

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 4, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 4, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Agenda. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Ms. Hopkins to approve the minutes of August 26, 2021, October 13, 2021, and October 14, 2021, Planning and Zoning Commission meetings. Motion carried 4-0

OTHER BUSINESS

(2004-38) Wetherby

Revised Final Subdivision Plan

This is a Revised Final Subdivision Plan for Wetherby, a cluster subdivision consisting of one-hundred and twenty-six (126) single-family lots located on the south side of Harmons Hill Road (Rd. 302). The Planning Commission at their October 13, 2021 meeting deemed the subdivision substantially underway, under the stipulation that site work shall continue on the site in order to maintain this status. The Revised Subdivision Plan submitted on August 2, 2021, reflects a change in the previously approved plans to relocate the proposed entrance to the western end of the site, instead of the eastern end to accord with DelDOT requirements. The Revised Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 234-16.00-27.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all updated agency approvals.

Mr. Whitehouse stated since this Application was placed on the Agenda and circulated to the Commission, staff had reviewed the submitted plans; that the plans need slight revision in order to meet the requirements; that they do comply with the Subdivision Code; that there must be a signature panel located on the plan for the Council President to sign prior to recordation; that staff has included a list of minor revisions that have been requested to be made; that it is the Commission's decision if they would like to make an approval based on those requirements being made, or place the Application back on the agenda once the requirements have been made and that none of the stated requirements will drastically change anything on the plan.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Final Subdivision Plan contingent on the compliance to the November 2, 2021, required revisions stated in the staff letter to Michael S. Cotton P.E. Motion carried 4-0.

2018-13 Anchors Run

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the Anchors Run Subdivision. This plan proposes a 4,100 +/- square foot clubhouse, in-ground pool, central mailbox, associated parking, and other site improvements. The site is located on the end of Snug Berth Drive within the Anchors Run Subdivision. The Preliminary Amenities Plan complies with the Sussex County Zoning Code. Tax Parcels: 234-6.00-19.00 & 234-6.00-20.01. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all required agency approvals for this proposal, and therefore, both Preliminary and Final approvals may be granted at the will of the Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Amenities Plan as a Preliminary and Final Amenities Plan. Motion carried 4-0.

2018-01 Acadia Landing

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the Acadia Subdivision. This plan proposes a 4,000 +/- square foot clubhouse, in-ground pool, tennis court, associated parking, landscaping, and other site improvements. The site is located on the south side of Frenchman Bay Drive within Acadia Landing Subdivision. The Preliminary Amenities Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-11.00-60.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all required agency approvals for this proposal, and therefore, both Preliminary and Final approvals may be granted at the will of the Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Amenities Plan as a Preliminary and Final Amenities Plan. Motion carried 4-0.

Patriots Glen RPC (Phase 1)

Preliminary Site Plan

This is a Preliminary Site Plan for Patriots Glen RPC consisting of a one-hundred and sixty-one (161) residential unit residential planned community located on the southeast side of John J. Williams Hwy. (Rt. 24). The Planning Commission at their July 16, 2019 meeting approved CZ 1877 for the MR-RPC (Medium Density Residential Zoning District, Residential Planned Community). The applicant has submitted a written request to reduce right-of-way throughout portions of Patriots Glen (Phase 1) and provided an exhibit. The Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 234-29.00-66.00, 66.01, & 66.02. Zoning: MR-RPC (Medium Density Residential Zoning District-Residential Planned Community). Staff are awaiting agency approvals.

The Commission discussed the Preliminary Site Plan.

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

APD 2021-01 – Webb Family Farms, LLC

Consideration of Agricultural Preservation District

This is an application to consider an Agricultural Preservation District in an Agricultural Residential Zoning District in Cedar Creek Hundred for one (1) parcel of land totaling 250.51 acres more or less, located along the north and south sides of Beach Highway (Rt. 16) and the south west corner of Beach Highway (Rt. 26) and Truitt Road (S.C.R. 604) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation. Tax Parcel: 230-25.00-29.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Agricultural Preservation District. Motion carried 4-0.

OLD BUSINESS

2021-21 - Lewes Crossing Phase 8 (2016-4)

This is a revision to a previously approved 42-lot major subdivision known as Lewes Crossing. The proposal is to reduce the number of trees proposed within Perimeter 2 in Phase 8 of the Lewes Crossing Subdivision. This reduction is proposed to the rear of Lots 215-227. The property is located on the south side of Beaver Dam Road approximately 1,436 ft. west of Salt Marsh Boulevard. The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D. 334-5.00-222.01

Ms. Stevenson stated that she had considered all the information that has been presented regarding the Lewes Crossing Phase 8 Buffer that is the subject of Subdivision 2021-21; that a lot of information has been provided by the developer who is seeking to revise the buffer requirements and the residents who are affected by this request; that she had also studied the revised plans that have been submitted.

Ms. Stevenson moved that the developer shall be required to provide a buffer as shown on the plan identified as the Lewes Crossing Phase 8 Landscaping Plan prepared by Solutions, IPEM and dated August 23, 2021 (Received on September 16, 2021)

With regard to the completion of the buffer, the following conditions shall also apply:

1. The landscape and forested buffers shall be installed within six months from today.
2. The developer shall be responsible for the health and survival of the trees, including regular necessary watering for a minimum of 2 years or until such a later date as the maintenance responsibilities are transferred to the Lewes Crossing HOA.
3. Pursuant to Sussex County Code Section 99-5, the 20' wide landscape buffer shown in the plan must be planted with a mix of 70% deciduous and 30% evergreen trees, the majority of which shall be suitable trees of common local species and every 100' of buffer shall include a minimum of 15 trees.
4. All deciduous trees that are planted to establish the buffer plantings shall have a minimum caliper of 1.5-inches and a minimum height of six feet above the ground when planted in order to ensure that the trees will be capable of obtaining a minimum height of 10-ft. above ground within five years of being planted.
5. All evergreen trees that are planted to establish the buffer plantings shall have a minimum height of five feet above the ground when planted in order to ensure that they are reasonably capable of attaining a minimum height of 10-feet above ground within five years of being planted.
6. The trees shall be planted in a staggered natural manner and the buffer area shall have a final grade that contains a minimum of four inches of topsoil and a suitable grass mix planted as a sacrificial cover between the buffer trees for soil stabilization until the newly planted trees become larger. The plan may substitute woodchips for planted grass between the buffer trees in respect to both newly planted and existing trees.

Motion by Ms. Stevenson, seconded by Ms. Hopkins approve the Application 2021-21 Lewes Crossing Phase 8 Subdivision (2016-4) with the Conditions stated in the Motion. Motion carried 4-0

C/U 2264 Laudan Investments, LLC

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

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

The Commission discussed this application which has been deferred since October 28, 2021.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use # 2264 for Laudan Investments, LLC for professional offices based upon the record made during the public hearing and for the following reasons:

1. This Application seeks to amend and replace the existing Conditional Use on the subject properties. Previously, they were approved for medical offices under Conditional Use #1549 and Ordinance #1723 and Conditional Use # 1744, and Ordinance #1966. This application expands the use from medical uses to more general office uses.
2. The use of these properties for offices is in character with the long history of development of medical and professional office space along Savannah Road.
3. The use as professional offices is supported by the Sussex County Comprehensive Plan.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
5. There is currently an approved commercial entrance from Savannah Road that serves both parcels. DelDOT has also reviewed the proposed use and has stated that no Traffic Impact Study is required.
6. There is sufficient space on the properties for parking to serve both office buildings.
7. The Applicant has stated that she intends to maintain the residential appearance of both buildings that currently exist on the site.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions:
 - A. The buildings shall be used for office use only. No retail sales or other commercial uses shall occur on the site.
 - B. Each building shall be permitted to have one unlighted sign. The signs shall not exceed 32 square feet in size on each side.
 - C. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - D. As proffered by the Applicant, the business hours shall be limited to 8:00 am until 5:00 pm, Monday through Friday, with the exception of emergency services that may be required.
 - E. The two existing office buildings shall share an entrance as approved by DelDOT.

- F. With the exception of handicapped parking spaces, all parking areas shall be located at the rear of the properties. The Final Site Plan shall designate all parking areas.
- G. As stated by the Applicant during the public hearing, the residential appearance of the existing structures shall be maintained while in use as offices.
- H. Failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to recommend approval of Conditional Use No. 2264 for Laudan Investments, LLC. Motion carried 4-0

C/U 2271 Chris Brasure

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

The Commission discussed this application which has been deferred since October 28, 2021

Ms. Stevenson moved that the Commission recommend approval of Conditional Use # 2271 for Chris Brasure for use as office space based upon the record made during the public hearing and for the following reasons:

1. This Application seeks to amend and replace the existing conditional use on this property. Previously, it was approved for a different use as part of the Applicant's business under Condition Use #1920 and Ordinance #2240. This application amends that prior approval to allow the Applicant to relocate its offices within its business that occurs at this location along Route 54.
2. The use of these properties for offices is in character with the type of development that is occurring generally along this area of Route 54 and particularly in the Route 54 and Dickerson Road intersection. This general location along Route 54 has also been used as part of the family's business for decades. This proposed use is in character with the surrounding zoning and uses in the area.
3. The Applicant intends to use the existing buildings on the site for offices by converting them into office space for the Applicant's company.
4. The use as office space is supported by the Sussex County Comprehensive Plan.
5. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
6. The Applicant has stated that access to the area of this Conditional Use will be through the Applicant's existing business that is adjacent to it. DelDOT has reviewed the proposed use and has stated that no Traffic Impact Study is required.
7. There is sufficient space on the properties for parking to serve the office uses.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions:

- A. The buildings shall be used for office use only.
- B. One lighted sign shall be permitted on this site. The sign shall not exceed 32 square feet in size on each side.
- C. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- D. As stated by the Applicant, access shall be via the existing entrance to Brasure's Pest Control from S.C.R. 389 with an internal driveway to this site.
- E. The Final Site Plan shall designate all parking areas associated with this use.
- F. Any dumpsters or trash receptacles shall be screened from view of neighboring properties and roadways.
- G. Failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Hoey Stevenson, seconded by Mr. Hopkins to recommend approval of Conditional Use No. 2271 for Chris Brasure. Motion carried 4-0

PUBLIC HEARINGS

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

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 found that Mr. Michael Parsons spoke on behalf of his Application; that his commercial delivery of parts mostly comes on regular Fed Ex trucks; that there will be no deliveries by large vehicles such as 18-wheeler tractor-trailers; that parts will be stored for a few days and the parts are then taken to his vendor sites where the parts are then sold.

