is situated just off Irons Lane; that the Applicant has, through its team, met the requirements of the Sussex County Code, particularly the Zoning Code and sections of the Subdivision Code; that in addition to Mr. Clark's testimony, some various reports and documents are contained within the project book that further demonstrates the Application's compliance with the Code; that when the surrounding area and communities were reviewed, it is clear that the site is residential within Sussex County along Irons Lane; that there is already a number of existing built-out residential communities within the area; that there is a mixture of zoning classifications ranging in size and density from AR-1 to MR Medium Residential and some HR High Residential properties in the area; that those ranges are consistent with Chapter 4, regarding land use, within the 2018 Comprehensive Plan; that the area along Irons Lane is located in the Coastal Area; that the Coastal Area is one of Sussex County's designated growth areas; that there are two primary characteristics of properties within the Coastal Area; that one characteristic is that they area among the most desirable locations for housing in Sussex County; that the second characteristic is the areas contain ecologically sensitive characteristics; that the Comprehensive Plan states that medium and higher densities can be appropriate within the Coastal Area where there is central water and sewer; that there are commercial uses and employment centers in the nearby area; that the Application is consistent with the Coastal Area designation on the future land use map; that is on the low side of density with a proposed density of 2.25 units per acre; that this is not considered medium density which is four units to the acre; that there is public water and sewer available to the site; that the site lies within close proximity to Millville and Ocean View where there are services, markets and employment opportunities; that there is a range of zonings, densities and housing styles available within the area of the Application; that a cluster option subdivision is proposed; that the subdivision will provide a greater perimeter buffer and better utilization of the open space; that there is a central park in the center of the proposed subdivision; that the lots will surround the central park area or are located adjacent to the stormwater management ponds to the rear of the property; that the Cluster Subdivision tool is what allowed the elements to be integrated into the plan; that it also allowed for the four additional lots beyond the two units to the acre; that for each additional lot there is a development fee due; that he believed it to be \$20,000 per lot within the Code; that for all of the reasons stated The Knoll is consistent with the Sussex County Code and the 2018 Comprehensive Plan and he submitted proposed Findings and Conditions.

The Commission found that Mr. Jeff Clark spoke on behalf of the Application; that the site as surveyed is 14.66-acres; that it is situated on the east side of Irons Lane; that is about 2,300-ft. northeast of the Holts Landing Rd. intersection; that it is located in an area that is fully developed to the north of The Knoll into over 900 single-family residential lots and multi-family homes; that the entire subject property is currently zoned AR-1 Agricultural Residential; that the property is currently owned by the Applicant; that the existing zoning map illustrates the communities within the immediate neighborhood as well as Holts Landing State Park; that this clearly illustrates the area as fully developed to the extent of the Sussex County Sanitary Sewer infrastructure as currently been installed; that the southernmost sewer point of connection is located immediately in front of The Knoll; that The Knoll site is presently wooded and not actively managed for timber, harvesting or silviculture; that the proposed subdivision site is bound on the north by The Greens subdivision; that The Greens is an AR-2 Agricultural Residential half acre lot subdivision which was originally developed in the 1980's; that The Greens predates sewer installation; that The Greens is fully built out with large custom residences; that many of these residences overlook the Cripple Creek Country Club golf course; that to the south of the Application site is Irons Landing subdivision; that Irons Landing also appears to be fully developed with custom residences on

17,000 sq. ft. lots; that two large lots, about 1 to 1 ¾-acre in size, fronting on Irons Lane also adjoin the Application site to the south and west; that the land immediately east of The Knoll is fully wooded; that the area is currently undeveloped; that to the west of the Application site is The Preserve at Irons Landing and Seagrass Plantation Subdivisions; that these combined subdivisions yield 220 lots and are developed at a 7,500 sq. ft. lot size; that this is the same size as what The Knoll is proposing; that the proposed subdivision site is located in the Coastal Area according to the Comprehensive Plan; that a supplemental data book was prepared and submitted to the Planning & Zoning Commission in advance to the meeting; prior to preparing a land use plan for the site, a field investigation was conducted by Watershed Eco; that Watershed Eco is a recognized Delaware professional environmental consulting firm; that no jurisdiction of wetlands and no rare, threatened or endangered species were found on the site; that the reports prepared by Watershed Eco can be found in the provided supplemental data book; that in the predesign phase it was learned that an existing 18-in. sanitary sewer main and terminal manhole exist within the Irons Lane right-of-way and immediately in front of The Knoll property; that the Sussex County Engineering Department has confirmed this site is located in a Tier II Planning Area; that adequate compacity exists to accommodate the proposed land use; that adequate potable and fire protection water supply is available to serve the project from an existing 8-in. watermain running within the Irons Lane right-of-way; that a Willing and Able To Serve letter is provided by Tidewater Utilities, Inc. within the supplemental data book; a single commercial entrance is planned to connect The Knoll with Irons Lane; that this entrance is similar to the other subdivisions in the area; that fully developed subdivisions abutting The Knoll to the north and the south eliminate, from a planning stand point, any opportunity for interconnectivity; that during the conceptual design phase a thorough soils and site investigation was conducted; that stormwater management areas were identified; DelDOT confirmed in both the PLUS comments and the Service Level Evaluation Response that the planned 33-lot development will generate fewer than 50 vehicle trips in any hour; that the planned development will create fewer than 500 vehicle trips per day; that DelDOT will not require a Traffic Impact Study (TIS); that DelDOT characterized the addition traffic impact for the proposed development as negligible; that the proposed 33-lots will range in size from 7,715 sq. ft. to 8,719 sq. ft.; that each lot fronts on a 50-ft. right-of-way with a standard Sussex County curbed street and a continuous concrete sidewalk on one side; that the sidewalk network will connect to a trail between Lot 18 and Lot 19; that on the western side of the community it meanders around to large stormwater ponds with a five acre community open space; there is a second one acre community open space planned for the center of the subdivision, which is the wooded area in the center of the plan; that the total open space within The Knoll is 6.2-acres as defined by the Sussex County Code, which is 42% of the total acreage of the site; that along the entire wooded perimeter of the site adjoining existing developed subdivisions the site plan plans for a minimum of 30-ft. preserved existing wooded buffer; that over 25% of the existing woods are preserved after development; that Lot 1 is setback from Irons Lane approximately 60-ft. at the main gateway to The Knoll; that no lots have any direct access to a State maintained road; that the project was reviewed in November of 2020 by the Office of State Planning and the PLUS process; that the complete PLUS report and written responses have been submitted to the Planning office and is contained in the supplemental data book; that the site lies within Investment Levels 2 & 3 according to the Strategies for State Policies and Spending; the Investment Levels 2 & 3 reflect areas where growth is anticipated; that the State Historic Preservation Office confirm in the PLUS comments that no known archeological or national registered listed properties are located on the parcel; that the interior landscape area will be planted in conformance with a detailed plan prepared by the landscape architect; that perpetual maintenance will be accomplished by qualified individuals and firm specializing in this field under direct contract of the Homeowners Association (HOA); that streetlighting will be standard Delaware Electric Coop subdivision poles and fixtures manufactured by holophane; that the lighting will be directed downward toward sidewalks with cutoffs toward the residents so lighting does not shine in the windows; that the site plan demonstrates that all area and bulk requirements of the Sussex County Code can be met; that

the maximum allowable density for a Cluster option AR-1 tract in the Coastal area served by both central water and sanitary sewer is four dwelling units per acre where the developer has proffered a development fee for every unit in excess of two units per acre to Sussex County; that therefore the 14.66-acres could produce an allowable density of 58 lots; that The Knoll proposes 33 lots or four lots in excess of the two lots per acre requiring a development fee; that The Knoll land use proposal is consistent with the adjoining land uses and area zoning and the proposed subdivision will not have an adverse impact on traffic, roadways, neighboring properties and communities.

