

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 12, 2020

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 12, 2020 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III and Mr. Nick Torrance – Planner I.

Mr. Whitehouse noted that there were no changes to the Agenda. Motion by Ms. Wingate seconded by Ms. Stevenson and carried unanimously to approve the Agenda. Motion carried 5-0.

OTHER BUSINESS

The Estuary – Phase 3 (2005-64)

Final Subdivision Plan

This is a Final Subdivision Plan for the establishment of a proposed cluster subdivision to consist of 118 single-family dwellings on a 78.36 acre +/- parcel of land lying within the Coastal Area. The property retains access off of Piney Way and Estuary Boulevard within what is currently Phase 2 of the existing Estuary Subdivision. At their meeting of Thursday, October 11, 2018, the Planning and Zoning Commission approved the Final Subdivision Plan for the Estuary Subdivision (2005-64). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 134-19.00-115.02 & 134-21.00-8.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson, and carried to approve the Final Subdivision Plan. Motion carried 4-0. Ms. Wingate abstained.

James D. West (2020-05)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of a major, standard subdivision to divide 4.296 acres +/- into 4 single-family lots off of a 50-ft access easement. The property is located on the west side of Sussex Highway (Route 13) approximately 0.78 miles south of Adams Road. At their meeting of Thursday, September 10, 2020, the Planning and Zoning Commission approved the Preliminary Subdivision Plan. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 530-17.00-2.02. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

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

Americana Bayside MR-RPC – Freeman Arts Pavilion

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a 1,010-seat arts pavilion, including 876 parking spaces, and other related uses on a parcel consisting of 8.98 acres. The site is located on the south side of Signature Boulevard within the existing Americana Bayside development. At their meeting of Thursday, March 12, 2020, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the performing arts pavilion. Due to the current COVID-19 pandemic, the Freeman Stage had to significantly alter their plans for the 2020 season. Seats were previously sold in “pods” of four, with each pod maintaining the required 6-ft of separation distance. However, this option can only accommodate 400 patrons total and for this reason is unsustainable in the long term. To both address the need to accommodate additional patrons under the current Governor’s Orders and CDC guidelines and ensure the success of the Freeman Stage, GMB has proposed a phasing plan which would allow for maintaining the same number of patrons as the existing stage could accommodate while the new stage is being constructed. The plan is called “Phase 1A” and has been added to the plans as “Phase 1A Temporary Site Plan.” The Final Site Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 533-19.00-36.01, 864.00, 866.00, 881.00 and 990.00. Zoning District: MR-RPC (Medium Density Residential, Residential Planned Community.) Staff are in receipt of all approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson, and carried to approve the Revised Preliminary Site Plan for temporary use to accommodate patrons under the current Governor’s orders and the CDC guidelines. Motion carried 4-0. Ms. Wingate abstained.

MillerMetal Fabrication Inc. (S-20-17)

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 60,000 square foot sheet metal and metal fabrication shop. The property was the subject of a Change of Zone application, (C/Z 1919) to facilitate a change of zone from a C-1 (General Commercial District) to an LI-2 (Light Industrial District). The Change of Zone was approved by the Planning and Zoning Commission at their meeting of Thursday, September 24, 2020. Subsequently, the application was also approved by the Sussex County Council at their meeting of Tuesday, October 20, 2020. The project is located on the south side of Newton Road (Route 404), approximately 791 feet west of Sussex Highway (Route 13) and retains access off a private road, Emma Jane Lane. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 131-6.00-8.00. Zoning: LI-2 (Light Industrial District). Staff are awaiting agency approvals.

Mr. Torrance noted that parking is in the front yard setback off a private road.

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

OLD BUSINESS

C/Z 1928 Plantation Partners, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 11.570 acres, more or less The property is lying on the southwest side of Plantations Rd. (S.C.R. 275) and the southeast side of Cedar Grove Rd. (S.C.R. 283) approximately 0.63 mile northwest of John J. Williams Hwy. (Rt. 24). 911 Address: N/A. Tax Parcel: 334-12.00-52.00 (portion of)

The Commission discussed this application which has been deferred since October 22, 2020.