Ms. Stevenson questioned if Mr. Parsons had any employees, where the parts are stored and questioned why the Applicant was required to obtain a Conditional Use.

Mr. Parsons stated he does not have any employees, only himself, and that all parts are stored in a trailer.

Mr. Whitehouse stated that the Conditional Use Application was pursued after multiple discussions with the Sussex County Constables office; that he has looked closely at the definition of a Home Occupation; that the storage onsite of goods and parts, which are not made onsite, was the reason the Applicant was encouraged to obtain a Conditional Use.

Mr. Hopkins questioned the size of the trailer and if Mr. Parsons required a sign.

Mr. Parsons stated the trailer is 17'x16' which is large enough to fit a go-kart in; that this is the only business equipment he has, and he would be interested in a sign, but will not require the sign to be lit.

Mr. Robertson questioned what the property looked like; what the surrounding areas are like and if there will be any negative effects to neighboring properties.

Mr. Parsons stated it is a residential property; that he lives on the property; that The Hopkins' do have a farm to the front of the property; that most of the surrounding properties are residential; that there is a construction business located down the road from his property and he does not believe there will be any negative impact to his neighboring properties.

Chairman Wheatley questioned the frequency of deliveries.

Mr. Parsons stated on a busy week he may get deliveries up to four times per week; that deliveries arrive Monday through Thursday; that on Fridays he delivers the parts to the tracks and on slower weeks deliveries arrive about one time per week.

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 2273 Michael Parsons. Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to defer action for further consideration. Motion carried 4-0.

C/U 2314 Millsboro Fire Company

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FIRE DEPARTMENT SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS. The property is lying on the northeast corner of Millsboro Highway (Rt. 24) and Lewis Road (S.C.R. 409). 911 Address: 30134 Millsboro Highway, Millsboro. Tax Parcel: 133-20.00-17.16

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Applicant's site plans, a copy of DelDOT's Service Level Evaluation Response, a copy of the staff analysis, a copy of a letter from Sussex County Engineering Department Utility Planning Division; a letter from the President of Millsboro Fire Company; a letter from Dagsboro Volunteer Fire Department, a letter from the State Fire Prevention, photos and exhibits received by the Applicant, zero letters of opposition, 82 letters of support and zero mail returns.

The Commission found that Ms. Rachel Bleshman Esq. was present on behalf of the Applicant, Millsboro Fire Company; that also present are Mr. Dennis Swain, Mr. Ron O'Neal, Mr. Bob Ricker, and Mr. Matt Warrington; that Millsboro is growing; that at times the town is in gridlock with traffic; that the Millsboro Fire Company's members reside, half on the eastside of Rt. 113; that this is where the current fire station is located; that the other half of members are located on the west side of Rt.113; that this is where the Application substation is proposed to be located; that 30 members, approximately half of the fire company members, live on the western side of Rt. 113; that there is a State standard of an eight-minute response time from the time a fire call comes in until a member must respond; that Millsboro Fire Company is doing very well with their response times; that weekend traffic adds

difficulty; that summer traffic adds difficulty; that weekends in the summer are extremely difficult; that a substation on the western side of Rt. 113 is needed for the community; that the site plan for the proposed substation is currently under contract with the owners; that the proposed location does have sufficient onsite well water and sewage treatment; that the buildings currently on the property are in excellent shape; that no structural changes will be required; that the Applicant did submit photographs; that there is a building that was previously used as a garage for a mechanic; that the Millsboro Fire Company has applied with the State Fire Prevention Commission; that they were approved for a permit to operate a substation at the proposed site; that there is over 80 letters of support from neighbors; that the letters of support include two letters from neighboring Dagsboro Volunteer Fire Company and Georgetown Fire Company; that under Sussex County Code public or governmental buildings and uses, including schools, parks, playgrounds and public boat lands are permitted Conditional Uses within the AR-1 Agricultural Residential Zoning District, that Planning & Zoning Planner, Ms. Christin Scott constructed a very articulate memorandum which stated under the Comprehensive Plan the proposed site is designated a developing area; that the surrounding properties are also located in developing areas; that Ms. Scott stated a careful mixtures of homes with light commercial and industrial uses can be appropriate to provide convenient services to allow people to work close to home; that Ms. Scott also mentioned there is a property located to the west side of Millsboro Hwy that is zoned Light Industrial; that since 2011 a Conditional Use Application, within a one mile radius, was approved to perform a trucking business and parking of vehicles; that if this Application should be approved, the Conditional Use would serve the health and wellbeing of the general public of the Town of Millsboro; that the proposed site is a convenient location for fire prevention coverage and the property already had existing structures which can be utilized for the purpose.

Ms. Stevenson questioned if there will be a siren on the property and how many firetrucks will be parked on site.

Mr. Matt Warrington stated there will not be a fire siren at the location of the substation and three firetrucks are proposed to be housed on the site.

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

The Commission found in the room, there was a raise of 16 hands in support of 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.

Ms. Stevenson moved that the Commission recommend approval of C/U 2314 for The Millsboro Fire Company based on the record and for the following reasons:

1. The Conditional Use for a fire station is of a public nature, and it will promote the health, safety, and welfare of the residents of Sussex County.
2. The Fire Company has stated that many of its members live on the west side of Millsboro, which makes this location much closer to their homes. That will reduce fire company response times for emergency calls.
3. The Fire Company has stated that the substation is necessary to maintain and improve its fire protection and emergency service to current and future residents of this area of Sussex County.

4. No parties appeared in opposition to this application, and there are many letters in the record in support of this application.
5. This Conditional Use is subject to the following conditions:
 - A. Any security lighting shall be screened away from neighboring properties and County Roads.
 - B. 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. Mears and carried unanimously to recommend approval for C/U 2314 Millsboro Fire Company for the reasons and conditions stated in the motion. Motion carried 4-0.

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 advised the Commission that since the notice of the Ordinance, the Planning & Zoning Department has received a total of five written responses; that these responses were received after the circulation of the paperless packet and the responses have been printed and circulated to the Commission; that of those five responses, none are in opposition to the Ordinance; that all of the responses offer constructive comments on the content to the Ordinance and there is an additional public hearing scheduled before the Sussex County Council for December 7, 2021, at 1:30 pm.

The Commission found present were Mr. Vincent Robertson, Assistant County Attorney, to speak on behalf of the Ordinance to amend chapters of the Sussex County Code regarding drainage features, wetlands, water resources and buffers; that also present were Mr. Jamie Whitehouse, Sussex County Director of Planning Zoning, Mr. Todd Lawson, Sussex County Administrator, and Mr. Hans Medlarz, Sussex County Director of Engineering; that this started during 2018 Comprehensive Land Use Plan; that there are references all throughout the plan; that the reference make their way into the Ordinance, as a lot of the whereas clauses that are in the Ordinance; that there is a basis for that; that there was recognition of which the Sussex County Code needed updating; that there are undefined terms and some ambiguities which led to enforcement issues; that there are problems in that it places potential buffer requirements on properties that are currently used for agricultural purposes; that this was something that has never been enforced but has been stated in Sussex County Code; that what was in the Sussex County Code did not do anything to deal with the resources themselves, such as the rivers, streams and tidal bodies of water; that they chose that to be a goal moving forward; that the General Assembly as adopted Senate joint resolution 2; that this directs the Delaware Department of Natural Resources and Environmental Control to begin coordinating with federal agencies to carry out permitting authority for certain State non-tidal wetlands or create a statement on the non-tidal wetlands program; that this would be for the purpose of shifting permitting authority from the Federal level to the State; that the desire is to keep that control within Sussex County; that the new present Ordinance is 34 pages which amend parts of Chapter 99 and Chapter 115; that presented are two pages of whereas clauses, five pages of definitions which were required to be repeated for Chapter 99 and Chapter 115 and four pages of verbiage from the old Code which was deleted; that this Ordinance will not apply to undeveloped land; that this Ordinance is only triggered for residential land use permits; that this Ordinance will not apply to land that does not have a resource upon it; that there have been a lot of sensitive discussions to avoid the Ordinance becoming a back door to address density; that density should be addressed head on or not;