Ms. Wingate questioned the landscape buffer at the corner of Lot 29 and the property out the outside of the retention ponds, where the walking path is proposed if a 30-ft. buffer would be maintained in those areas; that she questioned if DelDOT will be constructing a multiuse path at the entrance and questioned what types of homes are proposed.

Mr. Clark stated there is a 30-ft landscape buffer around the property including both of those areas in question.

Mr. Pfeifer stated that a multi-use pathway will be constructed along the frontage of the site.

Mr. Absher stated the homes will be over 2,000 sq. ft each and will be single-family custom-built homes.

Ms. Stevenson questioned the clearing of trees and the length of the dead-end roads.

Mr. Clark stated there would be clearing of trees in the areas that need development; that the lots are deeper than necessary for the housing construction; that in addition to the 30-ft. buffer he would not expect the lot to be cleared in its entirety but enough to build each home on the front of each lot, as well as the street system; that the exception to this is the park in the center of the site and the length of the dead-end roads are less than the maximum required by the Fire Marshal.

Mr. Hopkins questioned what number of parking spaces per home is proposed.

Mr. Clark stated it is expected the homes have a two-car garage and the available space for two parked cars in the driveway, but the exact architecture is not completed yet.

The Commission found that Mr. Kenneth Lieb spoke in opposition to the Application; that he lives in Irons Acres adjoining the property; that he had heard a rumor that Mr. Absher had purchased Mr. Chad Marvel's property, which is the home to the left of the open area of the site; that he is concerned if this is true Mr. Absher will add that property to The Knoll to build more homes on it in the future; that he questioned who will provide the maintenance to the boundary trees that overhang the property line; that he rakes an excessive amount of leaves from the trees and would like them trimmed if possible; that Irons Lane Rd. contains a lot of traffic from the nearby neighborhoods; that drivers often speed on Irons Lane Rd.; that there is no shoulder; that he feels the road was not constructed with the intention of the traffic it currently has; that he questioned if there are any future road improvements scheduled for the road; that his neighborhood is the only neighborhood in the surrounding area of Baltimore Hundred not connected to the sewer system; that he questioned if there was any future plan to make that happen and he personally would like to see a sewer connection made.

Chairman Wheatley stated that the subject of the current public hearing is only for The Knoll; that the Commission cannot confirm, deny, or address any rumors; that if the Applicant did acquire additional property, they will have the right to ask to have the land subdivided and in Sussex County all of the

roads are the responsibility of the State of Delaware and encouraged him to call the Sussex County Engineering Department regarding sewer connection service in the area.

Mr. Charles Campbell proposed a question; that he inquires where the water goes, from the retention ponds at the end of the development, once they overflow; that he asked that question because there is a giant borrow pit that lays in the nearby woods; that he questioned if it was permitted to fill the borrow pit up and build on top of it; that the nearby properties often flood with heavy rain, leaving standing water for days; that neighbors have lost their septic systems due to the water; that others have water within their crawlspace; that he questions how the proposed development will impact the flooding issue and he stated his neighborhood was previously approved by Sussex County and the State of Delaware and it was not supposed to flood; that he does not know the date his neighborhood was approved and he states at one time the whole area he was referencing was located within a 100-year floodplain, but the 100-year floodplain has since been removed.

Chairman Wheatley stated the law requires the proposed development to not affect adjacent properties at all; that the developer is required to retain and dispose of 100% of the property's stormwater on their property without causing any more runoff that currently exists; that the retention pond is not designed to overflow; that he believes the neighborhoods approval was most likely granted 30-40 years ago; that Sussex County and the State of Delaware have learned a lot in the last 20 to 40 years from situations like what Mr. Campbell had stated and Sussex County tries very hard not to let those situations happen anymore.

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

Mr. Robertson stated should the Application receive preliminary approval the Application would still need to be submitted to the Sussex Conservation District who will take a look at the stormwater management design to ensure it will not cause any negative impacts to adjacent properties and he encourages if there are septic systems in the referenced area; the homeowner's group contact the Sussex County Engineering Department regarding getting on Sussex County sewer; that Sussex County will go in and retrofit and pull people off septic systems and put in lines.

Mr. Campbell stated he had originally contacted Sussex County and the answer he got was that the current water main was pressurized and could not be tied into.

Chairman Wheatley encouraged Mr. Campbell to contact Sussex County Engineering Department again because he feels the answer given was wrong; that he stated if the Application were approved it would be the ideal time for sewer connection and that residents may contact the Soil Conservation District who will come out to the property to investigate.

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

In relation to Application 2021-08 The Knoll. Motion by Ms. Wingate, seconded by Mr. Hopkins to defer action for further consideration. Motion carried 4-0.

2021-09 Brookland Farm

A Coastal Area cluster subdivision to divide 42.82 acres +/- into 92 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on

the east side of Bayard Road (S.C.R. 384), approximately 0.51-mile north of Zion Church Road (Route 20). Tax Parcel: 533-11.00-87.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicants subdivision plan, a copy of the Applicant's exhibit booklet, a copy of the Applicant's design booklet and environmental statements, a copy of the Applicant's Chapter 99-9C Response, a copy of the DeIDOT Service Level Evaluation Response, a copy of the State Planning Office PLUS comments, a copy of the technical advisory committee comments including USDA United States Department of Agriculture and the Division of Public Health and two comment letters, with one of the letters being in opposition.