Ms. Stevenson moved that the Commission recommend approval for Change of Zone 1928 for Plantation Partners, LLC based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant originally sought B-2 zoning of this property, but it was determined that the property did not meet the size requirements for B-2 zoning. As a result, that application was withdrawn and this application for C-2 zoning was submitted.
2. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads. Plantations Road and nearby Route 24 are both designated as “Major Collector Roads” by DelDOT. This is an appropriate location for C-2 zoning.
3. This property is in an area where a variety of other uses exist, including uses that are similar to what is permitted in the C-2 District. These uses include a future assisted living facility, the Plantation Park office park, a church, Plantation Square and the Sussex County Paramedic Station. The property is also near the new Beebe Medical Center campus that is under construction. All of these uses support the type of services that are available in the C-2 District.
4. The use will not have an adverse impact on properties in the area.
5. This property is in the Coastal Area according to the Sussex County Comprehensive Plan. C-2 zoning is appropriate in this Area according to the Plan.
6. Public sewer and water are available to this property.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
8. No parties appeared in opposition to the rezoning application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/U 2228 M.L. Joseph Heirs Farm Account, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a campground for mobile campers, camp trailers, touring vans and the like to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 73.91, more or less. The property is lying on the north side of Lewes-Georgetown Hwy. (Rt. 9) approximately 0.66 mile east of the intersection of Sand Hill Rd. (S.C.R. 319) and Lewes-Georgetown Hwy. (Rt. 9). 911 Address: 22349 Lewes-Georgetown Hwy., Georgetown. Tax Parcel: 135-15.00-55.01

The Commission discussed this application which has been deferred since October 22, 2020.

Ms. Stevenson moved that the Commission recommend approval for Conditional Use 2228 for M.L. Joseph Heirs Farm Account, LLC based upon the record made during the Public Hearing and for the following reasons:

1. The subject property was once the Georgetown Raceway used for harness horse racing, training and boarding. It has historically been used for commercial purposes.

2. This conditional use is for the creation of a 350- site campground/resort to provide lodging opportunities for tourists to Sussex County, and particularly those visitors playing sports at Sports at the Beach and the Sandhill Sports Complex. These facilities are located across the street from this site, and both of them support the conditional use.
3. The use is consistent with other existing uses in the area, including the two sports complexes and other commercial and business uses. The zoning of the area includes AR-1 and C-1 within Sussex County, and HC (Highway Commercial) and UR-3 (Neighborhood Residential) within the Town of Georgetown.
4. Under the current County Comprehensive Plan, the site is located in the Developing Area, which is recognized as a development or growth area on the Future Land Use Map.
5. The Town of Georgetown's Future Land Use Map designates this area as being "Commercial".
6. The development is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area.
7. The site has direct access to both Route 9 and Sand Hill Road. Route 9 is classified by DelDOT as a "Principle Arterial". The intersection of these two roads is currently undergoing extensive improvements and access to the campground will occur via an upgraded signalized intersection.
8. The proposed conditional use will not adversely affect the congestion of roads or streets as confirmed by DelDOT. In accordance with the MOU between Sussex County and DelDOT, the campground would only have a "Minor" impact on area roadways.
9. There will be no negative impact on schools or other similar public facilities since the development will operate seasonally.
10. The Town of Georgetown will provide water and sewer service to the campground.
11. The proposed campground complies with the requirements of Section 115-172H of the Sussex County Zoning Code for the approval, design and operation of campgrounds.
12. The proposed use is beneficial and desirable for the general convenience and welfare of Sussex County and its residents, since it will provide tourism and related services, economic growth in a designated development area, full and part-time employment opportunities, and significant economic benefits to area businesses.
13. This recommendation is subject to the following conditions:
 - a. There shall be no more than 304 camping and RV sites and no more than 46 cabins within the campground.
 - b. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT.
 - c. The campground shall be connected to the Town of Georgetown's central sewer system.
 - d. The campground shall be connected to the Town of Georgetown's water system for domestic use and fire protection.
 - e. Stormwater Management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - f. The Development shall be surrounded by a 50-foot landscaped buffer.
 - g. The entire facility may open no earlier than March 1st of each year and shall close no later than November 30th of each year.
 - h. The campground shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed. This prohibition shall not include designated storage areas shown on the Final Site Plan, or the cabins, which may remain unoccupied in their respective locations.
 - i. There shall be no accessory buildings located on individual campsites.

