

## **THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 18, 2021**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 18, 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 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Seth Thompson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Agenda. Motion carried 5-0.

### **OLD BUSINESS**

#### **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).

The Commission discussed the Application which had been deferred since October 28, 2021.

Mr. Mears moved that the Commission grant preliminary approval for Subdivision 2021-08 for The Knoll based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Coastal Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 33 lots on 14.66 acres.
3. This subdivision is in an area with several other existing and similar subdivisions including The Greens, Irons Landing, The Preserves at Irons Landing, Fairway Villas, Blackwater Reach, and Bay Colony. This is an appropriate location for an infill subdivision such as this.
4. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of 2.25 units per acre. The 33 lots include 4 lots that exceed the base density of two (2) units per acre which will require the payment of the Bonus Density Fee required by Sections 115-25 and 62-7 of the Sussex County Code.
5. DelDOT has determined that the development's traffic impact will be negligible and that no TIS will be required. The proposed development will still comply with all DelDOT roadway and entrance requirements.
6. There are no State or Federal wetlands on the property.
7. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.

8. The subdivision contains approximately 6.2 acres of open space, which represents nearly 42% of the site. There will also be 3.8 acres of preserved woodlands within the site.
9. The project will be served by central water and sewer.
10. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is located in this Area according to the Plan.
11. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
12. The subdivision is consistent with the character and trend of development in the area and will not adversely affect the neighboring and adjacent properties.
13. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
14. This preliminary approval is subject to the following:
  - a. There shall be no more than 33 lots within the subdivision. The Applicant shall pay the bonus density fee required by Sections 115-25 and 62-7 of the Sussex County Code for the four (4) additional bonus density units.
  - b. The Final Site Plan shall confirm that at least 42% of the site remains as open space and that 3.8 acres of existing woodlands are preserved as “Non-Disturbance Areas”.
  - c. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
  - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
  - f. The development shall comply with all DelDOT entrance and roadway improvement requirements.
  - g. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path. A system of fully shielded and downward-screened streetlighting shall also be provided.
  - h. The subdivision shall be served by Sussex County sewer. The Final Site Plan shall also include a sewer easement providing for a future connection to the Irons Landing development. The location of this sewer easement shall be coordinated with the Sussex County Engineering Department.
  - i. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
  - j. Street design shall meet or exceed Sussex County standards.
  - k. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

- l. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 am through 2:00 pm on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- m. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- n. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby and they shall include the Agricultural Use Protection Notice.
- o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided the preservation of all buffer areas and the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- p. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- r. 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 grant preliminary approval for Subdivision 2021-08 The Knoll, for the reasons and conditions stated in the motion. Motion carried 5-0.

### **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).

The Commission discussed the Application which had been deferred since October 28, 2021.

Ms. Wingate moved that the Commission grant preliminary approval for Subdivision 2021-09 Brookland Farm based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 92 lots on 42.82 acres. This will include 9 bonus density lots that will require payment of the Bonus Density Fee to preserve open space under Section 115-25 of the Zoning Code.
3. This subdivision is located next to The Hamlet at Dirickson Creek and is near Batson Creek Estates, Fox Haven, The Estuary, and other developments. This is an appropriate location for an infill subdivision such as this.

4. DelDOT stated that no TIS is required and that the developer will be required to pay an Area Wide Study Fee instead. The proposed development will still comply with all DelDOT roadway and entrance requirements.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.
6. The subdivision contains approximately 19.33 acres of open space, which represents nearly 45% of the site.
7. The project will be served by central water and sewer.
8. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space and buffering that would not be achieved within a standard subdivision.
9. This preliminary approval is subject to the following:
  - a. There shall be no more than 92 lots within the subdivision. The Applicant shall pay the Bonus Density Fee required for the additional nine (9) units that exceed the permitted density in AR-1 as required by Sections 115-25 and 62-7 of the Sussex County Code.
  - b. The Final Site Plan shall confirm that at least 45% of the site remains as open space.
  - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
  - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area. In addition, there shall be a 10-foot-wide area set aside between the perimeter buffer and any lot to be utilized for stormwater conveyance.
  - f. There shall be a 50-foot setback from all lands used for Agricultural Purposes.
  - g. The Final Site Plan and recorded Restrictive Covenants shall include the Agricultural Use Protection Notice and a similar notice advising that lands nearby are actively used for hunting.
  - h. The development shall comply with all DelDOT entrance and roadway improvement requirements.
  - i. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets and they shall connect to the multi-modal paths required by DelDOT. A system of fully shielded and downward-screened streetlighting shall also be provided.
  - j. As discussed during the public hearing, there shall be a pervious walking path between lots 58 and 59 of this development connecting to the stubbed point of interconnectivity within adjacent Hamlet at Dirickson Creek
  - k. The subdivision shall be served by a central sewer system.

- l. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- m. Street design shall meet or exceed Sussex County standards. The street design shall include an emergency vehicle access point connecting the internal street system with Bayard Road as shown on the Preliminary Site Plan.
- n. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- o. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 am through 2:00 pm on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- p. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- q. There shall be on-site amenities including walking trails and a swimming pool with a bathhouse. The size and dimensions of the pool and bathhouse shall be included on the Final Site Plan. These amenities shall be completed and open to use prior to the issuance of the 40<sup>th</sup> residential building permit.
- r. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and the preservation that will occur within the buffer areas. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- s. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- t. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- u. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to grant preliminary approval for 2021-09 Brookland Farm for the reasons and conditions stated in the motion. Motion carried 5-0.

### **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).

The Commission discussed the Application which had been deferred since October 28, 2021.

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision 2010-10 Graywood Springs based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District utilizing individual On-Site Wastewater Treatment and Disposal Systems.

2. The subdivision will have no more than 38 lots on 58.11 acres. This results in a density of .65 lots per acre, which is well below the maximum density that is permitted in the AR-1 zone.
3. All lots will be at least 21,780 square feet in size.
4. The subdivision is located in an area along Oyster Rock Road that has developed with other AR-1 homes and communities. It is adjacent to a number of strip lots along Oyster Rock Road, and it is across the road from communities such as Covington Chase, Oyster Rock, and Osprey Landing. This subdivision is consistent with those other developments.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code and the Applicant has addressed the requirements of Section 99-9C of the Code.
6. The Property contains no rare, threatened, or endangered species.
7. DelDOT reviewed the applicant's planned project and issued a letter stating that the proposed project will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day therefore no Traffic Impact Study is required. In addition, DelDOT's review indicated that it considered the proposed development's traffic impact to be "negligible" in the context of DelDOT's MOU with Sussex County.
8. Each home site will be served by its own On-site Wastewater Treatment and Disposal Systems (OWTDS-Septic). A current septic feasibility report prepared by a professional, licensed soil scientist, confirms the optimal type of OWTDS-Septic for each lot.
9. Tidewater Utilities, Inc. is willing and able to provide public water to the site, including fire protection.
10. No lots will contain any State or Federal wetlands within their boundaries.
11. The proposed clustered subdivision has a design superior to that of a standard design for the following reasons:
  - a. The clustered subdivision includes a thirty-foot (30') buffer from the adjacent communities and homes;
  - b. The clustered subdivision includes a 25-foot buffer from all federally regulated wetlands and a 50-foot buffer from all tidal wetlands and waters;
  - c. The clustered subdivision includes tree preservation by preserving approximately 25.5 acres of existing woodlands; and
  - d. The clustered subdivision contains open space consisting of approximately 31 acres which is 54% of the Property. This significantly exceeds the 30% open space requirement for a clustered subdivision.
12. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
13. Based upon the record and with the conditions of approval, this subdivision will not have an adverse impact on neighboring properties or area roadways.
14. This preliminary approval is subject to the following:
  - a. There shall be no more than 38 lots within this development.
  - b. The subdivision shall be served by On-site Wastewater Treatment and Disposal Systems.
  - c. The developer shall establish a homeowners association responsible for the maintenance of streets, buffers, stormwater management facilities, and other common areas. Signage and/or markers shall be installed at the edge of lots created adjacent to buffer areas to deter residents from encroaching and clearing these

common areas. The locations, types, and sizes of signage and/or markers shall be shown on the Final Site Plan.

- d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities. The system shall be maintained and operated using Best Management Practices.
- e. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- f. The street design shall meet or exceed Sussex County standards.
- g. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- h. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24 inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at all entrances to the site during construction.
- i. The Applicant shall coordinate with the local school district regarding the location of a school bus stop. The location and details of this area shall be shown on the Final Site Plan.
- j. The development shall be served by its own on-site amenities including walking trails, children's play equipment, horseshoe pits, and a community BBQ area with weather-protected seating. All amenities shall be completed and open for use prior to the issuance of the 20th residential building permit.
- k. There shall be sidewalks on at least one side of the streets and the sidewalk system shall connect with DelDOT's multi-modal path.
- l. A system of fully shielded and downward screened streetlighting shall be provided.
- m. There shall be a buffer that is at least 50 feet wide from all tidal waters, tidal tributary streams, tidal wetlands, perennial rivers, and nontidal streams. There shall also be a buffer that is at least 25 feet wide from all federal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.
- n. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- o. The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be

preserved. This Landscape Plan shall further identify all “Limits of Disturbance” within the site. As stated by the Applicant, the buffer areas shall be governed by an Open Space Management Plan.

- p. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- q. The Final Site Plan and recorded Restrictive Covenants shall contain a prominent “Notice” that hunting activities occur nearby, and they shall include the Agricultural Use Protection Notice.
- r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- s. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant preliminary approval for 2021-10 Graywood Springs for the reasons and conditions stated in the motion. Motion carried 5-0.

**C/U 2273 Michael Parsons**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE USE OF COMMERCIAL DELIVERIES OF PARTS TO BE SOLD OFFSITE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.99 ACRES, MORE OR LESS.** The property is lying on the south side of Pecan Drive, approximately 475 ft. east of Hopkins Road (S.C.R. 286). 911 Address: 30274 Pecan Drive, Lewes. Tax Parcel: 234-5.00-49.00

The Commission discussed the Application which had been deferred since November 4, 2021.

Ms. Stevenson move that the Commission recommend approval of Conditional Use #2273 for Michael Parsons to allow commercial deliveries to and from his home-based upon the record made during the public hearing and for the following reasons:

- 1. This use is very nearly a home occupation. But for the fact that the Applicant stores and uses a commercial trailer on the property as part of his business and the regular commercial deliveries to and from his home, this use would likely not require a conditional use.
- 2. The property will retain its primary use as a residence, and it will remain residential in appearance.
- 3. The Applicant has stated that there are not any employees other than himself associated with the use on this property.
- 4. The Applicant has stated that no parts are manufactured on the property and there will not be any outside storage occurring on the property.
- 5. This limited use will not adversely affect neighboring properties or roadways.
- 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 the receipt of deliveries to and from the applicant's residence and the storage of a trailer associated with the use upon the property.
  - B. The primary use of this property shall remain residential at all times that this conditional use is in effect. It shall also maintain a residential appearance at all times.
  - C. No retail sales shall occur directly from the property and no customers shall come to the property. This condition does not prevent indirect retail sales conducted via the telephone and/or the internet.
  - D. No manufacturing shall occur on the property.
  - E. No outside storage of any deliveries, parts, equipment, or inventory associated with the use shall be permitted.
  - F. One unlighted sign shall be permitted. It shall not be larger than 32 square feet per side.
  - G. The Applicant shall comply with any requirements imposed by DelDOT regarding this use.
  - H. The failure to comply with any of these conditions of approval may result in the termination of this Conditional Use.
  - I. The Final Site Plan shall be subject to the review and approval of the Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2273 Michael Parsons for the reasons and conditions stated in the motion. Motion carried 5-0.

**AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLANDS AND WATER RESOURCES AND THE BUFFERS THERETO.**

Mr. Whitehouse informed the Commission that 40 comments have been received in relation to this Ordinance and the comments which were not updated into the paperless packet uploaded to the website, have been circulated to the Commission.

Chairman Wheatley announced that the record regarding the Ordinance is now closed.

**C/Z 1936 OA-BP Marina Bay-Lakeside, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1883 (ORDINANCE NO. 2690) AND CHANGE OF ZONE NO. 1475 (ORDINANCE NO. 1573) RELATING TO THE MAXIMUM NUMBER AND TYPES OF HOUSING PERMITTED FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 778.39 ACRES, MORE OR LESS.** The property is lying on the south end of Bay Farm Road (S.C.R. 299) and the south side of Trinity Road (S.C.R. 299A). 911 Address: N/A. Tax Parcels: 234-30.00-1.00 thru 430.00.

The Commission discussed the Application which had been deferred since November 4, 2021.