The Commission found that Mr. Jeff Clark with Landtech was present on behalf of the Applicant, Brookland Farm; that also present were Mr. Robert Harris with Gulfstream Development; that he is the landowner and Applicant of the Application, and Mr. Ron Sutton with Civil Engineering Associates; that the 42.5-acre Brookland Farm site is predominantly tilled open land with a dwelling and a man-made open water ponds on the western portion of the property; that there is a small fringe of woods and marsh along the eastern boundary that abuts the unnamed tributary of Dirickson Creek, that the entire property is zoned AR-1 Agricultural Residential; that the site is mapped in the Coastal Area in the current Sussex County Comprehensive Plan; that the site has both central water and sanitary sewer available; the Brookland Farm subdivision site is bound on the north and west by farmsteads with open and clear lands that are actively farmed; that immediately south of the Brookland Farm is the 90-lot Hamlet at Dirickson Pond subdivision; that the Hamlet subdivision is a fully developed community of single-family homes on lots averaging 1.5-acres with some larger homesites; that directly across the street from the Hamlet community is the 110-lot Batson Creek Estates subdivision; that the Batson Creek lots are a minimum of 7,500 sq. ft each; that these lots are similar to the lots proposed within the Brookland Farm project; that other communities within the immediate vicinity include Fox Haven, Swann Estates and the Estuary; that both federal non-tidal and DNREC tidal wetlands were found on the site; that these wetlands were professionally delineated by Watershed Eco LLC; that the site was surveyed as a prerequisite for the land use planning; that also a complete professional site analysis found there were no rare, threatened or endangered species present; that there were no areas of environmental concern on the property; that each of the environmental reports were prepared by Mr. James McCulley; that these reports are contained in supplemental data book prepared and submitted in advance to the public hearing; that the DNREC jurisdictional wetlands as delineated on the Brookland Farms site will be adequately buffered with a minimum of a 50-ft. non-disturbance zone from the single-family home land use; that they will remain in their natural condition; that the area will not be disturbed as part of the subdivision construction; that this area is located to the far eastern part of the property; that there are two existing farm ponds located near Byard Rd.; that both ponds were delineated as Waters of the United States; that presently the driveway is the upland access to the existing farm, home and outbuildings; that the driveway bisects the two existing ponds; that the land use plan illustrates the private streets serving as the gateway to the subdivision follows the same farm lane path; that the two ponds are planned for an expansion in size; that they will become a passive amenity for the residents and their guests; that no lots within Brookland Farm subdivision have direct access onto Byard Rd.; that all lots when viewed from offsite will present only the fronts of each home across two large ponds on either side of the entry; that there is a single commercial entrance plan to connect Brookland Farm with Byard Rd.; that this is similar to the other existing subdivisions in the area; that the land use plan also illustrates an alternative private street connection; that this is located in the cul-de-sac to the lower left of the site where there is an

emergency allowance present; that there is a second alternative which is the cul-de-sac on the other side of the property; that this is another potential connection should the adjacent land ever be developed; that the Artesian Water Co. has expressed in a letter to the Applicant that there is adequate public water infrastructure on Byard Rd.; that Artesian Water Co. currently serve the abutting Hamlet at Dirickson Pond subdivision; that all water infrastructure will be designed to Artesian's standards and specs; that it would be reviewed by the State Fire Marshal's office for conformance to the Fire Prevention Regulations; that there is a Willing and Able to Serve letter located in the supplemental data book; that the sewage disposal proposed for Brookland Farm will be the connection to the existing Sussex County Sanitary Sewer infrastructure; that this is located within the Byard Rd. right of way; that a Sewer Service Concept Evaluation report from the Sussex County Engineering Department has confirmed that there is adequate capacity to serve the Brookland Farm project; that they have identified specific connection points; that there are some additional parcels within the neighborhood that this Applicant will have to serve as a result of bringing sewer further south; that the Brookland Farm project abuts the Sussex County Sewer District but is not currently included; that a copy of the sewer study is contained in the submitted booklet; that the Brookland Farm subdivision design results in an excess of 19.33-acres of open space; that by calculation that is 45.5% of the proposed site; that the open space would be actively managed by a professional maintenance company under contract of the HOA Homeowners Association; that the low residential density plan for Brookland Farm will result in 2.12 dwellings per acre; that this is generally keeping with the low density character of the surrounding area; that all streets, sidewalks and site grading infrastructure will be designed, constructed and inspected for conformance to all Sussex County Engineering Departments standards and specs; that the entire Brookland Farm subdivision site is mapped on Flood Insurance Maps with Flood Zone X; that all grading, drains and stormwater management facilities will be constructed and inspected in conformance to Sussex Conservation District and DNREC standards and specs; that based upon comments offered by DelDOT the Brookland Farm subdivision does not require a TIS Traffic Impact Study; that will instead pay an area wide study fee; that the recommendation for offsite improvements by DelDOT staff and regulations will become necessary as part of the subdivision entrance process; that the commercial subdivision entrance permit will ensure that DelDOT standards and safe bicycle, vehicular and pedestrian movements will occur as part of the new subdivision construction; that the Brookland Farm design incorporates paved sidewalk network throughout the neighborhood, connecting residents to each other and site amenities; that a sidewalk will be located on at least one side of each street; that there is also a community trail system that meanders around the two ponds and a couple of the open areas; that the trail is also connected to the DelDOT shared use path located along Byard Rd.; that the plan proposes a total of 92-lots ranging in size from 7,500 sq. ft. to the largest lot being 10,243 sq. ft.; that each lot fronts on a 50-ft. right of way with a standard crowned paved street and continuous concrete sidewalk; that this is all designed to Sussex County Engineering Standards; that a 17-acres community open space park area, with two large open water ponds are planned at the gateway of the main subdivision entrance; that within the interior of the subdivision community are two additional parks; that the parks are centrally located with active amenity area with a proposed swimming pool and bathhouse; that along the entire perimeter of the site adjoining an existing developed residential lots is a minimum 30-ft. landscape buffer; that to the north the required 50-ft. building construction setback has been maintained along the northern agricultural boundary line; the community existing natural areas are open space, perimeter buffers, and subdivision street and trees; that the trees are to be planted in conformance with a detailed open space management plan; that the plan will be prepared by the project landscape architect; that the perpetual maintenance of those areas will be accomplished by qualified individuals and firms which specialize in

the field under the direct agreement to the Brookland Farm HOA Homeowner Association; that the project was reviewed in November 2020 by the Office of State Planning and the PLUS process; that the complete review and comments are located within the supplemental data book; that in the PLUS comments of the State of Historic Preservation Office noted there are no known archeological or national registered listed properties located on the parcel; that the historic archeological potential of the site is low; that street lighting will be standard Delaware Electric Coop subdivision poles and fixtures; that these would be designed to be downward lighting to not shine offsite; that the site plan demonstrates that all area and bulk requirements of the Sussex County Code can be met; that there is a total site area of 42.48-acres; that the total area of tidal wetlands is .79-acres; that this equals a gross site area of 41.69-acres; that the number of lots permitted is 83 or two lots per acre; that located in the Coastal Area for AR-1 Zoned land, within the Comprehensive Plan, that is served by central sewer system and public water, and if the developer has proffered a development fee, the number of dwelling units that may be permitted is one unit per 10,890 sq. ft., or four units per acre, or in this Application's case 166 units; that the total number of lots is 92; that the number of lots subject to the development fee in the Application is nine; that the open space acreage purposed or preserved is 19.33-acres or 45.5% of the site; that no woodlands will be removed from the site for development of the subdivision; that the Brookland Farm subdivision land use plan is consistent with the adjoining land uses and area zoning; that it will not have an adverse impact on traffic, roadways or neighboring properties and communities; that the proposed project has been planned in accordance with the 2018 Comprehensive Plan and its Future Land Use Map; that it is located within the Coastal Area; that the Coastal Area is designated as one of the growth areas, where medium and higher densities can be appropriate where there are features of central water and sewer, commercial uses, employment centers and keeping with the character of the surrounding area; that the Comprehensive Plan states a range of housing types should be permitted within the Coastal Area; that these types include single-family homes, townhomes, and multi-family units and given the proximity of the site to the towns of Ocean View, Millville, Bethany Beach and the nearby Rt. 54 commercial corridor, there is an abundance of services, markets, and employment opportunities available.