that he requested to make it clear that to the fullest extent possible the Ordinance should be neutral in regards to density on a property as one goes to seek development on it; that it is not to say there may not be a swing of a lot or two, based on geometry and things of that nature; that there were multiple discussions within the working group to make sure everyone was comfortable with that; that they tried to avoid arbitrary lines drawn on a piece of paper; that to accomplish this there are methods of averaging the buffers; that the line will be drawn where it makes sense; that there are also incentives in the Ordinance; that this is an incentive to protect things that are worthwhile rather than another arbitrary line on a piece of paper; that for example, if there is a forest which could be preserved versus an open area of land that has no environmental significance, the desire is for the forest to be preserved; that this is an opportunity, through the Ordinance, to provide a mechanism to maintain the resource; that there are a few ways to do this; that one way is to require easements to get to the resource; that there were several people within the working group pointed out from their own personal experience; that if you have an issue and some kind of resource, you know it requires action to be fixed, but often takes a lot of hassle to get to the resource, that one of things the Ordinance will provide is easements to provide access to the resources; that if there is a problem which is causing issues upstream, one will now be able to have access to the resource to address any issues; that currently when land use Applications are presented, buffers are addressed but often times not the resource itself; that the Ordinance frontloads the look at the resource; that this will allow reaction to anything that needs to be addressed; that this will allow these issues to be addressed at the time the land use Application comes through and during the time site work will be occurring; that it is a lot easier to fix an issue during these times than post development; that he presented the goals, objectives and strategies from the 2018 Comprehensive Land Use Plan that deal with or support the initiative of the current Ordinance; that this also gives rise to the whereas clauses within the Ordinance; that this was not something that was drummed up by staff; that this was derived directly from the 2018 Comprehensive Plan; that a working group was created approximately a year and a half ago; that he presented the names of the people within the working group; that the working group consisted of 13 members; that it is a wide range of people; that the working group contained people from Sussex Conservation District, The University of Delaware; Sussex County Engineering Department, as well as public representatives, environmental scientist, the Delaware Center for Inland Bays, land owners, farmers and Planning & Zoning staff; that there was a consultant, that acted as a facilitator, who also had an environmental background; that this helped everyone speak the right language and focus on what was relevant; that it was a very good working group; that there were a lot of different viewpoints; that there were a lot of conversations that occurred; that the working group participated in nine, three hour meetings; that these meetings took place between February 2019 to August 2019; that this was aside from subject matter presentations that were provided from members who were experts in the field; that the working group members did have homework assignments; that a lot of time and energy was spent constructing a draft Ordinance, which led to what was introduced; that the goal of the Ordinance was to provide recommendation to Sussex County Council for updating the buffer Ordinance as it applies to development projects; that this is what led to the origins of the working group based upon the Comprehensive Plan; that he presented the initiative details; that these are the goals, established by the working group, from the beginning; that General, Water Quality, Habitat and Flood Mitigation and Drainage initiatives were presented; that these four items make it into the definition of the buffer within the Ordinance; that these are the guiding principles; that there was a lot of conversation to construct the initiatives; that there are 13 sections of the Ordinance; that there is some repetition within the 13 sections, as things must be restated between Section 99 to 115; that the first section is the definitions; that the definitions currently within the Sussex Code were not all that great; that there were some terms that were not defined at all; that it took the group three to four meetings to

come up with the definitions; that defined are femoral streams, intermittent streams, non-tidal wetlands, the ordinary high watermark delineation, perineal non-tidal rivers and streams, resource buffer, major subdivision and minor subdivision and tax ditches; that the group did not create a buffer from the tax ditch, but were required to define a tax ditch to better explain how buffers do not necessarily apply to tax ditches; that these definitions are spelled out very clearly in terms that can be uniformly applied; that the second section is the general requirements and restrictions; that this section requires resources and resource buffers to be depicted on the preliminary and final plot plans for each major subdivision of land; that the third section is a technical one; that there currently is a preliminary conference requirement for all subdivisions; that it took out a reference to major and minor subdivisions; that this is now addressed in the definition of the terms of Section 99-4; that the fourth section deals with information to be shown; that currently Section 99-23 has a checklist of items that need to be shown on a preliminary site plan; that it does add the additional items that need to be added to the preliminary site plan regarding the resources and the resource buffers; that the Applicant will have to show the resources and the resource's buffers; that the boundary and type of any tidal and non-tidal wetlands must be shown; that all existing native forest and non-forest meadows must be shown with the future resource buffer; that this Ordinance seeks to maintain existing forests and meadows within the buffer area; that the desire is to avoid clear cutting of trees and meadows and then going back and planting things; that they desire to keep them in their natural state; that to use the calculations for buffer averaging or incentives a proposed access easement must be shown and a reference to the drainage assessment report; that the fifth section requires a resource and resource buffer management plan to be recorded as part of the subdivision; that this is currently a requirement; that the buffer management plan must be within the restrictive covenants as a method for providing for the perpetual maintenance of streets, roads, drainage, stormwater management facilities, open spaces and common areas; that the group is only adding to that requirement the maintenance and management of the buffers and the resources; that the sixth section is the same as section four; that this section recalls the checklist items for Preliminary Site Plans; that the sixth section stated the same checklist of items is required to be shown on the Final Site Plan; that the seventh section deals with construction plans which is currently within the Sussex County Code; that it states the public access easement needs to be shown on the construction plans; that the eighth section which is restatement of the same definitions stated in Chapter 99; that the group chose to put them in both places to stay consistent and avoid having to flip back and forth; that the ninth section is one the group picked up; that the Applicant would now have to comply with the buffer requirements which apply for all subdivisions; that this was to avoid any inconsistencies between the two places; that the tenth section establishes the heart of the Ordinance; that the group deleted what was currently within the Ordinance; that it was up to four pages of verbiage deleted; that it now jumps right into the requirements; that subsection A of the requirements addresses the resource buffer width, that the width must be established in accordance with Table I; that Zone A being the closest to the resource; that there was discussions among the working group about that the numbers should be; that as a result of the conversations, the group came up with tidal waters having a full buffer width of 100-ft. in Zone A; that there are two buffer zones – Zone A and Zone B; that Zone A is the area located the closest to the resource and beyond that is Zone B; that there are different things you can do within Zone B which is not permitted in Zone A in some situations; that for tidal waters it is a 100-ft. of total buffer width; that this is comprised of 50-ft. in both Zone A and Zone B; that tidal wetlands is also a 100-ft. of total buffer width, which is made up of 50-ft. in Zone A and 50-ft. in Zone B; that perennial non-tidal rivers and streams the total buffer width is 50-ft.; that this is broken down of 25-ft. in Zone A and 25-ft. in Zone B; that non-tidal wetlands and intermittent streams both have a total buffer width of 30-ft.; that this is broken down with 15-ft. in Zone A and 15-ft. in Zone B; that ephemeral streams are streams that do not exist very often but sometimes show up

after a rain event; that the group chose not to require a buffer from ephemeral streams; that Section B deals with resource buffer width averaging; that the group wanted to make it so there was some flexibility, in regard to the Zone B buffer; that Applicant's will be able to average that Zone B buffer within the boundaries of the development; that averaging is not available within Zone A; that the averaging cannot exceed double the width of what Zone B would be; that an Applicant could not have a large arm of Zone B located on one corner of the property and have no Zone B located everywhere else; that this allows for averaging but not manipulation of the averaging to create it to be practically non-existent; that Section 10C deals with the permitted activities for Zones A and B; that this was another section the group spent a lot of time on; that if it is not listed on the chart presented, it is therefore not permitted; that the chart spells out all the different types of uses that can be permitted within the buffer areas; that stormwater management water quality BPMs is permitted but had a limitation; that the chart is to make permitted uses within the buffer areas clear to everyone; that an Applicant cannot subdivide the buffers, unless it is a phase line; that this means there can be no lots located within Zone A and Zone B; that all lots have to be separate and outside of the buffer zones; that Section 10D addresses the buffer standards; that if an area is an existing forest or meadow, it is encouraged to maintain the existing forest or meadow, subject to selective cutting; that if the area is neither an existing forest or meadow, it is encouraged the Applicant establish it in either forest or meadow; that there are definitions for what a forest and non-forest meadow would be; that Section 10E defines the definition for Selective Cutting; that the group recognized the Applicant should be permitted to remove brush or forest understory; that selective cutting does not mean clear cutting; that it does not mean the use of heavy machinery to remove stumps and other things of that nature; that Section 10F is the maintenance of drainage conveyances; that this is the section that establishes easements; that this is the section that addresses taking action on any problems that may exist on the resource before development; that Section 10G addresses resource buffer options; that this is the section addressing incentives; that the group added this to deal with ways to protect other areas that may be offset within the buffers that are required by the rest of the section; that for example, if an Applicant is preserving the forest within the resource buffer, that has been in existence for at least five years prior to the date of the application; the Applicant can receive a corresponding area reduction in the resource buffer Zone B or the Applicant can receive a corresponding reduction in the perimeter landscape buffer; that the idea is, it is more important to preserve existing forest than it may be to preserve an area with no value or environmental importance; that there is also a credit to preserve offsite lands to perpetual conservation easements; that this would allow the Applicant to reduced Zone A and/or Zone B, depending on the credit in corresponding amount or percentage amount based on the land the Applicant is preserving offsite; that if an Applicant were to preserve land on the opposite side of a stream from where the property is located, creating buffers on both sides of the stream; with a conservation easement on the other side of the stream, the Applicant will receive a credit on the Applicant's side of the property; that the group looked at this as a positive for other land owners and farmers; that now value has been created where it did not previously exist on the adjacent property; that this will encourage the developer to go out and acquire a conservation easement on the property across the stream, which the Applicant can then use to their benefit within the subdivision; that the group does recognize they do need to make some minor textual changes to provide some clarity; that this would be brought back to the Commission in a recommendation should the Commission act favorably upon the Ordinance; that subsection H address resource and resource buffer management maintenance; that this is along the same lines discussed previously; that this encourages to get issues fixed at the time the development is occurring; that this would be facilitated through the Planning & Zoning staff, as well as the Sussex County Engineering as they review the condition of the resources, what is shown on the plan and look at ways to improve the resources through the construction