- j. Campground restrictions shall be submitted as part of the site plan review. These shall include “Quiet Hours” between 10:00 pm and 7:00 am each day.
- k. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreation vehicles and equipment manufactured specifically for camping purposes.
- l. The Developer shall plan the entrance design to accommodate a DART bus stop and turnabout in consultation and cooperation with DART.
- m. One sign not exceeding thirty-two (32) square feet per side with lighting shall be permitted at the entrances to Route 9 and Sand Hill Road. The lighting for the signs shall not shine on any neighboring properties or roadways.
- n. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.
- o. Any wetlands on the site shall be clearly marked to avoid disturbance. The location and type of these markers shall be shown on the Final Site Plan.
- p. The Applicant shall identify all “dwellings” in the vicinity of the property that require a 400 foot buffer pursuant to Section 115-172H (3) of the Sussex County Code. All campsites and cabins shall be a minimum of 400 feet from any dwelling that exists at the time of Final Site Plan approval.
- q. All campsites must be 2000 square feet in size and at least 40 feet wide.
- r. No cabin or campsite shall have direct access to any road outside of the boundaries of the campground. Access to the campground shall be gated and restricted so that the only access shall be from the established entrance points.
- s. There shall be no sales of campsites or camping units, including park models, RVs, travel trailers or cabins.
- t. The campground shall comply with all of the requirements of Section 115-172H.
- u. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 5 – 0.

PUBLIC HEARINGS

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

Chairman Wheatley read the mask policy.

C/U 2247 Hillary Brock

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a mini spa to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.50 acres, more or less. The property is lying on the west side of Beaver Dam Rd. (Rt. 23) approximately 0.41 mile south of Hopkins Rd. (S.C.R. 286). 911 Address: 19950 Beaver Dam Rd., Lewes. Tax Parcel: 234-5.00-44.09

Mr. Whitehouse advised the Commission that submitted into the record is a site plan, a copy of the DelDOT service level evaluation response, a staff analysis and comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail

returns.

The Commission found that Ms. Hillary Brock and Mr. Todd Brock were present on behalf of their application. Ms. Brock stated that she had a mini-spa in downtown Milton that was destroyed in a fire; that she and her husband have built their home on Beaver Dam Road; that the property is improved with a pole building; that a portion of that pole building could be used as a day-spa; that two other providers would also use the premises as subcontractors; that hours of operation would be 9:00 am – 7:00 pm, seven days a week, by appointment only; that a lighted sign is requested; that the light will be extinguished after 10 pm daily; that there is adequate parking; and that there will be approximately 10 people coming and going daily.

The Commission found that Ms. Jane Brock spoke in favor of the Application; that she owns the property adjacent to the subject property and that she will be constructing a home on the neighboring property and living there.

The Commission found that one person spoke in favor of and none in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed C/U 2247 Hillary Brock. Motion by Ms. Stevenson, second by Ms. Wingate, to defer action for further consideration. Motion carried 5-0.

C/Z 1930 Indian River School District

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a I-1 Institutional District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 186.98 acres, more or less. The property is lying on the east and west side of Patriot's Way. 911 Address: 26026 Patriots Way & N/A. Tax Parcels: 133-7.00-8.01 & 133-11.00-105.00

Mr. Whitehouse advised the Commission that submitted into the record is a site plan, a copy of the DelDOT service level evaluation response, a staff analysis and comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns.

The Commission found that Mr. Joe Booth was present on behalf of the Applicant, Indian River School District; that the current Sussex Central High School has a conditional use; that the change of zone to Institutional Zoning would be more appropriate than a conditional use; and that a proposed new school will be constructed adjacent to the existing high school.

The Commission found that no one spoke in favor of or in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

Ms. Wingate moved that the Commission recommend approval for Change of Zone 1930 for Indian River School District based upon the record made during the Public Hearing and for the following reasons:

1. This site is across the road from a site was approved for a Conditional Use for a new school. I-1 Institutional Zoning is more appropriate than a Conditional Use for a new school.

2. This change of zone is for the I-1 Zoning District. The I-1 Zoning District has permitted uses that focus on healthcare and institutional uses.
3. The rezoning is consistent with the stated purposes of the I-1 District, which is to allow public, quasi-public and institutional uses to occur on properties that are compatible with surrounding districts and uses. This site is the proposed location for the new Sussex Central High School. It is directly across the road from the existing Howard T. Ennis school and next to the existing Sussex Central High School. The purpose of the I-1 zoning and the permitted uses within the I-1 district are consistent with this area.
4. The rezoning will not adversely affect neighboring properties, public facilities, traffic or area roadways.
5. The rezoning to I-1 promotes the health, safety and general welfare of Sussex County and its present and future residents by providing a convenient location for needed schools.
6. Any further development of this site will require site plan review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 5 – 0.