The Commission found that Mr. Ron Sutton with Civil Engineering Associates spoke on behalf of the Application; that DelDOT is requiring the Applicant to improve approximately 1,700 linear feet of roadway; that currently the roads are not super elevated; that super elevation is required for the roadway; that this will be a large DelDOT improvement project; that super elevation will be placed on the curve and straightening everything out; that super elevation is an engineering term for lifting the road; that when a person drives around a curve, centrifugal force wants to throw the driver out; that super elevation is where the road is lifted and tilted upward; that when driving around the curve the driver will be able to stay in their lane, rather than having force throw the driver into the oncoming lane; that this process is known as super elevating; that this is a costly endeavor; that it requires a lot of regrading, building up of one side of the road and lowering the other side of the road; that this will keep traffic flowing smoothly around the curve; that the Applicant is required to improve the intersection just up past Evans Rd. and the new roadway will have 12-ft. lanes, eight foot shoulders, as well as a left and right turn lane.

Ms. Wingate stated there was some concern from neighbors at the Hamlet subdivision regarding an existing dilapidated fence; that she questioned if the fence would be removed and/or a new fence replaced, in addition to the buffer, for additional screening; that the fence is located on the Applicant's property according to the public comment letters submitted; that there is currently a buffer present between the Hamlet subdivision and the proposed property; that she feels the proposed entrance is a

great look coming in the subdivision from the road and she likes having some green space there rather than the houses up against the road and she questions interconnectivity; that Lot 58 at The Hamlet does show potential interconnectivity; that she questioned if the developer would be willing to make that area for interconnectivity for walking pedestrian traffic; that she feels this would keep pedestrians off the main road; that Batson Creek and The Hamlet share use; that she feels emergency personnel only would have access after eliminating Lot 58 to allow people to walk back and forth, as well as emergency response personnel and questions what types of homes are proposed to be built.

Mr. Harris with Gulfstream stated that if the fence is located on the property and dilapidated it will be removed.

Mr. Clark stated that the Sussex County Code refers to the placement of either a fence, a berm, or a buffer; that there is a 30-ft. planted buffer proposed; that there is a great expense to create the proposed buffer; that there is an area of trees existing, but that area is proposed to be enhanced to create the 30-ft. buffer; that he believes the current proposed location for emergency vehicle access, at the cul-de-sac located at Lot 92 is more appropriate for emergency personnel access, rather than emergency personnel having to travel through another community; that this would be quick access to the site directly off of Bayard Rd. and cannot imagine the pedestrian access being an issue but questions the connection of a road.

Mr. Sutton stated Lot 58 could be relocated to create access.

Mr. Harris stated the homes would be in conformance to the same type of homes built in other communities by Gulfstream Development, LLC; that an example of homes would be those located in the Woodlands; that homes would be single-family; that the homes would be 2,000 sq. ft. to 3,000 sq. ft. and pricing would be \$400,000 to \$700,000.

Ms. Stevenson questioned how the Applicant plans to overcome the very poorly draining soil and the soil report stated the site would present nothing but flooding, causing issues in basements and cracking in frost; that everyone's lots will be flooded when it rains, that report stated all runoff will dump into Dirickson's Creek; she questioned how runoff would be filtered going into Dirickson's Creek; that she questioned what access right-of-way has been established to the tax ditch, so that it can be maintained; that she questioned if there is active hunting on the property to the north; that she requested it be placed in the covenants stating active hunting could take place nearby; that she questioned what a biofilter was; that she also had questions about interconnectivity at Lot 58 and she questioned if Mr. James McCulley physically visited the site to confirm there was no endangered species on the property.

Mr. Sutton stated a detailed geotechnical analysis was performed across the entire site; that there is a layer of clay just underneath of the topsoil; that once you get below the clay there is well draining soils present; that for stormwater, once they break through the clay, there is ample room for stormwater management; that everything will be graded to run to the streets, swales and stormwater management areas; that nothing will be designed to hold water on-site; that he believes the water will run in conveyance to what will be designed; that there will be no proposed basements; that the homes will most likely be slab on grade; that there is a natural divide, right above the clubhouse, where the lots are separated, there is an area of open space; that everything to the left or west of that area will drain into the two ponds in that location; that all runoff to the east will drain back and eventually make it to the pond at the rear of the property and will drain into the tax ditch on that side of the property; that both areas are meant to drain to a tax ditch; that there is no right-of-way, to the tax ditch, located on the

Applicant's property; that it was asked that the tax ditch be reviewed, addressing the right-of-way and submit for court order changes if needed; that in this Application a court order change is not required; that the current resource protection event volume, required by DNREC and Sussex Conservation District, will be met with both stormwater ponds on the site; that the stormwater ponds will comply with the regulations for the 10-Year and 100-Year storm event; that he does not know if there is active hunting on the property to the north; that biofilters are also known as bioswales; that they are long flat swale that is used to help provide quality management; that it helps cut down on the nutrients and sediments that make their way to the stormwater management ponds; that they are super elevating the roads, that the high side is toward the houses, with the low side being toward the ponds; that when it rains, the rain will runoff and filter through the grass before making its way to the pond and this will create better quality and sediment reduction.

Mr. Clark stated Mr. James McCulley did physically visit the site and located within the book there are comments in writing from the agencies and that the comments are not very well written by the agencies; that the area they are referencing is enormous; that the species the report referenced was found at Dirickson's Creek; that the site is pretty far removed from that area; that stated in the report is there is a minimal chance that species is located on the site, due to it being farmed and nothing was found during the visit to the site.

Mr. Hopkins questioned what the parking conditions would be like for each of the homes.

Mr. Clark stated each home would have a two-car garage; that the homes are set back at least 20-ft. allowing cars to park in front of the home without handing over the sidewalk and submitted proposed conditions into the record.

The Commission found Mr. Bill Easton had questions regarding the Application; that he lives on Jahnigen Dr.; that on the southern boarder of the proposed project that there is an established head row that separates the Brookland Farm property from The Hamlet subdivision; that the head row contains mature trees at 50-ft. and higher, with some lesser trees and bushes; that the head row exists within the proposed 30-ft. buffer and on The Hamlet HOA property; that the head row provides both a sight and sound buffer between properties; that he requested a condition be placed, upon the approval of the Brookland Farm Application, that the existing head row be left undisturbed; that by doing this it will benefit both properties; that he has concern about Bayard Rd.; that Bayard Rd. is a two-lane country road with no shoulders; that Bayard Rd. is becoming increasingly important north and south route; that there are many types of vehicles that travel the road; that in warmer months there is bicycle traffic; that vehicles must enter oncoming lanes to pass bicyclist; that he request prior to the approval of the Brookland Farm Application a TIS Traffic Impact Study be performed; that the TIS should include the expected traffic increase of not only the Brookland Farm subdivision, but also all other approved and under construction projects along the traffic corridor and if the study finds Bayard Rd. inadequate for the traffic increases, he feels any new subdivision approvals along this corridor should be postponed until Bayard Rd. is upgraded to meet the increased traffic demands.