process on the site itself; that Section 10I addresses modifications and exceptions; that the current buffer ordinance has this; that the group wanted a safety valve on it; that if there were conditions which are special and unique to the property, not created by the actions of the Applicant; or the exceptions will not adversely affect the functions or the resource or the buffers, there should be the ability to grant some relief by the Planning & Zoning Commission; that one thing stated is if the Commission should grant that relief it should not be something, that could otherwise be resolved through buffer averaging; that the group provided that flexibility with the intension the Applicant use it; that it is discouraged the Applicant come back in requesting modifications, when there is design flexibility; that this does allow the Commission some leeway within certain guidelines to grant modifications to the buffer requirements; that Section 11 and Section 12 restates the Preliminary and Final Site Plan requirements; that the last section is the effective date and when the Ordinance was introduced by Sussex County Council; the Sussex County Council introduced the Ordinance with a six month lead time; that the Ordinance will not take effect until six months after the date of adoption and there is a map included in the presentation that offer examples of what the buffers would be and how they would work.

The Commission found that Mr. Hans Medlarz, Director of Sussex County Engineering, spoke on behalf of the Ordinance; that when looking at the map it provides the various resources; that the first resource would be the stream; that the stream has a buffer on the stream itself; that if wetlands are present around the intermittent or perennial stream, the buffer is then located around the wetlands; that in the definitions the various resources have been defined; that on the map tidal wetlands are not shown, but non-tidal wetlands are shown; that the wetland located in the upper left is a good example of where a wetland would be connected to the body of water with a stream which would require the wetland area to be buffered; that located to the lower left, there is a wetland area not connected; that this is also known as isolated wetlands; that these wetlands are not required to be buffered; that this is also true with man-made ponds, which is considered a non-buffered feature, not a resource; that located on the bottom right, there is a wetland area associated with a perennial stream which is required to be buffered; that this a play on the various buffers with Zone A and Zone B; that presented is a non-tidal example, not a tidal example; that the buffers in regards to tax ditches was a difficult item; that currently tax ditches are not considered a resource, which requires no buffering; that tax ditches to have associated rights-of-ways; that they may have wetlands located within the rights-of-ways; that if a wetland is located on a tax ditch right-of-way and extends past the tax ditch right-of-way, it would be required to be buffered; that agricultural ditches are not defined and are not covered by the proposed Ordinance.

Ms. Stevenson questioned the density increase; that part of the Ordinance is to preserve forest; that she questions if an Applicant performs some clearing of the forest, such as dead trees, but in the process other trees die, would the Applicant be required to replant the trees to keep the density the same.

Mr. Medlarz stated that once the project is accepted the entire responsibility shifts to the future owner; that in regards to residential development would be an HOA Homeowners Association; that the enforcement of whatever the interpretation of the density is, would shift to that entity; that if there were a major storm prior to the transition, the Sussex County Engineering Department would be making the requirement for the final acceptance of the plans and in the end, he would like it to be very clear, neither the Planning & Zoning Department nor the Sussex County Engineering Department is the enforcing agents after the project is complete.

Mr. Mears questioned if there was anything in place to keep property owners from clear-cutting the proposed buffers years before applying to develop.

Mr. Robertson stated there is nothing in place to keep property owners from cutting the buffers, but the Ordinance does offer an incentive to keep it.

Mr. Medlarz stated the buffers cannot be subdivided, which make the buffers, not private property; that this creates property owners to be taking the law into their own hands and would be subject to enforcement actions; that clear-cutting the buffers prior to development is not, not prohibited and the incentive options speak to that, trying to incentivize it to not happen.

The Commission found that Mr. Rich Borrasso provided comment on the Ordinance; that his interest and knowledge of the topic runs deep because of his heavy engagement in the Comprehensive Plan process, as well as being a participant in the Wetland Buffer Working Group; that the latter was a great experience in an open forum which allowed for the free expression of points of view, exchange of ideas and spirited dialogue; that subject matter experts brought their experiences; that it was a learning experience that enabled him to gain a broader perspective on what he considers to be one of the most critical conservation decisions in County history; that it has been over 30 years since current wetland buffers have been deliberated; that a lot has happened in Sussex County over the last three decades; that one of his biggest takeaways from the group was that updating buffer regulations is not a property rights issue, but one of, striking a balance between private and public need; that to better reinforce this point, he reads an abstract from *The Public/Private Balance In Land Use Regulation* by Stanford Professor Mark W. Cordes; Private land ownership in America has always involved a balance between private and public interest; that protection of private interest is necessary to encourage investments to improve property, essential to meeting critical needs, such as housing and providing for personal autonomy and privacy; that private property has long been limited by implied public interest; that investment expectations regarding future uses of undeveloped land should include the possibility of regulation to protect public interests; that much of the value in private property has been added by government “giving’s”; that it cannot be viewed as unfair when government regulations for important purposes diminish some of that value; that fairness concerns must be evaluated from a broader perspective of “reciprocity”; that this will recognize although a landowner might be adversely affected by some regulatory actions, the same person is often benefitted by other regulatory actions; that overall a general adjustment of benefits and burdens occur; that he is pleased to see Sussex County Council exercise its authority to regulate land use; that he is more grateful the actions are aligned to goals and objectives outlined in the Sussex County Comprehensive Plan; that the public wants to see Sussex County Council priorities guided by strategies laid out in the plan, that it is a good example; that the public expects better alignment in the amending of existing codes and introduction of new ordinances in the future; that this Ordinance seeks to, consider strategies for preserving environmental areas from development and the protection of wetlands and waterways; that it recognizes the Inland Bays, their tributaries and other waterbodies as valuable open space area of ecological importance; that it determines if amendments are needed which will better help protect groundwater, waterways, sensitive habitat areas and other critical natural lands; that it calls for the protection of the natural functions and quality of Sussex County’s surface waters, groundwaters, wetlands and floodplains; that it identifies an appropriate range of wetland buffer distances based upon location and context; that it balances the protection of land equity with the protection of the resources defined in the Ordinance and their associated functions; that it works to establish a framework under which future property owners and Owners Associations will maintain the resources, resource buffers, and properties adjacent to, the systems that they are a part of in the future to ensure the ongoing positive conveyance of drainage features; that the Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County; that according to The State of Delaware 2018 Combined Watershed Assessment Report (305(b)) and

Determination for the Clean Water Act, Section 303(d) List of Waters needing TMDLs and the Center for the Inland Bays research shows our area has lost about half of its original wetlands due to drainage, conversion to other land uses, and sea level rise; that Wetlands and their beneficial functions continue to be lost; that 1,434 acres of Sussex County's wetlands were lost between 1992 and 2007 and 1,147 acres of wetlands were lost between 2007 and 2019; that saltmarshes continue to disappear and have decreased around the Inland Bays from a total of 10,838 acres in 1938 to 7,300 acres in 2007; that this is a 32% decrease; that many of the wetlands that remain are in poor condition; that an example of this is the health of streamside wetlands and saltmarshes in the Inland Bays watershed have received a grade of D; that in a most recent DNREC assessment of water pollution found that 87% of streams, ponds and bay within Sussex County were polluted due to high bacteria levels, high levels of nutrients or low dissolved oxygen levels; that in the Inland Bays Watershed, all assessed waters were found to be polluted by excess nutrients, 50% by bacteria, and 11% had low dissolved oxygen; that while significant improvements to the water quality of the Inland Bays have been realized, measured pollutant loads from the watershed to the Bays have not decreased; that many of the tributaries of the Inland Bays have very high pollutant levels and very poor water quality; that flooding which decades ago usually happened only during a powerful or localized storm, now happen frequently; that Lewes recorded an average number of four flood days in 2000; that in 2017, there were 15 flood days recorded; that in 2030, between 15-30 high tide flood days are projected; that from 2008-2015 over 13,500 building permits were issued; that a significant portion of this development has been in areas at risk of flooding; that from 2010 to 2017, Sussex County had the third highest number of homes, which was 1,233 homes, built in a 10-year flood risk zone of any county in the United States; that sea levels have been rising off the coast of Delaware for more than a century; that they will continue to do so at about twice the global average; that this is because of a geological phenomenon known as "subsidence"; that this means the section of the earth's crust beneath the Mid-Atlantic states is sinking at a rate slightly greater than one inch per decade, or about one foot per century; that Delaware's coastal communities already experience several days of high-tide flooding annually; that the problem is forecasted to grow; that the National Oceanic and Atmospheric Administration (NOAA) predicts that Lewes could see upwards of 30 high-tide flooding days annually by 2030 and as many as 135 by 2050; that Sussex County roads and bridges have the highest risk of inundation due to the sea level rise in the state; that this is according to DNREC's Sea Level Rise Vulnerability Assessment; that Sea Level Rise directly affects travel on roadways as a result of flooding, inundation, erosion of road bases, removal of sediment around bridges abutments or piers and reduced bridge clearance; that in Sussex County approximately 357 miles of roads and bridges that lie in the path of sea level rise may be adversely impacted; that according to the 2016 State of Delaware Inland Bays, from 1992 to 2012 upland forest decreased by 14 square miles in the Inland Bays watershed; that the existing water resource and buffer regulations are inadequate and failing to protect groundwater, waterways, sensitive habitat area and other critical natural lands in Sussex County; that regarding the proposed Ordinance Amendment, SARG has read, understands and is in agreement with the Wetland Buffer Workgroup regarding definitions, resources subject to the Ordinance, buffer purpose, buffer widths, two-zone buffer approach, buffer activities permitted and restricted, buffer averaging, buffers and lot lines, and resource management requirements; that however there are provision in the proposed Ordinance amendments that were altered or added post workgroup recommendations; that there was either no or limited debate on these provisions except one off with Sussex County officials in recent months; that personally he spent three hours with two other colleagues earlier in the week; that he feels strongly that this alone does not constitute an implied workgroup recommendation; that there are most likely modifications to the Buffer Ordinance Introduction dated October 21, 2021 in front of the Commission currently; that he has no objection and he looks forward