Mr. Mears moved that the Commission recommend approval of Change in Zone # 1936 for OA-BP Marina Bay Lakeside, LLC for an amendment to CZ # 1883 and CZ # 1475, being ordinances 2690 and 1573 respectively, based upon the record made during the public hearing and for the following reasons:

1. This application merely seeks to amend the breakdown of home types within the existing Peninsula MR-RPC development. It does not affect the total number of units permitted within the MR-RPC.
2. Currently, Ordinance # 2690 permits the following:
  - 358 Single-Family Lots
  - 388 Single – Family Detached Condominium Units
  - 270 Single – Family Attached Townhouses
  - 378 Multi-Family Condominium Units
3. This proposed revision seeks to amend the breakdown of unit types while keeping the maximum number of units at 1,394, as follows:
  - 358 Single-Family Lots
  - 471 Single-Family Detached Condominium Units
  - 270 Single – Family Attached Townhouses
  - 295 Multi-Family Condominium Units
4. The revision does not affect the density of the MR-RPC, and it will not create any additional traffic or impacts upon roadways.
5. As an MR-RPC, this revision will trigger amendments to the approved site plans for the development. As part of that process, various agencies will still review and approve the changed site plans. This will include the Sussex Conservation District’s review of how the changes may affect the stormwater management system’s design, construction, and operation within the development.
6. This recommendation is subject to all of the conditions of approval of ordinances 2690 and 1573 that are not affected by this revision to the number of housing types permitted within the MR-RPC.
7. For all of these reasons, it is my recommendation that this Application should be approved, but with the condition that a revised Master Plan shall be submitted to the Planning & Zoning Commission within 6 months of approval of this Ordinance by County Council showing the distribution of the approved housing mix across the entire MR-RPC in Table Form.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1936 OA-BP Marina Bay Lakeside, LLC for the reasons stated in the motion. Motion carried 5-0.

**C/Z 1937 Double DB, LP**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1/MR-RPC AGRICULTURAL RESIDENTIAL DISTRICT AND MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 29.07 ACRES, MORE OR LESS.** The property is lying on the west side of Wil King Rd. (Route 288) approximately 0.89 miles north of Conleys Chapel

Road (Route 280B). 911 Addresses: 20440, 20452, and 20464 Wil King Road, Lewes. Tax Parcels: 234-6.00-26.00, 26.01, 26.02, 26.03, 26.05, and 59.19.

The Commission discussed the Application which had been deferred since November 4, 2021.

Ms. Stevenson moved that the Commission recommend a DENIAL of CZ#1937 for **DOUBLE DB, LP**, for a change in zone from the AR-1 Agricultural Residential District and the GR General Residential District to an AR-1/MR-RPC based upon the record made during the public hearing and for the following reasons:

1. This rezoning to an AR-1/MR-RPC is not appropriate at this location.
2. This property currently has a split-zoning. The frontage of the property is currently zoned GR to a depth of approximately 485 feet, which is consistent with the corridor of GR zoning along Wil King Road. The bulk of the property is zoned AR-1, which is also consistent with all of the property that is behind the GR zoning along Wil King Road.
3. The applicant seeks to rezone the bulk of the property so that the GR-zoned frontage is replaced by MR zoning, and with the exception of the northern corner of the property, the rest of the property will be rezoned from AR-1 to MR. The rear corner of the property would remain AR-1 because it is located in the Low-Density Area under the Sussex County Comprehensive Plan.
4. If approved, the entire property would still have a split-zoning, but now with less AR-1 land and a new MR classification and an RPC overlay.
5. Although the RPC overlay designation is proposed, once zoned to MR, that zoning classification would remain with the property even if the RPC designation is discontinued for any reason.
6. The current GR-zoned frontage of this property is consistent with the rest of the GR corridor along Wil King Road. The application to change that GR zoning to MR and rezone most of the AR-1 land to MR is not consistent with the existing zoning along Wil King Road. There is no other MR along this Wil King Road corridor. If approved, the creation of MR zoning where none currently exists would create a standalone MR District that is different from every other parcel along Wil King Road. It would be spot-zoning, which is disfavored.
7. The MR Zoning would allow an increase in permitted density on this site along Wil King Road. This road is a relatively small and narrow two-lane road with no sidewalks. It is heavily traveled already, and it cannot support the increased density that could result from rezoning this property to MR.
8. Although the current Sussex County Comprehensive Plan indicates that all but the northern corner of this property is in the Coastal Area, it does not mandate that the property be rezoned to MR. The Plan states that Sussex County's density of two units per acre permitted under the existing AR-1 zoning is appropriate in the Coastal Area. That statement supports the continuation of the existing AR-1 zoning and the two units per acre that are permitted under the AR-1 zoning.
9. The Comprehensive Plan suggests that zoning classifications that permit densities greater than 2 units per acre can be justified under certain circumstances. However, several of those conditions mentioned in the Plan do not exist here. For example, MR Zoning is not in keeping with the area. The MR zoning is not on a main road at or near a major intersection, with Wil King Road being a narrow, two-lane road at this location. The property is also not near any commercial uses or employment centers.
10. There is no compelling reason to rezone most of this property to MR under the Comprehensive Plan.

11. I do not believe that this proposed rezoning to an RPC satisfies the higher standards and purposes of the RPC designation. It does not create a superior living environment and there is no design ingenuity involved in the preliminary site plan for the property.
12. Several neighbors appeared in opposition to this application, citing concerns about traffic along Wil King Road and vehicle and pedestrian safety if this project were to be approved. They also raised concerns about the inconsistency of creating MR zoning in this area where none currently exists. There was testimony that rezoning this property to MR would set a precedent for other properties in the area, which would significantly change the character of the area. In general, there was testimony that the change in zone and the impacts of it would adversely affect the area, its roadways, its character, and nearby properties. I found these reasons to be compelling.
13. The proposed rezoning does not promote the overall health, safety, convenience, and general welfare of this neighborhood or the County.
14. In summary, there is nothing in the record to suggest that the proposed AR-1/MR-RPC is more appropriate than the existing AR-1 and GR zoning that currently exists on this property.
15. For all of these reasons, it is my recommendation that CZ 1937 be denied.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend denial of C/Z 1937 Double DB, LP for the reasons stated in the motion. Motion carried 5-0.

#### PUBLIC HEARINGS

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

#### **AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00**

Mr. Whitehouse advised the Commission that submitted into the record is an exhibit booklet received from the land owner, an exhibit map from the land owner, a copy of an exhibit map from Sussex County, a copy of the Ordinance's PLUS submission, which was submitted to the Office of State Planning and one letter in opposition, which was circulated to the Commission within the paperless packet.

Mr. Whitehouse reminded the Commission the public hearing is not for a Change of Zone application; that the public hearing is for an Ordinance to consider a potential revision to the Future Land Use Map; that the Delaware Code mandates all counties and municipalities have a Comprehensive Plan in place; that counties and municipalities must review and update the plans for State certification every year while also providing annual updates on the progress of implementation; that Sussex County's Comprehensive Plan was adopted by the Sussex County Council on Tuesday, December 4, 2018; that following the adoption, the Comprehensive Plan was certified by the Governor on March 19, 2019; that within the Comprehensive Plan there is a Future Land Use Map; that within the Future Land Use Map there is Future Land Use Categories; that staff often refer to these categories in terms of applicable zoning districts for decision making; that in Table 4.5-2 states some applicable zoning districts translate to certain categories and designations on the Future Land Use Map; that in May 2021 staff received a request to consider a potential revision to the Future Land Use Map for the five parcels; that upon receiving the request staff prepared a submission to the State Planning Office to submit; that any change to the Future Land Use Map must be reviewed by the State Planning Office; that it was submitted to

PLUS for review in June 2021; that following that submission staff received comments in July 2021, which have been included within the paperless packets; that following discussions with the State Planning Office, and discussions with the land owner of the parcels, it was agreed to bring the parcels forward for further consideration as part of the public hearing process; that this is the process which has led to the current public hearing for the Ordinance; that Mr. Whitehouse presented Mr. David Edgell and Ms. Dorothy Morris, from the Delaware State Planning Office and suggested the representatives for the State of Delaware provide comment first, prior to any land owners.

The Commission found that Mr. David Edgell spoke in opposition of the proposed Ordinance; that he is the Director of the Office of State Planning Coordination; that he is opposing the plan amendment and the change to the Future Land Use Map on behalf of State agencies; that the Sussex County Comprehensive Plan was certified in 2019; that the plan was prepared by Sussex County through an inclusive process that involved an extensive public outreach effort; that the plan was thoroughly reviewed by State agencies and the Cabinet Committee of State Planning Issues before being certified by the Governor; that certification of the plan indicates the plan is consistent with the Strategies for State Policies and Spending; that it also indicates the State agencies will work collaboratively with the local government to implement the plan; that the plans are long-range documents which are relied upon by many private and public sector entities as they make long-term plans for investments and infrastructure services; that this is why any amendments to the certified plans are reviewed by State, through the Preliminary Land Use Service process; that in this case, the proposed amendment was determined not to be in compliance with the State Strategies; that it represented a major change from the certified plan, which warranted the State's objections; that he requested to summarize the PLUS letter comments for the record; that the parcels are located within a low density area of the Sussex County Plan; that the parcels are located within Investment Level 4 of the State Strategies and Policies for Spending; that one of the parcels is located within an existing development area; that this represents areas which are existing uses; that they are currently zoned, but are scattered throughout the county; that the proposed Ordinance Application is to bring all of the proposed parcels into a developing area; that developing areas are identified as new or emerging growth areas which demonstrate the characteristics of developmental pressures; that most of the development areas are adjacent to municipalities, within or adjacent to future annexation areas or adjacent to town centers; that the parcels in question do not meet the definition of a developing area; that the properties are not adjacent to the Town of Delmar; that the properties are not within or adjacent to potential annexation areas of the town; that the Town of Delmar plan has recently been updated and certified; that the properties were not included in the Town of Delmar's planned growth area; that there has been no justification mentioned for why development would be needed in that area of the County; that the State sees no reason for the proposed change from Investment Level 4 to an area that would allow more growth and development; that the Sussex County Certification letter was issued by the Governor in April 2019 indicating the plan was certified providing no major changes are enacted; that the proposed Ordinance Application is not something the State was anticipating; that the request is considered a major change; that the process the State follows in rare cases such as this, is his office works through the Cabinet Committee on State Planning Issues; that this advises the Governor on these matters; that if there is an objection, the State must enter into a 45 day negotiation period with the local government; that this negotiation period has been started; that he has been working closely with Mr. Whitehouse and the planning staff; that as part of the process it was mutually agreed upon to extend the time period to allow the public hearings to proceed; that this would allow the Applicant to have their local review process as appropriate; that there are two potential paths forward; that there is another public hearing scheduled before Sussex County Council; that his office did report on the progress to the Cabinet Committee of State Planning Issues at their meeting of September 30, 2021; that at the meeting

they reviewed and discussed the summary of what was just described within the PLUS comments; that the Cabinet Committee unanimously approved a motion to support the State's position as described in the PLUS letter; that his hope is the Commission will choose to stick to the current Comprehensive Plan; that no further action by the Cabinet Committee or the Governor would be necessary if the Commission denies the Ordinance; that should County Council proceed with approval after hearing the Application, the State would request County Council table the action and refer the matter back to the Cabinet Committee of State Planning Issues for a dispute-resolution process; that this process is spelled out within the Delaware Code; that he is hopeful this will not occur in this Application's case; that they have worked very closely with the Sussex County staff and reviewed the Application very carefully; that they are working through the Sussex County process to allow everyone to be heard and he hopes this allows for a good decision which is beneficial for all parties involved.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the proposed Ordinance; that he is representing Double H Properties 2, LLC and Blackwater Shawfield, LLC; that also present are Mr. Bobby Horsey and Mr. Zac Crouch; that proposed is an Ordinance which was drafted to amend the Future Land Use Map in Chapter 4 of the Comprehensive Plan; that the Ordinance is regarding five parcels, which is approximately 895 acres; that in September 2006 the Planning & Zoning Commission considered the Blackwater Creek project; that it consisted of the same parcels with the exception of one parcel; that parcel 532-12.00-27.00 was not originally part of the Blackwater Creek project; that in 2006 the Blackwater Creek project consisted of four applications in front of the Planning & Zoning Commission; that it eventually became three applications in front of County Council; that the four Applications for Blackwater Creek consisted of C/Z 1595; that this sought to change the zoning designation for 3.2 acres from AR-1 Agricultural Residential to B-1 Neighborhood Business District; that this is now a closed district within the current zoning code; that C/Z 1596 which was an AR/RPC Application for 233 acres; that C/Z 1597 was a GR/RPC Application for 274 acres; that the fourth Application, which only the Planning Commission could consider, was for a 2005-57 cluster subdivision application for 400 units on 200 acres; that the Planning Commission recommended approval of all three of the Change of Zone Applications; that the Commission also recommended approval for 2005-57 subdivision; that a month later County Council conducted public hearings on the three Change of Zone Applications; that in January 2007 Sussex County adopted C/Z 1595, C/Z 1596 and C/Z 1597; that in 2008 the real estate market became depressed; that the project did not move forward at that time; that in 2008 Sussex County updated the Comprehensive Plan and the Future Land Use Plan; that he presented the previous Land Use Plan from 2008; that at that time all of the subject properties were located within a developing area; that at that time there was a small portion of the northeast parcel which was located in the GR General Residential; that there is a portion of property between the two located with the low density; that the Comprehensive Plan was update in 2018, that the update was adopted by the Governor in 2019; that there was an extensive public process for the adoption of the 2018 Comprehensive Plan to occur; that he and Mr. Horsey attended many of the meetings; that the product of all the public hearings was a recommendation for the Future Land Use Plan which the Planning & Zoning Commission sent to County Council; that the recommendation for the 2018 Future Land Use Map had two designations for the proposed parcels; that the designations were a mixed residential and developing area; that Providence Church Rd. divided the two designations; that both of the designations were listed as growth areas within Sussex County; that the recommendation stayed consistent with the 2008 Comprehensive Plan; that the recommendation was forwarded to Sussex County Council; that when County Council received the recommendation, there were significant changes made to Chapter IV and the Future Land Use Map; that not only did the map change, but new land use categories were added; that certain categories were renamed; that there was a wholesale change from the recommended Planning & Zoning Commission