The Commission found that Mr. Lee Warren spoke in opposition to the Application, that he lives across the street from the project; that he was happy to see Lot 58 located on the site plan; that he feels there is already enough people coming into the neighborhood; that having an opening at Lot 58 will create increased traffic through his neighborhood; that vehicles often speed on that road; that there is increased traffic flow on the road; that his neighborhood houses are 3000 sq. ft. to 4,000 sq. ft.; that he lives in a fairly pristine neighborhood; that he is concerned about any increased traffic coming through the

neighborhood at all; that particularly he is concerned about vehicle headlight invading peoples homes head on; that he would not be opposed to an emergency vehicle only entrance where a gate would be placed; that at times it is difficult for him to enter his driveway from the foot and bicycle traffic coming from Batson Creek Estates because of the lake; that he is also concerned about the runoff; that in The Hamlet at Dirickson Pond community, their lake is the largest spring-fed lake located in Delaware; that the lake water is pristine; that the lake came about from a person performing a beach replenishment, they hit a spring, creating the water to build up; that the community swims in the lake; that the community has great restrictions from covenants established by the Association to ensure residents are not doing anything to damage the lake; that electric motors are not permitted in the lake; that he is concerned runoff from the proposed development will run into the lake; that residents are very careful how they treat their lawns and property to ensure the lake is not compromised; that there are houses in the community listed for \$1,000,000; that he does not want to see property values decrease because of damage to the lake; that currently there is an environmental study being conducted to inform residents what must be done to keep the lake pristine; that grasses are being installed on the swales to clean the runoff and residents are spending a lot of money to keep the lake pristine.

The Commission found that Mr. Lawrence Long spoke in opposition to the Application; that he is the "L" in L&D Long, LP; that he owns the adjoining property; that he wanted to confirm that there is active hunting on the property; that it is mainly for deer and goose and he wanted to make the hunting known on behalf of his sons.

The Commission found no one wished to speak by teleconference in support of or in opposition to the Application.

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

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

In relation to Application 2021-09 Brookland Farm. Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 4-0.

2021-10 Graywood Springs

A cluster subdivision to divide 58.11 acres +/- into 38 single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the east side of Oyster Rocks Road (S.C.R. 264) approximately 0.45-mile northeast of Coastal Highway (Rt. 1). Tax Parcel: 235-16.00-40.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit booklet, a copy of the Applicant's subdivision plan, a copy of the PLUS comments from the State Planning Office, a letter from Environmental Resources, Inc. concerning endangered, rare and threatened species on the parcel, a copy of the Applicant's Chapter 99-9C response, a copy of the Technical Advisory Committee comments, including United States Department of Agriculture and the Public Health Office, a copy of the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, the Applicant's Soil Feasibility Study and there was an additional comment that was circulated to the Commission.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of the Application, 2021-10 Graywood Springs; that he is representing the Applicant, Double DB, LP; that also present are Mr. Webb Gray who is the principal of Double DB, LP, Mr. Jeff Clark with Landtech, Mr. Lãf Erickson

with Atlantic Resource Management, Inc., Mr. Chris Pfeifer with GMB Engineering, Dr. Ed Launay with Environmental Resources, Inc.; that Graywood Springs is a cluster subdivision Application; that proposed is a 38-lot cluster subdivision on a little over 58-acres; that the roadway that runs in front of the property is Oyster Rocks Rd.; that this road is a classic Sussex County intersection; that the road on the side of Hudson Fields is identified as Eagles Crest Rd.; that after crossing over Rt. 1 to the side of The Crossing church, the road changes to Oyster Rocks Rd. and there are many residential communities located along Oyster Rocks Rd. including Covington Chase.

The Commission found Mr. Jeff Clark spoke on behalf of the Application; that the site is situated on the southeast side of Oyster Rocks Rd.; that it is approximately 1,500-ft. from the intersection at Rt. 1; that it is located in an area that is fully developed, with multiple single-family subdivisions, to the west of the proposed Graywood Springs community; that there are also a collection of stripped residential lots; that the entire Graywood Springs property is zoned at AR-1; that it consists of 24.93-acres of upland, agricultural fields, 14.38-acres of forested uplands, 10.66-acres of State of Delaware, DNREC regulated, tidal wetlands and 8.14-acres of Waters of the United States non-tidal wetlands; that this creates a total site area of 58.11-acres as surveyed; that the agricultural fields site were not actively tilled during the last season; both the federal and DNREC jurisdictional wetlands have been professionally delineated and surveyed; that this was a prerequisite to any land use planning for the proposed site; that a complete site analysis was professionally conducted to learn if there were any rare, threatened or endangered species on the site; that it also identified if there were any special forested areas that should not be developed; that this information was prepared by Mr. Ed Launay; that the information can be found in the supplemental data book; that Graywood Springs is buffered on the north and east by wooded federal and DNREC jurisdictional wetlands that are associated with the Headwaters of Fisher Creek; that the centerline meanders the Fisher Creek to form the eastern boundary of the property; that to the east of Fisher Creek are open, cleared lands that are actively farmed; that to the south abutting Graywood Springs is open agricultural lands that is presently and actively tilled; that the western boundary of Graywood Springs is formed by an abutting 14 single-family lots; that these lots front on, and have direct access to, Oyster Rocks Rd.; that most of the road frontage lots have been improved by single-family residents; that each lot having individual septic systems and wells; that further west and abutting Oyster Rocks Rd. are several large subdivisions; that these subdivisions have over 200 lots cumulatively; that these subdivisions include Covington Chase; Oyster Rock and Osprey Landing; that as the site plan has been developed the federal jurisdictional forested wetland area and the DNREC tidal jurisdictional areas will be adequately buffered from the proposed single-family home land use; that they will all remain in their natural condition; that they are not to be disturbed as a part of the subdivision construction; that Graywood Springs Application preserves a minimum of 50-ft. buffer of existing woods; that all identified tidal wetlands will have a minimum of 25-ft. buffer of existing woods adjacent to all the identified federal jurisdictional wetlands; that an open space management plan, constructed by a qualified professional, will outline in great detail the strategy to maintain the native trees and shrubs within the natural area; that the strategy will also include the management of the developer planted landscape buffer area and street trees; that no lots within Graywood Springs have direct access onto Oyster Rocks Rd.; that there is a single commercial entrance plan to connect Graywood Springs with Oyster Rocks Rd.; that this connection will be much the same as the other subdivisions within the area; that the land use plan does illustrate an alternative private street connection should the adjacent residential land be developed into residential homesite in the future; that Tidewater Utilities Water Co. has adequate public water infrastructure within Oyster Rocks Rd.; that this is located directly in front of the property site; the Tidewater Utilities currently serves the existing subdivisions to the west; that all