to the potential modifications; that it is unrealistic to expect the public to be able to review and consider on the day of the public hearing; that he requested a motion to keep the record open to allow for future public comment; that he feels selective cutting should be removed; that he references Line 705 D. regarding the Resource Buffer Standards; that in the January 9, 2020 Ordinance draft, it was defined as “Selective Clearing”; that this was defined as the removal or limbing of trees greater than two inches in diameter measure at breast height which does not change the areal extent of the forest boundary by concentrated removal of trees in one specific area; that based on the March 4, 2020 draft, which was shared with Sussex County Council, it is defined as “Selective Cutting” to be forest management activities; that includes the removal of trees less than three inches in diameter at breast height and the removal of understory vegetation less than three inches DBH and “Selective Cutting” shall not alter the canopy extent of the Resource by impacting an area more than 30 feet wide or one third the width of the Resource Buffer, which is less; that however in the proposed Ordinance Amendment it states “Selective Cutting” is defined as the removal or limbing of trees greater than three inches in diameter at breast height and no disruption of a contiguous forest canopy for a width greater than thirty feet; that it is apparent the “selective clearing” or “cutting” is a contradiction with the aforementioned overarching Buffer Standard; that it is vague and open for interpretation by developers; that more importantly the future caretakers of the Standards, that being the ability for HOA’s to govern their residents; that the most difficult to understand are the provisions in Section G.; that he does understand that any improvements to the resource water and wetland buffers are not intended to reduce density; that in the Agricultural Residential Zone up to two dwellings per acre is permitted today and will be with the proposed increases in the buffer widths outlined in the proposed amendment; that sometimes boundary irregularities present site plan design challenges; that for this reason there was a consensus from the work group to include the buffer averaging tool to provide flexibility to developers in unique situations; that some believe that the Buffer Averaging provisions more than sufficiently provide for flexibility; that there continues to be this desire for more flexibility; that depending on who you speak with “flexibility” to some is evading the proposed buffer width guidelines in order to respond to consumer demand for greater access and or proximity to the water resources; that also the belief some buffer options provide superior benefit via conservation and preservation easements in exchange for buffer reductions; that whichever the case each must scientifically demonstrate their ability to protect the resources and their associated functions; that they should do this by improving and protecting water quality via sediment filtration, reduce impact of nutrient loading on resources, moderate water temperature and enhance infiltration and stabilization of channel banks; that provide wildlife habitat via nesting, breeding, and feeding opportunities provide sanctuary and refuge during high water events; protect critical water’s edge habitat and protect rare, threatened and endangered species associated with each resource and its upland edge; that it should enhance and/or maintain the flood plain storage functionality via reduction 158 of flood conveyance velocities and dissipation of stormwater discharge; that each must demonstrate functional equivalency, both in terms of timing, protection, enforcement and ongoing maintenance and remediation; that at no time shall any incentives allow for the resource Buffer Zone A reductions and at no time reduce the buffer widths or permitted uses to less than the current Resource Buffer regulations; that specifically regarding G.1. which proffers “incentivizing the retention of forests”, he believe this is a band aid on a much more critical wound in Sussex County; that he believes this issue goes way beyond forest preservation in resource buffer areas alone; that if the County is serious about addressing the vast decimation of forests and trees there must be a separate study with solutions that encompass tree conservation throughout all of Sussex County; that there are countless examples in neighboring jurisdictions where tree conservation is a priority; that it is working; that present is a distraction, especially when G.1 (a), (b), and (c) considers allowing the encroachment on the existing

Forest and/or Landscape Buffers on the same property; that forest and/or landscape buffers intended purpose is to provide screening and open space between major subdivision; that allowing the reduction and/or elimination of the forest and/or landscape buffer has no relevance and provides no substitute or remedy for protecting the buffer resource; that this option must be removed; that regard H. Resource and Resource Buffer Maintenance and Management, he believes this is a long time in coming; that it will help to ensure that the resource buffers will continue to perform their intended purpose; that there needs to be a language included that any and all measure for access easement have minimal to no effect on disrupting the normal purpose and function of the buffers up to and including the width and number of access points; that he would like to make reference to Aesop's Fables of The Hare and the Tortoise, The Ant and the Grasshopper, The Fox and the Crow and most specifically The Goose that Laid the Golden Egg; that metaphorically the goose represents the world class water resources in Sussex County; that depending on your perspective the golden egg represents the benefits the public derives from their grandeur and indirect value derived from the ability for economic gain; that the golden egg is finite; that we are not creating more of these resources and we must work together to not kill the goose that laid the golden egg.

The Commission found that Dr. Edward Launay provided comment on the proposed Ordinance; that he is a professional wetland scientist and environmental consultant with Environmental Resources; that he was also a member of the Wetland Buffer Workgroup; that he supports the Ordinance as currently written, with one notable exception; that he has understanding and hope, that with a new section of the Ordinance, Section G. Resource Buffer Options, become more refined and better articulated as the Ordinance moves through the approval process; that he wishes to speak in the "Selective Clearing"; that Selective Clearing is the Resource Buffer Standards at Section 10.D2, Lines 705-707, which states that forest subject to the proposed Ordinance, all existing trees and understory shall be preserved and maintained in their natural state; that allowing Selective Cutting within a forested resource buffer does not constitute maintaining the resource buffer in a natural state; that as specified in the definition of Resource Buffers, which is Lines 145-159, resource buffers under the proposed ordinance are intended to provide resource protection, water quality protection, protection in conservation of wildlife habitats, and flood plain functions; that it is his personal and professional opinion that the provision allowing for Selective Cutting within resource buffers severely diminishes the functional values of proposed resource buffers; that allowing the removal of an entire natural forest understory, including shrubs, trees smaller than 3-in. in diameter, compounding that adverse impact by allowing the intensive select removal of large caliber trees; that as written, the Selective Cutting definition allows for the potential removal of essentially every other large tree in a forest stand; that in his opinion it is nearly equal to essentially having no buffer at all; that this is his interpretation as to what it is meant under Selective Cutting; that he feels the Commission might find it of interest, that he was the person that suggested the use of those words; that as a group there were individuals with the ability to do things to manipulate within the buffers was an essential item to the exercise of constructing the buffer Ordinance; that the reasons given were it may be tough to enforce and there must be ways to get into and around the buffers; that he states these things have been addressed; that he is requesting all references to selective cutting be removed from the Ordinance; that this will keep forested resource buffers truly protected in their natural state; that many provisions are included in the Ordinance which already allow for a wide variety of activities within the resource buffer; that these include walking trails, gaining access to the water front, a variety of water related projects along the waterfront; that these projects include the removal of any invasive species, or individual trees that pose a safety hazard to public or private property; that these are all included on the list of activities permitted within the resource buffer; that there is no need for selective cutting; that including selective cutting within the document, the way it is currently written only serves to give the