version; that County Council conducted a similar process; that County Council then released their version of the Future Land Use Plan which the public was able to review and provide comment on; that on the County Council recommendation a new category, Existing Developing Area, was added; that Existing Developing Area became the new designation for many of the proposed parcels; that after the version of County Council's recommendation was released, County Council conducted a final public hearing; that based off of the approved Future Land Use Map, two western parcels and a portion of the northeastern parcel are located within the Existing Development Area; that on County Council's recommended version of the Future Land Use Map, the southeast side of the intersection of Providence Church Rd. and Delmar Rd. was no longer listed within a growth area; that on the northside of Delmar Rd. all of the proposed properties are listed within the developing areas; that this is not reflected on the final version of the Future Land Use Map which was certified by the Governor; that most presently development is focused on the eastern side of Sussex County; that what was explained during the 2006 public hearings before both the Planning & Zoning Commission and Sussex County Council for Blackwater Creek was how ideal the location is for a number of reasons; that these thoughts were reflected on the 2008 Comprehensive Plan, the Planning & Zoning Commissions recommended version and the initial version recommended by County Council; that the close proximity to the city of Salisbury, Maryland is one of the primary reasons for how ideal the property is for development; that Salisbury is the largest city on the Eastern Shore; that Salisbury is a city that is growing; that the city of Salisbury is a major employment center; that the two most significant employers in Salisbury are Tidal Health and Perdue; that from the proposed properties, there are ways to enter into Salisbury without the need to go onto the highway of Rt. 13; that since the Blackwater Creek project was approved in 2007, Sussex County has grown and the City of Salisbury has grown; that Tidal Healthcare has expanded its footprint, which now includes Seaford and Millsboro; that within the project book is a map showing numerous other employment opportunities within the area; that there is also a map showing places of higher education and healthcare providers within the area; that there was a request made to amend the Future Land Use Map which lead to the current public hearing; that as the City of Salisbury and Sussex County have grown, so has the need for the proposed development; that the interest to construct something similar to Blackwater Creek is still present and the demand is still strong; that the Applicant looked at the current Future Land Use Map and attempted to choose the best Future Land Use category within the Code to match the area and the area characteristics; that the category which best matched the area, formal approval and formal designations on prior Future Land Use plans was the Developing Area Designation; that the Office of State Planning Coordination has a different view of whether or not the Developing Area is appropriate for the properties; that Mr. Edgell previously stated the properties are within a Level 4 area; that he agrees that is the designation on the State Strategies Map; that the designation comes largely from the designation, set by Sussex County, on their Future Land Use Map; that he has had many conversations with Ms. Dorothy Morris; that he has always been told the single most important factor, when determining the State Strategies Map, is the designation on the underlining local government's Future Land Use Map; that this is why the plans get certified through the State; that there is a very high emphasis placed on the underline designation on a Future Land Use Plan from the local jurisdiction in which it arises; that due to this, it is not surprising that the three parcels on the right hand side of Providence Church Rd. are shown within Level 4; that this is due to being designated within a Low Density Area on Sussex County's Future Land Use Map; that the Office of State Planning Office coordinates various State agencies; that principally among the agencies is DelDOT; that the PLUS comments within the letter provided in the materials is instructive on the Application; that the PLUS comments related back to the Blackwater Creek project; that there was a TIS Traffic Impact Study performed for the Blackwater Creek project; that noted in the PLUS comments, was due to the

designation on the State Strategies Map, the improvements would not be provided by the State; that improvements would be the responsibility of the property owner or developer of the project; that this is consistent with the designations and the past history of the property; that in Chapter 4 of the Comprehensive Plan, each of the various growth areas has the same bulleted points set forth within it; that the first bulleted point within the designation categories is Permitted Uses; that Permitted Uses within a Developing Area is to support a variety of housing types in selected areas and at appropriate intersections and commercial uses should be allowed; that looking back on the Blackwater Creek project, that was essentially what was proposed at the intersection of Providence Church Rd. and Delmar Rd.; that on the zoning map, in the northeast corner of the intersection, there is 3.2 acres which were originally zoned B-1 through the process; that at an appropriate intersection, with the appropriate improvements made by the property owner it is appropriate within a Developing Area as set forth in the County Code; that even though the Blackwater Creek project did not move forward, the B-1 Change of Zone designation carries forward with the property itself; that the second bullet point within each category refers to Density; that in each of the categories it always starts with the County's baseline of two units to the acre; that the Comprehensive Plans the medium and higher densities can be appropriate when meeting guiding factors; that these guiding factors include when central water and sewer are present, when near sufficient commercial uses, when along a major road or near a major intersection; that there are other considerations which flow from there; that the first of those is the availability of water and sewer; that this factor often drives density and helps to determine if a project should be the standard two units per acre or not; that for these properties Tidewater Environmental Services, Inc. has the CPCN for each of the proposed parcels, except for the parcel located in the northeast corner; that Tidewater will soon be known as Artesian; that Artesian would be available to provide public wastewater service to the site; that there is a CPCN listed for all parcels, including the parcel located to the northeast corner; that another consideration is the property is ideally suited for commercial uses; that the third category references infrastructure; that it states within each various growth area that central water and sewer are strongly encouraged; that central water and sewer would be used at the proposed site; that within the bulleted points of a developing area within the Comprehensive Plan there is a sentence that states, Master Planning should be encouraged, especially for large scale developments, on large parcels or groups of parcels, higher density and mixed-use developments to provide flexibility and site design; that it would be far superior to have a Master Plan for 800(+) acres, which would proceed through a Master Planning process rather than a piecemeal process over time; that Sussex County's Comprehensive Plan encourages a Master Plan zoning district in the future; that he understands this is an Ordinance currently being worked on by Mr. Whitehouse and County staff; that Table 4.5-2 shows each of the Future Land Use Map categories, as well as corresponding zoning district which would be appropriate for that; that in almost each category, new zoning districts are applicable; that this would mean if Sussex County adopted a new zoning classification, such as a Master Plan Zoning classification, it would fit into almost every one of the zoning classifications; that there is only one classification it would not fit into; that classification is the Existing Development Area; that majority of the parcels are located in the Existing Development Area; that the request was made to amend the Future Land Use Map to a developing area; that in the developing area it does have the new zoning classification permissibility; that Master Planning would be appropriate for the five parcels; that all of the presented factors and additional information provided in the project book support the property being within a Developing Area; that these factors are further supported by the history of the properties; that the history includes the approvals in 2007, the 2008 Future Land Use Plan itself and the versions of the 2018 Future Land Use Plan which were recommended by the Planning & Zoning Commission and the initial recommended version by County Council.



The Commission found that Mr. Robert Horsey spoke on behalf of his Application; that he is part owner of the property, along with his brother; that he feels Mr. Edgell portrayed the request to be an abrupt turn of what the public requested on the 2018 Comprehensive Plan; that after ten months of workshops the Planning & Zoning Commission performed, aside from five workshop, he attended almost every workshop; that he feels many members of the public were disheartened when a member of the Commission made a suggestion, which went to the County Council; that when it went to County Council it was amend and some of the suggestions were removed; that on his side there was a lot of public disappointment; that there was a lot of time and effort put into something the public thought the Commission suggest would stand on the 2018 Comprehensive Plan; that Mr. Edgell was incorrect; that the public sediment did have a growth area in the southwestern corner of Sussex County; that when looking at the growth maps, everyone looks at Sussex County with a line across; that this is not true; that Sussex County is adjacent to the largest city south of Wilmington; that the City of Salisbury has nearly grown to the line of Sussex County, approximately being within a mile along the Rt. 13 corridor; that he feels it would be a grave mistake to not place a growth area on the southwestern portion of Sussex County to accommodate the work force of the metropolitan area south of the area; that the maps currently do not show this; that he believes the Level 4 State Strategies Map was put on during the Ruth Ann Minner Administration; that he feels it is just a line on a plan; that his family bought the farm in 2004; that the previous land owner has subdivided every lot they could; that strip lots have been placed on White Deer Rd. and Providence Church Rd. since then; that it is a little hamlet of housing that has been created in southwestern Sussex County; that Delmar has one of the best school districts in Sussex County; that people raising families attract to a nice school district; that he recently celebrated 36 years in business as a family company; that about 33 of those years they have been working with developers; that he did not attend college; that he does not have a degree; that he does know a successful development attracts to where people like to congregate and live; that the hamlet of houses shows that people want to live on the southwestern portion of the Sussex County; that this is due to the school district and the employment to the south of the area; that Providence Church Rd. turns into Jersey Rd. once it hits the Maryland line; that Jersey Rd. is approximately 5.5-miles to Naylor Mill Rd. which runs dead center of north Salisbury commercial district; that from the property one could get to Tidal Health in approximately 10-12 minutes; that this is not a quick process; and the process has changed in his 33 years of business; that he is not asking for a plan approval; that the request is to change the Future Land Use Map; that this request will not happen overnight; that it is a long process; that he is requesting to get the process started and request the Commission consider the request in a positive way.

Mr. Hopkins stated he recalls the Commission spending a lot of time on the Ten Year Land Plan; that the Commission could have spent ten times more on analyzing where growth should take place; that it is almost impossible for a body, such as the Planning & Zoning Commission, to anticipate exactly where growth should be; that when the recommendation left Planning & Zoning and was submitted to County Council, there were changes me; that he did find it disheartening; that the next Ordinance request is another example of the same situation and he feels the Commission should have an open mind about making changes without waiting ten years to readdress some of these issues.

Ms. Wingate stated she joined the Commission while the Comprehensive Plan was being approved and she appreciated the comments from Mr. Hopkins.

Mr. Mears stated he was not part of the Comprehensive Plan process; that he does agree with Mr. Hopkins's comments; that the Commission cannot estimate and get it right the first time and small adjustments are not a bad thing, they are a positive thing.

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

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

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

Ms. Stevenson stated the caller did have a good point in regard to placing a sign on the property to alert the public of the Ordinance.

Chairman Wheatley questioned the differences in notifications for Ordinances versus Land Use Applications.

Mr. Whitehouse reminded the Commission the current Application was for an Ordinance and not a Change of Zone; that under Title IX, under Comprehensive Plan amendments of the Sussex County Code it does not require public notification by sign and if there were such a requirement to send a postcard notice for every Ordinance amending the Comprehensive Plan, it would be required to mail every landowner within Sussex County a postcard for each Ordinance Application.

In relation to the Ordinance. Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01**

Mr. Whitehouse advised the Commission that submitted into the record a copy of the staff's application submitted to the State Planning Office as part of the PLUS process, the comments of the PLUS review, a letter from the land owner, a copy of the Ordinance for the Application file, a copy of the land owners exhibit booklet, a copy of the Applicant's exhibit maps, a copy of Sussex County's exhibit maps as part of the Ordinance, 51 letters of opposition, four letters in support and the responses which were not included in the paperless packet have been circulated to the Commission.

Mr. Whitehouse stated this is an Ordinance to amend the Future Land Use Map of Sussex County; that there are five parcels; that an area of 247 acres would potentially be affected by the Ordinance; that the parcels are located on the northeast side of Coastal Hwy., opposite the intersection of Cave Neck Rd.; that the yellow hatching on the plan shows the proposed extension of the Coastal Area with the Future Land Use Map; that they are currently all within the low density area; that the low density areas are reflected as nonshaded areas on the map; that the yellow areas are reflected in yellow on the map; that the request was received February 2021 to consider a potential amendment of the Future Land Use Map; that following that request it was reported to the State Planning Office; that it was then heard at the PLUS process meeting in June 2021; that following the PLUS meeting, Planning & Zoning staff have received written comments from the State Planning Office and he then introduced Mr. David Edgell and Ms. Deborah Morris from the Delaware State Planning Office.