water infrastructure would be designed to Tidewater's standards and specs; that the infrastructure would have to be reviewed by the State Fire Marshal for fire protection regulations; that there is a Willing and Able to Serve letter from Tidewater; that the letter can be found in the supplemental data book; that the low residential density plan will result in less than one dwelling per acre; that the density is 0.65 dwelling units per acre; that this is less than, but generally keeping with the low density character of the surrounding area; that all streets, sidewalks and site grading infrastructure will by necessity be designed, constructed and inspected in conformance of the Sussex County Engineering Department's standards and specs; that the property is located within Flood Zone X and AE; that during the conceptual design phase thorough site soils investigation was conducted by Geotechnical Associates; that stormwater management areas have been identified to planning purposes; that all grading, drains and stormwater management facilities will be designed, constructed and inspected in conformance with the Sussex Conservation District and DNREC standards; that all onsite septic systems will be designed, constructed and inspected in conformance to the onsite wastewater treatment and disposal system, DNREC regulations and a report containing the site's soil analysis; that the proposed onsite septic system type is contained with the supplemental data book; that DelDOT confirmed in both the PLUS comments and Service Level Evaluation Response that the proposed development will generate fewer than 50 vehicle trips in any hour; that the development will generate fewer than 500 vehicle trips per day; that DelDOT will not require a Traffic Impact Study; that DelDOT characterized the traffic impact of the proposed project as negligible; that a total of 38-lots are proposed; that the lots range in size from .5-acre to the largest lot being 1.2-acres; that each lot fronts of a 50-ft. right of way with a super elevated street; that a slope having an open drainage swale on one side and a continuous concrete sidewalk on the other side of each street; that this will be designed to Sussex County Engineering Standards; that a community open space park area with a large pond is planned within the wooded area; that this is located immediately in front of the main entrance intersection within the interior subdivision street; that the Graywood Spring design results in an excess of 31-acres of open space; that this represents 54% as defined in the Sussex County Code; that this is to be actively managed by a professional maintenance company; that along the entire perimeter of the site adjoining existing developed residential lots is a minimum 30-ft. landscape buffer; that the landscape buffer will be designed by the project landscape architect; that any existing woods within the buffer area will be preserved after development; that there is a 50-ft. building construction setback from the property line contained on the southwest side of the subdivision; that this area abuts land currently used for agricultural purposes; that the open space management plan and the interior landscape plan will be planted in conformance with the detailed plan; that the project was reviewed in November 2020 by the Office of State Planning during the PLUS process; that the complete PLUS report and the Applicant's response are contained in the supplemental data book; that in the comments from the State Historic Preservation office stated there are no known archeological or national registered listed properties on the parcel; that the street lighting proposed is a standard Delaware Electric Coop subdivision poles and fixtures; that they will be directed downward toward the sidewalks; that this will cut light off from new residences and those that are existing on neighboring properties; that the site plan demonstrates that all area and bulk requirements of the Sussex County Code can be met; that the allowable residential density has been calculated for Graywood Springs; that the total site area is 58.11-acres; that the total area of wetlands is 18.8-acres, which is comprised of both federal and State of Delaware tidal wetlands; that after subtracting the wetlands, the gross site area is 47.5-acres; that in the low density area, as mapped in the Comprehensive Plan, the growth site area is required to be additionally reduced by 25%; that this brings the gross to 35.59-acres; that the reduced gross site area is then divided by 32,670 sq. ft., or $\frac{3}{4}$ of an acre; that this allows for a

maximum allowable number of lots on this property of 47; that 38 lots are proposed; that the minimum lot size allowable is .5-acre; that the open space preserved is 31.55-acres; that there is a total of 32.1-acres woodlands that cover the site; that 6.6 acres will be removed as 20% and this will leave 80% of the woodlands intact.

Dr. Ed Launay spoke on behalf of the Application; that he did a thorough investigation of the property; that he started with the delineation of the State and Federal wetlands; that the State wetland boundary was done in accordance with the official State Wetlands map; that the 50-ft. buffer was determined from that; that there is a minimum 25-ft. voluntary buffer has been established from the boundary of the federally regulated wetlands; that Fisher Creek is located near the centerline of the property; that from that area the property rises pretty significantly in elevation from that natural floodplain area; that there are portions of Fisher Creek within the property that are tidally influenced; that located toward the south it is mostly a nontidal system; that historically there were a number of excavations within the property to create ponds; that this created man-made water features within the delineated wetlands; that these are located apart from where the lots are being and being part of the open space; that there is roughly about 25-acres of upland agriculture field; that there are a little over 14-acres of wooded uplands; that there are 10.86-acres of area identified by the State Wetlands Maps as stated regulated wetlands; that the remainder of the wetland area is about 8-acres of nontidal wetlands which is regulated by the Army Corp of Engineers; that the Army Corp of Engineers regulates the same wetlands that the State regulates; that all the hydric soils, which include high water table soils and soils poorly suited for development, are mostly contained within the wetland area that was delineated, that as the property rises in elevation, there are very well draining and suitable soils present; that this soil should be suitable for inground wastewater management on the property; that he spent a great deal on the site; and observed the various habitats on the site; that he did contact the Fish & Wildlife Service for any records they may have; that there is a federally listed threatened species, the Eastern Black Rail; that is located within the project vicinity; that the species habitat is not suitable on the project property; that its habitat is further downstream near the wide open marshes; that he also consulted with DNREC Species Conservation and Research Program; that they stated there were no State rare or federal listed species on the property and no special habitats were identified and he concurs with the findings of both agencies letters based off of his onsite observation.

Mr. Hutt asked Mr. Lunay to confirm comments that were made as part of the PLUS letter submitted into the record regarding mature forest growth on site.

Mr. Lunay stated that there are parts of the property that were more mature; that a portion of the property had been excavated which resulted in wetlands; that this excavation had resulted in ponding on the property; that there is a block of mature forest on a portion of the site; that on the northwest side of the property was young forest; that he would not characterize the forest on the subject site as being mature growth forest; that there were several clearings where the land had been manipulated over time; that there is some mature old-growth forest on one end of the site; that the wetlands delineation report and plans were submitted to the Army Corps of Engineers; that the Corps had issued an approval letter on 5/4/21 as included as part of the Applicant's Exhibit Booklet.

Mr. Hutt stated that the project area that lies between Route 1 and Oyster Rocks Road where the project is located is a fairly consistent residential area along Oyster Rocks Road; that the subject property has a Future Land Use designation of "Low Density" Area as included within Sussex County's latest Comprehensive Plan update; that the gross density of the project is 0.65 units/acre; that this is well-

below the allowed density for the AR-1 and Low Density Areas designated on the Future Land Use Map; that a calculation of permitted density for the property had been presented and provided by Mr. Clarke of which tidal wetlands were subtracted from the overall gross acreage of the property; that the resulting number was multiplied by 25% and divided by 0.75 for a $\frac{3}{4}$ acre lot; that the density is just over 1 unit/acre at 1.06 units/acre; that the cluster option allows for greater buffers and tree preservation; that 25 acres of trees on the site would be preserved; that there are greater buffers than required due to adjacent agricultural uses; that the project is consistent with the Zoning Code and for the reasons just stated is consistent with Sussex County's Comprehensive Plan and Future Land Use Map found within that plan and that a proposed set of Findings of Fact and Conditions of Approval were ready for submittal to the Commission and County legal staff.