developer a blueprint for how to adversely impact and disturb the resource buffer prior to turning it over to a homeowners association; that he feels it is best to not say anything at all; that the County can decide where something happens or how forcefully they choose to control situations after the homeowners association owns the property; that in his experiences there will always be a homeowner that tries to encroach the buffer to make their backyard bigger, but most of the time, there are always other members of that HOA community which are quick to enforce the provisions; that he feels there is often times a good deal of self-enforcement; that he feels this is a good mechanism that we can rely on; that currently the document is acting as a blueprint for a developer to maximize his return while disturbing the buffer; that before the Buffer Workgroup was constructed, himself, Mr. Chris Bason and another environmental consultant were asked to make a presentation in front of Sussex County Council; that Mr. Bason presented a slide of a project on Whites Creek; that the slide presented a before slide with many mature pine trees and after slide with the majority of the mature pine trees removed; that several Commissioners questioned how that could happen; that he explained to Council the way the current buffer Ordinance is written and the way it has been enforced over the previous years, a person could pretty much do what they wanted and plant along the way; that is essentially what had happened in that situation on the slide; that currently that is what the Buffer Ordinance currently allows; that he believed the goal of the new Buffer Ordinance was to prevent situations like that from happening; that if the Ordinance should be approved with Selective Clearing the way it is currently written, developers will be back to doing the same thing again; that the Resource Buffer Options section is a more recently developed part of the proposed Ordinance; that it was largely composed after the involvement of the wetland workgroup; that over the past few weeks he has been able to review and discuss Section 10.G, Lines 782-859, with other members of the workgroup and County staff; that there are many questions about the intent, as well as how this section of the Ordinance would be applied have been answered in his mind; that many needed improvements to the text have been made in order to better define the intent; that improvements were being made up to the date of the public hearing; that he does support the goals and intentions outlined in the Buffer Options section; that he appreciated the opportunity to better understand the options, while providing input on them; that he believes this section of the Ordinance will require some additional work as the Ordinance moves forward to County Council; that he plans to continue working the Sussex County staff on this part of the document; that there are topics such as developing suitable templates for future conservation easements to protect offsite resource buffers; that his is already currently proposed; that the future conservation easement document needs to be worked out and truly understood; that the document does not yet exist; that it is his personal and professional opinion that the Ordinance does offer adequate flexibility through buffer averaging and other measure to ensure flexibility and enhance design project it applies to without the Resource Buffer section; that after his most recent review of this section and consultations with the staff, he is in support of the Resource Buffer section; that as intended he believes it will offer a positive impact to the goals and resource protection and provide incentives for the retention of existing forest prior to future development; that the ongoing refinement of the section will undoubtedly need further effort; that if the proposed Buffer Ordinance did not move forward, he does believe there should be some incentive to ensure no clearing of the buffer from the moment they present an Application; that he makes the suggestion to construct a third Resource Buffer Table; that the table could reduce some of the buffer widths with the provision of demonstrating the future resource buffers on the project would not have been disturbed for five years advance of the project; that this would qualify the Applicant for buffer that are less than those proposed in Table A; that he would like the Commission to understand, often times, a tax ditch is a perennial stream; that currently buffers are required from tax ditches; that he believes Mr. Medlarz meant to say we are applying resource buffers, but are not being applied to the tax ditch

buffer that applies to the tax ditch; that tax ditches already require a maintenance buffer; that often times the tax ditch buffer may be wider than the resource buffer; that his interpretation is if the resource buffer would be wider than the tax ditch buffer, the resource buffer would extend past the tax ditch buffer, within a Zone B, which allow certain activities, and extend beyond the tax ditch right-of-way; that saying we will not regulate a tax ditch is wrong; that he may be wrong in his interpretation; that there is no need to provide an easement to get into a tax ditch; that the easement already exists and is controlled by the State of Delaware; that anytime any maintenance is needed regarding tax ditches, an approval is required from DNREC and Army Corp of Engineers and if an Applicant receives the approvals, they would be exempt from the Buffer Ordinance.

Mr. Robertson stated he agrees with Mr. Launay in regards to tax ditches; that tax ditches in and of themselves do not require buffers but if they are considered a perennial stream it may require a buffer; that if there is a tax ditch easement, the buffer would not begin from the easement; that the buffer would be where the easement would be; that they will not require trees to be where an easement would be located; that he feels they are both correct in some extent; that the working group worked on the Ordinance through 2019; that product of the working group was an evolving document; that since the Ordinance was introduced to Sussex County Council the document has not changed.

Mr. Medlarz stated not all streams are tax ditches and not all tax ditches are streams, but some streams are tax ditches and if a stream is a tax ditch, it will be required to have a buffer.

The Commission found that Mr. Chris Bason, Executive Director for Delaware Center for the Inland Bays; that Mr. Bason presented a PowerPoint presentation to the Commission; that the presentation discussed the importance of Wetlands and Buffers to Inland Bays Comprehensive Conservation & Management Plan, the relevant water quality and land use trends in the Inland Bays, over comparison of the proposed Ordinance to those of nearby jurisdictions and recommended amendments to the proposed Ordinance; that the first iteration of the Inland Bays Comprehensive Conservation & Management Plan was in 1995; that it was amended in 2012 and again in 2021; that it has seven signatories; that the County is one of the signatories; that the mission is to bring back the water quality to the Inland Bays by reducing nutrient pollution and restoring ecosystems, education and mediating flooding and adapting to climate change; that the buffer action is within the Inland Bays Management Plan; that the idea is to take the bays we currently have, which is a system dominated by algae due to excessive nutrients, and restore the system by reducing the nutrients; that this will allow sunrays to get to the bottom of the bay floor; that they have had success with wastewater and reducing the nutrients going into the bay; that they have had little success, over the past 30 years, controlling the nutrients coming off of the land; that they have seen no reduction in this source since the 1980's; that in the Little Assawoman Bay they have recently seen an increase in the nutrients, that we are backsliding on Delmarva and Sussex County in regards to water quality; that excessive algae growth often creates zero oxygen at night; that this leads to the death of our fish, shellfish and plant life; that this past year there were 15 fish kills recorded within the Inland Bays; that this is the largest recording of fish kills since 1985; that buffers are very important to water quality; that buffers can be the solution to these issues; that land use has changed dramatically of the last 25 years; that between 1992 -2017 we have had 30 sq. miles of development; that we have lost almost four square miles of wetlands; that we have lost 10 square miles of upland forest; that we have lost 22 sq. miles of agriculture; that there has been an 18% decrease in the upland forest cover from 1992-2017; that all forests are important to the watershed, but those closest to the resources are the most important; that we are also losing our saltmarshes; that we have lost over 3,600 acres of salt marsh since the 1930's; that the saltmarshes are now drowning due to sea level rise; that the only way to protect the marshes is to provide a buffer to the marshes to move into;

that most development is taking place around the bays; that flooding is on the rise; that in 2020 there were eight High Tide Flood Days; that NOAA projects by 2030 there will be between 15-30 High Tide Flood Days; that we are building within flood prone areas; that from 2010-2017 Sussex County had the highest number of homes built within the 10-year flood risk zone of any ocean coastal county in the United States; that he presented a Wetland and Waterways Buffer Policy Comparison chart; that Sussex County's does not come close in many areas to what other jurisdictions are requiring; that achievements of the Ordinance includes the consensus points of the buffer workgroup on features, widths, activities, site design and flexibility with buffer averaging, the specific purposes of the buffer, requiring a Management Plan and including access through easements; that his recommendation for the Ordinance are the requirement for protecting and restoring the forest, restriction of selective cutting to small lengths of buffers on only tidal wetlands, waters and freshwater ponds, removal of the Resource Buffer Options section and clarification to Maintenance of Drainage Conveyance; that he would like to see existing forests being preserved from the time the Application is submitted; that forested buffers are more beneficial than grass buffers as they provide 36% more nitrogen; that a forest is an assemblage of different trees and different layers; that selective cutting currently does not have a defined purpose within the proposed Ordinance; that it does not seem to serve the purpose of the Ordinance over all; that he feels Selective Cutting is for the purpose of views capes; that these situations should be made specific within the Ordinance; that he recommends Selective Cutting should only be permitted for 20% of the buffer feature length; that this should only apply to buffers on tidal waters, wetlands and freshwater ponds were views area commonly desired; that he believes flexibility for site design is addressed through buffer averaging; and options should not reduce the width of a buffer; that any options should not reduce the effectiveness of another part of the Ordinance with a separate purpose; that he feels incentives should be, if an Applicant increased the width of their buffer, maybe they would be granted a few additional lots and he feels there should be clarification on the definition of "positive conveyance."

The Commission found that Mr. Preston Schell with Ocean Atlantic Companies spoke in favor to the Ordinance; that he stated he is heavily in favor of the Ordinance; that he feels it was a long time coming; that he was not part of the working group but is thankful for their hard work; that he feels the working group came to a lot of solutions that he had not even thought of; that he likes the idea over the averaging; that the options for developers are a great idea; that what he appreciates the most is the guidance it offers the Commission; that proposed Applications, especially for cluster subdivisions, it is a guessing game as to what level of buffer the Commission or County Council will be satisfied by; that sometimes developers will come in and do the minimum; that he has always tried to exceed the requirement; that sometimes in doing so, it seems like you give an inch and they take a mile type of situation; that he feels the proposed Ordinance is very detailed and outlined well; that it allows everyone to see the Ordinance in more black and white; that it allows all developers to be on the same playing field and will be treated equally; that he agrees with Mr. Basons previous comments and recommendations; that he does not agree with Mr. Launay in regards to the Selective Cutting and he does not feel the developers will be the issue; that the issue will be with the homeowners and stated anyone can see an example of this within Coastal Club at how well homeowners obey the fact that they are prohibited from clearing trees within the buffer.

The Commission found that Mr. Jim Erikson provided comment to the proposed Ordinance; that he feels there should be clarification to who the beneficiaries would be for the easements; that he feels there should be clarification to the easements in regards to should they be cleared or should they remain in their natural state; that he does have some concern with the drainage assessment report; that he would like confirmation if drainage assessment would only be looked at on the property; that it would be

difficult to request someone to go offsite, identify something and obtain access to fix it when it is not under their control; that he is curious as to who will perform the review and making the decisions; that in Section H, he worries slightly about the stormwater impacts of opening up the restriction, if the restriction has been in place for a long time; that he feels there could be a crisscross of communication in regards to grading plans depending on the engineer, and their standpoint when performing grading plans; that he is concerned walking trails, as they are currently constructed, may not be allowed as the Ordinance is currently written and he does feel there needs to be slight revisions to the Ordinance, but generally supports the Buffer Ordinance.