Mr. Thompson recused himself and left the dais.

The Commission found that Mr. David Edgell spoke in opposition to the Ordinance request; that he is the Director of the Office of State Planning Coordination; that the Strategies for State Policies and

Spending were first developed in 1999 under the Governor Carper Administration; that they have been a policy of the State Government since that time; it is updated every five years; that the five year cycle is to keep up with the Comprehensive Plans of all the 57 municipalities and 3 county governments; that there are many things that go into the State Strategies; that it is not just the local government Comprehensive Plans; that the local government Comprehensive Plans are a foundational element; that there are 30 different data layers within the analysis of what designation Investment Level to give a parcel or area; that Level 1-2 are built-up urban and suburbanized areas; that Level 3 is considered for newer growth areas which are emerging; that Level 4 are for the more rural areas; that this is an area where they expect a continuation of rural, agricultural, industrial and natural resource types of activities; that the subject parcel is near Cave Neck Rd.; that there are many data layers which are performed with mapping; that these layers relate to things that are favored in growth; that these indicated areas which are more likely to be a positive growth area; that there area number of layers that indicated favored preservation; that those areas tend to be environmental in nature; that if they favor toward growth, it receives a positive one; that if it favors toward preservation receive a negative one; that the totals are summed up by layering maps on top of each other; that in this application's case there is a fire station within three miles and a hospital within five miles; that the application property is not located within the County growth area according to the Comprehensive Plan; that the subject property is not located within a municipality, annexation area or transferable development of right receiving area; that the property is not located in an urban area according to the census; that the property was not currently built as a 2012; that the property is not located within a transportation improvement district; that the property is not in proximity to bus stops, bike paths, trails, public libraries, public schools, State service centers, freestanding EMS and local police departments; that the property is not connected to County sewer service; that the property is located near wetlands; that the property is located with the Delaware Ecological Network; that the property is located within the Coastal Zone; that portions of the subject property are located within the 100 Year Flood Plain; that he does believe the rear property has been amended and removed from the Application submitted to PLUS; that if the property was removed, it may no longer be a specific issue; that the property is located within a low density area, subject to sea level rise inundation and in close proximity to tidal wetlands; that these are all areas of criteria analyzed through the process; that per the process, the property is designated Level 4; that this designation is not determined by drawing a line on a map; that the designation is not based completely off Sussex County's Comprehensive Plan; that they perform a very detailed analysis of all the different data layers previously mentioned; that the subject properties have been through the PLUS process multiple times for various applications; that he appreciated the presentation for the previous application; that he was not present for all of the meetings to construct the Comprehensive Plan; that he was not aware of the history of the previous applications parcel; that we must conform to what is stated within the Comprehensive Plan which was approved by the local government, legislative body and certified by the Governor; that they review about nine application to a packet; that of the nine applications, the two current applications were the two they found concerns with; that the amendment to the Coastal Area would open up a large number of options for the zoning of the property; that the low density area is limited to two units per acre; that in the Coastal Area the density could go as high as 12 units per acre, as well as allow heavy commercial uses; that they object to the current request; that the process would be in the same with the current public hearing being held and a public hearing before County Council; that should County Council agree to move forward, the application would need to be referred back to Cabinet Committee of State Planning Issues for consideration; that his office and the agencies they work with are very interested in working with Sussex County as the county grows, develops and change; that they are committed to working with Sussex County as they move forward; that this is an example of unusual and difficult situation at the end

of a Comprehensive Plan period; that this went through a very long and thorough process and he understands there were some changes made at the last minute.

The Commission found Mr. David Hutt, Esq. spoke on behalf of the Ordinance; that also present were Ms. Alice Robinson, along with her two children, Thomas and Mary Beth; that Mr. Joe Reed and his son Mr. Brent Reed were present; that they are the principals of the ownership groups for the properties; that proposed is an Ordinance to amend the Future Land Use Map designation for five parcels consisting of approximately 247 acres; that the Mr. Chapel, who was a previous owner of one of the parcels, considered selling the property; that he learned his property was not located within Sussex County's growth areas; that it was characterized as low density; that this came as a surprise, as the area was shown within a growth area according to the 2008 Future Land Use Plan; that this was shown in the Environmentally Sensitive Overlay Zone; that the Comprehensive Plan was updated in 2018; that the Comprehensive Plan was signed by the Governor in 2019; that the property owners participated in the process; that as previously discussed in the last public hearing, there was a recommended Future Land Use Plan, which was amended by the Planning & Zoning Commission to County Council; that County Council did amend significant changes to the Future Land Use Map and area designations; that the Environmentally Sensitive Overlay Zone was renamed to Coastal Area; that County Council placed the property within the Coastal Area; that the owners were very satisfied with this as the Coastal Area was located more east than it originally did on the 2008 Future Land Use Plan; that the process after County Council released their recommended version is where the unknown elements and surprises come into play; that County Council's recommended version went to a public hearing on October 23, 2018; that at the public hearing Mr. Robertson, on behalf of the Planning Commission and Ms. Cornwell, made a presentation to County Council regarding the Comprehensive Plan and the specific chapters within the Plan; that if his notes are correct and the Sussex County minutes are correct, thirteen people spoke about the Comprehensive Plan at the October 23, 2018 public hearing; that at least two of those speakers or groups are present at the subject public hearing, that he was one of the speakers; that he was present and spoke at the public hearing in October 2018; that SARG Sussex Alliance for Responsible Growth spoke at the meeting as well; that during the October 23, 2018 public hearing there were three groups of properties discussed; that he was not present on behalf of the subject property; that the other comments largely dealt with implementation and other aspects of the plan; that there were comments regarding the need for affordable housing; that there were a number of things that occurred aside from people seeking changes to the Future Land Use Plan; that at the conclusion of the public hearing, it was closed by County Council; that Council deferred the decision on the Ordinance to approve the Comprehensive Plan, certify and send it to the Governor, for his signature; that the next meeting is no longer considered a public hearing; that this means the public can view, but not provide comment, on the actions taken by the County Council; that the meeting of October 30, 2018 a number of properties, including the subject properties, were discussed; that for the first time, the Future Land Use categorization came into question; that the concern regarding the categorization of the Future Land Use Plan was unknown to the property owners; the land owners had participated in the process and assumed the recommended version would be the plan to be sent to the Governor for certification; that the Future Land Use Plan which was certified contained a significant change; that the subject 247 acres is no longer located in the Coastal Area; that the 247 acres is now located in a low density area; that he read the comments within the supplemental packet; that he feels there was some irony; that there were some comments about the amount of time people had to consider the Ordinance; that there were comments stating there was not enough time for people to adequately consider their positions or make time to attend the meeting; that the irony is the public is in a far better position than his client; that his client participated in the process for 18 months or more; that during the public process, his client was always shown a map that showed their land as

being within a growth area; that when the public process was concluded, the plan was changed and sent to the Governor with the change; that regardless of ones position on a land use matter, a fundamental, logical and orderly process is an opportunity to know what is occurring and be able to comment on the matter; that anything else has the appearance of being arbitrary; that ultimately the change occurred and was certified by the Governor; that as part of the process the property owners did not go back to check at that time; that this was indicated in the Applicant's initial letter of December 2020 to County Council; that the letter stated they acknowledge the responsibility to check, but they thought due to the history of the property, as well as the history of the recommendations from Planning & Zoning and County Council that double checking was not necessary; that the change from Growth Area to Low Density Area was discovered during the sales process; that the process of amending the Future Land Use Plan is a fairly new process; that in this new process the Office of State Planning Coordination considered the Application from Sussex County at their June 2021 meeting; that it is a public process, but it is the Applicant and various agencies who participate in the process; that this on the subject Application, there are significant gaps and differences between what the Office of State Planning thought they were considering and what the Application is; that when a letter states to the effect of there was no good reason given for the Application, the reason is the Applicant did not have enough time to provide a reason; that the Applicant would have been happy to provide a reason and would have liked to have been asked to participate in the process in June through the PLUS review process; that technically Sussex County is the Applicant and the Applicant was not allowed to participate in the process; that he feels this is pouring salt in the open wound of how this situation began in the first place; that it was hard for the Applicant after the public process was closed realizing the map had been changed and then not being able to participate in the process after requesting for it to be amended; that an explanation from the Applicant may or may not have made any difference to the Office of State Planning; that an example, if one of the first comments within the PLUS report; that the comments reference other project they are familiar with; that in the report it was described as being an active part during the Comprehensive Plan amendment process; that the only activity occurred on the subject properties were they maintained being in a growth area; that the growth area actually expanding the growth area with a recommendation from County Council; that in addition, the Office of State Planning Coordination response indicated there are tidal wetlands contiguous to the parcel; that Director Whitehouse indicated that the State Planning Office may have been considering a larger application than the application actually is; that the nearest tidal wetlands are 625 ft. away; that the bulk of the tidal wetlands are almost a half mile away from the site; that another comment provided in the PLUS response was the parcels are not close to public services, such as water sewer, police, fire and schools; that the Applicant disputes those comments; that there was another comment that the area is a Level 4 area; that as indicated in Mr. Edgell's comments, the foundational piece used is the underlying designation on the local government's Future Land Use Plan; that once the property is in low density, being designated in Level 4 is not a surprise; that it creates a self-fulfilling prophecy for the property; that there also seemed to be confusion about the actual land; that it was thought the land extended all the way back; that there was a reference to 415 acres; that in the reference it goes on to state it would be further away from public services and utilities; that part of the difficulty in present an application in this situation, is he does not want anyone to think this is an attack on the Office of State Planning Coordination; that they just happen to be the body that puts the information together; that in this Application's case, he does not feel the Office of State Planning Coordination had the whole picture when the information was put together; that his clients would have welcomed the opportunity to help provide a better glimpse of the picture; that in Sussex County's Future Land Use Plan, Chapter 4, the first basis for consideration of Future Land Use in Sussex County is to direct development to areas that have existing infrastructure or where it can be secured cost effectively;

that the Application requesting to change the designation fully recognizes that basis and is consistent with the basis through both the planned transportation improvements of Cave Neck Rd. and Rt. 1 intersection and the existence of utilities and infrastructure; that further into Chapter 4 there are guidelines for when to consider an area in a growth area or not; that a few of those guidelines are the presence of existing public sewer and water service nearby, plans by Sussex County to provide public sewage service within five years, location on and near a major road or intersection, the character and intensity of surrounding development, including proposed development and the areas environmental character; that each of the guidelines also supports the conclusion the parcels should be located in a growth area; that the parcel should be located in the Coastal Area based upon the environmental considerations; that one of the primary issues with most Applications is transportation and traffic; that being on or near a major roadway or intersection is a listed guideline; that DelDOT's proposed grade separated interchange for Rt. 1 and Cave Neck Rd. is part of the Capital Transportation Program; that the State is estimating spending \$69,000,000.00 on the project, with \$54,000,000.00 in improvements and \$15,000,000.00 is for the right-of-way acquisition; that it is stated throughout the Comprehensive Plan and the Zoning Code that projects should be located near intersections and major arterials; that this is one of the reasons the property should be located in a growth area; that the public hearing is the very beginning of the process; that there is no concept plan and nothing has been submitted to the Office of State Planning Coordination to consider; that there are years to go on whatever the process may be; that there are few years to go before the DelDOT CPT project for Cave Neck Rd and Rt. 1 takes place; that another factor in considering growth area was the existence of public water and sewer service nearby; that the property is located within wastewater service territory for Sussex County; that there are three wastewater service providers within the properties area of Sussex County; that on the map presented, Artesian is represented in red, Tidewater Utilities is represented in green and the other colors represent the various tiers Sussex County has assigned to the area; that on the eastern side of Rt. 1 Tidewater has a 12 inch water main which runs across the frontage of a portion of the property; that on the western side of Rt. 1 Artesian has an 8 inch sewer force main which is available to provide water to the property; that another growth area guideline is environmental features; that on the presented map, non-tidal wetlands are represented in blue and represented in green are tidal wetlands; that the property is 625 ft. for from the closest point to tidal wetlands; that there are many other Coastal Areas within Sussex County that extend right to the edge of present wetlands, even at times including the wetlands; that there is a significant distance between the property and the wetlands; that the bulk of the property is located over .5 mile away from the wetlands; that the proposed buffer Ordinance will further protect the wetlands on anything that would occur beyond the proposed Application for the growth area; that another characteristic and intensity of surrounding development, including proposed development; that there is already commercial zoning across the eastern side of Rt. 1 right up to the property; that directly across the property is C-1 areas and other areas which are zoned commercially; that across from the northern parcel there is a recent rezoning of MR and C-3 located at the intersection; that anticipated as part of the rezoning were the future improvements which were planned for the intersection; that what was described in the Ordinances for the rezoning equally apply to the subject properties; that the Application is not for a rezoning but the same characteristics apply regarding the appropriateness of being within a growth area; that in Ordinance 2783, which is the Medium Residential Change of Zone application; that the Ordinance states both central water and central sewer will be available; that the Ordinance states the site is the location of a grade separated interchange or overpass which will be constructed by DelDOT with on ramps and off ramps; that proposed is one of the first great separated intersections in Sussex County; that the Ordinance states the great separated intersection gives the location an urban character; that the Ordinance states given the properties location adjacent to the interchange MR Zoning is appropriate for