Ms. Stevens asked Mr. Lunay how large Fisher's Creek is and how far it is from the rear of the proposed lots.

Mr. Lunay stated that where there is a defined channel that is not wider than 10-ft but the width is variable contingent upon what area is used as a reference point; that there is a good deal of natural vegetation which buffers the lots including vegetation between the lots and the existing wetlands.

Ms. Stevens asked whether the proposal is to sell homes or lots and whether potential buyers would have the opportunity to survey the property to determine the most feasible location and type of on-site wastewater disposal system.

Mr. Hutt indicated that custom homes would be built on-site; that there is likely hunting in the area; that this was not included as part of the proposed Conditions, but that this would be an appropriate addition due to the nature of adjacent properties.

Ms. Wingate clarified that the property was tilled before as farmland and clarified that some of the wet areas on the property may be as a result of these activities.

Mr. Whitehouse had a question regarding the strip of land shown on the center of the site and asked whether any thought had been given to an easement or future access to the site or whether this property was to remain in open space.

Mr. Clarke stated that this strip was not adequate for access; that there is no use for it currently and serves no purpose within the subdivision.

The Commission found that no one present within Council Chambers wished to speak in favor of the Application.

The Commission found that Mr. John Vincent spoke in opposition to the Application; that he owns the farm to the south of the development; that his property borders Fisher Creek; that there are two problems which exist in the Fisher Creek area, one of which is very severe; that he is a chemist who works around the world on cruise ships building desalinization wastewater plants; that he holds a patent in the United States for this process; that he is working on his Doctorate degree in Research on the effect of opiates on single-cell bacteria; that Fisher Creek's problem pertains to the State Highway Department; that his property receives runoff from Route 88 all the way to Whites Chapel Church; that he had taken drone images of the property, from 2,600-ft and 135-ft wide; that the discharge pipe is a concrete culvert which is 12 inches wide; that on the west side of Route 1, the culvert is a metal culvert which is 24 inches wide; that the center drains are French drains; that when 4 inches of rain occurs, 864,000 gallons of water

runoff within that stretch; that the next farm north receives some runoff; that this runoff was never calculated; that as a result of his testing, he found baromatic and alopatic hydrocarbons; that there is a dam in Fisher Creek; that there were baby eels in the creek that were present but are now gone; that he went to the DelDOT website from Route 16 to Five Points; that in 2011 there were 27,150 vehicle trips per day; that in 2018 there were 35,991 vehicle trips per day; that equals a 22% increase; that the traffic pattern has changed with an increase of construction vehicles; that traffic backs up coming into the Five Points area back to the Broadkill Bridge; that when the traffic returns north on Sundays, the traffic again backs up to Red Mill Pond; that this will change when they install the new traffic pattern of the overpasses; that in the meantime there are excessive exposure to hydrocarbons; that hydrocarbons kill plant life; that during the wintertime, when the outfall of Fisher Creek begins to enter the marsh, it is frozen over; that as the water comes out of the branch, he believes there is an Artesian well which creates warmer water; that the water is steaming coming out; that the steaming water flows to the two irrigation ponds; that these ponds were placed by the Richards family while they were growing potatoes; that the water flows through the ponds and then onto the frozen ice; that as things begin to melt, the water which is very high in hydrocarbons, flows through, killing all the grass; that there will be a lake, but it will be null and void; that there were no shorebirds or crab shells or mollusks in that area; that it was originally a stream; that it has developed into a lake which is moving out onto the marsh; that it will continue to move out onto the marsh and meet Cool Spring Creek; that it will then make a rapid turn heading to the Broadkill River and then onto Roosevelt Inland; that when this happens it will kill all shrimp, crabs and fish; that this will be a result of the runoff from the road system, which will most likely only worsen; that with the proposed Applications septic systems, the anerobic bacteria will not be able to correctly perform its job due to disinfectants used; that Dawn dish soap is made up of DDBSA Dodecyl Benzene Sulfonic Acid, which breaks the carbon bond, creating it to rise to the top of septic systems; that this makes the anerobic bacteria unable to get to the carbon; that due to this the fats, oils and greases become rancid and breakdown; that they then release free fatty acids; that this is an organic acid and very strong; that the free fatty acids will be released in the effluent from the septic systems; that about 15-ft into the woods edge, on the far eastern edge, the soil is rotten; that this will continue to happen with the proposed development being so close to the wetlands and woodlands and the dead trees and plant life presented on his video were not caused by salt water intrusion from a high tide.

Mr. Vincent presented an ariel drone video.

The Commission found that Mr. Charles Warrington spoke in opposition to the Application; that he has lived in the area since 1940; that traffic is already an issue and he is concerned about increased traffic; that he also is concerned about residents' complaints when he tills his property; that he has had previous complaints from residents from Covington Chase regarding dust in their swimming pool and he has many offers to sell his farmland but he is determined to keep it farmland.

The Commission found that Ms. Julie Short spoke in opposition to the Application; that she is concerned about the destruction of the wetlands; that she also has increased traffic concerns; that there are no shoulders on Oyster Rocks Rd. and she is concerned about the impact on the wildlife.

The Commission found that Ms. Lydia Richardson spoke in opposition to the Application and stated she would like to see the farmland kept as farmland.

The Commission found no one wished to speak by teleconference in support of or in opposition to the Application.

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

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

In relation to Application 2021-10 Graywood Springs. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

Recess from 5:35 pm - 6:05 pm.

C/U 2264 Laudan Investments, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICES TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRES, MORE OR LESS.

The property is lying on the southeastern side of Savannah Road (S.C.R. 443A), approximately 0.77-mile northeast of Wescoats Road (Rt. 12). 911 Addresses: 1302 & 1304 Savannah Road, Lewes. Tax Parcels: 335-8.18-15.00 & 335-8.18-16.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Site Plan, a copy of the staff analysis, a copy of a letter that has been received from the Sussex County Engineering Department Utility Planning Division, a copy of the DeIDOT Service Level Evaluation Response, and that no letters of support or opposition had been received by the Department.

The Commission found that Mr. Tim Willard, Esq. with the law offices of Fuqua, Willard, Stevens, and Schab spoke on behalf of the application, C/U 2264 Laudan Investments, LLC; that he is representing the Applicant, Dr. Aponte, the Principal of Laudan Investments; that she has been practicing medicine for 21 years in Lewes and that she specializes in rheumatology.