The Commission found that Mr. Scott Shaughnessy, Ms. Emily Knearl, and Ms. Michelle Forsley spoke by teleconference in support of the proposed Buffer Ordinance; that he does agree and support the comments made by Mr. Borrasso, Mr. Launay, and Mr. Bason; that he mentions concerns regarding flooding, what enforcement will look like, selective tree cutting, reserves in trusting HOAs and condo associations appropriately enforcing buffer regulations, the size of the non-tidal wetlands, intermittent and ephemeral stream buffers and the procedures which go along with the buffers once the Application is submitted.

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

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

In relation to the Wetlands Buffer Ordinance. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for 14 days, leaving the record open for the public written comment. Motion carried 4-0.

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-23.00-270.00

Mr. Whitehouse advised the Commission that they may remember this parcel from Change of Zone 1922 which was heard by the Commission earlier this year and was recommended for adoption by County Council; that this is a straight-forward Ordinance to amend the designation of the parcel from the Commercial Area to the Coastal Area; that the reason for this is that there is a Change of Zone Application pending for a High-Density Residential – Residential Planned Community (HR-RPC); and that submitted into the record is a copy of the PLUS comments; a copy of the minutes from both the Planning and Zoning Commission meeting and the County Council meeting referred to. Mr. Whitehouse noted that the Office of Planning and Zoning received no comments in support of or in opposition to the proposed Ordinance.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the property owner; that the request is to amend the Future Land Use Map of the Comprehensive Plan; that Condition P of the approval for CZ 1922 was to make this amendment to the Map; that the Office of State Planning states that this property is in a High Use Area; that going from Commercial to Coastal is a down-zoning; that it is in Investment Level II and III which is where development is directed; and that the State has no objection to the amendment.

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

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

In relation to the Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-23.00-270.00. Motion by Ms. Stevenson to approve the Ordinance as it is consistent with the other land use classifications around this property and that it is a less intensive land use classification going from Commercial Area to Coastal Area, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

The Commission took a recess from 5:55 pm until 6:25 pm.

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.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis, a copy of the Applicant's revised Master Plan showing the breakdown in units, a copy of the Planning and Zoning Commission meeting minutes from June 27, 2019, a copy of Ordinance 2690, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, and a copy of a letter from the Applicant. Mr. Whitehouse noted that Staff has received two letters in opposition to the Application.

The Commission found that Mr. Zac Crouch was present on behalf of the Applicant. Mr. Crouch stated that in 2019 the Applicant requested a reduction in the number of single-family units and an increase in the number of multi-family units but keeping the total number at 1394; that change was recommended for approval by the Commission and approved by Council; and that the current request is to decrease the number of multi-family units from 378 to 295 and to increase the single-family detached condominiums from 388 to 471 which will keep the total amount at 1394 based on the previous approval.

Ms. Stevenson asked about the square footage of proposed condos?

Mr. Greg Tobias stated that the condos will be 36 ft. in width and range from 1,400 sq. ft. to 3,500 sq. ft.

Mr. Hopkins asked about the number of parking spaces per unit.

Mr. Crouch stated that the Applicant will come before the Commission with a site plan, should this Change of Zone Application be approved.

The Commission found that there was no one who wished to speak in support of and three people who spoke in opposition to the Application.

The Commission found that Mr. Stephen Dulin spoke in opposition to the Application.

Mr. Dulin stated that the original Windswept totaled 11 units; that when it was approved it was for a total build-out of 1,404 homes which was one of the reasons to buy in this development; that money was put into an escrow fund to ensure that the build-out would take place at The Peninsula; that a clubhouse was included; that a nature center was promised; that there is a discrepancy in the Applicant's numbers; and that he opposes the Application based on the fact that the Application is incorrect.

The Commission found that Ms. Mary Lucente spoke in opposition to the Application.

Ms. Lucente asked if an impact study has been completed since the 20 ft. wide roads will not change within the development.

Chairman Wheatley explained that the number of units is not changing just the ratio of multi-family to single-family will change if this is approved.

Ms. Lucente stated that larger homes will accommodate larger vacationing families which in turn will have more cars and impact traffic and parking within The Peninsula; and that there is no overflow parking.

The Commission found that Mr. Mike Edison spoke in opposition to the Application.

Mr. Edison stated that his concerns are not about the building but what the building of these units is doing to the watershed; that there are drainage and flooding issues; and he asks how these issues are going to be addressed and if can it be done before the building starts.

Mr. Robertson stated that this is a Residential Planned Community and any changes to the Site Plan will have to get approval from the Sussex Conservation District for the alterations to the Stormwater Management System.

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

In relation to Application C/Z 1936 - OA-BP Marina Bay-Lakeside, LLC. Motion by Mr. Mears, to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

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.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Site Plan, a copy of the Applicant's Exhibit Booklet which includes the Applicant's environmental assessment, a copy of the staff analysis, a copy of the PLUS response letter, a copy of the DelDOT

Service Level Evaluation Response, and a copy of a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that the Office of Planning and Zoning received zero letters in support of the Application, seven mail returns, and as of the beginning of the meeting 36 letters in opposition.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Double DB, LP; that also present are Mr. Webster Gray, principal of Double DB, Mr. Jeff Clark, Landscape Architect with LandTech, Mr. Chris Pfeifer, Engineer with George, Miles, and Buhr, and Mr. Will Twupack, Professional Wetland Scientist with Watershed Eco. Mr. Hutt stated that he will describe the Application in general terms and then have other members of the team address the Application in more detail; that this property is within the Henlopen Transportation Improvement District (TID); that this Application is for a 76-lot Residential Planned Community (RPC) on approximately 29 acres off Wil King Road; that there were some questions about the actual acreage; that while there is a difference in acreage between the site plan and the Application that was filed is due to a refinement of a legal description over time; that the Application states 29.07 acres and the Revised Site Plan shows 29.10 acres; that there is a four-acre portion shown on the site plan that is not part of this Application; that originally the area was comprised of five tax parcels; that some lot lines were removed and this Application now involves just two tax parcels; that the northern tax parcel is 6.26 acres and the southern parcel is 22.84 acres; that there are presently two zoning classifications on this property, General Residential (GR) on the east and Agricultural Residential (AR-1) on the west; that this Application seeks to change both the AR-1 and GR portion of the property that is within the Coastal area to Medium Residential (MR); that the northern portion that is currently in the AR-1 Zoning District will remain as AR-1; that the reason the entire property is not being rezoned is because GR and MR are not permitted zoning districts in the Low Density Area; that an Application was filed to include the northern portion of the property in the Coastal Area which would allow the entire parcel to be included in the rezoning request; that Application to the Office of State Planning was rejected; and that the Applicant will integrate the MR and the AR portions of the property into an RPC.

Mr. Jeff Clark stated that Wil King Station proposed subdivision is bound on the north by open farmland with some forested area immediately abutting the subject property; that the western boundary abuts a fully developed 175-lot Oakcrest Farms MR zoned subdivision; that to the south is a fully developed 6-lot subdivision with larger lots approximately four acres each with the smallest being one acre; that there are a number of subdivided lots to the east ranging in size from ½ an acre to approximately one acre and a 4.2 acre wooded tract which is presently undeveloped; that some of the subdivisions in the immediate area are Oakwood Village, Chapel Green, Ocean Meadows, The Ridings of Rehoboth, Heron Bay and Anchors Run which demonstrate that this is a developing area in Sussex County; that the Wil King Change of Zone to MR is consistent with the neighboring Oakcrest subdivision to the west; that before preparing a land-use plan for this site a field investigation was conducted by Will Twupack from Watershed Eco and he will address the Commission later; that no jurisdictional wetlands and no rare, threatened, or endangered species were found on this site that would impact any land-use planning; that Sussex County Engineering Department has confirmed that this area is a tier one planning area and adequate capacity exists to provide sanitary sewer to this development; that adequate water for both potable and fire protection are also available to serve this property and confirmation from Tidewater Utilities has been included with the Application; that the proposed plans shows a single commercial entrance to connect Wil King Station with Wil King Road; that there are two opportunities for interconnectivity, one to the east and one to the west; that Geotechnical Associates conducted a soil survey to identify the areas best-suited for storm water management; that no Traffic Impact Study (TIS)

was required by DelDOT as the site lies within the Henlopen TID and the Applicant will be required to pay a per-lot fee in lieu of making any off-site improvements; that fee has been calculated to be \$427,794; that 76 lots are being proposed and they range in size from 7,500 sf in the southern portion of the property to 17,701 sf. in the northern portion of the property that is zoned AR-1; that AR lots in an RPC must be at least 2/3 of the 20,000 sf; that the remaining lots all conform to the MR-RPC zoning district with a minimum requirement of 60 ft. road frontage and a minimum lot size of 7,500 sf.; that each lot fronts on a 50 ft. right of way (R.O.W.) with a standard Sussex County curbed street with a continuous concrete sidewalk on one side; that several open space areas are planned for the center of the community with two other playground spaces between lots 11 and 12 and between lots 56 and 57; that the total open space will be 8.9 acres which is 30% of the total acreage of the site; that there will be a 20 ft. landscape buffer around the perimeter of the entire development; that the existing woods and buffer areas will be preserved with this plan; that the first lot will be set back from Wil King Road approximately 300 ft.; that no lots have direct access to any state maintained roads; that the project was reviewed by the Office of State Planning Coordination and went through the PLUS process and the report was included with the supplemental exhibits; that State Office noted that the site is in Investment Levels III and IV with the majority of the site in Level III; that according to the Strategies for State Policies and Spending Level III reflects areas where growth is anticipated in the near-term and longer-term future; that street lighting proposed will be standard Delaware subdivision poles and fixtures and will all be downward screened towards sidewalks; and that the site plan demonstrates that all area and bulk requirements of Sussex County can be met.