the property; that the Ordinance stated the property is adjacent to a property with C-1 Zoning, with other commercially zoned properties across Cave Neck Rd. from the site; that all of the characteristics are the same for the subject properties; that many of the same comments were made in Ordinance 2784 for the C-3 Change of Zone; that the Ordinance states the site has frontage along Rt. 1, at a location that is next to an existing C-1 property with various commercial uses; that this characteristic is identical to what is occurring on the eastern side of Rt. 1; that the Ordinance stated is was across Cave Neck Rd. and other commercially zoned properties and the location is appropriate for the proposed zoning; that a very similar description is given regarding the proposed grade separated interchange and the change it will bring to the property, area and character of the area; that the Coastal Area is appropriate as it has been the historic designation for the properties previously and best reflects the characteristics of the property; that according to Chapter 4 of the Comprehensive Plan the Coastal Area has two primary characteristics; that one characteristic being it is among of the most desirable locations in Sussex County; that the second characteristic is contains ecologically important and sensitive characteristics; that both characteristics are true of the subject properties; that the report from the PLUS office mentioned concern about the permitted uses for the properties; that the same concern was referenced in a number of letters and emails submitted to the Planning & Zoning Office; that this is the significance of the property being in the Coastal Area the environmental characteristics and sensitivities, authorizing the Planning Commission and County Council to ensure those items are appropriately protected; that as indicated for the bulk of the site the sensitive area are at least .5-mile away from the proposed growth area; that within Chapter 4 it mentions the need for the property to be near transportation, shopping center and office parks, located on arterial roads; that the property is located near Rt. 1 which is a major arterial road; that this characteristic was a reason stated for the approval of the previously mentioned Change of Zone; that density was a proposed concern; that within a Coastal Area there is a possibility of an increase to the base density of two units to the acre; that the Coastal Area describes when it is appropriate for the higher densities to occur; that where it is appropriate to occur is similar to the characteristics previously mentioned; that higher densities are appropriate where central water and sewer are provided, when near sufficient commercial uses and employment centers, where it keeps within the character of the area, where it is located along a main road or at or near a major intersection and where these is an adequate level of service; that the site has central water and sewer; that the site is located near many commercial uses and employment centers; that the site keeps with the characteristics of the area, and has many similar characteristics to the nearby approved Change of Zone; that the site is located along a main road and nearby intersection; that one of the basis for the Future Land Use Plan is to direct development to areas which have existing infrastructure or where it can be secured cost effectively; that when you look at the basis and consider the stated guidelines, they weigh heavily in favor for the entire four parcels and first portion of the fifth parcel being designated to the Coastal Area on the Future Land Use Map; that the Applicant request the proposed Ordinance be adopted when sending a recommendation to County Council and the requested designation would return the designation on the Future Land Use Map to the original recommended version from Planning Commission to County Council as part of the Comprehensive Plan update process.

Mr. Hopkins questioned if the site was located in the growth area, prior to the Planning Commission reviewing as part of the Comprehensive Plan update; that he stated the site was located within the Coastal Area when it was recommended to County Council; that there were many meetings held by the Planning & Zoning Commission, as well as County Council; that the public perception after the meetings was the site would remain in the growth area; he questioned if there is an idea of what happened once the recommendation left the Planning & Zoning Commission; that he questioned if there was some same on the Commission for not alerting the land owner of the change; that he stated with many years of being

located within a growth zone he finds it strange the designation would go backwards, being removed from the growth area; that the Commission spends a lot of time figuring out where growth should be; that growth should be where there is infrastructure; that there is infrastructure near the site being near Rt. 1 and near the health centers at Milford and Beebe; that he does not understand what happened and why there is a need to spend so much time hashing out something that seems to obvious.

Mr. Hutt stated when County Council issued their recommended version, the site was shown within the Coastal Area, and regarding the process, it was incredibly disappointing to a property owner, who participated in the process, to be informed of the change, without any chance to impact the change.

The Commission found Mr. Jeff Stone spoke on behalf of SARG Sussex Alliance for Responsible Growth, in opposition to the proposed Ordinance; that the Great Marsh and eastern Sussex County quality of life area under attack again; that this attack has profound ramifications far beyond the parcels in question; that in keeping with Mr. Hopkins comment regarding notifying property owners, the proposal was submitted nine months ago; that there was no notice to many communities nearby and the thousands of residents in the area; that the proposed change was placed on the agenda; that the developers get nine months to work things out but the citizens are given seven day notice by way of an opaque item of a publish agenda; that he feels this is not an advertisement in transparency in government; that he feels Mr. Hutt's comment also follow along with that statement; that he feels there must be a better way of getting these applications done and to get information out; that the proposed request would make a major modification to the County's Comprehensive Plan vision and intent; that within the most recent Comprehensive Plan update, completed in 2018, County Council designated the land and most other properties north of Willow Creek Rd., on the east side of Rt. 1, as low density; that the State designates the area as Level 4 with the State Strategies; that in Investment Level 4 areas, the State's investments and policies should retain the rural landscape, preserve open spaces and farmlands, support farmland related industries and establish defined edges to more concentrated development; that stated is a precise and correct description to the nature of the area; that less than three years into a 10 year plan, the new owners are requesting to change the designation to Coastal; that this designation change would allow much more intense development which would not be limited to residential; that the current low density land use designation within the AR-1 Agricultural Residential Zoning, would permit approximately 484 single-family homes based on the gross acreage; that two residential subdivisions have been approved on the property; that if the proposed change in land use is adopted it could results in potentially 2,900 single and/or multi-family residences based on gross acreage; that it would also potentially permit a wide variety of commercial uses; that this would include retail and car dealers which are heavy commercial; that none of those things are present in the area currently; that the Delaware Office of State Planning has officially stated the position of opposition; that also opposed to the request is the Delaware Department of Natural Resources and Environmental Control; that the acreage was designated low density for good and sound reason; that it abuts an area of significant tidal wetlands, which is a critical ecological and economic resource; that he is sure the Commission, at the time of the Overbrook Town Center proposal for rezoning, will recall that many, if not all of the same issues and concerns raised then are just as relevant and applicable today; that they provided the rational for the County Council to deny the application twice and keep the designation as low density development; that the Comprehensive Plan has barely begun to be implemented; that now a major change, impacting thousands of residents and visitors is proposed; that Sussex County has not yet prepared an implantation plan, which is required by the Comprehensive Plan; that he recently uncovered a July 2021 Comprehensive Plan update provided by Planning & Zoning to the State; that this Comprehensive Plan update was not found on the Sussex County website; that this update shows Sussex County is apparently



working on no less than 23 Comprehensive Plan Strategies regarding open space, wetlands, waterway protection, well head protection and recharge areas; that these are all issues cited by DNREC in their statement of opposition; that Sussex County's strategy efforts cited have just begun; that the adoption of this proposal would render those strategy efforts irrelevant; that Sussex County has been losing areas designated low density to development at an astonishing rate; that according to the State Planning Office, between 2016 – 2020, 93% of residential units were approved state-wide in Level 4 areas through development applications in Sussex County; that the Comprehensive Plan was prepared; that the preparation costed hundreds to thousands of dollars; that it included significant citizen input; that the Future Land Use section stated one of the goals is to protect critical and natural resources, such as inland bays and others by guarding against overdevelopment and permanently preserving selected lands; that to large measure, the resulting document, unanimously approved by County Council, responded to the concerns of citizens seeking to preserve open space, while allowing low density residential development to happen while keeping with the character of the area; that he questioned how it makes sense to throw away two years of efforts by the Sussex County government and the citizens before serious implementation efforts have begun; that he feels it makes sense to implement the plan and measure the effects on the County before making major changes; that he knows what the proposed change will lead to if approved; that other owners of low density lands will be encouraged to seek different designations which allow more intense development; that the owners and developers will file to rezone properties to allow for high density residential; that one rationale is the site is already adjacent to land already designated as Coastal Area; that this is precisely the reason County Council made the choice they did; that how often through the Comprehensive Plan process did we hear the need to preserve the rural character of Sussex County; that land use designations must begin and end somewhere; that the opportunity to provide additional protection to the Great Marsh, as well as preserving some of the rural character of the County helped County Council make the choice; that the characteristics of a Level 4 area are defined as rural in nature, open space natural areas, agribusiness activities and farm complexes; that all of these uses precisely describe the area; that State Growth Strategies for growth areas include, retain the rural related and farm related industries, establish defined edges to more concentrated development among others; that he questioned what could be more appropriate than a low density area providing a buffer between the Great Marsh, one of the State's most valuable natural areas, and a growth area west of Rt. 1; that clearly County Council sought to preserve the east side of Rt. 1 to balance and establish a defined edge to the anticipated growth on the west side, which is already apparent; that he questioned what the rationale is for changing the Future Land Use Map only three years into the plan; that the Applicant has cited the fact the new great separate interchange will be constructed over Rt. 1 and Cave Neck Rd.; that the developer states this is the most appropriate area for high density development; that he feels this may be true in New Castle, Montgomery County Maryland, or southeastern Pennsylvania but not in Sussex County; that the improvements now being performed along Rt. 1, under the Corridor Capacity program are a response to safety, congestion and accident concerns which were caused by inadequate infrastructure that cannot safely handle the volumes of traffic already flowing as well as the anticipated traffic in the future; that the improvements are not for the purpose of new high density development; that DelDOT's plans are based on the Comprehensive Plan; that the Comprehensive Plan designates the east side of Rt. 1 as low density; that there currently is serious capacity and safety issues west of Rt. 1, along Rt 16 and Cave Neck Rd.; that there is no capacity issue east of Rt. 1 currently; that if a low density designation is maintained there will not be; that allowing heavy commercial and high-density housing on the east side will create new and significant capacity issues on both sides; that the traffic generated will overwhelm the millions of dollars the State is investing in improvements; that this will but residents and visitors back into traffic hell; that he questions

if it makes sense to create more traffic, before the improvements are even underway; that we do not know if the improvements will relieve any of the current problems; that the public has been disappointed before; that the proposal also stated it will lead to the creation of jobs; that the pandemic caused profound and fundamental change to the nation's economy; that 4,000,000 people quit their jobs nationwide last August; that unemployment in Sussex County is just above 4%; that this is slightly above historic norms; the newspapers Help Wanted sections are overflowing with advertisements; that Sussex County employers are having difficulty recruiting employees; that according to a report from Stateline, which is an initiative of The Pew Charitable Trusts, dated November 12, 2021, stated a record number of job openings and fewer workers to fill the openings, have left 42 states with more available jobs than people looking for work; that Delaware is listed as one of the 42 mentioned states with 1.3 jobs available for every job seeker; the development projects do not create jobs; that the economy and employers create jobs; that the same jobs will be created if the project were located in a more appropriate area of the County; that it is a specious argument which will sacrifice a finite resource to gain jobs; that smart planning allows places to have both; that if the proposal is approved the Commission might as well include all properties on the eastside of Rt. 1, from Willow Creek to Milford; that once one of the properties changes, especially a property as ecologically critical as the subject property, all of the dominos must fall; that he has heard the justification time and time again; that if you give it to him, you must give it to me; that this does not seem apparent in Sussex County, developers have no right to develop anything more than the land use designation and zoning allow; that there is no right to change a land use designation because it does not fit a business model; there is no right to rezoning because the yield of the current zoning does not have enough return; that Sussex County has the sole authority to determine what land use best serves the community at large; that in this case, the decision by County Council responding to the clear desire of the citizens was that the most appropriate use of lands east of Rt. 1 is low density residential and open space; that there is no evidence showing that the decision by County Council to designate the land low density was incorrect, except for the fact it does not provide a developer with a high enough margin; that the developers knew what they were getting when they bought the land; that the developers are depending on the Sussex County government to bail them out; that within the Application documents they admit they dropped the ball, now requesting the County to fix it; that there are already approved subdivisions on the properties; that the fact is they can build hundreds of homes on the property in question without changing the land use designation or rezoning while still making a profit; that the Comprehensive Plan also permits, in addition to AR-1, business community, marine district and institutional district; that there is no need to change the land use designation to provide for commercial units to serve the residential developments there; that the County recently approved commercial development west of Rt. 1 which would easily serve the areas communities; that to his knowledge the house development has already been approved and met no opposition; that while these options may not generate as much profit as developers would like it is not the County's responsibility to maximize the developers return; that he requests the Commission not repeat the mistakes of the past, creating another Five Points, or duplicate the situation along Rt. 1 near the outlets south of Five Points; that he requested the Commission protect the Great Marsh and the rural character of Sussex County; that one positive which could result from the proposal is to strongly encourage the County, specifically the Planning & Zoning Commission, to engage in a long range quarter planning effort to better determine how to achieve the Comprehensive Plan vision by specifying the specific types of development the County should encourage and where it should be located; that if this is done in corporation with DelDOT it would be game changing; that the new Comprehensive Plan gives the County the opportunity to change course from haphazard overdevelopment patterns over the last 10 years to a balance between rational growth which would serve the community and the preservation of

the quality of life, history and environment of Sussex County; that we need to take advantage of the opportunity and not cut it off before it begins; that the Commission should give the Comprehensive Plan a chance to be implemented; that the Commission may like the results; that if the Commission begins making changes now, we will never know what is missed; that he states it is a simple choice; that the Commission can take the old road and continue to lose the things that make Sussex County, Sussex County; that the Commission can choose a new path which would enhance the things that make Sussex County special; that he states the decision is in the Planning & Zoning Commissions hands; that Sussex Alliance for Responsible Growth request the Commission choose to preserve the rural character of the county by recommending denial of the Application and he request the Commission keep the record open for a reasonable time; that there were a lot of people who were surprised by the Ordinance request; that they were notified of the request late last week; that members of the public wanted to have the opportunity to speak and comment but did not have the information available and due to this they request for a reasonable amount of time be set for the record to remain open.