Mr. Robertson recused himself for the next case and left Council Chambers.

C/Z 1932 Jeff-Kat, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 0.78 acre, more or less. The property is lying on the east side of Kings Highway (Route 9) approximately 900 feet southeast of Theodore C. Freeman Highway (S.C.R 23). 911 Address: 1005 Kings Highway, Lewes. Tax Parcel: 335-8.00-40.00 (portion of)

Mr. Whitehouse advised the Commission that submitted into the record is a staff analysis, a site plan, an exhibit book, a copy of the DelDOT service level evaluation response and comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that the Office of Planning and Zoning received two comments regarding the Application which has been circulated to Commission members.

The Commission found that Ring Lardner was present on behalf of the Applicant, Jeff-Kat, LLC; that also present is the Applicant, Mr. Jeff Hamer; that the Application before the Commission is to rezone a 0.78 of land from Agricultural Residential (AR-1) to Heavy Commercial (C-3); that in May 2019, Council approved the rezoning on a parcel of land to the east of the subject property; that the area to be rezoned is currently owned by First Baptist Church of Lewes; that the purchase of this portion of land is contingent on the successful rezoning of this land; that to the north of the subject property is First Baptist Church, Bay Breeze Estates, Jefferson Apartments; that across Kings Highway to the west is a commercial strip and as you move south there is Henlopen Gardens, Jack Lingo Realty and Cape Henlopen High School; that to the south of the subject property is the Cape Henlopen Medical Center, Mitchell lands and Lane Builders which is adjacent to Big Oyster; that the site is not in a floodplain and does not contain federal wetlands; that there are no known archaeological sites or national register-listed properties on the subject parcel; that the property is located in Level One Investment Area of the State Strategies on Spending Map and is in the Coastal Area of the 2045 Future Land Use Map in the Sussex County Comprehensive Plan; that there are commercial uses in the area so this request is not out of character for the area; that the DelDOT response is included in the packet and states that the use would generate less than 50 trips per hour, less than 500 trips

per day and therefore, a Traffic Impact Study is not required; that some right of way may be required by DelDOT when the site plan is submitted; that if this rezoning is approved, the subject parcel would be used for the Big Oyster brew pub business and the existing dwelling on the property would be used as an office; that the use will not adversely affect the neighborhood as the brew pub is already in operation; that vehicular circulation will be improved as additional parking will be added; that the request is consistent with the recent C-3 zoning and the Comprehensive Plan; that the C-3 Zoning is appropriate based on the record made this evening and the information contained within the booklet; and that the conditions for C/Z 1875 would be appropriate for this change of zone request.

Mr. Hamer stated that when he began his business four years ago that the neighboring Baptist Church was opposed to his Application; that he has been a good neighbor to the Church; that now they Church is selling part of their property to him and are in support of the Application; that currently the business leases commercial property across King's Highway; that to have additional property on the same side of the street will provide a safer environment for employees and the general public; and that they will continue to operate responsibly as the business grows.

Mr. Whitehouse noted that the subject property is in the Kings Highway Master Plan Area and the County participates in discussion regarding this area.

Mr. Jay Tomlinson representing Citizens for Responsible Kings Highway Development; stated that he does not necessarily oppose the rezoning based on the relationships of the existing zoning; that there are issues with the Kings Highway Master Plan and the amount of right-of-way which will be required; that the Applicant and DelDOT have not detailed the requirement for the highway; and that there are some concerns about where the additional parking will be located.

Mr. Kenneth Mecham representing the First Baptist Church of Lewes; stated that the Church supports this Application.

The Commission found that one person spoke in favor of and one in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed C/Z 1932 Jeff-Kat, LLC. Motion by Ms. Stevenson, second by Ms. Wingate, to defer action for further consideration. Motion carried 5-0.

Mr. Robertson returned to Council Chambers.

Ord. 20-05 – The Coastal Area

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-194.3 OF THE CODE OF SUSSEX COUNTY REGARDING THE COASTAL AREA

Mr. Whitehouse noted that the Office of Planning and Zoning received 21 letters in support of and 10 letters in opposition to the Application which have been circulated to Commission members.