That the parcel is where Dr. Aponte has been practicing for some time; that it is right next to the existing entrance to Cape Henlopen High School; that the parcel had been approved for a Conditional Use in the mid-2000's for use as a medical office; that also included in the Application is parcel 16.00; that parcel 16.00 was approved for a Conditional Use in 2007 for use as an architectural office through; that Dr. Aponte had purchased parcel 16.00 two summers ago; that she had been having the necessary repairs performed on the existing property; that the proposed Conditional Use Application is for medical offices; that meetings had been undertaken with Mr. Whitehouse; that the path that had been decided on was to amend the previous Conditional Use by submitting a new application for a Conditional Use for general business and general office use; that the definition of General Office Use is "a room or group of rooms for conducting affairs of a business profession, serving industry or government and generally furnished with desks and files for communications," that the intent of the application was to provide the Applicant with additional flexibility in the event that she wishes to rent the property; that the process started in February when the application was filed. Mr. Willard also advised the Commission that he had copies of the previously approved and original ordinances for the property.

Mr. Robertson requested the reference numbers for the previous Ordinances from Mr. Willard.

Mr. Willard clarified that the Conditional Use approved in 2004 was Conditional Use No. 1549, Ordinance No. 1723 and was for a medical office; that three years later the other Conditional Use was approved; that this application was Conditional Use No. 1744, Ordinance No. 1996; that this approval was for Parcel 16.00 which was sought previously by Mr. Wagner; that the total acreage of Parcels 15.00

and 16.00 together is 0.68 acres; that the property is zoned AR-1; that the property through the latest approved Comprehensive Plan has the Future Land Use designation of “Commercial Area;” that one of the previous Conditions of Approval was that the property remain residential in nature; that the proposed Findings of Fact were written to match this previous requirement; that the property has a recorded entrance permit already; that the entrance permit had been granted by DeIDOT in 2007; that the entrance permit required site improvements including the installation of curb and gutter; that the parking requirement is one parking space per 200 square feet of floor area; that the property requires 15 parking spaces under these requirements; that the site currently contains 12 parking spaces; that the property was large enough that, per the survey, another 10 parking spaces could be added on the opposite side of the property; that no TIS was required by DeIDOT; that proposed Findings of Fact and Conditions were available to be supplied to the Commission and County legal staff.

Mr. Willard requested Dr. Aponte verify that his statements were true and accurate to which she had no objections.

Chairman Wheatley asked the Applicant whether her practice treats any other autoimmune diseases other than rheumatoid arthritis.

Dr. Aponte confirmed that her office treats several autoimmune diseases such as lupus, scleroderma, vasculitis, and lichen planus.

Ms. Stevens asked whether more parking spaces will be included on-site and that the site appeared to be busy.

Dr. Aponte confirmed that the practice was busy; that more parking spaces are being included on-site; that there is a large elderly population in the area which has resulted in the growth of her practice; that she has a new P.A.; that she intends to extend the practice in the future in order to find new ways to treat the community.

Mr. Willard indicated that there is one existing handicap-accessible parking space; that two more were likely to be added to the site.

The Commission found that no one from the public within Council Chambers wished to speak in favor of or opposition to the proposed Application.

The Commission found no one wished to speak by teleconference in support of or in opposition to the Application.

Ms. Stevens asked whether the Applicant wishes to have one unlighted sign for both properties or one for each property and confirmed that the application requested one unlighted sign for each property.

Mr. Robertson requested that the Commission defer this Application for him to receive copies of the originally approved Ordinances for the site.

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

In relation to Application C/U 2264 Laudan Investments, LLC. Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 4-0.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1920 (ORDINANCE NO. 2240) TO ALLOW FOR OFFICE SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.35 ACRES, MORE OR LESS. The property is lying on the northeast corner of the intersection of Lighthouse Road (Rt. 54) and Dickerson Road (S.C.R. 389). 911 Address: 33095 and 33113 Lighthouse Road, Selbyville. Tax Parcel: 533-18.00-25.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Site Plan, a copy of the staff analysis, a copy of a letter that has been received from the Sussex County Engineering Department Utility Planning Division, a letter containing the DelDOT Service Level Evaluation Response, a copy of the previous CU Application, Conditional Use No. 2240 and that no letters of support or opposition had been received by the Department.

The Commission found that Mr. Tim Willard, Esq. with the law offices of Fuqua, Willard, Stevens and Schab spoke on behalf of the application, C/U 2271 Chris Brasure; that he is representing Mr. Chris Brasure; that his parents Carroll and Diane Brasure were also in attendance; that the company has about 60 employees total; that about 15 employees currently work in the office; that he thinks the office is the largest, independently-owned pest control business in the country; that the company was started by Jacob and James in the late 18th century, early 19th century who used to harvest salt; that large spoils were taken from the rear of dunes which functioned as salt springs; that the salt water would be captured and boiled; that Carol started the company 50 years ago; that a previous Conditional Use had been sought and approved for the subject property in 2011 for an existing barn for the parking of trucks on site; that the Applicants are working on securing an alternative site in Roxana where their business trucks may be stored; that the existing home is located on Parcel 24.00 has been used for decades and has been transferred into an office; that the Brasure's desire to move that business out of the existing dwelling and into a more efficient office; that the application is truly for an amendment although it is for a new Conditional Use application; that the amendment is to allow the existing building to be retrofitted into an office; that the Applicant's have already been in discussion with Warfel Construction; that the Application would provide an aesthetic improvement to the site and make their business more efficient; that a memo had been provided by Planning and Zoning staff describing the adjacent and surrounding areas; that the Application is consistent with existing homes and businesses in the area; that the proposal is consistent with Sussex County's latest Comprehensive Plan update; that the nature of the proposal is of public or semi-public use; that the parcel consists of approximately 1.68 acres total; that proposed Findings of Fact and Conditions had been drafted and were available for submittal to the Commission and the County's legal staff; that the building would consist of approximately 4,900 square feet; that there are 15 existing parking spaces on site; that there are currently 12 parking spaces on the adjacent parcel; that the existing entrance would remain on the site and was not proposed to change; that the only change would be the existing barn-like building on site which houses the business trucks will be improved to house people and an office space.

Ms. Wingate indicated that she knew the property well and that the site was exceptionally manicured. Ms. Wingate asked whether any employees would be added to the business and whether any parking spaces were to be added on site.

Mr. Brasure confirmed that the number of employees and number of parking spaces were to remain the same.

The Commission found that no one from the public within Council Chambers wished to speak in favor of or opposition to the proposed Application.

The Commission found no one wished to speak by teleconference in support of or in opposition to the Application.

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

In relation to Application C/U 2271 Chris Breasure. Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 4-0.

ADDITIONAL BUSINESS

Mr. Whitehouse asked if there were any concerns with the list of proposed CY 2022 Planning & Zoning Commission meeting dates that had been circulated. Upon there being no concerns with the dates as circulated, Mr. Whitehouse confirmed that these dates would be entered for the next Calendar Year.

Mr. Whitehouse also reminded the Commission that the next scheduled meeting to be held on November 4, 2021, would start at 3:00 PM.

Meeting adjourned at 6:35 p.m.

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