Chairman Wheatley stated he believes most of Delaware's rural area is located within Sussex County; that he feels 93% of residential units were approved state-wide in Level 4 areas through development applications in Sussex County is an impactful statistic; that he questioned what percentage of rural land is located within Sussex County and believes it is a fairly large amount.

Chairman Wheatley questioned Mr. Whitehouse if the current public hearing was advertised the way every other public hearing has been previously advertised.

Mr. Whitehouse stated a notice was published, in advance, in two newspapers with general circulation; that notice was published on the Sussex County website and noticeboard; that this Application, prior to being submitted as an Ordinance, went through the PLUS process, which is required to be noticed on the State of Delaware's website; that the only difference being, an Ordinance to amend the Comprehensive Plan is not considered a Development Application, which is specifically linked to a certain type of development, and regarding Ordinances, postcard notifications are not sent out.

Chairman Wheatley questioned when the map was first sent to County Council, if the entire parcel, including the piece extending to the Great Marsh, was located in the environmentally sensitive zone; that he believes the Commission was trying to avoid zone splitting on parcels; that the way he understands the request is to be a compromise between the original recommendation of the map and the map which was certified by the Governor and the current request is only for the front parcels, not the parcel extending back to the Great Marsh.

Mr. Whitehouse stated he believes the way Planning & Zoning staff had packaged the Application when submitting for the PLUS process had created some confusion; that the PLUS submission did refer to the entirety of the parcels; that to clarify the blue line, shown on the map, is the parcel boundary; that the hatched yellow area on the map is the subject area of the current Application.

Chairman Wheatley questioned who the current owners of the parcels are, as there was a reference to new owners, and questioned if the site was under contract to a developer subject to the outcome of the Application request.

Mr. Hutt stated that Mr. Chapel owned the northern portion of the property; that Mr. Chapel did sell the property to Seaside of Lewes, LLC; that there is another piece of property which has another LLC name; that the southern piece of the property is owned by the Robinson family and there are various heirs and LLC's associated with the subject properties.

The Commission found Mr. David Green spoke in opposition to the Application on behalf of Mr. Keith Steck, Vice President of DELCOG Delaware Coalition For Open Government; that he stated the area is designated low density and should stay as such; that he mentioned concerns with transparency and the method of notification by Sussex County to residents and feels the major change to the Comprehensive Plan should be handled by the State Cabinet Committee, not by Sussex County.

Chairman Wheatley stated the State of Delaware has delegated Land Use authority to Sussex County for the last 80 years and which is the reason Sussex County is involved in the matter.

Ms. Stevenson questioned if Mr. Edgell still presented with the same concerns after learning the Application did not include the entire parcel.

Mr. Edgell stated Mr. Whitehouse had clarified the distinction at the Cabinet Committee meeting in September 2021; that the Cabinet Committee of State Planning issues did receive a similar presentation, at their meeting of September 30, 2021, to what he presented to the Planning & Zoning Commission; that the Cabinet Committee voted unanimously to support the PLUS comments, the position of the State and its agencies; that he feels it is noteworthy to mention Ms. Nicole Majeski, Secretary of Transportation, made the motion to support the States position and comments; that the planned transportation infrastructure was planned based on the current Sussex County Comprehensive Plan and is not anticipating any additional development on the site.

Chairman Wheatley states the public hearing is part of a process; that the process was placed for a reason; that the reason being the Commission may not get the maps correct every time; that is why the process exists to be able to go back to look at things; that it is important to remember the State is not their enemy in the process; that he has been doing the job for 25 years; that they are currently enjoying the best relationship with the State the County has ever had; that it has been a good thing; that there are nine Comprehensive Plan amendment requests in front of the State currently; that the State only has issues with the two requests subject to the current public hearing; that the State is mostly agreeing with the County; that the County and the State will not always agree; that interests of the County and State do not always coincide; that the idea is to persevere though; that he does feel there are processing issues; that he feels the process issues are with Sussex County based off of the way some of the previous processes were done and the way decisions were made; that at the end of the day it is Sussex County's map that is submitted to the State; that is the reason Sussex County becomes the Applicant when submissions are made to the State; that the process may be something the County needs to work out with the State, as the property owner is not as involved in the process as they would like to be and possibly should be; that they are all finding their way through the situation and he feels it has been a good exchange of information.

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

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

In relation to the Ordinance. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

**2021-11 Lightship Cove (F.K.A Fisher Road)**

A cluster subdivision to divide 51.97 acres +/- into 97 single-family lots to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the south side of Fisher Road (S.C.R. 262), approximately 1.54 mile southeast of Lewes-Georgetown Highway (Rt. 9). Tax Parcel: 334-10.00-69.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the PLUS Comments, a copy of the Applicant's Subdivision Plan, a copy of the Applicant's Exhibit booklet, a copy of the DelDOT Service Level Evaluation Response and the review memorandum, a copy of the staff analysis and staff review letter, a copy of TAC comments that have been received, which include comments from the USDA United States Department of Agriculture, DNREC Division of Waste, Delaware Division of Public Health, Delaware Electric Coop, Delaware Department of Transportation, a letter from Sussex County Mapping & Addressing Department, a letter from Sussex County Engineering Department Utility Planning Division, zero letters of support, zero letters in opposition and zero mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. spoke on behalf on the Application, Lightship Cove; that also present was Mr. Tim Green, Director of Land Development with Schell Brothers and Mr. Jason Palkewicz, PE with Solutions Integrated Planning & Management, LLC; that the Applicant submitted an extensive booklet which has been before the Commission for at least 10 days; that the Applicant's submission include the major subdivision application, correspondence from DelDOT, TAC comments, Preliminary Plans, PLUS Application, Site Plans and comments, Lightship Cove's project reference material prepared by Solutions, Artesian's Will Serve Letter, Geotech Soil Report, Preliminary Jurisdictional Determination; that she also requested to submit into the record proposed Conditions of Approval; that the Applicant proposes Lightship Cove a cluster lot subdivision to divide 48.94 acres into 97 single-family homes; that the parcel is a total of 51.97 acres; that 3.03 acres are being retained by the seller; that this results in a 48.94 acre parcel; that of that area a portion is to be devoted to lots, a portion to be devoted to streets; that 26.5 acres, which is a total of 54% of the parcel, would be devoted to interconnected open space with 25-acres of contiguous open space; that the proposed cluster development provides a total environment and design superior to a standard subdivision; that this is due to the project clusters homes on environmentally suitable portions of the property, provides for significant amounts of open space, landscape buffers to protect and avoid development in environmentally sensitive areas on site, and a stormwater management system that is a natural companion to the natural features onsite, including Bundicks Branch, promoting groundwater recharge and protection of the groundwater quality; that the property is located on the southside of Fisher Rd.; that approximately 1.54 miles southeast of Cool Spring Rd.; that the property is adjacent to the community of Springtown Farms; that the property is in the vicinity of residential communities including Ridings at Rehoboth, Ocean Meadows, Cool Spring Farm and Spring Haven; that the property is currently of vacant use; that if granted approval there will be a total of 97 single-family lots; that this will create a density of 1.98 acres; that homes per acre, as permitted by Sussex County Code, allows for two dwelling units per acre based on the gross site area; that the property is located in a low density area per the Comprehensive Plan; that the property is located within an Investment Level 4; that the concept plan for Lightship Cove was presented to PLUS on November 18, 2020; that the response was provided to PLUS with address comments point by point; that the project also went through the TAC process; that the parcel is located in AR-1 Agricultural Residential District; that all proposed structures will comply with the height, area and bulk requirements of the Sussex County Code; that the project complies with the purpose of the Municipal Code, Section 115-19 by proposing a low density single-family residential development that protects water resources, watersheds, forested areas and scenic views; that the project also complies with the requirements of the AR-1 Zoning District and the AR-1 Cluster Requirements specifically; that Municipal Code, Section 115-20 of AR-1 permits single-family detached

homes on individual lots; that Municipal Code, Section 115-21 allows for outdoor amenities used by community occupants and their guests; that the project complies with Chapter 115-25 E. of the AR-1 District design requirements for cluster development for the reasons stated in the project reference material prepared by Solutions; that pursuant to Chapter 115-25 F. the developer applied for a cluster development in accordance with Chapter 99; that the proposed lots and amenities are located within environmentally suitable areas of the site, which avoid wetlands and waterways; that clearing of any existing wooded areas is limited to the amount required to develop the project; that the open space provided meets the official definition of acceptable open space contained in Sussex County Code and other open space requirements; that a minimum of a 25-ft. buffer is provided around the existing non-tidal wetlands; that a 50-ft. buffer is provided from Bundicks Branch; that stormwater will be handled onsite and will meet the current State of Delaware regulations; that tree removal will be limited to what is necessary to develop the project; that the project protects scenic views; that the land plan preserves natural facilities including wetlands and wooded areas; that the plan proposes sidewalks and connections to DelDOT's multimodal path; that as required sidewalks will be provided on one side of the street; that the cluster development plan will preserve natural and historic areas; that the property is not located in a designated growth area; that the plan integrates the subdivision into existing terrain; that the subdivision plan offers surrounding landscape by providing significant open space; that the open space includes 54% of the total site, which preserves forested non-tidal wetlands; that the subdivision proposes providing a minimum of a 30-ft. landscape buffer adjacent to all surrounding property lines; that a 50-ft. buffer is proposed from Bundicks Branch; that all proposed lots within the community are a minimum of 35-ft. from the outbounds of the property; that evidenced in the Geotech Soil Report, the Applicant has located the stormwater management facilities based on the extensive soil boring and soil report; that the PLUS Application and plan indicated all delineated wetlands will be avoided; that the lots are a minimum of 25-ft. from the wetlands and there is 50-ft. buffer from Bundicks Branch; that the property is located within Flood Zone X and Flood Zone A; that the majority of proposed lots are specifically located within Flood Zone X; that a small rear portion of Lot 72 is located within Flood Zone A; that however the homesite itself will not be located within Flood Zone A; that there are no known sites that require historic preservation on the site; that the plan including the roadway system, stormwater features and lots were all designed to minimize impacts of the natural features and disturbance of deep slopes; that the plan preserves large tracts of open space; that there will be a minimization of tree, vegetation, soil removal and grade changes; that there will be screening of objectional features from neighboring properties and roadways provided by the proposed 30-ft. landscape buffer; that water will be provided by Artesian; that this is evidenced in the Will Serve Letter included in the exhibit booklet; that Lightship Cove's community wastewater is also anticipated to be provided by Artesian; that arrangements with a commercial trash hauler will provide for trash collection for the community; that all run off from the community will be directed via the closed road section and storm drain network into a stormwater management system consisting of best management practices; that plan accounts for safe vehicular and pedestrian movement within the site and with two adjacent ways; that the entrance to the community will be designed per current DelDOT standards; that all roadways will be designed in accordance with Sussex County standards; that proposed are 5-ft sidewalks on one said of the road which will connect to DelDOT's multimodal path; that it is anticipated that the proposed community will cause current property values to remain the same, if not increase in the area; the proposed subdivision will not adversely effect adjacent farmland, considering a proposed landscape buffer will be provided; that there have been a series of discussions with DelDOT concerning the area roadway improvements, specifically regarding offsite transportation and frontage improvements; that entrance improvements are anticipated to include turn lanes into the community; that the proposed development meets DelDOT's volume warrants to pay the area wide study fee in lieu of doing a traffic impact study as detailed in the information submitted into the record and the project is compatible with others land uses in the region with the adjacent community of Spring Town Farms, as well as other communities such as Ridings of

Rehoboth, Ocean Meadows, Cool Spring Farms and Spring Haven in the vicinity of the proposed community.