The Commission found that Mr. Robertson presented Ordinance 20-05 – The Coastal Area; that this began with the 2003 Comprehensive Plan which established the Sussex County Environmentally Sensitive Development District Overlay Zone and also established the desire to do clustering of subdivision lots; that up to that point if you wanted to do a subdivision in AR-1 zone, it was ¾ acre without sewer and 20,000 sf with sewer and those were the design standards with no flexibility; that County Council and the Planning

and Zoning Commission realized that there were downfalls such as large lot subdivisions without a lot of design or open space; that the 2003 Comprehensive Plan was created to establish two things, the first being the Environmentally Sensitive Development District Overlay Zone and the second was to create clustering in the AR-1 area outside of the Environmentally Sensitive Zone; that in 2004 County Council adopted AR-1 Cluster subdivision plan and this allowed for 7,500 sf lots based on the underlying density of the AR-1 zone; that you could get an actual 2 units per acre based on the Cluster Ordinance and you had to have a superior design over what would be a standard subdivision; that there was a requirement that a landowner/engineer come in and show why the cluster subdivision was better than the standard subdivision; that the issue with that is that it did not say what a superior subdivision was and there was a lot of discretion; that in 2008 the AR-1 Cluster process was revised; that it was revised to include specific requirements with what it meant to be a superior designed subdivision and is listed in County Code as “For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission meets all of the following criteria” and the criteria was listed; that this gave standards and if the standards were met the expectation was that the subdivision would be approved; that when the Ordinance was considered by County Council in 2008, County Council said if they were establishing criteria, they would create two paths; that one is the old path which said you have to have a superior design but did not lay it out and the new path which included superior design added a Yield Plan but in return gave applicants expediated treatment; that in 2019 the Yield Plan was eliminated from that requirement and everyone had to comply with the requirements of what it meant to be a superior designed subdivision; that more than 2/3 of the County has to follow these requirements; that the Environmentally Sensitive Development District Overlay Zone which is now called the Coastal Area had its own cluster subdivision allowance but without superior design requirements; that the lot size are essentially the same for both the AR-1 zone and the Coastal Area; that the difference is in the requirements for how you design a subdivision in AR-1 which is the majority of the County versus the Coastal Area; that both areas have to comply with the 17 items in 99-9C of the County Code, they must comply with all Chapter 99 requirements and the Planning and Zoning Commission can impose conditions of approval; that the only other item that needs to be submitted for a Coastal Area subdivision is the Environmental Assessment and Public Facility Evaluation Report; that if you are in the AR-1 zone you have to comply with the superior design which includes buffers, no lots in wetlands; preserve natural resources; homes clustered in the least environmentally sensitive areas of the parcel, open space of at least 30% and be contiguous, 25 ft. wetland setback and 50 ft. tidal water and stream setback, limited healthy tree removal, scenic views preserved, sidewalks required on one side, and the developer must show the Commission the sequence of how the subdivision was designed; that by the density remaining at two units per acre with 7,500 sf lots, it gives the developer room to allow for a lot more open space; that the proposed Ordinance if approved would make the requirements that apply to the AR-1 zone also apply to the Coastal Area; that the requirements would apply to all areas in Sussex County; that there have been some questions about the timing of this Ordinance but there was a series of workshops going on regarding an Ordinance for Wetland buffers, therefore, this was put on hold; that it didn't make sense to work on both Ordinances simultaneously as it might create inconsistencies; that then Covid-19 became a factor and then the Election which stopped the Wetland initiative moving forward; that the proposed Ordinance is essentially to fix to make all of the County equal in terms of Cluster Subdivisions; that the Yield Plan was added for conversation sake and it was not part of the initial discussions to fix this issue; that there is a history of the Yield Plan dealing with these on the AR-1 cluster areas, but it was never used and was deleted in 2019; that the idea behind the Yield Plan and the effect of it was that if you did the Yield Plan you would have to show how many lots you could fit on a parcel of property, so if you begin with 2 units per acre on a parcel and you have to maintain either ¾ acre or 20,000 sf, you cannot fit both of those lots on an acre where you also have to fit a road and potentially storm water management, so your actual density will never be two units per acre; that depending on the calculations, it would probably be closer to 1.6 units per acre; that in the Coastal Area there has never been a Yield

Plan and numerous subdivisions have been approved at the density they can achieve; that there are two different issues, one is the fix and one is the Yield Plan; that there would be some changes which have been submitted and if the Commission was going to make a motion to recommend approval to insert the word subdivision to ensure that this applies to subdivisions and not commercial type projects and a numbering fix for the criteria for open space; and that before the Commission hears public comment, they may want to discuss the Yield Plan aspect of the proposed Ordinance.