Mr. Chris Pfeifer stated that this project is within the Henlopen TID and contributions will be made to DelDOT for off-site improvements; that there will also be improvements along the frontage which will include a right-turn lane into the site, a by-pass lane and widening of the road to 11-foot lanes and 5-foot shoulders; that there were some concerns about drainage; that the general flow pattern on Wil King Road is from north to south; that there are a series of ditches and driveway culverts that connect in order for the flow to go from north to south which eventually crosses Wil King Road from west to east; that the culvert at the entrance to this property sits a foot higher than the others on Wil King Road; that as part of the improvements for this property, the higher culvert will be reset to match the others so that the flow can make its way all the way down; and that there will be stormwater management ponds on site that will meet the requirements from the Sussex Conservation District.

Mr. William Twupack stated that he is an Environmental Consultant with Watershed Eco, professional wetland scientist, a Maryland/Delaware qualified forest professional and a bog turtle surveyor for Maryland, Delaware and Pennsylvania; that Watershed Eco was contracted to conduct a wetland delineation on the property; that the wetland delineation identified two small depressions within what was prior agriculture; that these areas now have sapling sweet cone and loblolly pine which are standard in Sussex County; that a jurisdictional determination (JD) was requested from the Army Corps. of Engineers (ACE); that the ACE approved the JD on May 17, 2021, and is valid for a period of five years; that the US Fish and Wildlife Service determined that there are no concerns relating to rare, threatened or endangered species on this parcel; that National Marine Fisheries who determined that there are no concerns relating to rare, threatened or endangered species on this parcel; that DNREC Natural Heritage also determined that there were no rare, threatened or endangered species on this parcel but they did note that the forest on the northern portion of the property was mature and worth saving; that this portion consists of 12 – 18 inch white oak, northern red oak, red maple, sweet gum and American holly dating back to 1937; that this wooded area was used as a dump consisting of tire piles, household waste, and concrete; that the forest is a narrow piece and is not part of a larger

100-acre forested tract; that it would not be beneficial for forest interior dwelling birds; and that it is not yet a mature forest.

Mr. Hutt stated that comments made by Mr. Clark, Mr. Pfeifer and Mr. Twupack have reviewed how this Application meets the requirements found in the Zoning Code; that the proposed zoning change and RPC overlay is also consistent with the make-up of the area in general along Wil King Road; that the RPC tool allows to integrate the AR-1 portion and the MR portion into one homogenous community with larger lots in AR-1 and smaller lots in the MR portion; that this is consistent with the 2018 Comprehensive Plan for the Coastal Area which allows for density of 2 – 12 units to the acre as well as in the Low Density Area in AR-1 is generally 2 units to the acre; that the combination of this is 2.69 units to the acre which is on the low side of the Coastal Area but on the high side of the AR in the Low Density Area; that some of the concerns of neighbors addressed the acreage, the setback buffer, traffic concerns, stormwater management, and special environment features on the site; that each of those concerns have been addressed as part of the Application or as part of the presentation; and that for all these reasons the Applicant submits that this Application is consistent with the Sussex County Zoning Code and its Comprehensive Plan.

Mr. Hutt submitted proposed Findings of Fact and Conditions to Commission members.

Ms. Stevenson asked about the trees that are being preserved on the site.

Mr. Twupack stated that typically a mature forest consists of trees that are 18 – 30 inches in diameter and that this site does not meet that standard for a mature forest.

Ms. Stevenson stated that the Applicant talks about workforce housing and asks for an explanation.

Mr. Clark stated that several developers have expressed interest in this project and all of them have considered this area for workforce housing which means younger families so tot lots are needed and be oriented towards children and be away from the entrance.

Ms. Stevenson asked what the price point would be.

Mr. Webster Gray stated that a builder has not been chosen but they would expect that the homes be in the low \$300K.

Ms. Stevenson asked where the property will come from for widening the road.

Mr. Clark stated that most of it will come from the subject property but if an additional property is required then the Applicant will approach homeowners for the additional property needed.

Mr. Whitehouse asked about the significance of the gray line shown on the plan.

Mr. Clark stated that the Subdivision Ordinance requires a 50-ft building setback from lands used for agricultural purposes.

The Commission found that Mr. Sergei Boboshko spoke in opposition to the Application; that Wil King Road is a two-lane road with a length of 1.8 miles; that the speed limit is 45 mph and is rarely obeyed; that it is populated by single-family homes in addition to providing access to four communities with a combined total of 410 homes; that there are school children living on this road and there are 7 bus stops to pick up 16 elementary school children, 8 bus stops to pick up 24 middle school children and 7 bus stops to pick up 12 high schoolers; that a 2019 report showed the average vehicle trips per day is 1,455 and the proposed land use would generate more than 500 additional trips per day; that he has concerns because a TIS was not completed and the Developer is contributing funds in lieu of Traffic Improvements; that the rapid pace of Development is disturbing to all residents and is negatively impacting the quality of life; and that he hopes the Commission will deny this Application and follow the wishes of the majority of residents in Sussex County.

Mr. Robertson explained the Henlopen Traffic Improvement District agreement between Sussex County and DelDOT.

Mr. Wheatley explained that the Commission is an appointed body and that their job is to administer the ordinance and to weigh each application against that ordinance.

The Commission found that Mr. Dave Chernuta spoke in opposition to the Application. Mr. Chernuta stated that the proposed development is not compatible with the area; that the area is currently a mix of farms, forests, and low-density housing; and that for these reasons he asks that the Commission recommend denial of this Application to maintain the integrity of the area.

The Commission found that Ms. Janet LeDigabel spoke in opposition to the Application. Ms. LeDigabel stated that both DNREC and the PLUS report refer to mature trees on the subject property; that this Application should be denied for various reasons; that this rezoning will set a precedent for more zone changes; that Mr. Clark referred to other developments along Beaver Dam Road and these cannot be compared to Wil King Road; that there are no shoulders on Wil King Road and the mailboxes are close to the road; that the PLUS report states that there are wetlands on the property but the scientist testified that there are no wetlands on the property and she requests that a new study to show that there are no wetlands on the property; that she disagrees with the scientist, it is a mature growth forest; that the PLUS report states that this is a possible Nanticoke historical site and she requests that the Developer has an archeological study performed; that she requests that the flooding on the road be corrected before the building begins; that the soil studies were only performed in four areas; that there has been dumping on the site and antimony that is found car batteries could have seeped into the soil so there should be more soil studies performed throughout the property; that were the antimony was found is the area for the proposed children's playground; and that there is no reason for a zone change as it would be detrimental to the existing residents.

The Commission found that Ms. Terri Russo spoke in opposition to the Application. Ms. Russo stated that she is addressing three safety issues with the proposed development; that Wil King road is only 22 ft. wide with no shoulder; that traffic is a serious concern; that removing healthy forest acres takes oxygen away and eliminates existing air pollution protections; that she asks the Developer to consider a wildlife study to be performed; that a study should be performed on the emergency services response times if this Development is approved; and that she requests a no vote on the requested rezoning.

The Commission found that Ms. Jill Hicks spoke in opposition to the Application; that she stated the DelDOT traffic report is two years old and does not take into account the housing boom that has occurred since then; that the study does not address the safety obstacles that exist on both sides of Wil King Road; that Wil King Road is lined by 87 mailboxes; that steep ditches are lining both sides of the road; that

visibility around trash trucks is obscured in both directions; that this narrow road also floods and flooding will not be solved by fixing one culvert; that the ditches cannot handle the run-off; and that she requests that the rezoning be denied as it would set a dangerous precedent as it would add more traffic to this already dangerous road.

The Commission found that Mr. Rodney Harmon spoke in opposition to the Application. Mr. Harmon stated that there are flooding issues on this road and when it rains the water comes up to his door; that there is no place for the water to go; and that this property was owned by the Nanticoke Tribe and an archeological study should be performed on the site.

The Commission found that Mr. Gary Rosenblum spoke in opposition to the Application. Mr. Rosenblum is concerned that if this development is approved that it will set a precedent for other properties in the area.

The Commission found that a resident spoke in by teleconference in opposition to the Application. The caller stated that she agreed with all the statements made by the residents in opposition to the Application.

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

In relation to Application C/Z 1937 Double DB, LP. Motion by Mr. Mears, to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

ADDITIONAL BUSINESS

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to go into Executive Session. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to return from Executive Session. Motion carried 4-0.

Meeting adjourned at 9:15 p.m.

**Planning and Zoning Commission meetings can be monitored on the internet at
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