Ms. Stevenson questioned if there was a proposed walking path around the stormwater pond located in the middle of the property and states she would like to see a walking path placed if not.

Ms. Peet stated she did not believe there was a proposed walking path around the stormwater pond located in the middle of the property at this time.

Mr. Palkewicz stated there is not a walking path around the large stormwater pond in the middle, however, there currently is a walking path around the small pond; that the concern he has with placing walking paths around the large pond is that residents will be walking in other resident's backyards or adjacent to their backyards

Ms. Stevenson suggested this is an issue created when all open space is located in resident's back yards; that there is not much space to walk around the proposed community; that Fisher Rd. is not suitable for pedestrian walking and due to these issues she would prefer a walking path located around the large stormwater pond in the middle of the property.

Ms. Wingate questioned if there was a 50-ft. separation from the corners of Lots 71 and 72.

Mr. Palkewicz stated there is a 50-ft. separation from Bundick Brach and Bundick Branch is located in the center of the light green color, behind Lots 71 & 72 on the Lightship Cove rendering and the homes are located approximately over 100-ft from the branch.

The Commission found that Mr. Jim McHugh spoke in support of the Application; that he lives adjacent to the proposed property which is currently owned by his wife; that he is in favor of the Application as it will bring sewer and water to the area and it will address stormwater issues along Fisher Rd.

The Commission found that Ms. Stacy Beck spoke in opposition to the Application; that she lives along the right-of-way of the proposed development; that in the packet, the letter from Mr. Palkewicz with Solutions, dated January 4, 202, address to Ms. Constance Holland, State Planning Director, under the Strategies for State Policies and Spending, Ms. Holland stated from a fiscal responsibility perspective the development of this site is likewise inappropriate; that the costs of providing services to developments in rural areas is an inefficient and wasteful use of the State's fiscal resources; that the project as proposed will bring a new residential development to an area where the State has no plans to invest in infrastructure upgrades or additional services; that the intended development will need access to services and infrastructure such as police and transportation; that to provide such examples the State Government funds 100% of road maintenance and drainage improvements for the transportation system and 100% of the cost of the police protection on the unincorporated portion of Sussex County where the development is proposed; that over the longer term the unseen negative ramifications of this development will become even more evident as the cost maintaining infrastructure and providing services increases; that because the development is inconsistent with the 2020 Strategies for State Policies and Spending the State does not support the development of the proposed parcel; that from the correspondence of the DelDOT meeting minutes of February 18<sup>th</sup>, it states there are historical draining issues for Fisher Rd.; that this is currently part of a regional drainage area project; that Solutions will coordinate with Mr. Matthew Schlitter on a potential outfall onto the site of Bundick Branch; that Bundrick Branch affects her personally; that she currently has problems with flooding; that the flooding goes over the bridge, that leads up to her lane; that if there is an increase to the runoff to Bundick Branch, there will be more flooding; that when flooding occurs currently she cannot leave her property; that the

farmland around Fisher Rd. is in farm preservation; that no other parts of the land will be developed; that currently there is already many problems with drainage from rain and snow; that Fisher Rd. is not high on the priority list of being taken care of in regards to drainage or snowplowing; that adding 97 homes and vehicles will not help the situation; that the addition of the homes and vehicles will make it worse; that there is constant flooding on Fisher Rd. near the Honeybee Wedding Venue and where the old Byron Joseph's house stood; that DelDOT frequently places signs on the road due to flooding that does not clear for many days; that often times people do not obey the signs causing multiple accidents; that in the past few months there have been two occasions where a telephone pole was hit and required replacing; that there have been multiple accidents at the curve on Fisher Rd. near Hopkins Rd.; that Fisher Rd. is one of the last roads to be plowed when receiving snow; that even when plowed, it often drifts closed due to the openness of the area; that many times her husband had to walk to Rt. 9 to catch a ride to work because the road had not been plowed; that she questioned how this will work with and additional 97 more homes; that all of the runoff runs to her daughters property; that her daughter just built her home; that the runoff will contain pesticides, fertilizers and other chemicals the development will use for their yards; that all the runoff will run directly to her daughters property; that this will affect her drinking water and bathing water; that the Honeybee Wedding Venue has beehives; that the bees will be affected by the pesticides used; that the proposed development does not seem to promote the farm preservation that surrounds the area; that she read mention in the notes regarding connecting Springtown Farms Development to Lighthouse Cove; that if this interconnectivity happens it will create a cut through for people who do not want to go to the four-way intersection located at Cool Springs Rd. and Fisher Rd.; that this will create a mess similar to the intersection down by Lowes where everyone cuts through the development; that there is already an issue with increased traffic; that it is difficult trying to pull out onto Beaver Dam Rd. from Fisher Rd.; that vehicles must sit for long periods of time; that it is a dangerous area; that adding more traffic will make the situation worse; that the proposed lot sizes are 60'x125'; that her tennis court is 60'x120'; that there is no room for swing sets for children; that children will have a pool but will have no location to play; that there open area is engulfed by a giant pond; that side yards and back yards are 10' wide; that she moved to her farm 22 years ago to escape developments, lights, noise and people; that she loves where she lives; that she can go out at night and see the stars in the sky; that the proposed development will ruin all the reasons she moved there; that the Applicant is comparing themselves to other developments; that she feels the developments are not the same; that the surround land is in land preservation; that she researched Schell Brothers on the Better Business Bureau; that she read some of the reviews; that they have a one star review due to complaints of the building quality, cutting corners, cheap materials, lack of follow up on their work; that she questioned how these types of home will help her property value; that Ms. Colleen Beck, Mr. Troy Timmer and Mr. Walter & Stacy Beck all have right-of-ways recorded on the their deeds for Hermitage Way; that she feels the right-of-ways should be taken off any deeds for this subdivision, from Mr. Charles Marvel's estates, now owned by Ms. Emily McHugh; that she feels the right-of-ways should be given to the people who maintain and use Hermitage Way; that Lightship Cove's Homeowners Association, along with any of the new residents that live along the side of it should not be permitted to use Hermitage Way right-of-way; that the surrounding area is one of the largest farmland preservations areas close to the beach; that there is an abundance and variety of wildlife; that this wildlife includes eagles, turkeys, migratory birds and other wildlife; that there are also three types of endangered salamanders that live in Bundicks Branch; that she questions why a subdivision would be approved when it directly opposes the Delaware Strategies for State Policies and Spending and land development; and the proposed development will reduced the quality of life for wildlife and the human population which has already been impacted and stressed by unmitigated expansion.

The Commission found that Mr. Troy Trimmer spoke in opposition to the Application; that he lives off of Hermitage Way; that he agrees with what Ms. Beck stated; that there is a drainage problem; that DelDOT has acknowledge the drainage issue on Fisher Rd.; that the majority of the runoff runs to Ms.



Colleen Beck, Mr. & Mrs. Beck and his properties; that he has heard the developer stated he can fix it; that he questioned what happens if the drainage does not get fixed; that everyone will be making money, except for the three of them; that the surrounding area is owned by three different farmers who's farms are in farm preservation; that these farms include the Joseph's Farm, the Carpenter's Farm and the Hopkin's Farm; that he feels there is plenty of development in the area for people to enjoy; that people love driving down Fisher Rd.; that it is one of the last roads in the area with little development; that everyone else it has been built up; that he request the Commission conserve a little; that he request the Commission work with the State; that he is not present to fight against development; that he is present to preserve the small section where he lives; that if you removed the area of ponds from the proposed property, it is more than likely approximately 41-acres; that proposed is 97 homes on 41-acres; that he questions where the runoff will go; that when they receive hard rain, it washes Hermitage Way out; that if the runoff washes out everything, he questions who will be financially responsible fixing the damage; that the area is a beautiful area and he requested to save the small portion of undeveloped land.

The Commission found that Mr. Water Beck spoke in opposition to the Application; that he questions where children will go to play in the proposed community; that with all of the development around Fisher Rd. the vehicle traffic races on the road; that there have been several accidents on Fisher Rd.; that Fisher Rd. is not a road for this type of development; that children will only have a pool; that there is no area to play or to have play sets; that his lane crossed over Bundicks Branch; that since the placement of the Springtown Farms subdivision, Bundicks Branch has flooded out twice; that Mr. Charles Marvel had previously told him in the 100 years he was alive Bundicks Branch never overflowed; that he believe this is an issue caused by improper drainage from the new development; that the current density of the existing subdivision is bad enough, but the proposed development density is worse; that the proposed lot sizes are about the size of his tennis court; that the proposed development will be right next to farm preservation; that it opposes comments made from the State of other agencies; that there is no infrastructure in the area; that he suggest reasonable development with reasonable sized lots would be more appropriate for the area; that he feels the proposed Application is to maximize profit; that he feels Fisher Rd. cannot handle the development it currently has and he strongly opposes the development in its current state.

The Commission found that Ms. Kim Schwartz spoke in opposition to the Application; that she and her sister both live on Fisher Rd.; that she and her sister bought their property over 20 years ago from Mr. Charles Marvel; that the area is beautiful; that she was under the impression that Mr. Marvel had placed his property in farm preservation; that she build a home on her property three years ago; that her sister has lived on her property for 15 years; that she feels the proposed density is a bit much; that currently she can have up to 20 deer in her backyard; that she can hear the turkeys and owls; that across the street is the Joseph's Farm, which is tilled daily; that around the corner is Honeybee Lane and Hopkins Farm; that there are four homes proposed across the span of her one acre back yard; that people drive down Fisher Rd. at 80-90 mph.; that she feels the road cannot handle the proposed density; that she feels she and the other surrounding neighbors can handle it; that she understands she may not be able to stop development of the area, but request a reduction in the density proposed; that she is a nightshift nurse; that she fears for her ability to sleep during construction; that she cannot imagine how traffic will handle the farm tractors and she often has to pull over to allow the tractors to pass by.

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

Ms. Stevenson questioned what road improvements and widening of the road must be performed for the construction of the subdivision.

Ms. Wingate questioned if the proposed subdivision will provide sewer service for the existing residents in the area, as previously stated in public comment.

Mr. Palkewicz stated they will widen the frontage of the property, which is the extension of the far end of the property; that the entire front will be widened with wider travel lanes and shoulders; that drainage issues were mentioned; that DeIDOT had a project, which they have not been able to get to; that DeIDOT has requested the Applicant to fix the drainage issue; that the drainage issue begins at the farm field across the street; that runoff causes the road to flood; that they intend to add inlets and distribute the runoff into the subdivision's stormwater management system; that this is a requirement by the State of Delaware; that it is considered part of the Applicant's contribution; that it is currently uncertain if additional right-of-way is required; that the turn lanes will be located where the proposed property meets the road; they are improving the road from one side of the property to the other; that water and sewer will be provided to the property by Artesian; that the water will go across the frontage and may loop through; that the water may not go in front of the existing homes; that there will not be a requirement for any of the existing residents to use the water and sewer services; that there will be a force main extended from the proposed property down the road; that the sellers want to tie into the system designed onsite, that it is a gravity system; that if existing residents were interested in hooking up to the sewer service, they would be required to speak to Artesian and it would allow sewer service to be more available than it currently is, but residents would have to speak to Artesian on how they would be able to serve existing properties.

The Commission found Ms. Diane Johnson questioned what type of sewer system will be installed for the proposed subdivision and if Artesian has approved the installation of the sewer system.

Chairman Wheatley stated it will be a public sewer; that it will tie into a central plant; that the provider for the area is Artesian; that they have the CPCN, Certificate of Public Convenience and Necessity for the area; that Artesian will install the sewer lines; that the sewage will be distributed to a central plant; that at the plant it will be processed; that this is different from a septic system; that the sewage is not handled at a local plant on-site; that the sewage will be taken miles away from the site; that Artesian can install the sewer system and Artesian has stated they can and will provide the sewer system.

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

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

In relation to Application 2021-11 Lightship Cove (F.K.A. Fisher Road). Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

**C/U 2274 Jed James (R&J Farms Limited Partnership)**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRES, MORE OR LESS.** The property is lying on the southwest side of East Trap Pond Road (S.C.R. 62), approximately 0.55 mile southwest of Hardscrabble Road (Rt. 20). 911 Address: 28274 East Trap Pond Road, Laurel. Tax Parcel: 232-9.00-5.01

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's layout sketch, a copy of the DeIDOT Service Level Evaluation Response, a copy of a letter from

Sussex County Engineering Department Utility Planning Division, and one letter in opposition that has been circulated to the Commission.