Chairman Wheatley stated that Ordinances making things equal across the County can be a good thing; that sometimes something not so good can be presented and he is unsure how the Yield Plan got put in the proposed Ordinance; that it was decided in 2019 to delete the Yield Plan; that there is a lot of information submitted some as late as this afternoon; that public testimony will be heard this evening; and that the Commission will take the time to digest all the information submitted before making a recommendation to County Council.

The Commission found that several people with an interest in Ordinance 20-05 were present in Council Chambers and the following people spoke:

Mr. Tom Natelli stated that he wished to address the Yield Plan and he referenced three subdivisions and the impact of the Yield Plan would reduce the number of units greatly; that having all the open space in one area will not work in today's market; that outdoor living is extremely important; that it is important to be able to spread out the open space; that housing in the Coastal Area will be less affordable; that the developers would prefer to keep nature features such as trees but sometimes due to stormwater management issues the developer is forced to clear cut trees.

Mr. Ring Lardner spoke on behalf of the American Council of Engineering Companies of Delaware (ACEC); that the proposed ordinance will affect all four residential districts; that outside the Coastal Area you cannot reduce your lot widths as the current Code is written; that reducing lots to 7,500 sf with 30% open space would not work; that would the HR district be exempt because lots are already 7,500 sf; and that the ACEC requests that the record remain open to allow for additional review and to provide written testimony.

Mr. Robert Tunnel stated that there are a lot of requirements such as the sidewalk requirement and the landscape buffer that were not included; that the Design Requirements and Standards of Chapter 99 are included in both the AR-1 and the Coastal Areas and that this would be a substantial change to how the current ordinance is written; that all design requirements would be in one section and could be addressed in order; and that clear cutting of trees should not be happening but is due to the grading requirements, changes could make this better.

Mr. Christian Hudson stated that he had some questions, that the first question is how long this Coastal Area has been in existence with different rules for the cluster ordinance (AR zones), specifically what projects have come through without the proper cluster regulations and what requirements did they get away with; that answers to these questions will help understand the scope of what the County is trying to fix; that the yield plan was not mentioned in the advertising and now is off the table; that it seems that this ordinance is being expedited through; and that he submitted a letter of opposition this afternoon; and that he asked the Commission to please keep the record open for additional public input on this ordinance.

Mr. Robertson stated that the Coastal Area was a renaming of the Environmentally Sensitive Development Overlay Zone which goes back to the 2002-2003 Comprehensive Plan and the Future Land Use Map that was adopted under that plan; that any subdivision developed since 2002 in the Coastal Area and AR-1 would have complied with the Coastal Area requirements in that Ordinance; that the ones outside the Coastal Area would have complied with the Cluster Design Ordinance; that Mr. Hudson referenced the Farmers for Fairness in his comments and that in Kent County they significantly reduced density in the overlay district; and that if you disregard the Yield Plan aspect, it actually resolves the issue that came about in Farmers for Fairness because essentially everyone who has AR-1 whether in the Coastal Area or without it has the same standards and that is what this Ordinance change is trying to accomplish.

Mr. Bob Horsey stated that he is representing his family who are farmers, landowners, contractors and developers; that his family are advocates to make Sussex County a better place to live; that this Ordinance does not do that; that the Ordinance does not create a balance between the agricultural community and development; that there is a need for technical education and trades to provide jobs for the youth in the area and this proposal slows the growth of the County and will take away opportunities; that there are applications submitted for months and have been postponed due to Covid-19 restrictions; that this Ordinance was only introduced three weeks ago and is being heard already; that many people were not able to attend tonight to voice their opinion because of the fear of contracting Covid-19; that pocket parks are a good idea and a safer attraction, which is a design standard; Ordinances and regulations create lower density; that for harmony between agricultural and development density should be increased in the growth area and that he is opposed to this Ordinance and requests that the record remain open for more public input.