The Commission found Mr. Jed James was present on behalf of his Application; that he has proposed to use the property for a diesel mechanic repair shop; that he came across some opposition; that he did not expect there would be opposition and the opposition lead to his Conditional Use Application.

Mr. Hopkins questioned how long Mr. James has owned the property, how many trucks would be located on the property, how many employees there are, what hours of operation are proposed if he would like a sign and he questioned if the previous owners used the garage as a commercial shop.

Mr. James stated he acquired the property approximately two years ago; that he currently farms the land surrounding the property; that he has tilled the 310 acres that surround the property for at least 50 years; that he owns the property adjacent to it; that this property was up for sale 30 years ago; that he was not able to purchase the property at that time; that when the previous owners of the proposed property offered to sell to him, he purchased the property; that the current building on the property is 40'x45' with a 30' tall ceiling; that due to its size it seemed suitable for a mechanic shop; that he would love to use it as his personal shop, but that would be too much running from farm to farm; that his request is to service diesel trucks; that there has never been more than four trucks on the property at a time; that only the past years had he been operating the diesel mechanic shop; that he is the property owner; that he does not operate the business; that his tenant on the property is the sole employee for the business; that the tenant is very helpful around the farm; that the tenant helps maintain some of his farm equipment; that the tenant and the neighbor across the street from the property do not see eye to eye; that this led to a citation; that there are two tenants that live on the property; that one tenant for the dwelling and one tenant for the garage; that it takes the two tenants to afford the mortgage; that the previous owner did use the garage as a personal shop; that the previous owner did not use the garage for business use; that the previous owner was a welder, not a mechanic; that they have recently restricted the hours of operation from 7:00 am to 8:30 pm; that they are required to work on Saturdays and Sundays as well; that is the time the trucks are not working out in the fields; that he does request a sign and the one acre parcel is inclusive of both the dwelling and the shop.

Ms. Stevenson questioned if there was a restroom within the shop, if the work is done under a roof or outside, if there are any chemicals stored on the property, and questioned the hours of operation.

Mr. James stated there was not a restroom currently located within the shop; that the tenant has full access to the restroom located on the farm at a different location; that primarily the work is performed inside the shop; that some small work may be performed outside if the shop is full; that all chemicals are stored in containers; that the containers are located inside of the building; that the proposed hours are 7:00 am to 8:30 pm; that these hours were set after he learned there was an issue and they had been working different hours in the past.

Chairman Wheatley questioned how much noise is generated from the diesel repair shop and how much of the work performed is for agricultural purposes.

Mr. James stated when starting a diesel truck, they must run for a period of time to allow the air brakes to pump up; that this process creates noise; that there is a lot of large truck traffic traveling on East Trap Pond Rd.; that these trucks come and go from the landfill; that he believes the work to be 75% dump trucks and over-the-road trucks; that they believe the work to be 25% agricultural trucks and he is seeing more agricultural business as local farmers are getting word of the services.

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

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

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

In relation to Application C/U 2274 Jed James (R&J Farms Limited Partnership). Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

**C/U 2275 Christopher L. Hooper**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR RETAIL SALES OF ANTIQUES AND COLLECTIBLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 9.7 ACRES, MORE OR LESS.** The property is lying on the south side of Seashore Highway (Rt. 18/404), approximately 2.32 miles west of Dupont Boulevard (Rt. 13). 911 Address: 16842 Seashore Highway, Georgetown. Tax Parcel: 231-7.00-36.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Deed, a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of a letter received from the Applicant, a copy of a letter from Sussex County Engineering Department Utility Planning Division, copies of maps and surveys received from the Applicant, the Applicant's Elevation Certificate for the property, no comments, and no mail returns.

The Commission found Mr. Christopher Hooper spoke on behalf of his Application; that also present was his mother, Ms. Lisa Hooper; that he is part owner, along with his mother, of the property; that he would like to open an antique business; that his mother has worked at the post office for 35 years; that his mother is looking to retire to the area; that his mother has dabbled in antiques, and he is trying to help her start the business.

Mr. Hopkins questioned if a parking area has been established, the number of employees, and if a sign is requested.

Ms. Stevenson questioned how large Mr. Hooper plans for this business to become and how many people are allowed to come in accordance with the Fire Marshal's regulations.

Ms. Wingate questioned if all antiques will be stored within the pole building.

Mr. Hooper stated that a parking lot has already been established; that the employees will only be family; that he would like a sign and the proposed hours would be Thursday through Sunday, 9:00 am to 5:00 pm; that originally they proposed to do online auctions, but he is unsure if they will move forward with that; that if they did proceed with online auctions, it would only be one to two auctions a year; that there is an existing pole building which is 60' x 100'; that he does not have a response from the Fire Marshal; that everything is in the open; that there will be four exits and all antiques will be stored in the pole building.

Mr. Whitehouse stated there are size limits when there is an additional sign; that as part of the Conditional Use, one lighted or unlighted sign, may be permitted, subject to size restrictions and setbacks; that there are many types of signs which are permitted by right and potentially the Applicant could have two signs depending on the size.

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

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

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

In relation to Application C/U 2275 Christopher L. Hooper. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

**C/U 2276 Atlantic Well Drilling, Inc.**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A WATER WELL DRILLING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.04 ACRES, MORE OR LESS.** The property is lying on the south side of Concord Road, approximately 0.16 mile southeast of the intersection of Concord Road, Baker Mill Road (S.C.R. 483), and Church Road (Rt. 20A). 911 Address: 10872 Concord Road, Seaford. Tax Parcel: 132-3.00-4.09

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's site plan, a copy of the DelDOT Service Level Evaluation Response, a copy of a letter from Sussex County Engineering Department Utility Planning Division, zero letters in support, zero letters in opposition and zero mail returns.

The Commission found that Mr. Douglas Hudson spoke on behalf of his Application; that also present was Mr. Mike Kelly; that Mr. Kelly is his partner in Atlantic Well Drilling, Inc.; that he owns the property and the farmland behind the property; that he and Mr. Kelly built a pole building for agriculture; that they sold their business in Delmar; that they then moved their business to the pole building on the proposed property; that they were then cited for running a business from the pole building and he has tried to keep everything cleaned up on the property.

Ms. Wingate questioned the number of employees, the hours of operation, if a sign is requested and if any maintenance will take place on-site.

Mr. Mears questioned how many well-drilling rigs would be located on the property and if there is a screened trash dumpster located on the property.

Ms. Stevenson questioned if any of the trucks or equipment that beep when backing up and if there would be any reason for customers to visit the site.

Mr. Hopkins stated the Commission should take into consideration that the Applicant cannot always control the exact time they return to the property site from a job site.

Mr. Hudson stated there would be 10 employees; that the hours of operation are 7:00 am to 5:00 pm, Monday through Friday; that he would request a sign; that maintenance would take place onsite; that

all maintenance would take place inside the pole building; that all chemicals will be contained to the inside of the pole building; that some equipment is stored outside of the pole building; that he owns two well-drilling rigs which would stay on the property when they are not on the job site; that during the week the rigs mostly stay on the job site; that mostly on the weekends they stay on the property; that other equipment stationed outside on the property are a water truck, trencher and excavator; that he does have a trash dumpster on the property; that there are two dumpsters, one for recycle and one for regular trash; that the trash dumpsters is not currently screened; that they are currently located next to the pole building; that he does have equipment with back-up beepers; that the trash truck also has back-up beepers and lights; that most everything is handled online and very rarely a customer will stop by the property to pay a bill.

The Commission found that Mr. Mike Kelly spoke in support of the Application; that he and Mr. Hudson own the 41-acres; that his home is about 1,250-ft behind the property; that he owns Bunny Lane; that Bunny Lane backs up to Cool Branch Rd.; that the hours will be from 7:00 am until 5:00 pm; that occasionally they may run a little late; that they do plan to build a fence around the property; that there are trees to the back side of the property which separates their property from a neighbor; that he has no problem moving the dumpsters behind the building to screen from public view; that any maintenance performed is inside of the pole building; that there may be some pipes stored outside; that they had to moved there because they had to sell their old shop; that it took three years to sell it; that there old shop was in forbearance; that their old shop had a brown field problem with the Town of Delmar; that there previously was fuel leaks; that this caused an issue when trying to sell the property; that when it sold they had no place to go; that they quickly moved everything to the proposed property; that in this process his father passed of COVID-19; that all of these things led them to move everything quickly which did not allow them to obtain to proper permitting; that Mr. Hudson farms all the land behind the property; that there will be nothing but farmland behind them and they do a lot of agriculture work with large water wells for farmers.

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

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

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

In relation to Application C/U 2276 Atlantic Well Drilling, Inc. Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0

### **C/Z 1941 Charletta Speaks-Floyd**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS.**

The property is lying on the southeast side of John J. Williams Highway (Rt. 24), approximately 0.15 mile southwest of Hollyville Road (S.C.R. 305). 911 Addresses: N/A. Tax Parcel: 234-32.00-60.00

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Applicant's site plan, a copy of the staff analysis, a copy of the DeIDOT Service Level Evaluation Request, a copy of the Soil Feasibility Study, a copy of a letter from Sussex County Engineering Department Utility Planning Division, zero comments in support, zero comments in opposition and two mail returns.

The Commission found that Ms. Charletta Speaks-Floyd was present on behalf of her Application; that she lives about three miles down the road from the property; that she purchased the property as part of her retirement; that she owns the property next to it; that on that property she has a hair salon and a daycare center; that she desires to expand her business; that due to being at max capacity she is unable to expand; that for the past 25 years she has worked in the building next door to the property; that she began renting the building in 1996; that in 2014 she purchased the building; that in 2019 she purchased the Application property beside it; that she requests to rezone the proposed property so that she may build another facility; that she has currently moved out of the building next to the property; that she is renting space elsewhere; that she did this so they childcare center had more room for children and it was needed due to the effects of the COVID-19 pandemic.

Chairman Wheatley questioned what the current zoning was for the adjacent property Ms. Speaks-Floyd owned.

Ms. Speaks-Floyd stated the property was in the B-1 Neighborhood Business Zoning District.

Chairman Wheatley stated the request is considered more of an extension of zoning to the adjacent property.

Ms. Wingate stated there is a great need for childcare and applauded Ms. Speaks-Floyd for attempting to expand it; that the site evaluation within the packet had expired as of August 2021 and questioned if Ms. Speaks-Floyd was prepared to have the site re-evaluated.

Ms. Speaks-Floyd stated if it is required, she will make sure to get an updated site evaluation.

Mr. Whitehouse stated if improvements came forward at a later date, they would be required to come back to the Commission through the site plan process and staff would work with the Applicant to receive approvals from Fire Marshal and DeIDOT.

Ms. Stevenson mentioned she would like to see interconnectivity between the two properties; she would like to see the area where parking is located to be extended out to the next property; that if someone were to build on the adjacent property, they would be able to connect the two parking lots and it needs to be shown on the site plan.

Ms. Speaks-Floyd stated prior to her purchasing the property there was already a driveway in place and that she currently can go from one property to the next.

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

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

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

In relation to Application C/Z 1941 Charletta Speaks-Floyd. Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

#### ADDITIONAL BUSINESS

Mr. Whitehouse stated the next regularly scheduled Planning & Zoning meeting is on December 9, 2021, at 5:00 pm; that there is an additional meeting scheduled for Wednesday, December 8, 2021,

from 3:00 pm until 5:00 pm to address Other Business.

Ms. Stevenson mentions she feels the Ordinances to change the Comprehensive Plan should be placed on the agendas in piecemeal; that she suggested scheduling a specific meeting, twice a year, once in January and once in June, to address all Comprehensive Plan changes and she feels the current procedure is making the State of Delaware unhappy.

Chairman Wheatley stated he feels it may have to be addressed more often than twice a year and suggested maybe four times per year, once a quarter.

Mr. Whitehouse stated Sussex County had agreed with the State of Delaware to group the Ordinances; that this is why staff recently took nine in one batch; that this did prove to be more efficient; that staff does attend PLUS Reviews every month; that two more applications have been submitted to change the Comprehensive Plan; that one was staff initiated and the other was landowner initiated; that these requests will likely be submitted to PLUS Review in December 2021, which has been seven months since the last submission was made; that currently, the staff is working on batches every six months; that due to the processing times staff may revise this moving forward; that the other two submissions have been patiently waiting all summer and applications are naturally forming every six months at the moment.

Ms. Wingate mentioned placing the smaller applications on the agenda ahead of the larger applications and Ordinances.

Mr. Whitehouse stated he can construct the agendas to reflect the request and that evening's agenda was constructed to allow the State of Delaware to be present and participate in the Ordinances public hearings.

**Meeting adjourned at 9:20 p.m.**

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**Planning and Zoning Commission meetings can be monitored on the internet at  
[www.sussexcountyde.gov](http://www.sussexcountyde.gov).**

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