Mr. Martin Ross stated that in the proposed Ordinance, there is reference to Wetlands, Wooded Areas and Mature Woodlands – this needs to be clearly defined to avoid ambiguity; that the State Code language should be used in the Ordinance; that the Cluster Ordinance is one of the most successful in the County to date, it has achieved open space and natural areas, it has not negatively impacted property values and is used on the majority of subdivision applications; that it appears that this Ordinance was put together in haste; that more time is needed for the complete vetting of the proposal; that a more pragmatic approach is warranted; that the Commission should consider tabling this proposal and schedule some workshops which will give the public a better picture of what this Ordinance is trying to achieve; that the marketplace should determine community design; and that there is a lack of affordable housing in Sussex County.

Mr. Jim Ericksen stated that his biggest concern is the Yield Plan; that using the Yield Plan you would end up with approximately 1.5 units per acre; that there is a huge demand for housing in Sussex County that less density creates sprawl; that creates the need for more infrastructure; that with less density there will not be the population to support the necessary infrastructure; that there will be similar issues with utilities; that the idea of the Comprehensive Plan is to provide homes for people where they want to be and prevent sprawl; that the Yield Plan would be in contradiction to the Comprehensive Plan; that this Ordinance is trying to create superior design standards but a superior design is what the market determines; that the Ordinance would apply to other zonings within the Overlay; that there was no language in the Ordinance to address the impacts on Multi-family; and that this Ordinance feels rushed and that more time is needed to iron out the kinks.

Mr. Robertson stated that a simple change could be made in the wording of the Ordinance to state that this only applies to AR-1 Subdivisions.

Mr. Rich Barasso stated that he is representing Sussex Alliance for Responsible Growth (SARG); that SARG will release a commentary regarding the Ordinance in the near future; that SARG supports the adoption of Sussex County Council to eliminate the two pathways for a Cluster Subdivision option and to immediately standardize the process for applicants to utilize the specific design criteria currently contained in Section 115-25 (F) 3 of the Sussex County Zoning Code; that there are three reasons SARG has taken this position; that number one is that it standardizes the superior design element requirements to qualify for cluster status across the County by applying those requirements to the Coastal Area Overlay Zone and not just to the AR-1 outside of the Coastal Zone; that number two it acts to fully implement that Future Land Use vision in the 2018 Comprehensive Plan that was to provide for balanced and well-planned future growth and development and supports the Counties economic development as well as preserving the character of the County and its natural resources; that the vision was not designed just to apply to certain parts of the County, it must be consistent for the entire County; that number three according to a survey of approximately 600 Sussex County Residents, 93% expressed the opinion that the proposed amendment should make superior design mandatory for all Cluster Subdivision developments; that the Coastal Area designation is intended to recognize two characteristics, first that this area in the most desirable in Sussex County for new housing and second this region contains ecologically important and sensitive characteristics as well as other coastal lands which help to absorb flood waters and provide habitat for native flora and wildlife; that this area also has a significant impact on water quality; that more data is needed and therefore, a decision on this Ordinance should be delayed.

Mr. John Paradee stated that he is aware of two people who could not gain entrance to the meeting tonight due to Covid-19 restrictions; that the overlay zoning violates the uniformity requirement in zoning regulations in Title 9 6903(B); that provision provides that all regulations have to have uniform effect or impact; that if you want to change them for one, they have to be changed for all AR-1 zoned properties; that the Coastal Area does not address every AR-1 property in Sussex otherwise that would be a clear violation of the uniformity law; that Section 6926 of Title 9 states that if Sussex County are going to change the zoning regulations for any district that individualized notice by mail must be sent to property owners at least seven days in advance of the meeting; that the proposed Ordinance is fatally flawed and could be legally challenged in court.

Mr. James H. Baxter, IV stated that he is representing Baxter Farms, Inc; that he was part of the working group for the Wetlands Buffer which spent close to 18 months working on some good compromises for that Ordinance; that the Wetlands Buffer Ordinance fell through before it was introduced at County Council; that the timing of this Ordinance is bad for farmers as this is the only time of year that farmers get to see the income from their year's work; that this Ordinance would have a major effect on the future of the family farms; and that the Ordinance is being rushed when Agriculture doesn't have the time to review this thoroughly.

Mr. Steve Bream stated that he is representing the Sussex County Farm Bureau; that the Bureau is opposed to the ordinance as it reduces equity in farmland; that by restricting the density it is encouraging urban sprawl; that agriculture is a valuable resource to Sussex County; and that this Ordinance would devalue the number one resource – farmland.

Mr. Steve Johnson stated that this Ordinance would devalue the equity in land; that there is no affordable housing with Yield Plan; and that he recommends that this Ordinance be tabled, and that workshops be held.

Mr. David Hutt, stated that he is submitting a letter on behalf of J. G. Townsend outlining the following points; that he agrees with Mr. Natelli, when you have certain features on a property you cannot achieve the 1.2 or 1.5 density per acre; that this would be inconsistent largely with the Growth Area of the Comprehensive Plan; that the Comprehensive Plan was signed off by the Governor just over a year ago and the Coastal Area was identified as a Growth Area with higher density and now this Plan is talking about reducing density in Growth Areas; that there would be a lot of unintended consequences when there are hasty decisions made; that the request is that the Commission recommend denial of this Ordinance to County Council; and that there can be workshops to get a more well-rounded Ordinance to move forward.

Mr. Kevin Broznya stated that he is representing Builder in Sussex County; that many good arguments have been put forth this evening; that he would support the recommendations about the impact of the Yield Plan and the conflict between this Ordinance and the Comprehensive Plan; that there has only been 16 days to think about something this impactful to so many people; that there is a lot of financial impact for those opposing this Ordinance; that this Ordinance creates another layer of difficulty for the home builder; and that he recommends to keep the record open for further input.

The following people appeared by teleconference

Ms. Amy Isaac stated that she lives in the Coastal Area; that she supports stronger regulations; that developments are all the same; that clear cutting trees is a big concern because trees stop flooding; that overdevelopment is harming wetlands and the water quality is suffering; and that the infrastructure cannot support higher density.

Ms. Yu Lee stated that she has lived in Sussex County for 15 years; that she has concerns about the traffic in Eastern Sussex County; that she has concerns about emergency evacuations, the quality of life and medical provisions for the new residents who are mostly retirees; and that if people moving here know about the current traffic problems in Sussex if the current growth will continue.

Ms. Beau Daley stated that farmers and Developers are not the only landowners;; that due to a glitch in the Ordinance, developers do not have to adhere to superior design standards in exchange for the savings that the Cluster Ordinance offers them; that this has created environmental issues in the Coastal Area; that this Ordinance needs to apply to the Coast Area in addition to the rest of the County; that more trees, open space and buffers are needed to combat the run-off which leads to flooding; that the Proposed Ordinance will lower the cost of developing while making subdivisions more attractive and therefore, increase the value; that this would be a win-win for all; and that it can still result in the original two house per acre.

Ms. Judith Siebert stated that she thanks Council for introducing this Ordinance; that the residents depend on Council to maintain the quality of life in Sussex County; that the best way to have this Ordinance approved would be with the current Council; that the superior design criteria should apply to the Coastal Area; that it is a question of fairness; that developers can use the benefits of the Cluster

Ordinance without the requirements of superior design; that not all open space needs to be contiguous but small areas between the sidewalk and road should not be considered in the calculations; that the current 50 ft. landscape buffer is not adequate; and that the Cluster Ordinance does not decrease density.

Ms. Valerie Wood stated that the Coastal Area provides the most income for the economy; that the Coastal Area is being ruined by all the building and the lack of infrastructure; that there will be a need for EMS to decrease as the aging population increases; that there should be compromise between farmers and landowners; that there should be socially responsible development; and that Route 24 is an evacuation route but in the case of an evacuation today, it would not perform well.

Ms. Gail VanGilder stated that she is in support of this Ordinance being applied to the Coastal Area; that there is no need to write a new Ordinance; that there are flooding and water quality issues in the Coastal Area and this needs to be addressed before it gets worse; that the effort to reduce sprawl has never worked by trying to contain growth in the growth areas; that the value of farmland will be protected under the right ordinance; that delaying this Ordinance would be a mistake: and that you please protect the quality of life here in Sussex County.

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

At the conclusion of the Public Hearings, the Commission discussed Ord. 20-05 – The Coastal Area. Motion by Mr. Hopkins, second by Ms. Wingate, that the Ordinance be removed from the November 19, 2020 meeting as an item of old business as all Commissions members will not be present. Motion carried 5-0.

ADDITIONAL BUSINESS

There was no additional business to be discussed.

Meeting adjourned at 9:22 p.m.

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